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House of Representatives

The House met at 10 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Remind us always, O gracious God, that Your blessings and redemptive power are showered on all the people from every background and every nation. While we attempt to serve with enthusiasm and zeal in our place and time, may we never act with undue pride about our responsibility, but rather go about our work with humility and diligence. Encourage us to focus on the goals of justice with an attitude of mercy for in so doing we will truly be Your people. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Ohio [Mr. TRAFICANT] come forward and lead the House in the Pledge of Allegiance.

Mr. TRAFICANT led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will recognize Members for twenty 1-minute speeches on each side.

SAFETY AND HEALTH IMPROVEMENT AND REGULATORY REFORM ACT OF 1995

(Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, today, along with 55 of my colleagues, I am introducing the Safety and Health Improvement and Regulatory Reform Act of 1995. The legislation will comprehensively change the Federal Occupational Safety and Health Act [OSHA]. Few Federal programs are in need of change as much as this one.

I believe that OSHA has become fundamentally misdirected, and instead of promoting and encouraging workplace safety and health, OSHA has become known for issuing silly regulations and is preoccupied with collecting fines from unsuspecting employers. It is time to add some common sense to OSHA's regulations and focus on promoting safety in the workplace.

Legislation that I am introducing today targets 50 percent of OSHA's funding toward consultation, training, education, and compliance assistance programs. Other important changes include adopting the regulatory reform measures already approved by the House, and giving employers the opportunity to fix alleged safety and health violations prior to the issuance of a citation. Finally, to save taxpayer dollars, this bill proposes the merger of the Occupational Safety and Health Administration with the Mine Safety and Health Administration—without compromising workplace safety.

I welcome your cosponsorship of this much needed legislation.

NEW YORK BAR ASSOCIATION OPPOSES CHANGING BURDEN OF PROOF IN TAX CASE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the New York State Bar Association has come out against H.R. 390. They are against changing the burden of proof in a tax case. The New York State Bar Association says taxpayers should remain guilty and prove themselves innocent.

That is really no surprise. Bar associations oppose it. IRS commissioners oppose it. IRS agents oppose it. Many lawyers oppose it. The only real support my bill has is 95 percent of the American people, the most widely supported bill in the country.

Mr. Speaker, I think it is time that we tell the bar associations and the IRS to shove their opinions up their cash cows. It is time to change the burden of proof in a tax case. They can in fact document those admissions they make on our tax form in the administrative process, but when it gets into court, the foundation of our Constitution is you are innocent until proven guilty and, damn it, a taxpayer should be treated like everybody else.

THE PRESIDENT JOINS THE BUDGET DEBATE

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, let me just say that the President's speech last night was fabulous. Bill Clinton was his usual polished self. He was convincing, sincere, and articulate. I would argue that Bill Clinton has a rare gift for making speeches.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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But let us not forget one crucial thing. With Bill Clinton, there is always a huge difference between reality and his speeches.

Let me illustrate. During his campaign for the Presidency, Bill Clinton argued passionately for deficit reduction and the need to balance the budget. In fact, in June 1992, Bill Clinton told Larry King that he would present a plan to balance the budget in 5 years. This never happened.

For the last 3 years, the President has introduced budgets that called for more deficit spending, not less.

His last budget, the one he just rejected last night, calls for $200 billion deficits well into the next century.

Mr. Speaker, we are glad he wants to get into the debate, but I urge everyone to keep in mind the difference between Mr. Clinton's speeches and his actions.

PRESIDENT COMMENDED FOR TOUGH STAND AGAINST JAPANESE AUTOMAKERS

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, I rise to congratulate President Bill Clinton for the very tough and long awaited stand he has taken against Japanese automakers. I applaud his decision to place a 100-percent tariff on Japanese luxury automobiles until they allow American cars and parts to be imported without unfair barriers. For years and years I have watched President after President threaten and warn Japan about their unfair trade practices, but finally President Clinton has ended the threats and has taken the decisive action that has been needed for many years. Cars and car parts account for most of the huge United States trade deficit we have with Japan, yet despite negotiations in good faith Japan has refused to remove the barriers that prevent United States automakers to compete. President Clinton has a record that clearly shows he is open to free trade, but now at the same time he shows he is willing to take forceful action against foreign unfairness. I applaud the President for this decisive action, and ask my colleagues to support him in this bold and appropriate action.

THE CHANGING PRESIDENTIAL WINDS

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, we all should welcome the President to the budget debate—and hope that this time, the shift in Presidential winds will be a lasting one. In announcing that ''It's time to clean up this mess,'' the President made big news. It is not hard to see why such a proclamation, coming from the President of the United States, makes headline news.

Four months ago, when the President submitted his official budget to Congress with no plan for bringing about fiscal balance, he clearly did not think the time had arrived to clean up the mess. Even more interesting is that, after signing into law the largest tax increase in history in 1993, the President declared that he had taken the necessary steps to clean up the mess.

The President's changing view on this subject has been somewhat of a whirlwind. But today, even though the President's plan is 3 years later and a half trillion dollars shorter than the Republican plan to balance the budget, we welcome him to the debate.

MEDICARE

(Mr. BARCIA asked and was given permission to address the House for 1 minute.)

Mr. BARCIA. Mr. Speaker, I am deeply concerned about the proposed changes to the Medicare Program. Taking away funding from Medicare, which benefits 35 million aged and disabled Americans, is an unacceptable act of Congress.

I have heard from hundreds of senior citizens from my district urging me to maintain and preserve their Medicare benefits. Our elderly Americans have worked too hard for their future. To dismantle the program they depend on for their health care needs would be devastating.

Medicare provides an invaluable and irreplaceable security for seniors. With the population of older Americans growing every year, Medicare must be strengthened and decisions must be made to support the program not break it down. The future of Medicare is critical not only for seniors but for all Americans who will someday need it.

Although Congress must strive toward a balanced budget and address the solvency of Medicare, let us turn to other programs for cuts, not our seniors.

Older Americans deserve our support. Balancing the budget is no easy task and it will require tough decisions that I am willing to make. But making our senior citizens struggle to pay for health insurance is not a choice I am willing to make.

DETAILS OF PRESIDENT'S BUDGET YET TO COME

(Mr. JONES asked and was given permission to address the House for 1 minute.)

Mr. JONES. Mr. Speaker, remember the first budget that the President sent to Congress this year. It came up for a vote on the Senate floor and was defeated 99 to 0—yes, 99 to 0. Not one Democrat supported his budget.

Now, the President tells us that he has seen the light. He has realized that the American people really do want to balance the budget. So, at the end of the process, he has finally jumped on board—we hope.

Where are the details? Where is the fine print?

It is easy to stand up and talk the talk, but it takes real leadership to walk the walk. Republicans have shown that leadership through our balanced budget plan.

Mr. Speaker, we hope the President will soon show us the details of his plan.

CAMPAIGN FINANCE

(Mrs. MALONEY asked and was given permission to address the House for 1 minute.)

Mrs. MALONEY. Mr. Speaker, last weekend in New Hampshire, a shake of hands promised to shake up a system in dire need of shaking up.

With a handshake, the President and the Speaker implicitly endorsed a bill that Representatives JOHNSON, MEEHAN, and I introduced earlier this year to reform campaign finance laws.

For 20 years, Congress has failed miserably in its efforts to reform Federal elections, to level the playing field between challengers and incumbents.

Americans want elections instead of auctions.

Our bill is modeled closely after the law which created the military base closing commission.

The commission would be mandated to examine all key principles of campaign finance reform.

The commission would present Congress with a bill for a straight up-or-down vote.

Mr. Speaker, it is time to turn the promise of a handshake into the reality of law.

AFFIRMATIVE ACTION

(Mr. FRANKS of Connecticut asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRANKS of Connecticut. Mr. Speaker, I have been opposed to racial and gender based set-asides and preferential treatment throughout my career, but I believe that we must maintain and/or strengthen three aspects of our equal opportunity laws:

First, we must ensure that opportunities are made known and are accessible to all Americans, followed by fair competition.

Second, we must continue to have a mechanism to determine whether an entity has violated antidiscrimination laws.

Third, we must strengthen the enforcement aspect of our equal opportunity laws. Enforcement should be swift and severe.

However, Mr. Speaker, if set-asides and preferential treatment are not removed from the authorization and appropriation bills, I will attempt to offer amendments on the House floor to eliminate them all. I do so not to fuel the debate on affirmative action but to help ensure closure on this potentially divisive and emotional issue.

FLAG DAY

(Mr. FORBES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FORBES. Mr. Speaker, today on this June 14, this Flag Day, we not only celebrate our history but mark a point in our lives where we as a people must continue to preserve our great gift of freedom.

The symbol of this freedom is our own American flag. Symbolized is the land, the people, government, and ideals of the United States of America. Since its creation on June 14, 1777, it has been the hallmark of this great democracy in which we live. In our flag we see the struggles of our forefathers in times of war, political upheaval, and natural disaster.

As we move here in the House to consider a constitutional amendment to protect that flag, I urge all my colleagues to think of the ideals, to think of our need to preserve freedom and the symbolism of this great American flag. I urge its adoption.

OPPOSING RESUMPTION OF FRENCH NUCLEAR TESTS IN THE PACIFIC

(Mr. UNDERWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. UNDERWOOD. Mr. Speaker, I join my colleague from American Samoa in expressing my outrage over France's decision to resume testing.

Mr. Speaker, yesterday, I, along with 20 colleagues, sent a letter to the President asking him to seek assurances from French President Chirac in their meeting today that France would not go forward in its intended resumption of nuclear tests in the Pacific.

All Pacific communities, including Guam, have a strong interest in stopping the insanity of nuclear testing in our region. Over the years, more than 100 nuclear devices have been tested in our region—that is 100 too many.

Yesterday, President Chirac announced that France would conduct eight tests and then sign the Comprehensive Test Ban Treaty. By its latest announcement to resume tests, France has launched a pre-emptive strike on Pacific peoples. Hopefully, the talks today will change the course France is on.

If it is so safe, why not test these warheads in Paris?

TODAY IS FLAG DAY

(Mr. BAKER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BAKER of California. Today, June 14, is Flag Day, a day we honor the symbol of freedom, the symbol of individual liberties, the symbol of limited government.

Our Founding Fathers prayed daily for guidance to create the most perfect form of self-government. A woman asked Benjamin Franklin after they had written this document, the Constitution, ''What have you given us?'' He replied, ''A republic, if you can keep it.''

The Contract With America will restore the luster of this great republic: A strong national defense, a balanced budget and living within our means, limits on onerous regulations, an open and independent Congress.

The flag is a symbol of our liberty. It is not to be burned, spit upon, or defiled.

Happy birthday, flag, and may God continue to bless America.

AGAINST BALANCING BUDGET AT EXPENSE OF MEDICARE

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, last night President Clinton turned up the pressure to reach a balanced budget.

I am sympathetic to that idea and to creating pressure for a more bipartisan effort, but I must say that I profoundly disagree with the President's proposal for $130 billion of Medicare cuts. Like the Republican proposal, when you slash Medicare in the context of a budget where you are cutting taxes, the Medicare cuts are no more than a piggy bank for another purpose, and I think that that is wrong.

I have said all along that the only way to move toward a balanced budget is to make everyone contribute to that effort, and that includes cuts in corporate subsidies. We should move toward a balanced budget, but if we do that, everyone should be asked to contribute. We need to move toward that balanced budget, but not with a disproportionate cut to the seniors of this country.

MIKE TYSON IS NO HERO

(Mr. MCINNIS asked and was given permission to address the House for 1 minute.)

Mr. MCINNIS. Mr. Speaker, to my colleagues, as we know from our history, this country was built into the best country in the whole world, built on character, based on character, based on honesty, and based on integrity.

With that in mind, I want you to note a very important date, that is this next Tuesday, June 20 when in New York a welcoming committee will give a hero's welcome to a convicted rapist, Mike Tyson. This is what the Wall Street Journal says.

Enough is enough. Mr. Tyson has expressed no remorse for his unfortunate encounter with Ms. Washington, the young black woman he was convicted of raping. He has been quoted as saying, ''I like to hurt women when I make love to them. It gives me pleasure.''

And now this country is going to give him a hero's welcome. I wonder if that welcoming committee is going to show up to welcome Captain O'Grady. I wonder if that welcoming committee could find time to honor the best teacher in New York State or the best teacher in Colorado or some of the highest graduates from our colleges across the country?

Mike Tyson is a disgrace to this country, and in this American's opinion, he is no hero.

□ 1020

PROGRAMS AMERICANS NEED

(Mr. SANDERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SANDERS. Mr. Speaker, this country has a $4.6 trillion national debt, and the leadership in Congress is proposing major cuts in Medicare, Medicaid, veterans' programs, student loans, Head Start, nutrition programs, and millions of dollars in cuts in programs that Americans all over this country desperately need.

Within that context, how in God's name could the Congress last night vote to expand the B–2 bomber program and spend another $1.5 billion per airplane for another 20 planes? This despite the fact that the Pentagon has said they do not need the planes, they do not want the planes.

Would it not be a good thing if the elderly and the young and the sick had friends in this Congress to the degree that the B–2 bomber does?

BAN DESECRATION OF THE FLAG

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, as I come to the well today, I can hardly contain my excitement, because today is Flag Day. It is the day we honor Old Glory, and what a day, because you know on June 28 I will bring on this floor the constitutional amendment that will ban the physical desecration of the American flag, and you know what? We have 282 cosponsors and we only need 290 to pass it on this floor, and we are going to do it. What a day for you to come to this well today and get on as one of the original cosponsors, because it will go down in the history of this country as the fastest ratified amendment ever presented to the American people. Let's go, guys, come on down here and cosponsor it.

COMMENDING THE PRESIDENT'S BUDGET PLAN

(Mr. PAYNE of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PAYNE of Virginia. Mr. Speaker, I rise to commend the President of the

United States for the plan he put forth last night to balance the Federal budget by the year 2005. I further commend him for proposing that our health care and education programs be protected for the long-term strength of this Nation.

We now, for the first time in a very long time, have the House and the Senate and the President working toward the important goal of balancing our Federal budget.

We are proud that we have reduced our deficit for each of the last 3 years, the first time since Harry Truman was President that we have been able to say that. And now let the debate begin about how we can continue to stay on this path to a balanced budget.

WHAT ARE THE PRESIDENT'S BUDGET SPECIFICS?

(Mr. WICKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WICKER. Mr. Speaker, the freshmen Republicans sent President Clinton a letter 1 month ago encouraging him to submit a balanced budget. Up until now President Clinton had sided with his pollsters and spin-masters and made a conscious decision not to submit a balanced budget. Welcome to the arena, Mr. President. We hope your decision is a permanent one and that you do not change your mind and fall back when the going gets tough.

But if you noticed, the President was not very specific about how to accomplish his stated goal. Where are the details, Mr. President? Where are the specifics on how to achieve your balanced budget?

Republicans accepted Mr. Clinton's challenge back in January to be specific about our plan. Mr. President, give us your specifics. I will be glad to make copies and distribute them to the rest of my colleagues.

JOIN WITH THE PRESIDENT TO SOLVE THE BUDGET PROBLEM

(Mr. WARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WARD. Mr. Speaker, I rise this morning in strong support of what President Clinton is beginning to work on with the Congress.

I heard just as President Clinton heard on Sunday, and I think that the American people can be confident that we all get the message. The message is, we need to work together. We need to come together to find a way to deal with our long-term deficit problem.

Now, for people to argue that 7 or 10 years is a big difference, I think misses the point. The point is, we need to decide how we can do it without providing a huge tax break for the most wealthy, without slashing the programs that help those in our society who need help, but with a glidepath to a balanced budget. If it is in 10 years, that is fine. That is what we need to do. But we need to do it together, and I reach out to my colleagues on the other side of the aisle. Please, join with the President, try to find a constructive solution to this problem.

FLAG BURNING

(Mr. LOBIONDO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOBIONDO. Mr. Speaker, this Wednesday is Flag Day.

Throughtout the Nation, Americans will unfurl the Stars and Stripes, flying our flag proudly as citizens of the greatest Nation on Earth.

Our flag reminds us of our heritage. It reminds us of everything that is good about this Nation, and it reminds us of all those who have served America in the Armed Forces who make it all possible.

Our flag is more than just a piece of cloth. It embodies us as a nation—our values and our beliefs. And especially, the memories of all those who gave their lives to make the United States of America the great country it is today.

That is why we cannot tolerate any deliberate desecration of the American flag.

I for one look forward to June 28 when we will vote on a constitutional amendment banning flag desecration. I will be proud to cast my vote for that amendment because I believe our flag is part of the very fabric of America, and the symbol that our veterans fought for and died for and deserves this protection.

MARRIAGE PENALTY

(Mrs. KENNELLY asked and was given permission to address the House for 1 minute.)

Mrs. KENNELLY. Mr. Speaker, the American Heritage Dictionary defines the word ''simplify'' as ''to render less complex.'' When it comes to the marriage penalty provision in the Tax Code, the Republican contract defines ''simplify'' as 20 additional pages of tax tables and more confusion and headaches.

Do not get me wrong—I oppose the marriage penalty and have tried for years to reduce it. The Republicans tried to make it better—and I applauded them for the effort. But the results do not live up to the promise.

I have with me an analysis from the Treasury Department that says the Republican contract's marriage penalty provision is an administrative nightmare. It would add dozens of pages of tax tables, all for very little benefit to the taxpayer. Treasury also estimated that taxpayers with interest from savings accounts or who itemize deductions would have to do four sets of calculations under the new marriage penalty provision. That is the exact opposite of tax simplification.

I urge my colleagues to rethink this provision. Anything worth doing is worth doing right. And things should not get more complex when we try to simplify.

PUBLIC BROADCASTING

(Mr. LEWIS of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of California. Mr. Speaker, like millions of Americans, I am a supporter of the Public Broadcasting System. And, like millions of Americans, I am also a supporter of reducing the size of government and balancing our budget. Preserving PBS and balancing the budget are worthy, and not totally inconsistent, goals. I have come to the conclusion that we can do both.

At first glance, some might suggest that my conclusion is far fetched. After all, Federal dollars are becoming harder and harder to come by. The priorities are many and the dollars are few. But I believe we are overlooking a tremendous opportunity for both Congress and public broadcasting. It is called the free marketplace.

In this age of exploding technology and the revolution in the telecommunications industry, the marketplace is where the action—and the future—is. Public broadcasting's greatest asset—its educational mission—is a marketing dream and provides an attractive incentive for investment.

Interest remains high in the marketplace—and in living rooms across America—for quality programming. I believe innovative public-private partnerships hold the key, providing public broadcasting the opportunity to seek ways of lessening its dependence on Federal dollars while exploring a long-term funding strategy.

It is time for a bold, imaginative, and decisive action plan to guide the future of public broadcasting. That course can best be determined by joining together the leadership of Congress, public broadcasting, and the business community. Acting together, we can secure long term viability. But we must act now. Time is running out.

Rather than pointing fingers, Republicans and Democrats should join together in building a bridge between business and public broadcasting. Short of a private/public partnership, partisan politics will prevail. Lacking a truly bipartisan solution, Congress will lose more than Big Bird and the Civil War. We will lose the trust of the American people who look to us for leadership and creative solutions to guide the future of this treasured national resource.

SUPREME COURT DECISION TURNS BACK THE CLOCK

(Mr. HILLIARD asked and was given permission to address the House for 1 minute and to revise and extent his remarks.)

Mr. HILLIARD. Mr. Speaker, I rise today to express my displeasure over

the Supreme Court ruling on affirmative action programs. These programs have been in place to assist struggling minority and women-owned businesses all over the country, people who have been denied opportunities in the past by law and who are still being denied opportunities in fact. They have been denied the opportunities to participate in this great country. We must not let the Republican angry-white-male syndrome keep others from full participation in the American dream.

We must continue to reach out to the disadvantaged, not only to blacks, but to women and also to those who have physical disabilities.

The current Supreme Court decision has turned back the clock of time. We must reverse this in order to continue the few decades of progress this country has made in the area of diversity, equality, and justice for all.

Mr. Speaker, this Nation cannot afford to go back down the road to discrimination.

WHAT ARE DETAILS OF PRESIDENT'S BUDGET PLANS?

(Mr. CHRYSLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHRYSLER. Mr. Speaker, I would like to welcome Mr. Clinton to the balanced budget battle. You know, we are looking forward to the details of his plans. All we know at this time is that 90 percent of its cuts, $190 billion, occur in the last year of its 10-year plan. The freshmen sent a letter to the leadership and said that we would not vote for any budget that did not put this country on the glidepath to a balanced budget by the year 2002. The leadership then sent a letter to the President and asked him if he would give us his vision, where he would like the money spent, and give us a budget that would balance. We asked for that to be done before he went to Russia, and in fact we received only the budget that gave us $200 billion deficits for as far as the eye could see.

Well I guess at this point he has wet his finger and seen which way the political winds are blowing, and can we really take him seriously when in fact it was him and his people that worked in the Senate to kill the balanced budget amendment by getting six Democrats that had always voted for a balanced budget in the Senate to vote against the balanced budget amendment.

PRESIDENT'S BUDGET EFFORTS ARE LATE

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, this morning the silence is deafening. Only 2 members of the new minority, with over 200 members in their ranks, only 2 members of the new minority stood here in the well of the House to champion the President's effort to balance the budget. Let me again repeat what the ranking Democrat on the House Committee on Appropriations told both the Associated Press and ABC News:

> I think most of us learned some time ago that if you don't like the President's position on a particular issue, you simply need to wait a few weeks . . . If you can follow this White House on the budget, you're a whole lot smarter than I am.

So spoke the gentleman from Wisconsin [Mr. OBEY]. Small wonder then that I refer to my friends on this side of the aisle as guardians of the old order. We welcome the President's efforts, but as our own leadership said, this train left the station, and he is making a vain attempt now to latch on to the caboose.

PERMISSION FOR SUNDRY COMMITTEES AND THEIR SUBCOMMITTEES TO SIT TODAY DURING 5-MINUTE RULE

Mr. HAYWORTH. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit today while the House is meeting in the Committee of the Whole House under the 5-minute rule.

Committee on Agriculture; Committee on Banking and Financial Services; Committee on Commerce; Committee on Economic and Educational Opportunities; Committee on Government Reform and Oversight; Committee on House Oversight; Committee on Resources; Committee on Science; and Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore (Mr. BUNNING). Is there objection to the request of the gentleman from Arizona?

Mr. MCNULTY. Mr. Speaker, reserving the right to object, the gentleman is correct, the minority has been consulted. There is no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

MODIFICATION TO DELLUMS AMENDMENT NUMBER 2 TO H.R. 1530, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that during further consideration of the bill, H.R. 1530, pursuant to House Resolution 164, my amendment at the desk which corrects a drafting error be substituted for and considered in lieu of my amendment No. 2 now printed in subpart D of part 1 of House Report 104–136.

The SPEAKER pro tempore. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment number 2 in subpart D of part 1 of House Report 104–136 offered by Mr. DELLUMS:

Page 38, line 18, insert ''(a) IN GENERAL.—'' before ''Of the amounts''.

Page 38, after line 22, insert the following:

(b) REDUCTION.—The amounts provided in subsection (a) and in section 201(4) are each hereby reduced by $628,000,000.

(c) NATIONAL MISSILE DEFENSE AMOUNT.—Of the amount provided in subsection (a) (as reduced by subsection (b)), $371,000,000 is for the National Missile Defense program.

At the end of title IV (page 161, after line 3), insert the following new section:

SEC. 433. ADDITIONAL MILITARY PERSONNEL AUTHORIZATION.

There is hereby authorized to be appropriated to the Department of Defense for fiscal year 1996 for military personnel the sum of $628,000,000. Of the amount appropriated pursuant to such authorization—

(1) $150,000,000 (or the full amount appropriated, whichever is less) shall be for increased payments for the Variable Housing Allowance program under section 403a of title 37, United States Code, by reason of the amendments made by section 604; and

(2) any remaining amount shall be allocated, in such manner as the Secretary of Defense prescribes, for payments for the Variable Housing Allowance, the Basic Allowance for Quarters, and the Basic Allowance for Subsistence in such a manner as to minimize the need for enlisted personnel to apply for food stamps.

Page 280, beginning on line 19, strike out ''beginning after June 30, 1996'' and inserting in lieu thereof ''after September 1995''.

Mr. DELLUMS (during the reading). Mr. Speaker, I ask unanimous consent that the modification be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from California?

There was no objection.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

The SPEAKER pro tempore. Pursuant to House Resolution 164 and rule XXIII the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1530.

□ 1035

IN THE COMMITTEE OF THE WHOLE

The CHAIRMAN. Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1530) to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes, with Mr. EMERSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole House rose on Tuesday, June 13, 1995, the amendments en bloc offered by the gentleman from South Carolina [Mr. SPENCE] had been disposed of.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair takes this opportunity to remind all staff who now enjoy the privilege of the floor that they are to desist from audible conversations and are not to manifest any approval or disapproval of proceedings.

It is now in order to consider the amendment printed in subpart (c) of part 1 of the report.

AMENDMENT, AS MODIFIED, OFFERED BY MR. CLINGER

Mr. CLINGER. Mr. Chairman, pursuant to section 4(a) of House Resolution 164, I offer an amendment in modified form.

The CHAIRMAN. The Clerk will designate the amendment, as modified.

The text of the amendment, as modified is as follows:

Amendment, as modified, offered by Mr. CLINGER:

After the heading for title VIII (page 323, after line 15), insert the following (and conform the table of contents accordingly):

Subtitle A—Competition

SEC. 801. IMPROVEMENT OF COMPETITION REQUIREMENTS.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2304 of title 10, United States Code, is amended to read as follows:

"§ 2304. Contracts: competition requirements

''(a) MAXIMUM PRACTICABLE COMPETITION.—Except as provided in subsections (b), (c), and (e) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

''(1) shall obtain maximum practicable competition through the use of competitive procedures consistent with the need to efficiently fulfill the Government's requirements in accordance with this chapter and the Federal Acquisition Regulation; and

''(2) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

''(b) EXCLUSION OF PARTICULAR SOURCE.—The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service. The Federal Acquisition Regulation shall set forth the circumstances under which a particular source may be excluded pursuant to this subsection.

''(c) EXCLUSION OF CONCERNS OTHER THAN SMALL BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 2323 of this title.

''(d) PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—Procedures other than competitive procedures may be used for purchasing property and services only when the use of competitive procedures is not feasible or appropriate. Each procurement using procedures other than competitive procedures (other than a procurement for commercial items or a procurement in an amount not greater than the simplified acquisition threshold) shall be justified in writing and approved in accordance with the Federal Acquisition Regulation.

''(e) SIMPLIFIED PROCEDURES.—(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.

''(2) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

''(3) In using simplified procedures, the head of an agency shall ensure that competition is obtained to the extent practicable consistent with the particular Government requirement.

''(f) CERTAIN CONTRACTS.—For the purposes of the following laws, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

''(1) The Walsh-Healey Act (41 U.S.C. 35–45).

''(2) The Act entitled ''An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes'', approved March 3, 1931 (commonly referred to as the ''Davis-Bacon Act'') (40 U.S.C. 276a–276a–5).''.

(2) Chapter 137 of title 10, United States Code, is amended by inserting before section 2305 a new section—

(A) the designation and heading for which is as follows:

"§ 2304f. Merit-based selection"; and

(B) the text of which consists of subsection (j) of section 2304 of such title, as in effect on the day before the date of the enactment of this Act, modified—

(i) by striking out the subsection designation and the subsection heading;

(ii) in paragraphs (2)(A), (3), and (4), by striking out ''subsection'' and inserting in lieu thereof ''section'' each place it appears;

(iii) in paragraph (2)(C), by striking out ''paragraph (1)'' and inserting in lieu thereof ''subsection (a)'';

(iv) by redesignating paragraphs (1), (2), (3), and (4) as subsections (a), (b), (c), and (d), respectively; and

(v) in subsection (b) (as so redesignated), by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively.

(3) The table of sections at the beginning of such chapter is amended by inserting before the item relating section 2305 the following new item:

''2304f. Merit-based selection.''.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended to read as follows:

"SEC. 303. CONTRACTS: COMPETITION REQUIREMENTS.

''(a) MAXIMUM PRACTICABLE COMPETITION.—Except as provided in subsections (b), (c), and (e) and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services—

''(1) shall obtain maximum practicable competition through the use of competitive procedures consistent with the need to efficiently fulfill the Government's requirements in accordance with this chapter and the Federal Acquisition Regulation; and

''(2) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

''(b) EXCLUSION OF PARTICULAR SOURCE.—An executive agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service. The Federal Acquisition Regulation shall set forth the circumstances under which a particular source may be excluded pursuant to this subsection.

''(c) EXCLUSION OF CONCERNS OTHER THAN SMALL BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 7102 of the Federal Acquisition Streamlining Act of 1994 (15 U.S.C. 644 note).

''(d) PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—Procedures other than competitive procedures may be used for purchasing property and services only when the use of competitive procedures is not feasible or appropriate. Each procurement using procedures other than competitive procedures (other than a procurement for commercial items or a procurement in an amount not greater than the simplified acquisition threshold) shall be justified in writing and approved in accordance with the Federal Acquisition Regulation.

''(e) SIMPLIFIED PROCEDURES.—(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.

''(2)(A) The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

''(B) For purposes of subparagraph (A), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

''(3) A proposed purchase or contract or for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

''(4) In using simplified procedures, an executive agency shall ensure that competition is obtained to the extent practicable consistent with the particular Government requirement.''.

(2) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 303L a new section—

(A) the designation and heading for which is as follows:

"SEC. 303M. MERIT-BASED SELECTION."; and

(B) the text of which consists of subsection (h) of section 303 of such Act, as in effect on the day before the date of the enactment of this Act, modified—

(i) by striking out the subsection designation and the subsection heading;

(ii) in paragraphs (2)(A), (3), and (4), by striking out ''subsection'' and inserting in lieu thereof ''section'' each place it appears;

(iii) in paragraph (2)(C), by striking out ''paragraph (1)'' and inserting in lieu thereof ''subsection (a)'';

(iv) by redesignating paragraphs (1), (2), (3), and (4) as subsections (a), (b), (c), and (d), respectively; and

(v) in subsection (b) (as so redesignated), by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively.

(3) The table of contents for the Federal Property and Administrative Services Act of 1949 (contained in section 1(b)) is amended—

(A) by striking out the item relating to section 303 and inserting in lieu thereof the following:

''Sec. 303. Contracts: competition requirements.''; and

(B) by inserting after the item relating to section 303L the following new item:

''Sec. 303M. Merit-based selection.''.

(c) REVISIONS TO PROCUREMENT NOTICE PROVISIONS.—Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended in subsection (b)(4)—

(1) by striking out ''all''; and

(2) by striking out ''(as appropriate) which shall be considered by the agency''.

(d) REPEAL OF DUPLICATIVE PROVISIONS.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended—

(1) by striking out subsections (e), (f), (g), (h), and (i); and

(2) by redesignating subsection (j) as subsection (e).

(e) EXECUTIVE AGENCY RESPONSIBILITIES.—(1) Section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) is amended—

(A) by striking out ''achieve'' in the matter preceding paragraph (1) and inserting in lieu thereof ''promote''; and

(B) by amending paragraph (1) to read as follows:

''(1) to implement maximum practicable competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that are consistent with the need to efficiently fulfill the Government's requirements;''.

(2) Section 20 of such Act (41 U.S.C. 418) is amended in subsection (a)(2)(A) by striking out ''serving in a position authorized for such executive agency on the date of enactment of the Competition in Contracting Act of 1984''.

SEC. 802. DEFINITION RELATING TO COMPETITION REQUIREMENTS.

(a) DEFINITION.—Paragraph (6) of section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) is amended to read as follows:

''(6) The term 'maximum practicable competition', when used with respect to a procurement, means that the maximum number of responsible or verified sources, consistent with the particular Government requirement, are permitted to submit sealed bids or competitive proposals on the procurement.''.

(b) CONFORMING AMENDMENTS.—

(1) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The Office of Federal Procurement Policy Act is further amended—

(A) in section 4(5), by striking out ''full and open'' and inserting ''maximum practicable''; and

(B) in section 20, by striking out ''full and open'' and inserting in lieu thereof ''maximum practicable'' each place it appears in subsection (b)(1), subsection (b)(3)(A), subsection (b)(4)(C), and subsection (c);

(2) TITLE 10.—Title 10, United States Code, is amended—

(A) in section 2302(2), by striking out ''pursuant to full and open competition'' and inserting in lieu thereof ''using maximum practicable competition'';

(B) in section 2323(e)(3), by striking out ''less than full and open'' and inserting in lieu thereof ''procedures other than''; and

(C) in each of the following sections, by striking out ''full and open'' and inserting in lieu thereof ''maximum practicable'':

(i) Section 2302(3).

(ii) Section 2305(a)(1)(A)(i).

(iii) Section 2305(a)(1)(A)(iii).

(iv) Section 2323(i)(3)(A).

(3) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(A) in section 309(b), by striking out ''pursuant to full and open competition'' and inserting in lieu thereof ''using maximum practicable competition''; and

(B) in each of the following sections, by striking out ''full and open'' and inserting in lieu thereof ''maximum practicable'':

(i) Section 303A(a)(1)(A).

(ii) Section 303A(a)(1)(C).

(iii) Section 304B(a)(2)(B).

(iv) Section 309(c)(4).

(4) OTHER LAWS.—(A) Section 7102 of the Federal Acquisition Streamlining Act of 1994 (108 Stat. 3367; 15 U.S.C. 644 note) is amended in subsection (a)(1)(A) by striking out ''less than full and open competition'' and inserting in lieu thereof ''procedures other than competitive procedures''.

(B) Section 15(l) of the Small Business Act (15 U.S.C. 644(l)) is amended in paragraph (1) and in paragraph (2)(A) by striking out ''full and open'' and inserting in lieu thereof ''maximum practicable'' each place it appears.

SEC. 803. CONTRACT SOLICITATION AMENDMENTS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305 of title 10, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking out subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B) and in that subparagraph by striking out ''subparagraphs (A) and (B)'' and inserting in lieu thereof ''subparagraph (A)''; and

(2) in subsection (b)(4)(A)(i), by striking out ''all'' and inserting in lieu thereof ''the''.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended—

(A) by striking out paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2) and in that paragraph by striking out ''paragraphs (1) and (2)'' and inserting in lieu there of ''paragraph (1)''.

(2) Section 303B(d)(1)(A) of such Act (41 U.S.C. 253b) is amended by striking out ''all'' and inserting in lieu thereof ''the''.

SEC. 804. PREAWARD DEBRIEFINGS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305(b) of title 10, United States Code, is amended—

(1) by striking out subparagraph (F) of paragraph (5);

(2) by redesignating paragraph (6) as paragraph (8); and

(3) by inserting after paragraph (5) the following new paragraphs:

''(6)(A) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable and may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

''(B) The contracting officer is required to debrief an excluded offeror in accordance with paragraph (5) of this section only if that offeror requested and was refused a preaward debriefing under subparagraph (A) of this paragraph.

''(C) The debriefing conducted under this subsection shall include—

''(i) the executive agency's evaluation of the significant elements in the offeror's offer;

''(ii) a summary of the rationale for the offeror's exclusion; and

''(iii) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

''(D) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

''(7) The contracting officer shall include a summary of any debriefing conducted under paragraph (5) or (6) in the contract file.''.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) by striking out paragraph (6) of subsection (e);

(2) by redesignating subsections (f), (g), (h), and (i) as subsections (h), (i), (j), and (k), respectively; and

(3) by inserting after subsection (e) the following new subsections:

''(f)(1) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable and may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

''(2) The contracting officer is required to debrief an excluded offeror in accordance with subsection (e) of this section only if that offeror requested and was refused a preaward debriefing under paragraph (1) of this subsection.

''(3) The debriefing conducted under this subsection shall include—

''(A) the executive agency's evaluation of the significant elements in the offeror's offer;

''(B) a summary of the rationale for the offeror's exclusion; and

''(C) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

''(4) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

''(g) The contracting officer shall include a summary of the any debriefing conducted under subsection (e) or (f) in the contract file.''.

SEC. 805. CONTRACT TYPES.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2306 of title 10, United States Code, is amended—

(A) by inserting before the period at the end of subsection (a) the following: '', based on market conditions, established commercial practice (if any) for the product or service being acquired, and sound business judgment'';

(B) by striking out subsections (b), (d), (e), (f), and (h); and

(C) by redesignating subsection (g) as subsection (b).

(2) The heading of such section is amended to read as follows:

''§ 2306. Contract types''.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended—

(A) by inserting before the period at the end of the first sentence of subsection (a) the following: '', based on market conditions, established commercial practice (if any) for the product or service being acquired, and sound business judgment''; and

(B) by striking out ''Every contract award'' in the second sentence of subsection (a) and all that follows through the end of the section.

(2) The heading of such section is amended to read as follows:

''SEC. 304. CONTRACT TYPES.''.

(c) CONFORMING REPEALS.—(1) Sections 4540, 7212, and 9540 of title 10, United States Code, are repealed.

(2) The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4540.

(3) The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7212.

(4) The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9540.

(d) CIVIL WORKS AUTHORITY.—(1) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2332. Contracts for architectural and engineering services and construction design

''The Secretary of Defense and the Secretaries of the military departments may enter into contracts for architectural and engineering services in connection with a military construction or family housing project or for other Department of Defense or military department purposes. Such contracts shall be awarded in accordance with the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).''.

(2) The table of sections at the beginning of chapter 137 of such title is amended by adding at the end the following new item:

''2332. Contracts for architectural and engineering services and construction design.''.

(3) Section 2855 of such title is repealed. The table of sections at the beginning of chapter 169 of such title is amended by striking out the item relating to such section.

SEC. 806. CONTRACTOR PERFORMANCE.

(a) REQUIREMENT FOR SYSTEM.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

''SEC. 35. CONTRACTOR PERFORMANCE.

''(a) VERIFICATION AUTHORIZED.—The Federal Acquisition Regulation shall provide a contractor verification system for the procurement of particular property or services that are procured by executive agencies on a repetitive basis. Under the system, the head of an executive agency—

''(1) shall use competitive procedures to verify contractors as eligible for contracts to furnish such property or services; and

''(2) shall award verifications on the basis of the relative efficiency and effectiveness of the business practices, level of quality, and demonstrated contract performance of the responding contractors with regard to the particular property or services.

''(b) PROCUREMENT FROM VERIFIED CONTRACTORS.—The Federal Acquisition Regulation shall provide procedures under which the head of an executive agency may enter into a contract for a procurement of property or services referred to in subsection (a) on the basis of a competition among contractors verified with respect to such property or services pursuant to that subsection.

''(c) TERMINATION OF VERIFICATION.—The Federal Acquisition Regulation shall provide procedures under which the head of an executive agency—

''(1) may provide for the termination of a verification awarded a contractor under this section upon the expiration of a period specified by the head of an executive agency; and

''(2) may revoke a verification awarded a contractor under this section upon a determination that the quality of performance of the contractor does not meet standards applied by the head of the executive agency as of the time of the revocation decision.''.

(b) REPEALS.—Section 2319 of title 10, United States Code, is repealed. Section 303C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253c) is repealed.

(c) CLERICAL AMENDMENTS.—(1) The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by adding at the end the following new item:

''Sec. 35. Contractor performance.''.

(2) The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended by striking out the item relating to section 2319.

(3) The table of contents for the Federal Property and Administrative Services Act of 1949 (contained in section 1(b)) is amended by striking out the item relating to section 303C.

Subtitle B—Commercial Items

SEC. 811. COMMERCIAL ITEM EXCEPTION TO REQUIREMENT FOR COST OR PRICING DATA AND INFORMATION LIMITATIONS.

(a) ARMED SERVICES ACQUISITIONS.—(1) Subsections (b), (c), and (d) of section 2306a of title 10, United States Code, are amended to read as follows:

''(b) EXCEPTIONS.—

''(1) IN GENERAL.—Submission of cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

''(A) for which the price agreed upon is based on—

''(i) adequate price competition; or

''(ii) prices set by law or regulation;

''(B) for the acquisition of a commercial item; or

''(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

''(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception on the submission of cost or pricing data in paragraph (1)(A) or (1)(B), submission of cost or pricing data shall not be required under subsection (a) if—

''(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

''(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

''(c) AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

''(2) The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

''(3) The head of a procuring activity may not delegate functions under this paragraph.

''(d) LIMITATIONS ON OTHER INFORMATION.—The Federal Acquisition Regulation shall include the following:

''(1) Provisions concerning the types of information that contracting officers may consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section, including appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

''(2) Reasonable limitations on requests for sales data relating to commercial items.

''(3) A requirement that a contracting officer shall, to the maximum extent practicable, limit the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

''(4) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.''.

(2) Section 2306a of such title is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

(3) Section 2375 of title 10, United States Code, is amended by striking out subsection (c).

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Subsections (b), (c) and (d) of section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b) are amended to read as follows:

''(b) EXCEPTIONS.—

''(1) IN GENERAL.—Submission of cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or a modification of a contract or subcontract—

''(A) for which the price agreed upon is based on—

''(i) adequate price competition; or

''(ii) prices set by law or regulation;

''(B) for the acquisition of a commercial item; or

''(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

''(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception on the submission of cost or pricing data in paragraph (1)(A) or (1)(B), submission of cost or pricing data shall not be required under subsection (a) if—

''(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

''(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

''(c) AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

''(2) The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

''(3) The head of a procuring activity may not delegate the functions under this paragraph.

''(d) LIMITATIONS ON OTHER INFORMATION.—The Federal Acquisition Regulation shall include the following:

''(1) Provisions concerning the types of information that contracting officers may consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section, including appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

''(2) Reasonable limitations on requests for sales data relating to commercial items.

''(3) A requirement that a contracting officer shall, to the maximum extent practicable, limit the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

''(4) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.''.

(2) Section 304A of such Act is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

SEC. 812. APPLICATION OF SIMPLIFIED PROCEDURES TO COMMERCIAL ITEMS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2304(e) of title 10, United States Code, as added by section 801(a), is amended—

(1) in paragraph (1), by inserting after ''special simplified procedures'' the following: ''for purchases of commercial items and''; and

(2) by adding at the end the following new paragraph:

''(4) The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items in an amount greater than the simplified acquisition threshold, the head of an agency may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with the Federal Acquisition Regulation.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), as added by section 801(b), is amended—

(1) in paragraph (1), by inserting after ''special simplified procedures'' the following: ''for purchases of commercial items and''; and

(2) by adding at the end the following new paragraph:

''(5) The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items in an amount greater than the simplified acquisition threshold, an executive agency may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with the Federal Acquisition Regulation.''.

(c) SIMPLIFIED NOTICE.—Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended in subsection (a)(5) (as redesignated by section 801(d))—

(1) by striking out ''limited''; and

(2) by inserting before ''submission'' the following: ''issuance of solicitations and the''.

SEC. 813. AMENDMENT TO DEFINITION OF COMMERCIAL ITEMS.

Section 4(12)(F) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(F)) is amended by striking out ''catalog''.

SEC. 814. INAPPLICABILITY OF COST ACCOUNTING STANDARDS TO CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.

Subparagraph (B) of section 26(f)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(2)) is amended—

(1) by striking out clause (i) and inserting in lieu thereof the following:

''(i) Contracts or subcontracts for the acquisition of commercial items.''; and

(2) by striking out clause (iii).

Subtitle C—Additional Reform Provisions

Redesignate sections 801, 802, 803, 804, 805, 806, 807, and 808 as sections 821, 822, 823, 824, 825, 826, 827, and 828, respectively (and conform the table of contents accordingly).

Add at the end of title VIII (page 329, after line 13) the following (and conform the table of contents accordingly):

SEC. 829. GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.

(a) GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by inserting after section 16 the following new section:

''SEC. 17. GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.

''It is the policy of the Federal Government to rely on the private sector to supply the products and services the Federal Government needs.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by inserting after the item relating to section 16 the following new item:

''Sec. 17. Government reliance on the private sector.''.

SEC. 830. ELIMINATION OF CERTAIN CERTIFICATION REQUIREMENTS.

(a) ELIMINATION OF CERTAIN STATUTORY CERTIFICATION REQUIREMENTS.—(1)(A) Section 2410 of title 10, United States Code, is amended—

(i) in the heading, by striking out ''**: certification**''; and

(ii) in subsection (a)—

(I) in the heading, by striking out ''CERTIFICATION'';

(II) by striking out ''unless'' and all that follows through ''that—'' and inserting in lieu thereof ''unless—''; and

(III) in paragraph (2), by striking out ''to the best of that person's knowledge and belief''.

(B) The item relating to section 2410 in the table of sections at the beginning of chapter 141 of such title is amended to read as follows:

''Sec. 2410. Requests for equitable adjustment or other relief.''.

(2) Section 2410b of title 10, United States Code, is amended in paragraph (2) by striking out ''certification and''.

(3) Section 1352(b)(2) of title 31, United States Code, is amended—

(A) by striking out subparagraph (C); and

(B) by inserting ''and'' after the semicolon at the end of subparagraph (A).

(4) Section 5152 of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) is amended—

(A) in subsection (a)(1), by striking out ''has certified to the contracting agency that it will'' and inserting in lieu thereof ''agrees to'';

(B) in subsection (a)(2), by striking out ''contract includes a certification by the individual'' and inserting in lieu thereof ''individual agrees''; and

(C) in subsection (b)(1)—

(i) by striking out subparagraph (A);

(ii) by redesignating subparagraph (B) as subparagraph (A) and in that subparagraph by striking out ''such certification by failing to carry out''; and

(iii) by redesignating subparagraph (C) as subparagraph (B).

(b) ELIMINATION OF CERTAIN REGULATORY CERTIFICATION REQUIREMENTS.—

(1) CURRENT CERTIFICATION REQUIREMENTS.—Not later than 210 days after the date of the enactment of this Act, any certification required of contractors or offerors by the Federal Acquisition Regulation or an executive agency procurement regulation that is not specifically imposed by statute shall be removed by the Administrator for Federal Procurement Policy from the Federal Acquisition Regulation or such agency regulation unless—

(A) written justification for such certification is provided to the Administrator (i) by the Federal Acquisition Regulatory Council (in the case of a certification in the Federal Acquisition Regulation), or (ii) by the head of an executive agency (in the case of a certification in an executive agency procurement regulation); and

(B) the Administrator approves in writing the retention of such certification.

(2) FUTURE CERTIFICATION REQUIREMENTS.—(A) Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) is amended—

(i) by amending the heading to read as follows:

"SEC. 22. CONTRACT CLAUSES AND CERTIFICATIONS.";

(ii) by inserting ''(a) NONSTANDARD CONTRACT CLAUSES.—'' before ''The Federal Acquisition''; and

(iii) by adding at the end the following new subsection:

''(b) PROHIBITION ON CERTIFICATION REQUIREMENTS.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation or an executive agency procurement regulation unless—

''(1) the certification is specifically imposed by statute; or

''(2) written justification for such certification is provided to the Administrator for Federal Procurement Policy (A) by the Federal Acquisition Regulatory Council (in the case of a certification in the Federal Acquisition Regulation), or (B) the head of an executive agency (in the case of a certification in an executive agency procurement regulation), and the Administrator approves in writing the inclusion of such certification.''.

(B) The item relating to section 29 in the table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) (41 U.S.C. 401 note) is amended to read as follows:

''Sec. 29. Contract clauses and certifications.''.

SEC. 831. AMENDMENT TO COMMENCEMENT AND EXPIRATION OF AUTHORITY TO CONDUCT CERTAIN TESTS OF PROCUREMENT PROCEDURES.

Subsection (j) of section 5061 of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 413 note) is amended to read as follows:

''(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall take effect on August 1, 1995, and shall expire on August 1, 2000. Contracts entered into before such authority expires in an agency pursuant to a test shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.''.

SEC. 832. PROCUREMENT INTEGRITY.

(a) AMENDMENT OF PROCUREMENT INTEGRITY PROVISION.—Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended to read as follows:

"SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.

''(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

''(2) Paragraph (1) applies to any person who—

''(A) is a present or former officer or employee of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

''(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

''(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

''(c) PROHIBITION ON DISCLOSING OR OBTAINING PROCUREMENT INFORMATION IN CONNECTION WITH A PROTEST.—(1) A person shall not, other than as provided by law, knowingly violate the terms of a protective order described in paragraph (2) by disclosing or obtaining contractor bid or proposal information or source selection information related to the procurement contract concerned.

''(2) Paragraph (1) applies to any protective order issued by the the United States Board of Contract Appeals in connection with a protest against the award or proposed award of a Federal agency procurement contract.

''(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

''(1) CRIMINAL PENALTIES.—

''(A) Whoever engages in conduct constituting an offense under subsection (a), (b), or (c) shall be imprisoned for not more than one year or fined as provided under title 18, United States Code, or both.

''(B) Whoever engages in conduct constituting an offense under subsection (a), (b), or (c) for the purpose of either—

''(i) exchanging the information covered by such subsection for anything of value, or

''(ii) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract,

shall be imprisoned for not more than 15 years or fined as provided under title 18, United States Code, or both.

''(2) CIVIL PENALTIES.—The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under subsection (a), (b), or (c). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

''(3) ADMINISTRATIVE ACTIONS.—(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting an offense under subsection (a), (b), or (c), the Federal agency shall consider taking one or more of the following actions, as appropriate:

''(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

''(ii) Rescission of a contract with respect to which—

''(I) the contractor or someone acting for the contractor has been convicted for an offense under subsection (a), (b), or (c), or

''(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

''(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

''(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code, or other applicable law or regulation.

''(B) If a Federal agency rescinds a contract pursuant to subparagraph (A)(ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

''(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A)(iii), engaging in conduct constituting an offense under subsection (a), (b), or (c) affects the present responsibility of a Government contractor or subcontractor.

''(e) DEFINITIONS.—As used in this section:

''(1) The term 'contractor bid or proposal information' means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

''(A) Cost or pricing data (as defined by section 2306a(h) of title 10, United States Code, with respect to procurements subject to that section, and section 304A(h) of Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h), with respect to procurements subject to that section).

''(B) Indirect costs and direct labor rates.

''(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

''(D) Information marked by the contractor as 'contractor bid or proposal information', in accordance with applicable law or regulation.

''(2) The term 'source selection information' means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

''(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

''(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

''(C) Source selection plans.

''(D) Technical evaluation plans.

''(E) Technical evaluations of proposals.

''(F) Cost or price evaluations of proposals.

''(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

''(H) Rankings of bids, proposals, or competitors.

''(I) The reports and evaluations of source selection panels, boards, or advisory councils.

''(J) Other information marked as 'source selection information' based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

''(3) The term 'Federal agency' has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

''(4) The term 'Federal agency procurement' means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

''(5) The term 'contracting officer' means a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

''(6) The term 'protest' means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to title IV of the Federal Acquisition Reform Act of 1995.

''(f) LIMITATION ON PROTESTS.—No person may file a protest against the award or proposed award of a Federal agency procurement contract alleging an offense under subsection (a), (b), or (c), of this section, nor may the United States Board of Contract Appeals consider such an allegation in deciding a protest, unless that person reported to the Federal agency responsible for the procurement information that the person believed constituted evidence of the offense no later than 14 days after the person first discovered the possible offense.

''(g) SAVINGS PROVISIONS.—This section does not—

''(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

''(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

''(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

''(4) prohibit individual meetings between a Federal agency employee and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

''(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

''(6) authorize the withholding of information from, nor restrict its receipt by, any board of contract appeals of a Federal agency or the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

''(7) limit the applicability of any requirements, sanctions, contract penalties, and remedies established under any other law or regulation.''.

(b) REPEALS.—The following provisions of law are repealed:

(1) Sections 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789).

(3) Section 281 of title 18, United States Code.

(4) Subsection (c) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428).

(5) The first section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918).

(c) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) The table of sections at the beginning of chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) Section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) is amended by redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively.

SEC. 833. FURTHER ACQUISITION STREAMLINING PROVISIONS.

(a) PURPOSE OF OFFICE OF FEDERAL PROCUREMENT POLICY.—(1) Section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404) is amended to read as follows:

''(a) To promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government, there shall be an Office of Federal Procurement Policy (hereinafter referred to as the 'Office') in the Office of Management and Budget to provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies.''.

(2) Sections 2 and 3 of such Act (41 U.S.C. 401 and 402) are repealed.

(b) REPEAL OF REPORT REQUIREMENT.—Section 8 of the Office of Federal Procurement Policy Act (41 U.S.C. 407) is repealed.

(c) REPEAL OF OBSOLETE PROVISIONS.—(1) Sections 10 and 11 of the Office of Federal Procurement Policy Act (41 U.S.C. 409 and 410) are repealed.

(d) CLERICAL AMENDMENTS.—The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by striking out the items relating to sections 2, 3, 8, 10, and 11.

SEC. 834. JUSTIFICATION OF MAJOR DEFENSE ACQUISITION PROGRAMS NOT MEETING GOALS.

Section 2220(b) of title 10, United States Code, is amended by adding at the end the following: ''In addition, the Secretary shall include in such annual report a justification for the continuation of any program that—

''(1) is more than 50 percent over the cost goal established for the development, procurement, or operational phase of the program;

''(2) fails to achieve at least 50 percent of the performance capability goals established for the development, procurement, or operational phase of the program; or

''(3) is more than 50 percent behind schedule, as determined in accordance with the schedule goal established for the development, procurement, or operational phase of the program.''.

SEC. 835. ENHANCED PERFORMANCE INCENTIVES FOR ACQUISITION WORKFORCE.

(a) ARMED SERVICES ACQUISITIONS.—Subsection (b) of section 5001 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 108 Stat. 3350; 10 U.S.C. 2220 note) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by designating the second sentence as paragraph (2);

(3) by inserting ''(1)'' after ''(b) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—''; and

(4) by adding at the end the following:

''(3) The Secretary shall include in the enhanced system of incentives the following:

''(A) Pay bands.

''(B) Significant and material pay and promotion incentives to be awarded, and significant and material unfavorable personnel actions to be imposed, under the system exclusively, or primarily, on the basis of the contributions of personnel to the performance of the acquisition program in relation to cost goals, performance goals, and schedule goals.

''(C) Provisions for pay incentives and promotion incentives to be awarded under the system.''.

(b) CIVILIAN AGENCY ACQUISITIONS.—Subsection (c) of section 5051 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 108 Stat. 3351; 41 U.S.C. 263 note) is amended—

(1) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii); respectively;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(3) by inserting ''(1)'' after ''(c) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—''; and

(4) by adding at the end the following:

''(2) The Deputy Director shall include in the enhanced system of incentives under paragraph (1)(B) the following:

''(A) Pay bands.

''(B) Significant and material pay and promotion incentives to be awarded, and significant and material unfavorable personnel actions to be imposed, under the system exclusively, or primarily, on the basis of the contributions of personnel to the performance of the acquisition program in relation to cost goals, performance goals, and schedule goals.

''(C) Provisions for pay incentives and promotion incentives to be awarded under the system.''.

SEC. 836. RESULTS ORIENTED ACQUISITION PROGRAM CYCLE.

Section 5002(a) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 108 Stat. 3350) is amended—

(1) by inserting ''(1)'' before ''to ensure''; and

(2) by striking out the period at the end and inserting in lieu thereof the following: ''; (2) to ensure that the regulations compress the time periods associated with developing, procuring, and making operational new systems; and (3) to ensure that Department of Defense directives relating to development and procurement of information systems (numbered in the 8000 series) and the Department of Defense directives numbered in the 5000 series are consolidated into one series of directives that is consistent with such compressed time periods.''.

SEC. 837. RAPID CONTRACTING GOAL.

(a) GOAL.—The Office of Federal Procurement Policy Act is amended by adding at the end the following new section:

''SEC. 35. RAPID CONTRACTING GOAL.

The Administrator for Federal Procurement Policy shall establish a goal of reducing by 50 percent the time necessary for executive agencies to acquire an item for the user of that item.''.

(b) CLERICAL AMENDMENT.—The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

''Sec. 35. Rapid contracting goal.''.

SEC. 838. ENCOURAGEMENT OF MULTIYEAR CONTRACTING.

(a) ARMED SERVICES ACQUISITIONS.—Section 2306b(a) of title 10, United States Code, is amended in the matter preceding paragraph (1) by striking out ''may'' and inserting in lieu thereof ''shall, to the maximum extent possible,''.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 304B(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c(a)) is amended in the matter preceding paragraph (1) by striking out ''may'' and inserting in lieu thereof ''shall, to the maximum extent possible,''.

SEC. 839. CONTRACTOR SHARE OF GAINS AND LOSSES FROM COST, SCHEDULE, AND PERFORMANCE EXPERIENCE.

(a) ARMED SERVICES ACQUISITIONS.—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2306b the following new section:

''§ 2306c. Contractor share of gains and losses from cost, schedule, and performance experience

''The Federal Acquisition Regulation shall contain provisions to ensure that, for any cost-type contract or incentive-type contract, the contractor may be rewarded for contract performance exceeding the contract cost, schedule, or performance parameters to the benefit of the United States and may be penalized for failing to adhere to cost, schedule, or performance parameters to the detriment of the United States.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after

the item relating to section 2306b the following new item:

''2306c. Contractor share of gains and losses from cost, schedule, and performance experience.''.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 304C the following new section:

''SEC. 304D. CONTRACTOR SHARE OF GAINS AND LOSSES FROM COST, SCHEDULE, AND PERFORMANCE EXPERIENCE.

''The Federal Acquisition Regulation shall contain provisions to ensure that, for any cost-type contract or incentive-type contract, the contractor may be rewarded for contract performance exceeding the contract cost, schedule, or performance parameters to the benefit of the United States and may be penalized for failing to adhere to cost, schedule, or performance parameters to the detriment of the United States.''.

(2) The table of contents for such Act, contained in section 1(b), is amended by inserting after the item relating to section 304C the following new item:

''Sec. 304D. Contractor share of gains and losses from cost, schedule, and performance experience.''.

SEC. 840. PHASE FUNDING OF DEFENSE ACQUISITION PROGRAMS.

Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2221. Funding for results oriented acquisition program cycle

''Before initial funding is made available for the development, procurement, or operational phase of an acquisition program for which an authorization of appropriations is required by section 114 of this title, the Secretary of Defense shall submit to Congress information about the objectives and plans for the conduct of that phase and the funding requirements for the entire phase. The information shall identify the intended user of the system to be acquired under the program and shall include objective, quantifiable criteria for assessing the extent to which the objectives and goals determined pursuant to section 2435 of this title are achieved.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2221. Funding for results oriented acquisition program cycle.''.

SEC. 841. IMPROVED DEPARTMENT OF DEFENSE CONTRACT PAYMENT PROCEDURES.

(a) REVIEW AND IMPROVEMENT OF PROCEDURES.—The Comptroller General of the United States shall review commercial practices regarding accounts payable and, considering the results of the review, develop standards for the Secretary of Defense to consider using for improving the contract payment procedures and financial management systems of the Department of Defense.

(b) GAO REPORT.—Not later than September 30, 1996, the Comptroller General shall submit to Congress a report containing the following matters:

(1) The weaknesses in the financial management processes of the Department of Defense.

(2) Deviations of the Department of Defense payment procedures and financial management systems from the standards developed pursuant to subsection (a), expressed quantitatively.

(3) The officials of the Department of Defense who are responsible for resolving the deviations.

SEC. 842. CONSIDERATION OF PAST PERFORMANCE IN ASSIGNMENT TO ACQUISITION POSITIONS.

(a) REQUIREMENT.—Section 1701(a) of title 10, United States Code, is amended by adding at the end the following: ''The policies and procedures shall provide that education and training in acquisition matters, and past performance of acquisition responsibilities, are major factors in the selection of personnel for assignment to acquisition positions in the Department of Defense.''.

(b) PERFORMANCE REQUIREMENTS FOR ASSIGNMENT.—(1) Section 1723(a) of title 10, United States Code, is amended by inserting '', including requirements relating to demonstrated past performance of acquisition duties,'' in the first sentence after ''experience requirements''.

(2) Section 1724(a)(2) of such title is amended by inserting before the semicolon at the end the following: ''and have demonstrated proficiency in the performance of acquisition duties in the contracting position or positions previously held''.

(3) Section 1735 of such title is amended—

(A) in subsection (b)—

(i) by striking out ''and'' at the end of paragraph (2);

(ii) by striking out the period at the end of paragraph (3) and inserting in lieu thereof ''; and''; and

(iii) by adding at the end the following:

''(4) must have demonstrated proficiency in the performance of acquisition duties.'';

(B) in subsection (c)—

(i) by striking out ''and'' at the end of paragraph (2);

(ii) by striking out the period at the end of paragraph (3) and inserting in lieu thereof ''; and''; and

(iii) by adding at the end the following:

''(4) must have demonstrated proficiency in the performance of acquisition duties.'';

(C) in subsection (d), by inserting before the period at the end the following: '', and have demonstrated proficiency in the performance of acquisition duties''; and

(D) in subsection (e), by inserting before the period at the end the following: '', and have demonstrated proficiency in the performance of acquisition duties''.

SEC. 843. VALUE ENGINEERING FOR FEDERAL AGENCIES.

(a) USE OF VALUE ENGINEERING.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 837, is further amended by adding at the end the following new section:

''SEC. 37. VALUE ENGINEERING.

''(a) IN GENERAL.—Each executive agency shall establish and maintain effective value engineering procedures and processes.

''(b) THRESHOLD.—The procedures and processes established pursuant to subsection (a) shall be applied to those programs, projects, systems, and products of an executive agency that, in a ranking of all programs, projects, systems, and products of the agency according to greatest dollar value, are within the highest 20th percentile.

''(c) DEFINITION.—As used in this section, the term 'value engineering' means a team effort, performed by qualified agency or contractor personnel, directed at analyzing the functions of a program, project, system, product, item of equipment, building, facility, service, or supply for the purpose of achieving the essential functions at the lowest life-cycle cost that is consistent with required or improved performance, reliability, quality, and safety.''.

(b) CLERICAL AMENDMENT.—The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

''Sec. 37. Value engineering.''.

SEC. 844. ACQUISITION WORKFORCE.

(a) ACQUISITION WORKFORCE.—(1) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 843, is further amended by adding at the end the following new section:

''SEC. 38. ACQUISITION WORKFORCE.

''(a) APPLICABILITY.—This section does not apply to an executive agency that is subject to chapter 87 of title 10, United States Code.

''(b) MANAGEMENT POLICIES.—

''(1) POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b) of title 5, United States Code.

''(2) UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

''(3) GOVERNMENTWIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that such policies are consistent with the policies and procedures established and enhanced system of incentives provided pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 263 note). The Administrator shall evaluate the implementation of the provisions of this section by executive agencies.

''(c) SENIOR PROCUREMENT EXECUTIVE AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

''(d) MANAGEMENT INFORMATION SYSTEMS.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementation of this section. To the maximum extent practicable, such data requirements shall conform to standards established by the Office of Personnel Management for the Central Personnel Data File.

''(e) ACQUISITION WORKFORCE.—The programs established by this section shall apply to all employees in the General Schedule Contracting series (GS–1102) and the General Schedule Purchasing series (GS–1105), and to any employees regardless of series who have been appointed as contracting officers whose authority exceeds the micro-purchase threshold, as that term is defined in section 32(g). The head of each executive agency may include employees in other series who perform acquisition or acquisition-related functions.

''(f) CAREER DEVELOPMENT.—

''(1) CAREER PATHS.—The head of each executive agency shall ensure that appropriate

career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make information available on such career paths.

''(2) CRITICAL DUTIES AND TASKS.—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

''(3) MANDATORY TRAINING AND EDUCATION.—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency shall also encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

''(4) PERFORMANCE INCENTIVES.—The head of each executive agency, acting through the senior procurement executive for the agency, shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce which rewards performance of employees that contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

''(A) relate pay to performance;

''(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel contributed to achieving the agency's performance goals; and

''(C) provide pay and promotion incentives to be awarded, and unfavorable personnel actions to be imposed, under the system on the basis of the contributions of personnel to achieving the agency's performance goals.

''(g) QUALIFICATION REQUIREMENTS.—

''(1) GENERAL SCHEDULE CONTRACTING SERIES (GS–1102).—

''(A) ENTRY LEVEL QUALIFICATIONS.—The Director of the Office of Personnel Management shall require that, after October 1, 1996, a person may not be appointed to a position in the GS–1102 occupational series unless the person—

''(i) has received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees,

''(ii) has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management, or

''(iii) has passed a written test determined by the Administrator for Federal Procurement Policy, after consultation with the Director of the Office of Personnel Management, to demonstrate the judgmental skills necessary for positions in this series.

''(B) QUALIFICATIONS FOR SENIOR CONTRACTING POSITIONS.—The Director of the Office of Personnel Management shall require that, after October 1, 1996, persons may be appointed to positions at and above full performance grade levels in the GS–1102 occupational series only if those persons—

''(i) have satisfied the educational requirement either of subsection (g)(1)(A)(i) or subsection (g)(1)(A)(ii),

''(ii) have successfully completed all training required for the position under subsection (f)(3), and

''(iii) have satisfied experience and other requirements established by the Director for such positions.

However, this requirement shall apply to persons employed on October 1, 1996, in GS–1102 positions at those grade levels only as a prerequisite for promotion to a GS–1102 position at a higher grade.

''(2) GENERAL SCHEDULE PURCHASING SERIES (GS–1105).—The Director of the Office of Personnel Management shall require that, after October 1, 1996, a person may not be appointed to a position in the GS–1105 occupational series unless the person—

''(A) has successfully completed 2 years of course work from an accredited educational institution authorized to grant degrees, or

''(B) has passed a written test determined by the Administrator for Federal Procurement Policy, after consultation with the Director of the Office of Personnel Management, to demonstrate the judgmental skills necessary for positions in this series.

''(3) CONTRACTING OFFICERS.—The head of each executive agency shall require that, beginning after October 1, 1996, a person may be appointed as a contracting officer with authority to award or administer contracts for amounts above the micro-purchase threshold, as that term is defined in section 32(g), only if the person—

''(A) has successfully completed all mandatory training required of an employee in an equivalent GS–1102 or 1105 position under subsection (f)(3); and

''(B) meets experience and other requirements established by the head of the agency, based on the dollar value and complexity of the contracts that the employee will be authorized to award or administer under the appointment as a contracting officer.

''(4) EXCEPTIONS.—(A) The requirements set forth in subsection (g)(1) and (2), as applicable, shall not apply to any person employed in the GS–1101 or GS–1105 series on October 1, 1996.

''(B) Employees of an executive agency who do not satisfy the full qualification requirements for appointment as a contracting officer under subsection (g)(3) may be appointed as a contracting officer for a temporary period of time under procedures established by the agency head. The procedures shall—

''(i) require that the person have completed a significant portion of the required training,

''(ii) require a plan be established for the balance of the required training,

''(iii) specify a period of time for completion of the training, and

''(iv) include provisions for withdrawing or terminating the appointment prior to the scheduled expiration date, where appropriate.

''(5) WAIVER.—The senior procurement executive for an executive agency may waive any or all of the qualification requirements of subsections (g)(1) and (2) for a person if the person possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. This authority may not be redelegated by the senior procurement executive. With respect to each waiver granted under this subsection, the senior procurement executive shall set forth in writing the rationale for the decision to waive such requirements.

''(h) PROGRAM ESTABLISHMENT AND IMPLEMENTATION.—

''(1) FUNDING LEVELS.—(A) The head of an executive agency shall request in the budget for a fiscal year for the agency—

''(i) for education and training under this section, an amount equal to no less than 2.5 percent of the base aggregate salary cost of the acquisition workforce subject to this section for that fiscal year; and

''(ii) for salaries of the acquisition workforce, an amount equal to no more than 97.5 percent of such base aggregate salary cost.

''(B) The head of the executive agency shall set forth separately the funding levels requested in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31, United States Code.

''(C) Funds appropriated for education and training under this section may not be obligated or used for any other purpose.

''(2) INTERAGENCY AGREEMENTS.—The head of an executive agency may enter into a written agreement with another agency to participate in programs established under this section on a reimbursable basis.

''(3) TUITION ASSISTANCE.—Notwithstanding the prohibition in section 4107(b) of title 5, United States Code, the head of each executive agency may provide for tuition reimbursement and education (including a full-time course of study leading to a degree) for acquisition personnel in the agency related to the purposes of this section.

''(4) INTERN PROGRAMS.—The head of each executive agency may establish intern programs in order to recruit highly qualified and talented individuals and provide them with opportunities for accelerated promotions, career broadening assignments, and specified training for advancement to senior acquisition positions. For such programs, the head of an executive agency, without regard to the provisions of title 5, United States Code, may appoint individuals to competitive GS–5, GS–7, or GS–9 positions in the General Schedule Contracting series (GS–1102) who have graduated from baccalaureate or master's programs in purchasing or contracting from accredited educational institutions authorized to grant baccalaureate and master's degrees.

''(5) COOPERATIVE EDUCATION PROGRAM.—The head of each executive agency may establish an agencywide cooperative education credit program for acquisition positions. Under the program, the head of the executive agency may enter into cooperative arrangements with one or more accredited institutions of higher education which provide for such institutions to grant undergraduate credit for work performed in such position.

''(6) SCHOLARSHIP PROGRAM.—

''(A) ESTABLISHMENT.—Where deemed appropriate, the head of each executive agency may establish a scholarship program for the purpose of qualifying individuals for acquisition positions in the agency.

''(B) ELIGIBILITY.—To be eligible to participate in a scholarship program established under this paragraph by an executive agency, an individual must—

''(i) be accepted for enrollment or be currently enrolled as a full-time student at an accredited educational institution authorized to grant baccalaureate or graduate degrees (as appropriate);

''(ii) be pursuing a course of education that leads toward completion of a bachelor's, master's, or doctor's degree (as appropriate) in a qualifying field of study, as determined by the head of the agency;

''(iii) sign an agreement described in subparagraph (C) under which the participant agrees to serve a period of obligated service in the agency in an acquisition position in return for payment of educational assistance as provided in the agreement; and

''(iv) meet such other requirements as the head of the agency prescribes.

''(C) AGREEMENT.—An agreement between the head of an executive agency and a participant in a scholarship program established under this paragraph shall be in writing, shall be signed by the participant, and shall include the following provisions:

''(i) The agreement of the head of the agency to provide the participant with educational assistance for a specified number of school years, not to exceed 4, during which the participant is pursuing a course of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

''(ii) The participant's agreement—

''(I) to accept such educational assistance,

''(II) to maintain enrollment and attendance in the course of education until completed,

''(III) while enrolled in such course, to maintain an acceptable level of academic standing (as prescribed by the head of the agency), and

''(IV) after completion of the course of education, to serve as a full-time employee in an acquisition position in the agency for a period of time of one calendar year for each school year or part thereof for which the participant was provided a scholarship under the program.

''(D) REPAYMENT.—(i) Any person participating in a program established under this paragraph shall agree to pay to the United States the total amount of educational assistance provided to the person under the program if the person is voluntarily separated from the agency or involuntarily separated for cause from the agency before the end of the period for which the person has agreed to continue in the service of the agency in an acquisition position.

''(ii) If an employee fails to fulfill the agreement to pay to the Government the total amount of educational assistance provided to the person under the program, a sum equal to the amount of the educational assistance may be recovered by the Government from the employee (or the estate of the employee) by setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and by such other method as is provided by law for the recovery of amounts owing to the Government.

''(iii) The head of an executive agency may waive in whole or in part a repayment required under this paragraph if the head of the agency determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(E) TERMINATION OF AGREEMENT.—There shall be no requirement that a position be offered to a person after such person successfully completes a course of education required by an agreement under this paragraph. If no position is offered, the agreement shall be considered terminated.''.

(2) The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

''Sec. 38. Acquisition workforce.''.

(b) FEDERAL ACQUISITION INSTITUTE.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), is amended—

(1) in subsection (d) by amending paragraph (5) to read as follows:

''(5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration;''; and

(2) by adding at the end the following new subsection:

''(l) The Federal Acquisition Institute shall—

''(1) recommend policies, procedures, and guidelines to the Administrator, for—

''(A) fostering and promoting the development of a professional acquisition workforce governmentwide, and

''(B) administering the provisions of section 35;

''(2) collect data and analyze acquisition workforce data from the Office of Personnel Management, the heads of executive agencies, and, through periodic surveys, from individual employees;

''(3) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

''(4) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

''(5) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

''(6) evaluate the effectiveness of training and career development programs for acquisition personnel;

''(7) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

''(8) promote, coordinate, or conduct governmentwide research and studies to improve the acquisition process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;

''(9) facilitate, to the extent requested by agencies, interagency intern and training programs; and

''(10) perform other career management or research functions as directed by the Administrator.''.

(c) REPEAL OF SUPERSEDED PROVISION.—Section 502 of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (41 U.S.C. 414a) is repealed.

Subtitle D—Streamlining of Dispute Resolution

PART I—GENERAL PROVISIONS

SEC. 850. DEFINITIONS.

In this subtitle:

(1) The term ''Board'' means the United States Board of Contract Appeals.

(2) The term ''Board judge'' means a member of the United States Board of Contract Appeals.

(3) The term ''Chairman'' means the Chairman of the United States Board of Contract Appeals.

(4) The term ''executive agency'' has the meaning given by section 2(2) of the Contract Disputes Act of 1978 (41 U.S.C. 601(2)).

(5) The term ''alternative means of dispute resolution'' has the meaning given by section 571(3) of title 5, United States Code.

(6) The term ''protest'' means a written objection by an interested party to any of the following:

(A) A solicitation or other request by an executive agency for offers for a contract for the procurement of property or services.

(B) The cancellation of such a solicitation or other request.

(C) An award or proposed award of such a contract.

(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(7) The term ''interested party'', with respect to a contract or a solicitation or other request for offers, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

(8) The term ''prevailing party'', with respect to a determination of the Board under section 864(b) that a decision of a contracting officer violates a statute or regulation, means a party that demonstrated such violation.

PART II—ESTABLISHMENT OF THE UNITED STATES BOARD OF CONTRACT APPEALS

SEC. 851. ESTABLISHMENT.

There is established in the executive branch of the Government an independent establishment to be known as the United States Board of Contract Appeals.

SEC. 852. MEMBERSHIP.

(a) APPOINTMENT.—(1) The Board shall consist of Board judges appointed by the Chairman, without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Board judge, from a register of applicants maintained by the Board.

(2) The members of the Board shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, United States Code, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law.

(3) Notwithstanding paragraph (2) and subject to subsection (b), the following persons shall serve as Board judges:

(A) Any full-time member of an agency board of contract appeals serving as such on the day before the effective date of this subtitle.

(B) Any person serving on the day before the date of the enactment of this Act in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code.

(b) REMOVAL.—Members of the Board shall be subject to removal in the same manner as administrative law judges, as provided in section 7521 of title 5, United States Code.

(c) COMPENSATION.—Compensation for the Chairman and all other members of the Board shall be determined under section 5273a of title 5, United States Code.

SEC. 853. CHAIRMAN.

(a) DESIGNATION.—(1) The Chairman shall be designated by the President to serve for a term of five years. The President shall select the Chairman from among sitting Board judges each of whom has had at least five years of service—

(A) as a member of an agency board of contract appeals; or

(B) in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code (as in effect on the day before the effective date of this subtitle).

(2) A Chairman may continue to serve after the expiration of the Chairman's term until a successor has taken office. A Chairman may be reappointed any number of times.

(b) RESPONSIBILITIES.—The Chairman shall be responsible on behalf of the Board for the executive and administrative operation of the Board, including functions of the Board with respect to the following:

(1) The selection, appointment, and fixing of the compensation of such personnel, pursuant to part III of title 5, United States Code, as the Chairman considers necessary or appropriate, including a Clerk of the Board, a General Counsel, and clerical and legal assistance for Board judges.

(2) The supervision of personnel employed by or assigned to the Board, and the distribution of work among such personnel.

(3) The response to any request that may be made by Congress or the Office of Management and Budget.

(4) The allocation of funds among the various functions of the Board.

(5) The entering into and performance of such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and the making of such payments, as the Chairman considers necessary or appropriate to carry out functions vested in the Board.

(6) The operation of an Office of the Clerk of the Board, including the receipt of all filings made with the Board, the assignment of cases, and the maintenance of all records of the Board.

(7) The acquisition, operation, and maintenance of such automatic data processing resources as may be needed by the Board.

(8) The prescription of such rules and regulations as the Chairman considers necessary or appropriate for the administration and management of the Board.

(c) VICE CHAIRMEN.—The Chairman may designate up to four other Board judges as Vice Chairmen. The Chairman may divide the Board into two or more divisions, and, if such division is made, shall assign a Vice Chairman to head each division. The Vice Chairmen, in the order designated by the Chairman, shall act in the place and stead of the Chairman during the absence of the Chairman.

SEC. 854. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Board may establish—

(1) such procedural rules and regulations as are necessary to the exercise of its functions, including internal rules for the assignment of cases; and

(2) statements of policy of general applicability with respect to its functions.

(b) PROHIBITION ON REVIEW BY OTHER AGENCY OR PERSON.—Rules and regulations established by the Board (including forms which are a part thereof) shall not be subject to review by any other agency or person (including the Administrator of Information and Regulatory Affairs, pursuant to chapter 35 of title 44, United States Code) in advance of publication.

SEC. 855. LITIGATION AUTHORITY.

Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board.

SEC. 856. SEAL OF BOARD.

The Chairman shall cause a seal of office to be made for the Board of such design as the Board shall approve. Judicial notice shall be taken of such seal.

SEC. 857. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 1997 and each succeeding fiscal year such sums as may be necessary to carry out the provisions of this subtitle and to enable the Board to perform its functions. Funds appropriate pursuant to this section shall remain available until expended.

PART III—FUNCTIONS OF UNITED STATES BOARD OF CONTRACT APPEALS

SEC. 861. ALTERNATIVE DISPUTE RESOLUTION SERVICES.

(a) REQUIREMENT TO PROVIDE SERVICES UPON REQUEST.—The Board shall provide alternative means of dispute resolution for any disagreement regarding a contract or prospective contract of an executive agency upon the request of all parties to the disagreement.

(b) PERSONNEL QUALIFIED TO ACT.—Each Board judge and each attorney employed by the Board shall be considered to be qualified to act for the purpose of conducting alternative means of dispute resolution under this section.

(c) SERVICES TO BE PROVIDED WITHOUT CHARGE.—Any services provided by the Board or any Board judge or employee pursuant to this section shall be provided without charge.

(d) RECUSAL OF CERTAIN PERSONNEL UPON REQUEST.—In the event that a matter which is presented to the Board for alternative means of dispute resolution, pursuant to this section, later becomes the subject of formal proceedings before the Board, any Board judge or employee who was involved in the alternative means shall, if requested by any party to the formal proceeding, take no part in that proceeding.

SEC. 862. ALTERNATIVE DISPUTE RESOLUTION OF DISPUTES AND PROTESTS SUBMITTED TO BOARD.

With reasonable promptness after the submission to the Board of a contract dispute under section 863 or a bid protest under section 864, a Board judge to whom the contract dispute or protest is assigned shall request the parties to meet with a Board judge, or an attorney employed by the Board, for the purpose of attempting to resolve the dispute or protest through alternative means of dispute resolution. Formal proceedings in the appeal shall then be suspended until such time as any party or a Board judge to whom the dispute or protest is assigned determines that alternative means of dispute resolution are not appropriate for resolution of the dispute or protest.

SEC. 863. CONTRACT DISPUTES.

The Board shall have jurisdiction as provided by section 8(a) of the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

SEC. 864. PROTESTS.

(a) REVIEW REQUIRED UPON REQUEST.—Upon request of an interested party in connection with any procurement conducted by any executive agency, the Board shall review, as provided in this section, any decision by a contracting officer alleged to violate a statute or regulation. The authority of the Board to conduct such review shall include the authority to review regulations to determine their consistency with applicable statutes. A decision or order of the Board pursuant to this section shall not be subject to interlocutory appeal or review.

(b) STANDARD OF REVIEW.—In deciding a protest, the Board may consider all evidence that is relevant to the decision under protest. It shall accord a presumption of correctness to all facts found and determinations made by the contracting officer whose decision is being protested. The protester may rebut this presumption by showing, by a preponderance of the evidence, that a finding or determination was incorrect. The Board may find that a decision by a contracting officer violates a statute or regulation for any of the reasons stated in section 706(2) of title 5, United States Code.

(c) DETERMINATION OF WHETHER TO SUSPEND AUTHORITY TO CONDUCT PROCUREMENT IN PROTEST FILED BEFORE CONTRACT AWARD.—(1) When a protest under this section is filed before the award of a contract in a protested procurement, the Board, at the request of an interested party and within 10 days after the submission of the protest, shall hold a hearing to determine whether the Board should suspend the authority of the executive agency involved (or its head) to conduct such procurement until the Board can decide the protest.

(2) The Board shall suspend the authority of the executive agency (or its head) unless the agency concerned establishes that—

(A) absent action by the Board, contract award is likely to occur within 30 days after the hearing; and

(B) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board.

(3) A suspension under paragraph (2) shall not preclude the executive agency concerned from continuing the procurement process up to but not including award of the contract unless the Board determines such action is not in the best interests of the United States.

(d) DETERMINATION OF WHETHER TO SUSPEND AUTHORITY TO CONDUCT PROCUREMENT IN PROTEST FILED AFTER CONTRACT AWARD.—(1) If, with respect to an award of a contract, the Board receives notice of a protest under this section within the period described in paragraph (2), the Board shall, at the request of an interested party, hold a hearing to determine whether the Board should suspend the authority of the executive agency involved (or its head) to conduct such procurement until the Board can decide the protest.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the contract is awarded and ending at the end of the later of—

(A) the tenth day after the date of contract award; or

(B) the fifth day after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.

(3) The Board shall hold the requested hearing within 5 days after the date of the filing of the protest or, in the case of a request for debriefing, within 5 days after the later of the date of the filing of the protest or the date of the debriefing.

(4) The Board shall suspend the procurement authority of the executive agency involved (or its head) to acquire any goods or services under the contract which are not previously delivered and accepted unless such agency establishes that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board.

(e) PROCEDURES.—

(1) PROCEEDINGS AND DISCOVERY.—The Board shall conduct proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest. The Board shall limit discovery to material which is relevant to the grounds of protest or to such affirmative defenses as the executive agency involved, or any intervenor supporting the agency, may raise.

(2) PRIORITY.—The Board shall give priority to protests filed under this section over contract disputes and alternative dispute services. Except as provided in paragraph (3), the Board shall issue its final decision within 65 days after the date of the filing of the protest, unless the Chairman determines that the specific and unique circumstances of the protest require a longer period, in which case the Board shall issue such decision within the longer period determined by the Chairman. An amendment that adds a new ground of protest should be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest.

(3) THRESHOLD.—Any protest in which the anticipated value of the contract award that will result from the protested procurement, as estimated by the executive agency involved, is less than $1,000,000 shall be considered under simplified rules of procedure. These rules shall provide that discovery in

such protests shall be in writing only. Such protests shall be decided by a single Board judge, whose decision shall be final and conclusive and shall not be set aside except in cases of fraud. The Board shall issue its final decision in each such protest within 35 days after the date of the filing of the protest.

(4) CALCULATION OF TIME FOR ADR.—In calculating time for purposes of paragraph (2) or (3) of this subsection, any days during which proceedings are suspended for the purpose of attempting to resolve the protest by alternative means of dispute resolution, up to a maximum of 20 days, shall not be counted.

(5) DISMISSAL OF FRIVOLOUS PROTESTS.—The Board may dismiss a protest that the Board determines is frivolous or which, on its face, does not state a valid basis for protest.

(6) PAYMENT OF COSTS FOR FRIVOLOUS PROTESTS.—(A) If the Board expressly finds that a protest or a portion of a protest is frivolous or does not state on its face a valid basis for protest, the Board shall declare that the protester or other interested party who joins the protest is liable to the United States for payment of the costs described in subparagraph (B) unless—

(i) special circumstances would make such payment unjust; or

(ii) the protester obtains documents or other information after the protest is filed with the Board that establishes that the protest or a portion of the protest is frivolous or does not state on its face a valid basis for protest, and the protester then promptly withdraws the protest or portion of the protest.

(B) The costs referred to in subparagraph (A) are all of the costs incurred by the United States of reviewing the protest, or of reviewing that portion of the protest for which the finding is made, including the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28, United States Code) incurred by the United States in defending the protest.

(f) DECISIONS AND CORRECTIVE ACTIONS ON PROTESTS.—(1) In making a decision on protests filed under this section, the Board shall accord due weight to the goals of economic and efficient procurement, and shall take due account of the rule of prejudicial error.

(2) If the Board determines that a decision of a contracting officer violates a statute or regulation, the Board may order the agency (or its head) to take such corrective action as the Board considers appropriate. Corrective action includes requiring that the Federal agency—

(A) refrain from exercising any of its options under the contract;

(B) recompete the contract immediately;

(C) issue a new solicitation;

(D) terminate the contract;

(E) award a contract consistent with the requirements of such statute and regulation;

(F) implement any combination of requirements under subparagraphs (A), (B), (C), (D), and (E); or

(G) implement such other actions as the Board determines necessary.

(3) If the Board orders corrective action after the contract award, the affected contract shall be presumed valid as to all goods or services delivered and accepted under the contract before the corrective action was ordered.

(4) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and shall be made a part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest.

(g) AUTHORITY TO DECLARE ENTITLEMENT TO COSTS.—(1)(A) Whenever the Board determines that a decision of a contracting officer violates a statute or regulation, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate prevailing party to be entitled to the costs of—

(i) filing and pursuing the protest, including reasonable attorneys' fees and consultant and expert witness fees, and

(ii) bid and proposal preparation.

(B) No party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be declared entitled under this paragraph to costs for—

(i) consultants and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Federal Government, or

(ii) attorneys' fees that exceed $150 per hour unless the Board, on a case by case basis, determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

(2) Payment of amounts due from an agency under paragraph (1) or under the terms of a settlement agreement under subsection (e)(4) shall be made from the appropriation made by section 1304 of title 31, United States Code, for the payment of judgments. The executive agency concerned shall reimburse that appropriation account out of funds available for the procurement.

(h) APPEALS.—Except as provided in subsection (e)(3), a final decision of the Board may be appealed as set forth in section 8(d)(1) of the Contract Disputes Act of 1978 by the head of the executive agency concerned and by any interested party, including interested parties who intervene in any protest filed under this section.

(i) ADDITIONAL RELIEF.—Nothing contained in this section shall affect the power of the Board to order any additional relief which it is authorized to provide under any statute or regulation.

(j) NONEXCLUSIVITY OF REMEDIES.—Nothing contained in this section shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims or in a United States district court.

SEC. 865. APPLICABILITY TO CONTRACTS FOR COMMERCIAL ITEMS.

Notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), the authority conferred on the Board by this subtitle is applicable to contracts for the procurement of commercial items.

PART IV—REPEAL OF OTHER STATUTES AUTHORIZING ADMINISTRATIVE PROTESTS

SEC. 871. REPEALS.

(a) GSBCA PROVISIONS.—Subsection (f) of the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949; 40 U.S.C. 759) is repealed.

(b) GAO PROVISIONS.—Subchapter V of chapter 35 of title 31, United States Code (31 U.S.C. 3551-3556) is repealed.

PART V—TRANSFERS AND TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

SEC. 881. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) TRANSFER.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions vested by law in the Comptroller General pursuant to subchapter V of chapter 35 of title 31, United States Code, and in the boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date of this Act), shall be transferred to the Board for appropriate allocation by the Chairman.

(b) EFFECT ON PERSONNEL.—Personnel transferred pursuant to this subtitle shall not be separated or reduced in compensation for one year after such transfer, except for cause.

(c) REGULATIONS.—(1) The Board shall prescribe regulations for the release of competing employees in a reduction in force that gives due effect to—

(A) efficiency or performance ratings;

(B) military preference; and

(C) tenure of employment.

(2) In prescribing the regulations, the Board shall provide for military preference in the same manner as set forth in subchapter I of chapter 35 of title 5, United States Code.

SEC. 882. TERMINATIONS AND SAVINGS PROVISIONS.

(a) TERMINATION OF BOARDS OF CONTRACT APPEALS.—On the effective date of this subtitle, the boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date of this Act) shall terminate.

(b) SAVINGS PROVISION FOR CONTRACT DISPUTE MATTERS PENDING BEFORE BOARDS.—The provisions of this subtitle shall not affect any proceedings (other than bid protests pending before the board of contract appeals of the General Services Administration) pending on the effective date of this Act before any board of contract appeals described in subsection (a). Such proceedings shall be continued by the Board, and orders which were issued in any such proceeding by any board of contract appeals shall continue in effect until modified, terminated, superseded, or revoked by the Board, by a court of competent jurisdiction, or by operation of law.

(c) BID PROTEST TRANSITION PROVISIONS.—(1) No protest may be submitted to the Comptroller General pursuant to section 3553(a) of title 31, United States Code, or to the board of contract appeals for the General Services Administration pursuant to the Brooks Automatic Data Processing Act (40 U.S.C. 759) on or after the effective date of this Act.

(2) The provisions repealed by section 871 shall continue to apply to proceedings pending on the effective date of this subtitle before the board of contract appeals of the General Services Administration and the Comptroller General pursuant to those provisions, until the board or the Comptroller General determines such proceedings have been completed.

SEC. 883. CONTRACT DISPUTE AUTHORITY OF BOARD.

(a) Section 2 of the Contract Disputes Act of 1978 (41 U.S.C. 601) is amended by striking out paragraph (6) and inserting in lieu thereof the following:

''(6) the term 'Board' means the United States Board of Contract Appeals; and''.

(b) Section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended—

(1) in paragraph (4)—

(A) by striking out ''the agency board of contract appeals'' and inserting in lieu thereof ''the United States Board of Contract Appeals''; and

(B) by striking out ''the board'' and inserting in lieu thereof ''the Board''; and

(2) in paragraph (6)—

(A) by striking out ''an agency board of contract appeals'' and inserting in lieu thereof ''the United States Board of Contract Appeals''; and

(B) by striking out ''agency board'' and inserting in lieu thereof ''the Board''.

(c) Section 7 of the Contract Disputes Act of 1978 (41 U.S.C. 606) is amended by striking out ''an agency board of contract appeals'' and inserting in lieu thereof ''the United States Board of Contract Appeals''.

(d) Section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) is amended—

(1) by amending the heading to read as follows:

''UNITED STATES BOARD OF CONTRACT APPEALS'';

(2) by striking out subsections (a), (b), and (c);

(3) in subsection (d)—

(A) by striking out the first sentence and inserting in lieu thereof the following:

''The United States Board of Contract Appeals shall have jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency relative to a contract made by that agency.''; and

(B) in the second sentence, by striking out ''the agency board'' and inserting in lieu thereof ''the Board'';

(4) in subsection (e), by striking out ''An agency board'' and inserting in lieu thereof ''The United States Board of Contract Appeals'';

(5) in subsection (f), by striking out ''each agency board'' and inserting in lieu thereof ''the United States Board of Contract Appeals'';

(6) in subsection (g)—

(A) in the first sentence of paragraph (1), by striking out ''an agency board of contract appeals'' and inserting in lieu thereof ''the United States Board of Contract Appeals'';

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2);

(7) by striking out subsections (h) and (i); and

(8) by redesignating subsections (d), (e), (f), and (g) (as amended) as subsections (a), (b), (c), and (d), respectively.

(e) Section 9 of the Contract Disputes Act of 1978 (41 U.S.C. 608) is amended—

(1) in subsection (a), by striking out ''each agency board'' and inserting in lieu thereof ''the United States Board of Contract Appeals''; and

(2) in subsection (b), by striking out ''the agency board'' and inserting in lieu thereof ''the Board''.

(f) Section 10 of the Contract Disputes Act of 1978 (41 U.S.C. 609) is amended—

(1) in subsection (a)—

(A) in the first sentence of paragraph (1)—

(i) by striking out ''Except as provided in paragraph (2), and in'' and inserting in lieu thereof ''In''; and

(ii) by striking out ''an agency board'' and inserting in lieu thereof ''the United States Board of Contract Appeals'';

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2), and in that paragraph, by striking out ''or (2)'';

(2) in subsection (b), by striking out ''any agency board'' and ''the agency board'' and inserting in lieu of each ''the Board'';

(3) in subsection (c), by striking out ''an agency board'' and ''the agency board'' and inserting in lieu of each ''the Board''; and

(4) in subsection (d), by striking out ''one or more agency boards'' and ''or among the agency boards involved'' and inserting in lieu of each ''the Board''.

(g) Section 11 of the Contract Disputes Act of 1978 (41 U.S.C. 610) is amended—

(1) in the first sentence, by striking out ''an agency board of contract appeals'' and inserting in lieu thereof ''the United States Board of Contract Appeals''; and

(2) in the second sentence, by striking out ''the agency board through the Attorney General; or upon application by the board of contract appeals of the Tennessee Valley Authority'' and inserting in lieu thereof ''the Board''.

(h) Section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) is amended—

(1) in subsection (b), by striking out ''an agency board of contract appeals'' and inserting in lieu thereof ''the United States Board of Contract Appeals''; and

(2) in subsection (d)(2), by striking out ''by the board of contract appeals for'' and inserting in lieu thereof ''by the Board from''.

SEC. 884. REFERENCES TO AGENCY BOARDS OF CONTRACT APPEALS.

Any reference to an agency board of contract appeals in any provision of law or in any rule, regulation, or other paper of the United States shall be treated as referring to the United States Board of Contract Appeals.

SEC. 885. CONFORMING AMENDMENTS.

(a) TITLE 5.—Section 5372a of title 5, United States Code, is amended—

(1) in subsection (a)(1), by striking out ''an agency board of contract appeals appointed under section 8 of the Contract Disputes Act of 1978'' and inserting in lieu thereof ''the United States Board of Contract Appeals'';

(2) in subsection (a)(2), by striking out ''an agency board of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978'' and inserting in lieu thereof ''the United States Board of Contract Appeals''; and

(3) in subsection (b), by striking out ''an appeals board'' each place it appears and inserting in lieu thereof ''the appeals board''.

(b) TITLE 10.—(1) Section 2305(e) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking out ''subchapter V of chapter 35 of title 31'' and inserting in lieu thereof ''title IV of the Federal Acquisition Reform Act of 1995''; and

(B) by striking out paragraph (3).

(2) Section 2305(f) of such title is amended—

(A) in paragraph (1), by striking out ''in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31'' and inserting in lieu thereof ''section 424(f)(2) of the Federal Acquisition Reform Act of 1995''; and

(B) in paragraph (2), by striking out ''paragraph (1) of section 3554(c) of title 31'' and inserting in lieu thereof ''section 424(g)(1)(A) of the Federal Acquisition Reform Act of 1995''.

(c) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—(1) Section 303B(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(h)) is amended—

(A) in paragraph (1), by striking out ''subchapter V of chapter 35 of title 31'' and inserting in lieu thereof ''title IV of the Federal Acquisition Reform Act of 1995''; and

(B) by striking out paragraph (3).

(2) Section 303B(i) of such Act (41 U.S.C. 253b(i)) is amended—

(A) in paragraph (1), by striking out ''in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31'' and inserting in lieu thereof ''section 424(f)(2) of the Federal Acquisition Reform Act of 1995''; and

(B) in paragraph (2), by striking out ''paragraph (1) of section 3554(c) of title 31'' and inserting in lieu thereof ''section 424(g)(1)(A) of the Federal Acquisition Reform Act of 1995''.

PART VI—EFFECTIVE DATE; INTERIM APPOINTMENT AND RULES

SEC. 891. EFFECTIVE DATE.

This subtitle shall take effect on October 1, 1996.

SEC. 892. INTERIM APPOINTMENT.

The Board judge serving as chairman of the board of contract appeals of the General Services Administration on the date of the enactment of this Act shall serve as Chairman during the two-year period beginning on the effective date of this subtitle, unless such individual resigns such position or the position otherwise becomes vacant before the expiration of such period. The authority vested in the President by section 853 shall take effect upon the expiration of such two-year period or on the date such position is vacated, whichever occurs earlier.

SEC. 893. INTERIM RULES.

(a) RULES OF PROCEDURE.—Until such date as the Board promulgates rules of procedure, the rules of procedure of the board of contract appeals of the General Services Administration, as in effect on the effective date of this Act, shall be the rules of procedure of the Board.

(b) RULES REGARDING BOARD JUDGES.—Until such date as the Board promulgates rules governing the establishment and maintenance of a register of eligible applicants and the selection of Board judges, the rules of the Armed Services Board of Contract Appeals governing the establishment and maintenance of a register of eligible applicants and the selection of board members shall be the rules of the Board governing the establishment and maintenance of a register of eligible applicants and the selection of Board judges, except that any provisions of the rules of the Armed Services Board of Contract Appeals that authorize any individual other than the chairman of such board to select a Board judge shall have no effect.

Subtitle E—Effective Dates and Implementation

SEC. 895. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) APPLICABILITY OF AMENDMENTS.—(1) An amendment made by this title shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 896 to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

(2) An amendment made by this title shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 896 to implement such amendment, with respect to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

(B) an offer under consideration on the date described in paragraph (3); or

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be October 1, 1996, or any earlier date that is not within 30 days after the date on which such final regulations are published.

SEC. 896. IMPLEMENTING REGULATIONS.

(a) PROPOSED REVISIONS.—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this title shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

(d) MODIFICATIONS.—Final regulations promulgated pursuant to this section to implement an amendment made by this title may provide for modification of an existing contract without consideration upon the request of the contractor.

(e) SAVINGS PROVISIONS.—(1) Nothing in this title shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 895(b)(3) except to the extent and in the manner prescribed in such regulations.

(2) Except as specifically provided in this title, nothing in this title shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act.

(3) Except as otherwise provided in this title, a law amended by this title shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

(B) if no such date is specified in regulations, October 1, 1996.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. CLINGER] and a Member opposed will each be recognized for 20 minutes. Is the gentlewoman from Illinois [Mrs. COLLINS] opposed to the amendment?

Mrs. COLLINS of Illinois. Yes, I am, Mr. Chairman.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. COLLINS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. I yield myself such time as I may consume.

Mr. Chairman, I rise to offer the Clinger-Spence-Kasich acquisition reform amendment to the National Defense Authorization Act for fiscal year 1996. This amendment would modernize and streamline the procurement procedures of the Department of Defense and the civilian agencies. It builds upon legislation enacted last year and represents a significant shift in the operation of our Federal procurement system to meet the needs of the American taxpayer.

This amendment has been developed from H.R. 1670, the Federal Acquisition Reform Act of 1995, a bill Mr. SPENCE and I, along with other members of our committees, have introduced. You have heard and may hear again that we are rushing through legislation that has had no hearings. This is simply not true. We held a hearing in February to solicit proposals for simplifying and streamlining the Federal procurement process. This was a followup to last year's Federal Acquisition Streamlining Act of 1994 [FASA], the bipartisan effort to reform the complex Federal procurement system.

During this hearing we were exposed to various proposals for reform—ranging from minor technical corrections to a complete overhaul of the system. During the last few months, Chairman SPENCE and I, in conjunction with other committee members, have poured over and carefully considered this wealth of ideas. This effort culminated in the introduction of H.R. 1670, which is a synthesis of all of those ideas, which I think distills those ideas and takes the best and in corporates it into this bill. Subsequent to the introduction of H.R. 1670, the Committee on Government Reform and Oversight and the Committee of National Security held an unprecedented joint hearing to solicit comments specifically on this legislation from many senior industry executives and government officials.

Further, I have been working with my ranking minority member, Mrs. COLLINS, to refine the Clinger-Spence-Kasich amendment to include, for the most part, five of the six amendments she and Mrs. MALONEY offered at the Rules Committee. I think these have substantially improved the bill. The amendment which we are offering today includes that language which came about as a result of those discussions and negotiations.

While we will continue to pursue H.R. 1670 through the traditional course, and I want to emphasize that we will continue to pursue this bill through the traditional course, and along those lines we have scheduled a markup in the Government Reform and Oversight Committee for June 21, next week, we are similarly committed however to pursuing this matter as part of the National Defense Authorization Act for fiscal year 1996.

This approach is not intended to short circuit the process or to preclude anybody from having their input into the ultimate process but it is intended simply to maximize our opportunities for enactment of a significant piece of Government reform by the end of this year. And I might say that the administration is supportive of these efforts to enhance and improve the procurement reforms we made last year.

□ 1040

Each year, our Government spends about $200 billion on goods and services, and that is a substantial amount of money, ranging from weapons systems to computer systems to everyday commodities. The current system costs too much, involves way too much red-tape, and ill-serves both the taxpayer and industry.

In December 1994, a report prepared for the Secretary of Defense found that, on average, the Government pays an additional 18 percent on what it buys solely because of the requirements it imposes on its contractors. We have the most unbelievably heavy burden on our contractors. This confirmed the average estimate by major contractors surveyed by GAO that the additional costs incurred in selling to the Government are about 19 percent. While some of the Government's unique requirements certainly are needed, we do not dispute that we clearly are paying an enormous premium for them—billions of dollars annually, that we need not be spending.

And this is only part of the Government's inflated cost of doing business—for it includes only what is paid to contractors, not the cost of the Government's own administrative system. The Government's contracting officials are confronted with numerous mandates of their own, often amounting to step-by-step prescriptions that increase staff and equipment needs, and leave little room for the exercise of business judgment, initiative, and creativity. The Clinger-Spence-Kasich acquisition reform amendment focuses on these restrictions which hamstring the Government buyer and ultimately increase costs to the taxpayer.

In addition, as a complement to the work we started last year with FASA, our amendment moves the Federal procurement system closer to a commercial-type process.

Why should the Government be doing procurement in a wildly different way than happens in the private sector?

As 10 senior industry executives stated in a letter to Chairman SPENCE and me, our approach ''will significantly lower the costs to the government—and industry—by replacing bureaucratic procedures that long ago outlived their usefulness with the type of streamlined approaches that continue to work so well in the commercial sector.''

In fashioning our amendment, we were guided by a number of considerations: How to provide meaningful competition, obtain quality goods at reasonable prices, and ensure accountability of public officials for public transactions. At the same time, we are under enormous budgetary constraints that drive us to look at ways to meet our goals, yet do so in a way that is affordable and uses common sense.

The Clinger-Spence-Kasich amendment would:

Maximize competition by permitting the Government to provide for meaningful competition—not competition for competition's sake—which would allow firms to concentrate their energies and resources on Government business that they can realistically meet;

Provide a preference for expanded use of commercial products and services through simplified procedures, and the elimination of costly, time-consuming regulations designed primarily for the noncommercial environment;

Create a single, understandable reasonable approach to procurement ethics and also eliminate a cumbersome certification process that has had little value and contributed significant costs to both Government and industry;

Establish a results-oriented acquisition system which provides performance incentives—both positive and negative—for Government buyers and industry tied to cost and performance goals; and

This amendment would eliminate the guesswork from the current bid protest and dispute resolution maze by creating a single administrative entity to handle such matters with a single set of efficient procedures.

Some may say, in fact, have said, we should rest on our laurels, and let the

system absorb the changes made last year by FASA. But we must continue to push for reforms which will make the Federal procurement system work better and cost less. The Clinger/Spence/Kasich amendment provides the fundamental changes necessary to promote affordable and commonsense approaches to meet our budgetary goals and move the Federal procurement system into the 21st century.

If there has been one hallmark of this Congress, it has been to take away the regulatory overkill that we have imposed both on our Government procurement officials and also on the private sector. This amendment moves us dramatically in that direction.

Mr. Chairman, I urge my colleagues to support the Clinger-Spence-Kasich amendment.

Mr. Chairman, I reserve the balance of my time.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, while I have been working cooperatively with Chairman CLINGER over the past several days on his Governmentwide procurement amendment, I have serious concerns about the process that brings us here today. In the first place, a Governmentwide procurement bill should not be considered on the national defense authorization bill. Second, this amendment is being considered on the floor without benefit of debate within the Government Reform and Oversight Committee.

In previous Congresses, Republicans vigorously opposed nongermane amendments. Such amendments clearly undermine the integrity of our committee process. They deprive the majority and minority Members of the House, with the most expertise on a given subject, of the opportunity to carefully consider and fully debate complicated and difficult issues before House consideration. It also takes up valuable floor time on issues which might have been and should have been resolved by the committee.

However, the rule has made Chairman CLINGER's amendment in order, so I, along with the ranking Democratic member of the Government Information and Technology Subcommittee, Representative MALONEY, have attempted to work with the chairman to improve his amendment. As a result, the modified Clinger amendment is a substantial improvement over the original amendment.

With one important exception, Chairman CLINGER has incorporated all of the proposed amendments which we offered to the Rules Committee. That one exception regards the Clinger amendment's elimination of full and open competition, which I believe will cripple the ability of small businesses to compete for Federal contracts. I will offer an amendment shortly to retain the current practice allowing all businesses to compete for Government contracts under full and open competition.

In brief, our amendments represent significant reform and enhancement of Federal procurement policy. They allow for the increasing decentralization of procurement authority, and elicit greater cost-effectiveness for the Federal Government and the taxpayer. Chairman CLINGER and I share the same goals of modernizing and streamlining Federal acquisition procedures, and I applaud his recent efforts to reach a consensus with Democratic members of the Government Reform and Oversight Committee on procurement reform legislation.

Let me briefly describe portions of my bill, H.R. 1795, that will be essentially incorporated into Chairman CLINGER'S modified amendment.

First, the modified Clinger amendment now includes my amendment to improve Government procurement management practices by requiring Federal agencies to make more effective use of the cost-management tools and procedures known generally as value engineering.

Value engineering is a long-standing and widely accepted technique in both the public and private sectors that, despite its proven capabilities, remains underutilized in the Federal acquisition process.

Numerous GAO and IG reports, independent studies, and even the Presidentially appointed Grace Commission have demonstrated that Federal agencies' underutilization of value engineering has resulted in billions of dollars in lost opportunities to reduce costs to the Federal Government.

This provision will ensure better implementation of value engineering procedures, and will thereby reduce capital and operation costs, and improve and maintain optimum quality of construction, administrative, program, acquisition, and grant projects.

Second, Chairman CLINGER has accepted my amendment to retain the knowing standard for criminal violations of our procurement integrity laws, and increase the maximum criminal penalty from 5 to 15 years. This change will facilitate the Justice Department's ability to prosecute criminal and civil procurement fraud cases.

Third, Chairman CLINGER has accepted our amendment to limit sole-source contracting for commercial products. While I believe that the complete elimination of the simplified acquisition threshold contained in the Clinger amendment will raise problems, our amendment will place limits on its use and will help to ensure that an adequate level of competition is maintained with the expanded use of commercial items.

Finally, Chairman CLINGER has accepted an amendment by Representative MALONEY that improves the performance capability of the frontline contracting personnel. The amendment requires civilian agency heads to adopt education, training, and incentive features that raise the level of excellence and professionalism of the acquisition work force.

Mr. Chairman, the inclusion of these provisions in the Clinger amendment substantially improve the amendment. I commend the chairman for approaching this matter in the bipartisan spirit with which any acquisition reform effort should be undertaken.

Mr. Chairman, I reserve the balance of my time.

Mr. CLINGER. Mr. Chairman, I yield 5 minutes to my good friend, the gentleman from South Carolina [Mr. SPENCE], the coauthor of this amendment and the chairman of the Committee on National Security.

Mr. SPENCE. Mr. Chairman, I rise in strong support of the Clinger-Spence-Kasich amendment.

This legislation represents an important leap forward in reforming today's antiquated and inefficient Federal procurement system.

Last year, Congress enacted comprehensive acquisition reform legislation that is just now beginning to work itself through the regulatory process. The Federal Acquisition Streamlining Act was a good start in making needed incremental changes to the system.

I realize that some may wonder why we are launching another round of acquisition reform while the last one is still going through the implementation process. The answer is simple—we cannot afford to wait for last year's modest reforms to go into effect before fixing the fundamental problems ailing the current system.

Mr. Chairman, what is required today is fundamental reform, not incremental reform. The American taxpayer pays too much for the goods and services bought by the Federal Government. The current system results in products that are too costly, many times outdated, and of questionable quality.

This issue is of critical importance because, how the Federal Government buys goods and services affects the budgets and programs under the jurisdiction of every single committee of the House. As we all contemplate the difficult fiscal reality of moving toward a balanced budget in 7 years, we must fix today's inefficient procurement system in order to maximize return on every single Federal tax dollar.

As the Federal Government's largest single buyer, nowhere do these problems apply more than in the Department of Defense. While the bill before the House does increase spending relative to the President's budget request, even this spending level will not adequately cover the many critical military capability-, readiness-, and quality-of-life shortfalls facing the military in the years ahead.

I supported this budget as it struck a prudent balance between halting the 10-year slide in defense spending and putting us on a track toward a balanced Federal budget. But I also realize that the shortfalls created by the drastic reductions in spending of the past few years will require that we aggressively find additional findings from within the defense program.

H.R. 1530 begins this process by cutting nondefense spending, initiating a series of structural and organizational reforms and, through the Clinger-Spence-Kasich amendment, making important process reforms that will streamline acquisition procedures, reduce the costly overhead associated with Federal procurements and allow the Government to buy commercially more often.

Mr. Chairman, I recognize that some in the House are concerned about moving governmentwide legislation of this importance on the defense bill. Let me briefly address this point. For the reasons I have mentioned, both Mr. CLINGER and I are committed to having Congress pass comprehensive and fundamental acquisition reform legislation this year. To increase the likelihood of this objective, we have determined that a two-track process is in order. Putting this legislation on this bill represents one track. This approach provides the House with the option of pursuing acquisition reform legislation as part of the conference on the defense authorization bill.

The second track—and the one that both Mr. CLINGER and I prefer and are committed to vigorously pursue—is to move this legislation as a separate bill through the normal committee process. The Government Reform and Oversight Committee, which Mr. CLINGER chairs, has already scheduled a markup on H.R. 1670 as the first step in a process designed to allow the House to work its will on this important topic through the normal deliberative process. Other committees, including the National Security Committee which I chair, will subsequently have an opportunity to consider and improve upon this legislation in the normal course of events.

While the separate-bill track remains the approach of choice and I am confident that the House will allow such a separate bill to be brought to the House floor in an expeditious fashion, there is no assurance that the other body is similarly interested in quick action on this urgent priority. Therefore, we must retain all procedural options by having this second track. Regardless of which track ultimately gets used. BILL CLINGER and I are committed to bringing to the conference and defending the substance of this legislation as it continues to be refined and improved through the normal legislative process.

Mr. Chairman, while I strongly support and urge all my colleagues to support this amendment, it must also be said that it still requires further refinement in certain areas, particularly the provisions establishing a single bid protest forum. It is my intention to continue working this and other issues with BILL CLINGER and other committees of interest and jurisdiction to improve upon the remaining problem areas.

However, while we still have some fine points to work through, I am in full agreement with BILL CLINGER and JOHN KASICH that comprehensive, fundamental reform of the Federal acquisition system is needed as quickly as possible if we are to begin reducing the size and expense of the Federal Government. The Chinger-Spence-Kasich amendment is the proper vehicle to move us toward that objective.

The gentlelady from Illinois [Mrs. COLLINS] will be offering a perfecting amendment that will walk back many of the important provisions of the Clinger-Spence-Kasich amendment. The Collins amendment, while well intentioned, would revert back to the same timid and ineffective reforms that we have engaged in for the past 10 years. What is needed is fundamental reform. Clinger-Spence-Kasich is that fundamental reform.

In closing, I urge my colleagues to defeat the Collins amendment to water down the critical provisions of the Clinger-Spence-Kasich amendment and strongly support the Clinger-Spence-Kasich amendment as an important step toward a more efficient and cost-effective Federal acquisition system.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield 7 minutes to the gentlewoman from New York [Mrs. MALONEY], the ranking member of the subcommittee.

Mrs. MALONEY. Mr. Chairman, I share the chairman's commitment to modernize and streamline the procurement process, and I share his desire to dramatically improve the way the Federal Government spends more than $200 billion of the taxpayers' dollars in private contracts.

But there are at least two fundamental problems with the substance of this amendment. First, it would weaken the requirement for full and open competition for Federal contracts, which has been Federal law since 1984. These requirements are the taxpayers' best protection against waste, fraud, and abuse.

That the Clinger amendment weakens these taxpayer protections is extremely disturbing. The inspector general of the Department of Defense agrees with my objections and so stated in a letter to the chairman dated yesterday, and I am including that letter at this point in the RECORD, as follows:

INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE,
Arlington, VA, June 13, 1995.

Hon. WILLIAM F. CLINGER, Jr.,
Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Although we recently provided the Department our views on H.R. 1670, ''Federal Acquisition Reform Act of 1995,'' the enclosed comments on sections we support or find troublesome are forwarded for your consideration. We were especially troubled by proposals in Sections 201 and 203 to reduce the number of contracts subject to the Truth In Negotiations Act. The proposals reduce the ability of contracting officers to ensure the Government receives a fair price for items purchased on noncompetitive contracts.

I hope the information is helpful as the Congress continues consideration of this important issue. If we can be of further assistance, please contact me or Mr. John R. Crane, Office of Congressional Liaison, at (703) 604–8324.

Sincerely,

ELEANOR HILL,
Inspector General.

INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, COMMENTS ON H.R. 1670, FEDERAL ACQUISITION REFORM ACT OF 1995

Section 101, Improvement of Competition Requirements. Subsections (a) and (b) would amend 10 U.S.C. 2304 and 41 U.S.C. 253, respectively, to establish a statutory preference for the use of ''maximum practicable competition'' rather than ''full and open competition.'' The proposed amendments would eliminate the statutory exceptions to competition and authorize DoD and civilian agencies to exclude a particular source in order to establish or maintain an alternative source of supply for a particular item or service. The proposed amendments further provide that when noncompetitive procedures are used to procure an item or service, the procurement shall be justified in writing and approved in accordance with the Federal Acquisition Regulation. We disagree with the proposed amendments. Contracting officers have flexibility to exercise sound business judgment under the current statute in determining the appropriate acquisition strategy for a procurement. There is no preference for sealed bids. Further, there are legitimate reasons, which the current statutes identify, that preclude the use of competition for some contracts. The exceptions were included in the statutes because in some agencies, there was an institutional bias against competition or a proclivity for sole-source contracting. We believe that the exceptions to competition should be retained in the statute to avoid abuse of sole-source contracting.

Subsection (c) would amend 41 U.S.C. 416 to eliminate differences in requirements for publicizing procurements between DoD and civilian agencies and the requirement that contracting officers consider each responsive offer that is received. We support amending the statute to establish uniform procurement notice requirements for DoD and civilian agencies. We do not support deleting the requirement that contracting officers consider all responsive offers. The purpose of the preaward notice is to open competition to all offerers who can meet an agency's needs.

Subsection (d) would amend 15 U.S.C. 637 to delete provisions that duplicate 41 U.S.C. 416. We support the amendment.

Subsection (e) would amend 41 U.S.C. 414 to incorporate the proposed statutory preference for ''maximum practicable competition'' in the executive agency responsibilities. It would also amend 41 U.S.C. 418 to delete the reference to the date of enactment of the Competition in Contracting Act. We do not support the amendment of 41 U.S.C. 414 for the reasons discussed above in Subsections (a) and (b). Also, competition is not a procurement procedure, but an objective that a procedure is designed to attain. Therefore, the word ''achieve'' is preferable to ''promote.'' We do not object to the proposed amendment of 41 U.S.C. 418.

As an alternative, we like the words in Section 1012 of S. 669, ''Federal Acquisition Improvement Act'' that amend 10 U.S.C. 2305(b) and allow the contracting officer to limit competition to the top 3 contractors bids. The provision allows all contractors to compete initially and then narrows the field.

Section 102, Definition Relating to Competition Requirements. The section would amend 41 U.S.C. 403 to replace the definition of ''full and open competition'' with ''maximum practicable competiton'' and make

similar substitutions in sections of Titles 10 and 41. We do not support the amendment. The current statutory preference for ''full and open competition'' requires contracting officers to use competitive procedures to the maximum extent practical. Also, see previous comments on Section 101.

Section 103, Contract Solicitation Amendments. The section would amend 10 U.S.C. 2305 to delete the provision stating that specifications included in contracts shall permit full and open competition and will include restrictive provisions only to the extent necessary to satisfy the needs of the agency or as authorized by law. Specifications express agency needs and serve as the baseline for the evaluation of offers. The current language was included in the statute because agencies used specifications to restrict competition by unnecessarily defining their needs too narrowly. Thus, we do not support the change.

Section 104, Preaward Debriefings. We agree with the proposed amendment to 10 U.S.C. 2305(b) to clarify the policy for debriefing unsuccessful offerers prior to the award of a contract. The change may also eliminate some needless protests. The contracting officer should have discretion whether a debriefing is required, particularly, for actions that do not involve significant judgments about factors other than price.

Section 105, Contract Types. The section would amend 10 U.S.C. 2306 to delete the prohibition on payment of contingency fees to obtain contracts; the 15 percent fee limit on performing cost-plus-a-fixed-fee (CPFF) contract for experimental, developmental, research work; the 10 percent fee limit for any other CPFF contract; the 6 percent fee limit for performing a CPFF contract for architectural or engineering (A&E) services; the requirement under cost reimbursable contracts for the prime contractor to provide notice of certain subcontract awards; and references to Truth In Negotiations Act (TINA) provisions and multiyear contracting authority.

We do not support deleting the prohibition on payment of contingency fees or the elimination of the limits on fees on CPFF and architectural or engineering contracts. As a matter of public policy, contractors should not pay contingency fees to someone for soliciting or brokering for them to obtain Federal contracts.

We disagree with deletion of the 6 percent fee limitation for a CPFF contract for architectural or engineering services. The statute serves its intended purpose because it limits how much the DoD can spend designing projects and prevents overspending on design efforts to the detriment of actual construction. The statute also helps to limit the Government's risk of investing in an expensive design for a project. We have audited hundreds of military construction projects and have never seen a lack of competition for the design work or higher construction prices due to the fee limits.

We also disagree with the proposed elimination of the 15 percent and 10 percent fee limits. The fee limitations provide a reasonable framework for the contracting officer to use in negotiating CPFF contracts and still allow the contracting officer flexibility to reward contractors according to different risk situations. Contractors have less financial risk on level-of-effort and completion type CPFF contracts than any of the other contract types. Eliminating the statutory limitations on fees for CPFF contracts would likely result in varying interpretations by contracting officers and higher fees on some CPFF contracts. Also, contracting officers often apply the 10 and 15 percent limitations to maximum fees on cost-plus-incentive-fee (CPIF) and cost-plus-award-fee (CPAF) contracts. In 1993, there were $112 billion in contracts by the DoD and $47.7 billion (42 percent) were cost-type contracts, of which $16.6 billion (14 percent) were CPFF contracts. Thus, a lot of contracts will be affected. The Section 800 Panel recommended eliminating the 6 percent limitation for architectural and engineering contracts but did not recommend eliminating the other fee limitations.

We have no objection to deleting the references to the TINA provisions or multiyear contracting authority since the provisions are in other statutes.

Section 106, Contractor Performance. The section would add a new Section 35 to 41 U.S.C. 401, et seq., that provides for a contractor verification system for the procurement of particular property or services that are procured by executive agencies on a repetitive basis. Procedures for the system would be defined in the Federal Acquisition Regulation (FAR). The section would also repeal 10 U.S.C. 2319, which provides policies on encouragement of new contractors and qualification requirements. We do not support the proposed change to eliminate the qualification requirements. Allowing new contractors to qualify helps competition in contracting, reduces costs, enhances industry responsiveness, and maintains integrity in the expenditure of public funds by ensuring that contracts are awarded on the basis of merit rather than favoritism. Under the current statute, contracting officers should also consider quality of product and contractor performance in addition to price before awarding a contract. This proposal goes away from trying to add new vendors to DoD supplier lists and appears to limit suppliers to the past DoD contractors.

Section 201. Commercial Item Exception to Requirement for Cost or Pricing Data and Information Limits. We disagree with the proposed change to the TINA, 10 U.S.C. 2306a (b)(1)(A), which deletes the section that allows the use of established catalog or market prices of commercial items that are sold in substantial quantities to the general public as an exception to the requirement for cost or pricing data. The proposed change allows the exception under (B), which is for acquisition of a commercial item. Placing the exception under commercial items allows the exception without first determining whether enough information is available to determine whether the item is actually commercial and the fairness and reasonableness of the contractor's proposed price for the exempted commercial item.

Section 1204 of the Federal Acquisition Streamlining Act (FASA) recently amended 10 U.S.C. 2306a (d)(2)(B) to allow a commercial item exemption when contracting officers are able to obtain information on prices for which the same or similar items were sold in the commercial marketplace to determine price reasonableness. We disagree with the proposed rule that would allow an exemption simply because the definition of commercial item is met. Without restrictions to only allow the exemption after the fairness of the proposed price has been determined, there are no control mechanisms to prevent the Government from being overcharged.

The proposed change in this Bill to Section 2306(c) of 10 U.S.C. would eliminate the right of the head of the procuring activity to request cost or pricing data because the item is now called commercial. The proposed change to Section 2306a(d) of 10 U.S.C. would eliminate the right for contracting officer to request limited data for commercial items and for auditors to have 2 years after award of the contract to audit the data. The proposed change also eliminates 10 U.S.C. 2306a(h), which states the FAR will contain provisions on the types of information a contracting officer can request to be submitted to determine if a price is reasonable when the procurement is under $500,000.

We disagree with the changes, which create intolerable loopholes to the TINA. The FASA changes enacted last year to allow the current 10 U.S.C. 2306a exemption for commercial items has not yet been implemented and its effect cannot be judged. Also, the ability to request limited data for commercial items and allow 2-year audit rights was placed in the FASA as a compromise last year to allow for limited tests or reviews, without penalties to contractors, to determine whether fair prices were being received under the commercial item exemption. Without this audit provision, there is no way to evaluate properly the FASA change related to commercial items. We believe that changing the provision of a law designed to streamline the purchase of commercial items before the law has been implemented is premature.

The Defense Contract Audit Agency and this office identified $2,017 million in FY 1994 in direct monetary benefits related to the TINA. Those benefits were from identified contract over-pricing that resulted in price reductions or administrative and criminal collections for overpricing. The Coopers and Lybrand/TASC study on contract cost drivers stated that TINA adds about 1.3 percent to contract costs. If this cost driver estimate is near accurate, then TINA added about $660 million in costs to DoD contracts in FY 1994, but there were $2 billion in benefits. This is a benefit to cost ration of 3 to 1. However, the greatest benefits from TINA are intangible, and we cannot estimate the intangible but positive effect of the TINA on keeping contract prices fair for the Government. Just the fact that the law exists and there are audit and investigative agencies creates an atmosphere of voluntary contract compliance.

Section 202. Application of Simplified Procedures to Commercial Items. The proposed change to 10 U.S.C. 2304(e)(1) would amend Sections 101 (a) and (b) of this Bill to specify that simplified acquisition procedures may be used for purchases of commercial items regardless of dollar value. The section would also amend 41 U.S.C. 416, as amended by Section 101(c), to conform notice requirements for commercial items to the use of simplified procedures. We strongly support the concept of making the purchase of commercial items easier. The Deputy Inspector General, DoD, testified last year that because of the restrictive acquisition laws, the Department purchased very limited quantities of common commercial items, such as clothing and textiles, wood products, meat and seafoods from the top 10 commercial producers. The Department purchased these commercial items from smaller companies that specialized in satisfying the Department's acquisition rules and selling to the Department. To really reduce costs, you need to exempt commercial item purchases from all Buy-American, small business and other socioeconomic statutes.

Section 203. Amendment to Definition of Commercial Items. We disagree with the proposed change. As written in Part (F) of the FASA (41 U.S.C. 422(f)(2)), the procurement of commercial services is limited to established catalog prices for the services. At present, the statute Part (E) provides for acquisition of installation, maintenance, repair and training services as commercial services. The proposed change in Part (F) allows a definition of commercial services as services based on established prices. There is no definition of ''established prices,'' and the terms are much broader than the current terms ''established catalog prices.'' The new

terms could result in almost any service fitting that description and, thus, being considered a commercial product. Established prices may merely represent prices traditionally offered the Government and may not reflect lower prices offered affiliates and commercial customers for sales of like quantities under similar terms and conditions. Unless the prices for the specific tasks are published in a catalog, the Government would be unable to determine whether standard commercial terms, conditions and prices are offered.

According to a March 1993 OMB report, service contract costs were $103 billion for the Government and $61 billion in the DoD for 1993. The proposed change would permit the acquisition of all professional and technical services as a commercial service and exempt $100 billion of service contracts from contracting officer and auditor requests for a contractor's catalog, pricing data or cost data to perform pricing or cost analyses. Without any restrictions or exclusions, the language is too broad and is very likely to result in increased prices and a reduction in competition. The DoD has not yet implemented the (D) and (F) provisions of the FASA to judge their effect. We believe it is too early to change a provision of law designed to streamline the purchase of services before the law has been implemented.

Section 204, Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items. We disagree with excluding the requirement to comply with Cost Accounting Standards (CAS) if the contract for commercial items provides for Government financing through progress payments or public vouchers. In order to receive financing, the contractor must demonstrate that his accounting practices adequately assign costs to contracts. Therefore, any contract for commercial items that provides for Government financing should include the provisions of the CAS.

Section 301, Government Reliance on the Private Sector. The section would add a Section 17 to the Office of Federal Procurement Policy Act that states it is the policy of the Government to rely on commercial sources to supply its needs. We have no objection to the amendment. The policy is already stated in Executive Order and administrative regulations (Office of Management and Budget Circular No. A–76).

Section 302, Elimination of Certain Certification Requirements. We do not agree with the proposed amendment to 10 U.S.C. 2410 to delete the certification requirement for contractor requests for equitable adjustment and relief under Public Law 85–804. The claims are subject to audit and inaccurate, incomplete or misleading data could be a basis for denial of the claim and other sanctions. We also do not agree with the proposed amendment to 10 U.S.C. 2410b to delete the certification for contractor inventory accounting systems. Contractor representations are one of the basis that help DoD personnel decide whether to reduce the need for systems audits to establish whether the systems meet standards. We do not object to the amendment of 31 U.S.C. 1352(b)(2) to delete the certification requirement regarding the prohibition on use of appropriated funds for lobbying (Byrd Amendment) and 41 U.S.C. 701 to delete the certification requirement from the Drug-Free Workplace Act. We do not support the proposed requirement in subsection (b) that not later than 210 days after the date of the enactment of the Act, any certification required of contractors or offerers by the FAR that is not specifically imposed by statute would be removed from the FAR or such agency regulation unless written justification for such certification is provided to the Administrator, Office of Federal Procurement Policy (OFPP) by the FAR Council and the Administrator approves in writing the retention of the certification. Instead, we support a provision that would vest agency heads with nondelegatable authority to decide when agencies may impose such certifications. We believe there is a need for certifications from contractors where funds or safety are involved because they enhance the efficiency and trust in the contracting process.

Section 303, Amendment to Commencement and Expiration of Authority to conduct Certain Tests of Procurement Procedures. The change is to subsection (j) of Section 5061 of the FASA. Section 5061 covers the OFPP Test Program for Executive Agencies. The OFPP test programs were limited by the FASA to under $100 million in procurements, allowed OFPP to test innovative procurement polices, and waive any nonstatutory rule in the FAR and 13 statutes. Subsection (j) does not allow use of the test programs in any agency until the agency certifies to Congress full Federal Acquisition computer Network (FACNET) capability. We agree with the change because it allows use of the test programs prior to full Facnet capability. The DoD does not project obtaining full FACNET capability until late 1997.

Section 304, International Competitiveness. The proposed change deletes the requirement for recoupment of a proportionate amount of nonrecurring costs for research, development and production of major defense equipment. The premise is that doing so will facilitate the transfer of technology between Government and commercial markets; aid integration of contractor's Government and commercial operations; increase U.S. competitiveness in worldwide markets; and enhance national security by preserving the industrial base. We disagree with the change and offer an alternative. The current law and regulations allow the change to be waived if the charge is an impediment to the sale. Requests for waivers are invariably granted. Some personnel refer to the charge as a tax when, in fact, it is a refund to the U.S. Treasury of a proportionate amount of research and development funds provided to the contractor to develop the item. The nonrecurring cost collections added about $181 million to the U.S. Treasury in FY 1994 and the Defense Security Assistance Agency projects that an additional $1 billion will be collected during FYs 1995 to 2000. If the provision of noncollection applies to only new sales, then $148 million ($25 million in 1998, $48 million in 1999 and $70 million in 2000) of the $1 billion will not be collected during these years. However, between 2001 and 2005, nothing will be collected. If recoupments are stopped, another source of revenue will be needed to offset the noncollection. It has also been stated that repeal is needed to improve the competitiveness of U.S. companies selling military hardware. Recent sales figures show that in 1993 the U.S. accounted for 53 percent of all military hardware sold to other nations. During the 1991 to 1993 period, the U.S. supplied about $34 billion of military equipment to foreign countries and all other nations combined provided $34 billion. Since the U.S. sales of military hardware exceed all other countries combined, there is no need for additional across-the-aboard help when it can be done through waivers, on a case-by-case basis, to help competitiveness.

Section 305, Procurement Integrity. We agree with the proposed repeal of 10 U.S.C. 2397, Employees or former employees of defense contractors: reports; 10 U.S.C. 2397a, Requirements relating to private employment contacts between certain Department of Defense procurement officials and Defense contractors; 10 U.S.C. 2397b, certain former Department of Defense procurement officials: limitations on employment by contractors; 10 U.S.C. 2397c, Defense contractors: requirements concerning former Department of Defense officials; and 18 U.S.C. 281, Restrictions on retired military officers regarding certain matters affecting the Government. The provisions of Title 10 relate solely to the Department of Defense and impose various post-employment restrictions and reporting requirements. The provision of Title 18 imposes criminal penalties for violations of post-employment restrictions by retired military officers. It is currently suspended. The complexity of the current restrictions have frustrated the ability of the contracting work force—in Government and industry—to abide by them The current statutory certification requirements are unlikely to deter conduct to be proscribed. Moreover, the certifications create considerable administrative burden.

Section 306, Further Acquisition Streamlining Provisions. We do not support amending 41 U.S.C. 404 to define the purpose of the OFPP and repealing 41 U.S.C. 401 and 402, which currently define the purpose and responsibilities of the OFPP. The change replaces specific language with vague, general language and we see no benefit to the change. We also disagree with the repeal of the reporting requirement in 41 U.S.C. 407(a), which requires the Administrator of OFPP submit an annual report to the Congress on the major activities of his office. We believe this requirement should be retained because it assists the Congress in carrying out its oversight responsibilities. We agree with the repeal 41 U.S.C. 407(b), which requires the Administrator to transmit a report to the Congress on proposed policies and regulations. Repeal would reduce the administrative burden created by this reporting requirement. We agree with repeal of the obsolete provisions in 41 U.S.C. 409 and 410, which cover the 1983 appropriations and rules for the OFPP.

Section 401–452, Establishment of the United States Board of Contract Appeals. The new consolidated Board will be established in the executive branch and be composed by judges from all the Boards of Contract Appeal (BCAs) and assistant general counsels from the General Accounting Office (GAO) that now hear bid protests. The proposed change terminates all of the existing BCAs in the different departments.

Functions of the new Board include the following:

1. Required to provide alternative disputes resolution services for contract disputes.
2. Adjudicate contract disputes under the Contract Disputes Act (CDA).
3. Resolve bid protests through use of the following procedures: may consider all relevant evidence; preponderance of the evidence standard; has authority to suspend procurement pending protest; costs can be paid to U.S. on frivolous protests; successful protestor can be awarded costs; and nonexclusivity of remedies. A contractor can still protest to an agency, a District Court or a Court of Federal Claims. However, it repeals authority of the General Services Administration Board of Contract Appeals (GSBCA) and the GAO to hear protests.

We have no opinion on these sections since it is unclear if efficiency or costs savings will result from this proposed legislation, and we have no basis to make such a determination.

Second, the Clinger amendment allows a simplified acquisition procedure for the purchase of these so-called commercial products no matter what the dollar value. Last year we passed a landmark bill with bipartisan support that raised the threshold for simplified

procedures to $100,000, thus allowing officials to purchase basic goods like salad dressing or paperclips without undue red tape.

This amendment would eliminate the threshold altogether, and while I might, in fact, support raising the threshold, I cannot in good conscience support eliminating the threshold and thereby depriving the taxpayers of the assurance that when it buys a multimillion-dollar product the American people are still getting the best possible product at the best possible price.

The Department of Defense's inspector general has strong reservations concerning the Clinger amendment's definitions of commercial items because there is no definition for established prices for commercial services afforded other customers, a determination of lower prices cannot be made and, therefore, may end up costing more for the Government. The IG's concern underscores mine that waiver of full and open competition is available for products and services within the broad spectrum of the term commercial items.

The term simplified procedures only tells procurement agents that they need to have competition to the maximum extent practicable. This is a far cry from a requirement for full and open competition when buying a multimillion-dollar item. Waiving a requirement of full and open competition may be fine for small purchases, but I believe that allowing contracting officials to spend as much taxpayer money as they want with limited competition may lead to serious problems.

Also of major importance is the process under which we are considering the Clinger amendment on the floor today without a markup or even a committee report explaining the provisions of this legislation. In fact, Mr. Chairman, when a bill of this magnitude and complexity is brought directly to the floor, it can only raise the suspicion in the minds of the public that we might be trying to push something through that cannot stand the scrutiny of public debate.

I am certainly confident that everyone concerned has the best interests of the Nation at heart, but strange procedures like this will lead to questions however unjustified, when the subject is how $200 billion will be spent.

Let me be clear that there are many provisions of this amendment that I do support, including those that I drafted to improve the acquisition work force. I thank the chairman, the gentleman from Pennsylvania [Mr. CLINGER], and his staff for working closely with the gentlewoman from Illinois [Mrs. COLLINS] and myself and for accepting many of our amendments.

□ 1100

The acquisition work force, a major thrust, is needed because a major thrust of almost all recent procurement reform is placing more responsibility and decisionmaking power with the front-line procurement official, the contracting officer. But at the same time we are giving more responsibility to those officials, we are also witnessing a significant downsizing of the work force. Therefore, these reform initiatives will be successful only if we have a highly trained and motivated corps of professionals.

Currently, there are no professional requirements for contracting officers; in fact, one need not have a college education even though they are making decisions about how to spend millions of taxpayer dollars. For the first time, we will have mandatory qualifications that include a requirement that contracting officers, at a minimum, possess a college degree. But while these changes will make this a better amendment than before, the fact that the Clinger amendment weakens full and open competition for Federal contracts makes it impossible for me to give my support.

As I said earlier, the simple fact is that the best protection that the taxpayers have against the danger of waste and corruption in procurement is the requirement that contracts be awarded using competitive procedures. This ensures that the American people get the best product for the lowest price, but by removing the requirement for competition and replacing it with some nebulous definition of ''maximum extent practicable,'' we are only inviting lawsuits and other trouble for the American taxpayer.

I will discuss some of these issues further in supporting the amendment which the gentlewoman from Illinois [Mrs. COLLINS] will offer to the Clinger amendment to remedy some of these flaws. Under different circumstances and with a few fundamental changes, the Clinger amendment could represent an excellent second step to follow the changes made last year by Congress and those made by Vice President GORE, but until those changes are made, I must oppose the amendment.

Mr. CLINGER. Mr. Chairman, I yield 4 minutes to the gentleman from New Hampshire [Mr. ZELIFF], a very valued member of the committee and supporter of this amendment.

Mr. ZELIFF. Mr. Chairman, I rise in support of this amendment to the defense authorization bill to cut redtape and simplify the Federal acquisition system. For too long, Federal procurement has meant costly, time-consuming regulations that waste millions of taxpayers' dollars. This amendment takes a much-needed giant step toward reinjecting both common and economic sense into the Federal acquisition process.

I am proud to join as a cosponsor of this amendment with the distinguished chairman of the Government Reform and Oversight, National Security, and Budget Committees, respectively, as well as my distinguished colleague from New Hampshire, Congressman CHARLIE BASS. Chairmen CLINGER, SPENCE, and KASICH—and their staffs—deserve tremendous credit for forging this consensus amendment.

It is important to note that this amendment has the support of the committee chairs charged with reforming and cutting the size of Government, with authorizing our military with the means to secure our Nation, and with cutting our Federal budget.

In short, this amendment cuts Government waste, enhances national security, and makes financial sense. Clearly, the time is now to pass this amendment.

When it comes to acquisition reform, we appropriately should focus on the Department of Defense. DOD spends nearly 80 percent of the roughly $200 billion per year spent by the Federal Government on good and services. That is nearly $160 billion a year.

Under the current acquisition rules, DOD pays an additional 18 to 19 percent in costs generated by existing redtape. That is an added $28 to $30 billion in unnecessary costs per year—that leaves a lot of room for improvement.

This amendment goes a long way toward cutting those unnecessary costs by building on the reforms passed last year in the Federal Acquisition Streamlining Act [FASA] of 1994.

Chairman BILL CLINGER led the fight to pass those reforms last year—the first in nearly a decade—as he is leading the fight this year to continue the job.

Today's amendment will give the taxpayer more bang for the buck. It requires more efficient competition, expanded use of off-the-shelf commercial products, results-oriented performance incentives, and streamlining of the dispute resolution and bid protest process.

When you have a system as bloated and inefficient as the Federal acquisition system, even today's reforms may not be enough. While scuttling the system all together may be tempting, I would urge my colleagues to support this amendment. It recognizes the need for major reform by requiring dramatic yet prudent change.

I share Chairman JOHN KASICH's concern that the culture surrounding the Federal procurement process, especially within DOD, must be reassessed and fundamentally changed.

As a small businessman, I have learned that at the end of each day, you need to balance your books if you want to stay in business. Our Government and the Federal acquisition process need to be reintroduced to these basic business practices. We need to incorporate these lessons from the private sector. This amendment pushes us in that direction.

Finally, a subcommittee chairman charged with overseeing the economy and efficiency of DOD, I share Chairman SPENCE's desire to achieve greater efficiency without sacrificing one ounce of security. This amendment cuts costs without cutting military readiness.

Mr. Chairman, today's amendment calls for fundamental change that is

long overdue in the Federal acquisition system. Many among us, Republicans and Democrats, have been working to improve the way our Government does business. We are blessed with a wealth of ideas and energy in this Congress.

My fellow colleagues, let us seize this moment and channel our energy into a positive, constructive force. Let us pass this amendment and improve the Federal acquisition system. That is what the American people expect—and I am confident that is what we will deliver.

Mrs. COLLINS of Illinois. I yield 4 minutes to the gentlewoman from Kansas [Mrs. MEYERS], the chair of the Committee on Small Business.

(Mrs. MEYERS of Kansas asked and was given permission to consent to revise and extend her remarks.)

Mrs. MEYERS of Kansas. Mr. Chairman, I rise reluctantly to oppose the Clinger amendment and enthusiastically in support of the Collins amendment. The Clinger amendment does several things. First, it repeals the requirement for full and open competition. Next, the Clinger amendment would permit the use of so-called simplified procedures for the procurement of commercial products without any dollar limitation. Currently, these simplified procedures can be used only for small purchases, those less than $25,000. After implementing regulations are issued on the Federal Acquisition Streamlining Act [FASA] from last year, authority to use simplified procedures will increase to $100,000. Let me repeat, the Clinger amendment would permit the use of simplified procedures for the purchase of commercial products, without dollar limitation.

Mr. Chairman, I am also concerned about the Clinger amendment for procedural reasons. This sweeping procurement legislation should not be considered at the last minute as a floor amendment to the DOD authorization bill. It has had one hearing. It has not had a markup. The sponsor urges that the text of the amendment being considered is merely a placeholder, subject to future revision. I remain concerned, given the changes that this legislation makes and how those changes would affect small business.

In its present form, this legislation, the Federal Acquisition Reform Act of 1995, is a disaster for small business. This legislative alert is now being circulated at the 1995 White House Conference on Small Business, which is taking place this week. I am informed that it is being distributed by the Small Business Working Group on Procurement Reform, which includes NFIB, National Small Business United, the Small Business Legislative Council, and other groups. It expresses great concern about the this legislation and this process. It says that this legislation, now being considered in the form of the Clinger amendment, would take away small businesses' right to bid on contracting opportunities being offered by the government by repealing the full and open competition standard of the 1984 Competition in Contracting Act.

When I was elected in 1984, all during that long, hot summer and fall, all I heard about was the $435 hammers and the $7,600 coffee pots. The full and open competition standard was put in legislation to do away with those and similar sole-source procurement excesses. Now we are considering legislation to repeal it.

Small business sees this effort as a mechanism to again deprive them of the opportunity to bid. The legislative alert specifically highlights that the legislation before us as the Clinger amendment would repeal current protections requiring a contracting officer to justify the proposed award of a contract through less than full and open competition. The Clinger amendment would repeal statutory protections for the prequalification of contractors. It would repeal the provisions of the Small Business Act that require notice of contracting opportunities in the Commerce Business Daily—or local posting for small purchases—and assure adequate time to submit an offer.

The legislation contained in the Clinger amendment would authorize awards of contracts for commercial items without dollar limitation through simplified procedures currently used for only small purchases. I approve of the use of simplified procedures for commercial items under $25,000 or even under $100,000, but not without any dollar limitation. Under simplified procedures, a person sitting in the Pentagon could make a telephone solicitation of three firms of the contracting officer's choosing, and that would be recognized as competitive.

Mr. Chairman, as a result of last year's Federal Acquisition Streamlining Act, commercial items are broadly defined to include not only items sold in the marketplace, but even unbuilt items that are, ''intended to be offered in the future.'' The Clinger amendment legislation would also broaden the definition of commercial items to cover a broad range of services.

Mr. Chairman, I think that the Clinger amendment locks out small business. The Collins amendment strikes the most egregious provisions of the Clinger amendment. I would urge my colleagues to vote for the Collins amendment and against the Clinger amendment.

Mr. CLINGER. Mr. Chairman, I yield myself 30 seconds to respond.

Mr. Chairman, the task force alert which was referred to by the gentlewoman from Kansas [Mrs. MEYERS] unfortunately, I regret to say, is full of misinformation and disinformation, and I think that may be partially our fault for not have been—but I think we will have an opportunity before we go to markup next week to correct some of the misinformation that is included in that markup, and we will certainly do that. I stress again we are going to markup next week. If there are these problems that are alluded to, we can address those at that time.

Mr. Chairman, I yield 2 minutes to the gentleman from Oklahoma [Mr. WATTS], a member of the Committee on National Security.

Mr. WATTS of Oklahoma. Mr. Chairman, I believe Congress is finally doing something positive for small business. The Clinger-Spence-Kasich amendment to H.R. 1530 slashes bureaucracy and creates an accomodating marketplace environment. It does this by increasing the use of commercial practices, streamlining the lengthy dispute process, and enhancing competition.

It will be easier for the Federal Government to contract with the private sector, easier for the private sector to carry out its responsibilities, and easier for the user—our soldiers, sailors, airmen, and marines—to receive the goods and services necessary to fight and win the battles that lie before them.

Last month, the National Security and Government Oversight Committees held a joint hearing. In that session, a senior official of a minority-owned information technology firm testified that Congress needs to streamline the currently cumbersome and costly acquisition process. This amendment moves us in that direction by eliminating administrative burdens normally associated with the contracting process. For example, the use of cost accounting standards on commercial items would become a thing of the past. Cost accounting standards are complex rules for collecting and reporting costs. How much will this save? Hundreds of thousands of dollars in costs will no longer be paid to company employees and watchdogs whose primary role is to collect, organize, and report costs to government buyers.

We can no longer tolerate the archaic approach at work within the Federal acquisition process. We have before us the opportunity to lower the cost of doing business and expedite deliveries to the military consumer. This chance should not be overlooked. I ask my colleagues to please join me in supporting this amendment.

□ 1115

AMENDMENT OFFERED BY MRS. COLLINS OF ILLINOIS TO THE AMENDMENT OFFERED BY MR. CLINGER, AS MODIFIED

Mrs. COLLINS of Illinois. Mr. Chairman, I offer an amendment to the amendment, as modified.

The CHAIRMAN. The Clerk will designate the amendment to the amendment.

The text of the amendment to the amendment is as follows:

Amendment offered by Mrs. COLLINS of Illinois to the amendment offered by Mr. CLINGER, as modified: Strike out sections 801, 802, 803, and 806 in the matter proposed to be inserted, and insert in lieu of section 801 the following:

SEC. 801. COMPETITION PROVISIONS.

(a) CONFERENCE BEFORE SUBMISSION OF BIDS OR PROPOSALS.—(1) Section 2305(a) of title 10, United State Code, is amended by adding at the end the following paragraph:

''(6) To the extent practicable, for each procurement of property or services by an agency, the head of the agency shall provide for a conference on the procurement to be held for anyone interested in submitting a bid or proposal in response to the solicitation for the procurement. The purpose of the conference shall be to inform potential bidders and offerors of the needs of the agency and the qualifications considered necessary by the agency to compete successfully in the procurement.''.

(2) Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended by adding at the end the following new subsection:

''(f) To the extent practicable, for each procurement of property or services by an agency, an executive agency shall provide for a conference on the procurement to be held for anyone interested in submitting a bid or proposal in response to the solicitation for the procurement. The purpose of the conference shall be to inform potential bidders and offerors of the needs of the executive agency and the qualifications considered necessary by the executive agency to compete successfully in the procurement.''

(b) DESCRIPTION OF SOURCE SELECTION PLAN IN SOLICITATION.—(1) Section 2305(a) of title 10, United States Code, is further amended in paragraph (2)—

(A) by striking out ''and'' after the semicolon at the end of subparagraph (A);

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ''; and''; and

(C) by adding at the end the following new subparagraph:

''(C) a description, in as much detail as is practicable, of the source selection plan of the agency, or a notice that such plan is available upon request.''.

(2) Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is further amended in subsection (b)—

(A) by striking out ''and'' after the semicolon at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof ''; and''; and

(C) by adding at the end the following new paragraph:

''(3) a description, in as much detail as is practicable, of the source selection plan of the executive agency, or a notice that such plan is available upon request.''.

(c) DISCUSSIONS NOT NECESSARY WITH EVERY OFFEROR.—(1) Section 2305(b)(4)(A)(i) of title 10, United States Code, is amended by inserting before the semicolon the following: ''and provided that discussions need not be conducted with an offeror merely to permit that offeror to submit a technically acceptable revised proposal''.

(2) Section 303B(d)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by inserting before the semicolon the following: ''and provided that discussions need not be conducted with an offeror merely to permit that offeror to submit a technically acceptable revised proposal''.

(d) PRELIMINARY ASSESSMENTS OF COMPETITIVE PROPOSALS.(1) Section 2305(b)(2) of title 10, United States Code, is amended by adding at the end the following: ''With respect to competitive proposals, the head of the agency may make a preliminary assessment of a proposal received, rather than a complete evaluation of the proposal received, rather than a complete evaluation of the proposal and may eliminate the proposal from further consideration if the head of the agency determines the proposal has no chance for contract award.''.

(2) Section 303B of the Federal Property and Administrative Services Act of 1949 (41 (U.S.C. 253b) is amended by adding at the end the following: ''With respect to competitive proposals, the head of the agency may make a preliminary assessment of a proposal, and may eliminate the proposal from further consideration if the head of the agency determines the proposal has no chance for contract award.''

(e) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall be revised to reflect the amendments made by subsections (a)< (b), (c), and (d).

The CHAIRMAN. Under the rule, the gentlewoman from Illinois [Mrs. COLLINS] is recognized for 20 minutes, and a Member in opposition will be recognized for 20 minutes.

PARLIAMENTARY INQUIRY

Mrs. COLLINS of Illinois. Mr. Chairman, I understood that we had a 4 remaining minutes on the other discussion. Do I now have 24 minutes, remaining?

The CHAIRMAN. The gentlewoman has 20 minutes, in addition to her remaining time.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment does three things: First it strikes from Chairman CLINGER's amendment his repeal of full and open competition for Federal contracts. Second, it strikes an unnecessary system of Federal agency verification, whereby agency bureaucrats determine which firms are allowed to bid for Federal contracts. Third, it moves us closer to commercial buying practices, by empowering agency officials to have more open communication with the private sector. My position is supported by the Small Business Administration and the National Federal of Independent Businesses.

The cornerstone of our free enterprise system is full and open competition. The competitive market ensures fair prices to the Government. If a vendor's product costs too much it will not survive. At the same time full and open competition provides the opportunity for all vendors, particularly small businesses, to participate in the Federal marketplace, to be judged on merit. This creates incentives for the development of new and innovative products. Clearly these market forces are essential if we are to position our country for economic leadership into the next century.

Chairman CLINGER's amendment detours from the well-lighted road of full and open competition, and into the uncharted wilderness of maximum practicable competition. While it is unclear from the bill exactly what is meant by this new standard, I am concerned that we will be changing the playing field to significantly limit the ability of small businesses to compete for Federal contracts.

Prior to 1984 Federal agencies used maximum practicable competition to award sole source contracts because agency bureaucrats complained that full and open competition would be too complicated and time consuming. They said it was less risky and more manageable to do business with a few selected vendors, instead of encouraging new and innovative qualified companies to enter the Federal marketplace.

That lack of competition resulted in widespread waste and abuse in every Federal agency. As a result, in 1984, Congress passed the Competition in Contracting Act, which established the current standard of full and open competition which has saved the Federal Government billions of dollars. Now, the same old tired, fallacious arguments which were used to limit competition before we passed the Competition in Contracting Act, have resurfaced with the Clinger amendment.

Now, I can understand why agency bureaucrats would only want competition to the maximum extent practicable. It is certainly much easier and less time consuming to do business with only a few selected well-known big companies. Agency officials get to know the people in these companies, and yes, the old-boy network does have its advantages. The question is: do we really want our country to go backwards as we move into the more enlightened information age? I do not think so; I certainly hope not.

Over the past 5 years many of the major innovative and technological advances that our country has made have come from small businesses. For example, one need only to look at the remarkable rise of companies like Microsoft and Apple computers. Just a few years ago they were new, small companies; today they successfully compete with computer giants like IBM.

Over the next 10 years, 85 percent of all new jobs in the United States will come from small businesses. Such business are in every district of every Member in this House. By returning to Chairman CLINGER's standard of ''maximum practicable competition,'' we will establish procurement policy which locks small businesses out of the Federal marketplace and significantly undermine our Nation's competitiveness.

Joshua Smith, who chaired President Bush's Commission on Minority Business, testified several years ago before the Government Operations Committee that emphasizing subjectivity in awarding contracts creates a ''breeding ground for prejudice,'' because contracting officers, if given the choice, will usually go with a well-established, large firm instead of a small business offering a lower price.

Much of the stated justification for this change in standard is to give agency employees more power to exclude noncompetitive companies; but under the current full and open competition standard most of that authority already exists. For example under existing law, companies can be excluded: First if they lack sufficient capital to perform the contract; second, if they lack a satisfactory performance record; third, if they lack sufficient technical

skill or experience; fourth, if they are not able to meet the delivery or performance schedule. In addition, Federal agencies have the authority to limit competition under special circumstances.

Giving agencies the further authority to limit competition in noncommercial items is bad public policy. Suppose, for example that a contracting officer decides to cut off competition after receiving three competitive bids and bids four, five, and six were all technically better than any of the first three and offered at a lower price. The Clinger amendment could mean that Federal taxpayers will get stuck with paying higher prices for inferior products. That is not what I call procurement reform.

Several years ago the Federal Aviation Administration ran a noncompetitive procurement known as corn. At the insistence of the Government Operations Committee, the FAA was forced to run a real competitive procurement procedure that actually resulted in a savings of $1 billion to the taxpayers. Under the proposed maximum practicable competition standard, such savings would have been lost.

Now, I agree with Chairman CLINGER that there does appear to be a problem of many companies having technical weaknesses which are evident to the agencies early in the process. However when agency procurement officers fail to so advise these companies of their little chance of winning, in a timely fashion, a lot of their money is wasted in a futile effort to win a contract.

This point was made by Sterling Philips, chief operating officer for TRICOR Industries, who testified at our hearing that:

> Our interests, and those of the taxpayer, would have been served much better by telling us early in the cycle that our solution, or our company, was simply not qualified to win.

There also seems to be a problem with the lack of dialog between agencies and businesses prior to bidding. In the private sector, buyers and sellers talk to each other all the time. In the Federal Government we limit that discussion.

Mr. Edward Cypert, vice president of TRW clarified this problem when he testified:

> It seems like when we have an opportunity to sit down and discuss the requirements and to find what the requirement base is going to be where, we understand it on both sides. Both what is going to be imposed and what is going to be built leads us into a position where not only is the process shortened, but the response is better, it is more on target, you can get to the price and the performance that you want.

I agree with these two industry concerns. Therefore, my amendment provides for prebid or preproposal conferences which should disclose as much information as possible regarding the qualifications necessary to successfully win a contract.

In order to give companies a better understanding of how agencies will evaluate bids, my amendment would require that solicitation describe the agency source selection plan in as much detail as practicable. If companies are better informed about how bids will be evaluated, they will be better able to give the Federal Government exactly what it needs and at the best price.

Finally, my amendment empowers Federal agencies by giving them the authority to eliminate from cost and technical discussions and evaluations any proposal that clearly has no chance for award. In this way companies should be informed early in the process that they have no chance to win a bid. This will cut down on time and significantly reduce costs.

Mr. Chairman, full and open competition is the key to efficiency and fairness in Federal procurement. it creates a level playing field upon which all qualified vendors, particularly small businesses, have a fair chance to compete for a share of the hundreds of billions of dollars spent by the Federal Government in procurement each year. In return, the Government receives the maximum benefit from the innovations and expertise offered by companies large and small. We should maintain this standard, and make the targeted changes contained in my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CLINGER. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. CLINGER] is recognized for 20 minutes.

Mr. CLINGER. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. FOX].

Mr. FOX of Pennsylvania. Mr. Chairman, I rise in opposition to the amendment being offered by the gentlewoman from Illinois. Her amendment, although well intended, is misdirected in that it seeks to address in piecemeal fashion, and with process-oriented requirements, the restrictions that have been imposed upon the acquisition system by the current rigid competition standard.

Unfortunately, the amendment misses the point. There is simply no need for any of the patchwork provisions in this amendment if the source of the problems—the current competition standard—is addressed as it is in the Clinger-Spence-Kasich amendment.

Once again, Congress is striving to make the system work better and cost less, not impose more inflexibility upon a system already filled with too many exceptions to its rules. If we provide the needed flexibility as proposed by the Clinger-Spence-Kasich amendment, there will be little need for more legislative fixes.

I respectfully urge my colleagues to vote ''no'' on the Collins amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield 6 minutes to the gentleman from South Carolina [Mr. SPRATT].

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

Mr. SPRATT. Mr. Chairman, I spent 2 years of my life in defense procurement and what I learned mostly is how little I know. But I do know this: I would tread lightly when departing from the standard of full and open competition. So I rise to raise a caution flag as to the language in the bill before us and to commend the gentlewoman from Illinois [Mrs. COLLINS] our ranking member, for the amendment she is now offering, which I support.

For those Members of this body who do not remember the passage of CICA, who were not here, CICA is the Competition in Contracting Act, I think it is important to recall some of its successes.

CICA was a landmark piece of legislation which originated in the Congress, and originated in response to widely perceived abuses in the defense procurement arena which I need not enumerate here. CICA said in effect if we can have full and open competition, that we do not have to have post-award audits, because we can tell the public this has been vigorously competed and awarded in that manner. So it narrowed the exceptions to the use of full and open competition from 17 to 7. It required competition advocates to be established at each procurement activity as a way of checking routine use or abuse of any one of the exceptions to full and open competition. In effect, these advocates also served the role of breaking the code on how to do business with the Defense Department for firms that have not been bidders in the past. It required that notices of intent to procure be published daily in the Commerce Business Daily so that industry as a whole, the whole spectrum, would know of upcoming procurements, not just some selected groups. It reformed the protest procedure so that losing bidders could self-police the system, make it more competitive.

What are the results after about 10 years?

□ 1130

As a result of CCA, the Competition in Contracting Act, the Navy more than doubled the annual value of its competitive awards going from $9 billion in fiscal 1982 to $21 billion in fiscal 1994. The Army increased the percentage of its competitive actions from 40 percent in 1982 to 88 percent in fiscal year 1994. At a time when the investment accounts, procurement and R&D were declining, those are significant results, Mr. Chairman. I would not like to see us make the mistake today of turning back from this vigorous competition which we have been able to build into our system.

Yet we have here before us an act which uses a new term, maximum practicable competition. I am told it was used in prior law. But when the gentlewoman from Illinois [Mrs. COLLINS], as the ranking member, was going

through this legislation in the process of the first hearing on it and she simply asked a question for starters to the board of industry people who were testifying, what does it mean, not one of them could articulate a definition that was usable in practice.

Then it provides, in addition to narrowing down competition from free and open to maximum practicable, it provides for a verification system so that certain contractors will become select contractors, and an elite set, a club of contractors. That is a very important and potentially dangerous step. It is potentially a move away from free and open competition all the way to cartelization. This is not streamlining potentially. It is potentially setting up a cartelized club of competitors, the established defense contractors.

So I ask the question: What is the definition? What are the criteria for getting in this select club, being a verified contractor? Once again, we could not get from the witnesses before us an elaboration of what this meant. It is all left to the discretion of the procurement agencies.

Let me tell you, we have found in the past that these procuring officers and these procuring activities and these procurement agencies do indeed wanted to streamline what they do. They would like to simplify. Vigorous competition comes down as a burden on their back to bear. They like to make it as simple and direct as possible.

But we have to be careful here that, as we move to streamline, before just willy-nilly putting provisions like these in the code and turning back on something that has worked well, we will move, I fear, from competition to cartelization.

There are other things in here: commercial exceptions for commercial buying which I support but we need better definition. We are moving away from using GAO and the dispute resolution process to a new appellate procedure. I have not any idea whether that is a good idea or not. I will say to the chairman I was there until midday with the hearing, I could not stay for the rest of the hearing. It may well have been worked out then. I am not criticizing him or the committee. I am simply raising a caution flag saying, let us be diligent, let us be careful, let us do the right thing here.

Our objective in this bill and in the years ahead is to defend the country for about $250 to $260 billion. That is a lot less money than it used to be, but it is still a lot of money. If we are not—we simply cannot do what we need to do, fund four military services, if we spend the money the way we spent it in the 1980's. We have to spend it smarter than we did in the 1980's. We should take care here that we do not build into title 10 of the code a bias toward high cost contractors who bid without the fear or discipline of rigorous competition and charge us more than we have to pay, or we will undo the whole quest that lies before us in this bill.

So the gentlewoman and I are saying is that, when we go into the markup, I support the gentlewoman's amendment, I think it is a substantially positive improvement to this bill and hope everybody will vote for it. But as we go into the markup of this bill, I think it still needs a thorough scrubbing.

Mr. CLINGER. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. CHAMBLISS], a very excellent freshman member of the Committee on National Security.

Mr. CHAMBLISS. Mr. Chairman, I rise in opposition to the Collins amendment.

Mr. Chairman, the Clinger-Spence acquisition reform amendment will finish the job begun by the Congress last year. Consider the changes proposed by the amendment:

Changing competition requirements so that they are reasonable, establishing commercial-like procedures for Government procurement, reforming procurement integrity so that it no longer stifles the process—making American companies more competitive on the international market—streamlining the burdensome certification process, and consolidating the many dispute resolution mechanisms into a single review board.

These are all commonsense answers to the very real problem of red tape and an overly bureaucratic procurement process. This Congress is finally applying real-world family and business practices to our budgets and our administration of Federal programs. Why not apply these standards to Federal purchasers?

I commend Chairmen SPENCE and CLINGER for working so hard to bring this needed change to Government. Support the Clinger-Spence amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York [Mrs. MALONEY], the ranking member of the subcommittee.

(Mrs. MALONEY asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I rise in strong support of the Collins amendment.

This amendment preserves the standard of full and open competition in Federal procurement, but it does so while adding needed reforms to the process, which bring Government acquisition closer to commercial buying practices.

Full and open competition is at the heart of the free-market system. In the Federal procurement process, it guarantees that the Government gets the best value for the goods and services that it purchases. The full and open competition standard has been law for over a decade. It was enacted as part of the Competition in Contracting Act of 1984. That bill was a response to the fraud and abuse which characterized Federal procurement at the time.

We all are familiar with the scandals of the late 1970's, the $1,000 hammers, the $500 scarves. Chairman CLINGER's amendment would replace the full and open competition standard with something called maximum practicable competition. What is that? In fact, not one witness at the only hearing held on the legislation could define what maximum practicable competition meant.

I find this lack of definition extremely troubling. How can we debate something when we do not even know what it means?

Mr. Edward Black at our hearing on this amendment called this lack of definition, and I quote, ''a breeding ground for litigation.''

Which is hardly simplified procedure.

Doing business with only a few well-known firms is certainly easier than considering all responsible sources, but such a system would certainly cost the American taxpayer money in the form of higher prices. Adopting the proposed standard of maximum practicable competition would also make it much harder for small businesses to compete for Government contracts.

Small businesses make up the heart of our economy, generating 85 percent of all new jobs. Putting small businesses at a disadvantage in the Federal procurement system is not only unfair, it makes no economic sense.

Mr. CLINGER. Mr. Chairman, I yield 2 minutes to the gentleman from New Hampshire [Mr. BASS], another valued freshman member of our committee and a strong supporter of the Clinger amendment.

Mr. BASS. Mr. Chairman, I rise in opposition to the amendment offered by the gentlewoman from Illinois and in favor of the Clinger-Spence-Kasich amendment as it has been originally offered.

The Collins amendment strikes three of the four sections in the Clinger-Spence-Kasich amendment and waters down the remaining section, section 801. The provisions of the original amendment that we are considering here today are not new. They have been around essentially in their present form since the mid-1980's. As it is, we have debated now the concept of trying to make it possible not only to have competition in procurement but to allow for normal business people like me or anybody else to be involved in the process. The fact is, that the Clinger-Spence-Kasich amendment provides flexibility for vendors and buyers. It eliminates delays in procurement, and it reduces the overall cost of a $200 billion procurement system that we have in place today.

What the Collins amendment would do would go back 90 or 98 percent of the way to the present system that we have today. I would submit to my colleagues that the arguments that we hear about increased competition are really the results of micromanaging. What happens is that we cannot compete unless we have experts and professionals who know how to deal with the

cumbersome and difficult process. Although it may seem like we are loosening up the rules, what we are in effect doing is providing this needed flexibility so that more people can become involved in the process.

The fact is that we, the sponsors of the Clinger-Spence-Kasich amendment, believe that individuals should have more flexibility to set the rules so that more individuals can compete in the process and that we can reduce the costs and get more vendors involved in the process in the first place.

So it is for this reason that I rise in opposition to the Collins amendment and in strong support of the Clinger-Spence-Kasich amendment.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. COLLINS] has 2½ minutes remaining, and the gentleman from Pennsylvania [Mr. CLINGER] has 16 minutes remaining. The gentlewoman from Illinois [Mrs. COLLINS] has the right to close.

Mr. CLINGER. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. HUNTER], a leader on the Committee on National Security.

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding.

My colleagues, for those who have complained about the $600 hammer, you are buying the $600 hammer today. You are paying for it. The difference is you are paying for part of it from the vendor and you are paying for the rest of it in the 300,000-person army that is the Pentagon bureaucracy that oversees this so-called competition.

We are only spending about $40 billion a year in major weapons procurement. We are spending $30 billion a year, almost as much, in this army of personnel who are needed to oversee this very complex, heavily-regulated paperwork heavy system that we have created. So you are buying a $600 hammer, do not fool yourself. You are buying it right now.

That means when you buy an aircraft that cost $200 million, you pay the Pentagon $100 million for the service of purchasing the aircraft. We are not going to be able to cut down this army, which is incidentally twice the size of the U.S. Marine Corps, if we do not cut the corresponding amount of paperwork at the same time.

Please defeat the Collins amendment.

Mr. CLINGER. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia [Mr. DAVIS], chairman of the Subcommittee on the District of Columbia and a very valued member of the full committee.

Mr. DAVIS. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise to speak today to oppose the Collins amendment. I do not think I have heard so much misunderstanding or misinformation about any amendment in my brief tenure here in the House as I heard today.

I was a procurement lawyer for 15 years for both small businesses and large businesses, general counsel for each. And this has nothing to do with the $7,000 toilet seats or the $600 hammer. Some of these came well after the 1984 CCA Act and Procurement Integrity Act to try to get at those later. I am happy to see both sides are going to agree that those ought to be repealed here today.

The rhetoric here today has been that this legislation hurts small business and that the Collins amendment somehow fixes this by restoring us back to the status quo.

Actually, I think the opposite is the case. Proponents of the amendment will argue that it leads to more sole sourcing. We have got plenty of sole sourcing right now. Nothing in the Clinger amendment also allows or permits, let alone mandates, that a company be excluded from competition because of its size.

You can be eliminated because of your capability, but that is in the current law as well. That happens under current law and the Collins amendment as well. So if a company is not in the competitive range, the key here is that this defines that competitive range a little earlier. But any small business who wants to bid has ample access to the competition under this bill.

Nothing here states or allows or mandates that big companies, well-known big companies bid on these projects and not small companies. That is just rhetoric. There is nothing here that states that or indicates that at all.

□ 1145

The current code has seven justifications or exceptions to allow sole source, but you can still have it, and we do very often. Under the Clinger amendment, we still have approvals and justifications for the sole source here, but what we have done, instead of pages of statute going through this, we give the contracting officer more discretion, and that contracting officer's discretion is then subject to review as well. So there are plenty of protections for businesses who think they are in the competitive range but are found otherwise by the contracting officer.

The standard of the Clinger amendment is a dynamic one, not a statutory, static-driven one. We talk about reinventing Government and empowering the employee at the window or at the customer service desk to make the decisions. That is what the Clinger amendment is all about. That is what the Collins amendment eliminates.

The issue, really, is, one, who is better equipped to handle complex, diverse, and specialized procurements, a one-size-fits-all Federal statute, or the Government buyer who is responsible for procuring a specialized service with a dwindling agency budget and procuring it within that budget?

Small businesses and large businesses waste millions annually chasing rainbows, going after procurements that they cannot perform or that they cannot possibly win due to misinformation and by opening up the process to an extent early on that forces them to spend money, where if they knew more, they probably would not get into it. They are going after contracts they do not have a chance to win.

Getting that word earlier in the process is good public policy, and it is good for business, all business, large business, minority businesses, small businesses. Passing the Collins amendment is a return to a longer procurement process, a more costly procurement process, for Government and for business, and more bid protests and delays in final awards. That is a step backward at this time, when we are tightening our belts at the agency level, the Federal level, and it is also a step backward for businesses who want to go after meaningful competition and go after contracts that they can afford to compete in and win.

I think this is an outstanding acquisition reform amendment of the gentleman from Pennsylvania [Mr. CLINGER] and the gentleman from South Carolina [Mr. SPENCE], and I am happy to support it as it is, and I oppose the Collins amendment.

Mr. CLINGER. Mr. Chairman, may I inquire of the gentlewoman from Illinois if she has additional speakers?

Mrs. COLLINS of Illinois. I would say to the gentleman from Pennsylvania, I have one additional speaker, and I would like to close after the gentleman has finished.

Mr. CLINGER. The gentlewoman has one additional speaker and then she will close?

Mrs. COLLINS of Illinois. I have one additional speaker that will close.

Mr. CLINGER. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Massachusetts [Mr. BLUTE], a member of the committee.

Mr. BLUTE. Mr. Chairman, I rise today in opposition to the Collins amendment, and urge my colleagues to vote against it. The amendment furthers the notion that Congress is in the business of micromanaging the operations of the executive branch and dilutes the fundamental reforms included in the Clinger-Spence-Kasich amendment. The Clinger-Spence-Kasich amendment would provide the much-needed flexibility to Government buyers to seek meaningful competition among sources who meet or exceed the government's requirements. To do this, we are eliminating much of the current maze of statutory requirements and restrictions which, over the years, have been imposed on our government purchasers.

To some, this is alarming—we are moving away from a well-known system to one that requires thought and creativity. We expect our Government buyers to make rational business judgments instead of blindly following arcane procedures when making purchasing decisions.

Unfortunately, Mrs. COLLINS' amendment would counter our drive to

streamline and simplify the system. Instead, her amendment adds more requirements and more direction and more micromanaging.

Mr. Chairman, I urge my colleagues to vote ''no'' on the Collins amendment and to support the Clinger amendment.

Mr. CLINGER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I must reluctantly rise in opposition to the amendment of my ranking minority member, the gentlewoman from Illinois [Mrs. COLLINS]. I certainly am very grateful and appreciate her willingness to address the problem. She has made a very good faith and a very instructive effort to address the problem within the procurement system, and I also commend her for her sensitivity to issues which were raised at the hearings. However, I cannot support the approach. I think this does represent a fundamental difference in dealing with this question of acquisition reform.

The Clinger-Spence-Kasich amendment would provide, I think, very much needed flexibility to Government buyers to maximize competition in a way that is consistent with their particular and unique requirements. To do this, we would eliminate much of the current underbrush, thicket if you will, of statutory requirements and restrictions which over the years have been placed on government purchasers.

To some, I can understand, this is alarming. We are moving away from a very well-known system to one that requires perhaps more thought, more creativity, would eliminate sort of the knee-jerk reaction to look at the regulations and say ''This is what we have to do.'' We will now be expecting our Government buyers to use their heads, their heads, instead of a rule book while making purchasing decisions. I think the Clinton administration would call this empowering of the government work force to do their jobs. This is what we have tried to do in this amendment, stop micromanaging, stop trying to predict everything that a purchaser might have to deal with, give them some flexibility to ensure that the Government gets its money's worth.

Unfortunately, the amendment of the gentlewoman from Illinois would strike from our amendment all the provisions which eliminate the statutory underbrush and drive the fundamental changes. Instead, her amendment really adds more of the same, more requirements and direction to the government purchaser. The objective, I think, is meritorious. The objective is one we are both trying to achieve. My only objection is that we are adding additional requirements on the purchaser, things they have to comply with, levels they have to meet before they can make that decision.

Some have raised the issue that our amendment may unfairly exclude small businesses from the Government marketplace. That, Mr. Chairman, is simply wrong. As I have alluded to in the handout from the Small Business Task Force, it is really full of misinformation, and I am hopeful that we can address their concerns and the misinformation which they are promulgating here during the time we have before markup next week.

This will not exclude small businesses from the marketplace. It really is wrong. This amendment does not in any way inhibit small businesses from participating in the Federal marketplace. It does not amend or change any small business, small disadvantaged business, or woman-owned business program. Some would have liked to have addressed those issues, and we did not deliberately, we stayed away from getting into that whole thicket.

It does not eliminate notification of Federal contracting opportunities, and it does not, I would stress again, it does not encourage sole source contracting. Again, while I do commend the gentlewoman from Illinois for her effort, and we have been working in a very cooperative effort on this whole question of procurement reform, both in the last Congress and in this Congress, and I have been very grateful for the cooperative effort that we have seen, I have to oppose her amendment. It is one that we both feel strongly on our sides of it, because it does treat, in my view, symptoms of the problem, instead of attacking its source.

There is simply no need for any of the patchwork provisions that I think are in the Collins amendment if the source of the problem, which is the current competition standard, is refined by the Clinger-Spence-Kasich amendment.

I would just say, Mr. Chairman, that it has been suggested that this is some attempt to sort of backdoor the process, to jam the circuits, to ramrod something through here without due consideration. Respectfully, with regard to some in the full committee's concern about the process, I respect that, but I would just assure all those that have been concerned about that, that is not this gentleman's intention.

My intention is to assure that we will have action on procurement reform in this Congress. I can only absolutely assure myself and the other Members that we will have action on it, if it is included in this bill. If it goes as a freestanding bill, I cannot be assured that the other body will deal with this in that fashion, so the purpose of this is really to establish the fact that we will have action on procurement reform, which I think we all want, that we are all desirous of moving beyond what we did last year.

What I have always committed to, however, is that as we move through this process, and as we go next week to a markup in the committee, that we will have an opportunity to consider these matters further. I have also pledged that if there are amendments as we go through the process, either at the committee, and then the bill will be back here on the floor, I have requested the majority leader to provide time for us to consider this measure as a freestanding bill in this session.

When we have completed the process here, all of the amendments that may be adopted in that exercise will be included, and I would pledge this, and the chairman agrees to that, will be included in any conference report that comes out of the DOD authorization.

I will just reiterate again, this is not an attempt to short-circuit the process, it is not an attempt to defeat the good intentions that people have, it is merely an attempt to ensure that all of us get what we all want, which is procurement reform.

Mrs. COLLINS of Illinois. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I am happy to yield to the gentlewoman from Illinois.

Mrs. COLLINS of Illinois. Mr. Chairman, I still must express my concern, because the gentleman has said repeatedly today that we are going to take this procurement bill up in committee on the 21st day of June, which is next week. We are talking about procurement now. As far as I am concerned, it is a backdoor procedure, because we have not had a markup on the procurement bill. We have not had a markup on this section of the bill that the gentleman wants to be put into the defense authorization bill.

It seems to me that without having had any kind of markup at all, or when we do go to markup, as the gentleman has said, we will inherit whatever amendments that will have been passed today on procurement as an integral part of the bill which we will be remarking up on June 21 of next week, which is backward. It is not the legislative process that we have always worked on in this House of Representatives. We have put the cart before the horse, and the cart is running away with it.

Mr. CLINGER. If I may reclaim my time, Mr. Chairman, I would just again reiterate that if in fact we are going to make changes, and they may well happen, that I would pledge to the gentlewoman and to all the Members that those changes will be incorporated in the ultimate product that comes out of this process.

Mr. Chairman, I would at this time urge the defeat of the Collins amendment, well-intentioned as it may be, and urge the support of the Clinger-Spence-Kasich amendment.

Mr. Chairman, I yield back the balance of my time.

Mrs. COLLINS of Illinois. Mr. Chairman, I would ask the Chair how much time I have remaining.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. COLLINS] has 2½ minutes remaining.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield 2 minutes to close to the gentlewoman from Kansas [Mrs. MEYERS], chairman of the Committee on Small Business.

(Mrs. MEYERS of Kansas asked and was given permission to revise and extend her remarks.)

Mrs. MEYERS of Kansas. Mr. Chairman, there has been a good debate today, and a lot of comments about $435 hammers, but the fact is that the Clinger amendment does away with full and open competition. And, the Clinger amendment would permit the use of simplified procedures, three phone calls, for commercial items, without any dollar limitation.

The gentleman from Pennsylvania [Mr. CLINGER] said that he will go to markup next week, but he will go to markup if his amendment passes with these provisions already in the DOD authorization bill, provisions which small business opposes. By adopting the Collins amendment, the bill will go to markup, but the House will preserve full and open competition, and eliminate other changes approved by small business.

The Small Business Working Group on Procurement Reform opposes the Clinger amendment. The Small Business Working Group includes NFIB, National Small Business United, the Small Business Legislative Council, the National Association of Women Business Owners, and several other groups.

The Associated General Contractors have written a letter in opposition to the Clinger amendment.

Listen to what they say: ''The Clinger amendment as a freestanding bill was introduced May 18 and was the subject of one hearing, which did not include testimony from the construction industry, and has not moved through the markup process. Changing the competition standard away from full and open competition to something less invites potential for subjectivity, favoritism, and abuse. Please, vote ''no'' on the Clinger amendment. I am sure they would support the Collins amendment, which preserves full and open competition, and would want the Federal Acquisition Reform Act to go to markup with the changes reflected in the Collins amendment.

The landmark Competition in Contracting Act of 1984, CICA, which established the full and open competition standard, and prescribed deterrents to noncompetitive contracting, has increased competition in the award of Government contracts. Prior to CICA 60 percent of Government contracts were sole sourced. Today, more than 70 percent are competitive.

Now the Clinger amendment wants to go back to the pre-CICA standard. Competition increases quality and checks cost growth. Work by the GAO, the Department of Defense IG, and the major DOD buying activities all demonstrate savings averaging 25 percent when a buy is competitive, rather than sole-source.

Evidence of excessive competition has never been established by anything more than isolated anecdotal examples. In contrast, the Advisory Panel on Codifying and Streamlining Defense Acquisition Laws, this is a group comprised of recognized procurement experts from Government and the private sector, which made an 18-month study and an 1,800-page report, that provided the analytical foundation for last year's Federal Acquisition Streamlining Act, specifically reviewed and rejected the idea of abandoning the full and open competition standard.

□ 1200

Mr. Chairman, I would urge my colleagues to vote for the Collins amendment and oppose the Clinger amendment.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. It is the Chair's understanding that the original amendment offered by the gentleman from Pennsylvania [Mr. CLINGER] was in a modified form which was at the desk with the concurrence of the gentlewoman from Illinois [Mrs. COLLINS] pursuant to section 4(a) of House Resolution 164.

The question is on the amendment offered by the gentlewoman from Illinois [Mrs. COLLINS] to the amendment, as modified, offered by the gentleman from Pennsylvania [Mr. CLINGER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mrs. COLLINS of Illinois. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 213, noes 207, not voting 14, as follows:

[Roll No. 371]

AYES—213

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Barton
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilirakis
Boehlert
Bonior
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunn
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Ehlers
Ehrlich
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Forbes
Ford
Frank (MA)
Franks (NJ)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Gonzalez
Gordon
Green
Gunderson
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Houghton
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Jones
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaHood
Lantos
Leach
Levin
Lewis (GA)
Lightfoot
Lincoln
Lipinski
LoBiondo
Lofgren
Longley
Lowey
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Minge
Mink
Moakley
Mollohan
Montgomery
Morella
Nadler
Neal
Ney
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pomeroy
Porter
Poshard
Rahall
Reed
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rose
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Volkmer
Vucanovich
Ward
Waters
Watt (NC)
Waxman
Whitfield
Wise
Woolsey
Wyden
Wynn
Zimmer

NOES—207

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bilbray
Bliley
Blute
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Dickey
Dicks
Doolittle
Dornan
Dreier
Duncan
Dunn
Emerson
English
Ensign
Everett
Ewing
Fawell
Flanagan
Foley
Fowler
Fox
Franks (CT)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Gillmor
Goodlatte
Goodling
Goss
Graham
Greenwood
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Kasich
Kim
King
Kingston
Klug
Knollenberg
Kolbe
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Linder
Livingston
Lucas
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Molinari
Moorhead
Moran
Murtha
Myers
Nethercutt
Neumann
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Petri
Pickett
Pombo
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Visclosky
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Wicker
Williams
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—14

Bishop
Diaz-Balart
Fields (TX)
Geren
Hastert
Kleczka
LaFalce
Mineta
Myrick
Rangel
Sisisky
Smith (TX)
Wilson
Yates

□ 1223

The Clerk announced the following pair:

On this vote:

Mr. Mineta for, with Mrs. Myrick against.

Messrs. HALL of Texas, YOUNG of Alaska, DUNCAN, ALLARD, and SCARBOROUGH changed their vote from ''aye'' to ''no.''

Messrs. BEVILL, ROBERTS, MARTINI, BUNN, GENE GREEN of Texas, RIGGS, and LONGLEY changed their vote from ''no'' to ''aye.''

So, the amendment to the amendment, as modified, was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. HASTERT. Mr. Chairman, on rollcall No. 371, I was unavoidably detained.

Had I been present, I would have voted ''no.''

The CHAIRMAN. The Chair will allocate the remaining time.

The gentlewoman from Illinois [Mrs. COLLINS] has 4 minutes remaining, the gentleman from Pennsylvania [Mr. CLINGER] has 30 seconds remaining, and the gentleman from Pennsylvania has the right to close.

Mrs. COLLINS of Illinois. Mr. Chairman, inasmuch as my amendment has passed, I have no comments at this point in time and will vote for the Clinger amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. CLINGER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. CLINGER], as modified, as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CLINGER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 420, noes 1, not voting 13, as follows:

[Roll No. 372]

AYES—420

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Myers
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Rush
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stark
Stearns
Stenholm
Stockman
Stokes
Studds
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walsh
Wamp
Ward
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wise
Wolf
Woolsey
Wyden
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—1

Martinez

NOT VOTING—13

Bishop
Fields (TX)
Hastert
Kleczka
LaFalce
Murtha
Myrick
Parker
Smith (TX)
Walker
Waters
Wilson
Yates

□ 1245

So the amendment, as modified, as amended, was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. HASTERT. Mr. Chairman, on rollcall No. 372, I was unavoidably detained.

Had I been present, I would have voted ''aye.''

I ask unanimous consent that my statement appear in the RECORD immediately following that rollcall vote.

The CHAIRMAN. It is now in order to debate the subject matter of ballistic missile defense.

The gentleman from South Carolina [Mr. SPENCE], and the gentleman from California [Mr. DELLUMS] will each be recognized for 30 minutes.

The Chair recognizes the gentleman from South Carolina.

Mr. SPENCE. Mr. Chairman, I yield myself such time as I may consume.

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

Mr. SPENCE. Mr. Chairman, H.R. 1530, the National Defense Authorization Act for fiscal year 1996, includes several important recommendations concerning ballistic missile defense. These actions are consistent with the committee's effort to bolster the modernization accounts that have been dramatically underfunded by the Clinton administration after a decade of decline.

First, the bill provides increased funding for theater and national missile defense systems—those designed to protect our troops deployed overseas as well as Americans at home. These additional funds are necessary to accelerate critical BMD programs that have been delayed as a result of significant cuts in the missile defense budget implemented by the Clinton administration over the past 3 years.

Programs that received increased funds include the Navy's theater missile defense systems, the Army's theater high altitude area defense system, and ground-based weapons and sensors that would comprise an initial national missile defense system.

Second, the bill recommends that ''affordable'' defenses be deployed ''at the earliest practical date''—thus, making deployment of defenses a top priority while simultaneously taking into account cost and technological maturity considerations.

Third, the bill calls upon the President to halt the administration's apparent efforts to turn the 1972 Anti-Ballistic Missile Treaty into an ABM–TMD Treaty that would impose limitations on advanced U.S. theater missile defense systems. It also establishes policy to ensure that the ABM Treaty is not used to constrain U.S. theater missile defense programs.

For these reasons, Mr. Chairman, H.R. 1530 represents an aggressive yet responsible response to the growing threat posed by the proliferation of missiles and weapons of mass destruction. It has staked out a supportable and sustainable position.

The Spratt amendment to H.R. 1530, on the other hand, would represent a significant step backward from the committee's bipartisan position. The Spratt amendment would undermine the policy priorities established in H.R. 1530 by elevating compliance with the ABM Treaty to an equal status with the deployment of a highly-effective defense of the United States. In essence it would hold the effective defense of our territory hostage to Moscow's concurrence. A similar amendment was offered in full Committee, and it was defeated on a bipartisan vote of 18 to 33. Therefore, I urge my colleagues to vote ''no'' on the Spratt amendment.

A second amendment, this one to cut BMD funding, will be offered by Mr. DELLUMS or Mr. DEFAZIO. This amendment would eliminate the carefully crafted funding increases for both theater and national missile defense programs contained in the bill—investments which are specifically targeted toward programs that would provide highly effective defenses.

I strongly urge my colleagues to support the bipartisan committee position and vote ''no'' on the Spratt and Dellums-DeFazio amendments.

Mr. DELLUMS. Mr. Chairman, I ask unanimous consent to allow my distinguished colleague, the gentleman from South Carolina [Mr. SPRATT], to control 15 minutes of the 30 minutes that have been allocated to me.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from South Carolina [Mr. SPRATT] for 15 minutes.

Mr. SPRATT. Mr. Chairman, I thank the gentleman for yielding this time to me, and, Mr. Chairman, I would like to speak just briefly now, and more detail later, about the amendment I will offer when the time comes. I would like to highlight three reasons why my amendment ought to be supported.

First of all, the language in this bill is ambiguous about full compliance with the ABM Treaty, and I think that is the wrong signal to send to the Russians at this particular time. In the next 3, 4, 5 months the Russian Duma will decide whether or not it will ratify the START II Treaty and take the number of nuclear warheads in its arsenal from around 8,500 down to around 3,500.

Now reduction in 5,000 warheads will have a significant effect on the security of this country and the security of the whole world. There will be reciprocal reductions on all sides. That is a critical development, and we dare not do anything that would jeopardize it. If we rattle the cage, the ABM Treaty, if we suggest that we may be breaking out of it, not now, but in the future, sort of an anticipatory breach, if we send that signal to the Russians, then we will put an even greater risk than it already stands now, the ratification of START II, and that is not a good decision.

Second, by keeping START II on track not only do we improve our national security, we save money. Without START II we will have to keep in place our arsenal of 8 to 10,000 nuclear warheads on the sea, under the sea, on land. We will have to maintain a much larger arsenal, 8,500 warheads instead of 3,500 warheads, and obviously an arsenal with 3,500 warheads is much cheaper to maintain. So, if we are forced by the nonratification of START II to maintain an arsenal that really exceeds our needs, then in order to have strategic symmetry with the Russians we will have to pay substantial money that will come out of readiness, and modernization, and quality of life.

So, a vote for my amendment removes the ambiguity in the bill, does not signal the wrong signals to the Russians, and it means we can maintain a smaller arsenal and have more money to spend on things we need for conventional defense.

Third, by voting for my amendment, which simply calls for compliance with the IBM Treaty, we will not leave this country defenseless as some of the opponents to my amendment have claimed. We can put in a ground-based interceptor that will protect the continental United States. Right now the treaty allows it, and we can amend the treaty in the future to allow for more sites if we feel they are needed for the full coverage of the United States, Alaska, and Hawaii.

I have a letter from Sid Greybill, Nixon's top negotiator on the ABM Treaty, and I will leave it here in the House for any Member who wishes to see it. It has been sent out by ''Dear Colleague.'' Mr. Greybill supports my amendment, and he agrees that we can say fairly the ABM Treaty does not leave us defenseless. By its faults we can deploy a ground-based system which will give us ample defense.

The authors of the ballistic missile provisions in the markup asserted that it was not their intention to break out of the treaty, and I commend them for that. My amendment simply takes them at their word and puts provisions in black and white in this bill which simply say comply with the treaty, and to the extent that we do not find compliance in our national self-interest, then stay within the processes of the treaty and seek amendments, agreed statements and other modifications or changes to it. There is too much at stake to allow ambiguous language to stay in this bill.

I say to my colleagues, ''I urge you to support this amendment when it is offered.''

Mr. Chairman, I reserve the balance of my time.

Mr. HUNTER. Mr. Chairman, I yield 2 minutes to the gentleman from Colorado [Mr. HEFLEY].

Mr. HEFLEY. Mr. Chairman, many Members may ask themselves, why should I support a defense against ballistic missiles when the cold war is over now? The answer, I think, lies somewhere both in the past and in the future. If we had a better defense against ballistic missiles, American servicemen would not have died in the barracks in Saudi Arabia. If we had pursued more strongly ballistic missile defense, perhaps Israel would not have sat in terror night after night waiting for Scuds as they rained down on them. Make no mistake. We should have learned our lesson in the Persian Gulf war about missile attacks.

Many Members will try to tell us that the threat is gone, that there are no bad guys anymore. There are approximately 30 countries with ballistic missile capabilities. Some of these nations are our allies. Many are unfriendly: China, Iraq, Syria, Iran, Libya, North Korea. Of the 30 nations which have ballistic missile capability, 8 are in the Middle East, and there are hot spots around the world where our troops could be deployed and are being deployed which are in the range of ballistic missiles from hostile countries. There are currently two nations which have the ability, and sometime in the future might even have the will, to launch an attack on the United States. Both Russia and China have this kind of ability.

I used to chuckle out of seeing a bumper sticker that the old nuclear-freeze crowd used to paste on their car. It said, ''One nuclear weapon can ruin your whole day.'' That is the only thing probably that I agreed with them on, but is it not interesting now that the Soviet threat is reduced these naysayers maintain that we do not need defense against that nuclear weapon that could ruin our day.

Rest assured, in the future an enemy can strike either U.S. troops or the U.S. mainland. It has happened before;

it will happen again. Be assured that our conscience, those of use that have fought for ballistic missiles defense, should be clear. I hope my colleagues' is, too. Vote against the Dellums-Spratt amendment. Vote for a strong ballistic missile defense program.

Mr. DELLUMS. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. FOGLIETTA].

Mr. FOGLIETTA. Mr. Chairman, I rise in support of the Dellums-DeFazio amendment, which would reduce research and development funding for ballistic missile defense, and redirect these savings to improve the quality of life for our men and women in uniform.

In these tight-budget times, we must prioritize our defense needs, just as we are being forced to prioritize funding for child nutrition programs and education. The Clinton administration budget request is more than adequate to meet our missile defense needs. However, for more than a decade, the housing needs of our men and women in uniform have been neglected. Furthermore, over the years, we have seen an alarming number of American military personnel and their families living in hovels and forced to apply for food stamps.

As a member of the Military Construction Appropriations Subcommittee, I have been proud of the work of Chairman VUCANOVICH and ranking member BILL HEFNER to improve the quality of life for our men and women in uniform. This should be our No. 1 priority.

I urge my colleagues to fund our troops and their families' earthly needs before we spend more money in the heavens.

Mr. SAXTON. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, up until quite recently we have never in our history intentionally rendered ourselves defenseless to devastating attacks as a matter of national defense policy, yet that is precisely what we did when we signed the ABM treaty in 1972 which made it illegal for the United States to defend itself against ballistic missile attack. Since that time we have also engaged in an unspoken national policy of not disclosing that strategy plainly to the American people.

Now, while that strategy of defenselessness as defense may possibly have been arguable in 1972, when we had only one, or perhaps two, ICBM nuclear-capable enemies, it is utterly without merit today when missile strikes can come now or will soon be capable of coming from any number of nations, 25-plus at last count. In the not-so-distant future it is not only conceivable, but frankly predictable and probable that self-appointed warlords from all over the world will be so armed and will be able to deliver warheads from mobile launchers in remote locations or from sea-based platforms, leaving no calling card to positively identify or verify the attackers.

□ 1300

Even if you can actually convince yourself of the validity of mutually assured destruction as a legitimate destruction strategy, it goes all to hell if you cannot identify the aggressor and do not know against whom to retaliate and whom to destroy. But suppose we did know who to destroy. Do we really want to depend on a strategy that trades New York or Los Angeles for Pyongyang, Damascus, Baghdad or Tehran? Would the American people really support such a policy?

All of which is to say that the policy of mutually assured destruction, or MAD, is just exactly that, and will be viewed in the long sweep of history as a particularly dumb idea which held sway under peculiar circumstances for a very brief period of time.

What is unconscionable is that the public has intentinally been kept in the dark, indeed defrauded of its right to know, that all of America, particularly her largest cities, are now the beta site for a bizarre experiment in national defense strategy that is right out of Dr. Strangelove.

Which brings me to the crux of the ethical issue, namely that it is just plain wrong to put the lives of a quarter billion Americans at risk to satisfy an outdated and outmoded treaty that most Americans know nothing about. The fact is that a substantial majority of U.S. citizens believe we have a complete and effective national defense against ballistic missiles and actually find it hard to believe that that is not the case when they are told otherwise. Who can blame them? Even the title of the ABM gives the false impression it is a treaty limiting ballistic missiles, when in fact it only forbids us to defend against them.

The question we should be asking is knowing the circumstances that exist in the world today, would we, de novo, without an ABM treaty, enact the ABM treaty that is on the books?

Mr. SPRATT. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. KENNEDY].

Mr. DELLUMS. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts.

The CHAIRMAN. The gentleman from Massachusetts [Mr. KENNEDY] is recognized for 3 minutes.

Mr. KENNEDY of Massachusetts. Mr. Chairman, sometimes I wonder why we get ourselves into a partisan debate on an issue that seems to be so clear. The fact of the matter is that I am sure Democrats and Republicans alike, if in fact there was a real threat to this country through an all-out attack by other countries that we could realistically stop, both Democrats and Republicans would provide the funding that is necessary to stop it.

The reality is, that is not the situation. Certainly you can make out countries like Iran and Iraq and Syria and others to have the capability of launching a nuclear attack against the United States. All of our intelligence agencies suggest that that day is a long, long way off. You can spend billions of dollars of U.S. taxpayer money to prevent a threat that currently does not exist, or you can think about where you should spend your money effectively and use those dollars to deal with the real threat that this country has.

There is the capability before us today to sign a treaty that will eliminate by the stroke of a pen 5,000 nuclear warheads aimed at the United States of America. Why not do it? You say that you are tantamount to agreeing with the Spratt amendment that we are going to stay within the ABM treaty. But then speaker after speaker comes up here and argues why we should not stay in compliance with the ABM treaty, and it is President Bush, not President Clinton, that recognizes the direct linkage between ABM and START.

If you want to reduce the nuclear threat to the United States, stay within the ABM treaty. It makes sense. If in fact we get to a point where we need to look at increased threats from other countries, from rogue nations and the like, this process that has been put in place by this bill allows us, down the road, to deal with those threats. But let us not create monsters on paper or in the minds of the American people that simply do not exist according to our own intelligence data. Let us come up with the kind of defense that we need.

Mr. Chairman, I also want to suggest that in this bill, we have the capability of dealing with another issue that once again deals with the perceived threat versus the real threat. We are increasing over and above the request from the administration by over $1 billion the money that goes into national missile defense systems. This is a threat that again is not borne out by the reality of what our intelligence networks indicate.

We have a real problem with troops from this country that are having to go on food stamps and live at below-standard housing because we do not simply give them enough money to live on. Let us adhere to what the gentleman from California [Mr. DELLUMS] has attempted to do with the gentleman from Oregon [Mr. DEFAZIO], and take a few of the dollars that are going into a threat that does not exist and put them into the real needs of our troops so that we can have a strong military threat when it comes to the real indications that our intelligence networks tell us are our threats today. That is what I think we should do.

Mr. HUNTER. Mr. Chairman, I yield myself 1½ minutes to respond to my friend from Massachusetts.

Mr. Chairman, let me just tell my friend it was Mr. Woolsey, who was the director of CIA for this President, a Democrat President, who said that within 10 years there would be a number of nations that had the ability to

deliver intercontinental ballistic missiles to the United States. As the gentleman knows, who watched the Patriot missile being developed in his own State, it was started in 1962, I believe, and delivered for the battlefield shortly before Desert Storm, it takes about 10 years to develop a missile system, and especially a complex antimissile system. So the first question I would ask the gentleman is, Does it not make sense to start developing systems now, if in fact you think the threat will be there in 10 years?

Mr. KENNEDY of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from Massachusetts.

Mr. KENNEDY of Massachusetts. Mr. Chairman, I do not think it makes sense for us to be developing the system. I think it certainly makes sense for us to research the system. But why buy a system off the shelf today?

Mr. HUNTER. Mr. Chairman, reclaiming my time, let me just complete my point. My point is it does not take 10 years to just research a system. It takes 10 years to research and build a defensive system. So if you do not start now, if you are going to have the threat in 10 years, you cannot just have bare research at the end of 10 years. You have to have something in place when that missile is launched. That is the point that I am making. That means it is logical to start building a defensive system at this point.

The last thing I would say is in 1987 a number of Republicans on the committee wrote the Nation of Israel, we wrote their defense minister. We said in a short period of time, at some point you are going to have Russian-made ballistic missiles from an Arab neighboring country coming into your country. We could not get any Democrat Members to sign it. We wanted it to be a bipartisan letter. They said the same thing you said, it is unrealistic. It was realistic, and a few years later it happened.

So I think the tradition in this body has been to underestimate the speed of technology and technology implementation by our adversaries. That is my point.

Mr. Chairman, I reserve the balance of my time.

Mr. DELLUMS. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY of Massachusetts. Mr. Chairman, I appreciate the gentleman from California yielding.

Mr. Chairman, my point is that, as I understand the intelligence networks' estimates, they say it would be a minimum of 10 years. Not in 10 years, they say a minimum of 10 years. The fact of the matter is that we are making great strides in our research programs that indicate that we will be able to put together a much more sophisticated system down the road apiece, maybe 2 or 3 years from now.

In the interim, as the gentleman from South Carolina [Mr. SPRATT] has indicated, it is very possible to deal with the short-term threat that is being posed by these renegade nations. None of them have the capability at this time of directly threatening the United States. The only one, as I understand it, would be China with a very small arsenal, which we could defend with less than 100 missiles.

So it seems to me that if you are going to deal with the real threat, you have a very clear path as to what you should do. If you are going to try to make a monster and then throw defense dollars at it, we can do as the gentleman from California is suggesting. I would deal with the real threat rather than the perceived threat.

Mr. HUNTER. Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania [Mr. WELDON] for a response.

Mr. WELDON of Pennsylvania. Mr. Chairman, we are going to have to respond to these points as they are made on the floor. I have here articles in color, produced by the Russians in color, showing the missiles they are currently offering for sale. On the open market at the Abu Dhabi show, they offered the SS–25.

Mr. Chairman, for those who do not know what the SS–25 is, it is the 11,500-kilometer range missile that is the primary carrier of their nuclear weapons. They do not offer the nuclear weapons, but the architecture. The Israelis have already tried to launch a satellite using the SS–25. Any country that gets the SS–25 can hit any city in America with a chemical, biological, or conventional weapon. That is the threat, and it is real and it is today.

The CHAIRMAN. The gentleman from California [Mr. HUNTER] has 19 minutes remaining, the gentleman from California [Mr. DELLUMS] has 11½ minutes remaining, and the gentleman from South Carolina [Mr. SPRATT] has 9 minutes remaining.

Mr. DELLUMS. Mr. Chairman, I yield myself 5½ minutes.

First, I appreciate the comment by my colleague from Pennsylvania, Mr. WELDON. The gentleman and I have worked very closely together. I would simply say to the gentleman that when you lay out these arguments, it is precisely that side of the aisle that reduced funding for Nunn-Lugar that is designed to dismantle these nuclear weapons. So it is not, it seems to me, the height of responsibility to continue to attempt to frighten American people without dealing with the reality. Let's establish some reality here.

We have already spent, Mr. Chairman, in excess of $30 billion, not million, we have already spent in excess of $30 billion pursuing strategic defense initiative technology, ballistic missile defense technology. For the past few years, we have spent approximately $2.5 billion each year for theater missile defense. For the last few years we have been spending approximately $400 million per year, above and beyond the $30 billion that we just kept pouring down this rat hole, to develop a national missile defense system. Fact. If you take the time to understand the architecture, whether you agree with it or not, at least take the time to understand the architecture of the administration's present program, $2.5 billion for theater missile defense, the last time I looked. That was no insignificant amount of money. Four hundred million dollars for national missile defense.

There is a contingency plan, Mr. Chairman, that in the event that a threat out there materialized that we needed to worry about in the near term, that we could move from where we are right now, research and development, to the deployment of an interim system within 18 to 24 months at somewhere at the level of about $5 billion. My colleagues were in the room, they all received the briefing, and all heard that testimony. We then could move beyond that. The administration's program does that as well.

So to stand here in some way to say to the American people we have not spent money, we spent over $30 billion in pursuit of a very difficult technology. In terms of theater missile defense, we have a robust, aggressive, an extraordinary program in theater missile defense, and there is now a program in national missile defense. But for the first time in a long time, this program now looks like a program.

For years, I would say to my colleague from California, we poured billions and billions and billions of dollars into star wars, and we did not get a lot back from it. Finally the Congress got up enough courage, enough intelligence, and enough discipline to force a program. Now it looks like, smells like, acts like a program.

So what happens once we get that discipline? Now we want to start pouring some more money in.

My final comment is this: I would hope that we never experience a nuclear explosion in this country. But I am prepared to debate with you that there is a greater likelihood that if a nuclear device exploded in this country, there is a much less likelihood that it would explode from some intercontinental ballistic missile.

□ 1315

Incidentally, we all know that some of these so-called rogue countries have that capability. But do you know now it would exhibit employed, by a terrorist act. The safest place to put a nuclear weapon is in a bale of marijuana. We cannot find it. You can fly it in here. You can backpack it in here. You can bring it in here on a commercial ship. You can reassemble it, bringing it in piece by piece, reassemble it in some tall building in this country and ignite the weapon.

We are spending billions of dollars going down the wrong road to solve the wrong problem. At the end of the day it is about nonproliferation. At the end of the day it is about ratification of

START II. At the end of the day it is about Nunn-Lugar, dismantling of these nuclear weapons. It is not about some pie-in-the-sky notion that we can knock down a whole bunch of missiles, spending billions of dollars. There is already a program designed to take us there intelligently, responsibly, and effectively. And we ought to stay within the confines of that.

Mr. Chairman, I yield to the gentleman from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY of Massachusetts. Mr. Chairman, I want to respond to the issue laid out by the gentleman from Pennsylvania [Mr. WELDON] that somehow or other these rogue states are going to be able to purchase these missiles that the Russians have on the open market.

First of all, not a single SS–25 has been sold. Second, there is no indication by anyone, I have never heard of any estimate that suggests any of these countries would have the capability of designing a reentry vehicle. There are only three countries in the world that have them: the United States as well as China and Russia.

I do not think that at this time any of these countries have the nuclear warheads. So you have got the potential of one of the three components that is necessary in order to do the damage that you suggested.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Mr. Chairman, we are not talking about the warheads. We are talking about an architecture, a system that gives a rogue country from a mobile launch system, the SS–25 is a mobile system. They have 400 launchers. They take that system to a rouge nation and fire a missile at any city in our country. That capability is there.

Mr. KENNEDY of Massachusetts. Mr. Chairman, if the gentleman will continue to yield, the fact of the matter is that again you are blowing smoke. What we are talking about is whether or not they have the three components that are necessary to actually hurt the United States. They only have one in theory.

Mr. HUNTER. Mr. Chairman, I yield 1 minute to my colleague, the gentleman from California [Mr. DORNAN].

Mr. DORNAN. A fascinating debate.

When we last visited this discussion, this compelling debate 2 years ago, I made a very brief statement on the House floor. I am proud to tell my colleagues it is framed on the wall in small letter picture frames at the ballistic missile defense office.

Here is what it says, I doubt they are going to frame anything from the other side once more, it says,

> Right now we cannot defend against one single nuclear missile coming at our beloved country, not one. There is no reaction time, as we had with Hurricane Emily, no time for battening down the hatches or stockpiling food. If one single rogue nuclear missile hits our country, citizens will be marching on this capital as though it were Doctor Victor Frankenstein's castle, with the intent to burn us down.

I repeat what I said then: We would deserve that rough treatment because 72 percent of our fellow citizens do not know at this moment that we cannot stop a single missile from radiating one of our cities into ash.

Mr. SPRATT. Mr. Chairman, I yield myself 2 minutes. I would like to respond to several points that have been raised by various speakers in this debate.

First of all, Mr. Chairman, one of the speakers opened by saying if we had had this program in place and had been moving ahead of it, as though he were speaking in opposition to my amendment, we would not have suffered the casualties we suffered in the Persian Gulf. My amendment, first step says, our first priority is to deploy, and I quote,

> At the earliest practical date highly effective theater missile defenses to protect forward-deployed and expeditionary elements of the Armed Forces of the United States and to complement the missile defense capabilities of our allies and forces friendly to the United States.

This calls for the deployment at the fastest possible rate of the THAAD, the theater high altitude intercept system and the ERINT. I might say here, Mr. Chairman, that we are talking as if we did not have a program. The gentleman from California [Mr. DELLUMS], our ranking member, just reminded everyone, if you were here in the 1980's, we spent $35 billion on strategic missile defense in the 1980's. And now, today, we have 10 systems in development by my count, a PAC–2 upgrade, a Patriot 2 upgrade, a Patriot 3, the extended range interceptor, the theater high altitude interceptor, so-called the THAAD, an upper tier system which the Navy is developing, it is plussed up by $170 to $200 billion in this bill before, a lower tier system to protect the fleet, a CORSAM system to protect the Army land-based forces, a so-called MEADS system, which would be an interoperable adaptation of that that would be used throughout NATO, a Hawk upgrade for better air defense, a boost phase intercept system which is not yet developed but will be developed to a down select among three contractors in a few years, and the Arrow missile which we are helping the Israelis with.

In addition to that, on the strategic or national missile defense side provided for in this bill, we have a ground based interceptor, double the administration's request. And my amendment leaves that in place. We have lasers funded, chemical lasers, and we are fully funding and plussing up the request for Brilliant Eyes. That is a robust program, a step up of $800 million to $3.8 billion in this bill.

Mr. HUNTER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Maine [Mr. LONGLEY].

Mr. LONGLEY. Mr. Chairman, my opposition to the Spratt amendment is founded on the fact that it would make the deployment of any highly effective workable national missile defense system contingent on gaining Russia's agreement to amend the treaty.

It is significant that this is a treaty, we need to remind ourselves, that was signed over 20 years ago with a party that no longer exists, the former Soviet Empire, by mandating that any necessary United States actions inconsistent with that treaty must first be negotiated with the Russians. It gives the Russians an effective veto over United States defensive deployments. But more importantly, it not only mandates a narrow view of the ABM treaty, a very specific interpretation that is contrary to American interests. It also takes a very narrow view of the threats that we face, not only from the missile development and technologies coming out of Russia and being exported to China but also to Iran, Iraq, North Korea, Libya, and any other rogue state that may come into being.

Furthermore, it also mandates a very narrow view of technology. I would submit with reference to the prior gentleman's remarks that 2 and 3 years is the blink of an eye in terms of technology.

The language that we adopt in this bill could very well be operative within the next 5 or 10 years. My only experience is that there are three fundamental principles to destruction of missiles or to an antimissile defense system. First is the ability to detect the launch; second to track it; third to destroy it.

We not only have demonstrated conclusively our ability to do that, but we are rapidly expanding that skill to the point where we potentially within a very near term could be able to intercept and destroy any missile targeted at this country.

I might add that this has a particular interest to me in my district. We produce the Aegis destroyer for the U.S. Navy, one of most sophisticated antimissile tracking systems known to man. I believe that by limiting and taking a narrow view of what we are able to do in our antimissile defense systems, that we will effectively be limiting the employment of the valuable dollars that we have invested in this program and I think we would unalterably be weakening our defense. I urge a ''no'' vote on both amendments.

Mr. DELLUMS. Mr. Chairman, I yield myself 1 minute.

Let me interject another level of reality into this debate. I would ask my colleagues to recall, at the height of the cold war, when there was the greatest tension between the United States and the Soviet Union, when our nuclear warheads exceeded 10,000, when theirs exceeded 8,000, there was no nuclear war because everyone understood the nuclear deterrent capability of the United States.

And the gentleman is not giving credit to one startling reality: We still

have that capacity. We still have thousands of nuclear weapons that brought us through the greatest tension in the face of this earth with nuclear deterrence, and we still have that deterrence.

Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from New York [Ms. VELÁZQUEZ].

(Ms. VELÁZQUEZ asked and was given permission to revise and extend her remarks.)

Ms. VELÁZQUEZ. Mr. Chairman, I oppose many of the spending priorities contained in H.R. 1530. One of the most foolish of those initiatives is the $3.5 billion authorized for the Ballistic Missile Defense Organization.

The Ballistic Missile Defense Organization was created by President Reagan during the cold war. Since that time, the Berlin Wall has crumbled and the evil empire no longer exists. There is no significant, long-range ballistic missile threat to the United States now or in the near future.

This afternoon we'll have an opportunity to salvage some of these wasteful star wars dollars. The Dellums-DeFazio amendment will channel $150 million more for needy military personnel.

Many men and women who serve in the military do not receive salaries high enough to maintain an adequate living standard. This amendment will provide funds to help military personnel who receive food stamps and off base housing.

Instead of wasting an exorbitant amount of money on star wars, we could reduce ballistic missile defense funding to the administration request of $2.9 billion and allocate the savings toward increases in pay for needy military families. If we can not meet the critical needs of our Nation's most vulnerable citizens, we should at least provide funds for the men and women who serve our country.

We as a nation can not afford to squander funding. It is unconscionable to throw away funding on the Ballistic Missile Defense Organization while neglecting the basic needs of our military personnel. I urge my colleagues to vote ''yes'' on the Dellums-DeFazio amendment this afternoon.

Mr. HUNTER. Mr. Chairman, I yield myself 2½ minutes to enjoin my colleague, the gentleman from California [Mr. DELLUMS], on a point that he just made.

Let me recast this debate and focus on the issue. The ABM treaty is an agreement by this country to hold our citizens defenseless to missile attack. My colleague says that that worked with the Soviet Union because both sides were afraid to cast the first stone. But we are not just dealing with the Soviet Union anymore. We have an agreement between two nations. One of those nations has now been split up into a number of nations.

Yet there are literally dozens of other nonsignatories which are developing missile systems. And that is the reason that we think that this system needs to be modified.

Lastly, I would say to my colleague, we are the arbiters, in a way, of what the ABM treaty means. There is not a world court that is going to judge what the ABM treaty means.

We have put in language that gives what we think is a reasonable interpretation. We have interpreted the ABM treaty in a way that we think is reasonable, that is justified by the facts that surrounded the original writing of this treaty. We have resisted the constraints that would have been placed on our theater ballistic missile systems that protect our troops in theater because we do not think it is wise and we do not want the administration to do that. But I think the problem with the gentleman's argument is it is no longer just the United States and Russia. it is a number of nations, and none of them signed that treaty.

□ 1330

Mr. DELLUMS. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from California.

Mr. DELLUMS. Mr. Chairman, I deeply appreciate the gentleman yielding.

Mr. Chairman, I would simply respond by saying first, if the people in the Soviet Union were intelligent enough to understand the incredible, enormous capacity that we had to destroy life, what makes the gentleman think that the other nations would not have exactly the same competence to understand that? That is No. 1.

Mr. HUNTER. Reclaiming my time, I would not impute that same rationality to people like Saddam Hussein and Mu'ammar Qadhafi.

Mr. DELLUMS. If the gentleman will continue to yield, the point is that at this point they do not have that capability.

Mr. HUNTER. Mr. Chairman, I yield 15 seconds to my colleague, the gentleman from California [Mr. DORNAN].

Mr. DORNAN. Mr. Chairman, I have the answer for the gentleman from California. The terrorist bomber at the marine barracks in Beirut, 220 dead marines, 17 sailors, 4 Army guys, and the marine guard who said he could not get his magazine into his M–16, lousy rules of engagement, he said that bastard killer was smiling before he booted himself to Allah and kingdom come. That is what a rogue missile is. It has nothing to do with rational killers in the Kremlin.

Mr. SPRATT. Mr. Chairman, I yield 3 minutes to the gentlewoman from California [Ms. HARMAN].

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, as a member of the Subcommittee on Military Research and Development of the Committee on National Security, I support its bipartisan recommendation to plus up the BMD budget. I would particularly like to salute the gentleman from Pennsylvania [Mr. WELDON], our chairman, for his leadership on this issue.

I also support the subcommittee and the full committee's allocation of the additional funds, which I understand comports with the recommendations of Gen. Malcolm O'Neill, who ably heads the BMDO office at the Pentagon.

Theater missile defense threats are real. One only has to visit Israel to understand that it would take 1 minute for a missile from Syria to penetrate Israel's continental boundaries, and 5 minutes for a missile launched from Iran or Iraq. Therefore, I strongly support full funding, as we have, of the United States-Israel BMD collaborative programs, including the Arrow.

It is also the case that there are medium-term threats to CONUS, the continental United States, from missile proliferation. Therefore, I support the work we are now funding on national missile defense. It is important and I agree that we must undertake it.

However, let me conclude by stressing how crucial it is to reach a common ground on this issue. Let us stop the partisanship. Let us move together. I agree with the gentleman from California [Mr. DELLUMS] that we have wasted money in the past because there has not been focus and leadership on this program. We are now in a position to supply that focus and leadership, both in the Congress and in the Pentagon. Let us do it.

Let us also continue to exercise oversight in the Congress. We are planning to spend a lot more money. Let us spend it wisely. Let us be sure we are getting our money's worth. Let us consider burden-sharing with our allies, because over time it will be clear that these threats are to our allies all over the world, some of whom are fully capable of sharing the costs.

Finally, Mr. Chairman, let me say that we should consider modifying the ABM Treaty. I support modifications. However, let us do this in a rational and reasonable way. Let us not proceed by adopting a rogue amendment on the House floor. Let us act with reflection, and let us act effectively for the future.

I want to make clear that I would oppose, and it is not being offered as we consider this bill, but I would oppose any effort to unilaterally abrogate our commitment to the ABM Treaty.

Finally, let me salute the women and men who have worked so ably on the BMD program in California's South Bay. My constituents have really supplied the intellectual base that has designed and built so many of these systems. With stronger focus, leadership and funding, I am hopeful that, finally, we will have a BMD system that protects our allies and protects us for the future.

Mr. HUNTER. Mr. Chairman, I yield 1½ minutes to the gentleman from Maryland [Mr. BARTLETT].

(Mr. BARTLETT of Maryland asked and was given permission to revise and extend his remarks.)

Mr. BARTLETT of Maryland. Mr. Chairman, the average American is both surprised and shocked to learn that we have no defense, let me say it again, no defense against even one ballistic missile attack. Some say that we do not need one because we are in the post-cold-war period. I think Robert Gates said it very well when he said it is as if you went into the jungle and slew the dragon, only to observe that you are now surrounded by poisonous vipers, 25 poisonous vipers in the form of 25 nations that are acquiring weapons of mass destruction and rapidly acquiring the ability to deliver them.

However, the original dragon, like the Sphinx, is capable of resurrection. Chernovsky, arguably the most popular politician in Russia has 2 goals: one, to have a child in each province; and two, to take back Alaska when he controls Russia. Are Members content that we do not need a ballistic missile defense system? Vote ''no'' on these amendments. That would strip us of our chance to protect our people and our service men and women.

The CHAIRMAN. The gentleman yields back 30 seconds.

Mr. HUNTER. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. MCCRERY].

Mr. MCCRERY. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I no longer have the privilege of serving on the Committee on National Security, but I did for several years, and watched carefully the construction of our defense bills as they came to the floor. In my opinion, this bill speaks more intelligently and forthrightly to the issue of anti-ballistic missile defense than any defense bill that has come to the floor since I have come to Congress.

The amendments, however, that are to be offered today would put this bill right back in the same framework that it has come to the floor here for the last several years, which restricts our ability to defend ourselves against ballistic missile attacks. That would be a mistake.

This bill does not go as far as I would like to go, frankly. I think we ought to abrogate the ABM Treaty. It was signed with a nation that no longer exists. It was designed to deter a threat that has been defused. We need to build missile defenses in this country. The first obligation of any central government is to defend its people.

Mr. HUNTER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Chairman, I would just like to address one point that has been made here over and over. As Members of Congress, our most important single duty is to provide for the common defense of our country against both foreign and domestic threats. As the gentleman on the other side of the aisle have pointed out continuously, or have tried to this afternoon, that we do not have a threat that we need to defend against with regard to this missile debate.

I would remind them, as I did a month or so ago, and let me just quote here, this is a quote by Adm. William Studeman, who was the Acting Director of the Central Intelligence Agency under this administration, I might add, he said ''On January 18, 1995, the Admiral said and testified that 'The proliferation of technology will lead to missiles that can reach the United States toward the end of this decade, or the beginning of the next decade.''' That is a fairly immediate threat, and it is someone who should know. That is someone who I believe has a great deal of credibility. It points to the necessity of us passing this provision as it is today.

Mr. SPRATT. Mr. Chairman, I yield 3 minutes to the gentleman from Florida [Mr. PETERSON].

Mr. PETERSON of Florida. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, this debate contains a huge disconnect between defense systems and the threat. On the one hand, we have put massive amounts of money in national missile defense without concern about the threat of a cruise missile or any kind of terrorist activity that might take place. We cannot build a bubble over the United States. This is really the bottom line.

At the same time, what we are doing in the language of this bill, we are saying it is okay to abrogate unilaterally the ABM Treaty. Not smart. Why do this in the face of Russia and what they are trying to do to us and with us cooperatively?

At the same time, just yesterday, we killed, essentially gutted, Nunn-Lugar. In that process we cut the opportunity to reduce the threat by the destruction of these weapons systems that are currently ongoing. Yes, in the bill, the committee wrote that it is not important to do civil defense anymore. Essentially they have a statement that FEMA, forget the civil defense. Where is the disconnection here?

Mr. Chairman, we are in the process of making a terrible mistake. We need to focus on the real threat to our country, and the real threat, while potentially, in a small way, from a strategic missile, the big threat comes from terrorism and it comes from cruise missiles off the back of a little freighter coming through the St. Lawrence Seaway. It comes from a Ryder truck.

If we unilaterally abrogate the ABM, we are essentially telling the Russians that START II is not important to us, either. We need to use our diplomatic negotiating process to reduce our threat, not raise our threat. By doing what we are doing today, by sending the message to Russia that they do not count, we are actually increasing the threat to the United States from any kind of strategic missile, because in the process of our action on Nunn-Lugar, they are going to have all those systems to sell to other people, if you will. Of course, they are not going to be a potted plant. They are not going to say to us ''It is okay, America, do whatever you want to to us.'' They are a proud people, and we need to work with them, not fly in their face in the process of doing what we want to do here.

The final outcome of this huge disconnect is going to cost this government billions of dollars in working on readiness and the process of what we are trying to do. The Spratt amendment is not the final solution, but it is a first step.

Mr. HUNTER. Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania [Mr. WELDON] to set the record straight.

Mr. WELDON of Pennsylvania. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I have to correct three statements that were just made by our good friend and colleague of the committee. First, we plussed up the cruise missile accounts by $75 million for exactly the reasons the gentleman stated. We saw the need to support General O'Neill in that request, and we did it.

Second, this bill does nothing, nothing to violate the ABM Treaty. That is in writing from General O'Neil, who is the administration's representative on missile defense.

Third, it was General O'Neill himself on March 23 who said ''If you give me extra money, I would put $600 million into national missile defense;'' General O'Neill, representing President Bill Clinton.

Mr. HUNTER. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Georgia [Mr. CHAMBLISS].

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

Mr. CHAMBLISS. Mr. Chairman, I am deeply concerned that the American people mistakenly believe its Government can protect its people and soldiers from missile attack. Recent reports indicate that a significant majority of the American people believe that if ballistic missiles are used to attack the United States, the U.S. military can intercept them before they fall.

Footage of our Patriot missile batteries shooting Iraqi scuds out of the sky during the gulf war have left the American people with a very false sense of their own security.

As advanced as our theater and national missile defense capabilities have become over the years, the fact still remains that we are vulnerable.

Since the end of the cold war and the demise of our No. 1 enemy, the number of rogue states that have acquired nuclear capability has increased dramatically. Additionally, the very fact that the former Soviet Union is embroiled in ethnic strife adds to our concerns about their existing nuclear stockpile.

Mr. Chairman, H.R. 1530 represents the proper approach to missile defense. It provides the emphasis necessary on

missile defense, and it strikes the proper balance between national and theater missile defensive systems.

In 1983, the great communicator Ronald Reagan called this Nation's science community to arms and challenged them to provide the ultimate defensive system. Through the years, tremendous strides have been made, and though the sacrifices are great, the consequences of failure are even greater.

Mr. Chairman, the American people deserve no less than the very best defensive technology, and H.R. 1530 achieves that goal.

Unfortunately, the Spratt amendment would chain this Nation to the outdated terms and assumptions contained in the ABM treaty we signed with a country that no longer exists. Furthermore, it rejects the necessary emphasis on national missile defense.

I urge my colleagues to support the provisions of H.R. 1530 and reject the Spratt amendment.

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Mr. SPRATT. Mr. Chairman, I yield my last minute to the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Chairman, I will not take the full time, but I do wish to ask two points of clarification if the gentleman does not mind.

Does this apply only to national missile defense?

The second is, what if this amendment does not pass? What would be the force and effect, particularly in light of the comments made by the gentleman from Pennsylvania?

Mr. SPRATT. If the gentleman will yield, this amendment calls, first of all, as a first priority, for full speed ahead, theater missile defense development. Second, for the development and deployment of a national missile defense system. And, third, for compliance of that system, a national missile defense system—it only applies to that—with the ABM treaty as it stands today or as we may amend it. It simply says stay within the processes of the ABM treaty in developing that system.

The CHAIRMAN pro tempore (Mr. COMBEST). All time of the gentleman from South Carolina [Mr. SPRATT] has expired.

Mr. HUNTER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas [Mr. THORNBERRY].

Mr. THORNBERRY. Mr. Chairman, I am a new Member of this body. I have not been a part of the debates that have gone on on this issue for the past years. I have tried to look at it from the ground up and maybe from a fresh perspective.

It seems to me when you get down to the basics, the question is whether we are willing to defend our people. The fact is that we have absolutely no way to stop a missile that is fired at the United States. The fact is that there are other countries who have missiles that can reach the United States.

The fact is that there is instability and uncertainty in Russia. And the fact is that just 2 weeks ago, China fired a new mobile missile that can reach the United States. The fact is there are a number of other countries that are working as hard and as fast as they can to put our people at risk by acquiring missile technology.

The fact is today we are vulnerable to accidental launch, to a rogue general acting on his own, or to some outlaw state such as Hussein or Qadhafi buying missiles, and we can do absolutely nothing to defend our people against a missile attack. I think that is wrong strategically, and I think that is wrong morally.

We cannot, of course, build a bubble and protect ourselves from all threats, but we can do what we can do. We have technology to make us safer than we are today, and it is silly to tie our hands and not make available for ourselves the possibilities which exist.

I think we have to be particularly careful of those who say, ''Yeah, I'm for a missile defense, except'' or ''under these circumstances.'' There should be no conditions on whether we protect the United States or its people.

This bill does not alter existing treaties, but it does allow us to be free to look at all the possibilities. The Spratt amendment would handicap us by only looking at certain possibilities that apply to certain treaties.

We ought to see what works the best, then go about developing that technology, change the treaty as ought to be appropriate and get something there that will protect our people. Frankly, I would push harder and quicker toward deploying a defense than is in this bill, but I think this bill is a minimum of what we can do to protect our people and fulfill our oath.

Mr. HUNTER. Mr. Chairman, I understand I have 7 minutes left. I yield myself 3 minutes.

The CHAIRMAN pro tempore. The gentleman is correct. The Chair recognizes the gentleman from California [Mr. HUNTER] for 3 minutes.

Mr. HUNTER. Mr. Chairman, to all of our colleagues in the Committee of the Whole, I just wanted to let folks know that if you look this bill over, you will see a lot of Republicans and Democrats working together on a number of issues. I have great respect for the gentleman from South Carolina [Mr. SPRATT], for the gentleman from California [Mr. DELLUMS], for all of our colleagues on the Democrat side of the aisle, and for all the Republicans who have worked hard to make this bill go, and the chairman, who I think has put together a very thoughtful package.

Mr. Chairman, we did plus up all of the theater missile defense systems. We put in the amount of money that our experts told us we needed to put in to advance those systems as rapidly as possible.

The sad thing is that when we asked General O'Neill, at the end of one of our hearings, the question as to whether or not these theater systems would stop any fast missiles, that is, stop, for example, the North Korean Taepo Dong–2 missile that is being developed now, his answer was no. They will stop basically the Model T's of ballistic missiles, the Scuds. But we have not been building missiles to stop high-performance ballistic missiles.

The Spratt amendment goes to ABM. That is going to be a key amendment. The difference between what the committee did and what the gentleman from South Carolina [Mr. SPRATT] wants to do this: The gentleman from South Carolina [Mr. SPRATT] elevates and, I think, liberalizes the ABM Treaty.

For Members of the House, it is important that you understand the ABM treaty. The ABM treaty is extraordinary. It is unique. It is an agreement by the Government of the United States to hold its citizens defenseless against missile attack. If you read it, and you are an average citizens, you are shocked, because it says that you cannot have a defense against nuclear systems.

The gentleman from California [Mr. DELLUMS] has explained how we incorporated that agreement, as extraordinary as it is, in this standoff between the United States and the Soviet Union, where we figured that because both sides had enormous arsenals and some degree of stability, neither side would want to throw the rock. Therefore, we held our own citizens defenseless. We held our own citizens up to nuclear attack without any defense being offered.

I would say that is an extraordinary measure. It is a measure that should be exercised very conservatively because it is an enormous imposition on your citizens, on your constituents.

When you vote on this thing as a Member of Congress, you are telling your own 575,000 constituents in your district that your are going along with an agreement that leaves them exposed deliberately to missile attack.

I do not think we should interpret or enforce that type of an agreement in a liberal way. I do not think we should use our creative juices to try to figure out new ways to hold ourselves at risk. I think we should exercise and follow that treaty very conservatively.

Lastly, the problem is, we made that treaty with one other nation in this world. Today there are dozens of nations who never signed it who are developing missiles. that is the difference between the committee bill and the amendments.

Mr. DELLUMS. Mr. Chairman, I yield myself the balance of the time.

The CHAIRMAN pro tempore. The gentleman from California [Mr. DELLUMS] is recognized for 3 minutes.

Mr. DELLUMS. Mr. Chairman, let me say to my colleague that whether we viewed it as moral or immoral, this gentleman's position was that we should not have gone down the road toward the development of more heinous nuclear weapons. But the fact of the matter remains that mutual assured destruction did indeed work.

The logic of the gentleman's argument, it is difficult for me to get my brain around the gentleman's argument because at the end of the day, the test of a policy's effectiveness is whether it worked. We did not have a nuclear war, so that that standoff was not keeping American people defenseless. That expensive, dangerous, insane nuclear triad kept everyone from waging war. That is No. 1.

Second, let's put reality into this debate. We keep saying to the American people, did you know we didn't have this? America, $35 billion of your dollars went down a rat hole developing the technology of star wars. The last time this gentleman looked, you look at my bank book, $35 billion is one hell of a lot of taxpayers' money to be spent.

Third, as we speak, America needs to know that we have been spending for the last few years approximately $3 billion per annum, part on theater missile defense, part on Brilliant Eyes, a space-based central system, and part on a national missile defense system.

We are spending money developing this. To, in some way, communicate to the American people that we have not spent billions of their dollars, now way over $40 billion, is to take a flight into fantasy. It is to engage in a disingenuous argument. That money is out there. The only debate between us at this point is whether you ought to be spending more money and go so fast that you violate ABM.

Why is ABM significant? It is significant at this moment, Mr. Chairman, because the ABM treaty is linked by the administration, by the Bush administration and others, to SALT II. SALT II allows us, with the stroke of a pen, to take the Russian nuclear arsenal from 8,500 down to 3,500. We can knock down 5,000 missiles by compliance with ABM, ratification of START II, and you cannot find the dollars, my friend, to build a system effective enough to destroy 5,000 warheads. So you are arguing against yourselves when making that statement.

The gentleman from Pennsylvania [Mr. WELDON], I believe this gentleman is in no way desirous of stepping outside the ABM treaty. He is a man of integrity, and I know that his word is real in that regard. But I am suggesting here that the gentleman from Pennsylvania [Mr. WELDON] does not speak for everybody on your side, and I know that there are a number of them who want to break out of the ABM treaty, with all the adverse impacts to America and stability in the world.

Mr. HUNTER. Mr. Chairman, I yield myself 15 seconds for one point, to make one point for my colleague.

I just want to say to my friend, I did not state that we have not spent billions and billions of dollars. I agree we have spent billions and billions of dollars, but the American people are interested in the real state of play and in results. Right now we do not have defenses against missiles. Many of them think we have them. I think the work this committee is doing will bring about defenses, but we do not have them at this time.

Mr. Chairman, I yield the balance of our time to the gentleman from Pennsylvania [Mr. WELDON], the distinguished chairman of the Subcommittee on Military Research and Development.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania [Mr. WELDON] is recognized for 3 minutes 45 seconds.

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

Mr. WELDON of Pennsylvania. Mr. Chairman, this has been a long debate and I think a very insightful debate from both sides. Let me say as we looked at the defense bill for this year, we looked at what I think will be the two biggest threats this country faces as we approach the 21st century. The first is missile proliferation and deployment, and the second is terrorism.

In our mark we plus up both accounts, to deal with the terrorism we heard about and to deal with the missile proliferation. We plussed up each. We held three full hearings. In the last few years, we did not hold any hearings on missile defense.

This year we have held three full hearings for Members to get classified and unclassified information on what the threat is. We heard there are 77 nations in the world that have cruise missiles, 20 more are building them. We heard about the Russians offering for sale the SS–25. Even the Clinton administration acknowledged just a month ago that the sale of the SS–25 is a violation of the START agreement. Even the Clinton administration acknowledges that. That architecture can be used to hit any city in America by a rogue nation, a mobile launch system.

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We heard that the North Koreans have a system that they are testing now that can reach Hawaii and Guam. And we just heard the Chinese, 2 weeks ago, tested a system that can hit the western United States and Guam as well.

Mr. Chairman, these are real threats. Our bill responds to those. But let me say, Mr. Chairman, our bill is totally consistent with General O'Neill. We don't micromanage General O'Neill. We accept the recommendation of the Clinton administration's expert on missile defense.

In fact we did not even give him all the money he would like to have had. Our mark is totally in line with him and in no way does it violate any part of the ABM treaty.

Mr. Chairman, I will enter in the RECORD a letter from General O'Neill to me dated yesterday stating that no part of this bill in any way violates any part of the ABM treaty.

The Spratt amendment is a political amendment being offered, I think, in the wrong-headed sense of the word. And let me say why. Our side, the conservative side, wanted to offer an amendment to take on the ABM treaty in this bill and I said, If you do, I will come to the floor and I will lead the fight against it. And that amendment was not offered. It was withdrawn.

Now, we are going to be asked to vote on an amendment that takes this bill over the line and says not only do we want it to comply with ABM, but all future modifications of ABM. So, we want to limit the ability of our defense experts to look at how we can best defend America.

This bill is not about the ABM treaty. We have agreed to a separate vote on the ABM treaty; a separate debate. This bill is about defending America.

We want to give our defense experts the chance to tell us, based on the threats that are there, how we can best defend the country. If we want to have a vote on ABM, let that occur at some other time and some other place. But it should not be on this bill. And I resent the fact that that amendment is being offered.

Mr. Chairman, I would encourage our Members and our colleagues to do what members of the committee did in a bipartisan manner. We rejected the Spratt amendment in a bipartisan vote of 33 to 18 saying this is not the place to discuss the merits of the ABM treaty.

I repeat again, General O'Neill, on the record in writing, has stated that nothing in this bill, nothing in any way, shape, or form, violates the terms or the conditions of the ABM treaty. That debate can occur at the appropriate time.

I would also ask our colleagues to support the leadership, Speaker GINGRICH and our entire House leadership, in opposing the Dellums amendment which would also gut this effort. And I thank our colleagues for their cooperation in the spirit of debate.

The letter previously referred to follows:

DEPARTMENT OF DEFENSE, BALLISTIC MISSILE DEFENSE ORGANIZATION,

Washington, DC, June 14, 1995.

Hon. CURT WELDON,

Chairman, Subcommittee on Military Research and Development, Committee on National Security, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: There has recently been a great deal of debate concerning whether or not the programs planned by the Ballistic Missile Defense Organization for fiscal year 1996 are compliant with the Anti-Ballistic Missile (ABM) Treaty. I can tell you that every activity under my control complies with the ABM Treaty, and that we will not develop, test or deploy systems that violate the Treaty. I take my stewardship of the Nation's ballistic missile defense programs very seriously and strive to ensure that the program complies with all our legal and international obligations.

I want to assure you that every program in the acquisition process that raises Treaty issues is subjected to a stringent compliance

review process managed by the Under Secretary of Defense for Acquisition & Technology (A&T). Additionally, tests, experiments, and programs that are sufficiently developed, but that are not yet in the acquisition process, are also scrutinized by the Under Secretary of Defense (A&T) Treaty Compliance Review Group to ensure that they do not violate Treaty obligations.

I hope this clarifies any ambiguity that may exist. I stand ready to answer any further questions you may have.

Sincerely,

MALCOLM R. O'NEILL,
Lieutenant General, USA,
Director.

Mrs. FOWLER. Mr. Chairman, I rise in support of the committee's treatment of ballistic missile defense issues in this bill.

Most Americans are unaware that this Nation currently has no ability to defend itself against an accident missile launch or an attack by a terrorist nation or rogue military commander. That, however, is indeed the case.

With the continuing proliferation of weapons of mass destruction and missile technologies, we cannot accept this shortcoming. There are too many nations—Iran, North Korea, and Iraq, among them—pursuing these capabilities. Meanwhile, the confiscation of highly enriched uranium on the black market indicates the deterioration of internal security controls over nuclear materials in the former U.S.S.R. Under the circumstances, we cannot remain complacent about our lack of defensive options.

H.R. 1530 increases the President's request for ballistic missile defense funding from $3.1 to $3.8 billion. This funding will step up efforts on both theater missile defenses, which are desperately needed to protect our service people in the field, and on national missile defenses, which we must pursue now, before renegade nations can threaten us.

Mr. Chairman, I urge my colleagues to support the committee's bill and oppose weakening amendments.

The CHAIRMAN. It is now in order to consider the amendments printed in subpart D, part 1 of the report relating to ballistic missile defense, which shall be considered in the following order:

By Representative SPRATT and by Representative DELLUMS.

It is now in order to consider amendment number 1 printed in subpart D of part 1 of the report.

AMENDMENT OFFERED BY MR. SPRATT

Mr. SPRATT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SPRATT:

Strike out section 232 (page 31, line 17 through page 32, line 4), and insert in lieu thereof the following new section:

SEC. 232. BALLISTIC MISSILE DEFENSE POLICY OF THE UNITED STATES.

It is the policy of the United States—

(1) to deploy at the earliest practical date highly effective theater missile defenses (TMD) to protect forward-deployed and expeditionary elements of the Armed Forces of the United States and to complement the missile defense capabilities of our allies and forces friendly to the United States; and

(2) to develop, test, and deploy, at the earliest practical dates, a national missile defense system (NMD) that complies with the ABM Treaty and is capable of providing a highly effective defense of the United States against limited ballistic missile attacks.

Page 32, strike out line 17 and all that follows through line 5 on page 33 and insert in lieu thereof the following:

(1) Up to 100 ground-based interceptors at the site now designated by the ABM Treaty or additional ground-based interceptors at such other site or sites as the Secretary of Defense may recommend if deployment of ground-based interceptors at more than one site is allowed by amendment to the ABM Treaty.

(2) Fixed, ground-based radars.

(3) Space-based sensors that are capable of acquiring and tracking incoming reentry vehicles as an adjunct to ground-based radars.

(4) Battle management, communication, and control systems integrated with ground-based radars and space-based sensors.

Page 38, line 5, strike out ''DEFINED''.

Page 38, line 6, insert ''(a) DEFINITION.—'' before ''For purposes of''.

Page 38, at the end of line 11, strike out the period and insert the following:

and all Agreed Statements and amendments to such Treaty in effect as of the date of the enactment of this Act or made after such date.

Page 38, after line 11, insert the following:

(b) INTERPRETATION.—Nothing in this subtitle shall be interpreted to violate, or to authorize the violation by the United States of, the ABM Treaty. Any provision of this subtitle that authorizes or requires the United States to deviate from the ABM Treaty is premised on the assumption that before any such action is taken amendments will be made to the Treaty to make such provision compliant with the Treaty.

The CHAIRMAN. Pursuant to the rule, the gentleman from South Carolina [Mr. SPRATT] and a Member opposed will each be recognized for 10 minutes.

Is the gentleman from California opposed?

Mr. HUNTER. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from California [Mr. HUNTER] will control the 10 minutes in opposition.

The Chair recognizes the gentleman from South Carolina [Mr. SPRATT].

Mr. SPRATT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my good friend, the gentleman from Pennsylvania [Mr. WELDON], chairman of the subcommittee, has just said in the well of the House to those who want to abrogate or violate the ABM treaty, he is opposed. It is not timely. And I agree with him.

I will come to the reason I agree with him in fuller detail in a minute, but basically it boils down to this. It is not an opportune time to talk about that because the ratification of START II hangs in balance right now.

The authors of this bill, therefore, say they don't support violation; they seek abrogation, not now, of the ABM treaty. All my amendment does is call for clarity, for the removal of any ambiguity, for spelling out their intention which they have stated here in the well of the House so that there is no mistake about it.

Section 233 of this bill, however, calls on the Secretary of Defense to deploy at the earliest practicable dates a national missile defense, NMD, system designed to protect the United States against limited ballistic missile attacks.

This NMD system, according to the bill, shall include up to 100 ground-based interceptors at a single site or at a greater number of sites as determined necessary by the Secretary.

Mr. Chairman, the ABM treaty as it is now written limits the United States and Russia to 100 interceptors at 1 site. By requiring in this bill that any national missile defense system protect the entire United States at more than one site, if necessary, we are going beyond the boundaries of the existing treaty. We may need to, and I anticipate that in the very language of my amendment when I say, ''Stay within the ABM treaty or the processes of it and seek amendments where necessary.''

But as I read the bill, the Secretary has no leeway and, in effect, it requires a multisite system and this is a violation of the treaty as now written.

As I said, my amendment deals with it by saying any such language would be interpreted to mean that we would seek an amendment to permit it before we went ahead to do it.

Now, section 233 also refers to direct queuing of interceptors, that is having an interceptor on the ground queued by the so-called Brilliant Eye, or low-Earth orbit satellite, which will be put into place some time around the turn of the century if we ever deploy a missile defense system.

This language is, too, a technical violation of the treaty. Now, I think we probably ought to clarify the amendment and permit it, but my amendment would say simply that if you are going to do it, then go seek a clarification or an agreed statement, or something that will permit it if you want to use that language.

My amendment anticipates, calls for, the deployment of a national missle defense system which would include 100 interceptors at 1 or more sites if the additional sites were approved by amendment. A ground-based radar system and space-based sensors plus BMCCC, Battle Management Command, Control, and Communications software.

Now, why is all of this so important? It is important because in the next 4 or 5 months the Russian Duma will either take up or not take up, and will either ratify or not ratify, START II. If START II is ratified, we will reduce Russian warheads, a real threat, which can be launched against us by 5,000, which is a significant diminution of the threat to the security of the United States today. It would reduce those by 5,000 down to 3,500 warheads.

We cannot build a missile defense system that will effectively shoot down so many Russian missiles, so much ballistic missile threat against us, so cheaply as the ratification of START II. Why put it in jeopardy by leaving any ambiguity in this bill?

Ratification by the Duma is shaky at best. It is by no means assured. And any signal this Congress sends that we may be breaking out or reaching beyond the terms of the ABM treaty could doom START II. And now is not the time to send such a signal.

START II serves our national security interests, as I said, by reducing the number of warheads that can be launched against us by 5,000 warheads; an enormous number. But it also does something else for our national security.

By lowering the number of warheads that we will have to maintain in our arsenal, the launchers, the platforms from which they would be launched, it also frees up resources for other national defense needs which are really more pressing right now. It would save us the cost of maintaining a huge nuclear arsenal with more than 8,000 warheads in it.

If START II is not ratified, then Secretary Perry warned in an address at Georgetown more than a year ago that we, the United States, will have no other choice. We will not go below START I levels. And there is no money currently in the DOD budget or the DOE budget to support this higher level of maintaining an arsenal of 8,500 warheads.

We will have to cut into funding for conventional forces, for quality of life, for modernization, for readiness, in order to pay to maintain the arsenal at this higher level. I would rather pay to maintain a stronger conventional force. I would rather get rid of those 5,000 warheads potentially aimed at us.

This amendment simply seeks to take the authors of the bill before us at their word and say, deploy a national missile system, but stay within the confines of the ABM treaty. If you need to amend it to go to multiple sites, then do so. Amend it.

But it sends a signal to the Russians at a critical time here on the eve of ratification of START II that we are not about to break out of the ABM treaty.

Mr. Chairman, I reserve the balance of my time.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. I thank the chairman for yielding me this time.

The reason that we should not pass this amendment, and the reason that we should not be concerned about the ABM treaty, notwithstanding whether or not what happens with respect to this bill does or does not violate the ABM treaty, and as you know we have got a letter that says it does not, but the reason that we ought not to be so concerned about that is that the former Soviet Union and Russia is not the only nation that has the capacity, the ability to lob a ballistic missile with a nuclear warhead at the United States.

What we have done is we have taken this policy, this national strategy that is based on mutually assured destruction that may have had validity in 1972, and we have extended it 25 years into a point in time when Russia is joined by as many as 25 or more other nations that have the same capability to blow up cities in the United States.

It is just a bad policy that I believe in the broad sweep of history is going to be seen as something that was peculiar and bizarre and should be completely abrogated.

Mr. SPRATT. Mr. Chairman, I yield 1 minute to the gentleman from Alabama [Mr. CRAMER].

Mr. CRAMER. Mr. Chairman, I thank the gentleman from South Carolina for yielding me this time.

Mr. Chairman, I am a strong supporter of our Nation's defense and a strong supporter of a robust national missile defense program. My community is strongly involved in that defense program. And I support the missile defense program outlined in this bill.

I strongly support the Spratt amendment. This amendment is frankly a very simple one, and I cannot imagine why anybody would oppose it. It simply reaffirms our Nation's commitment to a reduction of nuclear weapons.

This amendment in no way changes the missile defense program outlined in this authorization bill. The Spratt amendment would simply require that we develop, test, and deploy a national missile defense system that complies with the ABM treaty. It would allow for any future amendment if we determined that we need a missile defense system that might not need to comply with the ABM treaty.

I believe this amendment is crucial, this amendment today is crucial to our efforts to ratify the START II treaty. This amendment does not affect the theater ballistic missile programs, and only affects our national missile defense programs. I urge my colleagues to support the Spratt amendment.

Mr. SPENCE. Mr. Chairman, I yield myself 2 minutes.

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

Mr. SPENCE. Mr. Chairman, I rise in strong opposition to the Spratt amendment.

Mr. Chairman, a nearly identical amendment was considered in the Committee on National Security's markup of H.R. 1530. That amendment was rejected on a bipartisan vote of 18 to 33. This amendment should be defeated. It is designed to obviously cloud the issue and for that purpose, only.

The Spratt amendment is unnecessary. There are no activities planned for fiscal year 1996 that would conflict with the ABM treaty, as noted in the letter from General O'Neill referred to previously, who is the director of the Ballistic Missile Defense Organization.

More importantly this amendment sends the wrong signal. The Clinton administration in its zeal to "strengthen the ABM treaty" is seeking to turn the ABM treaty into a theater missile defense treaty, and constraining our theater missile defense systems.

The President continues on this course despite repeated appeals from the Republican congressional leadership and others.

A "yes" vote on the Spratt amendment is an endorsement of the President's approach to all missile defense.

The amendment would also essentially grant Russia an effective veto over our missile defense deployments in the future. All of us ought to find this unacceptable and resent it. The United States ought to be able to take whatever actions are necessary to defend our territory, its troops, and our interests. This amendment is not in our national security interest, and people who vote for it are not acting in the best interests of this country.

I strongly urge my colleagues to vote "no" on the Spratt amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SPRATT. Mr. Chairman, may I ask how much time is remaining on each side?

The CHAIRMAN. The gentleman from South Carolina [Mr. SPRATT] has 3 minutes remaining, and the gentleman from South Carolina [Mr. SPENCE] has 7 minutes remaining.

Mr. SPRATT. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. EDWARDS].

Mr. EDWARDS. Mr. Chairman, I am a hawk on defense. I support increased funding to ensure a strong national defense, and yesterday I voted for increased funding for the B–2 bomber.

□ 1415

However, there is a huge difference between being a hawk on defense and possibly jeopardizing the elimination of 5,000 Russian nuclear warheads. No national defense system can stop that many warheads.

By insuring compliance with the ABM Treaty, the Spratt amendment will contribute to the elimination of 5,000 nuclear warheads that someday could be aimed at America's citizens, at America's children. To do anything, to do anything at this time, this crucial time, that might jeopardize reduction of those 5,000 Russian nuclear warheads would not be being strong on defense. It would be sheer insanity.

If the authors of this bill say the bill does not violate the ABM Treaty, they should have nothing to fear from this amendment. On the other hand, despite the authors' intentions, if anyone someday might interpret this bill as being in violation of the ABM Treaty, then our grandchildren's future depends on the passage of this amendment.

Mr. SPENCE. Mr. Chairman, I yield 1½ minutes to the gentleman from Virginia [Mr. BATEMAN].

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

Mr. BATEMAN. Mr. Chairman, I think the chairman of the full committee has it exactly right. This amendment is really a red herring.

The debate need not and should not focus on any expectation or any claim that we are in jeopardy of violating a solemn treaty obligation of the United States of America.

What is involved here is allowing our technicians, our scientists to explore that technology which works best and most cost effectively to provide us with theater and national ballistic missile defense systems. If the best answer to those scientific equations is that we need to go back and renegotiate the ABM Treaty, that is exactly what the Constitution and the law will require, and what will be done.

If any messages are being sent here, it is a garbled and misinformed message to the Russian Duma that somehow or another we are concerned with and intend to violate a solemn treaty obligation. That is not what this provision is about.

Common sense would dictate if the best technology for our ballistic missile defense system nationally or for the theater is something that violates that treaty, then all common sense says we should go to the Russians, to anyone else, and renegotiate it. We also must bear in mind that under the very terms of the treaty itself, by giving appropriate notice, we are freed of any obligations under that treaty, and clearly should do so if violating it would be putting in jeopardy our ability to effectively defend this Nation either as a nation or its forces in the theater from missile attacks.

The common sense of this is to reject this amendment. We are sending the wrong message.

Mr. SPRATT. Mr. Chairman, I yield the balance of my time, 2 minutes, to the gentleman from Indiana [Mr. HAMILTON].

Mr. HAMILTON. Mr. Chairman, I thank the gentleman for yielding me this time.

I commend him for his amendment, and I strongly support it.

I think what this debate really is about is an abrogation of the Anti-Ballistic Missile Defense Treaty. The Spratt amendment assures that however the United States proceeds on missile defense, it stays within the terms of the ABM Treaty. That treaty is 23 years old. It has been the foundation for all of our arms control agreements with Russia.

Today we certainly may want some clarifications of that treaty or even revisions of it, but those changes ought to be worked out with the Russians. Those changes should not be imposed on the Russians.

There are provisions in this bill which clearly bring about the abrogation of the ABM Treaty. I think that is a bad precedent. Abrogation of that treaty will harm the national security interests of the United States in a number of ways.

If we break the ABM Treaty unilaterally, we will poison our relations with Russia. United States-Russian relationships are still the cornerstone of world peace. If we poison the well, every issue we have with Russia—arms control, European security, the Middle East peace process, Bosnia, nonproliferation—becomes more difficult, and we then would bank on little or no cooperation with the Russians if we walk away from our obligations under this treaty.

If we break the ABM Treaty, Russia will not ratify the START-II Treaty, a treaty that I should remind us all was negotiated by President Bush.

Russia then is likely to stop dismantling its nuclear weapons. No military planner in Russia will advocate further dismantling of nuclear missiles if a missile defense race begins. Breaking the ABM Treaty then risks a cold peace, a possible return to the cold war.

If START-II is ratified and implemented, and it would not be if the Spratt amendment is defeated, 5,000 warheads aimed at the United States would be dismantled.

I urge a ''yes'' vote on the Spratt amendment.

Mr. SPENCE. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. WELDON], chairman of the Subcommittee on Research and Development.

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, I cannot believe some of the debate here.

If this were a debate on the ABM Treaty or treaties themselves, perhaps we could bring out the four sanctions we waived against the Russians in violation of the missile control technology regime. Perhaps we would bring up the Krasnoyarsk radar violation which the Politburo deliberately ordered in terms of the ABM Treaty. Perhaps we would bring up the numerous accounts of deliberate proliferation activities by the Russians to other countries. But this is not a debate on any treaty.

This is a national defense bill. We have agreed to have a full debate on the ABM Treaty in a separate, freestanding bill. We have taken the extraordinary effort of making sure that our side did not offer an amendment to tilt the bill so that it in fact would attack the treaty.

But our colleagues on the other side—not all of them, because we have bipartisan opposition—but some of our colleagues on the other side want to tilt this treaty to the extreme of supporting and furthering the ABM Treaty beyond where it currently stands.

Even General Shalikashvili, in a memo to the administration earlier this year, made the point that our negotiations with the Russians were in danger of undermining our defense posture, and only when we threatened the nomination of Secretary Deutsch did the administration back off of that interpretation and that negotiation.

Mr. Chairman, this is not the time to be discussing the ABM treaty.

I will again enter at this point in the RECORD this letter, dated June 14, from General Mal O'Neill, the administration's point person on missile defense, and I would close with his statement:

> I can tell you that every activity under my control complies with the ABM Treaty and that we will not develop, test, or deploy systems that violate the treaty.

Mr. Chairman, we have that in writing from General O'Neill. That, more than anything else, speaks to the intent of this amendment. This is not about this bill violating the ABM Treaty, because even the administration's own leader says that is not the case.

This is about a political attempt to score some points for the Clinton administration and expanding the ABM Treaty, and that should be a separate debate at a separate time.

The letter referred to follows:

DEPARTMENT OF DEFENSE,
BALLISTIC MISSILE
DEFENSE ORGANIZATION,
Washington, DC, June 14, 1995.

Hon. CURT WELDON,
Chairman, Subcommittee on Military Research and Development, Committee on National Security, House of Representatives, Washington, DC.

DEAR SIR: There has recently been a great deal of debate concerning whether or not the programs planned by the Ballistic Missile Defense Organization for fiscal year 1996 are compliant with the Anti-Ballistic Missile (ABM) Treaty. I can tell you that every activity under my control complies with the ABM Treaty, and that we will not develop, test or deploy systems that violate the Treaty. I take my stewardship of the Nation's ballistic missile defense programs very seriously and strive to ensure that the program complies with all our legal and international obligations.

I want to assure you that every program in the acquisition process that raises Treaty issues is subjected to a stringent compliance review process managed by the Under Secretary of Defense for Acquisition & Technology (A&T). Additionally, tests, experiments, and programs that are sufficiently developed, but that are not yet in the acquisition process, are also scrutinized by the Under Secretary of Defense (A&T) Treaty Compliance Review Group to ensure that they do not violate Treaty obligations.

I hope this clarifies any ambiguity that may exist. I stand ready to answer any further questions you may have.

Sincerely,

MALCOLM R. O'NEILL,
Lieutenant General, USA,
Director.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. HUNTER], chairman of our Procurement Subcommittee.

Mr. HUNTER. Mr. Chairman, let me first say to my colleagues who have spoken about the reduction and the pending reduction in the Soviet arms arsenal, that was brought about by the Reagan and Bush administrations, which pushed forward with missile defense. So missile defense has not stifled arms reduction. It has produced arms reduction.

Second, the Russians are as worried as we are about the fact that we have this treaty between the two of us, and now you have dozens of missile makers around the world that never signed the treaty, and we both agreed to hold ourselves open, as open targets, for missile massacres on the basis that mutually assured destruction would deter war between Russia and the United States, but it says nothing about missile attacks by North Korea, by China, and by other adversaries.

My colleagues, it is very important that we do not hold our constituents hostage to an agreement between two countries when you have many, many adversaries that have the capability of using that opportunity to hit the United States.

Vote ''no'' on the Spratt amendment.

Mr. SPENCE. Mr. Chairman, to close out debate on our side, I yield the balance of our time to the gentleman from Louisiana [Mr. LIVINGSTON], the chairman of the Committee on Appropriations.

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

Mr. LIVINGSTON. Mr. Chairman, I rise in vigorous opposition to the Spratt amendment.

When we address the issue of the defense of our citizens against attack by some malevolent power, it matters not whether we speak of conventional, strategic, theater, national, or space based defense. What does matter is we are mandated by the Constitution to provide an adequate defense for our people. When it comes to protecting against incoming missiles, Mr. SPRATT and the Clinton administration accept the half-a-loaf theory and say, ''Yes we need a defense, but not that defense.''

I say you are wrong. To retain unbridled adherence to the cold war relic ABM Treaty, which was confected to restrain a one-time enemy no longer existent in the world, is to voluntarily reject certain options of defense against a grave and terrible threat of a brand new kind. It would leave the U.S. population virtually naked and defenseless against a nuclear, chemical or biological attack by way of incoming new technologies.

As Henry Kissinger has said, ''There is no virtue in being defenseless!''

Why in God's name would America wish to abide by the tenants of the ABM Treaty, when the leaders of such rogue and hostile powers as Iran, Iraq, North Korea, Libya, and Syria are not parties to it and would never dream of being bound by it?

Or when the Chinese are conducting nuclear tests and have recently developed a road-mobile ICBM which can hit California and Europe?

Or when the Russians and the North Koreans are selling missile technology to the highest bidder?

Or when Iran and even Brazil are buying up all the missiles they can get their hands on?

Why would we ever think of abiding by a document which limits our ability to respond to threats from any hostile power?

If the ABM Treaty did not exist today, do we really think any rationale person would stand up and propose to the American people that they invent a way not to defend themselves? Yet that is exactly what Mr. SPRATT and the Clinton administration would ask us to do with this amendment.

Mr. Chairman, I ask the Members to defeat the Spratt amendment and fulfill our responsibility to defend America.

The CHAIRMAN. All time has expired.

Mr. DELLUMS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my intention to yield to my distinguished colleague, the gentleman from South Carolina, in order to rebut a number of reports being made.

Mr. Chairman, I would like to point out to my colleagues and those who are observing this debate the gentleman from South Carolina [Mr. SPRATT] seeks to do a very simple thing. He said we want this bill to conform to the ABM Treaty.

The gentleman from Pennsylvania [Mr. WELDON], and I believe him, has said nothing in this bill is designed to violate the ABM Treaty; that is not our intention. Yet if you listen, as I have listened to the most recent speaker and who only reflected the remarks of a number of other speakers who walked into the well, who then specifically stated several different reasons why we should not comply with ABM. The point that I am making is very simple, that there is an incredible disconnect on this side of the aisle with one group saying, with one person saying, ''I do not want to violate,'' with a number of other Members saying, ''This is why we should violate.'' So there is tremendous contradiction here.

There is ambiguity here that is extraordinary. You do not have to be a PhD watching this debate to understand that. You do not have to be. It glares out at you.

So my point simply is, if indeed there is no desire on the part of my colleagues on this side of the aisle, and that is a genuine assertion, that you do not want to be in violation of the ABM Treaty, let the amendment process take care of itself on that matter down the road; then why not a simple commitment to a set of propositions that keep us within the framework of the ABM Treaty?

To do less than that is to fly in the face of the integrity of your own comments.

Mr. Chairman, I yield to the gentleman from South Carolina [Mr. SPRATT].

Mr. SPRATT. Mr. Chairman, in a debate like this we sometimes lose sight of the ball. This is my amendment.

The very first paragraph in it calls for deployment at the earliest practical date of a highly effective theater missile defense. If you listened to the debate, you would think we were opposed to that. I am not.

This bill pluses up ballistic missile defense of $3 billion requested by the administration to $3.8 billion. This amendment leaves the funding in place.

□ 1430

Second, my amendment says it is a policy of the United States to develop tests and deploy at the earliest practical dates a national missile defense system that complies with the ABM treaty, and there is the rub, that complies with the ABM treaty. What does that mean? It means, and we specify, 100 ground-based interceptors at the site now designated or at such other sites if it is allowed by amendment to the ABM treaty. It amends the language of this amendment so that we can make unmistakable what everyone has asserted here on the floor, it is not our intention to violate it, go beyond the ABM treaty. It says the ABM treaty means a treaty in effect as of this date or with such amendments adopted after that date.

It goes on to say nothing in this subtitle shall be interpreted to violate or to authorize a violation by the U.S. of the ABM treaty. Any provision that authorizes or requires the U.S. to deviate from the treaty is premised on the assumption that before any such action is taken amendments will be made to the treaty.

Why is this necessary, desirable? Again for reasons that are purely consistent with ballistic missile defense. We want to get rid of 5,000 warheads by the ratification of START II, and that will make ballistic missile defense of this country feasible.

Mr. DELLUMS. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. WELDON].

Mr. WELDON of Pennsylvania. Mr. Chairman, I thank the gentleman from California [Mr. DELLUMS] for yielding this time to me.

I would just say, as my colleague pointed out, that we have Members on this side who would like to abrogate the treaty. I have acknowledged that publicly, and I fought against offering that amendment on this bill.

Just as the Member would acknowledge that he has Members on his side who would like to take the ABM treaty and interpret it very narrowly as we saw happening to the point when General Shalikashvili earlier this year said, ''Whoa, your negotiations are threatening our defense; don't go any further,'' this is not the place for that to be.

Let me read again the letter from General O'Neil. He says everything in here complies with ABM, and he says additionally, and I quote, ''Tests, experiments, programs that are sufficiently developed, but not yet in the acquisition process, are also scrutinized and do not violate treaty obligations.''

I ask, ''What more can you want unless you have a hidden agenda?''

Mr. DELLUMS. Reclaiming my time, I thank the gentleman.

The gentleman made an assertion that our distinguished colleague and all of us in these chambers respect. The gentleman from South Carolina [Mr. SPRATT] has said on more than one occasion it is not the intent of this amendment to go beyond the ABM, but simply to comply——

Mr. WELDON of Pennsylvania. But it does.

Mr. DELLUMS. Now I would like to yield to the gentleman from South Carolina because his word, his credibility, and his integrity and his intelligence on this issue have been called into question. I would like the gentleman to have an opportunity to respond specifically to that assertion.

Mr. SPRATT. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to the gentleman from South Carolina.

Mr. SPRATT. Would the gentleman in the well explain to me what he meant when he said I wanted to liberalize the amendment when all the plain language of this calls for is compliance with the terms of the amendment as it may be amended and modified——

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield to me?

Mr. DELLUMS. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. This bill, according to General O'Neill of our administration, maintains there is no violation of the ABM Treaty.

Mr. DELLUMS. That is not the question.

The CHAIRMAN. The time of the gentleman from California [Mr. DELLUMS] has expired.

Mr. SPENCE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have said it before. Others have said it. This amendment is a red herring. It clouds the issue. It is not in the best interests of this country, and those who would vote in support of this amendment are not laboring in the best interests of this country if they support it.

Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. WELDON].

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, let me again clarify what we are doing here.

During the process of the markup of this bill we were very clear as to not have this become a showdown on the ABM treaty. We took the steps to prevent an amendment from being offered that would have abrogated the treaty.

What the gentleman from South Carolina wants to do, because already General O'Neill certified on the record in this letter, which I will provide to every Member as they walk in the door, that what we are doing here does not violate the treaty; what he wants to do is to go a step beyond that and say, ''Now wait a minute. Our defense leaders in the Pentagon can't even tell us what we may be able to do that would violate the ABM treaty.''

This is not a bill about the ABM treaty. This is a bill about how we defend the American people. We want our chief of staff, we want the Joint Chiefs, to come back and tell us how we best defend the American people. Maybe they will say we need five sites for national missile systems, maybe they will say we should use Navy effort here. But the gentleman from South Carolina does not want to have that option. He does not want to even give us the chance to look at and allow—does not even want to give us the chance to explore those options that can better protect and defend the American people.

Mr. Chairman, this amendment is very simple. It would take and put a political spin on this bill that is not necessary, and I will cite for the record again the representative of the Clinton administration on missile defense is Gen. Malcolm O'Neill. On June 14, and if the gentleman from South Carolina does not have a copy of the letter, I will provide one to him, General O'Neill states in this letter to us as Members of the Congress that in no way does this bill in any way, shape or form violate the ABM treaty, any portion of the ABM treaty, or any of the testing and evaluation violate the ABM treaty. This amendment is not necessary according to Gen. Malcolm O'Neill's letter to us which states on the record that we are in full compliance.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. My colleagues, the ABM treaty is a promise, a treaty promise, that we will hold our citizens helpless and defenseless to a missile attack. In that sense it is an extraordinary treaty. There is no treaty that says we will hold our citizens defenseless to a tank attack, to a naval attack, to an aircraft attack, but we have a treaty that says we will hold our citizens defenseless to a missile attack.

Now the gentleman from South Carolina [Mr. SPRATT] wants to elevate the ABM treaty to a Holy Grail, to an endorsement that is going to send a message, and the problem is it is going to send a message to one country, and there are now dozens of countries which are making missiles, unlike the situation that existed when we put the ABM treaty into its initial phase.

So, we have a bill, and I would just say to the gentleman from South Carolina: If you were worried about the ABM treaty, you should have written General O'Neill. You should have said: Look at this bill, and, if you had any problems at all with the bill, if you had a response from General O'Neill saying this violates the ABM treaty, you could have carted it to Mr. WELDON, and he would have taken care of it.

This bill does not violate the ABM treaty.

Mr. SPENCE. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentleman from South Carolina is recognized for 1 minute.

Mr. SPENCE. Mr. Chairman, I want to say this: People, of course, in this world can look at the same set of facts and arrive at a different conclusion. Our Maker has allowed us to do that. I have said it on other occasions, but the American people right now are defenseless against foreign powers firing missiles at us, defenseless, and our country is responsible for us being defenseless against these missiles because of just what we have heard here from the other side today.

Now, I will say this to my colleagues and everybody else that will want to listen to me, If and when, and I pray to God we don't ever have to face this critical decision of a missile coming in from somewhere and we have no defense against it, the people who are trying to delay us in our effort to provide this defense will be held accountable to the American people and their own conscience.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from South Carolina [Mr. SPRATT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SPRATT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 185, noes 242, not voting 8, as follows:

[Roll No. 373]

AYES—185

Abercrombie	DeFazio	Greenwood
Ackerman	DeLauro	Gutierrez
Baldacci	Dellums	Hall (OH)
Barrett (WI)	Deutsch	Hamilton
Becerra	Dicks	Harman
Beilenson	Dingell	Hastings (FL)
Bentsen	Dixon	Hefner
Berman	Doggett	Hilliard
Bevill	Dooley	Hinchey
Bishop	Doyle	Holden
Bonior	Durbin	Hoyer
Borski	Edwards	Jackson-Lee
Boucher	Engel	Jacobs
Brewster	Eshoo	Jefferson
Browder	Evans	Johnson (SD)
Brown (CA)	Farr	Johnson, E. B.
Brown (FL)	Fattah	Johnston
Brown (OH)	Fazio	Kanjorski
Bryant (TX)	Fields (LA)	Kaptur
Cardin	Filner	Kennedy (MA)
Clay	Flake	Kennedy (RI)
Clayton	Foglietta	Kennelly
Clement	Ford	Kildee
Clyburn	Frank (MA)	Klink
Coleman	Frost	Lantos
Collins (IL)	Furse	Laughlin
Collins (MI)	Gejdenson	Leach
Conyers	Gephardt	Levin
Costello	Gibbons	Lewis (GA)
Coyne	Gonzalez	Lincoln
Cramer	Goodling	Lofgren
Danner	Gordon	Lowey
de la Garza	Green	Luther

Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Moran
Morella
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pomeroy
Porter
Poshard
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Skelton
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn

NOES—242

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Goodlatte
Goss
Graham
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Murtha
Myers
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pickett
Pombo
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Traficant
Tucker
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—8

Fields (TX)
Kleczka
LaFalce
Myrick
Slaughter
Stockman
Wilson
Yates

□ 1458

Mr. GOSS changed his vote from ''aye'' to ''no.''

Mr. LAUGHLIN changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. SLAUGHTER. Mr. Chairman, I was unable to be present for rollcall vote No. 373 earlier today. Had I been present, I would have voted ''aye.''

□ 1500

REQUEST TO ALTER ORDER OF CONSIDERATION OF AMENDMENTS

Mr. SPENCE. Mr. Chairman, pursuant to section 5(c) of House Resolution 164, I request that during the consideration of H.R. 1530, amendments numbered 30, 1, 3, 33, and 37 printed in part 2 of House Report 104–136 be considered immediately following consideration of the amendments printed in subsection E of part 1 of that report and that the aforementioned amendments printed in part 2 of the report be considered in the order recited above.

The CHAIRMAN. The gentleman's request is noted.

It is now in order to consider amendment No. 2, as modified, printed in subpart D of part 1 in House Report 104–136.

AMENDMENT, AS MODIFIED, OFFERED BY MR. DEFAZIO

Mr. DEFAZIO. Mr. Chairman, I offer an amendment, as modified.

The CHAIRMAN. The Clerk will designate the amendment.

Amendment, as modified, offered by Mr. DEFAZIO: Page 38, line 18, insert ''(a) IN GENERAL.—'' before ''Of the amounts''.

Page 38, after line 22, insert the following:

(b) REDUCTION.—The amounts provided in subsection (a) and in section 201(4) are each hereby reduced by $628,000,000.

(c) NATIONAL MISSILE DEFENSE AMOUNT.—Of the amount provided in subsection (a) (as reduced by subsection (b)), $371,000,000 is for the National Missile Defense program.

At the end of title IV (page 161, after line 3), insert the following new section:

SEC. 433. ADDITIONAL MILITARY PERSONNEL AUTHORIZATION.

There is hereby authorized to be appropriated to the Department of Defense for fiscal year 1996 for military personnel the sum of $628,000,000. Of the amount appropriated pursuant to such authorization—

(1) $150,000,000 (or the full amount appropriated, whichever is less) shall be for increased payments for the Variable Housing Allowance program under section 403a of title 37, United States Code, by reason of the amendments made by section 604; and

(2) any remaining amount shall be allocated, in such manner as the Secretary of Defense prescribes, for payments for the Variable Housing Allowance, the Basic Allowance for Quarters, and the Basic Allowance for Subsistence in such a manner as to minimize the need for enlisted personnel to apply for food stamps.

Page 280, beginning on line 19, strike out ''beginning after June 30, 1996'' and inserting in lieu thereof ''after September 1995''.

The CHAIRMAN. Under the rule, the gentleman from Oregon [Mr. DEFAZIO] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

Does the gentleman from South Carolina [Mr. SPENCE] seek the time in opposition?

Mr. SPENCE. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from South Carolina [Mr. SPENCE] will be recognized for 10 minutes.

The Chair recognizes the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, there has been a lot of arcane debate in the last hour and a half over BMD and TMD and compliance with treaties.

Let us bring the debate back down to Earth for a few minutes. Let us bring the debate back to Earth for a few minutes here and confront some bitter realities.

Yesterday during the debate on the rule, the esteemed gentleman from New York, Mr. SOLOMON, said how it used to be a scandal, referred to the bad old days of equipment shortages and days even when members of the military were forced to be on food stamps. Well, unfortunately we have not banished those bad old days. There are an estimated 8,000 to 15,000 families, no one really knows, currently receiving food stamps who are active duty, full-time members of the military.

Now, the committee recognized this was a problem, but the committee only put up one-quarter of the money that was estimated that was needed to take care of this problem. And what I am saying is, we need to get our priorities straight. Do we need a further increase in ballistic missile defense beyond that asked for by the president? The president asked for a 1-year increase, inflation adjusted, of more than 1 percent in ballistic missile defense and fully funded all the requests of the Pentagon for theater missile defense. The committee has gone in and micromanaged the theater missile defense, added more money to ballistic missile defense. And yet after they add $628 million there, they can only find one-quarter of the funds they need to get our young men and women and their families, people serving today full time, enlisted in the military, off of food stamps. That is a scandal.

Let me read briefly from the National Military Family Association, a letter they sent to me.

''The system has become unfair to all military families but to those at the lower end of the income scale it can be devastating. The National Military Family Association is fully aware that the costs of creating a VHA minimum floor,'' that is a housing allowance, ''are not inconsequential. What price, however, do we put on a family's safety? How can we ask young service members to deploy at a moment's notice when they know their family will be left to fend for themselves in a rundown trailer park with a history of break-ins and robberies?''

The Pentagon itself, officials are deeply troubled by an increasing number of military families turning to food stamps.

Mr. SPENCE. Mr. Chairman, I yield myself such time as I may consume.

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

Mr. SPENCE. Mr. Chairman, I rise in strong opposition to the Dellums-DeFazio amendment to cut funding for ballistic missile defense programs.

Mr. Chairman, the proliferation of ballistic missiles, brought home so vividly by Iraq's use of Scud missiles during Operation Desert Storm, warrants an aggressive response to this growing threat. Accordingly, H.R. 1530 adds funds to the most promising theater missile defense [TMD] systems, including for example, the Navy's lower and upper tier systems and the Army's theater high altitude area defense system.

This amendment would cut funds for these programs and delay the date by which advanced theater missile defenses for our troops could be deployed. I don't believe that we should delay adequately defending our troops any longer.

Likewise, the amendment would dramatically cut funding for national missile defense research and development. The practical effect of this would be to ensure that Americans here at home remain unprotected against missile attack for the indefinite future.

Given the on-going strategic modernization efforts of Russia and China, and the likelihood that ''rogue regimes'' will acquire or develop a capability to attack the United States homeland, I oppose this amemdment.

Therefore, I strongly urge a ''no'' vote on the Dellums-DeFazio amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. DEFAZIO. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, during the debate over the budget resolution, Member after Member came to the House floor to talk about the tough choices we would need to make in order to balance the budget. Now, as I listened to the debate here this afternoon, I wondered just what sort of tough choices the advocates of increased star wars spending had in mind. Did they mean sacrificing SSI for the elderly for SDI for a pork barrel in the sky for the defense contractors in our country? Is that the tough decision?

Did they mean the elderly and those struggling to make ends meet should tighten their belts so that the Government should spend billions of additional dollars on a discredited defense program? Is that what they really mean by tough choices?

Or did they mean sacrificing students loans and cutting back student loans which is what the Republican budget does for the sake of star wars? Is that the tough choice they made, swapping educational grants for working-class kids to go to college so that we can have a star-wars-in-the-sky project that does not work? Or do they mean the tough choice of cutting back hot lunch programs for kids so that we can finance a program like this that has no mission, does not work, has never been put in place and we know is only a drain on our economy?

Let me tell you something, a lot of things have changed in the last 15 years, the music, the fashion in this country, but one thing has not changed, SDI still stands for ''same dumb idea'' that it did in 1983, when it was introduced. And you are going to change it now to BMD, ballistic missile defense, but BMD really stands for ''big money drain,'' out of programs for the elderly, out of programs for the kids in this country.

Let us just keep a few simple facts in mind. The cold war is over. The Russians are having a hard time controlling the Chechens, much less attacking the United States or launching a brand new missile program. It is time for us to support the DeFazio-Dellums amendment and its proper prioritization of money in this country.

Mr. SPENCE. Mr. Chairman, I yield 1½ minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Chairman, it seems that some Members in this body are still living in the period of 15 years ago, and they are using the SDR rhetoric, that is the ''same dumb rhetoric.''

The fact is that times have changed. We can no longer depend on mutually assured destruction to prevent a holocaust of our citizenry if a nuclear missile lands in a city in the United States of America.

When we had one enemy or two enemies, yes, mutually assured destruction worked. Today missile proliferation and nuclear proliferation means that in a few years we could face the scenario where a missile would be launched by an Iran or a Libya or some other country, maybe Afghanistan. Some people in Afghanistan will get their hands on a surplus Soviet missile and we could do nothing but sit back and listen to the same dumb rhetoric about hot school lunches and tell our people, well, I am sorry, we gave in to people who are more concerned about school lunches at the moment than we were about protecting our country against a holocaust that would cost millions of American lives.

SDI is not what it was 15 years ago. Now, for just a few billion dollars, we could actually implement a system that will protect us with the *Aegis* cruiser system from a missile attack from Iran. We should do that. That is what we should do. It is not time to defend SDI; it is time to implement it.

Mr. DEFAZIO. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, in response to the previous speaker, it certainly is not what it was 15 years ago. We have spent $36 billion and the result is one faked missile test over the Pacific. They did not even shoot down that one incoming warhead. They had to blow it up with detonators that were on board. No, it is not what is was 15 years ago. It has wasted $36 billion and now they want to waste more.

□ 1515

Mr. SPENCE. Mr. Chairman, I yield 1½ minutes to the gentleman from Indiana [Mr. HOSTETTLER].

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

Mr. HOSTETTLER. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise today to voice my opposition to the Dellums-DeFazio amendment to this defense bill. The Constitution makes clear that it is the responsibility of Congress to provide for the defense of this Nation. Indeed, 6 of the 18 powers granted to Congress by article I, section 8, deal with the Congress' role in providing for national security. This, my friends, is the first and most important role of government. To me then, the question concerning ballistic missile defenses must be, ''Are such defenses necessary for the protection of our people?'' The hearings I have participated in the past 5 months allow me to state, with no reservation, that the answer is yes.

According to the March 9, 1995, testimony of Gen. Malcolm O'Neill, the director of the Ballistic Missile Defense Organization, more than 25 countries possess or may be developing nuclear, chemical, or biological weapons. Today, more than 15 nations have ballistic missiles. By the year 2000, perhaps 20 nations will have them. Given our inability to guarantee that these missiles and weapons of mass destruction will be in safe, sane, hands, we have no choice but to deploy defenses against them.

And the question that ultimately arises is this—''But Congressman, what does it cost?'' My answer is, what is it worth to protect us from global blackmail, terrorism, or a missile accident? What can we say to the next generation when they are held hostage by a foreign nation who claims to have a missile aimed at New York City or Evansville, IN? How can we live with

ourselves if Oakland, CA, or Sumter, SC, are blown away by the accidental launch of an ICBM?

We have no choice. Our consciences and our constitutional duty demand that we defend America from missile threats as soon as is practical. Folks, the technology is there, it is up to us to use it. I urge the defeat of the Dellums amendment.

Mr. DEFAZIO. Mr. Chairman, I yield myself 30 seconds.

Remember, Mr. Chairman, the Pentagon asked for $2.9 billion. They asked for full funding plus an increase of 1 percent over inflation for BMD. They got it. They have gotten an increase from $1.65 billion to $2.18 billion in theater missile defense and a 65-percent increase for other TMD programs. They have gotten all they ask for and more. Now the committee wants to add on top of that.

This is not needed, according to the Pentagon. We say it is needed to feed the troops and their families. We can prove that by the 15,000 families receiving food stamps. That is a scandal. That is a readiness problem. We should be dealing with that and get our priorities straight.

Mr. SPENCE. Mr. Chairman, I yield 1½ minutes to the gentleman from New Jersey [Mr. SAXTON], a member of our committee.

Mr. SAXTON. Mr. Chairman, I rise in opposition to the Dellums amendment. I would say to the gentleman from Oregon, Mr. Chairman, that this is a time when we have to make tough choices. I would say that we are here in part, at least, because we have collectively cut the defense budget every year for the last 9 years.

I appreciate and understand the gentleman's willingness to want to build houses for military families with this money. It is important. However, those who would cut the funding of the ballistic missile defense see the world a far safer, friendlier place than the events in Korea, Iraq, China, or Russia could ever justify.

Currently, 12 developing countries have Scud-class or better missile systems. North Korea has successfully flight-tested a ballistic missile with a range of 620 miles, and recent reports have cited the Koreans as possessing a missile with a possible range of as much as 5,600 miles. I would once again point out that on January 18 of this year, the acting director of the Central Intelligence Agency, Adm. William Studeman, said these words. He said that, ''The missiles will be able to reach us,'' in his opinion, ''toward the end of this decade or the beginning of the next.'' This is not a choice that we like to make, this is a choice that we must make. This is an amendment which must be defeated in order to propel us in the correct direction.

Mr. DEFAZIO. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, how many times is this Congress going to substitute its judgment for the judgment of the professionals at the Pentagon? Yes, there are problems at the Pentagon, but one problem they do not have at the Pentagon is not asking for enough money to accomplish the needed goals to defend this country.

We have had scandal after scandal where we have overexpended funds, where we have had cost overruns. This is a case where we have fully funded the request of the Pentagon in the President's budget, $2.9 billion. That is an increase in ballistic missile defense, and we are up to $2.18 billion for theater missile defense. That is up by, that is almost $600 million in a mere 2 fiscal years. The funding is more than adequate.

What we are doing here, Mr. Chairman, is adding money into the budget the Pentagon did not ask for, and micromanaging the theater missile defense program, one of the most successful programs in the Pentagon. Do not mess with it.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentleman from Maine [Mr. LONGLEY].

Mr. LONGLEY. Mr. Chairman, it is amazing to listen to the rhetoric. It has not changed in 20 years, and refuses to acknowledge the tremendous progress that we have made in the area of antimissile defenses.

I would call the attention of this chamber to the article recently published by former Assistant Secretary of Defense Frank Gaffney, and specifically where he points to the progress that we have made with the Aegis Destroyer missile program. In fact, he suggests that many of our missile programs have resulted in costing more than they need to, and being deliberately made less effective than they could be.

We have spent nearly $50 billion in an infrastructure that can be rapidly adapted to kill ballistic missiles; namely, the Aegis anti-air missile defense system. We have scores of cruisers, thousands of vertical launching tubes, tremendously sophisticated radars, all of which are capable of potentially knocking down incoming ballistic missiles, and these ships could be equipped as early as 2 and 3 years ahead of time.

I think it is imperative that we continue to make the progress and build on the progress that we have made, because we are closer than ever to being able to implement an effective, workable, antimissile defense program, and the Aegis Destroyer is at the heart of it.

Mr. DEFAZIO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are hearing a lot about the increase of $600 million over what the Pentagon asked for, but I do not hear the other side responding to the fact that they did not fund the problem we have with 15,000 GI families on food stamps, living below the poverty level, living in unsafe conditions. They are not addressing that problem.

The committee dealt with it in a cursory manner. They recognized the problem. They said it should be dealt with. Then they said they could only afford 25 percent of the funds. With this amendment, we could afford more than 100 percent of the funds to bring our GI's and their families up above the poverty level.

It is a scandal, when the greatest Nation on Earth has members of its military and their families dependent upon food stamps, and living in unsafe and unwholesome conditions, and then we are going to ask those young men and women to go overseas and forget about the suffering of their families back home, forget about the food stamps, forget about the crummy place they are living.

Mr. SPENCE. Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Chairman, let me respond to my friend and first say that the Republican budget, and that is this defense budget, adds money to housing, so I hope the gentleman is dissatisfied with President Clinton's budget, because that is the budget that we increased with respect to housing.

Second, Mr. Chairman, Israel has housing shortages, but Israel devotes far more money to missile defense per capita than the United States does. That is because they live in a real world in which they have been threatened by missiles, they have been impacted by incoming missiles. It is that reality that is pressing us and compelling us to put forth the mark that we have. Missile defense is very important to our people in uniform.

Mr. DEFAZIO. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, they still have not responded to the fact that yesterday the esteemed chairman of the Committee on Rules stood on the floor and said it would be a scandal to go back to the days when Members of the military and their families were on food stamps. Those days never went away. They are still here. We cannot ignore that reality.

Yes, I have been critical of the President on a number of things. Yes, his budget was not adequate to lift those families above the poverty level. Does that mean we should stay in the past? The committee only put up 25 percent of the money it estimates, which I believe is a lowball number, is necessary to get those families off food stamps. Which one-quarter of those people are we going to take off food stamps and which three-quarters are we going to leave on food stamps?

Mr. SPENCE. Mr. Chairman, I would ask, we have the right to close?

The CHAIRMAN. The gentleman from South Carolina is correct.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. WELDON].

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, first of all, in terms of why

we put 25 percent of the funding in, if the gentleman would have checked with DOD, it is because it is going to take them the first three-quarters of the next fiscal year to come up with the guidelines to implement the program. Why throw money when it cannot even be spent wisely, according to the gentleman's own administration's DOD leadership? Look at the facts.

Where was the gentleman when we fought 2 years ago to put a pay raise in for the military that the gentleman's President and his side did not want? We put it in at the committee level because we care about the troops.

In terms of BMD requests, it was General O'Neill who works at the Pentagon who said he would like to have $1.2 billion. We gave him $800 million, so it was not some number we came up with, it was the gentleman's administration's leader on missile defense that we sought to assist and help. Let us get our facts straight in this debate. Oppose this ridiculous amendment.

Mr. DeFAZIO. Mr. Chairman, it is sad the gentleman thinks it is ridiculous that there are 15,000 G.I. families today on food stamps, and tens of thousands of others living in dangerous and unsafe conditions in proximity to our military bases, while at the same time we are asking them to deploy overseas into dangerous situations, and forget about their families back home. I do not think that that is a ridiculous amendment.

For the gentleman to say it would take 9 months to figure out a program to help lift those 15,000 families and tens of thousands of others above the poverty level and the near poverty level, I believe that the Pentagon that could deploy a rescue mission within 4 hours to Bosnia can figure out a way to compensate our GI's, men and women serving today, to compensate them adequately, so their families are lifted above the poverty level, and they are no longer eligible and dependent upon food stamps and living in substandard conditions. That cannot take 9 months, Mr. Chairman. I do not believe that could take 9 months. It is a specious argument.

The priorities on the Republican side were to throw more money at ballistic missile defense, despite the $36 billion spent so far, which has yielded nothing except for one faked successful test over the Pacific Ocean, and to ignore the needs of those tens of thousands of GI's and their families. That is not a proper set of priorities.

What is it that is the military might of America, the enlisted men and women, or pie-in-the-sky? I say food on their tables and adequate housing for their families come before pie-in-the-sky.

The CHAIRMAN. The time of the gentleman from Oregon [Mr. DEFAZIO] has expired.

Mr. DELLUMS. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. DELLUMS. Mr. Chairman, I take this opportunity to address my colleagues in the context of this amendment. I would preface my remarks by saying that I take some issue with my colleague who characterized this amendment as a ridiculous amendment.

I am prepared to intellectually and politically address any Member of this Congress on the wide range of issues with as much dignity and as much respect that I can accord another human being. If Members disagree with the amendment, that is one thing, but to characterize it, it seems to me, does not speak to the highest and the best in any of us here.

Having said that, Mr. Chairman, let us come back to the reality of what we are talking about. The American people need to know that over the past several years we have spent over $35 billion, billion, of their taxpayers' dollars. The amendment before us simply says this. The administration requested, the Pentagon requested, $2.9 billion.

□ 1530

This amendment funds the administration request of $2.9 billion, roughly $2.5 billion for theater missile defense, so we fund theater missile defense at the level the military asked.

Then there is $400 million for national missile defense funded in this amendment, what the administration asked.

What my colleagues on the other side of the aisle in the context of the markup did was to add $628 million to that. So the issue is not that one side wants to do something that the other side did not want to do. The issue is, do you want to do it at that level?

So now we are at $3.5 plus billion. What the gentleman and this gentleman are attempting to do in this amendment is not to cut theater missile defense whatever, but to take the $628 million that was added over and above the request.

What do we want to do with this? I am having some difficulty understanding the debate here. We say that missile defense is important. We give the administration request.

We then say that our troops are important, the quality of their lives, their dignity as people is important. If it is, then you should embrace this amendment, because what we do in this amendment is take that plus-up of $628 million and we take our young people off food stamps.

My colleagues, you know why American military people are serving this country and they are on food stamps? Because the housing that is available to them off base is too expensive for junior enlisted people, so they end up on food stamps. So not only are they serving our country but they have to pay out of their pocket to serve our country. They are on food stamps, the very same young people that we walk into the well of the House in support of day in and day out.

Yet when it comes to their human dignity, when it comes to the quality of their lives, it is more important, it seems to me, to put $628 million into a technology that we have already spent $35 billion for, and nearly $3 billion per year for the last few years for this function. It is disingenuous to communicate that we are not doing that, but we are simply taking this $628 million, $150 million of it for veritable housing allowances.

You ought to be for that proposition. You pat these young people on the back when you visit them. Put the rest of the money into getting these young people off of food stamps. You go out there and visit them. You talk about how wonderful they are. You give them the old salute. You pat them on the back. You tell them how great they are.

But when it comes down to putting the rubber to the road, Mr. Chairman, it is more important to put something in space than it is to deal with these young people suffering on the ground, on food stamps, do not have adequate housing.

If your question to me is, am I pleased that you put a few more dollars in housing, you are right. My vote was with you, but that is not enough. You still have got thousands of young families here on food stamps, thousands of kids who cannot afford to live off base, but they are wearing the uniform, and we keep patting them on the back. We trot them out there in harm's way.

This is quality of life. Put your money where your mouth is. You keep talking about quality of life. This amendment is for the troops. Get out of space and get back here on the ground where our kids are living and dying.

Mr. SPENCE. Mr. Chairman, how much time do I have left?

The CHAIRMAN. The gentleman has 1 minute remaining.

Mr. SPENCE. Mr. Chairman, I also have the right to strike the last word?

The CHAIRMAN. That is correct.

Mr. SPENCE. But I hesitate to do that. Unless the gentleman would like some more time, I will yield to him.

Mr. DELLUMS. I appreciate my colleague's generosity. I have made my statement, and I cannot amplify further. I thank the gentleman.

Mr. SPENCE. Therefore, Mr. Chairman, I will not ask for my additional 5 minutes, but I would like to close in the 1 minute I have.

The CHAIRMAN. The gentleman from South Carolina [Mr. SPENCE] is recognized for 1 minute.

Mr. SPENCE. Mr. Chairman, sometimes I think we go far afield and miss the point of just how serious this business of missile defense is. You do not have to be a superpower in this new world that we are living in to wage the horrors of mass destruction warfare on the rest of the world.

Indeed, a Third World country or a rouge nation can in a low-technology, inexpensive way produce weapons of

mass destruction, biological and chemical warfare weapons. Witness Oklahoma City and the subways of Tokyo.

These warheads can be affixed to cruise missiles with the proliferation of cruise missiles in the world today. They can be put on merchant ships, on airplanes, on submarines, and hit anywhere in this world. It is not just theater missiles that we are worried about anymore, because they can, in this way, reach any place in the world and bring the horrors of warfare to everyone. We are trying to defend against this threat in this bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon [Mr. DEFAZIO].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. DEFAZIO. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 178, noes 250, not voting 6, as follows:

[Roll No. 374]

AYES—178

Abercrombie
Ackerman
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clinger
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Coyne
Danner
DeFazio
DeLauro
Dellums
Deutsch
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
Klug
Lantos
Latham
Leach
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Montgomery
Moran
Morella
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Parker
Pastor
Payne (NJ)
Pelosi
Peterson (MN)
Pomeroy
Poshard
Rahall
Ramstad
Rangel
Reed
Reynolds
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Stark
Stenholm
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Volkmer
Ward
Waters
Watt (NC)
Waxman
Whitfield
Williams
Wise
Woolsey
Wyden
Wynn

NOES—250

Allard
Andrews
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dicks
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martinez
Martini
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Moorhead
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Paxon
Payne (VA)
Peterson (FL)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Regula
Richardson
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Visclosky
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—6

Durbin
Fields (TX)
Kleczka
LaFalce
Wilson
Yates

□ 1553

Mr. GUTKNECHT changed his vote from ''aye'' to ''no.''

Mr. HALL of Ohio and Mr. LEACH changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment number 1 printed in subpart E of part 1 of the report.

AMENDMENT OFFERED BY MR. SHAYS

Mr. SHAYS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SHAYS:

At the end of title XII (page 409, after line 18), insert the following new section:

SEC. 1228. REDUCTION OF UNITED STATES MILITARY FORCES IN EUROPE

(a) END STRENGTH REDUCTIONS FOR MILITARY PERSONNEL IN EUROPE.—Notwithstanding section 1002(c)(1) of the National Defense Authorization Act, 1985 (22 U.S.C. 1928 note), but subject to subsection (d), for each of fiscal years 1996, 1997, 1998, and 1999, the Secretary of Defense shall reduce the end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of the North Atlantic Treaty Organization (NATO) in accordance with subsection (b).

(b) REDUCTION FORMULA.—

(1) APPLICATION OF FORMULA.—For each percentage point by which, as of the end of a fiscal year, the allied contribution level determined under paragraph (2) is less than the allied contribution goal specified in subsection (c), the Secretary of Defense shall reduce the end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO by 1,000 for the next fiscal year. The reduction shall be made from the end strength level in effect, pursuant to section 1002(c)(1) of the National Defense Authorization Act, 1985 (22 U.S.C. 1928 note), and subsection (a) of this section (if applicable), for the fiscal year in which the allied contribution level is less than the goal specified in subsection (c).

(2) DETERMINATION OF ALLIED CONTRIBUTION LEVEL.—To determine the allied contribution level with respect to a fiscal year, the Secretary of Defense shall calculate the aggregate amount of nonpersonnel costs for United States military installations in European member nations of NATO that are assumed during that fiscal year by such nations, except that the Secretary may consider only those cash and in-kind contributions by such nations that replace expenditures that would otherwise be made by the Secretary using funds appropriated or otherwise made available in defense appropriations Acts.

(c) ANNUAL ALLIED CONTRIBUTION GOALS.—

(1) GOALS.—In continuing efforts to enter into revised host-nation agreements as described in the provisions of law specified in paragraph (2), the President is urged to seek to have European member nations of NATO assume an increased share of the nonpersonnel costs of United States military installations in those nations in accordance with the following timetable:

(A) By September 30, 1996, 18.75 percent of such costs should be assumed by those nations.

(B) By September 30, 1997, 37.5 percent of such costs should be assumed by those nations.

(C) By September 30, 1998, 56.25 percent of such costs should be assumed by those nations.

(D) By September 30, 1999, 75 percent of such costs should be assumed by those nations.

(2) SPECIFIED LAWS.—The provisions of law referred to in paragraph (1) are—

(A) section 1301(e) of National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2545);

(B) section 1401(c) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1824); and

(C) section 1304 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2890),

(d) EXCEPTIONS.—

(1) MINIMUM END STRENGTH AUTHORITY.—Notwithstanding reductions required pursuant to subsection (a), the Secretary of Defense may maintain an end strength of at least 25,000 members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO.

(2) WAIVER AUTHORITY.—The President may waive operation of this section if the President declares an emergency. The President shall immediately inform Congress of any such waiver and the reasons for the waiver.

(e) ALLOCATION OF FORCE REDUCTIONS.—To the extent that there is a reduction in end strength level for any of the Armed Forces in European member nations of NATO in a fiscal year pursuant to subsection (a)—

(1) half of the reduction shall be used to make a corresponding reduction in the authorized end strength level for active duty personnel for such Armed Forces for that fiscal year; and

(2) half of the reduction shall be used to make a corresponding increase in permanent assignments or deployment of forces in the United States or other nations (other than European member nations of NATO) for each such Armed Force for that fiscal year, as determined by the Secretary of Defense.

(f) NONPERSONNEL COSTS DEFINED.—For purposes of this section, the term ''nonpersonnel costs'', with respect to United States military installations in European member nations of NATO, means costs for those installation other than costs paid from military personnel accounts.

The CHAIRMAN. Pursuant to the rule, the gentleman from Connecticut [Mr. SHAYS] and a Member opposed will each be recognized for 20 minutes.

The gentleman from South Carolina [Mr. SPENCE] is opposed to the amendment and will be recognized to control the 20 minutes in opposition.

The Chair recognizes the gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Chairman, I yield 10 minutes of my time to the gentleman from Massachusetts [Mr. FRANK] and I ask unanimous consent that he be permitted to control that time.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. SHAYS. Mr. Chairman, I yield myself 1 minute to explain the amendment.

Mr. Chairman, this amendment passed last year, and on behalf of the gentleman from Massachusetts [Mr. FRANK], the gentleman from Michigan [Mr. UPTON], the gentlewoman from Oregon [Ms. FURSE], and the gentleman from New Jersey [Mr. MARTINI], we offer this amendment.

It is the burdensharing amendment requiring that Europe contribute 75 percent of the cost of our troops by paying 75 percent of the nonsalaried cost of our troops in Europe.

The amendment would ultimately save $9.5 billion in 5 years, if Europeans pay 75 percent, and it would have a $4 billion savings if they choose to not and we bring some of our troops home.

Mr. Chairman, this amendment would require an increase of 18 percent more each year to the alternate 75 percent by the year September 30th, 1999.

Mr. Chairman, the bottom line to this amendment is that we are asking the Europeans to do what we asked the Koreans and the Japanese to do, and that is to help pay for the cost of our troops overseas by paying 75 percent of the nonsalaried cost.

Mr. SPENCE. Mr. Chairman, I yield myself such time as I might consume.

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

Mr. SPENCE. Mr. Chairman, I rise in opposition to the Shays amendment linking burden sharing to the forward deployment of U.S. forces in Europe.

This amendment would appear to make good fiscal sense and to be in the interest of the taxpayer, but that is not the case. In truth, its passage would prove penny-wise but, pound-foolish. The interests and concerns of our European allies are but a small element of a greater issue of responsibility-sharing that we consider here today. As we move to pass this defense authorization bill, we are obligated to re-evaluate America's national defense needs, but we must avoid the isolationist temptation to over-simplify our important role in Europe, and in the world. The United States is a global superpower whose well-being is tightly linked to international peace and stability. It is in our primary interest to preserve these conditions, as we have done in Europe with NATO for over 45 years. To do so, we must maintain a forward presence to deter and, when necessary, to quickly defeat aggression that challenges our interests. A decision to link American military presence in Europe to our allies' willingness or ability to pay ignores this basic fact.

Despite the end of the cold war, no one can argue with certainty that the threat from the former Soviet Union is gone. Russia must still be regarded as a potential threat to American interests in Europe, and elsewhere. Amidst a period of transition, other potential threats to U.S. interests are likely to emerge in Europe. Ethnic or civil conflicts will continue, as in the former Yugoslavia. Unless defused or contained early on, they can escalate, spilling over into areas of direct interest to the people of the United States.

Threats and challenges to American interests can emerge suddenly and unexpectedly. Certainly, the Persian Gulf war taught us and our adversaries that the United States won't likely have the luxury of time of prepare for such conflicts in the future. This requires us to maintain a forward-deployed defense posture.

The Shays amendment to link the presence of U.S. forward-deployed forces to host nation support, is unsound and dangerous during this period of uncertainty. While U.S. armed forces in Europe commonly serve mutual interests of our friends and allies, they are there to, first and foremost, defend the vital national security interests of this country and the American people.

While I support U.S. forces being stationed in Europe as established by this body last year, I also support continued negotiations to increase host nation support. However, I feel that legislating diplomacy as proposed by the Shays amendment is bad policy and not in the best national security interest of this Nation.

I urge my colleagues to vote no on the Shays-Frank burdensharing amendment.

□ 1600

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

First, I would note every negative thing you will hear about burdensharing with Europe today, you heard from exactly the same institutional leaders against burdensharing with Japan 5 years ago. The House overrode that, insisted on burdensharing with Japan, and we are several billion dollars less poor and no less safe.

Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding me this time.

I would remind the Members of the House that it has now been 50 years since World War II and yet we are still spending billion of dollars subsidizing the defense of Europe.

I had hoped to offer an amendment, which the Committee on Rules did not allow me to offer, to require them to contribute 100 percent of the cost. This amendment makes them contribute 75 percent of the cost.

It is a wise idea. These are not war-torn, war-shattered countries. These are First World countries with first-rate economies and compete vigorously with us in every area of commercial life, and they have been able to provide their people with better health care, better education and better protection from crime, due to the fact that we subsidize a principal part of their budget.

In fact, while we are spending about $1,153 per capita on defense in this country, a significant portion of which defends them, they are only spending $419 per capita on defense in their countries.

I also point out to you that is ironic that while we are subsidizing our allies' defense, our government borrows money to pay for a deficit, a large portion of which ends up being borrowed from the very nationals whose defense we are subsidizing, thereby saving them money. Surely, 50 years after

World War II, it is time to tell our European allies, ''We love you, we are with you, but you pay your share of your own defense.''

Mr. SPENCE. Mr. Chairman, I yield 2½ minutes to the gentleman from Colorado [Mr. HEFLEY], the chairman of our Military Construction Subcommittee.

Mr. HEFLEY. Mr. Chairman, I rise in strong opposition to the amendment offered by Mr. SHAYS and Mr. FRANK. In my judgment, this debate is not about burden- sharing—every Member is for burdensharing. This debate is about the integrity of our forward-deployed presence in Europe. This amendment is little more than a thinly disguised attempt to reduce force structure.

The amendment ignores the current statutory framework for burdensharing. To listen to the proponents of the amendment tell the story you would get the impression that the allies are doing virtually nothing to share the burden. These are the facts:

The 1995 defense authorization bill contained a target for our European NATO allies to contribute to our stationing costs in Europe. The Department of Defense expects to meet, and exceed, the 37.5 percent target by the statutory deadline of September 30, 1996. In fact, by fiscal year 1997 DOD expects the allies to pick up over 40 percent of those costs.

The Shays-Frank amendment mandates that for every 1,000 ground troops required to be withdrawn from Europe, half will be discharged. The amendment could result in thousands of involuntary separations.

Adoption of the Shays-Frank amendment would negate the permanent authorized end strengths contained in the bill before the House.

This amendment would harm the ability of the United States to respond to crises in Europe, the Middle East, and Sub-Saharan Africa. The sharp reductions in force structure contemplated by the Shays-Frank amendment would not have permitted us to prosecute Operation Desert Shield/Storm in the manner we did. The fig leaf of Presidential wavier authority in the event of an emergency cannot hide the fact that our forward-deployed presence in Europe serves an American national purpose. Our forces are not some form of European welfare.

The amendment ignores the careful, prudent, and fiscally responsible drawdown we have already undertaken in Europe. As the chairman of the Subcommittee on Military Installations and Facilities, I have monitored the drawdown in Europe. Since 1990, we have closed 878 installations—a 63-percent cut—and reduced our troop presence by over 200,000—a 69-percent cut.

The Secretary of Defense, the Chairman of the Joint Chiefs of Staff, Gen. George Joulwan, Supreme Allied Commander in Europe, and Gen. Gordon Sullivan, the Army Chief of Staff all oppose this amendment.

I urge my colleagues to reject this relic of the past.

Mr. SHAYS. Mr. Chairman, I yield myself 30 seconds to just point out to the Members here that the Europeans in 1993 paid 14 percent of our costs, $2.1 billion total, but in cash only $301 million. That number dropped down to $2.2 billion, and only $252 million, and then it dropped down to $60 million. The Europeans are only providing $60 million of cash, and only $1.1 billion.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Chairman, I reluctantly oppose the position of my chairman on the Committee on National Security.

I have served overseas myself, in the Philippines, Japan, and Korea, and I know that the economy is supplemented by every military troop that we have in station. Those countries' economies are supplemented by our military pay.

Secondly, those countries need us in place. Japan supports 77 percent, Korea 60 percent, but yet Europe supports only 20 percent of the cost—20 percent.

It has been said that Bosnia is a European problem, but yet who do you see there paying the majority and the lion's share? They need us there for their freedom, and freedom comes at a great cost, great sacrifice to our families, a lot of dollars that we have to borrow and also, yes, it does cost American lives.

It is about time, and I do not think it is asking too much, that we ask the nations, in which we provide that freedom to pay a fair share of that freedom.

We take a look across at other countries, and I wish we did the same. We are giving great amounts of dollars to South Africa, and yet the only place we can get titanium is in South Africa and the Ukraine. Why can we not get something back from a lot of countries, not just Europe?

So I think this amendment actually falls short in a lot of areas in which we invest that we should be getting something back, and in this case we are willing to sacrifice in some cases for freedom for American lives. I think the Europeans should pay their fair share in lives, in dollars, and in sacrifice.

Mr. HEFLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just say briefly that the comptroller of the Department of Defense disagrees with every single figure the gentleman from Connecticut [Mr. SHAYS] gave just a moment ago.

Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. GILMAN].

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

Mr. GILMAN. Mr. Chairman, each year during debate on this amendment I have said—and it bears repeating once again—that at the heart of this debate, pure and simple, is the issue of defining and maintaining our country's ability to sustain its strategic interests abroad. It should be clear that to each and every Member that our allied security arrangements in Europe, Japan, Korea, and the South Pacific serve as the underpinning of our larger vital interests throughout the world. Those vital interests cannot be protected without a substantial U.S.-forward deployed presence. That presence, and the associated leadership and prestige it brings, is at risk if the House takes action to force untenable reductions in our forces in Europe.

This so-called ''burdensharing'' amendment actually calls for the withdrawal of U.S. Forces from Europe. It would be folly to take rash action now that could speed a return to the kind of confrontation that compelled us to station over 300,000 troops in Europe for several decades during the cold war.

Given the present uncertainty in Russia and elsewhere in central and eastern Europe, this is no time to precipitously withdraw our forces in that region.

This is not to say that the United States should not continue to vigorously pursue arrangements with our allies that would be more beneficial to the United States. Indeed, the American people deserve no less. But the American people must also know what is at stake in Europe if U.S. forces are cut too far and too fast.

Accordingly, I urge my colleagues to vote against the Shays-Frank-Upton amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 1 minute to the gentlewoman from Oregon [Ms. FURSE], a coauthor of the amendment.

Ms. FURSE. Mr. Chairman, why do the Concord Coalition, the National Taxpayers Union, and the Citizens Against Government Waste support this amendment? Well, for the same reason that so many Americans do. They all think it is only fair that Europe pick up a fair share of its own defense costs.

While the Europeans enjoy universal health care and a fine education system, we pick up their defense costs, and we have to cut education to our own citizens.

We begin to give our own constituents a break when we bring the money home from Europe. My constituents and all Americans deserve nothing less.

I urge support of this amendment.

Mr. HEFLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Chairman, I oppose this amendment.

This amendment attacks stability. It attacks all that we have stood for in Europe since the Second World War.

We do not have to do much history reading to see that twice we have been back to Europe to save them from tyranny. Harry Truman helped establish NATO. This is a direct attack on NATO. This is a direct attack on stability.

I urge my colleagues to take the time to read this amendment. Look at the language, and you see it is not a burdensharing amendment. It is one to actually cut the troop strength in Europe and, in truth, in fact, we are cutting down and down, and we will have, and have, only two army divisions with two brigades left in Europe.

□ 1615

We have cut our troop strength down there by 63 percent, down to a hundred thousand force level. As a result of previous congressional action, there it should stay. We cannot allow our stability, our presence, most of all our leadership in Europe, to come unglued.

This amendment does away with American forward presence in Europe, it does away with our leadership, it does not give us the voice that we should have, and the passage for our military and our ability to work with our allies in the field because we will not have adequate forces there.

We should turn this down, see this amendment for what it is. Though it is called a burdensharing amendment, in truth and fact it is an amendment to cause us to lose our leadership in NATO. We cannot allow that.

Mr. SHAYS. Mr. Chairman, I yield myself 30 seconds just to comment to two comments.

First off, our statistics come from the 1996–97 budget estimates of the Department of Defense host nation support, May 1995. This is where we are taking our statistics, so if the Department of Defense disagrees with their statistics, they are disagreeing with their own statistics.

I would just like to point out to our colleagues that Europeans today only pay $60 million in cash. The Japanese pay $3.4 billion in cash contributions to the United States. The Europeans are not stepping up to the plate, and they need to.

Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. UPTON].

Mr. UPTON. Mr. Chairman, the premise of our amendment is very simple, and it is also fair. If our European allies do not begin paying their fair share of nonpersonnel costs for maintaining U.S. troops in Europe, then we are going to gradually reduce our troops.

A few years ago we had the same argument on this floor with regard to Japan. In fact, we heard exactly the same arguments against what we are doing today back then, but guess what? We passed that bill that day, and, when we begin talking about burden sharing, let us emphasize the word ''sharing.'' It should be understood that our regional interests are the shared interests of the nations in which we house our troops, and guess what? Because of what we passed several years ago, the Japanese contribute today 76 percent of the nonsalaried costs of U.S. troops. What is that figure? It is $4 billion. What are the Europeans doing today? Not 76 percent, where we are with the Japanese, not 50 percent, not 40 percent, not 30. It is a puny 20 percent.

As we have to work in this body towards a balanced budget, we have heard over and over that we have got to make some tough choices. Well, how on earth can we continue to spend billions and billions of dollars for the defense of wealthy European nations like the United Kingdom and others when it is time for them to begin to share their responsibility? This is a year when Members in this Congress are asking taxpayers to tighten their belts. It is only fair that we ask the Europeans to do the same.

Some have suggested to me today that perhaps, if this amendment passes, we would lose the authority to control our troops overseas. Nothing could be further from the case. U.S. control exists, and I urge all of my colleagues to support this amendment that we passed on this House floor last year by a two to one margin.

Mr. HEFLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. TORKILDSEN].

Mr. TORKILDSEN. Mr. Chairman, I rise in strong opposition to the amendment offered by Mr. SHAYS and Mr. FRANK and others which would seriously impede the ability of the United States to defend its own national security interests.

Clearly, it is in our interest to require foreign nations who benefit from mutual security arrangements to pay their fair share. I support continued negotiations to achieve that. My colleagues may remember that a compromise was reached last year that provided for our European allies to pay 37.5 percent, an increase from 25 percent in 1990. However, our European allies will actually contribute in excess of 40 percent of such costs.

More importantly, in the area of force structure, this amendment would cut off our nose to spite our face. This amendment not only calls for the removal of our forces, but requires the United States to reduce personnel by half of all troops removed from Europe. This reduction would come on the heels of the most significant drawdown in U.S. end strength levels in over 50 years. Since 1990, the United States has reduced troop levels in Europe by 69 percent—from 330,000 to approximately 100,000. Earlier, U.S. troop strength was actually 500,000. This amendment, in the name of burdensharing, would reduce that force structure even more.

These mandated force structure cuts would compromise our national security interests around the globe.

Our forward based troops in Europe today are not a vestige of the cold war. In Operation Desert Shield/Storm, 95 percent of the strategic airlift, 90 percent of combat aircraft, and 85 percent of the naval vessels used in the conflict were either staged in or passed through Europe. Indeed much of our reasons for keeping troops in Europe are designed to protect U.S. interests in the Middle East, and elsewhere. Yet the sponsors of this amendment make no pretense at charging the beneficiaries in the Middle East, or elsewhere for this benefit.

And our forces in Europe have been deployed to conduct military or humanitarian operations in northern Iraq, Rwanda, the former Soviet Union, and in the former Yugoslavia. It would be foolhardly to attempt any of these missions with the base level of 25,000 troops specified in this amendment.

I urge all my colleagues to vote ''no'' on this well-intentioned, but seriously misguided amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I yield myself such time to say, ''I'm grateful to all of those who have risen today to say you don't need this because of the great amendment we had last year. I would note that every single one of them that said that voted against it last year, so they voted against it last year and fought it. When we got it done over their objection, they watered it down some. They now welcome it, and that's been the pattern. They said no when we tried to do it to Japan. It's worked well. They said no last year. They are always going to be against it when we try to do it, and then they'll use it only when they can to stop something better from happening.''

Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota [Mr. LUTHER].

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

Mr. LUTHER. Mr. Chairman, I rise in strong support of the burden sharing amendment to the military budget bill. This amendment wisely requires our allies to bear a greater share of the financial burden of maintaining U.S. troops in Europe. We simply can no longer afford to pay more than half of the nonpersonnel costs of maintaining our troops while European NATO nations contribute less than 25 percent. With this amendment we have the potential here today to save up to $9.5 billion over the next 4 years.

I can, frankly, understand how during the cold war the current financial arrangements came about. But this is a classic case of where changed times require changed policy in this country. In these days of budgetary constraint here at home and yet multiple commitments abroad, we must ask our allies who compete against us for business and jobs in this world, we must ask them to share in the cost of our international military operations.

With the cold war over, it is time for us in this country to enter a new era, an era of tough decisions and new priorities. I urge my colleagues to join with me in supporting this amendment.

Mr. HEFLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SISISKY].

Mr. SISISKY. Mr. Chairman, I rise in strong opposition to the Shays burden-

sharing amendment. If passed, this amendment would seriously disrupt NATO relations imperiling the most effective and singularly important military alliance in which the United States participates. Maintaining security in Europe requires building a new European security architecture that takes advantage of the Western alliances' victory in the cold war. The United States has a vital national security interest in building that stability and in seeing that another major war does not engulf Europe. We cannot do so without being on the ground with sufficient presence in Europe. The CINC for Europe and the Department of Defense all believe that the approximately 100,000 troops that remain after nearly a 70-percent cut of cold war levels are the minimum sufficient for maintaining that presence and for undertaking the many missions upon which they are called to perform.

This amendment, and I will tell the gentleman from Massachusetts, ignores last year's legislation and the DOD's success in moving toward a 2-year goal that was secure 37 and a half——

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. SISISKY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. The gentleman voted against last year's legislation and is ill-suited to invoke it now.

Mr. SISISKY. Reclaiming my time, the amendment that passed last year was not the amendment that we are working on right now. It is the amendment that we have right now, but not the one that came out of conference.

More than that, we should not attempt now, especially since the comparison to the Japan-United States contribution agreement are wrong on the facts. Europeans spend a good deal in forces and operations that support U.S. vital national interests. We had our troops in Europe because they are in the United States' vital national interests. Our troops are not there for the Europeans' convenience. They are there for our convenience.

Please do not destroy NATO, do not reduce our forces. Vote ''no'' on Shays.

Mr. SHAYS. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey [Mr. MARTINI] to speak on the exact same amendment as introduced last year except for the change in the dates.

Mr. MARTINI. Mr. Chairman, I rise in support of the burdensharing amendment.

Like most of my colleagues, I am committed to ensuring that the U.S. military is the finest fighting force in the world. We certainly owe this to the brave young men and women who serve their country in uniform.

I am, however, also very concerned about the fiscal crisis facing America. With a $4.5 trillion public debt and annual budget deficits of $200 billion we must look to reduce Federal spending everywhere we can.

During the cold war, the forward presence of United States troops on the European continent was necessary to neutralize the impending Soviet threat, but the time has come for our European allies to contribute to the cost of freedom in Europe.

Both Japan and Korea assume over 70 percent of the nonpersonnel costs for United States deployed in these countries.

Yet, astonishingly, our European friends contribute less than 25 percent of the nonpersonnel costs. This in my opinion is just plain wrong. Our European allies must step up to the plate. This amendment will simply require our friends to contribute 75 percent of the nonpersonnel costs of U.S. troops stationed in Europe by the year 2000.

If our allies choose to ignore the gradual payment scale outlined in this amendment, the Secretary of Defense will be required to reduce U.S. troop levels in Europe by 1,000 soldiers for each percentage point that the Europeans fall below the established targets.

Mr. Chairman, we will—and we have—hear from some today about how this amendment will severely jeopardize U.S. national security interests. This simply is not true. All of the arguments alleging disruption of our deployment are conditioned upon and apply directly on the willingness of our European allies to share in these costs.

Our amendment would also allow the Secretary of Defense to retain up to 25,000 troops, U.S. troops, even if these nations fail to comply with our proposal. Furthermore, the President may waive these requirements of our amendment if he believes our national security would be threatened.

Mr. Chairman, we have asked, and we will continue to ask throughout this summer, the American people to make reasonable sacrifices to reach a balanced budget. We should expect nothing less from our European allies. I urge support of this amendment.

□ 1630

Mr. HEFLEY. Mr. Chairman, I yield 1½ minutes to the gentleman from Indiana [Mr. BUYER].

Mr. BUYER. Mr. Chairman, I thank the gentleman for yielding time to me. To my colleague, the gentleman from New Jersey, who I would say I am in opposition to his statements, but to say my opposition is a position that would not be true in his eyes would, I think, be a misstatement.

Mr. Chairman, I rise in opposition to the amendment. Burdensharing is a vital component of our national security strategy. Requiring our allies to pay their fair share for their own defense is a prudent and commonsense policy.

However, I object to this amendment directly linking mandatory troop withdrawals from Europe if NATO nations do not meet burdensharing goals by a date certain.

The United States has fought two hot and one cold war in Europe during this century. In the case of the two World Wars, the rush to withdraw U.S. troops from Europe created a vacuum that necessitated our return to that continent at a later date with a greater cost in lives and treasure. We must not repeat this mistake.

Our presence in Europe is a commitment too valuable to the vital national security of the United States to jeopardize lightly. This amendment ties the hands of the Commander in Chief and could force our withdrawal from NATO at a dangerous and difficult time for the alliance.

I urge my colleagues to vote to maintain our flexibility in NATO and reject this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just say that being for burdensharing in principle while you promise to keep the troops there is a very unpersuasive way to get the Europeans to put up any money. As long as they can have the troops for free, they will not contribute.

Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. BONIOR] who began our successful effort to compel burdensharing by offering an amendment to require burdensharing from Japan, which drew every single negative argument we have heard today back then.

Mr. BONIOR. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, indeed, it does seem like deja vu. We have heard these arguments over the over again. But I think it is important for those who have not been here to recap what actually happened back in 1990.

We were debating the defense bill late into the evening. I walked into the well and I offered an amendment requiring that the Japanese pay their fair share. Here we are, having a huge trade deficit with the Japanese, we have got 50,000 troops over there, they are paying about 20 percent of the cost. The amendment passed overwhelmingly with about 350 votes.

Now, what is interesting about this amendment, it occurred at the time we are negotiating with the Japanese in Tokyo over a large contribution from them for our efforts in the gulf war. We wanted $4 billion from them, they offered us $1 billion. Two nights later, after the amendment was offered here that passed back in 1990, I get a call at 11 o'clock at night from the Japanese Ambassador, who told me they had met in a special session in Tokyo and that they were going to up the increase in their contributions in the gulf war from $1 to $4 billion. They eventually doubled it from there.

The upshot of this is it has saved not only in contributions in fighting the war in the gulf but certainly in burdensharing and supporting our troops over there, tens of billions of dollars. We have an opportunity today

to do the same things with our friends and allies in Europe. Requiring our European allies to pay their fair share will save us nearly $10 billion over the next 5 years.

I seems to me that if we are going to target seniors and target kids to cut this deficit, the least that we can do is ask our allies to pay their fair share. This amendment says that the days of the free ride are over. I hope my colleagues will support the amendment that is being offered on this floor.

Mr. HEFLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

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

Mr. BATEMAN. Mr. Chairman, I rise in opposition to this amendment and would certainly compliment the colleagues who preceded me in opposition to it for the cogency of their remarks.

Quite frankly, I find the amendment not only something that I disagree with, its fundamental premise is something that I think is offensive to the people who wear the uniform of the United States of America and who happen to be deployed under direction of their commanders to various places throughout the world, especially if it happens to be in Europe.

The premise of this amendment is that our troops are in some sense mercenaries there defending someone else for which we must receive an offsetting payment. They are not there in that role. They are there defending the interest and the security of the United States of America. I hope we are not going to forget that.

If we care about the NATO alliance, we cannot add but so much stress to it here on the floor of this House, where we have taken a position of unilateral lifting of the arms embargo against the Bosnian Moslems. We are at great points of difference in the pace in which we admit new states to the NATO alliance. There are differences that are running throughout that alliance, and it is not without some capacity of breaking that alliance.

Where then is the security interests of the United States served by this sort of thing, which has great political superficial appeal, but which has little more than that to offer in terms of national security policy for the United States of America?

Do not treat our forces as if they were mercenaries serving someone else's security needs. They are there, they are deployed in response to our security needs, and I hope we will not forget that when we vote on this amendment.

Mr. HEFLEY. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. GEREN].

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

Mr. PETE GEREN of Texas. Mr. Chairman, I rise in opposition to this amendment. It has been noted over and over that the Concord Coalition, the Citizens against Government Waste, and the National Taxpayers Union support this amendment. This amendment is penny wise and pound foolish. I commend those organizations for the great work they do in many other areas. They totally miss the point on this issue.

The premise of this amendment, as pointed out by my colleague from Virginia, Mr. BATEMAN, is that somehow we are over in Europe out of the goodness of our hearts. We are in Europe to protect vital American interests.

I would like to share with my colleagues a letter we received today from General Shalikashvili and Secretary Perry.

Because half the forces withdrawn from Europe would be eliminated, this amendment would lead to unilateral U.S. force reductions and compromise the President's ability to protect U.S. interests, not only in Europe but throughout the world. We request your support in defeating this amendment. Sincerely, John M. Shalikasvili and William Perry, Secretary of Defense.

I urge my colleagues to vote no on this amendment.

Mr. SHAYS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I would like to use my 2 minutes to just briefly describe in clearer terms hopefully what is happening presently and what happened in the past.

In the past, the Europeans contributed, in 1993, $2.1 billion in in-kind and in cash payment. In 1994 they went to $2.2 billion. Then it dropped to $1.1 billion in 1995. In cash, they went from $301 million to $252 million, and now down to $60 million. So I hear people say we need to continue this dialog in negotiations, at this rate we are going to have no contribution. We are going in the wrong direction. They are contributing less.

Now, that is one point I just feel needs to be on the table. The other point that needs to be on the table is we have made a gigantic assumption the Europeans do not value our troops in Europe. I think that is a fallacious argument. The Europeans must know that our troops are serving the world interests in Europe, our interests as well as theirs.

We are simply asking them to do what the Japanese and the Koreans do. If the argument worked and was logical for the Japanese and the Koreans, why is it not logical for the Europeans? It is. We have a difficult task. We have a defense budget that is not going to basically increase for the next 5 years. That means we have to find other ways to save money.

I care about national defense. We need to help get more money from others to help this incredible task that we have, and I urge passage and adoption of this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself the balance of my time, 3 minutes.

Mr. Chairman, the gentleman from Connecticut has made a very important point. This will lead to American troop withdrawal only if you believe that the Europeans are unprepared to pay anything at all. I think that is wrong. I think the Europeans would be getting the great bargain of the world, because contrary to the suggestion that these would be mercenary troops, America will still pay the salaries of these troops. What we will be asking the Europeans for are the basing costs, part of the basing costs.

Every single argument advanced against this amendment today has been made against every burden-sharing argument ever put forward. In fact, we have this great paradox: Members who voted against burden sharing a couple of years ago when the House passed it now want to take credit for what the House did and use that as an argument for not doing it anymore. But the day we stop passing the amendments is the day they will stop helping.

We are in a terrible budget crisis. We all acknowledge that. We have differences about how to deal with it. But all of them are painful. The question is, should we tell our European allies that they alone in the world will get a free ride. Because we do this with Japan. We are cutting foreign aid elsewhere. The wealthiest nations in the world, those in Western Europe, will do this.

Members have said well, you know, we started this in 1949. It was necessary in 1949. In 1949 they were poor and Stalin was strong. But have they not outgrown that position of dependence on us? It is not time for the Europeans to have a turn to make a contribution?

Again, the argument is that if we ask them to contribute, they will somehow break off this alliance. Apparently the notion is that America has nothing to offer if we do not heavily subsidize them. Apparently the notion is that they have no interest in being our allies. Apparently America is the baby that is so ugly that if you do not put a lamb chop around its neck, the dog will not play with it. You know what? The troops in Europe we pay for, that is the lamb chop.

We have to approach the Europeans and say, ''Please let us protect you and we will pay for it.'' You know what the most popular book from Europe is? Tom Sawyer, because they have figured out not only how to get America to paint the fence, but to get us to pay for it. As far as using that for the Middle East, yes, we were able to use it in the gulf war. But when Ronald Reagan wanted to bomb Libya, Europe was off limits. The Europeans have in fact been obstreperous and objected sometimes when we wanted to use our troops there for the Middle East.

We recognize that there is a partnership. These arrangements that now exist date from the time when we were all powerful and all wealthy and they were devastated by World War II and the communists were very powerful. We are prepared to cooperate now. But

you have got the most one-sided arrangement around. The wealthiest nations in the world, the Europeans, pay very little for their defense. None of them has a defense budget that remotely approaches ours. Most of them have percentages much less than ours. The only way this will cause us to withdraw troops is if they say ''Take it and get out.'' In fact, I will predict to my colleagues they will cause a troop withdrawal if they do not get some support from the Europeans for keeping them there.

Mr. HEFLEY. Mr. Chairman, I yield the balance of my time to the gentleman from Pennsylvania [Mr. WELDON].

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 2 minutes.

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, this is a feel good amendment. It is a feel good amendment because who back home could be against you wanting to bring our troops back home? Let us bring them all back home. Let us bring everybody back to America. Let us not just stop here. Let us bring them all home.

Let us about burden sharing around the world. Where were the colleagues on the floor here when we wanted to bring the troops home from Haiti, which costs the taxpayers $1.5 billion? Where was the burden sharing there? Where were our colleagues when we had the Somalia vote and we said bring our troops home from Somalia. Where were the burden sharing concerns then? How about our colleagues on Israel? And I support the Arrow program. Should we have Israel fund 75 percent of the costs of the Arrow program to defend their country, like we are paying?

Mr. Chairman, the ability for us to deter aggression around the world is directly dependent upon our ability to stop regional conflicts.

□ 1645

We are there not just to defend our allies. We are there to protect our troops from being involved in war. All of us in this body are for burdensharing. Let us get it clear, all of us on both sides.

The question here today is how fast and how much. It is a simple question on this amendment, I submit to my colleagues.

Do you trust the judgment of General Shalikashvili and General Sullivan, who have both gone on record and are against this amendment, or do you trust the judgment in this case of my colleague from Massachusetts and my colleague from Connecticut?

I will tell you where my judgment is. My judgment is for the support of General Shalikashvili and General Sullivan who are charged with the responsibility of the lives of our young military personnel, not because they want to pass some feel-good bill in the Chamber of this body.

I say oppose the Frank-Shays amendment.

Mr. BENTSEN. Mr. Chairman. I want to express my strong support for Representatives SHAYS, FRANK, UPTON, and FURSE burdensharing amendment. I believe that our allies should contribute to help cover the cost of U.S. troops stationed in those countries.

This amendment requires NATO nations to cover specified percentages of these nonpersonal costs—beginning with 18.75 percent by September 30, 1996 with a modest increase in the following years reaching 75 percent by September 30, 1998. Such nations which do not comply would see a reduction in U.S. troop strength. This is in accordance with recent agreements with the Japanese Government. Furthermore, the amendment allows the President to waive the requirement if he determines an emergency.

Fifty years after World War II, we still spend tens of billions of dollars to defend Europe and Japan. While American taxpayers have been subsidizing the defense of our allies, our allies have been able to provide more resources for health care for their citizens, education for their children, and better crime protection for their neighborhoods.

In 1994, our trade deficit with Germany alone was over $12 billion. In many cases, our allies have been subsidizing their industries and products to compete, sometimes unfairly, with American products. As a result, we have lost jobs.

Ironically, American taxpayers have been subsidizing our allies defense, while our Government borrows money to finance deficit spending.

I believe that at a time when we are closing bases and laying off approximately 81,000 soldiers and civilians, it is wrong for American taxpayers to continue paying billions of dollars to subsidize the defense of our allies who have adequate wealth of their own.

It is time to end America's biggest welfare program—the subsidization of the defense our European allies. We must demand that our NATO allies begin paying their share of the bills, bills that the American taxpayer have paid for far too long.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut [Mr. SHAYS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SHAYS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 273, noes 156, not voting 5, as follows:

[Roll No 375]

AYES—273

Abercrombie
Ackerman
Allard
Andrews
Archer
Baldacci
Barcia
Barrett (WI)
Barton
Bass
Becerra
Beilenson
Bentsen
Bilirakis
Bishop
Blute
Boehlert
Bonior
Bono
Borski
Boucher
Brewster
Brown (CA)
Brown (OH)
Bryant (TN)
Bryant (TX)
Camp
Cardin
Chabot
Chapman
Chenoweth
Chrysler
Clay
Clayton
Clement
Clyburn
Coble
Coburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Coyne
Crane
Cremeans
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
Dellums
Deutsch
Dickey
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Durbin
Ehlers
Ehrlich
Engel
English
Ensign
Eshoo
Evans
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Ford
Frank (MA)
Franks (CT)
Franks (NJ)
Frost
Furse
Gallegly
Ganske
Gejdenson
Gephardt
Gilchrest
Gillmor
Gonzalez
Goodlatte
Goodling
Gordon
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Harman
Hastings (FL)
Hayes
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hyde
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Jones
Kanjorski
Kaptur
Kasich
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
Kingston
Klink
Klug
LaHood
Lantos
Leach
Lewis (CA)
Lewis (GA)
Lightfoot
Lincoln
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McInnis
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Moran
Morella
Nadler
Neal
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Orton
Owens
Pallone
Parker
Pastor
Payne (NJ)
Pelosi
Peterson (MN)
Petri
Pomeroy
Portman
Poshard
Pryce
Rahall
Ramstad
Rangel
Reed
Regula
Reynolds
Riggs
Rivers
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sanford
Sawyer
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Scott
Sensenbrenner
Serrano
Shaw
Shays
Skeen
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Souder
Spratt
Stark
Stockman
Stokes
Studds
Stupak
Tate
Thomas
Thompson
Thornton
Thurman
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Wamp
Ward
Waters
Watt (NC)
Watts (OK)
Waxman
Weller
Whitfield
Williams
Wise
Wolf
Woolsey
Wyden
Wynn
Young (AK)
Zimmer

NOES—156

Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Bateman
Bereuter
Berman
Bevill
Bilbray
Bliley
Boehner
Bonilla
Browder
Brown (FL)
Brownback
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Canady
Castle
Chambliss
Christensen
Clinger
Collins (GA)
Combest
Cooley
Cox
Cramer
Crapo
Cubin
DeLay
Diaz-Balart
Dicks
Dornan
Dunn
Edwards
Emerson
Everett
Fowler
Fox
Frelinghuysen
Frisa

Funderburk	Linder	Rose
Gekas	Livingston	Salmon
Geren	Longley	Saxton
Gibbons	Lucas	Seastrand
Gilman	Manzullo	Shadegg
Goss	McCollum	Shuster
Graham	McCrery	Sisisky
Gunderson	McHale	Skaggs
Hall (TX)	McHugh	Skelton
Hamilton	McIntosh	Smith (TX)
Hancock	McKeon	Solomon
Hansen	Mica	Spence
Hastert	Miller (FL)	Stearns
Hastings (WA)	Molinari	Stenholm
Hayworth	Mollohan	Stump
Hefley	Montgomery	Talent
Hostettler	Moorhead	Tanner
Houghton	Murtha	Tauzin
Hoyer	Myers	Taylor (MS)
Hunter	Myrick	Taylor (NC)
Hutchinson	Nethercutt	Tejeda
Inglis	Ortiz	Thornberry
Johnson, Sam	Oxley	Tiahrt
Johnston	Packard	Torkildsen
Kelly	Paxon	Torres
King	Payne (VA)	Vucanovich
Knollenberg	Peterson (FL)	Waldholtz
Kolbe	Pickett	Walker
Largent	Pombo	Walsh
Latham	Porter	Weldon (FL)
LaTourette	Quillen	Weldon (PA)
Laughlin	Quinn	White
Lazio	Radanovich	Wicker
Levin	Richardson	Young (FL)
Lewis (KY)	Roberts	Zeliff

NOT VOTING—5

Fields (TX)	LaFalce	Yates
Kleczka	Wilson	

□ 1707

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Pursuant to the notice given earlier today, it is now in order to consider amendment No. 30 printed in part 2 of the report.

AMENDMENT OFFERED BY MR. POMBO

Mr. POMBO. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. POMBO: At the end of title X (page 377, after line 19), insert the following new section:

SEC. 1033. ROTC ACCESS TO CAMPUSES.

''(a) IN GENERAL.—Chapter 49 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 983. Institutions of higher education that prohibit Senior ROTC units: denial of Department of Defense grants and contracts

''(a) DENIAL OF DEPARTMENT OF DEFENSE GRANTS AND CONTRACTS.—(1) No funds appropriated or otherwise available to the Department of Defense may be made obligated by contract or by grant (including a grant of funds to be available for student aid) to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise maintain or seek to establish a unit of the Senior Reserve Officer Training Corps or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education.

''(2) In the case of an institution of higher education that is ineligible for Department of Defense grants and contracts by reason of paragraph (1), the prohibition under that paragraph shall cease to apply to that institution upon a determination by the Secretary that the institution no longer has an anti-ROTC policy.

''(b) NOTICE OF DETERMINATION.—Whenever the Secretary makes a determination under subsection (a) that an institution has an anti-ROTC policy, or that an institution previously determined to have an anti-ROTC policy no longer has such a policy, the Secretary—

''(1) shall transmit notice of that determination to the Secretary of Education and to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives; and

''(2) shall publish in the Federal Register notice of that determination and of the effect of that determination under subsection (a)(1) on the eligibility of that institution for Department of Defense grants and contracts.

''(c) SEMIANNUAL NOTICE IN FEDERAL REGISTER.—The Secretary shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for Department of Defense grants and contracts by reason of a determination of the Secretary under subsection (a).

''(d) ANTI-ROTC POLICY.—In this section, the term 'anti-ROTC policy' means a policy or practice of an institution of higher education that—

''(1) prohibits, or in effect prevents, the Secretary of Defense from maintaining or establishing a unit of the Senior Reserve Officer Training Corps at that institution, or

''(2) prohibits, or in effect prevents, a student at that institution from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.''.

''(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''983. Institutions of higher education that prohibit Senior ROTC units: denial of Department of Defense grants and contracts.''.

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. POMBO] will be recognized for 5 minutes, and the gentleman from California [Mr. DELLUMS] will be recognized for 5 minutes.

The Chair recognizes the gentleman from California [Mr. POMBO].

Mr. POMBO. Mr. Chairman, I yield myself 1½ minutes.

Mr. Chairman, I, along with my good friend, the gentleman from New York, GERRY SOLOMON, am offering this amendment today because I believe some of our institutions of higher education need to be put on notice that their policies of ambivalence or hostility toward our Nation's armed services do not go unnoticed by this House.

I believe that when a college vents its policy protests by denying its students the opportunity to participate in ROTC, then that school should be denied Department of Defense dollars. It is just that simple. If a college feels that funding from the Department of Defense is important, then they should not attack ROTC, which trains those who will defend the liberties and freedoms of all Americans.

Colleges and universities need to know that starry-eyed idealism comes with a price. If they are too good or too self-righteous to treat our Nation's military with the respect it deserves, then they may also be too good to receive the current generous level of DOD dollars. With the passage of this amendment, we will end this ungrateful double standard.

The bottom line is an issue of fairness. The House, representing the American people, needs to stand behind our young men and women in ROTC programs, our constituents across this country. We should not allow some institutions to accept generous amounts of DOD dollars while slamming the door on our future military leaders.

For our young men and women who train to defend the freedoms of all Americans, and for those who have proudly worn the uniform of this country, I urge my colleagues to support the Pombo-Solomon amendment, and send a message over the wall of the academic ivory tower.

Mr. DELLUMS. Mr. Chairman, I rise in opposition to the amendment offered before the body at this moment. Mr. Chairman, this is not the first time that this amendment has come before us. I rise in opposition for the same reasons that I rose in opposition last year.

Mr. Chairman, there are several reasons why this amendment should be voted down. Not the least of these reasons is that it prevents the Secretary of Defense from utilizing, to the advantage of the United States, all of the academic and research institutions that the Secretary should have at his or her disposal.

Second, it micromanages the policy decisions of our U.S. universities. Who are we from these Chambers to dictate the policies of American universitites? There are a variety of reasons why a university may determine that it is not interested in allowing senior ROTC units on the campus. That is not to say that the Department of Defense still cannot benefit on behalf of all of our men and women in uniform by the academic research skills of an institution that chose not to have a program on their campus.

It strikes this gentleman that we are, again, cutting off our noses to spite our faces. Let us also be aware that this is about compelling universities to respect the Department of Defense position that does not allow gay men and lesbians to serve openly in the service. This is also one of the targets of this amendment. In that regard, Mr. Chairman, it could have a chilling impact on the free speech rights of university campuses, the prerogatives of academic centers, and administrations around the country.

Mr. Chairman, my distinguished colleague, the gentleman from California, used the phrase, and I jotted it down, ''Starry-eyed idealism will have to pay a price.'' This is America, Mr. Chairman, or did I fall asleep and awaken in some other country? This is a Nation where we feel proud of the fact that people may engage in their first amendment rights, where we have differences of opinion, Republicans and

Democrats, liberals, moderates, and conservatives, people on the left and the right. That is what makes this Nation strong and powerful.

Are we saying here because some institution, by virtue of their decisions, engage in what we determine is starry-eyed idealism, I hope all the children of this country are starry-eyed idealists. It is not pessimists who bring change or who bring the best out in us, it is the dreamers, the hopers, the idealists, and the optimists. That is no reason for us to punish universities.

Mr. Chairman, this is an amendment that takes us backward into the 19th century. It does not catapult us forward as a beacon of light and freedom and commitment to democratic principles, and the right of people to have different perspectives and different points of view.

□ 1715

Mr. Chairman, I believe that we should preserve that precious freedom, that precious dignity that comes from people expressing their points of view under the first amendment to the Constitution.

I ask my colleagues to preserve our national security establishment's access to the best minds in this country, to not allow us to be blocked by some narrow perspective to attempt to punish and to micromanage because we happen to disagree with some other group of people or institution's judgments about decisions we make.

That is not how democracy operates. I hope that my colleagues will rise today to their highest and their best and reject this amendment. It is not in the best interests of our national security. I have laid that out. It is not in the best interests of the Constitution of the United States. I have laid that out. I do not think that it speaks to the highest and best in us as we function on this floor in this institution.

With those remarks, Mr. Chairman, I urge a no vote on the Pombo-Solomon amendment. I urge my colleagues to follow me in that.

Mr. POMBO. Mr. Chairman, I yield 30 seconds to the gentleman from Indiana [Mr. BUYER].

Mr. BUYER. Mr. Chairman, I would say to my good friend from California, you did not fall asleep and wake up in a different country. We woke up to a new majority, I guess, here in the Congress.

What I would also say to my colleague, the gentleman from California (Mr. DELLUMS), is that I am going to rise in support of this because to me young men and women must not be denied the opportunity to prepare for careers of serving our Nation in the military while attending college. Some of our students and young minds, which we both have a great deal of respect for, are being denied that opportunity.

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. Mr. Chairman, a constituent of mine, Paul Anderson, sent me an April 28 article from Human Events magazine about a young man at Yale University named Flagg Youngblood. Flagg Youngblood is a hard-working student. In addition to taking a full academic load, he is taking ROTC.

However, at Yale in order to take ROTC he has to travel 65 miles twice a week during his junior and senior year to get to an ROTC room, because Yale University will not let them teach it on campus. Although if he wants to take a course called ''The Story of Incest,'' he can take that on campus.

While Yale is making that judgment, they are greedily taking on the other hand a $5 million contract from the U.S. Army. We are not micromanaging Yale University. If they want to have ''The Story of Incest'' as one of their main academic majors, let them, but do not come back to us with the other hand, while you are kicking Flagg Youngblood and the other young men and women who want to join ROTC off campus, and then take a $5 million grant. I urge an ''aye'' vote for the Pombo amendment.

Mr. POMBO. Mr. Chairman, I have 1 additional speaker. I would inquire if they have any additional speakers on the other side.

The CHAIRMAN pro tempore (Mr. MCINNIS). The time of the gentleman from California [Mr. DELLUMS] has expired. He has no time remaining.

Mr. DELLUMS. Mr. Chairman, I would say to my colleague that at the appropriate point in my role as ranking minority member, I do have the right to strike the requisite number of words, and I shall use that opportunity. I will not be locked out at the end of this debate.

The CHAIRMAN pro tempore. The gentleman from California is correct. He does have the right to strike the last word and proceed for 5 minutes, but his current time has expired.

The gentleman from California [Mr. POMBO] may proceed.

Mr. POMBO. Mr. Chairman, I yield the balance of my time to the gentleman from New York [Mr. SOLOMON].

The CHAIRMAN pro tempore. The gentleman from New York [Mr. SOLOMON], the chairman of the Committee on Rules, is recognized for 2 minutes.

Mr. SOLOMON. Mr. Chairman, this Pombo-Solomon amendment, this important amendment, would put an end to the hypocrisy that is running rampant on our Nation's college campuses. It happens all the time. Currently dozens of colleges and universities across this country, including the prestigious ones such as Harvard and Yale, blatantly discriminate against students willing to serve their country, and it is so aggravating to this Member.

Last year the Congress overwhelmingly approved a similar amendment prohibiting any Department of Defense funds to colleges which deny access to our military recruiters. They would not let our military recruiters on their campuses until we made them do it. That Solomon amendment is now the law of the land, and it strengthens our All-Volunteer Forces. It tells young people that serving in our armed services is an honorable career, it is an honorable profession, and it is.

We are not going to take this nonsense from academia. They are going to let these ROTC students on their campuses or they are not going to get a nickel from this Federal Government.

Read the Constitution. The United States Constitution mandates that we must provide for a common defense to take care of the strategic interests of this country at home and around the world. Please vote for the Pombo-Solomon amendment. You have done it year in and year out on other issues similar to this. Speak up again for America.

Mr. DELLUMS. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN pro tempore. The gentleman from California [Mr. DELLUMS] is recognized for 5 minutes.

Mr. DELLUMS. Mr. Chairman, let me reiterate the arguments that this gentleman is trying to propound.

No. 1, I say to my colleague, it seems to me that w2e as policymakers here have a responsibility to step back and take the longer view. My first argument is that we should do nothing that would stand in the way of our U.S. military establishment having access to the best minds in this country, irrespective of whether we agree with their policies or not. That is No. 1.

We all come here saying we are committed to national security. We should have access to the best thinking, the clearest minds, the most cogent ideas that are possible. So whatever our misgivings are, they should not deny us the opportunity to go straight there, to have access to the best minds in the country. That is the first argument that I would make.

The second argument that I would make is that irrespective of whether we agree or disagree with the policies taken by a university, by its academic senate or by its faculty, that that should not stand in the way of that first point.

No. 2, because it seems to me that there are moments, Mr. Chairman, when we should be large people. We should be big people. We should be committed to democratic freedoms and principles.

As I was saying to some of the young people behind the aisle earlier today, we should never be so frightened of an idea that we turn our backs from it. The day that I am no longer willing to expose myself to a different point of view and a different perspective is the day that I die intellectually and I die spiritually.

It seems to me that if we do not agree with a university because they choose, for whatever reason, and that is the beauty of America, that they

choose to have or not have an ROTC, we should not engage in policies that are punitive in that regard. We should be a big beacon of light to the world, Mr. Chairman, about how strongly we believe in the fundamental principles of freedom, freedom and the right of people to make choices, even choices that they disagree with.

I would say to my distinguished colleague who mentioned that I did not wake up in a foreign country, I awakened to a new reality, I understand that. That is why I simply stepped up out of the chair of the chairman and moved over to the chair of the ranking minority member, and kept on doing business and kept on fighting back, because I respect that. That is the nature of this process. That is the beauty and the power of it, the right of people to make a decision, and you move on.

I am saying that that should be the same thing in the context of academic freedom. Those are the two points that I was choosing to make.

I yield briefly to my distinguished colleague, the gentleman from California.

Mr. DORNAN. I thank my friend for yielding.

I was listening very carefully what you said. I understand that, your opening words about standing tall and trying to understand this.

However, I think that you are looking at it from the top down, at the university's prerogative to say ''We are going to do thus and such.'' But I have had in my office fine young men and women, just what you were describing, the best young minds in our country, that have said to me, ''Congressman, can you not make this university where my dad graduated, my grandfather, my mother, they have the major that I want to participate in, but I want ROTC available to me.''

If you look at it from the standpoint of the students who are saying, why am I being denied this opportunity, I think quite honestly it cancels out the two-way fiduciary relationship that teachers and students have.

Mr. DELLUMS. Reclaiming my time, because I understand the point you are making, you make your point very well, I think.

Query: Should it be the role of the United States Congress to force a university? The beauty of our higher educational system is that we have public and private institutions. When we start dictating, you change the nature of our role in people's lives.

It should not be to make them. It should not be to punish them. Maybe we encourage, maybe we offer benefits, but it seems to me that it is not about being punitive because we disagree with a policy decision they make. That is not the highest and the best of what I think America is all about.

I yield happily to my colleague.

Mr. BUYER. I thank the gentleman from California [Mr. DELLUMS].

Your No. 1 argument is in fact my argument, also, when you said that you want the military to have access to the greatest minds in this country by way of research. You see, I would like for the military to also have equal access and opportunity to great minds who can be great leaders, whether they are noncommissioned officers or officers. We are denied that opportunity from a high quality recruiting pool. We share the very same argument, perhaps on different policy grounds.

Mr. DELLUMS. I simply say, you and I, a world ago when we were young people, we shopped around for universities. We were not military people. They can do the same thing.

Mr. SPENCE. Mr. Chairman, I move to strike the last word.

The CHAIRMAN pro tempore. The gentleman is recognized for 5 minutes.

Mr. SPENCE. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. I thank the chairman for yielding me the time.

Mr. Chairman, it just seems to me it is appropriate for us to pause and reflect on whether or not there is any implication in this bill for interfering with academic freedom, the right of any college or university to make whatever choice it chooses to make with reference to participation in a ROTC Program.

But is it not certainly a part of life, even in academia, that decisions have consequences? I do not think it is an unreasonable consequence to say, as a matter of public policy of this Congress, that a college or university that chooses to disdain participation in a program that is important to the security of the United States of America is a college that should not expect to receive the largesse of the Treasury of the United States of America.

This is not a denial of freedom. It is no infringement on the first amendment. It is a simple matter of accountability and making your decisions have consequences which logically and properly follow the decisions that you make.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. POMBO].

Mr. POMBO. Mr. Chairman, my colleague from California very eloquently stated the problem that we have with trying to implement ideas and disagreements that exist between people.

What we are faced with right now is universities that may have a disagreement with Federal policy and Federal law. Their response to that is to kick off the young men and women who belong to ROTC, to kick them off campus because they may share a differing point of view or they may represent an agency of the Federal Government that has a differing point of view than the leaders of that university do.

Their response to that is to put them out of sight and out of mind and say, ''We are not going to deal with that.'' But at the same time they require that the Federal funding continue to come to that university, and they continue to request that the Federal Government continue to fund their programs at their university.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. Mr. Chairman, my father is a college professor, Ph.D. My sister is a college professor. My mama has a master's degree; my other sister does, too. I come from an academic background and strongly believe in the academic freedom.

I think it is very important for universities and professors and faculty to be idealistic. Yet at the same time, when they come to Congress or to any other source asking for a resource or money, then they have to yield some of that freedom away.

All we are saying is, ''We are not going to micromanage you. Go ahead and kick ROTC off the campus, but don't come to the same Department of Defense and ask for a grant if you are not going to let ROTC on the campus. You can have your academic freedom, but what you cannot do is have it both ways.''

I think in that context we are not micromanaging Harvard or Brown or Stanford or Yale or any of these other offending universities.

□ 1730

Mr. SPENCE. Mr. Chairman, I yield 45 seconds to the gentleman from California [Mr. DELLUMS].

Mr. DELLUMS. Mr. Chairman, I appreciate the gentleman for yielding me this time.

Mr. Chairman, I first want to say, my friend, one of the gentleman's colleagues, used the term ''largesse'' and you said ''grants.'' These are not just grants, they are also contracts. And the gentleman and I both understand the definition of contract. It means that you enter into an arrangement where a product is returned to the Federal Government.

That is exactly the point that I was making; that we have access to those brilliant minds, research and development that give us that product back so we are not simply talking about a gift.

Finally, in checking the data, I learned, and the gentleman can tell me if I am wrong, there has been no student that has been forced off a campus. As a matter of fact, whenever these ROTC problems have arisen there have been specific plans laid out to allow that student to finish their education within the framework of what they chose to do.

Mr. SPENCE. Mr. Chairman, I yield 45 seconds to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Chairman, we have in this country the finest young men and women in the entire world serving in our military; and they are a cross-section of America.

But if we go and talk to any of the recruiters where we have district offices back home, we find that recruitment is falling off because we have had

such severe cutbacks in our military today.

We depend on our all-volunteer military. We want that cross-section of America. And our young men and women are entitled to serve their country. But when we have limitations on the numbers that are in the military budget today, all we are asking is that young men and women have a right to serve their country.

When we passed the law several years ago that said military recruiters will be allowed on the campuses or else they do not get any defense grants, do my colleagues know what they did? The colleges threw open their doors again. These recruiters are now on campuses. That is what this amendment does, the same thing; vote yes on the amendment offered by the gentleman from California [Mr. POMBO].

Ms. PELOSI. Mr. Chairman, I rise in opposition to the Pombo amendment because it would restrict the flexibility of the Secretary of Defense in making the best decisions possible about the making of defense contracts. As you all know, the funds we make available for any Federal program are precious. Each dollar needs to be spent to maximum advantage. We should not insist that political ideology interfere with decisions which should be made on merit.

Defense contracts should not be made as a reward for having ROTC programs but should be awarded based on a finding that the institution has the best ability to deliver the needed product at the lowest cost and highest possible advancement of the goal of the contract. To start making these decisions based on perceived support or opposition to ROTC programs is a disservice to the Department of Defense and the American people.

I urge a no vote on the Pombo amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. POMBO].

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. DELLUMS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to the rule, the Chair announces that the Chair will postpone requests for recorded votes on any of the next five amendments until after debate has been concluded on amendment number 37. So the gentleman from California [Mr. DELLUMS] will have that opportunity after number 37.

The point of no quorum is considered withdrawn.

The gentlewoman from Colorado [Mrs. SCHROEDER] not being on the floor, it is now in order to consider amendment number 3 printed in part 2 of House Report 104–136.

AMENDMENT OFFERED BY MR. BERMAN

Mr. BERMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment number 3 offered by Mr. BERMAN: Strike out section 1224 (page 398, line 22 through page 402, line 22).

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. BERMAN] will be recognized for 5 minutes and a Member opposed, the gentleman from South Carolina [Mr. SPENCE], will be recognized for 5 minutes.

The Chair recognizes the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I yield myself such time as I may consume.

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

Mr. BERMAN. Mr. Chairman, the bill before us installs at the end of the cold war, in the context of having watched what happened when countries around the world sold arms into the Middle East, what happened with Desert Shield and Desert Storm where frequently American troops had to face western weaponry and western technology that was used against them, this bill creates, I think, quite unbelievingly an entire new loan guarantee program for arms exports uncapped in a fashion that allows the U.S. Government, and the taxpayers of this country, should that government fail to pay the obligations it has for the arms that it is purchasing, to pick up the costs and pay off the defense contractor, the arms exporter who is making the sale.

I think it is a terrible mistake. The administration thinks it is wrong. A coalition yesterday of both conservative and progressive organizations ranging from the Cato Institute to the Progressive Policy Institute specifically called for the eliminating of military export sales subsidies and indirect subsidies to foreign purchases of U.S. defense firm products.

This is the perfect and classic example of a corporate subsidy, of a form of corporate welfare, but in a very dangerous and reckless arena. It is seeking to promote, and I understand the pressures on the defense budget, and I understand the desires of the defense contractors to look for new markets for their weapons systems, but to put the full faith and credit of the U.S. Government and the American taxpayer behind the question of whether or not a particular government will make the payments on those sales is a terrible, terrible mistake.

How many of my colleagues remember when we passed through this House a bill forgiving $7 billion or $8 billion in Egyptian loan payments which were already very delinquent and which CBO thought we would only collect $200 million on if we never forgave a penny?

We are right now dealing with a question of Jordan debt relief this bills makes, not simply to NATO members, which by the way includes countries that are credit risky like Greece and Turkey but APEC members in the Far East including China, including Thailand, a whole series of other countries, as eligible to receive these export loan guarantees.

I suggest this is an unnecessary program to try and subsidize a particular industry which already dominates the world market. Seventy percent of arms exports in 1993 were sold by U.S. defense contractorings. Well over 50 percent of arms exports this past year were by U.S. arms exporters.

We make the best weapons. We can sell those weapons on the merits. We do not need to be subsidizing these corporations in their effort to find markets which in many cases can lead to problems of regional instability and flows of technology and reexports that we are not able to control.

I would urge the Members to vote for my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SPENCE. Mr. Chairman, I yield myself 1 minute.

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

Mr. SPENCE. Mr. Chairman, I yield myself such time as I may consume, and I rise in opposition to the amendment.

Mr. Chairman, the Berman amendment seeks to strike a provision in the committee bill that establishes a defense export loan guarantee program designed to help keep the U.S. defense industrial base competitive and to keep thousands of high-wage, high-tech jobs from going overseas.

The global defense export market is shrinking, and foreign competition to U.S. military sales is growing more intense every year. European foreign military sales are increasing and assuming a greater share of the share of the global market.

Our friends and allies realize the importance of government-industry cooperation in this area and have chosen to preserve their defense industrial bases by attracting foreign military sales contracts with government subsidies. This has hampered the ability of American defense contractors to compete in a market where government subsidies have tilted the playing field in the favor of foreign defense firms.

Unless countered, this trend will increasingly threaten the defense industrial base of the United States.

H.R. 1530 addresses this problem, not by resorting to Government subsidies to help U.S. industry, but by an innovative program to allow the seller and buyer of U.S. defense products to cover the associated financing costs.

Mr. BERMAN's amendment would kill this program to make American-made weapons systems and defense technologies more affordable to approved purchasers without Government subsidies, and at no cost to the American taxpayer.

Just as importantly, contrary to the claims you will hear in support of the Berman amendment, the loan guarantee program in the bill will not lead to any increases in arms sales. Whatever arms sales will occur in the future,

will happen whether this program goes forward or not. The only difference will be whether the products sold are American or foreign made.

In summary, Mr. Chairman, if the Berman amendment passes, it will damage the competitiveness of the U.S. defense industry, erode the Nation's defense industrial base and ultimately threaten our long-term national security interests. In light of these facts, I strongly urge my colleagues to vote ''no'' on the Berman amendment and help maintain one of the most important sectors of our economic strength.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. PELOSI].

(Ms. PELOSI asked and was given permission to revise and extend her remarks.)

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in strong support of the gentleman's amendment, which is to amend the amendment offered by the gentlewoman from California [Ms. HARMAN]. I wanted to put on the record once again that the administration opposes the loan program and believes that it is unnecessary given the availability of existing authority for transactions of this type and the substantial American presence in international markets for military equipment.

I think it is very important that we remember that Congress already has the tools to make grants and loans for the purchase of military weapons when it is in our national interest to do so.

I rise as a member of the Subcommittee on Foreign Operations, Export Financing and Related Programs of the Committee on Appropriations which funds the FMF. It is called the Foreign Military Financing Program. We appropriated $3.15 billion in grants in fiscal years 1995 and 1996. Under the FMF program Congress can assume additional credit risks when it is in our national interest to do so.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. HARMAN].

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, I oppose the Berman amendment and support the language in the bipartisan committee bill.

Let me just make several points quickly. The gentleman from California [Mr. BERMAN] is fighting a different fight. This is not the Export Administration Act reauthorization, and the bill does not change the existing export rules. Anything exported pursuant to this loan guarantee proposal must comply with the existing protections under the Arms Export Control Act and all the rest of our export controls.

It does not cost money. It has no CBO score because the fund that is generated is paid into by the purchasers and by the exporting companies, and it is based on the creditworthiness of the purchaser. Its pluses were stated by the gentleman from South Carolina [Mr. SPENCE]; its minuses do not exist.

I urge support of the committee text and defeat of the Berman amendment.

Mr. DELLUMS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from California [Ms. PELOSI] to complete her statement.

Ms. PELOSI. Mr. Chairman, I thank the distinguished ranking member of the committee for yielding time to me.

As I was saying before my time expired, Mr. Chairman, under the FMF program Congress can assume additional credit risk when it is in our national interest to make the loan.

For fiscal year 1995, Congress appropriated $47.9 million to underwrite 619 million dollars' worth of loans for Turkey and Greece. This new loan program skirts the congressional oversight inherent in the FMF program, and that is one additional reason why I support the Berman amendment.

For good reason, Congress has not permitted the Export-Import Bank to finance arms exports except for certain counternarcotics purposes or in specific situations for nonlethal military loans and services, if the primary end use is for nonmilitary activities.

I repeat, Mr. Chairman, the administration opposes the loan program and believes that it is unnecessary, given the availability of existing authority for transactions of this type and the substantial American presence in international markets for military equipment.

I thank the gentleman from California [Mr. BERMAN] for this very, very important amendment. We know that the administration supports his position. The President already has the authority to make loan guarantees. This new program simply moves more jurisdiction for making such guarantees away from the Committee on Foreign Affairs and recreates a program that has remained unused for the last 10 years because it has been proven to be too costly.

For these and other reasons, Mr. Chairman, I believe that the amendment of the gentleman from California [Mr. BERMAN] is the appropriate course of action for us to take. I believe that it will make the world a safer place, and I thank him very much for making the motion and the ranking member of the committee for yielding time to me. I urge an ''aye'' vote for the Berman amendment.

Mr. DELLUMS. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I just want to make a couple of points in response to my friend, the gentlewoman from California [Ms. HARMAN], who has led the effort for the program. Rarely do we disagree. But the notion that it has no cost, CBO says, because some of the countries eligible for guarantees under the program are high-credit risks, the subsidy costs could be significant.

□ 1745

We are in the process of practically dismantling all of our public-private partnerships on defense conversion, on technology transfers, on providing commercial outlets for our defense industry. As we do that, do we really want to provide again the full faith and credit of the United States and its taxpayers behind the question of whether or not a China or a Turkey or some other country will repay its obligations?

We have a history; we have billions of dollars of outstanding loans that have not been repaid at this point. I would suggest this is not a wise move.

Mr. DELLUMS. Mr. Chairman, I yield myself the balance of the time.

In that time I would make simply three points. First, I rise in support of the amendment offered by the gentleman from California [Mr. BERMAN] because, first of all, I believe that this is a new subsidy program for arms sales. That is No. 1.

No. 2, it has been stated before, and I simply underscore for emphasis, that the U.S. weapons manufacturers already have an unprecedented dominance in the international arms market. Everyone knows that. It would seem to me that this program is not necessary, because they already have a dominant role to play.

Finally, and this is just what brought this gentleman to this Congress and what I think the post-cold war should be all about, and that is that we should not be making it easier to make weapons sales. We have an enormous opportunity here, Mr. Chairman, to slow down the proliferation of conventional weapons, and we should take that opportunity.

How many times on this floor have some of us seen our young people find themselves dodging bullets from weapons that we sold?

In the context of the post-cold-war world, where it seems to me our challenge is to bring greater stability and less danger to the world, because we are paranoid about where we sell all of these weapons, because we are downsizing the military, it seems to me that the inappropriate course is to set up a subsidy for arms sales that engage in proliferation of conventional weapons in the world when we should be going in just the reverse direction.

So for those three arguments, I would ask my colleagues to support Berman. It is a subsidy program. Our manufacturers do not need this additional advantage. They already have an unprecedented dominance in the world of arms sales.

And, finally, it seems to me as a matter of principle we ought to be about slowing down the proliferation of conventional arms weaponry in the world, not speeding it up.

Mr. SPENCE. Mr. Chairman, I yield 3 minutes to the gentleman from Connecticut [Mr. GEJDENSON].

Mr. GEJDENSON. Mr. Chairman, it is difficult for me to rise in opposition

to the gentleman from California [Mr. BERMAN] and his amendment, but I think he mischaracterizes what the legislation actually does.

It does not increase proliferation. What it does is make sure that when a country is deemed worthy and acceptable to have a sale made to it and there is competition between a product made by American workers and French or other foreign nationals, that the American workers and the company that employs them has a fair shot in the battle.

If every other country on the face of this Earth pulled their financial support for export sales, either commercial or defense, I would be with the gentleman from California [Mr. BERMAN].

But the reality is every time we come up against the French and many others, the subsidies they provide are far greater than any subsidy we provide here in this country. The decision we have to make on proliferation is a decision that gets made in the normal course. This amendment does not change it.

The President has to send the sale to Congress. Congress has to act on the sale. Only if those two conditions are met do we then, if necessary, have this additional support for a sale.

And there is a last reason why we need this provision. If we believe in downsizing because the threat is reduced, then we have to find some way to maintain the capabilities that a great power like the United States has at this moment. We can do it one of two ways, one of probably two or three ways: We can find commercial application. That is not always available, but sometimes that helps maintain the technology base. We obviously buy some for our own needs, and in some instances we actually have to provide funds simply to keep that readiness available.

One of the things that can bring the costs down to the taxpayers of this country is where countries are deemed worthy of the sale, that the United States can then sell some of those systems to other countries and thereby reduce the need for our subsidy to keep technologies and skills alive.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from California.

Mr. BERMAN. I thank the gentleman for yielding.

The gentleman talks about French programs and other countries' programs. The United States has well over half the world market. It should only be that in any other area we have this percentage of the world market.

Mr. GEJDENSON. Reclaiming my time, that is the mistake we made with the Japanese. We sat back and said, ''We are dominant in all of these fields.'' We sat and watched them pick area and area apart until we have a massive trade deficit with them.

I am not for proliferation. I am not for increasing arms sales. This provision does not increase arms sales. It provides the financing that may be necessary to keep American products competitive.

Mr. SPENCE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Chairman, I have been waiting for over 10 years to hear SAM GEJDENSON make some sense on this floor, and he just did.

You know, let me say right at the outset that the world is a better place because America is in it.

We need to remind ourselves of that because the rest of the world already believes that.

We also need to remind ourselves that America is the only remaining superpower, because the rest of the world already believes that too.

As much as some people seem to want for our country simply to be some kind of enlarged Switzerland or Sweden, this world is no Garden of Eden. Let us grow up. America sells arms abroad because America has vital interests. We have treaty obligations. We have other commitments for over 50 nations.

All this export loan guarantee program would do is permit U.S. Industry to compete in a limited number of sales to allied countries which have already made a determination to buy. That is all this does. There is nothing in this section of the bill that bypasses or repeals the Arms Export Control Act.

Vote against this amendment.

Mr. SPENCE. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas [Mr. THORNBERRY].

Mr. THORNBERRY. Mr. Chairman, I rise in opposition to the Berman amendment.

The defense export loan guarantee program is good public policy for several reasons. No. 1, it does not require an appropriation of public funds.

Second, it does not affect our national nonproliferation policy at all.

What it does is provide American firms with a modest competitive tool to use against foreign defense exporting companies. Defense exports are a major source of employment and a key to sustaining our industrial base. Yet we are losing about 20,000 jobs every month in the defense industry now.

Participating in the defense global market is a key way to stabilize employment and protect our national technology and manufacturing resources.

I think more than anything, though, this program provides a way to keep our production lines warm and preserve our ability to protect ourselves in the future.

What we are talking about in much of this bill is the expense of letting a production line go cold and then having to come in with a large investment to get it going again. It will ultimately, I believe, save the taxpayers dollars if we can draw on some of these foreign countries to keep our production lines warn and, therefore, the taxpayers will have lower unit costs, and it will save us money in the long run.

I think this defense loan guarantee program is a good economic policy. It is a good trade policy. It is a good military policy . And it is a good foreign policy.

The Berman amendment should be rejected.

Mr. SPENCE. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Connecticut [Mrs. KENNELLY].

(Mrs. KENNELLY asked and was given permission to revise and extend her remarks.)

Mrs. KENNELLY. Mr. Chairman, I rise in opposition to the Berman amendment. H.R. 1530 establishes the Defense Export Loan Guarantee program to improve export opportunities for U.S. defense companies without threat to this Nation's security, without financial risk to U.S. taxpayers, and without deviation from our Nation's export policy.

This program was specifically constructed to be self-financing in order to prevent any financial risk to American taxpayers. It simply creates more favorable rates of financing for export of U.S. defense items once they are approved for transfer.

Created with the support of DOD, this program would provide American firms with a competitive tool against foreign companies that already have access to loans, loan guarantees, and subsidies from their own governments.

The Defense Export Loan Guarantee Program will not lead to greater proliferation nor will it expand the list of approved transfers as my colleague suggests. Our defense companies can already bid on foreign contracts. Rather, this program promotes greater opportunity and leverage for our defense companies to compete in foreign markets.

I urge my colleagues to vote against the Berman amendment and support the defense Export Loan Guarantee Program established in H.R. 1530.

Mr. SPENCE. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. HARMAN].

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, you have heard from a bipartisan group in support of the committee language and against the Berman amendment.

There is not one arms proliferator among us. We are not for arms proliferation. We are only for an equal playing field for American firms to compete in the international marketplace.

I would point out that if exports increase for U.S. firms, the per-unit cost of their goods goes down and the cost, therefore, to the Defense Department goes down as well. So we are saving money for the U.S. taxpayer.

This bill has no score. The CBO scores it as zero because the fees paid

in are paid in either by the exporter or the purchaser, and they are calibrated based on the creditworthiness of the purchaser. The language of the bill makes that absolutely clear.

In conclusion, I would like to quote from the U.S. Department of Defense, which does support this bill. In testimony earlier this year, Josh Gotbaum, Assistant Secretary of Defense for Economic Security, said, ''U.S. defense sales are legitimate exports and should enjoy the same access to official export assistance as other U.S. exports. DOD supports the establishment of a defense export loan guarantee program.''

I urge opposition to the Berman amendment.

Mr. KIM. Mr. Chairman, I rise in opposition to the Berman amendment which would eliminate section 1224 of the pending bill.

Section 1224 would create a defense export loan guarantee program which, at no cost to the taxpayer, would provide American defense firms the ability to offer competitive financial packages for arms sales to certain specified countries that are friendly to the United States. Under this provision, the Secretary of Defense would be permitted to issue U.S. Government guarantees to a lender against losses of principal or interest, or both, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services. These guarantees would be available only to certain exports to America's key allies, namely our NATO partners, major non-NATO allies like Japan and Australia, and countries that belong to the Association of Southeast Asian Nations [ASEAN] as of March 31, 1995. Those countries are limited to: Thailand, Indonesia, Singapore, Malaysia, Brunei, and the Philippines.

While American defense products are some of the best in the world, they nonetheless face credible competition from European and other international producers. For example, consider the high-performance jet fighter market. From the U.S. side, McDonnell Douglas produces the F–15 Eagle and the F/A–18 Hornet. Lockheed manufactures the F–16 Fighting Falcon. Billions of dollars in revenue and tens of thousands of American jobs have resulted from the export of these aircraft. But, almost every final sale has been realized only after a hard-fought battle against the French Mirage, the British Tornado ADV, the European Tornado IDS, the Russian Sukhois and Migs, the Swedish Gripen, and the South African Cheetah—to cite just a sample of the competition.

However, an important part of any bid is the accompanying financial package. The new defense export loan guarantee provision in H.R. 1530 helps ensure that the American defense industry will remain able to offer competitive financing for its exports. This is particularly important in light of the unfair advantages European and other international competitors have because of the loan guarantees and direct financial subsidies they receive from their governments making their products economically more attractive.

This defense export loan guarantee will not result in any foreseeable costs to the American taxpayer. For each guarantee issued, the Secretary of Defense must charge a fee, known as an exposure fee. This fee shall be fixed in an amount sufficient to meet potential liabilities of the U.S. Government under the loan guarantee. And, the countries to which exports could be covered by this loan guarantee program are not financial risks. They are wealthy nations that can afford to pay back their loans. They are countries like Japan, Singapore, and Germany.

So why is this program needed? These loan guarantees are important because they reduce the risk of the lender, therefore allowing the lender to offer better financial terms making American products more affordable. Lower interest rates or easier repayment schedules do help make the difference in whether or not the American product is chosen. While countries like Japan may be wealthy, they are like any other responsible consumer and are always looking for the best value. Without the defense export loan guarantee program, many American products may no longer be the best value.

I strongly oppose the Berman amendment because it would eliminate this proposed loan guarantee program. As a result, I believe American defense exports would diminish and American defense-industry jobs would be lost.

As we continue to downsize our own military and, therefore, procure fewer defense items, increasing defense industry exports are vital to sustaining tens of thousands of jobs in the United States—many of them in my State of California. Hence, it is in our best interests to help promote responsible arms sales to our allies who can afford them. That's exactly what this defense export loan guarantee program does. By eliminating this program, as the Berman amendment proposes to do, we are giving our European and other international competitors a significant advantage in arms sales at the expense of American workers.

I urge my colleagues to join me in opposing the flawed Berman amendment.

The CHAIRMAN pro tempore (Mr. MCINNIS). All time having expired, the question is on the amendment offered by the gentleman from California [Mr. BERMAN].

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. BERMAN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to the rule, the Chair will postpone a demand for a recorded vote on any of the next two amendments until after the debate has been concluded on amendment No. 37. The gentleman will have an opportunity, but it has been temporarily delayed.

AMENDMENT OFFERED BY MR. KOLBE

Mr. KOLBE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. KOLBE: At the end of title X (page 377, after line 19), insert the following new section:

SEC. 1033. USE OF INMATE LABOR AT MILITARY INSTALLATIONS.

(a) USE OF INMATE LABOR AUTHORIZED.—(1) Chapter 155 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2610. State and local correctional institutions: use of inmate labor

''(a) USE OF INMATE LABOR.—The Secretary of a military department may enter into an agreement with a State or local government under which nonviolent offenders incarcerated in a correctional facility under the jurisdiction of that government may be made available to the Secretary to perform the services described in subsection (c) at a military installation under the jurisdiction of the Secretary.

''(b) EXPENSES.—(1) Except as provide in paragraph (2), in order to enter into an agreement pursuant to subsection (a), a State or local government shall agree to provide inmates to the Secretary of the military department concerned without charge to the Federal Government. The Secretary shall not provide compensation to an inmate who performs services pursuant to the agreement.

''(2) The Secretary may agree to reimburse the State or local government for administrative and other costs incurred by the government as a direct result of providing and overseeing inmate labor at a military installation. The Secretary may pay a nominal fee to support alcohol and drug abuse treatment programs for the inmates who perform services under the agreement. The Secretary may also furnish equipment, supplies, and other materials to be used by the inmates in performing services under the agreement and provide meals to the inmates while they are present at the installation.

''(c) AUTHORIZED SERVICES.—Subject to subsection (d), inmates provided to a military installation pursuant to an agreement under subsection (a) may be used to perform the following services:

''(1) Construction, maintenance, or repair of roads at the installation.

''(2) Clearing, maintaining, or reforesting of public lands.

''(3) Construction of levees or other flood prevention structures.

''(4) Custodial services.

''(5) Construction, maintenance, or repair of any other public ways or works.

''(d) CONDITIONS ON ACCEPTANCE OF SERVICES.—The Secretary of the military department concerned shall ensure that the use of inmate labor at a military installation under this section does not—

''(1) displace Government employees or defense contractor employees at the installation;

''(2) impair a contract for the provision of services at the installation; or

''(3) involve the performance of services in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality of the installation.

''(e) ACCEPTANCE OF SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the services provided by inmates made available to a military installation pursuant to an agreement entered into under subsection (a).

''(f) APPLICATION OF OTHER LAWS.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), section 1 of the Act of March 3, 1931 (Chapter 411; 40 U.S.C. 276a; commonly known as the Davis-Bacon Act), section 1 of the Act of June 30, 1936 (Chapter 881; 41 U.S.C. 35; commonly known as the Walsh-Healey Act), and section 2 of the Service Contract Act of 1965 (41 U.S.C. 351) shall not apply with respect to the use of inmate labor at a military installation pursuant to an agreement entered into under subsection (a).''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2610. State and local correctional institutions: use of inmate labor.''.

(b) EFFECTIVE DATE.—Section 2610 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1995.

The CHAIRMAN pro tempore. Pursuant to the rule, the gentleman from Arizona [Mr. KOLBE] and a Member opposed will each be recognized for a period of 5 minutes.

The Chair recognizes the gentleman from Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I have spoken extensively with the commanding officers of the several major military installations in my congressional district, I know that operations and maintenance dollars are tight and that many necessary repairs and facility improvements are difficult to make. I applaud the authorizing committee for recognizing this and providing a substantial increase in O&M funding.

But more can be done. My amendment would allow DOD to utilize the State/local prison labor pool to do routine maintenance. Currently, there is no Federal statute permitting use of civilian inmate labor from State/local correctional facilities by agencies of the Federal Government. DOD civilian inmate labor utilization is limited to the Federal Bureau of Prisons under title 18 U.S.C. section 4125.

My amendment protects law-abiding citizens from the threat of job loss resulting from prison labor. My amendment would deny the use of inmate labor if it displaces Government employees or defense contractor employees at the installation, impairs a contract for services at the installation, or involves services in skills, crafts, or trades in which there is a surplus of labor available locally.

The use of prison labor provides opportunities to preserve facilities and prevent deterioration where current funding is inadequate or wholly unavailable. These photographs demonstrate the effects of inadequate O&M dollars at Ft. Huachuca, one of the installations in my district. This lack of maintenance has a detrimental effect on the entire installation and the people that must live and work in these conditions.

This program has a second primary benefit—it serves as a tool for correctional facilities to rehabilitate and train its prisoners at no cost—and in fact, at great savings—to the taxpayer.

I urge my colleagues to support my amendment.

□ 1800

Mr. Chairman, I reserve the balance of my time.

Mr. KENNEDY of Rhode Island. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Arizona [Mr. KOLBE].

Mr. Chairman, I am compelled to rise against the Kolbe amendment authorizing the use of civilian inmate prison or convict labor at our military installations. This amendment has arrived on the floor of this body without the benefit of deliberation in the committee process or the blessing of the Department of Defense. There must be some specific reason for the absence of an official request from the Department on this program.

Last year this same provision was considered in conference, and it was rejected. The primary reason for that rejection was the potential conflict with the ongoing contracts with Government workers. Nothing has happened since then to change that concern. This amendment would leave the implementation arrangements up to the State and local governments to determine the final details of the arrangement in some form of a memorandum of understanding with the installation. That includes who will participate, the nature of the task to be performed, and the conditions under which the tasks would be performed.

Additionally, Mr. Chairman, the amendment purports not to involve services in skills for which there is a local surplus of available labor. It is inconceivable that unskilled or low skilled workers would not be found in the immediate area to perform these tasks. That, Mr. Chairman, is the reason the Department of Labor has continued to express concern over this program.

It seems to me that while the objectives of this program might be laudable, there remains too much ambiguity with its implementation. We do not know enough about the program at this time to make an informed decision, and for that reason I ask that we allow the Department to assess the utility of this program prior to giving its approval.

Let me just add this notion that prison labor is somehow a good break for the taxpayers is hogwash. In my State of Rhode Island, in the northwestern woolen mills up in Woonsocket, it is the prison labor authority that is stealing the jobs out of my workers in Woonsocket. Now this can be said for, I am sure, the military installation in my district in Newport, as well as it can be said for the woolen mills that manufacture those emergency blankets by which our service men and women keep themselves warm or by which our American Red Cross use in the humanitarian relief efforts. These are now being underbid, and they are not underbid because they are subsidized. Remember we pay the prison authority to incarcerate these people, so when they are doing the work and undercutting our labor market, it is not a good break for the taxpayers. In fact, if the taxpayers were to find out that what we were really doing was subsidizing convicted criminals, people who have transgressed the law, and subsidizing them to take good jobs away from American workers, why there is nothing more that could be said about the Chinese and their slave labor problems over there. We will be no better than them if we go down the direction that this amendment is asking us to go down.

Mr. Chairman, I have seen it before in my State. I do not want to see it repeat itself anywhere else in my district because it does not make sense for the hard-working families of my district, and I might add the State of Rhode Island can make these contracts with the local installations, and you know what? They will underbid because they will be using this prison labor, and I do not think that is fair to the working class people who depend on an income and the civilian work that goes on in these bases, and for that reason I ask my colleagues to defeat the Kolbe amendment.

Mr. KOLBE. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Texas [Mr. PETE GEREN].

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

Mr. PETE GEREN of Texas. Mr. Chairman, I want to take issue with my colleague, the gentleman from Rhode Island [Mr. KENNEDY], on his claim that this is an issue that has not been adequately studied, adequately reviewed. In fact, all we are talking about doing is taking the program that has worked very well with Federal prison inmates and expanding it to the State prison system. It has worked well. I have seen it at military bases around this country. They are able to stretch O&M dollars, make the most out of very limited budgets, and we, we are shrinking our defense budget, we are asking our military to do more with less. This will help us do that.

And it is a two-fer, Mr. Chairman. My constituents do not want to see prisoners sitting in air-conditioned rooms watching television all day. This puts them to work. That is good for the system, that is good for the prisoners. It helps them rehabilitate them.

So, we have a double win here. We got a win for the military. They get some of these tasks done that could not be done through the labor pool, and it forces prisoners to go to work and earn their keep.

I urge support of the Kolbe amendment.

Mr. KENNEDY of Rhode Island. Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Chairman, I reluctantly rise against the gentleman's amendment. One of us has served on military bases, and we have men, women, and children on those bases, and the last thing that I would like is for guards looking over. As my colleagues know, if there is an attempt to escape, there is going to be a shooting, and, when we have people at our commissaries, in our exchanges, plus a lot of these bases are very highly restricted in the areas as far as security, and I would hate to see that, and I reluctantly rise on the amendment and ask my colleagues to defeat it.

Mr. KOLBE. Mr. Chairman, I yield myself 1 minute.

First of all, Mr. Chairman, let me respond to a couple things that were said by the gentleman, and I hope the gentleman from California will stay

around here for a moment because the gentleman from Rhode Island said, that first of all he said it is inconceivable we cannot find local labor. That is not the issue. They are out of O&M money. It is not that labor is not available. There is not a dime, not a dollar, to do this kind of work. Apparently it is less important that we be able to fix the hot water heaters, fix the roofs, than it is to try and find money when we do not even have the money.

The second thing that the gentleman said, and I would like to; he talked about the problem of taking jobs away from his people in Woonsocket. If the State of Rhode Island does not want to do this, do not do it. Do not enter into a contract with the military installation, but in 7 years, and this is directed to the gentleman from California, 7 years of military installations doing this with the Federal Bureau of Prisons there has not been one complaint about losing a job and not one complaint about problems.

My particulate installation, nearby we have a very large DUI, a drug—not drug, but alcohol, for those who went in there. Those are in there for alcohol offenses, and I would say that they have not had—they can use those people. These are not violent offenders. We are not talking about taking criminals. In fact the legislation, they do not now take anybody that is a principal organized crime figure who is anybody of significant public interest who has committed a sex offense, who is an escape risk, who poses a threat to the general public, who is convicted of arson, who is convicted of any violent crime. We are talking about nonviolent criminals to do work that keeps the quality of life for the service men and women that we have living on these facilities, to fix the roof, fix the hot water heaters, do the general work on the streets They are there and out. They have Federal prisoners doing this work at installations all over the country.

Now why should they not be allowed to contract for State facilities at places where they do not have the Federal prisons nearby? That is all we are asking to do, is to try and do that.

Mr. Chairman, I reserve the balance of my time.

Mr. KENNEDY of Rhode Island. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I just want to echo the eloquent comments of my colleague, the gentleman from California [Mr. CUNNINGHAM], who pointed out a very important concern, and that is the security of our military base, allowing convicted prison labor on those bases where there may be some very sensitive things going on on those bases, and we are allowing those prisoners to be on the base.

Second, in terms of the money we plussed up by a figure of nearly $10 billion the operation and maintenance account in this year's authorization on the committee that I serve on so there will be money.

Last, again we do not want prison labor taking away jobs from our local people in our districts, and for that reason I ask the defeat of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona [Mr. KOLBE].

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. KENNEDY of Rhode Island. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Again, pursuant to the rule, further proceedings on the amendment offered by the gentleman from Arizona [Mr. KOLBE] will be postponed.

It is now in order to consider amendment No. 37 printed in part 2 of the report.

AMENDMENT OFFERED BY MS. MOLINARI

Ms. MOLINARI. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Ms. MOLINARI: At the end of subtitle B of title XXVIII (page 470, after line 21), insert the following new section:

SEC. 2814. REMOVAL OF BASE CLOSURE PROPERTIES FROM APPLICATION OF SECTION 501 OF THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.

(a) CLOSURES UNDER 1988 ACT.—(1) Section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note) is amended by striking out paragraph (6) and inserting in lieu thereof the following new paragraph:

''(6) Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) shall not apply with respect to the transfer or disposal of real property located at military installations closed or realigned under this title.''.

(b) CLOSURES UNDER 1990 ACT.—(1) Section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking out paragraphs (6) and (7) and inserting in lieu thereof the following new paragraph:

''(7) Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) shall not apply with respect to the transfer or disposal of real property located at military installations closed or realigned under this part.''.

The CHAIRMAN. Under the rule, the gentlewoman from New York [Ms. MOLINARI] will be recognized for 5 minutes, and the gentleman from California [Mr. DELLUMS] will be recognized for 5 minutes.

The Chair recognizes the gentlewoman from New York [Ms. MOLINARI].

Ms. MOLINARI. Mr. Chairman, I would like to begin by thanking the gentleman from New York [Mr. SOLOMON] for making my amendment in order and thanking the committee chair for allowing me to offer it this evening.

My colleagues, this amendment seeks to speed up the base reuse process by eliminating the Federal requirement that homeless providers must be accommodated with regard to closing military bases. Ever since the 1988 round of base closures, there has been a general consensus that the reuse process has taken too long. One of the reasons for this, particularly, for bases closed in 1991 and 1993, is the need to comply with the McKinney Homeless Act.

Last year, Congress passed an act which technically exempts closing bases from compliance with the McKinney Act. However, communities with bases being closed would still have to accommodate requests of homeless groups of property on bases. Ultimately, the reuse planning process can still be delayed for many, many months, perhaps many years, by the steps still required to accommodate homeless requests.

Listen: I strongly believe that when a base is closed, local communities have a tough enough challenge in planning economic redevelopment without having to respond to Federal mandates about accommodating the homeless. Therefore, this amendment would exempt closing military bases from the McKinney Act, fully and completely, once and for all. This would remove all of the uncertainty about homeless concerns and allow local communities to get on with their own reuse planning. According to alleged counsel this amendment would not affect bases where the property has already been transferred.

Let me also add that there is nothing in this amendment would prevent homeless providers from requesting facilities on closing military bases. But under my amendment, there would be no Federal requirement that such requests be accommodated. Where the needs of the homeless represent a legitimate local concern, local base redevelopment authorities would be able to respond to such needs in whatever manner they see fit.

Mr. Chairman, the Molinari-Bilbray amendment would simply stop the Federal Government from telling local authorities that they must respond at a certain point in the criteria to the concerns of homeless groups.

Mr. Chairman, I reserve the balance of my time.

Mr. DELLUMS. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Illinois [Mrs. COLLINS].

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Chairman, I rise to oppose the amendment because it would remove assistance to the homeless as a proper public purpose for which base-closure lands may be provided

Let me say right now that homeless assistance providers do not, repeat do not, have a priority to obtain base closure lands. Last year Congress, by voice votes in both Houses, approved

the Base Closure Redevelopment and Homeless Assistance Act of 1994.

The act established a new collaborative process among government, community, the local redevelopment authority, and local homeless representatives in the redevelopment planning. It made these parties partners in the process leading to a redevelopment plan.

The new process they worked out is both fair and flexible. It remains in line with the basic goal in title V of the Stewart B. McKinney Homeless Assistance Act; namely, to make assistance to the homeless one of the several public purposes for which surplus land is available for no-cost transfer.

To approve the pending amendment would be to disavow the principle of title V of the McKinney Act. The thought is particularly painful to me. Title V and the related land disposal provisions of the base closure statutes were matters within the jurisdiction of the Committee on Government Operations when I served as a subcommittee chair and later as vice chair of the full committee.

Today, dozens of communities are already benefiting or will soon benefit from the new procedures, bringing housing, food, job training, and job search assistance to thousands of homeless men, women, and children.

Only recently in my own district, the city of Chicago and the Chicago Coalition for the Homeless, working with some surplus land at the Navy Pier, showed us a splendid example of how the Federal Government, the community, and the homeless advocates can successfully work together.

In fact, the November 20, 1994, Chicago Tribune article that I'm including with my remarks reported that the ''Navy Pier' agreement * * * could serve as a model for resolving similar disputes elsewhere. * * *''.

Like a speeding train braked to a sudden stop, this amendment would throw past, present, and prospective activities into chaos and consternation. Base-closure land disposal arrangements made under present and prior law would stagnate in uncertainty and lead to a whole array of litigation.

To make a sudden and profound change like this without full hearings by the appropriate jurisdictional committees would be reckless and reprehensible procedure.

I urge my colleagues to reject this ill-considered and dangerous amendment.

[From the Chicago Tribune, November 20, 1994]

NAVY PIER LAND SWAP WORTH COPYING

There have been so many ugly confrontations between city authorities and the homeless that it is cause for celebration when the two sides strike a mutually beneficial deal.

Indeed, the proposed ''Navy Pier'' agreement between the Daley administration and the Chicago Coalition for the Homeless could serve as a model for resolving similar disputes elsewhere, beginning with Lake County.

But first the particulars of the Chicago deal:

The seeds were planted four years ago when a small parcel of land west of Navy Pier—land once used by the U.S. Coast Guard—popped up on a list of surplus federal land eligible for purchase by homeless groups. The Chicago Coalition fired off an application to the U.S. Department of Housing and Urban Development, which approved the sale, putting the city over the proverbial barrel.

The city needs the land as part of a planned Gateway Park across from the entrance to the redeveloping pier. Planners also argued, justifiably, that the doorstep of a major tourist attraction, especially one isolated east of Lake Shore Drive, is no place for the homeless.

But the Coalition persisted, forcing City Hall to offer a swap in which the city gets the pier land in return for helping the homeless coalition start a highly innovative employment project. The city proposes to give the coalition $50,000 and enough vacant land on the Near West Side to accommodate several greenhouses for the production of flowers, herbs and vegetables.

Homeless job trainees from West Side shelters will tend the crop. Their produce would be sold to wholesalers at the nearby South Water Market, at city-sponsored farmers' markets, and at a permanent stall on Navy Pier. Coalition trainees also will get first crack at temporary labor on Navy Pier and at McCormick Place, where they will help set up and tear down trade shows.

Why is Lake County ripe for such an arrangement?

Because homeless groups there have staked similar claims on portions of old Fort Sheridan, greatly complicating the plans of three Lake County suburbs to convert the surplus army base into a mixed-use residential community.

The suburbs' plan ought to include some housing for low-income families. But as a site for homeless shelters, Fort Sheridan, which is a long drive from Lake County employment centers, isn't much better than Navy Pier.

The suburban Fort Sheridan Joint Planning Commission needs to sit down with the three homeless groups that have made bids and work out something similar to the Navy Pier settlement. Recently passed amendments to the McKinney Act, the law that gives the homeless a claim on surplus federal land, should abet the process.

So will the spirit of compromise, rather than confrontation, that greased the innovative Chicago deal.

□ 1815

Ms. MOLINARI. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. BILBRAY].

Mr. BILBRAY. Mr. Chairman, we are talking about removing a process that may be well intentioned, but let me tell you as somebody who had to work at the local level at trying to make the process work and seeing the difficulties that happened in the last year, it was a good intention that is just not penciled out.

I think we need to remind all of us here that these facilities, these bases, were not just purchased by a willing seller. The great majority of the military installations in this country were taken under war powers acts and under emergency powers. So the concept of how they were taken and where they belong in the long run is something we can talk about at length. But let me tell you, as somebody who has tried to work with the homeless issue, that this act has not worked to the level that it could work if we were tapping into the greatest resource we have of providing homeless resources in our country, and that is the local government and local cooperation. This process, Mr. Chairman, is counterproductive to its stated intent.

I would like to point out that I will be introducing as one item, possibly in Corrections Day, as something that can really help the homeless programs. I have St. Vincent de Paul Housing Center in San Diego County paying over $30,000 a year in interest payments that are really inappropriate. I would hope my colleague would work with me on this. This act does not do what we want to do with the homeless programs.

I would like to point out also the way this thing is being interpreted right now, the California Coastal Commission is being preempted by HUD Federal mandate. I do not think anybody means to repreempt the California Coastal Act with this act. These are the kind of details we could avoid if we would go into a cooperative mode with the local authorities, and give them the right to implement these programs appropriately.

I would say to my chairman, HUD is not the best agency to make the determination of how best to provide homeless services in San Diego County or in New York or in Florida or in Washington. I think that local communities have proven over the last half a decade that when they are allowed to do the right thing, they not only do the right thing, but they do the best thing.

Mr. DELLUMS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from California [Ms. PELOSI].

(Ms. PELOSI asked and was given permission to revise and extend her remarks.)

Ms. PELOSI. Mr. Chairman, with great reluctance I oppose the amendment offered by the gentlewoman from New York [Ms. MOLINARI]. I urge my colleagues to vote ''no.''

Mr. Chairman, I rise in opposition to the amendment. This amendment would throw into turmoil collaborative planning processes for base reuse throughout the country.

Last year the Congress modified existing the application of the McKinney Act to base closures to ensure balance in the planning process. Last year's amendment gave local reuse authorities substantially more authority over base property than before, and ensured that homeless providers were partners, rather than organizations receiving priority over local reuse authorities.

This amendment would undermine the collaborative process in San Francisco, where homeless providers have worked with the citizens' reuse committee on all planning issues with respect to Treasure Island.

This amendment would eliminate the ability of San Francisco to effectively incorporate

homeless services into its reuse plan by terminating the no-cost McKinney conveyance powers. Now, for San Francisco to consider inclusion of homeless services in its reuse plan, it would be forced to pay market value for any buildings contemplated for homeless reuse.

I know that if the author of this amendment truly respected the needs and desires of local communities with respect to reuse, therefore they should either extend the application of the amended McKinney provisions to all bases not yet closed; or, they could give local reuse authorities approval power over all McKinney applications.

Mr. Chairman, this amendment, in its current form, goes too far, and I urge all Members to vote against the amendment.

Mr. DELLUMS. Mr. Chairman, I yield 1 minute to the distinguished gentleman from California [Mr. FARR].

Mr. FARR. Mr. Chairman, I thank the gentleman, the ranking member, for yielding and stand in strong opposition to this amendment.

Mr. Chairman, it is not broken. It does not need fixing. You have excess Federal housing which is allowed under present law to be given to community nonprofits with independent funding and without requiring the Federal Government to make appropriations.

We have in the largest base closing in the United States 26 community foundations, organizations, that are providing for the homeless at Fort Ord. This is a very successful program. If you take this away, you are going to require those agencies to go to the Federal Government to have housing for the homeless. Homelessness is a problem which our society has to deal with.

Why take away the very one element of Federal law when you have excess land that allows them to get in and have that excess land where there is local approval? It is working at Fort Ord, Philadelphia, New York, Maine, Washington, and throughout a number of States in the United States.

Ms. MOLINARI. Mr. Chairman, I yield the balance of my time, 1 minute, to the gentleman from Guam [Mr. UNDERWOOD].

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

Mr. UNDERWOOD. Mr. Chairman, I rise in strong support of the Molinari-Bilbray amendment. As a Member that usually is supportive and sympathetic to the efforts to address the homeless problem, I nonetheless do not support applying the McKinney Act to bases which are closing, and our experience in Guam demonstrates why an across-the-board application makes absolutely no sense.

In Guam's case, after the naval air station was closed under BRAC, an Oklahoma-based nonprofit organization wanted to come some 10,000 miles to Guam, acquire our bases, and import their homeless to our island. This decision not only makes no sense, it helped curtail the authority and complicated the plans of the local reuse committee.

This amendment helps restore the authority to localities who are in the best position to determine how to grow economically. When a base closes, a reuse committee needs to decide what is the best way to revitalize the local community. Facing an increase of unemployment is the last thing a community needs. There is a wave of homelessness. Local communities need these facilities to revitalize their job base and economies. Please support this amendment.

Mr. DELLUMS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. HALL].

Mr. HALL of Ohio. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise today to oppose this amendment. In my opinion, this amendment would be a setback for several existing projects and future plans to address one of America's biggest failures, of course, which I think is homelessness.

The amendment's proponents mistakenly take the position that the current law gives homeless advocates top priority in obtaining base closure property, and this is not true. The act that we passed last year completely addresses the pecking order problem feared by the authors. BRAC-CA passed a reasonable compromise this past fall, gives local communities control in prioritizing use for base closure property. It requires that the local redevelopment authority for each installation only consider homeless uses in developing base closure plans.

Mr. Chairman, homelessness is a national disgrace, and it is possibly the single most embarrassing condition in America today. We should not make it harder to solve homelessness. Even the Pentagon opposes this amendment because they are proud of the role they have recently played in solving the national disgrace of homelessness.

In fact, over 7,000 homeless people have been assisted since the new law was passed last year in Monterey and Philadelphia and Plattsburg and Seattle, just a few of the communities that have stepped up to the problem of homelessness and have worked as partners with the Pentagon. So, Mr. Chairman, I would hope that the Members would be against this amendment. It threatens to disrupt this and other plans that have worked very well, I think, for the homeless.

Mr. DELLUMS. Mr. Chairman, I yield such time as he may consume to the gentleman from Washington [Mr. MCDERMOTT].

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

Mr. MCDERMOTT. Mr. Speaker, I rise in opposition to this amendment.

Mr. Speaker, I want to thank Chairman DELLUMS for this opportunity to speak against this amendment which I strongly oppose.

Current law, which this amendment proposes to change, allows the Federal Government to transfer portions of former military bases to local communities, at no cost, who wish to provide housing and job training for the homeless.

Many local communities across the country, including my hometown of Seattle, WA, have successfully integrated homeless assistance plans into base reuse proposals in ways that will benefit the entire community.

The Sand Point Community Liaison Committee has worked extensively with the city of Seattle, the Seattle-King County Coalition for the homeless and many other groups to successfully address the problem of homelessness.

It seems odd that the Republican authors of this amendment would want to take away base closure property from local communities who have demonstrated willingness to use the property to assist the homeless.

Republicans are always declaring that they want to increase local flexibility but the Molinari-Bilbray amendment will only decrease the flexibility of local communities wishing to solve local problems.

If this amendment passes, an important option will be eliminated and local communities will be left with the problem of homelessness and in turn will need to rely on Federal and State appropriated money to address the problem.

By prohibiting local communities from finding innovative techniques, such as using closed military facilities, to address the serious problem of homelessness, this amendment will further increase the costs to local governments. Another unfunded mandate from the Republicans.

But the Republicans will continue to say, ''no, this is not an unfunded mandate. We are not mandating that you assist the homeless in any way in your local community.'' Of course you're not, but these communities are the ones that are dealing with the homeless in their backyards and in their alleys and streets.

Let's not inhibit local communities from doing their job. We should not cut the options for communities who want to deal with their homeless population to do so in a safe, agreeable, and fiscally responsible fashion.

I urge my colleagues to vote against this irresponsible amendment.

Mr. DELLUMS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, with some difficulty I have tried to focus on the debate, and I would like to address my remarks to the two principals of this amendment. There are at least three assertions that were made here that I would like to challenge.

With respect to your assertion, Mr. BILBRAY, I would assert to you, and this is acquiesced in by the Department of Defense interpretation of your amendment, that you do indeed eliminate the ability of local communities and nonprofit groups to use a base closure property to assist the homeless. So it is quite the reverse. You take away the local decisionmaking capability.

No. 2, Mr. Chairman, I do not know if anybody read the fact that last year the Congress modified the McKinney Act, or if they read it, they certainly misinterpreted it. Last year the Congress modified the McKinney Act to give communities greater say as to how assistance would be given to the homeless and to what extent.

Mr. Chairman, communities have found that the new process can be both

balanced and workable. This gentleman knows because we are dealing with it on the ground. This is not theoretical. Current legislation requires that the local reuse authority for each installation only consider, only consider, homeless assistance as one of its uses. It is not mandatory for the installation to be used in that manner.

Mr. Chairman, I would assert that as I listened carefully to my two colleagues, they either do not know that the McKinney Act was modified, or certainly grossly misinterpreted it. It has now been radically changed. So if you are going to debate the issue, let us debate the issue in the present time frame, not in yesterday's time frame, not in yesterday's provisions.

Third, the revised McKinney Act and the Base Closure Committee Redevelopment and Homeless Assistance Act of 1994 allows nonprofits with independent funding to use portions of former military bases to provide housing and job training to the homeless.

The next point: The elimination of the legislation would eliminate local control, just what the gentleman from California said he did not want to eliminate. Passage of the amendment would prohibit transfer of property even when the local communities decide to provide services to the homeless.

What could be more bizarre than that? The local communities and nonprofits are now seeking to use the legislation. This amendment puts programs in serious jeopardy. Its retroactive effects will destroy effective arrangements that are already in place. In some cities planning will come to a halt, awaiting a final decision on this amendment.

I would like to, to the gentlewoman from New York, make this assertion on her comment: The amendment will eliminate DOD's authority to implement locally devised programs by stripping DOD of the authority to transfer surplus military property. That is not just this gentleman's point of view.

You said that the legislative counsel suggested that was not the case. The Department of Defense's analysis of its prerogatives within the framework of this amendment arrived at the position that they believe that they are stripped of their capacity to transfer surplus military property. I know the gentlewoman and I do not think that is an intended consequence, but that is indeed an effect of the amendment.

This amendment neither serves local communities nor speeds up the base disposal process. I know that the gentlewoman is positively motivated. I think the gentlewoman believes that her amendment, given base closure problems in New York, would expedite the process. But I would think that the gentlewoman would live to rue the day that this amendment becomes reality, because I do not believe that it is going to speed up the process. I believe that it is going to be just the reverse. It is going to slow it down.

Last year we revise the McKinney act to deal with these kinds of problems. Communities are now warming up to this. They know that it is workable. Things are moving forward. I think that while perhaps well intended, I believe that at the end of the day, this is a mischievous, nonproductive amendment. I would hope that either my colleagues withdrew it based on reconsideration, or if it is laid out there, I hope that my colleagues will resoundingly defeat it. This is not time to make this mistake.

The CHAIRMAN pro tempore (Mr. MCINNIS). All time having expired, the question is on the amendment offered by the gentlewoman from New York [Ms. MOLINARI].

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DELLUMS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. Pursuant to the rule, further proceedings on this amendment offered by the gentlewoman from New York [Ms. MOLINARI] will be postponed.

ANNOUNCEMENT BY THE CHAIRMAN P.T.

The CHAIRMAN pro tempore. Pursuant to the rule, proceedings will now resume on those amendments on which further proceedings were postponed. They will be considered in the following order:

Amendment No. 30 offered by the gentleman from California [Mr. POMBO]; Amendment No. 3 offered by the gentleman from California [Mr. BERMAN]; Amendment No. 33 offered by the gentleman from Arizona [Mr. KOLBE]; and Amendment No. 37 offered by the gentlewoman from New York [Ms. MOLINARI].

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series of votes.

AMENDMENT OFFERED BY MR. POMBO

The CHAIRMAN pro tempore. The pending business is the vote on the amendment offered by the gentleman from California [Mr. POMBO] on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This is a 15-minute vote, to be followed by a series of 5-minute votes.

The vote was taken by electronic device, and there were—ayes 302, noes 125, not voting 7, as follows:

[Roll No. 376]

AYES—302

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Boucher
Brewster
Browder
Brown (FL)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Manton
Manzullo
Martini
Mascara
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp

Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wise
Wolf
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—125

Abercrombie
Ackerman
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bonior
Brown (CA)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Durbin
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hoyer
Jackson-Lee
Johnson (SD)
Johnson, E. B.
Johnston
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Lantos
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney
Markey
Martinez
Matsui
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pastor
Payne (NJ)
Pelosi
Poshard
Rahall
Reed
Reynolds
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Scott
Serrano
Skaggs
Slaughter
Stark
Stokes
Studds
Thompson
Torres
Towns
Tucker
Velazquez
Vento
Ward
Waters
Watt (NC)
Waxman
Williams
Woolsey
Wyden

NOT VOTING—7

Fields (TX)
Kleczka
LaFalce
Rangel
Thornton
Wilson
Yates

□ 1848

Mr. BROWN of California and Mr. FOGLIETTA changed their vote from ''aye'' to ''no.''

Messrs. RICHARDSON, SMITH of Texas, KLINK, and MARTINI changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. BERMAN

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California [Mr. BERMAN], on which further proceedings were postponed, and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from California [Mr. BERMAN], for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 152, noes 276, not voting 6, as follows:

[Roll No. 377]

AYES—152

Abercrombie
Andrews
Baesler
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Blute
Bonior
Boucher
Brown (FL)
Brown (OH)
Brownback
Bryant (TX)
Bunn
Chenoweth
Clay
Clayton
Clyburn
Coble
Coburn
Collins (IL)
Collins (MI)
Conyers
Deal
DeFazio
Dellums
Deutsch
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Engel
English
Eshoo
Evans
Farr
Fields (LA)
Filner
Foglietta
Franks (NJ)
Furse
Ganske
Gibbons
Gonzalez
Gutierrez
Hastings (FL)
Hinchey
Hoekstra
Holden
Horn
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnston
Kanjorski
Kaptur
Kasich
Kennedy (MA)
Kildee
Klug
Lantos
Latham
Leach
Lewis (GA)
Lincoln
LoBiondo
Lowey
Luther
Maloney
Markey
Martinez
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Metcalf
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Moran
Morella
Nadler
Neumann
Ney
Nussle
Oberstar
Obey
Olver
Owens
Pallone
Paxon
Payne (NJ)
Pelosi
Petri
Pomeroy
Poshard
Rahall
Ramstad
Rangel
Reynolds
Richardson
Rivers
Rohrabacher
Rose
Roukema
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sanford
Sawyer
Schroeder
Schumer
Sensenbrenner
Shays
Skaggs
Slaughter
Stark
Stokes
Studds
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Whitfield
Williams
Woolsey
Wyden
Zimmer

NOES—276

Ackerman
Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boehner
Bonilla
Bono
Borski
Brewster
Browder
Brown (CA)
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Christensen
Chrysler
Clement
Clinger
Coleman
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
DeLauro
DeLay
Diaz-Balart
Dickey
Dicks
Dingell
Doolittle
Dornan
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fattah
Fawell
Fazio
Flake
Flanagan
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Gejdenson
Gekas
Gephardt
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoke
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones
Kelly
Kennedy (RI)
Kennelly
Kim
King
Kingston
Klink
Knollenberg
Kolbe
LaHood
Largent
LaTourette
Laughlin
Lazio
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lofgren
Longley
Lucas
Manton
Manzullo
Martini
Mascara
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Murtha
Myers
Myrick
Neal
Nethercutt
Norwood
Ortiz
Orton
Oxley
Packard
Parker
Pastor
Payne (VA)
Peterson (FL)
Peterson (MN)
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Reed
Regula
Riggs
Roberts
Roemer
Rogers
Ros-Lehtinen
Roth
Salmon
Saxton
Scarborough
Schaefer
Schiff
Scott
Seastrand
Serrano
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thurman
Tiahrt
Torkildsen
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Wicker
Wise
Wolf
Wynn
Young (AK)
Young (FL)
Zeliff

NOT VOTING—6

Fields (TX)
Kleczka
LaFalce
Thornton
Wilson
Yates

□ 1900

Messrs. HOYER, ZELIFF, COSTELLO, FATTAH, NEAL of Massachusetts, and MEEHAN changed their votes from ''aye'' to ''no.''

Messrs. WHITFIELD, MINGE, MARKEY, NEY, KASICH, BLUTE, SHAYS, UPTON, KENNEDY of Massachusetts, and MOAKLEY changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above.

□ 1900

AMENDMENT OFFERED BY MR. KOLBE

The CHAIRMAN. The pending business is the demand of the gentleman from Arizona [Mr. KOLBE] for a recorded vote on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 214, noes 214, not voting 6, as follows:

[Roll No. 378]

AYES—214

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Flanagan
Foley
Fowler
Fox
Franks (CT)
Frelinghuysen
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoke
Horn
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
Longley
Lucas
Manzullo
McCollum
McCrery
McHale
McInnis
McIntosh
McKeon
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Radanovich
Ramstad
Roberts
Rogers
Rohrabacher
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thurman
Upton
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
White
Whitfield
Wicker
Wolf
Zeliff
Zimmer

NOES—214

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Chapman
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Edwards
Engel
English
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Forbes
Ford
Frank (MA)
Franks (NJ)
Frisa
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gillmor
Gilman
Gonzalez
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hastings (WA)
Hilliard
Hinchey
Hoekstra
Holden
Hostettler
Hoyer
Hunter
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Klink
Lantos
Leach
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McHugh
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Quillen
Quinn
Rahall
Rangel
Reed
Regula
Reynolds
Richardson
Riggs
Rivers
Roemer
Ros-Lehtinen
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Solomon
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Tiahrt
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Weller
Williams
Wise
Woolsey
Wyden
Wynn
Young (AK)
Young (FL)

NOT VOTING—6

Fields (TX)
Kleczka
LaFalce
Thornton
Wilson
Yates

□ 1909

Messrs. WELLER, CHAPMAN, and TORRICELLI changed their vote from ''aye'' to ''no.''

Mr. CUNNINGHAM and Mr. NEUMANN changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MS. MOLINARI

The CHAIRMAN. The pending business is the demand of the gentlewoman from New York [Ms. MOLINARI] for a recorded vote on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 293, noes 133, not voting 8, as follows:

[Roll No. 379]

AYES—293

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Bevill
Bilbray
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Johnston
Jones
Kelly
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Manton
Manzullo
Martini
Mascara
Matsui
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Meehan
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Mollohan
Montgomery
Moorhead
Moran
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wise
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—133

Abercrombie	Gejdenson	Nadler
Ackerman	Gephardt	Oberstar
Barcia	Gibbons	Obey
Barrett (WI)	Gonzalez	Olver
Becerra	Green	Owens
Berman	Gutierrez	Pastor
Bilirakis	Hall (OH)	Payne (NJ)
Bonior	Hamilton	Pelosi
Borski	Harman	Rahall
Brown (CA)	Hastings (FL)	Rangel
Brown (FL)	Hilliard	Reed
Brown (OH)	Hinchey	Reynolds
Bryant (TX)	Hoyer	Rivers
Clay	Jackson-Lee	Roybal-Allard
Clayton	Jacobs	Rush
Clinger	Jefferson	Sabo
Clyburn	Johnson (SD)	Sanders
Coleman	Johnson, E. B.	Sawyer
Collins (IL)	Kanjorski	Schroeder
Collins (MI)	Kaptur	Scott
Conyers	Kennedy (MA)	Serrano
Coyne	Kennedy (RI)	Skaggs
Danner	Kennelly	Slaughter
Davis	Kildee	Stark
DeFazio	Lantos	Stokes
DeLauro	Levin	Studds
Dellums	Lewis (GA)	Stupak
Dicks	Lofgren	Thompson
Dingell	Lowey	Torres
Dixon	Luther	Torricelli
Doggett	Maloney	Towns
Durbin	Markey	Tucker
Engel	Martinez	Velázquez
Eshoo	McCarthy	Vento
Evans	McDermott	Visclosky
Farr	McHale	Ward
Fattah	McKinney	Waters
Fields (LA)	Meek	Watt (NC)
Filner	Menendez	Waxman
Flake	Mfume	Williams
Foglietta	Miller (CA)	Woolsey
Ford	Mineta	Wyden
Frank (MA)	Mink	Wynn
Franks (NJ)	Moakley	
Furse	Morella	

NOT VOTING—8

Fields (TX)	LaFalce	Wilson
Kasich	Ney	Yates
Kleczka	Thornton	

□ 1917

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. DORNAN. Mr. Chairman, this bill marks a historic moment in our country's approach to maintaining national security. For the first time in four decades, a new majority in the House of Representatives is setting the priorities for spending by the Department of Defense. Because of the increasing pressures we face both here and abroad, this new approach to our Nation's security could not have come at a better or more appropriate time.

The world is becoming much more complex in terms of security requirements. Situations in Somalia, Bosnia, and Haiti have clearly demonstrated the dangers our military forces will face despite the apparent end of the cold war with the former Soviet Union. Meanwhile, increased budgetary pressures, including a commitment to balance the Federal budget by 2002, mean that the resources available to maintain an effective military capability will be very limited. Against this backdrop, the current administration has not only failed to clearly articulate a comprehensive foreign and national security policy for the future, but has under funded its own very questionable Bottom-Up Review by as much as $150 billion.

In response to these circumstances, the House National Security Committee has taken very bold and innovative measures designed to not only maintain but drastically improve our military capability for both now and the next century.

Highly motivated and qualified soldiers, sailors, airmen and Marines remain the foundation for an effective combat fighting force. In order to recruit, retain and reward such troops, the committee, led by my Personnel Subcommittee, took the following necessary steps. First, we placed a mandatory floor on military force structure in order to prevent the administration from further cutting personnel levels below those recommended in the Bottom-Up Review. We also authorized the Secretary of Defense funding for an additional 7,500 personnel that could be used directly to relieve pressure on certain portions of each military service being stressed by high operations tempo such as Air Force AWACS, Army military police, and Army Patriot missile units. In the area of compensation, we fully approved a military pay increase, the first requested by this administration in 3 years, and supported a range of other compensation initiatives over and above those requested including a 5.2 percent increase in the basic allowance for quarters [BAQ].

Another area that deserves and received more attention from the committee was training/readiness. Besides additional funds for property maintenance, base operations, ammunition, and other basic supplies, the Personnel Subcommittee increased the number of military technicians, a key to reserve component readiness, by 1,400 personnel above the level requested by the President. In order to pay for these combat readiness initiatives, the committee cut over $2 billion in non-defense spending from this bill. While many of these civil-military programs may have great merit, we decided that the priority should be on military programs that directly contribute to combat readiness. The defense budget must be for defense.

Finally, the committee made a firm commitment to new technology by funding vital modernization programs which will ensure our technical edge over any adversary for the foreseeable future. Chief among these modernization initiatives was additional funding for ballistic missile defense [BMD] including full funding in fiscal year 1996 for Navy lower and upper tier systems. By providing this additional funding, we will be able to build upon our previous investment in Aegis ships, radar and missiles and provide our allies, forward deployed forces, and even the U.S. with an effective missile defense by the turn of the century.

We also accelerated funding for armed reconnaissance helicopters for the Army, a requirement that was clearly demonstrated after the loss of an unarmed, underpowered, unstealthy OH–58 aircraft over North Korea earlier this year. The committee funded 20 additional OH–58D Kiowa Warrior aircraft to meet this requirement in the short term and fully endorsed the RAH–66 Comanche program to address this requirement in the long term.

The committee also made a clear commitment to address the lack of long range conventional bomber capability by authorizing funding for additional B–2 production and continued conventional enhancements to the B–1B aircraft. Such long range power projection systems will be vital to a future, credible U.S. military presence overseas.

This defense bill does not represent the total answer to our future national security requirements. It represents only the beginning. However, such a strong foundation is vital, especially without better guidance or vision from the present administration, if we are to ensure the national security of this great nation in the 21st century.

For those who might question why we need to continue to invest so much in defense, I would remind them, during this 50th anniversary of our victory in World War II, of the high price we pay in terms of human life when we are not properly prepared to quickly and decisively win at war. We must always remember that those who are most prepared to wage war are also those who are least likely to need to do so because of such preparedness. As one of our greatest battlefield commanders, Matt Ridgway, once commented: ''What red-blooded American could oppose so shining a concept as victory? It would be like standing up for sin against virtue.''

The House National Security Committee fiscal year 1996 defense authorization bill is a commitment to victory instead of defeat. Hopefully the Senate and appropriations committees will show the same commitment when considering this defense budget.

HIGHLIGHTS OF NATIONAL SECURITY COMMITTEE [NSC] DEFENSE BILL STATUS OF INITIATIVES BY CONGRESSMAN ROBERT K. DORNAN

1. Army Armed Reconnaissance Helicopters: After the loss of an unarmed, underpowered, unstealthy OH–58 helicopter over North Korea earlier this year, BOB DORNAN pressed for additional funding for replacement aircraft including the OH–58D and RAH–66.

OH–58D: NSC approved $125 million in additional funding for 20 aircraft—none requested by DoD despite existing Army requirement for more aircraft.

RAH–66: NSC fully supported program including authorizing $100 million in addition to administration's request. Committee also included report language drafted by Congressman DORNAN on the future of the program.

2. Navy Ballistic Missile Defense: Desert Storm clearly demonstrated that the ballistic missile threat is real and here today. Congressman DORNAN has been a long time supporter of a near term solution to this threat—Navy missile defense. By upgrading existing Navy ships, radar, and air defense missiles, the U.S., allies, and forward deployed U.S. forces can achieve an effective missile defense near the turn of the century. The NSC fully funded Congressman DORNAN's request for both Navy lower and upper tier systems.

Lower Tier: provides Navy ships and ports with Patriot-type point defense capability. Increased funding by $45 million.

Upper Tier: provides wide area coverage—such as protecting Japan against attack by North Korea. Increased funding by $170 million.

3. Air Force Conventional Bombers: Most experts agree that the current bomber force is inadequate for meeting the requirements of the administration's Bottom Up Review. Congressman DORNAN supports additional B–2 production and additional B–1B conventional enhancements in order to better meet this requirement.

B–1B: NSC fully supported budget request for conventional enhancements and added $21 million, as requested by Congressman DORNAN, for BVUD program which would give the aircraft a near term/off the shelf precision guided bomb capability.

B–2: NSC added $553 million in long lead funding for additional B–2 aircraft which will maintain the country's only existing bomber production line.

4. Battlefield Combat Identification System (BCIS): NSC fully funded the budget request for BCIS which is designed to help prevent friendly fire casualties by positively identifying targets on the battlefield. DORNAN, a long time supporter of the program, also drafted report language on BCIS which was adopted by the NSC.

5. Minuteman III (MM III) ICBM: The NSC fully supported a request by Congressmen DORNAN and HANSEN for $10 million in additional funding for MM III guidance upgrades. A recent DoD nuclear posture review fully supported maintaining the MM III as the land-based leg of the U.S. nuclear triad.

6. Armor/anti-armor upgrades: The NSC fully supported requests by Congressman DORNAN and other members for increased funding for two armor/anti-armor initiatives. The first request was for $39 million in additional funding for a lightweight anti-armor system known as Javelin.

This funding will significantly increase anti-armor assets available to rapid deployment units in the near future. The next request was for $14 million in additional funding for reactive armor protection for the Bradley fighting vehicle. Such protection is necessary against the proliferation of anti-tank weapons.

7. UH–60 Army Helicopter: The NSC fully approved the administration's request for $334 million for 60 UH–60 helicopters but rejected DoD plans to terminate the program after 1996. Congressman DORNAN supports additional UH–60 productions after 1996 in order to address Army requirements for additional MEDEVAC and light utility aircraft.

8. Navy Enlisted Storage Space: The NSC accepted report language drafted by Congressman DORNAN that would require a report from the Navy on the resources necessary to provide Navy enlisted personnel on board surface ships additional storage space when in port. DORNAN has learned on various visits with sailors on board these ships that they have no barracks space when in port and must therefore remain on board the ship. While building additional barracks space would be costly, Congressman DORNAN has won preliminary support for CNO Admiral Boorda for a plan to provide these sailors with additional storage space off the ship for recreational equipment and civilian clothing that could be used when in port. Such a measure would boost morale at minimal cost.

9. V–22: The NSC fully funded the DoD request for the V–22 Tiltrotor aircraft which would replace the Vietnam-era CH–46 helicopter as the Marine Corps' primary medium lift aircraft. Congressman DORNAN has been a long time supporter of the V–22 which would replace CH–46 aircraft at MCAS Tustin in the 46th district.

HIGHLIGHTS OF PERSONNEL SUBCOMMITTEE (NSC) MARKUP—1995 STATUS OF INITIATIVES BY CONGRESSMAN ROBERT K. DORNAN

1. POW/MIA Legislation: Congressman DORNAN adopted language similar to legislation introduced by Congressman GILMAN and Senator DOLE which is designed to standardize procedures for determining the whereabouts and status of American POWs/MIAs.

2. Abortion Restriction: Congressman DORNAN included language restoring Reagan-era policy which prohibits abortions at military facilities.

3. Discharge of HIV+ Personnel: Congressman DORNAN included language which mandates the immediate discharge of HIV+, permanently non-deployable military personnel.

4. End Payments to DoD Prisoners: Language was included that would require all military personnel convicted by court-martial to forfeit all pay and allowances during their period of confinement.

5. Award of AFEM to El Salvador Veterans: Language was included authorizing the Armed Forces Expeditionary Medal for U.S. military veterans who served in El Salvador.

6. End Strength Floors: Permanent military end strength floors were established by Congressman DORNAN which would prevent the DoD from further reducing personnel below current, Bottom Up Review levels.

7. Addition of Personnel to High Stress Units: Congressman DORNAN also authorized the SECDEF 7500 additional personnel to be placed in high stress areas such as AWACS, military police, and Patriot units.

8. Addition of National Technicians: Congressman DORNAN authorized 1400 additional military technicians for National Guard/Reserve units in order to improve their maintenance rates and overall combat readiness.

9. Increased Housing Allowance: Congressman DORNAN increased basic allowance for quarters [BAQ] by 5.2 percent greater than that requested by the administration in order to reduce out of pocket housing costs for members of the military.

10. Eliminated Disparity in COLAs for Military Retirees: Congressman DORNAN introduced a full committee amendment that would eliminate the disparity in payment of COLAs between Federal civilian and military retirees. COLAs for military retirees have been delayed an average of 8.5 months as compared to a delay of only 3 months for other Federal retirees. President Clinton attempted to address the problem in this budget but his proposal did not succeed. Congressman DORNAN then developed his amendment which provides $403 million to eliminate the disparity in 1996. The amendment passed during full committee markup.

Mr. SPENCE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SOLOMON) having assumed the chair, Mr. EMERSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1530) to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes, had come to no resolution thereon.

PAUSE FOR THE PLEDGE

(Mr. CARDIN asked and was given permission to address the House for 1 minute.)

Mr. CARDIN. Mr. Speaker, I take this time, and at the permission of the Speaker, to lead the House in the pledge of allegiance at this time of the day, and let me explain why, if I might.

Mr. Speaker, as you are well aware, today is Flag Day and this week is National Flag Week. Each year the National Flag Day Foundation, located in my district, participates in the Pause for the Pledge at Fort McHenry, the birthplace of the Star Spangle Banner at 7 o'clock in the evening on June 14th.

The National Flag Day Foundation encourages all Americans to join in the 7 o'clock Pause for the Pledge and this grassroots concept of national unity started in Baltimore in 1980. And I might point out that Presidents have joined in this pause.

Due to the voting of the House today, I am unable to be at Fort McHenry to participate in the ceremony. Therefore, I would request that the Members of the House join me and their fellow citizens in a Pause for the Pledge. If I could ask everyone to please rise and to face the flag.

PLEDGE OF ALLEGIANCE

The CHAIRMAN. Without objection, the gentleman from Maryland [Mr. CARDIN] will lead the House in the Pledge of Allegiance to the flag on this very special occasion.

There was no objection.

Mr. CARDIN led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

PERMISSION FOR SUNDRY COMMITTEES AND THEIR SUBCOMMITTEES TO SIT TOMORROW, THURSDAY, JUNE 15, 1995, DURING THE 5-MINUTE RULE

Mr. GUTKNECHT. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

Committee on Agriculture; Committee on Banking and Financial Services; Committee on Commerce; Committee on Economic and Educational Opportunities; Committee on Government Reform and Oversight; Committee on Judiciary; Committee on Resources; Committee on Science; Committee on Small Business; Committee on Transportation and Infrastructure; Committee on Veterans Affairs; Permanent Select Committee on Intelligence.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. VOLKMER. Reserving the right to object, Mr. Speaker. I do not plan to object. I just want to let the gentleman know that, yes, we do appreciate clearing this request with all the ranking members of the various committees and we appreciate it and look forward to working with the gentleman and the majority in the future.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

FRENCH NUCLEAR TESTS

(Mr. FALEOMAVAEGA asked and was given permission to address the House for 1 minute and to revise and

extend his remarks and include extraneous material.)

Mr. FALEOMAVAEGA. Mr. Speaker, here we go again. President Jacques Chirac of France has announced France will explode eight nuclear bombs in the South Pacific beginning this September.

Mr. Speaker, this is just what we need after 170 countries signed up to uphold the integrity of the Nuclear Non-Proliferation Treaty. France currently has the world's third largest stockpile of nuclear bombs and the fourth largest navy in the world, and after conducting almost 200 nuclear explosions in the atmosphere, and in the ocean, and under a South Pacific island atoll over the past 20 years—it is hard to believe that France's military establishment is still not sure if that nuclear trigger is working or not.

Mr. Speaker, give me a break. Why should we tell countries like India, Pakistan, Japan, North Korea, Iraq, and Iran not to get into the development of nuclear bombs when a major Western power like France does this without due consideration to the environment or the lives and welfare of the peoples of the South Pacific?

What madness. The height of hypocrisy. Mr. Speaker, I ask the good citizens and people of France—if you want nuclear tests to continue, do it in France, and don't bring this ugly monstor to the South Pacific.

Mr. Speaker, I include the following for the RECORD.

[From the Washington Post, June 14, 1995]

FRANCE SAYS IT WILL STAGE NUCLEAR TESTS

(By William Drozdiak)

PARIS, June 13.—President Jacques Chirac announced tonight that France will resume nuclear weapons testing in September and conduct eight tests in the South Pacific before next May so that it can sign a comprehensive test ban treaty by the end of next year.

Chirac told reporters on the eve of his first presidential trip abroad that his decision was crucial to ensure the reliability and security of the country's nuclear weaponry until France—which has the world's third-largest nuclear arsenal—develops laboratory simulation methods that would obviate future test blasts.

''I made this decision because I considered it necessary in the higher interest of our nation to authorize the end of this series of tests. This decision is, of course, irrevocable,'' he said.

U.S. government officials said they were disappointed by Chirac's decision and worried that it could erode confidence in the promise by all nuclear powers to work toward an early test ban. That pledge was an important factor in persuading more than 170 countries to embrace a permanent extension of the nuclear Non-Proliferation Treaty at a review conference two months ago.

President Clinton said in 1993, during a worldwide nuclear moratorium, that the United States planned no further nuclear tests, but he indicated he might reconsider if other nuclear powers resumed such blasts. A senior U.S. official said today, however, that France's announcement ''won't affect our own policy [and] will not lead us to resume nuclear testing.''

Only China has continued nuclear weapons testing in the past two years, drawing widespread international protests. U.S. officials said the French decision and its impact will be discussed when Chirac arrives in Washington Wednesday to meet with President Clinton before leaders of the Group of Seven industrialized democracies gather for a summit later this week in Halifax, Nova Scotia.

Chirac said a panel of military experts he consulted in making his decision had unanimously recommended that France complete a series of underground tests that was interrupted in April 1992 so that its independent nuclear deterrent force of nearly 500 strategic warheads will remain effective into the 21st century.

When President Francois Mitterrand halted nuclear testing in 1992, he said that France must set an example for the rest of the world in renouncing all such tests in the hope that other nuclear powers would sign a comprehensive test ban.

Mitterrand predicted that any of his possible successors as president would be inhibited from overturning his ban on nuclear tests by threat of angry protests at home and abroad. But Chirac tried tonight to shift the blame to Mitterrand, saying his decision to abort the testing program was premature because simulation techniques had not been perfected.

Seeking to thwart a potential outcry, Chirac said he had notified France's main allies, as well as Mitterrand, opposition leaders and the Australian and New Zealand governments. He insisted that the tests were harmless to the environment, and he invited ecologists to visit Mururoa Atoll in French Polynesia to monitor the explosions.

[Nevertheless, Australia and New Zealand angrily announced they would freeze defense ties with France over its decision, and Australian union leaders and politicians called for a boycott of French goods, the Reuter news agency reported. ''Australia deplores France's decision to resume nuclear testing in the South Pacific,'' Prime Minister Paul Keating said. ''What we are seeing is the arrogant action of a European colonial power. . . . They have yet to understand that as members of the Pacific community we expect something different,'' New Zealand Prime Minister Jim Bolger told parliament.

[Japan also protested, Reuter reported. ''The French decision seriously betrays the trust of non-nuclear states,'' Japanese Foreign Minister Yohei Kono told French Foreign Minister Herve de Charette in a telephone conversation.]

For months, Chirac has been under intense pressure from France's military establishment, largely dominated by his Gaullist party supporters, to ensure the country's future nuclear capability.

French defense experts said the military leadership had urged up to a dozen tests to verify the effectiveness of warhead stocks; to establish the effectiveness of a new warhead for the country's M–5 submarine-launched missile; to enhance computer-simulation plans; and to experiment with miniature warheads.

The experts said such tests would be necessary not only to check the status of the hardware but also to prepare for any change in strategy in the post-Cold War era. This could include a shift from the old threat of inflicting intolerable damage on a enemy through massive retaliation to a new French strategy of focusing on tactical battlefield weapons that could be used against specific targets.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. FOX of Pennsylvania). Under the Speaker's announced policy of May 12, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. LIPINSKI] is recognized for 5 minutes.

[Mr. LIPINSKI addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. RIGGS] is recognized for 5 minutes.

[Mr. RIGGS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. KAPTUR] is recognized for 5 minutes.

[Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California [Mrs. SEASTRAND] is recognized for 5 minutes.

[Mrs. SEASTRAND addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized for 5 minutes.

[Mr. MONTGOMERY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado [Mr. SKAGGS] is recognized for 5 minutes.

[Mr. SKAGGS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

CONCERNS REGARDING ANTITERRORISM LEGISLATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. BARR] is recognized for 5 minutes.

Mr. BARR. Mr. Speaker, for the last 3 days those of us who have the honor of serving on the Committee on the Judiciary have been engaged in some very

important, far-reaching legislation. What we have been considering, Mr. Speaker, is antiterrorism or counterterrorism legislation.

This legislation which has come before the Committee on the Judiciary is not something that arose simply because of what happened recently in Oklahoma, although it has taken on additional and rather urgent importance in light of what happened in Oklahoma.

It is however of concern to a number of us as conservatives and who were sent here to the House of Representatives as result of the election last year to take a very hard look at the power of the Federal Government to determine not only if there are circumstances under which the powers of the Federal Government may have gotten too broad, too large, and too extended so that we would be looking at methods to bring back in and rein back in the power of the Federal Government in those instances in which it has been too broadly construed or has been extended too far, but also to be very careful and jealous guardians of those authorities that currently belong to States and local communities and to take a very hard look, a very fair look, but a very hard look at those areas where the Federal Government is seeking to expand its authority.

The legislation that we have been considering in the Judiciary Committee raises some of these concerns that I would like to this evening just raise and alert the people of the United States of America to.

None of us favor terrorism, and certainly when we have legislation that is couched as counterterrorism or antiterrorism, certainly there is a predisposition, an inclination on all of our parts to say absolutely, we must pass whatever legislation is necessary in order to do everything within reason and within the bounds of our Constitution to prevent incidents such as what happened in Oklahoma recently from occurring, and to ensure that if it ever does occur, that our law enforcement officials and our prosecutors and our courts have full authority to investigate thoroughly, to apprehend, to prosecute, and then to punish to the greatest extent possible under our system of laws those that would perpetrate such acts on American citizens or indeed anybody within the geographic bounds of the United States of America.

The problem, Mr. Speaker, that we are facing and that I am personally facing in the committee with regard to this legislation, is that it seems to go beyond what the Government needs in order to really carry out its responsibility to protect American citizens against acts of terrorism and to prosecute those who do commit acts of terrorism. It goes beyond what is needed to simply what some of our law enforcement officials and some in our Government would like to see the Federal Government have.

It extends the reach, for example, Mr. Speaker, very broadly beyond the current definition of what is terrorism, and under the legislation that we are currently considering in the Committee on the Judiciary, for example, virtually any crime of violence committed anywhere in our country for whatever reason becomes a terrorist action.

Once under the legislation that is being considered an action becomes or falls within the definition of terrorism or terrorist activity or terrorist action, then a whole series of things occurs such as loosening of the standard on wiretap authority, loosening of the standard on the Federal Government's ability and law enforcement's ability to obtain certain types of records on citizens, and so on and so forth.

This is the concern, Mr. Chairman, and I think we need to be very, very careful and very jealous that in our understandable effort and our understandable zeal to protect our citizens against a recurrence of what happened in Oklahoma that we do not cross over the line and extend too much authority to the Government and that we do not inadvertently trample on some of our very cherished constitutional rights.

□ 1930

We are going to be continuing the markup of this legislation tomorrow. There will be further refinements to it, and then, of course, the full House will have full opportunity to look at this.

But I do have some concerns, Mr. Speaker, with this legislation, in that it does seem to go far beyond the current bounds of the reach of the Federal Government and really gets the Federal Government into a whole range of activities that, under standards of federalism, certainly as I and the citizens of the Seventh District understand them, say, ''Yes, we do want to have strong Federal law enforcement, but that does not mean we want the Federal Government involved in virtually every aspect of criminal activity that might take place anywhere in our country.''

Mr. Speaker, I appreciate having the opportunity to share some of these concerns, and we will hear more on this as we continue the deliberations in the Committee on the Judiciary and on the full floor.

TRIBUTE TO RAMSEY CLARK

The SPEAKER pro tempore (Mr. FOX of Pennsylvania). Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 5 minutes.

Mr. GONZALEZ. Mr. Speaker, I rise because I was very privileged today to attend, I think, a very significant ceremony in which Ramsey Clark, the former Attorney General in the Kennedy and subsequent administrations, from Texas and our area, served, and I was visited by Maury Maverick, Jr., who then escorted me to the ceremony in the Gold Room today.

And I would like to place in the record the remarks that Maury Maverick made with respect to Ramsey Clark. For instance, he points out that once he was a corporal in the United States Marine Corps. Once he was the Attorney General of the United States. And I was here when he was named Attorney General and had a lot to do with working with him.

And Maury says he reminds him very much of Stephen Crane's Civil War novel, ''The Red Badge of Courage.''

In any event, I was privileged to have been at this reception earlier this day, and thanks to Maury Maverick, his father, Maury Maverick, Sr., the original Maury Maverick, was one of those that first recognized me, totally unknown, a young student emerging from what we call the west side of San Antonio, the Mexican-American section, which at that time was really, really split and divided, and it was thanks to their magnificent friendship that it aroused in me an interest in political or public work.

So that I am placing that at this point in the RECORD, the remarks that Mr. Maverick prepared honoring Ramsey Clark, as follows:

Regarding so-called anti-terrorist legislation, one must face that threat to liberty and constitutional due process with the courage of a Ramsey Clark.

If what we are about to have is a new McCarthy era then I know something about the terror of the old one. As a member of the Texas House of Representatives of the 1950s I was one of the two legislators who filibustered to death the Texas Un-American Activities Committee. Are we on the road to having such committees again?

A paralysis of fear swept America in the 1950s and it will happen again if judges, congressmen, and the President run out on the Bill of Rights.

The ultimate answer to terrorism is Jeffersonian liberty, three meals a day, and human dignity.

Democrats with the knowledge of history of Franklin Roosevelt and Republicans with a sense of justice of Potter Stewart must stand up to the emerging new McCarthyism.

The bullies are on the move, The courage of Ramsey Clark must be shown by lawyers and politicians if we are not to have a new McCarthy era.

A new McCarthy era will be a worse disgrace than the last one because it will mean we didn't learn anything.

My brother and sister lawyers, friends and fellow citizens, I give you that former corporal in the U.S. Marine Corps and former Attorney General of the United States: Ramsey Clark.

WELCOMING THE PRESIDENT TO THE BUDGET BALANCING ARENA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

Mr. SMITH of Michigan. Mr. Speaker, last night President Clinton unveiled his second budget this year. The first budget actually increased deficit spending by $200 billion each year and grew our national debt from the current $4.9 trillion up to $7 trillion in 5 years.

This budget from last night aims to balance the Federal budget in 10 years. Well, we welcome the President to the arena, admitting that we should be balancing this budget. However, 10 years? This means that during the next 10 years, the Federal debt, which is now $5 trillion, will still be growing. It means that we hope that a decade from now when children who are now in the third grade, they will be graduating from high school, the budget will still not be balanced.

Remember, the President did not say the debt would be paid off. He said that if all goes well, we will stop adding to the debt a decade from now. That does not count what we are borrowing from social security and everything else.

Now, does not this all sound a little ludicrous? Do we really think that Congress will balance the budget 10 years from now, putting it off that long? We just cannot do it today?

There are some of us out there who remember the character Wimpy in the Popeye cartoons. Wimpy made the famous line, ''I will gladly pay you Tuesday for a hamburger today.'' Of course, everyone knew Wimpy did not intend to pay for that hamburger.

President Clinton is saying, ''We will not pay you back in 10 years, but we will stop getting an advance on those, if you will, hamburgers at that time.'' The President has said that it would be too painful to bring the budget into balance in less than 10 years.

Now, remember Thomas Jefferson, while President, introduced a plan to pay back the Federal debt over 16 years and then start paying off that debt and getting it done with. He thought it prudent not just to balance the budget, but to run up a surplus to pay off the debt and have a little extra in reserve.

Mr. KINGSTON. Mr. Speaker, will the gentleman yield?

Mr. SMITH of Michigan. I yield to the gentleman from Georgia.

Mr. KINGSTON. I want to ask about this because if the President is not reelected, that would mean that the budget that he is proposing will actually not be balanced until 9 years after he leaves office. Is that correct?

Mr. SMITH of Michigan. You mean, if everything worked out perfectly for the President and he stayed in the full 8 years that is allowed under law, he still would not have a balanced budget? That is what it means.

Mr. KINGSTON. Then at what level will the national debt be? Because that would be 9 more years of deficit spending on top of a $4.8 trillion debt. Did he project what the debt would be?

Mr. SMITH of Michigan. He did not project. But if the CBO projection, and you really cannot tell whether what he said was a political statement or whether he is serious about balancing the budget, we will not know that until we see the details. But we are looking at a growing budget, and if it is consistent with the spending that he suggested when he gave us his budget in February, that is at least $200 billion a year, times 10, times 10 years. We are looking at a budget that cannot possibly be paid back by our kids and our grandkids.

It is going to ruin their chances for a standard of living.

I think it is good to mention; he said it is going to be too painful to pay back this debt in just 7 years, but the pain we are talking about is political pain, admitting reality. So we have a problem here. We are spending money we do not have now. We are asking our kids and our grandkids to pick up that bill years from now, and you just cannot do it.

I think the President has got to come to this table, and if he expects to have any credibility in terms of input in the best way possible to cut spending and balance the budget, then he has got to come to the table seriously.

Mr. KINGSTON. If the gentleman will yield further, one thing that is interesting, I usually speak to two or three schools each month. I talk a lot to the high school juniors and seniors, and I always remind them, when they graduate and get in the work world, their percentage of income that goes to taxes is going to be far higher than their teachers, parents, grandparents, or any other generation of Americans that has ever entered the workplace.

We talked about postponing pain. Tell that to an 18- or 19-year-old who is about to get his or her first job. They will tell you, ''I cannot believe how much of my paycheck Uncle Sam gets,'' and, as you know, the third largest expenditure of the national budget now is interest on the debt. Think how much greater it will be if we wait 10 years.

Mr. SMITH of Michigan. The projection is that these kids today, if we continue to spend like we have been spending, are going to have to pay taxes that amount to over $180,000 during their lifetime just to pay their share of the interest on the national debt.

You know, this little card is what Congressmen use to vote with. It is sort of like a credit card, but really the Federal Government, these 435 Members of Congress here, do not have money to give away. They have got to take money away from the citizens all across this country, taxpayers, and we are giving away taxpayers' money. The way you hear some people talk, you would think it is government's money that they are giving away. We are taking away this money from individuals by increasing taxes.

I would invite the President to come seriously to the negotiating table, admit that it is right to balance the budget, come legitimately and say, ''Yes, I agree, we should be balancing in 5 years, 7 if necessary, and let us get on with making a better future for our kids.''

COMMEMORATING FLAG DAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. KINGSTON] is recognized for 5 minutes.

Mr. KINGSTON. Mr. Speaker, the gentleman from Michigan may want to complete that thought. I do not want to cut him off. It sounds like he got where he was going with that.

Mr. SMITH of Michigan. If the gentleman will yield, no, I want to talk about some significance and open the discussion today, Flag Day, and the American flag.

I had a brother that was a jet pilot, killed in 1957. I am old enough that I went through World War II, and the American flag is more than a symbol. It is what many Americans really out there on the front lines fought for and died for.

So I look forward to the gentleman's comments on Flag Day.

Mr. KINGSTON. It is interesting, I went to the Savannah Scottish Rite Flag Day ceremony this week, in Savannah, and we talked about the Bennington flag and the Grand Union flag that preceded our first national flag on June 14, 1777.

That flag has meant so much to different people, but our favorite flag story is the one about Francis Scott Key.

One of the things we always know is he was on a British ship, but we do not know what he was doing there. He was not a captive. His friend was a captive. He went to the British ship voluntarily on behalf of his friend and petitioned the officer in charge to release his friend, who was a doctor, for humanitarian purposes. He said, ''This gentleman is a doctor. He needs to come and tend to the sick and the wounded just as your British doctors do.'' And the British officer in charge was so taken back by his bravery in risking his own life in coming out there, and, you see, there were actually two of them totally. He said, ''I will tell you what, I will let all three of you guys go in the morning. We are attacking Fort McHenry through the night.'' They were, frankly, very confident they could win and capture Fort McHenry.

What happened, of course, is Francis Scott Key and his friends were sitting on the ship, bow of the ship, standing there captives, watching through the night, trying to figure out what would happen, and then at the dawn's early light they were able to determine, of course, by the sign, the American flag still standing or still flying, that the British were, in fact, not successful in taking Fort McHenry.

He started writing the poem, which became the national anthem, on his way back, because the British officer kept his word, let him go, starting writing the poem, finished it later. It took about 130 years for Congress to declare that the national anthem. You compare that to how quickly the Senate works these days, and we would still probably not have a national anthem.

You know, the American flag does two things. It is a warm and fuzzy emotion when you see it. You know, you

think about home. You think about mom and dad, your parents, your family. You think about goodness.

But then aside from that emotion, you think idealistically, like your brother. You think about the sacrifices. You think about the bravery and the freedom that men and women, generation after generation, have put forth to defend this great land of ours, and it is proper the U.S. Congress would take a moment today and say the Pledge of Allegiance one more time towards the end of the afternoon just so we can reaffirm that, and it is also proper that we recognize Flag Day on a bipartisan basis, because every now than and then we do get out of focus. We do start pounding one body or one party or one philosophy. We should always come back to that flag. That symbol of freedom is why we are here.

Mr. SMITH of Michigan. I think your point is so important and so good.

We do have the greatest Nation on Earth, and we get in our little squabbles, and we look for ways to try to improve it. Both sides of the aisle, Republicans and Democrats, feel very strongly that they want to make the best future possible for the kids. Sometimes we have a difference in philosophy on how to get there, but we have a great country, and the flag of the United States of America is something we all feel very closely to.

Ms. JACKSON-LEE. Mr. Speaker, will the gentleman yield?

Mr. KINGSTON. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE. I appreciate the gentleman yielding.

I thank you so very much for the entree to make this bipartisan salute, and because it is Flag Day, I think it is more than appropriate to simply say how special it is, as many of our young children begin kindergarten, sometimes earlier, they learn for the first time, ''I pledge allegiance to the flag of the United States of America,'' and how special it is for them to come and share with their family members that they know the words.

So it is appropriate that we make this a bipartisan salute.

I thank the gentleman for raising it. I think it is most appropriate that we do so in the U.S. Congress because the American people look to us to lead and to emphasize the high ground. So I congratulate you, but, more importantly, I congratulate the American people and salute the flag of United States of America.

Mr. KINGSTON. It is fitting we do that. I am a native of Texas, and as you know, Texas has a very rich history in that Texas was one of the States that was actually a country at one time, and one of the great chapters of Texas history was the Battle of the Alamo and the great cry for the men who were being surrounded by Santa Ana's troops at the Alamo was for Americans to come rescue them, which, when Sam Houston's folks did come, many, many American soldiers had volunteered for that cause of Texas freedom and sovereignty.

There, again, the good old American flag pulls through.

□ 1945

Mr. Speaker, it always has represented the hope, the glory, the promise and the freedom.

HOW AMERICA WILL WIN

The SPEAKER pro tempore [Mr. FOX of Pennsylvania.] Under a previous order of the House, the gentlewoman from Texas [Ms. JACKSON-LEE] is recognized for 5 minutes.

Ms. JACKSON-LEE. Mr. Speaker, I appreciate the opportunity to share in the salute to our flag, and my remarks now, I think, are really in line with what America is all about.

I looked at a startling figure this afternoon, and that was to determine that more than 14 million families in America make less than $10,000.

Many of us, of course, have risen to speak on behalf of business development and enhanced opportunities for our corporations so that jobs can be created, but simply think about someone who is making only $10,000, a hardworking family, some of whom have children and trying to survive in this country.

I would ask the question to my Republican colleagues, ''Why are we here?'' We certainly have not come here to be whiners and to complain about who has the better offering when it comes to budget and deficit reduction. I think the president of the United States did what was his responsibility. I reviewed the budgets that were on the table, including his previous submitted budget. He recognized there were 14 million citizens who were making under $10,000 and were suffering in this economy, and he began to draft a budget that responds to the bipartisan approach that is needed.

First of all, I think it should be noted that the deficit has gone down in the last year and 2 years. Second, I think it is well to recognize that the budget that was passed by this House, and I disagree with, was a very hard budget. It was a budget that was extreme, and the President now offers us an opportunity for reasoned and bipartisan debate, one we focus on education. It gives people the opportunity in the 21st century.

Second, I think it gives us a longer period of time to in a rational way stem the tide of a possible recession, to extend budget deficit reduction and a balanced budget to a 10-year mark. It preserves certain funding for certain programs that create jobs, and likewise it does not give a tax cut to unwilling Americans, meaning those who have said ''I don't need a tax cut; I'm making over $200,000 a year,'' but it does recognize the need to respond to working men and women and provide them wit a tax break.

It is important, now that we have several budgets on the table, that we be concerned about Medicare and we do not make the deep and dividing cuts that would damage some of the needs of seniors who have to make determinations to either buy prescription drugs or to eat. The President looks at this in a manner that is focused, is not mean spirited and answers the needs of all Americans.

I hope some day we will face a country that has all of our American citizens working at their fullest extent, that sees our 14 million citizens, families that are making under $10,000 make some than that, that they are able to enjoy life, vacation, have a home, send their children to college. But we will not get to that point unless we recognize that a budget must respond to the needs of all of us.

Education is the key. It breaks us out of the shackles of our under-opportunity to more opportunity.

So, Mr. Speaker, I think it is important not to be whiners. I think it is important to come and do the job that we have been asked to do, review the President's budget, review the budget that was passed out of the House, the Senate budget, avoid a crisis in October so that this Government is not shut down, begin to respond to the needs of those who asked us to open the doors of educational opportunity in elementary, secondary and higher education, not focus on the privileged few with major tax breaks and tax cuts, but focus on deficit reduction in a reasoned manner, and do not disrespect all of the good work that our seniors have done by making them make the choices between prescription drugs and simply eating, and do a reasoned reform of health care so that our seniors can be protected with a reasoned Medicare program, and those who are indigent, with a reasoned Medicaid program, and begin this debate not from a point of who gets the political brownie points, but in fact how will America win.

I think America wins when we sit down and discuss a budget that is fair and even-handed. I think the President has offered us an opportunity for that reasoned debate, and, Mr. Speaker, I would hope, as many of my colleagues, Republicans, have noted, and many Democrats have noted, that we will take the opportunity and the challenge and will work on behalf of the American people.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. FIELDS of Texas (at the request of Mr. ARMEY), for today, on account of attending a funeral.

Mrs. MYRICK (at the request of Mr. GEPHARDT), for today until 3:15 p.m., on account of family illness.

Mr. YATES (at the request of Mr. GEPHARDT), for today, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. VOLKMER) to revise and extend their remarks and include extraneous material:)

Mr. LIPINSKI, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. MONTGOMERY, for 5 minutes, today.

Mr. SKAGGS, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

(The following Members (at the request of Mr. BARR) to revise and extend their remarks and include extraneous material:)

Mr. KINGSTON, for 5 minutes, today.

Mr. BARR, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks:)

Mr. GONZALEZ, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. DORNAN, during debate on H.R. 1530 in the Committee of the Whole today.

(The following Members (at the request of Mr. VOLKMER) and to include extraneous matter:)

Mr. HAMILTON.

Mr. COYNE.

Mr. KENNEDY of Rhode Island in two instances.

Mr. KILDEE in two instances.

Mr. TEJEDA.

Mr. ACKERMAN.

Mr. MONTGOMERY.

Mrs. MINK of Hawaii.

Mr. JACOBS.

Mr. JOHNSON of South Dakota.

Mr. LUTHER.

Mr. RAHALL.

Mr. ANDREWS.

(The following Members (at the request of Ms. JACKSON-LEE) and to include extraneous matter:)

Mr. RICHARDSON.

Mr. WILLIAMS.

Mr. BARCIA.

Mr. FLAKE.

Mr. SOLOMON.

Mr. GILMAN.

Mr. OWENS.

(The following Members (at the request of Mr. BARR) and to include extraneous matter:)

Mrs. SEASTRAND in two instances.

Mr. SMITH of Michigan.

Mr. BAKER of California.

Mr. DAVIS in two instances.

Mr. WALSH.

Mr. LEWIS of California.

Mr. BALLENGER.

Mr. MANZULLO.

Mr. KIM.

Mr. LIGHTFOOT.

Mr. HUNTER.

Mr. ROTH.

Mr. MARTINI.

Mr. COBLE.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 349. An act to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

S. 441. An act to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes.

ADJOURNMENT

Ms. JACKSON-LEE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 52 minutes p.m.), the House adjourned until tomorrow, Thursday, June 15, 1995, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1033. A letter from the Coordinator for Drug Enforcement Policy and Support, Department of Defense, transmitting the Department's report on the status of random drug testing of members of the Armed Forces, pursuant to Public Law 103–337, section 1013 (108 Stat. 2837); to the Committee on National Security.

1034. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification that the United States is making a concerted effort to ensure that U.S. allies are increasing their levels of support for activities that will aid in accomplishing the objectives of the cooperative threat reduction programs, pursuant to Public Law 103–337, section 1205(d) (108 Stat. 2883); to the Committee on International Relations.

1035. A letter from the Chairman, Board of Directors, Corporation for Public Broadcasting, transmitting the semiannual report on activities of the inspector general for the period October 1, 1994, through March 31, 1995, pursuant to 5 U.S.C. app. (Insp. Gen. Act) Sec. 5(b); to the Committee on Government Reform and Oversight.

1036. A letter from the Secretary, Department of Veterans Affairs, transmitting the semiannual report of the inspector general for the period October 1, 1994, through March 31, 1995, and the semiannual management report on actions taken in response to audit recommendations, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. COMBEST: Permanent Select Committee on Intelligence. H.R. 1655. A bill to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the U.S. Government, the community management account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, with an amendment; referred to the Committee on National Security for a period ending not later than June 23, 1995, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of the committee pursuant to clause 1(k), rule X. (Rept. 104–138, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CANADY (for himself, Mrs. VUCANOVICH, Mr. HALL of Ohio, Mr. HYDE, Mr. INGLIS of South Carolina, Mr. GOODLATTE, Mr. SMITH of Texas, Mrs. SMITH of Washington, Mr. WELDON of Florida, Mr. SMITH of New Jersey, Mr. CHRISTENSEN, Mr. DORNAN, Mr. HILLEARY, Mr. BUNNING of Kentucky, Mr. CHABOT, Mr. EMERSON, Mr. HAYWORTH, Mr. LARGENT, Mr. WALSH, Mr. KNOLLENBERG, Mr. TALENT, Mr. WATTS of Oklahoma, Mrs. SEASTRAND, Mr. BARTON of Texas, Mr. BRYANT of Tennessee, Mr. YOUNG of Alaska, Mr. LEWIS of Kentucky, Mr. STEARNS and Mr. MCINTOSH):

H.R. 1833. A bill to amend title 18, United States Code, to ban partial-birth abortions; to the Committee on the Judiciary.

By Mr. BALLENGER (for himself, Mr. BOEHNER, Mr. GOODLING, Mr. BARRETT of Nebraska, Mr. BARTLETT of Maryland, Mr. BONILLA, Mr. BUNNING of Kentucky, Mr. BURR, Mr. CALVERT, Mr. CANADY, Mr. CASTLE, Mr. CHAMBLISS, Mr. CHRISTENSEN, Mr. COBLE, Mr. COOLEY, Mr. CREMEANS, Mr. CUNNINGHAM, Mr. DELAY, Mr. DOOLITTLE, Mr. EMERSON, Mr. FAWELL, Mr. FOLEY, Mr. FORBES, Mr. FUNDERBURK, Mr. GRAHAM, Mr. GREENWOOD, Mr. GUNDERSON, Mr. HANCOCK, Mr. HANSEN, Mr. HASTERT, Mr. HEFLEY, Mr. HEINEMAN, Mr. HERGER, Mr. HOEKSTRA, Mr. HUTCHINSON, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON, Mr. JONES, Mrs. KELLY, Mr. KLUG, Mr. KNOLLENBERG, Mr. LINDER, Mr. MANZULLO, Mr. MCKEON, Mr. MCINTOSH, Mrs. MEYERS of Kansas, Mr. MICA, Mrs. MYRICK, Mr. NORWOOD, Mr. PAXON, Mr. PETRI, Ms. PRYCE, Mr. RIGGS, Mr. SALMON, Mr. SCARBOROUGH, Mr. SOUDER, Mr. STENHOLM, Mr. STUMP, Mr. TALENT, Mr. TAUZIN, Mr. TIAHRT, Mr. WALKER, Mr. WAMP, Mr. WELDON of Florida, Mr. WICKER, and Mr. ZELIFF):

H.R. 1834. A bill to amend the Occupational Safety and Health Act of 1970; to the Committee on Economic and Educational Opportunities.

By Mr. DEFAZIO (for himself, Ms. FURSE, and Mr. WYDEN):

H.R. 1835. A bill to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Oregon, and for other purposes; to the Committee on Commerce.

By Mr. FORBES:

H.R. 1836. A bill to authorize the Secretary of the Interior to acquire property in the town of East Hampton, Suffolk County, NY, for inclusion in the Amagansett National Wildlife Refuge; to the Committee on Resources.

By Mr. FRANKS of New Jersey (for himself and Mr. MEEHAN):

H.R. 1837. A bill to establish a temporary commission to recommend reforms in the laws relating to elections for Federal office;

to the Committee on House Oversight, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HANSEN:

H.R. 1838. A bill to provide for an exchange of lands with the Water Conservancy District of Washington County, UT; to the Committee on Resources.

By Mr. HOEKSTRA (for himself, Mr. NORWOOD, Mr. MCKEON, Mr. HUTCHINSON, Mr. WELDON of Florida, Mr. CUNNINGHAM, Mr. BOEHNER, Mr. SOUDER, Mr. KNOLLENBERG, Mr. PETRI, Mr. GUNDERSON, and Mr. FUNDERBURK):

H.R. 1839. A bill to require executive agencies to identify which of its regulations impose requirements which conflict with the requirements of other executive agencies and for other purposes; to the Committee on Government Reform and Oversight, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RADANOVICH:

H.R. 1840. A bill to ensure equal opportunity in employment, education, and contracting; to the Committee on Economic and Educational Opportunities, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. JOHNSON of South Dakota (for himself and Mr. MINGE):

H.R. 1841. A bill to authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, and for other purposes; to the Committee on Resources.

By Mr. MEEHAN (for himself and Mr. FRANKS of New Jersey):

H.R. 1842. A bill to ban the utilization of Federal funds by a State to lure jobs and businesses from another State; to the Committee on Government Reform and Oversight.

By Ms. NORTON, by request (for herself and Mr. DAVIS):

H.R. 1843. A bill to permit a designated authority to borrow funds for the development and construction of a sports arena in the District of Columbia, to permit the District of Columbia to pledge certain revenues as security for the borrowing of such funds, and for other purposes; to the Committee on Government Reform and Oversight.

By Mr. OLVER:

H.R. 1844. A bill to contribute to the competitiveness of the United States by enhancing the manufacturing technology programs of the Department of Commerce; to the Committee on Science.

By Mr. OWENS:

H.R. 1845. A bill to establish the Professional Boxing Corporation, and for other purposes; to the Committee on Economic and Educational Opportunities, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RICHARDSON (for himself, Mr. ABERCROMBIE, Mr. BARRETT of Wisconsin, Mr. BEILENSON, Mr. BRYANT of Texas, Mr. COLEMAN, Mr. DEFAZIO, Mr. FARR, Mr. FILNER, Mr. FOGLIETTA, Mr. FRANK of Massachusetts, Mr. GUTIERREZ, Mr. HINCHEY, Mr. KENNEDY of Massachusetts, Mr. KILDEE, Mr. LEWIS of Georgia, Mrs. MEEK of Florida, Mr. MORAN, Mr. NADLER, Mr. OLVER, Mr. PASTOR, Mr. PORTER, Mrs. SCHROEDER, Ms. SLAUGHTER, Mr. SMITH of New Jersey, Mr. STUDDS, Mr. UNDERWOOD, Ms. VELÁZQUEZ, Mr. VENTO, Mr. WAXMAN, Mr. YATES, and Mr. EVANS):

H.R. 1846. A bill to establish the Yellowstone Headwaters National Recreation Area within the Gallatin and Custer National Forests in the State of Montana, and for other purposes; to the Committee on Resources.

By Mrs. SCHROEDER:

H.R. 1847. A bill to authorize appropriations to develop technologies that can be used to combat terrorism, and for other purposes; to the Committee on the Judiciary.

By Mr. SHAYS (for himself and Mr. PARKER):

H.R. 1848. A bill to amend certain provisions of title 5, United States Code, relating to the age and service requirements for entitlement to an immediate annuity under the Civil Service Retirement System or the Federal Employees' Retirement System, and for other purposes; to the Committee on Government Reform and Oversight, and in addition to the Committee on House Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STOCKMAN:

H.R. 1849. A bill to promote the return of human rights to the People's Republic of China; to the Committee on Ways and Means, and in addition to the Committees on International Relations, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TOWNS:

H.R. 1850. A bill to improve Federal enforcement against health care fraud and abuse; to the Committee on Government Reform and Oversight.

By Mr. MURTHA:

H.J. Res. 94. Joint Resolution proposing an amendment to the Constitution of the United States relating to school prayer; to the Committee on the Judiciary.

By Mr. RANGEL:

H. Con. Res. 75. Concurrent resolution expressing the sense of the Congress that Social Security should be maintained and protected; to the Committee on Ways and Means.

By Mr. SKAGGS (for himself and Mr.. KOLBE):

H. Con. Res. 76. Concurrent resolution expressing respect and affection for the flag of the United States; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 60: Mr. HORN, Mr. YOUNG of Alaska, and Mr. PARKER.

H.R. 127: Mr. WOLF, Mr. SCHIFF, and Mr. CLEMENT.

H.R. 201: Mr. PARKER and Mr. LIPINSKI.

H.R. 248: Mr. SMITH of New Jersey and Mr. FOLEY.

H.R. 263: Mr. MINETA.

H.R. 264: Mr. MINETA.

H.R. 359: Mr. BAKER of Louisiana and Mr. FROST.

H.R. 408: Mr. ANDREWS.

H.R. 540: Mr. SABO, Mrs. MALONEY, Mr. TALENT, and Mr. SCHUMER.

H.R. 616: Mrs. CLAYTON, Miss COLLINS of Michigan, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. FATTAH, Mr. CLAY, Mr. MARTINEZ, Mr. MFUME, and Mr. HASTINGS of Florida.

H.R. 661: Mr. ENGLISH of Pennsylvania.

H.R. 733: Mr. HERGER, Mr. ABERCROMBIE, and Mr. BURTON of Indiana.

H.R. 734: Mr. PAYNE of Virginia, Mr. CRAPO.

H.R. 752: Mr. ABERCROMBIE, Mr. BRYANT of Texas, Mr. CRAPO, Mr. KOLBE, Mr. LUCAS, Mrs. MEYERS of Kansas, Mr. MONTGOMERY, Mr. PACKARD, Mr. PASTOR, Mr. SCARBOROUGH, Mr. STEARNS, Mrs. SMITH of Washington, Mr. WATTS of Oklahoma, and Mr. WELDON of Florida.

H.R. 757: Mr. WARD.

H.R. 763. Mr. CHAPMAN.

H.R. 789: Mr. STOCKMAN and Mr. STEARNS.

H.R. 863: Mr. LAFALCE.

H.R. 868: Mr. DEUTSCH and Mr. HOLDEN.

H.R. 1046: Mr. SERRANO and Ms. LOFGREN.

H.R. 1127; Mr. BREWSTER.

H.R. 1201: Mr. KLECZKA.

H.R. 1229: Miss COLLINS of Michigan.

H.R. 1264: Mr. HILLIARD.

H.R. 1298: Mr. PACKARD.

H.R. 1314: Mr. NEAL of Massachusetts, Mr. JACOBS, and Mr. MCCRERY.

H.R. 1352: Mr. WALKER, Mr. HASTERT, Ms. DUNN of Washington, Mr. LIGHTFOOT, Mr. INGLIS of South Carolina, Mr. STUMP, Mr. CAMP, Mr. WATTS of Oklahoma, Mr. FARR, Mr. LAUGHLIN, Mr. BONO, and Mr. PETERSON of Minnesota.

H.R. 1386: Mr. ROGERS, Mr. JACOBS, Mr. CAMP, Mr. LIVINGSTON, and Mr. BENTSEN.

H.R. 1411: Mr. MASCARA and Mr. WYNN.

H.R. 1412: Mr. MASCARA and Mr. WYNN.

H.R. 1463: Mr. CLINGER.

H.R. 1464: Mrs. CUBIN and Mr. OWENS.

H.R. 1507: Mr. HASTINGS of Florida, Mr. SABO, Mr. MILLER of California, Ms. JACKSON-LEE, and Mr. WATT of North Carolina.

H.R. 1514: Mr. PICKETT, Mr. PETRI, Mr. WHITFIELD, Mr. WARD, Mr. STUPAK, and Mr. FRANKS of Connecticut.

H.R. 1521: Mr. SERRANO, Mr. COLEMAN, Ms. DELAURO, Mr. TOWNS, and Mr. WYNN.

H.R. 1539: Mr. VENTO and Mr. MARKEY.

H.R. 1576: Mr. ENSIGN.

H.R. 1578: Mr. FILNER and Mr. REYNOLDS.

H.R. 1594: Mr. SAM JOHNSON and Mr. DUNCAN.

H.R. 1610: Mr. SHAYS and Mr. HILLIARD.

H.R. 1627: Mr. THORNTON, Mr. HEFNER, Mr. THOMAS, Mr. BROWNBACK, Mr. ROGERS, Mr. HEINEMAN, Mr. DORNAN, Mr. WATTS of Oklahoma, Mr. LINDER, Mr. GOODLING, Mr. ROHRABACHER, Mr. CRANE, and Mr. FORD.

H.R. 1713: Mr. KOLBE and Mr. SALMON.

H.R. 1716: Mr. SMITH of Michigan, Mr. SMITH of Texas, Mr. HASTINGS of Washington, Mrs. MEYERS of Kansas, Mr. RADANOVICH, Mr. FUNDERBURK, Mr. MILLER of Florida, and Mr. DORNAN.

H.R. 1735: Mrs. THURMAN.

H.R. 1744: Mr. BENTSEN, Mr. MOORHEAD, and Mr. BARTLETT of Maryland.

H.R. 1756: Ms. PRYCE, Mr. POMBO, Mr. HOSTETTLER, Mr. PACKARD, Mr. ROYCE, and Mr. HANCOCK.

H.R. 1768: Mr. INGLIS of South Carolina.

H.R. 1791: Mrs. THURMAN.

H. Con. Res. 7: Mr. MINETA.

H. Res. 118: Mr. YATES, TORKILDSEN, and Mr. SERRANO.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1817

OFFERED BY: MR. BROWDER

AMENDMENT NO. 1: Page 2, line 12, strike ''$625,608,000'' and insert ''$611,608,000''.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, WEDNESDAY, JUNE 14, 1995 No. 97

Senate

(Legislative day of Monday, June 5, 1995)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Sovereign of this Nation, and Lord of our lives, we thank You for outward symbols of inner meaning that remind us of Your blessings. The sight of our flag stirs our patriotism and dedication. It reminds us of Your providential care through the years of our blessed history as a people, our role in the unfinished and unfolding drama of the American dream, and the privilege we share of living in this land.

Lord, today it is a moving experience to celebrate Flag Day, in the midst of the crucial legislation before this Senate. It is an inspiring reminder of why we are here. We repledge our allegiance to our flag and recommit ourselves anew to the awesome responsibilities You have entrusted to us. As we move forward with the remaining amendments and substantive content of the telecommunications legislation, may the flag that waves above this Capitol remind us that this is Your land, that the airwaves belong to You, and that You have entrusted to us the preservation of the decency of what is broadcast on radio and television and communicated through the sophisticated technology of computers.

Thank You, Lord, that our flag also gives us the bracing affirmation of the unique role of this Senate in our democracy. In each age You have called truly great men and women to serve as Senators. We praise You for the 100 dynamic patriots whom You have called to serve in this Senate at this strategic time in our history. May they experience fresh strength and vision, as You renew the drumbeat of Your spirit calling them to march to the cadences of the rhythms of Your righteousness. In Your holy name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mrs. HUTCHISON. Mr. President, on behalf of the leader I would like to say that the leader time has been reserved this morning, and there will be a period of morning business until the hour of 9:30 a.m.

Following morning business, the Senate will resume consideration of S. 652, the telecommunications bill. At that time the Senate will begin 20 minutes of debate on the Feinstein amendment.

Following that debate, at approximately 9:50, the Senate will begin a series of three consecutive rollcall votes. The first vote will be on or in relation to the Feinstein amendment, to be followed by a vote on or in relation to the Gorton amendment, to be followed by a vote on invoking cloture on S. 652, the telecommunications bill. Further rollcall votes can be expected throughout the day in hope of completing action on the telecommunications bill this evening.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order there will now be a period for the transaction of morning business not to extend beyond the hour of 9:30 a.m., with the time to be equally divided between the Senator from Florida [Mr. MACK] and the Senator from New Jersey [Mr. BRADLEY].

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER (Mrs. HUTCHISON). The distinguished Senator from New Jersey.

RACE FOR THE CURE

Mr. BRADLEY. Madam President, I am very pleased to join my distinguished friend from Florida today on the floor of the U.S. Senate to talk about the Race for the Cure which will take place this Saturday, and the issue of breast cancer generally. Breast cancer is a dreaded and devastating disease which has reached epidemic proportions in America. During 1995 an estimated 183,000 new cases of breast cancer will be detected in women, and 46,000 lives will be lost to this disease—46,000 lives. The number is staggering.

For this reason I am deeply committed to finding a cure for breast cancer, as much as a Senator can be committed. The real action is in science. But we cannot allow our wives, daughters, friends, and coworkers to be claimed by this disease. We must continue to battle for their well-being.

Every woman is at risk for breast cancer. It is the leading cause of death among African-American women and it is the leading cause of death among all women between ages 35 and 54. Although the incidence of breast cancer increases sharply after age 40, younger women, even women in their twenties, are also diagnosed with and die of breast cancer.

As a nation, we cannot afford to wait any longer to eradicate the leading killer of women in this country. Although we still do not know what causes breast cancer or how to cure it, we have begun to make significant strides. Federal funding for breast cancer research has quadrupled since 1990.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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The discovery of breast cancer genes has made headlines around the world and restored hope that one day a scientific breakthrough will provide a cure. However, we cannot simply sit back and wait for the cure. Each and every one of us has a role and we can play it and we should play it. One way to help in this fight is to participate in something like the sixth annual National Race for the Cure this Saturday, on June 17. The purpose of this race is to both raise money and public awareness about how early detection and mammograms save lives. The Race for the Cure, and others like it across the Nation, has raised $27.5 million since it began, making the race's foundation the largest private funder of research dedicated solely to breast cancer.

The Race For The Cure is a unique opportunity to bring together the many people whose lives have been touched by breast cancer. This year, 25,000 people are expected to participate in this special event. The size of this event clearly demonstrates the far-reaching impact this disease has had on American life. Since 1960, more than 950,000 U.S. women, nearly 1 million American women, have died from breast cancer. This is more than two times the number of all Americans who died in World Wars I and II, the Korean, Vietnam, and Persian Gulf wars. The fight against breast cancer is a continuing battle because breast cancer is the leading killer among women.

I will join the estimated 5,000 runners, walkers, and wheelchair participants who will turn out in force on Saturday. I will probably be a walker, not a runner, but I will be there. And I will join with my family, my staff, and I will join all those who have triumphed over breast cancer.

That is how my wife likes to refer to it, having had breast cancer in 1992 and gone through the agony of chemotherapy and all of the other assorted traumas that are associated with it. She does not like the word, ''survivor.'' She likes to say that she triumphed over breast cancer. So I will be joining all those who triumphed over breast cancer as well as the relatives of those who have lost loved ones.

I will race or walk for a cure. I am very proud of my own office. We will be bringing about 56 people to race for a cure on Saturday. I will race with my staff and hope that one day, when a new generation of American women grow old, their children will learn about breast cancer in history books and not in hospitals or in college or at bedside.

I encourage all my colleagues in the Senate to enter the race and urge them to help find a cure for breast cancer. With all of our help and the help of the American people, this race will be a tremendous success. Race for the Cure is, indeed, a race for life.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. MACK. Madam President, thank you.

I want to, first of all, express my appreciation to Senator BRADLEY for getting the Senate focused on the Race for the Cure. He came up to me yesterday afternoon and asked if I would be willing to come over and talk for a few minutes this morning.

I appreciate, again, in this busy schedule and busy arena in which we find ourselves, a situation where we can focus our attention and our interest on an issue that is of deep concern, frankly, to all Americans, but for some of us there is a very personal aspect to it.

I like the word the Senator's wife uses with respect to triumph. Maybe we should begin to change the language that we refer to because, as I have become involved in the discussion of this disease, one of the things that I have found is that the spirit of the individual, the determination of the individual to overcome the disease plays a significant role in the cure. I do not mean to downplay the significance, obviously, of the traditional medical approaches, but I think we are beginning to find out that the human spirit plays a greater and greater role in this battle against cancer.

Another person that I would like to thank is Nancy Brinker, who is the individual who started the Race for the Cure. The Susan Komen Foundation was established by Nancy Brinker in memory of her sister who died of breast cancer. Nancy has just done an outstanding job, and she has written a book that is called ''The Race Is Run One Step at a Time,'' and why we will be out on the streets of Washington, DC, and on The Mall this weekend putting one foot in front of the other maybe a little bit faster than we normally do trying to focus attention on the importance of early detection with respect to breast cancer.

I just recommend to any individual or any family that is dealing with the disease of breast cancer that you pick up this book that Nancy has written. It will change your life, and it will give you a sense about how you can triumph over the disease.

So, again, I thank Nancy Brinker. I thank Senator BRADLEY for his leadership, and I am delighted to have the opportunity to make a few comments of my own this morning. As I was trying to think how would I focus my comments this morning on this issue, I decided that I would like to spend a couple of moments anyway speaking on a personal basis about my wife, Priscilla. It has been almost 4 years since that day when Priscilla sat me down. She said, ''CONNIE, you had better sit down for a moment. I've got something I need to tell you.'' I had just come back from a week's trip. She said that while I was gone she had discovered a lump in her breast and that she was fearful that it was cancer.

Again, on a personal basis of having experienced this in my family, as many of you have heard, I have spoken out here on the floor before about my family's experience. At a young age, when I was in my twenties, my younger brother in essence said the same thing to me except that he had discovered a melanoma on his head. Unfortunately, because it was on his head and covered by hair, it had not been discovered until it was way too late. And the doctors told him he probably had 6 months to live. Michael ended up living 12 years and lived most of those 12 years in a very useful and beneficial and, for him, a comfortable way. It was just at the end that it became very, very difficult for him.

But the thoughts that went through my mind when Priscilla told me she discovered the lump—I went through all of those experiences again that I had with my brother Mike.

The fundamental difference, though, between the two was early detection. Priscilla had not been active in the fight against cancer, but because our family had been dealing with the cancer issue, she had become sensitized. She had heard the messages, frankly the messages that will come from our comments here on the floor today.

I will guarantee you there will be someone out there watching and observing today that will hear what Senator BRADLEY had to say about early detection, hear what Senator ROCKEFELLER will have to say about early detection, hear what I have to say about early detection, and the realization that if you detect the disease early, you can survive, you can triumph. In fact, it has been shown that with most breast cancers, if detected and treated early, there is a 94 percent triumphant rate; 94 percent cure rate. That is a dramatic statistic. The point that the Race for the Cure is all about is we can race there to get the message out that early detection saves lives.

So, again, if I can go back on a fairly personal basis, it, frankly, is hard for me to believe that I am standing on the floor of the U.S. Senate talking about breast cancer. I mean not too many years ago most males would have said this is not something we can talk about in public. Most women would have said that not too long ago. Most of our society said we cannot even talk about cancer. The importance of what we are doing is saying that you can come out in a very public way and talk about the disease and it is OK for men and women to talk about early detection with respect to breast cancer.

Again, in Priscilla's case, she did all of the things that one is supposed to do. She had a mammogram in November prior to the discovery of the disease. It did not pick up the lump at that time. She had her annual gynecological exam in June of the following year. Nothing showed up. But there was a message about self breast exams that somehow somebody got through to Priscilla. That is the way she discovered the disease. Because of that early discovery, Priscilla is going to survive. She is going to triumph. She has won. She is so excited about having

gone through that victory, if you will, that she is out right now—she left yesterday morning—she is in Florida this week, and she is working with other survivors of cancer, other people who are engaged in getting the message out about early detection.

I will say on a personal basis that I do not think Priscilla has ever felt better in her life, both physically and emotionally, to be involved in something she believes in so deeply and the realization that by getting up and saying to people—by the way, let me back up for a moment.

When I said to Priscilla that I had decided that I was going to run for the Congress back in 1982, she in essence said, ''Great. Go for it. But there are two things I do not do.'' She said, ''One is I do not speak to the media, and the other is I do not give speeches.'' Well, I tell you something. Priscilla is out speaking to the media, and she is out giving speeches because she is absolutely convinced that the more she does, the more opportunities there are for people to survive, to triumph over the disease. And she had not been doing this.

I think most of us recognize that there is nothing more satisfying in life than to be pursuing something that you believe in, that you are committed to, that you are dedicated to.

So, while I am out here today to talk about the significance of the Race for the Cure and the 20,000 to 25,000 people that may join us—and I, too, will be participating in the race on Saturday, as I did last year—the real message in all of this is that early detection saves lives. One of the comments that the American Cancer Society has stated over and over again is we can increase the cure rate of cancer from the 50 percent roughly where it is today, to 75 percent without a single additional technological breakthrough.

I get very excited about the things that are happening out at the National Cancer Institute with gene therapy, and with the therapy work that is going on, and we are going to get tremendous breakthroughs. But if we did not get one more, we could increase the cure rate from 50 to 75 percent if we could just convince people to take advantage of the early detection procedures that are already available through our health care system in America today. From 50 to 75 percent, that is dramatic, absolutely dramatic.

The other comment that I would make, and I have to be careful here not to use too many statistics, but as I understand it, only roughly 35, 37 percent of women that are covered by Medicare take advantage of reimbursement for mammography—only 37 percent. And I would make this point, that as an individual gets older and older and older and the chances of being diagnosed with breast cancer go up and up and up, there is more need to take advantage of what is offered through the Medicare system, and only 37 percent of American women are in fact taking advantage of that at this time. So we need to get that message out to the older women of our society.

The last point that I would make here this morning, Madam President, has to do with fear. Priscilla talks about this all the time, and we have all heard it. People say, well, gee, I think I would rather not know. And that is a rationalization on the one hand, but yet it is a recognition of fear, because we are still dealing with a situation where we are convinced that if we are told we have cancer, we are going to die, that people do not survive. That is just fundamentally wrong. So we have to get the message out that you do not have to address this with the level of fear that so many do; that you have to break through that fear and let us detect the disease early and let us provide then for the treatment of the disease so that we can see more of our loved ones triumph over this dreaded disease.

So, again, I thank the Chair. I thank Senator BRADLEY for getting us this opportunity to get together to talk about this. I look forward to being out there on Saturday with him and with the other 20,000, 25,000 as we raise more money to add to the coffers to do the research and get the message out that early detection saves lives. I thank the Chair.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

EARLY DETECTION AND PUBLIC AWARENESS OF CANCER

Mr. ROCKEFELLER. Madam President, I rise also to support the Race for the Cure. I do not have the same personal experience that Senator BRADLEY and Senator MACK have, but I am profoundly moved by the experiences they have gone through. As they communicated to all of us about much more devastating experiences that their wives have been through and to some extent are still going through, it is interesting that both men, in my judgment, both Senators are reticent about personal matters. That is their nature. But when it comes to something like this, where there is so much that they can do to help so many people, and where they know that as Senators people will at least from time to time listen to what they have to say, they know they have a duty, and I think we all do, to make people aware of what can happen through early detection and through public awareness.

America is a very interesting country. We battle about whether we are going to reform health care or whether we are going to increase or decrease Government spending on research, but Americans are very unique in the way that they sometimes can just galvanize themselves to make things known, and this Race for the Cure is a very dramatic example. The numbers have grown over the years. This year the international community will be involved for the first time on Saturday, June 17.

I really was interested in what Senator MACK had to say about fear. I think that is true. I have seen that in my own work as a Senator, even going back to the time I was a VISTA volunteer in West Virginia, the fear that people sometimes have either because there is enough that is going to be wrong in their lives they do not want to take a test to find out something which might tell them there is something much more seriously going wrong in their lives or simply because Americans often are generically optimistic; they figure ''it will not happen to me.'' Of course, it does. And the figures about how you can cut down through mammograms, through self-testing, the spread of this disease and mortality of this disease are really just staggering.

I am impressed by the difference between the 95 percent cure rate upon early detection and then over a 5-year period, that a 5-year survival rate goes all the way down to 18 percent.

If there has not been early detection and there has been such a spread on a more general basis, that argues so totally for prevention, for self-examination, for mammograms, for doing everything we possibly can.

So I think it is very important; the statement that more women die from this disease than any other is something that we have to understand and something that we have to talk about so that people will be strong in their response and that a husband and wife and friend, all of us feel a responsibility to each other about problems with diseases like this which are difficult for women in this case and others for men in other cases; that we have to be able to talk openly, publicly, freely, and instructively about this to each other and to the American public. It is one of our roles I think as public officials.

So that I congratulate Senator BRADLEY and Senator MACK, both for their own combination of privacy in the way they handled this ordinarily but, on the other hand, when it comes to helping others, the way they are determined to be more public so as to broaden public education and thus increase the possibility for a better cure rate. And symbolically, here we come to the Race for the Cure on Saturday, and I hope that it is the largest one ever.

I thank the Presiding Officer and I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida controls the time.

Mr. MACK. I inquire as to how much time I have remaining.

The PRESIDING OFFICER. The Senator has 1 minute 11 seconds.

Mr. MACK. I yield that 1 minute 11 seconds to my colleague from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

BREAST CANCER AWARENESS STAMP

Mr. D'AMATO. I thank my colleague and friend. Let me commend Senator MACK and Senator BRADLEY for their extraordinary efforts in this area of education, of bringing about public awareness of not only the disease but the horrible impact it has not only on women but the families of America.

Mr. President, I rise today to commend the Susan G. Komen Breast Cancer Foundation for sponsoring the sixth annual national Race for the Cure, which will take place this coming Saturday, June 17, here in our Nation's Capital.

This annual event raises critically needed funds to combat breast cancer—a horrible disease that, unthinkably, has become the most common form of cancer in women, and the leading cause of cancer death for all women between the ages of 35 and 54. It is a disease that—with no known cure and no known cause—can only be understood, and eventually conquered, through increased research.

In addition to raising funds for research, this race helps raise the level of public awareness of this disease, while bringing needed public attention to the importance of early detection.

We must continue to seek new and creative ways to promote breast cancer awareness. I want to take a moment to recognize the efforts of one of my Long Island constituents, Diane Sackett Nannery, who has proposed the creation of a special pink ribbon postage stamp to help bolster breast cancer awareness in our Nation. Such a stamp would serve as a strong reminder of the magnitude of this disease, while reinforcing public health officials' efforts to promote the benefits of early detection.

I believe this stamp deserves the strong and immediate support of the United States Postmaster General. Today I am forwarding a letter to the Postmaster General—signed by all 100 U.S. Senators—urging his support for the prompt approval of the important breast cancer awareness stamp. I am hopeful that the voice of our Nations' women will be heard through this unanimous statement by their elected officials, and that this stamp will soon become a reality.

Just as I am heartened by the overwhelming support for this stamp, I am likewise encouraged by the tremendous public response the Race for the Cure has received over its short history. In just 6 years, the national Race for the Cure has grown to become the largest 5K race in the country, with close to 20,000 participants expected in 1995. True to its name, those who enter run not to win the race to the finish line, but to help our Nation win the race against the clock to discover a cure for this devastating disease.

Mr. President, I want to commend all those involved in planning, organizing, supporting, and, not least of all, running in this important event. I hope that it will exceed all expectations, and that it will bring us closer to the day when the horrible ravages of breast cancer are a thing of the past.

Madam President, this great race, Race for the Cure, which is going to take place Saturday here in our Nation's capital, is just a small part of what my colleagues are attempting to do, and I am proud to be associated with them in this endeavor.

Let me also say that yesterday I was able to obtain the signature of every single Member of this body, 100 Senators, within a matter of several hours that would ask of the Postmaster General that a stamp be commemorated to bring about breast cancer awareness.

One of my constituents, Diane Sackett Nannery, proposed that there be the creation of a special pink ribbon postage stamp to help bolster breast cancer awareness in our Nation. And as I said I am very proud of my colleagues for the manner in which all of them were so supportive of this attempt to create a greater awareness in our Nation so that we can do more in our efforts to find not only the cure but also to do more in detection and prevention.

I can say to you that there has probably been no area in our Nation that has been harder hit than Long Island, my hometown, Nassau County, where we have the highest rate of breast cancer in the United States, a sad distinction to have.

So I want to commend my colleagues for their leadership, and I want to say that I am tremendously encouraged by the tremendous public response for the Race for the Cure, not only here but I think nationwide. We have brought people together with this magnificent endeavor.

I yield the floor and thank my colleagues.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Madam President, how much time do I have?

The PRESIDING OFFICER. One minute fifty-five seconds.

Mr. BRADLEY. I yield all my time to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized.

BREAST CANCER—A THREAT TO WOMEN'S HEALTH

Mrs. MURRAY. Madam President, I rise today to join my colleagues in expressing support for research on breast cancer and the Race for the Cure. This frightening disease has taken the lives of far too many women, and the long list of those who have died include many of my own friends.

As has been stated, breast cancer is a growing public health problem in this Nation and a great threat to women's health. Many women are very confused about the mixed messages being sent to us today about breast cancer. One year we are told to have annual mammograms beginning at the age of 40. The next year, after we faithfully comply with that, we are told something else. We remain worried and confused, and it is time for better research on the issue.

Clearly, research has to be done. More needs to be done in prevention and treatment of breast cancer, and the Race for the Cure is a way for all of us to express our desire to do better in this and to bring this to the public's attention.

I think it is an opportune time also for this Senate to recognize that it has been 6 months without a Surgeon General. Dr. Foster has the ability, if appointed, to bring this issue to the forefront of this Nation, and I hope that the majority leader brings Dr. Foster's nomination to the Senate expeditiously so that we can, again, have another way of making sure that women's health diseases are brought to the Nation's forefront.

I will be joining my husband and my children this weekend in the Race for the Cure. I urge all of my colleagues to not only walk the walk but talk the talk and get some good research done on this issue.

I thank my colleague from New Jersey.

Mr. BRADLEY. Madam President, as we conclude this morning business on the Race for the Cure, I simply pay tribute to a member of my staff, Katie Konnorton, who has coordinated the 56 people who will come from my office, associated with it, family members and staff members, to make the race on Saturday. She deserves a lot of credit.

I think because of her and because of the commitment of other people on the staff, we will have a tremendous turnout, and I hope that other Senators' offices—I am very pleased the Senator from Washington is going to be there with her family, I respect that—I hope other Senators might check off that Saturday is the day for them to be counted for the cure for breast cancer: The Race for the Cure, Saturday, Senators' offices here in Washington. It sends the message of early detection and fight for a cure. I thank the Chair.

COMMENDING JACKSON HOLE SKI AREA

Mr. THOMAS. Madam President, I would like to take a minute to commend the Jackson Hole ski area in my State of Wyoming. Recently this ski area received the prestigious Golden Eagle Award, sponsored by the Skiing Co. which is part of Times Mirror Magazines and publisher of Ski, Skiing, and TransWorld Snowboarding magazines. The Golden Eagle Award was established by the Skiing Co. and Times Mirror to recognize exceptional environmental excellence in ski area management by North American ski areas. It was presented at the annual meeting of the National Ski Areas Association in Palm Springs, CA, last month.

The Jackson Hole Ski Corp. won the top award for overall environmental excellence. The resort was commended by a panel of judges for downsizing its mountain master plan by a third, in order to provide a better ski experience

while adhering to environmental values. It was also recognized for its vehicle maintenance shop management program, for a sensitive revegetation plan, an aggressive recycling program, and for establishing a land trust to preserve the resort's scenic and natural character. Three years ago, at a series of training seminars, employees of Jackson Hole Ski Corp. chose ''Respect for the Environment'' as their highest corporate value. Jim Gill, vice president of the area, believes that economic growth and environmental protection can complement each other, because most resort guests consider themselves environmentalists who enjoy the outdoors and appreciate its natural beauty. According to Francis Pandolfi, president and CEO of Times Mirror Magazines and who presented the award,

> Our judges called Jackson Hole's initiative very broad-based and far-reaching—from its downsizing of the mountain to its outreach programs, its educational accomplishments and the preservation of the area's character through its land trust. The area has done superb environmental work on virtually every front.

In addition to Jackson Hole, five other ski areas won Silver Eagle Awards for environmental excellence in the following categories:

Snowbird, UT, for water conservation and wastewater management;

Heavenly, CA, for fish and wildlife habitat protection;

Sierra-at-Tahoe, CA, for environmental education;

Winter Park, CO, for community outreach; and

Beaver Creek, CO, for area design.

Madam President, too often we only hear from critics about how ski areas destroy the wilderness. Skiing is a wonderful sport which millions of people from around the world enjoy, and the Golden Eagle Award program confirms what we all know; that it can coexist with environmental protection of the highest degree. Industry surveys show that skiers are very environmentally aware and involved, and that any perception of skiing as being antienvironmental exists only in the minds of a few. These success stories not only educate the American public about what a good job many ski areas are doing to conserve and protect the environment, but they also serve as excellent examples for other ski areas to emulate.

Congratulations to Jackson Hole Ski Corp. and to all the other winners.

FLAG DAY—JUNE 14, 1995

Mr. HATCH. Madam President, today is Flag Day. Utahns, and indeed Americans all across our great country revere the flag as a unique symbol of the United States and of the principles, ideals, and values for which our country stands.

Congress has, over the years, reflected the devotion our diverse people have for Old Glory. During the Civil War, for example, Congress awarded the Medal of Honor to Union soldiers who rescued the flag from falling into rebel hands.

In 1931, Congress declared the Star Spangled Banner to be our national anthem. In 1949, Congress established June 14 as Flag Day. Congress has established ''The Pledge of Allegiance to the Flag'' and the manner of its recitation. Congress designated John Philip Sousa's ''The Stars and Stripes Forever'' as the national march in 1987.

Congress has also established detailed rules for the design of the flag and the manner of its proper display. Congress, along with 48 States, had regulated misuse of the American flag until the Supreme Court's 1989 decision in Texas versus Johnson.

As I say, these congressional actions reflect the people's devotion to the flag; Congress did not create these feelings and deep regard for the flag among our people.

The 104th Congress will have a chance to do its part to reflect our people's devotion to Old Glory by sending to the States for ratification Senate Joint Resolution 31, a constitutional amendment giving Congress and the States power to prohibit physical desecration of the flag of the United States.

I recognize that, in good faith, some of my colleagues oppose this constitutional amendment. They love the flag no less than supporters of the amendment.

I do hope those who have opposed the amendment in the past will reconsider their position. We can protect the flag without jeopardizing freedom of expression. Freedom of expression was extremely robust when the 49 flag desecration statutes were enforceable. And there is no danger of a slippery slope here because there is no other symbol of our country like the flag. We do not salute the Constitution or the Declaration of Independence, and no one has ever suggested a ban on burning copies of these hallowed documents. Numerous other methods of protest, including marches, rallies, use of placards, posters, leaflets, and much more clearly remain available. I hope we will send this amendment to the States for ratification.

On June 6, Senator HANK BROWN, chairman of the Subcommittee on the Constitution, Federalism, and Property Rights held a hearing on the flag amendment. The subcommittee heard from 11 witnesses, including opponents of the amendment. I hope those of my colleagues inclined to vote against Senate Joint Resolution 31 will review the very fine testimony of its supporters. I ask unanimous consent that two of the statements, that of Prof. Richard Parker and former Assistant Attorney General for Legal Counsel, Charles J. Cooper, be printed in the CONGRESSIONAL RECORD following my remarks, along with my opening statement from that hearing.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF RICHARD D. PARKER, PROFESSOR OF LAW, HARVARD LAW SCHOOL

I am a civil libertarian. I believe that, in a democracy, freedom of speech must be ''robust and wide-open''. Indeed I believe it ought to be more robust and wide-open than, in some respects, it is now and than the Supreme Court has been willing, on some occasions, to grant. It's because of that belief that I urge the Congress to propose to the states a new constitutional amendment, one that would permit the people—if, through the democratic process, they so choose—to protect the flag of the United States against physical desecration.

I

Let me begin with general principles. It is, after all, at the level of fundamental value that discussion of constitutional provisions—meant ''to endure for ages to come''—should be (and has traditionally been) conducted.

My basic proposition is this: Whether freedom of speech is, in fact, robust and wide-open does not depend solely, or even primarily, on case-by-case adjudication by the courts. It depends most of all on conditions of culture. First, it depends on the willingness and capacity of people—in our democracy, that means ordinary people—to express themselves energetically and effectively in public. Second, it depends on acceptance as well as tolerance, official and unofficial, of an extremely wide range of viewpoints and modes of expression. And, third, it depends on adherence to very basic parameters that, like constitutional provisions in general, help structure democratic life the better to release its energies.

This last condition is the one that concerns us now. Everyone agrees that there must be ''procedural'' parameters of free speech—involving, for example, places and times at which certain modes of expression are permitted. Practically everyone accepts some explicitly ''substantive'' parameters of speech content as well. Indeed, despite talk of ''content-neutrality,'' the following principle of constitutional law is very clear: Government sometimes may sanction you for speaking because of the way the content of what you say affects other people.

What is less clear is the shape of this principle. There are few bright lines to define it. The Supreme Court understands the principle to rule out speech that threatens to cause imminent tangible harm: face-to-face fighting words, incitement to violation of law, shouting ''fire'' in a crowded theater. And it does not stop there. It understands the principle, also, to rule out speech that threatens certain intangible, even diffuse, harms. It has, for instance, described obscenity as pollution of the moral ''environment.'' But what about ''political'' speech critical of the government? Isn't there a bright line protecting that, at least so long as no imminent physical harm is threatened? The answer is: No. The Court has made clear, for instance, that statements criticizing official conduct of a public official may be sanctioned if they are known to be false and damage the reputation of the official. There has been no outcry against this rule. It was set forth by the Warren Court—in an opinion by Justice Brennan, the very opinion that established freedom of speech as ''robust and wide-open.''[1] It has been reaffirmed ever since. Our constitutional tradition, therefore, leaves plenty of room for debate about the necessary and proper scope of the ''substantive'' parameters of the content of free speech.

Footnotes at end of article.

In the past couple of decades, a consensus has been growing around the following proposition: Important ''substantive'' parameters of public expression, parameters that have long been taken for granted, now need to be restored. The bonds that hold us together—and so make it possible, as in a healthy family, for us to engage in ''robust'' disagreement with one another—appear to be disintegrating. On the right, on the left and in the center, it is widely agreed that certain parameters must be reestablished if free speech, in general, is to flourish.

On the right, it's believed that ''uncivil'' and ''unreasoned'' speech content needs to be checked. The Supreme Court, on occasion, has interpreted the First Amendment in light of that belief. The problem, of course, is that this tends to invite regulation of speech content that is very broad and vague, suffocating free, spontaneous participation in the marketplace of ideas. On the left, it's believed that ''hate'' speech—beyond face-to-face harassment or fighting words—that denigrates disadvantaged groups (and so pollutes the ideological ''environment'') needs to be checked. On occasion, the Court has read the First Amendment in light of that belief as well. The problem, again, is that this tends to invite broad and vague regulations suffocating freedom and spontaneity in public speech. What's more, both these prescriptions—by drawing blunt distinctions among ''types'' of speech and speakers—may, unintentionally, tend to set us apart from each other, even further disintegrating—instead of reaffirming—the bonds that unite us even in disagreement.

In the center, however, there is widespread support for restoration of a much narrower, more focused parameter: protection of the U.S. flag from physical desecration. This proposal, first of all, avoids the vices of the broader, vaguer alternatives. Its virtue, moreover, is that—by means of an extremely minimal constraint on freedom, taken for granted until recently—it affirms the most basic condition of our freedom: our bond to one another in our aspiration to national unity. It leaves it to individuals, in a thousand other ways, to criticize government and even that aspiration to unity, if they want. But it affirms that there is some commitment to others, beyond mere obedience to the formal rule of law, that must be respected. It affirms that, without some aspiration to national unity—call it patriotism if you choose—there might be no law, no constitution, no freedom.

Still, we know, objections abound. Is this ''important'' enough? Is it ''needed?'' Is it likely to be ''effective?'' Aren't there ''less drastic alternatives?'' These questions deserve answers. Yet the truth is that they practically answer themselves.

A common objection goes like this: True, the aspiration to national unity is vital but, as embodied in the flag, it is just symbolic. What place does symbolism have in the Constitution? The answer is that the framers of the Constitution put symbolism of our unity at the very beginning of the document, invoking ''We the People of the United States''. And, very near the end, they required that all officials, high and low, be ''bound by Oath or Affirmation, to support this Constitution''—a provision that, surely, is less functional than symbolic, yet whose symbolism fulfills, nonetheless, an important function. Animating the whole Constitution of 1787, after all, was the aspiration to call into being a new sense of commitment, a commitment to a broad and deep national unity-despite-difference. What was it, at the beginning, but a bold symbolic effort?

But, we hear, that's all over now. The nation exists. What need is there to revisit old ideals? Yet the framers knew that nothing, on its own, lasts forever. Every institution must be reenergized by every generation to meet new challenges. Can we deny that our generation is now challenged to renew our commitment to unity-despite-difference? The aspiration to even a minimal unity is, once more, commonly put in question. We hear that the freedom the flag symbolizes is the freedom to burn it, that our unity consists simply in a celebration of disunity. These claims go to the heart of our Constitution. It is in the Constitution that we must answer them.

We hear that flag desecrators are like a few ''naughty, nasty children'' trying to ''provoke their parents.'' The rest of the family, we hear, need only ''count to ten.''[2] What's the harm? Take the analogy seriously for a moment. How healthy is a family in which there are no limits to expressive abuse, in which everything can be trashed and will be tolerated? Desecration of mutual bonds may be rate. But so are other wrongs we believe it important to sanction. What is at stake is a principle, a minimal one. It deserves minimal respect—as a matter of principle.

Still, we are told that the aspiration to unity-despite-difference cannot be instituted by law, that it can flourish only in the ''voluntary'' feelings of the people. This argument may, of course, be made, in specific contexts, against using the narrow authority to be restored by the proposed constitutional amendment. But such an argument ought not short-circuit the process, denying the people the right to find it invalid in certain circumstances. For who can doubt that, in some circumstances, legal proscriptions do in fact influence the ''voluntary feelings of the people?'' Those who invoke these feelings should, in any event, be the last to denigrate the people's expression of them, through the processes of democracy.

Finally, we hear there are other ways to do the job. If we don't like physical desecration of the flag, we should criticize the desecrators or fly the flag ourselves. Ordinarily, I agree, ''counter-speech'' is the best response. But this situation is unique, just as the flag is unique. If it is permissible not just to heap verbal contempt on the flag, but also to burn it, rip it and smear it with excrement—if such behavior is not only permitted in practice, but protected in law by the Supreme Court—then the flag is already decaying as the symbol of our aspiration to the unity underlying freedom. The flag we fly in response is no longer the same thing. We are told, again and again, that someone can desecrate ''a'' flag but not ''the'' flag. To that, I simply say: Untrue. This is precisely the way that general symbols like general values are trashed, particular step by particular step. This is the way, imperceptibly, that commitments and ideals are lost.

To boil down the fundamental value at stake here: Recall the civil rights movement. Recall not only its invocation of national ideals, but also its evocation of nationhood. Recall the famous photograph of the Selma marchers carrying flags of the United States. The question is: Will the next Martin Luther King have available to him or her a basic means of identification with all the rest of us—an embracive appeal to the bonds that, in aspiration and potential, make us one?

II

What are the costs, if any, of proposing to amend the Constitution this way? All kinds of fears have been stirred up in opposition to the proposal. I'll comment on two kinds. First, I'll address some rather specific fears: Would the proposal ''amend''—or ''desecrate''—the First Amendment? Then, I'll turn to more generic fears: Would it upset the ''delicate balance'' of the Constitution as a whole?

The proposal would not ''amend the First Amendment.'' Rather, each amendment would be interpreted in light of the other—much as is the case with the guarantees of Freedom of Speech and Equal Protection of the Laws. When the Fourteenth Amendment was proposed, the argument could have been made that congressional power to enforce the Equal Protection Clause might be used to undermine the First Amendment. The courts have seemed able, however, to harmonize the two. The same would be true here. Courts would interpret ''desecration'' and ''flag of the United States'' in light of general values of free speech. They would simply restore one narrow democratic authority. Experience justifies this much confidence in our judicial system.

But, we're asked, is ''harmonization'' possible? If the Johnson and Eichman decisions protecting flag desecration were rooted in established strains of free speech law—as they were—how could an amendment countering those decisions coexist with the First Amendment?

First, it's important to keep in mind that free speech law has within it multiple, often competing strains. The dissenting opinions in Johnson and Eichman were also rooted in established arguments about the meaning of freedom of speech. Second, even if the general principles invoked by the five Justices in the majority are admirable in general—as I believe they are[3]—that doesn't mean that the proposed amendment would tend to undermine them, so long as it is confined, as it is intended, to mandating a unique exception for a unique symbol of nationhood. Indeed, carving out the exception in a new amendment—rather than through interpretation of the First Amendment itself—best ensures that it will be so confined. Even opponents of the new amendment agree on this point.[4] Third, it's vital to recognize that the proposed amendment is not in general tension with the free speech principle forbidding discrimination against specific ''messages'' in regulation of speech content. Those who desecrate the flag may be doing so to communicate any number of messages. They may be saying that government is doing too much—or too little—about a particular problem. In fact, they may be burning the flag to protest the behavior of non-governmental, ''patriotic'' groups and and to support efforts of the government to squash those groups. Laws enacted under the proposed amendment would have to apply to all such activity, whatever the specific ''point of view.'' One, and only one, generalized message could be regulated: ''desecration'' of the flag itself. And regulation could extend no farther than a ban on one, and only one, mode of doing it: ''physical'' desecration.[5] Finally, and perhaps most importantly, we mustn't lose sight of the fundamental purpose of the proposed amendment. That purpose is to restore democratic authority to protect the unique symbol of our aspiration to national unity, an aspiration that, I've said, nurtures—rather than undermines—freedom of speech that is ''robust and wide-open.''

One objection remains. It involves ''desecration.'' Would this word, evoking sacredness, itself ''desecrate'' the Constitution? Those who make the objection this way defeat themselves, of course. If the Constitution as a whole is ''sacred,'' as they proclaim it is, then there is no text in which a reference to ''desecration'' of the symbol of the nationhood that undergirds it could be more at home. Beyond the play on words, however, it's useful to keep in mind that this word—

like any number of others in the constitutional text—is a term of art. It has no religious connotation. The Constitution of Massachusetts, for instance, provides that the right to jury trial ''must be held sacred,''[6] and no one reads that as a theological mandate. The question for courts interpreting the proposed amendment would be: What sorts of physical treatment of the flag are so grossly contemptuous of it as to count as ''desecration?'' This is the type of question—raising issues of fact and degree, context and purpose—that they resolve year in and year out under other constitutional provisions. Thus there is nothing radical or extreme about the flag amendment—unless it is the rhetoric, igniting and fueling all kinds of fears, purveyed by some of its opponents.

III

What hides its moderation, I think, is a generic fear of any proposed constitutional amendment—or, at least, of any that is driven by wide public support. Opponents of a flag amendment evoke this fear, suggesting the ''delicate balance'' of the Constitution is in jeopardy. In the ways they make the suggestion, however, they reveal it to be misleading, even perverse.

They tell us that the Constitution is perfect. Or they talk of its fragility. The document, they imply, is too fine or too delicate to amend. But a part of its ''perfection'' must be Article V, which provides for its amendment. It has, after all, been amended many times. (The framers' generation added ten amendments in one swoop.) And, far from proving fragile, it has proved to have extraordinary tensile strength, enduring by adapting to circumstances—changing and unforeseen—just as, long ago, Chief Justice John Marshall promised it would.[7]

Yet, they tell us, any proposed constitutional language will have unintended consequences—unless we pin down, right now and forever, every jot and title of its meaning. This is sometimes an effective strategy of opposition. It was deployed, for example, against the Equal Rights Amendment, nickled and dimed to death in disputes over hypothetical details.[8] The proposed flag amendment is far narrower and, so, far less vulnerable to such opposition. But those who supported the ERA—and deplored the strategy then—should be loath to use it now. It is, in any event, deeply misguided. For if (as John Marshall taught us) the genius of our Constitution is to endure through adaptation, then any pretense to fix its precise meaning, once and for all, is futile. Few constitutional provisions—few of those in the Bill of Rights, for instance—could pass such a test. Hence, the lesson of our history is: Leave future details of application to the future; trust our judicial system; and stick, for the moment, to issues of fundamental principle.

When all is said, opponents are left with one line of argument. You ought not, they say, ''fool with'' the Constitution. You should not ''tinker'' or ''fiddle'' with it. You must not ''trivialize'' it. Here is what's fascinating: Such verbs are rarely used to describe judicial interpretations or lawyers' interpretations or academic interpretations of the Constitution. They're reserved, instead, for the process of amendment prescribed by Article V. They're reserved, especially, for amendments proposed not by ''experts'' but by large numbers of ordinary citizens and their representatives. The disdain in such language is clear. It is, I believe, a disdain for the processes of democracy and for the ordinary people who take part in them. The implication is that the Constitution—which establishes processes for its own amendment—is too elevated, too refined, to be touched by those very processes.

In the end, that's what is at stake here: Our flag symbolizes our nation. It is a nation defined not by any ethnicity, but by a political practice, the practice of popular sovereignty, of democracy. It is through democracy that our law, including constitutional law, is made. It is through democracy that our liberties are nurtured and exercised and guaranteed. It is through democracy that we are bonded to one another. Shouldn't the people be authorized, if they choose, to require a very minimal respect for that one symbol, that one value, that one aspiration?

FOOTNOTES

[1] *New York Times* v. *Sullivan*, 376 U.S. 254 (1964).

[2] Testimony of Charles Fried before the Committee on the Judiciary of the United States Senate, June 21, 1990.

[3] I agree with the majority, for instance, that the Freedom of Speech protects expressive conduct and that its protection should not depend on how ''reasoned'' or ''articulate'' the expression is thought to be. I also agree, as a general matter, that government may not ''prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.'' I do not support the broader, vaguer proposals (described above) now being made on the right and on the left.

[4] See Frank Michelman, ''Saving Old Glory: On Constitutional Iconography,'' 42 Stanford Law Review 1337 (1990).

[5] It's entirely possible that the specific statutes declared unconstitutional under the First Amendment in Johnson and Eichman would *not* pass muster under the proposed amendment—because both may be worded too broadly. The Texas statute in *Johnson* made it a crime to ''damage'' a flag in a way known to ''seriously offend one or more persons likely to observe or discover'' it. Thus it swept beyond ''desecration'' defined by a more general standard. The United States statute in Eichman was more sharply focused. But, before the Supreme Court, the government interpreted it as extending to any and all violations of the ''physical integrity'' of the flag, again seeming to sweep beyond behavior that might count as ''desecration.''

[6] Constitution of the Commonwealth of Massachusetts, Part I, Article 15.

[7] *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

[8] See Jane Mansbridge, ''Why We Lost the ERA'' (1986).

TESTIMONY OF CHARLES J. COOPER

Good morning, Mr. Chairman and Members of the Subcommittee. My name is Charles J. Cooper, and I am a partner in the law firm of Shaw, Pittman, Potts & Trowbridge. I appreciate this opportunity to testify before this distinguished Subcommittee on the proposed Flag Protection Amendment.

Almost six years have passed since the Supreme Court decided the case that the Flag Protection Amendment was specifically designed to overturn. In Texas v. Johnson the Court held that the First Amendment's guaranty extends not only to a protester's expression of anti-American sentiments (''America, the Red, White, and Blue, we spit on you.''), but also to his act of burning an American flag to dramatize his views. In so ruling, the Court in effect overturned the flag desecration statutes of 48 States, as well as the Federal Flag Desecration Statute, which prohibited knowingly and publicly ''cast[ing] contempt upon any flag of the United States'' by burning or otherwise physically mistreating it. 18 U.S.C. §700.

The reaction of the American people to the Johnson decision was swift, loud, and overwhelmingly hostile. President Bush and several Members of Congress called for swift passage and ratification of the Flag Protection Amendment, while other Members of Congress supported a statutory response to the decision—the Flag Protection Act. The purpose of the legislation was to harmonize federal law with the Johnson decision by establishing a ''neutral'' flag desecration statute— that is, one that punished any impairment of the physical integrity of the flag, whether performed in public or in private, and regardless of any message that might be intended or conveyed by the act of physical impairment.

Several witnesses, I among them, testified before the Senate Judiciary Committee that the proposed legislation, even if cast in ''neutral'' language, could not be squared with the reasoning of the Johnson decision and would therefore almost certainly be invalidated by the Supreme Court. The point was simply this: clothing the federal Flag Desecration Statute in ''neutral'' language would not disguise the undeniable fact that the central purpose of the proposed measure was to preserve the flag's unique status as ''the Nation's most revered and profound symbol, representing what this Country stands for'' (the words are Senator Biden's, the bill's chief sponsor). The governmental interest in preserving the flag's unique status as a national symbol simply cannot be divorced from expression, for only messages concerning the flag can either advance or diminish its symbolic value.

Congress enacted the Flag Protection Act of 1989 (''Act'') by overwhelming majorities in both Houses, and the Supreme Court promptly struck it down in United States v. Eichman. Noting that ''[t]he Government's interest in protecting the 'physical integrity' of a privately owned flag rests upon a perceived need to preserve the flag's status as a symbol of our Nation and certain national ideals,'' the Court held that the federal statute, like the Texas statute invalidated in Johnson, ''still suffers from the same fundamental flaw: It suppresses expression out of concern for its likely communicative impact.''

The six-year period that has elapsed since the Johnson case has provided time for tempers to cool. The anger and sadness that consumed most Americans when the decision was announced has had time, if not to abate, at least to be moderated by reflection and thought. And yet it still appears that the vast majority of Americans so revere their flag that they are willing to undertake the arduous task of amending their Constitution to authorize Congress and the States to protect it from physical desecration. Congress has received resolutions calling for passage of a flag desecration amendment from the legislatures of 49 States. As a citizen, my own support for the Flag Protection Amendment has not weakened since Johnson was decided, for I remain convinced that the policies underlying the Flag Protection Amendment are sufficiently important to warrant its passage by Congress and ratification by the States.

But I have been invited to appear before this Subcommittee as a constitutional lawyer, to provide my views on the legal issues, as opposed to the policy issues, raised by the proposed amendment. I make this point because policy objections have dominated the arguments of constitutional scholars who have testified thus far before congressional committees in opposition to the Flag Protection Amendment. These policy objections—for example, that the proposed amendment would ''trivialize'' the Constitution, that flag desecration laws are popular in Communist regimes, and that the best response to flag desecration is to wave one's own flag—are important and should be considered seriously by Members of Congress, as well as by all Americans, in assessing the merits of the proposed amendment. But they are entitled to no additional weight when voiced by law professors (or Supreme Court Justices for that matter) rather than by any other citizen. I therefore will attempt to confine my testimony insofar as possible to the legal objections that have been advanced in opposition to the Flag Protection Amendment.

1. Some constitutional scholars have objected to the wording of the proposed Flag Protection Amendment, which provides simply that ''the Congress and the States shall have power to prohibit the physical desecration of the flag of the United States.'' These constitutional scholars object particularly to the use of the word ''desecration'' because it makes clear that the amendment would authorize Congress and the States to prohibit only physical mistreatment of the flag that conveys a political protest.[1] Arguing that the Constitution should protect the flag in a ''neutral'' manner, they propose that the amendment be worded to authorize Congress ''to prohibit any physical impairment of the integrity of the flag.'' Such an amendment would ensure that any statutory restrictions would apply across the board, regardless of the purpose or circumstances of the conduct at issue.

The threshold question that must be answered by proponents of this suggestion is whether anyone really wants a ''neutral'' flag protection statue. Does anyone really want to protect the physical integrity of all American flags, regardless of the circumstances surrounding the prohibited conduct? Certainly the constitutional scholars suggesting a ''neutral'' flag protection amendment do not, for they advance the idea only as a lesser evil than the Flag Protection Amendment. Nor are supporters of the proposed Flag Protection Amendment likely to be persuaded that a ''neutral'' alternative would be preferable. The problem is that a genuinely ''neutral'' flag protection measure simply doesn't make sense.

The act of burning an American Flag is not inherently evil. Indeed, the Boy Scouts of America have long held that an American flag, ''when worn beyond repair'' should be destroyed ''in a dignified way by burning.'' Boy Scout Handbook at 422 (9th ed.) Similarly, Congress has prescribed that ''[t]he flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.'' 36 U.S.C. 176(k). Nor is the respectful disposition of an old or worn flag the only occasion on which burning a flag might be entirely proper. The old soldier whose last wish is to be cremated with a prized American flag fast against his breast would be deserving of respect and admiration, rather than condemnation.

In contrast, Gregory Lee Johnson's conduct was offensive—indeed, reprehensible—not simply because he burned an American flag, but because of the manner in which he burned it. Yet, a truly neutral flag protection statute would require us to be blind to the distinction between the conduct of Gregory Lee Johnson and his comrades and the conduct of a Boy Scout troop reverently burning an old and worn American flag. It would also reach other forms of conduct that honor, rather than desecrate, the flag. If, rather than burning an American flag, Gregory Lee Johnson and his colleagues had heaped dirt upon it in some sort of anti-American burial ritual, their conduct would undoubtedly have violated not only the Texas flag desecration statute, but a ''neutral'' flag protection statute as well. A ''neutral'' statute, however, would also have reached and punished the conduct of the unidentified patriot who gathered up Johnson's charred flag and buried it in his back yard.

Moreover, not only would a ''neutral'' flag protection statute prohibit conduct that should be praised rather than punished, it would fail to prohibit an infinite variety of public conduct that casts contempt upon the flag. Such a statute would prohibit only conduct that comprises the physical integrity of the flag. Conduct that is not physically destructive of the flag, no matter how openly offensive and disrespectful it may be, would presumably not be reached. Thus, affixing an American flag to the seat of one's pants or simulating vulgar acts with a flag would not come within such a prohibition.

Thus, a ''neutral'' flag protection statute is at once too broad, since it would prohibit conduct that no one wants to prohibit, and too narrow, since it would permit conduct that few people want to permit. The proposal therefore simply does not mesh with the public sentiment that animated the passage of 48 state flag desecration statutes and a similar measure by the federal government, that led to the prosecution of Gregory Lee Johnson under the Texas flag desecration law, that provoked the extraordinary public outcry at the Supreme Court's reversal of Johnson's conviction, and that inspired this hearing. I submit that that public sentiment is not ''neutral''; it is not indifferent to the circumstances surrounding conduct relating to the flag. If such conduct is dignified and respectful, I daresay that the American people and their elected representatives do not want to prohibit it; if such conduct is disrespectful and contemptuous of the flag, I believe that they do.

The simple truth is that no one really wants a genuinely ''neutral'' flag protection statute. Accordingly, amending the Constitution to authorize enactment of such a statute obviously makes no sense.

2. Some opponents of the Flag Protection Amendment objects to the fact that its language does not explicitly state that it overrides the First Amendment. They make two principle points.

First, they argue that the proposed amendment, as written, does nothing more than confer upon Congress and the States a legislative power that they already possess. And because the proposed amendment does not expressly override the limitations of the First Amendment, any exercise of that legislative power would be subject to the same First Amendment challenge upheld in Johnson and Eichman. In other words, the Flag Protection Amendment, as written, would not alter the result of the Supreme Court's decisions in Eichman and Johnson.[2]

The first point to be made in response to this argument is that the proposed Flag Protection Amendment contains no statement that it overrides the First Amendment because such a statement is wholly unnecessary. The First Amendment is the only constitutional provision that has been construed, or could have been construed, by the Supreme Court to prohibit Congress and the States from criminalizing the physical desecration of an American flag. The proposed amendment clearly and directly grants (many would say restores) that legislative power to Congress and the States. A couple of examples will suffice to illustrate this point. If the Supreme Court held that the Eighth Amendment forbids capital punishment in all cases, a constitutional amendment empowering Congress and the States to impose the death penalty would not also have to contain the entirely redundant statement that it overrides the Eighth Amendment in order to be effective. Similarly, a constitutional amendment granting the States power to require a moment of silence at the beginning of each school day would plainly overrule the Supreme Court's contrary Establishment Clause cases, and it would be far-fetched, to put it mildly, to suggest that the purpose and effect of such an amendment would be unclear in the absence of express language overriding the First Amendment.

Beyond this point, I must confess that I am perplexed by the claim that the claim that the States and Congress currently possess, notwithstanding Johnson and Eichman, the legislative power that the Supreme Court so decisively and permanently prevented them from exercising in Johnson and Eichman. In those cases, the Court held that neither the States nor the Congress have constitutional power to prohibit the physical desecration of the American flag. In both cases, the Court overturned convictions for conduct that plainly constituted the physical desecration of American flags. The sole purpose of the proposed Flag Protection Amendment is to overturn the Eichman and Johnson decisions and thus to return to the States and to Congress the legislative power that they thought they had to prohibit the physical desecration of the American flag.

I am even more perplexed, however, by the suggestion that passage and ratification of the Flag Protection Amendment would not alter the outcome of a future Johnson or Eichman case. Suffice it to say that there is no reasonable possibility that the Supreme Court, in some future Johnson or Eichman case, would interpret the Flag Protection Amendment as being utterly meaningless.

The second point made by these opponents of the proposed amendment is that because its language does not expressly override the First Amendment, ''it leaves entirely unclear how much of the Bill of Rights it would dump.''[3] Apparently the argument is that the omission from the Flag Protection Amendment of any statement that it overrides the First Amendment may be construed to mean that the legislative power granted by the proposed amendment is exempt from or otherwise overrides all constitutional restrictions, such as the Due Process Clause and the Eighth Amendment.[4]

Before assessing this argument on its own merits, it is important to note first the paradoxical nature of the dual conclusions that these opponents draw from the absence of language in the Flag Protection Amendment expressly overriding the First Amendment. In one breath, they argue that the omission of such language leaves the Supreme Court's interpretations in Johnson and Eichman undisturbed and, thus, renders the proposed amendment ineffective in accomplishing its acknowledged purpose. In the next breath, they argue that the omission of such language from the Flag Protection Amendment presents a serious risk that all other protections in the Bill of Rights will be ''trumped'' when confronted with an exercise of the power to prohibit the physical desecration of the flag. In other words, they argue that by failing to include language explicitly overriding the First Amendment, the authors of the Flag Protection Amendment may have unwittingly overridden every constitutional provision except the First Amendment. This line of reasoning, frankly, is specious, and nothing more need be said to dismiss the notion that the express terms of the proposed amendment must contain a reference to the First Amendment.

In any event, there is no reasonable basis for concern that the proposed Flag Protection Amendment will ''trump'' any constitutional protections other than the constitutional right to physically desecrate the American flag. To be sure, the proposed amendment's grant of legislative power to prohibit the physical desecration of the flag comprehends, for example, the power to investigate and to punish violations. But nothing in the language or history of the proposed amendment even remotely suggests that federal or state authorities would be free to enforce a flag desecration statute by randomly invading and searching homes to

Footnotes at end of article.

ferret out violations or by summarily torturing or executing violators without a trial. Nor would the proposed amendment authorize state or local governments, for example, to punish Gregory Lee Johnson, ex post facto, for his violation, to prosecute only black people for violating a flag desecration statute, or to prohibit the press from reporting on incidents of flag desecration. There are simply no plausible arguments supporting an interpretation of the proposed Flag Protection Amendment that would yield these results.

In short, the only constitutional right that will be ''trumped'' by the proposed Flag Protection Amendment is the one recognized by the Supreme Court in Johnson and Eichman—the right to physically desecrate an American flag.

3. A particularly popular argument among opponents of the Flag Protection Amendment is the concern that prohibiting physical flag desecration will compromise the sacred values reflected in the First Amendment and lead inevitably to further compromises of our Constitution's protection ''for the thought we hate.'' But if prohibiting flag desecration would place us on this sort of slippery slope, we have been on it for a long time. The sole purpose of the Flag Protection Amendment is to restore the constitutional status quo ante pre-Johnson, a time when 48 States, the Congress, and four Justices of the Supreme Court believed that legislation prohibiting flag desecration was entirely consistent with the First Amendment. And that widespread constitutional judgment was not of recent origin; it stretched back about 100 years in some States. During that long period before Johnson, when flag desecration was universally criminalized, we did not descend on this purported slippery slope into governmental suppression of unpopular speech. The constitutional calm that preceded the Johnson case would not have been interrupted, I submit, if a single vote in the majority had been cast the other way, and flag desecration statutes had been upheld. Nor will it be interrupted, in my view, if the Flag Protection Amendment is passed and ratified.

4. Finally, I should like to conclude my testimony with the point that the Supreme Court is not the final word on the content or meaning of our Constitution. The American people are. And the idea that the act of desecrating an American flag is ''speech,'' and that the people are therefore powerless to intervene through law to prevent or punish such a tragic spectacle, falls uneasily on the ears of most ordinary Americans. When the Court errs in its constitutional judgment on a matter of surpassing importance to the people, it is entirely appropriate for them to correct that error through the amendment process prescribed by Article V of the Constitution. Indeed, I believe it is their responsibility to do so.

Again, thank you for inviting me to participate in this important hearing.

FOOTNOTES

[1] See Testimony of Henry Paul Monaghan before the Senate Judiciary Committee (June 21, 1990); testimony of Cass R. Sunstein before the Senate Judiciary Committee (June 21, 1990).

[2] Testimony of Walter Dellinger before the Senate Judiciary Committee at 2 (June 21, 1990) (hereinafter ''Dellinger Testimony'').

[3] Id.

[4] See id. at 3, n. 2.

STATEMENT OF SENATOR ORRIN HATCH

The American people revere the flag as a unique symbol of our country. It is the symbol that unites a very diverse people in a way nothing else can. Despite our differences of politics, philosophy, religion, race, ethnic background, socio-economic status, or geographic origin, the flag is an incomparable common bond among us.

Moreover, Justice John Paul Stevens, dissenting in Texas v. Johnson, aptly stated, ''A country's flag is a symbol of more than 'nationhood and national unity.' It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas . . .'' [491 U.S. at 436, Stevens, J. dissenting] The flag itself represents no political party or political ideology.

I wish we did not have to resort to a constitutional amendment. I believe the Supreme Court was wrong in Texas v. Johnson. But the Supreme Court has given us no choice: if we believe the flag is important enough to protect from physical desecration, an amendment is necessary.

Let me set the record straight about the origin of this bipartisan movement. A grassroots coalition, the Citizens Flag Alliance, has been working for some time in support of a constitutional amendment regarding flag desecration. The Citizens Flag Alliance, led by the American Legion, consists of over 100 organizations, ranging from the Knights of Columbus; Grand Lodge, Fraternal Order of Police; and the National Grange to the Congressional Medal of Honor Society of the USA and the African-American Women's Clergy Association. Forty-nine state legislatures have called for a constitutional amendment on flag desecration.

The Citizens Flag Alliance approached Senator Heflin and me last year, well before the November elections, and asked us to lead a bipartisan effort in the Senate. They told us they had reasonable hopes that President Clinton would support this amendment. We were pleased to introduce this resolution here. But, before we were asked to do so by the Citizens Flag Alliance, we had no plans to reintroduce this amendment.

This is an effort originating entirely among the American people, over 75 percent of whom both favor protecting the flag and sensibly believe that freedom of speech is not jeopardized by so doing.

There is more wisdom, judgment, and understanding on this matter in the hearts and minds of the American people than one will find on most editorial boards, law faculties, and, regrettably, in the Clinton Administration.

I believe the opponents of the amendment, including President Clinton, have, in good faith, posed a false choice to the American people. In effect, they say that if we wish to protect the flag from physical desecration, we have to trample on the First Amendment. If we want to safeguard the First Amendment, they say, we have to let desecrators trample on the flag.

In my view, this amendment, granting Congress and states power to prohibit physical desecration of the flag, does not amend the First Amendment or infringe upon freedom of speech. I believe the flag amendment overturns two Supreme Court decisions which have misconstrued the First Amendment.

The First Amendment's guarantee of freedom of speech has never been deemed absolute. Libel is not protected under the First Amendment. Obscenity is not protected under the First Amendment. A person cannot blare out his or her political views at two o'clock in the morning in a residential neighborhood and claim First Amendment protection. Fighting words which provoke violence or breaches of the peace are not protected under the First Amendment. I might add that legislative bodies are able to regulate conduct which people might seek to use as part of a political message.

Protecting the flag from physical desecration does not interfere with the numerous ways of conveying an idea whatsoever—through speech, use of placards, signs, bullhorns, leaflets, handbills, newspapers, and more. A protestor can burn or mutilate other symbols of our country or government, or even effigies of political figures. This amendment authorizes legislative bodies to prevent disrespectful conduct with regard to one object, and one object only, our flag. We can withdraw this one unique object from physical desecration and our freedom of speech will remain intact.

The parade of horribles some opponents conjure up is a diversion.

Indeed, for many years before the 1989 Texas v. Johnson decision invalidating flag desecration statutes, 48 states and the federal government prohibited flag desecration. Was freedom of speech impaired in this country all that time? To ask that question is to answer it—of course not. The First Amendment seemed to have survived these 49 statutes remarkably well.

Many academics have appeared before the Committee to tell us the Johnson decision was correctly decided and that it is just a natural development of the Supreme Court's previous First Amendment jurisprudence.

Yet, distinguished jurists regarded as great First Amendment champions have agreed that flag desecration does not fall within the ambit of the First Amendment. Chief Justice Earl Warren wrote, ''I believe that the States and the Federal government do have the power to protect the flag from acts of desecration and disgrace . . .'' [*Street* v. *New York*, 394 U.S. 576, 605 (Warren, C.J., dissenting)]. Justice Hugo Black—generally regarded as a First Amendment absolutist—stated, ''It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American Flag an offense.'' [Id. at 610 (Black, J. dissenting)]. Justice Abe Fortas wrote: ''[T]he States and the Federal Government have the power to protect the flag from acts of desecration committed in public . . .'' [Id. at 615 (Fortas, J., dissenting)].

As Justice Stevens said in his Johnson dissent: ''Even if flag burning could be considered just another species of symbolic speech under the logical application of the rules that the Court has developed in its interpretation of the First Amendment in other contexts, this case has an intangible dimension that makes those rules inapplicable.'' [496 U.S. at 436, Stevens, J., dissenting].

Even if, on the other hand, one agreed that the Johnson and 1990 U.S. v. Eichman cases were correctly decided under prior precedents, one could still support this amendment—if one views protection of the flag from physical desecration as an important enough value. I am sorry that President Clinton could not see his way clear to supporting protection of the flag against physical desecration, apparently deferring to the determinations made by his lawyers within the narrow confines of a legal memorandum or brief. This is terribly disappointing.

And there is no slippery slope here. The amendment relates only to the flag. The uniqueness of the flag renders the amendment no precedent for any other amendment or legislation. Most Americans understand this. Moreover, neither the amendment, nor any legislation it authorizes, compels any conduct or any profession of respect for any idea or symbol, nor prescribes what is orthodox in any matter of opinion.

Johnson was a 5–4 decision of the Supreme Court. Had the Court gone 5–4 the other way, and upheld flag desecration statutes, would there have been an uproar by editorial writers, law professors, and members of Congress to repeal these flag desecration statutes? I think not. In effect, one vote on the Supreme Court compels us to go the amendment

route, we have no choice—if we think the flag is important enough to protect.

Our acquiescence in the Supreme Court's misguided 5–4 decisions itself devalues the flag. I hope Congress will not stand idly by and tacitly accept the Court's wrongheaded notion that the flag is of no more value than a common object. As Justice Stevens wisely noted in his Johnson dissent: ''sanctioning the public desecration of the flag will tarnish its value . . . That tarnish is not justified by the trivial burden on free expression occasioned by requiring that an available alternative mode of expression including uttering words critical of the flag . . . be employed.'' [436 U.S. at 437]

I urge support for the amendment.

RACE FOR THE CURE—BREAST CANCER AWARENESS

Ms. MIKULSKI. Madam President, I rise today to join my colleagues in enthusiastically supporting the efforts of our Vice President and Mrs. Gore in bringing breast cancer awareness to the attention of our Nation's women. their participation in the Race for the Cure demonstrates their on-going commitment and dedication to finding a cure for breast cancer and for early detection.

I am proud to have been an advocate for breast cancer research and early detection. When we passed the breast and cervical cancer amendments of 1993, it showed that we can build a preventive health care system using the community-level, public/private partnerships which are critical to success. This legislation saved women's lives.

But our job is not over. There are many States that have no screening program for breast cancer and many other States are just getting started. Screenings are absolutely necessary if we are to prevent this dreaded health risk for America's women.

All women in America are at risk. In fact, 50,000 mothers, daughters, relatives, and friends will die from breast cancer alone. but the women most at risk are also those who are our most defenseless—older women, women of color, and women of limited income.

Over the past few years, we have made significant strides in breast cancer research—focused through the National Institutes of Health's Office of Women's Research. We know what it takes to save many of these lives.

It takes regular screening for women over 40 using mammograms and self-exams. All women need to hear this message. All women should think of getting a mammogram as once a year for a lifetime. For the fortunate majority of America's women, following through on that message is not too much to ask.

That is why I take pride in joining my colleagues today in urging participation in the Race for the Cure to be held this Saturday, June 16. Events like this get the message out. The message of ''breast cancer is preventable'' and ''Once a Year for a Lifetime'' in getting that mammogram.

I welcome the day when no woman turns away from the decision to have a mammogram for lack of funds, access to services, or lack of awareness. This is the noble cause I am dedicated to. America's women deserve no less. Join Race for the Cure.

RACE FOR THE CURE

Mr. DASCHLE. Madam President, I would like to take a few moments to underscore the comments many of my colleagues made earlier today in support of the upcoming Race for the Cure, which will be held this Saturday in Washington. This weekend's race marks the 6th year that Washingtonians have participated in this important event. it is a time when policymakers, civil servants, media representatives, and other put their ideological differences aside and show their solidarity in support of the effort to find a cure for breast cancer.

In the past, the Race for the Cure has helped raise critical funding for medical research and for mammograms. Much of this money remains in the local area to support research institutions and provide mammograms for women who could not otherwise afford them. The Race for the Cure has also done an exceptional job of raising the public's awareness about breast cancer, and of alerting women to the importance of early detection measures.

As in the past, many of Saturday's race participants will be breast cancer survivors. Many more will be the spouses, children, siblings, and friends of both breast cancer survivors and, I am sad to say, the many women who have not survived their battle with this disease. It is for all these individuals that we race. And it is for them that we continue our efforts to support research and public awareness in the hope that one day all women who face this disease will be survivors.

Although we have made significant strides in combating breast cancer, we are far from the finish line. Medical research into the causes, cure, and prevention of breast cancer is critical to this effort. Public awareness and prevention efforts are also critical components of our battle against breast cancer. Today doctors strongly recommend monthly self-examinations to check for the early warning signs of breast cancer. Sometimes these early warning signs are not early enough, however, and that is why it is so important for women at risk of breast cancer to have mammograms. I am hopeful that one day we will be able to detect all breast cancers at an early stage.

I am even more hopeful, however, that we will someday have a cure for this disease. Over 70 percent of all women who have breast cancer do not exhibit any of the known risk factors. This year 182,000 women will be diagnosed with breast cancer, and 46,000 women will die from this terrible disease. Whether the answer to this disease is around the corner, or it takes years to discover, we cannot give up the fight. We must find a cure.

Sometimes the most effective movements are born of tragedy, and the Race for the Cure is one of those movements. this race is a tribute to all women who have not survived their battle with breast cancer. It is in their memory that we continue our efforts to increase support for medical research and raise public awareness about this issue.

This race is also a tribute to all those women who are surviving their battle with breast cancer. It is in their honor that we stand with them, walk with them, and run with them. It is in humble respect that we race with them—to find a cure for breast cancer.

VARIOUS ISSUES REGARDING THE PEOPLE'S REPUBLIC OF CHINA

Mr. THOMAS. Madam President, as the chairman of the Subcommittee on East Asian and Pacific Affairs, I would like to speak this morning on two issues concerning the People's Republic of China; specifically, Hong Kong and our embassy in Beijing.

First, Hong Kong Governor Chris Patten contacted me last Friday to inform me that his government and the government of the People's Republic of China had finally reached an agreement on establishing the Court of Final Appeal [CFA]. He was kind enough to send me a copy of the agreement, as well as a copy of his statement to the Hong Kong Legislative Council.

As my colleagues know, the establishment of the CFA has been one of the major sticking points in the negotiations over the transition of Hong Kong from British to Chinese sovereignty in 1997. Hong Kong presently operates under a British legal system based on statute and common law, and the judiciary is a separate, independent branch of government. These legal traditions provide substantial and effective protections against arbitrary arrest or detention, and ensure the right to a fair and public trial. Aside from the legal protections individuals enjoy under this system, Hong Kong's transparent and predictable legal system and regulatory scheme has been a major draw to businesses. They know ahead of time what statutes govern their actions, and that their contracts will be enforced. The continuance of these laws after 1997 will be a key factor in the territory's ability to maintain its promised high degree of local autonomy and its attraction to business.

Final trial court decisions in Hong Kong are now appealable to the Supreme Court, and then to the Privy Council in London. There is a well-founded concern that, upon retrocession, the protections offered by the present legal and appellate systems might disappear to be replaced by a more ''indigenous'' system where the courts are instruments of the Party, contracts are honored only as long as they are useful, and final decisions are handed down from Beijing according to the whims of the leadership.

In an attempt to ally these fears, in the Joint Declaration and subsequent

discussions the People's Republic of China and United Kingdom agreed to establish a local CFA before 1997 to replace the Privy Council. Protracted negotiations between the parties, however, failed to produce a mutually agreeable plan for the Court's implementation. With 1997 looming and fears about the consequences of the lack of a court at the time of retrocession, the Hong Kong Government unilaterally prepared a draft bill for introduction in the Legco.

Beijing refused to endorse the draft, and both sides spent time pointing the finger at the other, while it languished. In March, in response to statements by Governor Patten that the Legco might unilaterally establish the CFA without waiting for Chinese approval, the People's Republic of China stated that it would dismantle any court established without its OK. This left the Hong Kong Government with the Hobson's choice: either leave it to China to decide when and how the court would be established after 1997, or go ahead with the draft bill and create a serious dispute with the People's Republic of China that would have damaged investor and citizen confidence and left doubts about whether China would eventually just dismantle it.

On June 1, however, the two sides began a new round of spirited negotiations which led to the June 9 agreement. The basic gist of the agreement is that the Hong Kong Government will procede to introduce its draft bill in the Legco, and that preparations for the Court should be made on the basis of the resulting legislation and completed in time for the Court to begin operating on July 1, 1997. It will not, however, begin operating before that date. Governor Patten noted on Friday that:

> What is vital is that we know now what kind of court will be in place on 1 July 1997. That is what the Hong Kong community and US and other foreign businessmen have been calling for and I believe that the Chinese have come to realise that it is vital to the maintenance of confidence in Hong Kong. There will be dissentient voices, of course, but I believe that the majority of the Hong Kong community and international investors will welcome the agreement, and that the Legislative Council will accept it.
>
> The bottom line is that, although it is not ideal, this agreement does more to strengthen the rule of law after 1997 than any alternative course of action, and for that reason I am convinced that it is the right way forward.

While I find myself in some agreement with Governor Patten, as an outside observer I have four concerns with the agreement: the timing, jurisdiction, finality, and judicial independence issues. First, I regret that the Court will not begin to function until the day jurisdiction is transferred in 1997. If the Chinese had agreed to allow the Court to begin functioning as soon as enabling legislation could be passed, then the two sides would have had more than a year in which to see how the court operates and to work out through a consensus any kinks or shortcomings that became apparent. As it stands now, the Court will be jumpstarted cold in 2 years on July 1 without a ''test run.''

My second concern involves the Court's jurisdiction. In the preliminary talks about the Court, the Chinese side was rather adamant that the jurisdiction of the CFA would not extend to acts of state. What Beijing sought to forestall by this provision was the spectre of a judicial branch based on English common law declaring void some tennet of the central government vital to the continuation of the Communist system. Unfortunately, the new agreement adopts the definition of ''act of state'' set out in Article 19 of the Basic Law, which has been seen by some as vague and thus capable of an overly expansive interpretation. The worry is that after 1997 the Chinese will simply qualify politically uncomfortable cases as touching on ''acts of state'' and therefore remove them from judicial review.

Third, the provisions regarding judicial appointments raise some concerns. Under the Joint Declaration, judges appointed to the CFA were to be confirmed by the Legco. Moreover, the Court would be allowed to invite judges from other English common law jurisdictions to sit on the Court. These two provisions have fallen somewhat by the wayside under the new agreement. Now, it appears that the confirmation provision by the Legco has been removed. In addition, the parties adopted the limitation of foreign judges to one set out in what are known as the secret documents. Both of these are violative of the Joint Declaration.

Finally, the parties appear to have largely glossed over what is known as the finality issue. The idea behind the CFA is that the Hong Kong citizens will have the final say about judicial decisions that effect them, and not some party cadre in Beijing. The reason is easily illustrated by a simple analogy: Wyoming citizens would not want decisions of their State supreme court on State laws to be subject to review by a bureaucrat in Washington. Yet, the finality of CFA decisions is still somewhat up in the air.

Having made these observations, Madam President, as I have pointed out before decisions such as these are principally a bilateral issue between the People's Republic of China and the United Kingdom. If both sides have agreed to the new provisions, who are we to gainsay their decision? This is one area where, I believe, overly active moves on our part would for once justify the usual Chinese observation that we were meddling in their internal affairs. I would just hope, though, that the parties would note our concerns and perhaps work with each other to remove some of the remaining ambiguities and departures from the Joint Declaration.

Madam President, I would also like to address another topic concerning the People's Republic of China today. It has come to my attention that our representative in the People's Republic of China, Ambassador J. Stapleton Roy, will be permanently leaving his present post next week to return to Washington and then move on to our Embassy in Jakarta, Indonesia. Yet, inexplicably, the Clinton administration has failed to even name a replacement, let alone forward his or her name to the Senate for confirmation, and has simply decided to leave the post vacant for an undeterminant period of time.

Madam President, I am amazed and dismayed that the Clinton administration has decided to take such an ill-advised step—whatever the impetus. Leaving a post vacant in a small, relatively non-strategic country is one thing; but to do so in the world's most populous country, a country that is emerging as the economic engine that will drive Asia into the 21st century, is quite another.

This is especially true at this time when our bilateral relationship is somewhat less than perfect.

The Chinese are extremely displeased with our decision this month to admit President Lee Teng-hui of Taiwan, and have stated that the decision has seriously soured their view of our relationship. While they have cancelled and postponed several meetings as a sign of their displeasure, I am sure that we have not seen seen the full extent of their reaction.

More importantly, the Chinese Government is itself in a state of flux. The move to replace the ailing Deng Xiaoping is, contrary to the beliefs of some, well under way. Jiang Zemin and his Shanghai compatriots are already moving to consolidate their positions, and other factions have begun their jockeying in turn. Under these circumstances, each and every move we make in relation to our Chinese friends—large, small, overt, or subtle—takes on a special importance.

To allow our Ambassador to depart from Beijing at this time and leave our embassy floating without anyone at the helm seems to me to be the height of misjudgment. I hope that President Clinton will forward the name of Ambassador Roy's intended replacement in the very near future so we can get the nomination process rolling and fill this vitally important position.

KATHY JORDAN

Mrs. FEINSTEIN. Madam President, I rise to salute Kathy Jordan, who today is being inducted in the Stanford University Athletic Hall of Fame.

My northern California field representative for over 2 years, Kathy joined my staff after an incredibly successful career in women's tennis.

While at Stanford, she won four AIAW Collegiate titles, including both the singles and doubles championships in 1979. She still is considered the best women's tennis player who ever went to Stanford.

She then turned professional and in her first year reached the final 16 at both Wimbledon and the U.S. Open.

During her professional tennis career that spanned a decade, Kathy won seven Grand Slam titles.

Kathy earned a reputation as a tough and tenacious competitor. And, as she defeated one challenger after another, Kathy proved she was one of the best players in the world and climbed to a ranking of No. 5. In just 1 year, she went from being No. 23 in the world to being No. 5.

During that time, Kathy beat Chris Evert in straight sets at Wimbledon in 1983, reached the finals of the 1983 Australian Open, and then went on to knock off Pam Shriver in the quarterfinal of the 1984 Wimbledon singles championship to reach the semifinals.

Kathy would later be described as Chris Evert's top nemesis, beating her three times.

Martina Navratilova, too, felt the sting of Kathy Jordan's passing shots. Not only did Kathy beat her in singles, but it was the team of Kathy Jordan and Liz Smylie that pulled a huge doubles upset and ended the 109-match winning streak of Navratilova and partner Pam Shriver in the Wimbledon final of 1985. Jordan and Smylie won by a score of 5–7, 6–3, 6–4. It was sweet victory for Kathy, who had lost 3 of the last 4 years to Navratilova and Shriver after winning the Wimbledon championship in 1980 with partner Anne Smith.

Looking back on the match, Kathy recounted how she and her partner, Smylie, were serving for the match at 5–4 in the third set. Kathy gambled, lunged across to Smylie's side of the court for a volley. They won the point, with Navratilova and Shriver looking stunned as the shot whipped by.

''Pam and Martina were standing there looking at each other. I'm kinda like a roving linebacker and Liz is like a defensive back who sometimes has to cover behind me in case a ball gets over my head,'' Kathy said in 1991.

That roving linebacker attitude is exactly what made Kathy Jordan a legend on the tennis courts.

But, in the 1987 Virginia Slims of New England, Kathy's career was jeopardized with one of the most serious injuries an athlete can suffer—a tear of the right anterior cruciate ligament.

''That's the Bernard King injury. The Danny Manning injury. You get scared. You never really know. A lot of people don't make it back,'' Kathy told the San Francisco Chronicle in 1990.

But, once again Kathy's determination paved the way and she once again became a potent threat in women's tennis. She reunited with her partner, Liz Smylie, and once again knocked off the expected winners to climb their way into the Wimbledon doubles final in 1990.

I've had the pleasure of getting to know Kathy over the course of the last 2 years.

After retiring from women's tennis, Kathy finished her undergraduate work at Stanford University and chose to direct her talents to public service. She worked on Lynn Yeakel's campaign for the U.S. Senate in her native Pennsylvania and then returned to California, where Palo Alto had become home.

Kathy joined my staff in 1993 as field representative for the northern California region of the State.

She has been one of the most outstanding staff persons I've worked with over the last 2 years.

Kathy assumed her field responsibilities with an incomparable level of compassion, intelligence, and diligence. And just as she did on the tennis court, Kathy has shown a fierce determination to fight for what is right.

She redefined the title ''field representative'' and was quickly promoted to the role of field director, overseeing projects for me statewide.

As a representative of over 20 counties, she was my eyes and ears for northern California. She identifies a problem and—more importantly—helps figure out how to solve a problem.

She has been a tireless advocate for the issues and concerns of the residents and elected officials in her jurisdiction.

I frequently have county supervisors and others approach and thank me for the work she has done and the results accomplished.

At a time when many feel alienated and are looking to the government's representatives to help them and respond to their needs and problems, I feel proud that I have a staff person who heeds the call and gets things done.

Kathy is a remarkable person whose compassion, respect, and talent for her work serves as a model for others.

I am grateful to have worked with her and benefited from her service to the U.S. Senate.

Madam President, I stand here to congratulate Kathy on all her accomplishments, and for the honor being bestowed her by Stanford University.

For all she has accomplished in both the world of tennis and in government service, it is an honor well deserved.

LANE KIRKLAND

Mr. MOYNIHAN. Madam President, I rise today to salute my friend, Lane Kirkland, who yesterday announced that he would not seek reelection as president of the AFL–CIO. During his 16-year tenure as head of the AFL–CIO and his 50 years of service to organized labor, Mr. Kirkland devoted himself to improving the lives and occupations of unionized workers. He accomplished this mission with skill and determination.

An editorial in today's New York Post remarked:

> We've always hailed his stalwart commitment to liberal anti-communism and his fealty to the concept of a global network of genuinely free trade unions. It's safe to say, in fact, that no one in the United States—apart from President Reagan himself—did more to hasten the demise of the Soviet empire than did Lane Kirkland.

Lane Kirkland's presence at the helm of American labor will be sorely missed. As the New York Post concluded:

> His retirement marks the departure from the public arena of a larger-than-life figure—an able, courageous and principled individual whose shoes will be difficult to fill.

I extend my thanks to Lane Kirkland for his dedication to working men and women, and I wish him the best of luck in the future.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Madam President, one does not have to be a rocket scientist to realize that the U.S. Constitution forbids any President's spending even a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So when you hear a politician or an editor or a commentator declare that ''Reagan ran up the Federal debt'' or that ''Bush ran it up,'' bear in mind that the Founding Fathers, two centuries before the Reagan and Bush Presidencies, made it very clear that it is the constitutional duty of Congress—a duty Congress cannot escape—to control Federal spending. They have not for the past 50 years.

It is the fiscal irresponsibility of Congress—of Congress!—that ran up the Federal debt that stood at $4,903,284,242,955.00 as of the close of business Tuesday, June 13. This debt, which will, of course, be passed on to our children and grandchildren, averages out to $18,612.95 on a per capita basis.

THE 220th ANNIVERSARY OF THE U.S. ARMY, JUNE 14, 1995

Mr. THURMOND. Madam President, exactly 220 years ago today, a proud American institution was born, the U.S. Army. I rise today to not only recognize this important milestone in the history of the Army, but to pay tribute to all soldiers who have served their Nation, both in the past and in the present.

For more than two centuries, America's soldiers have selflessly and successfully protected the freedoms and ideals of the United States, and America's soldiers have stood tall and fast wherever they have been deployed. From the Minuteman at Lexington with his trusty musket who started the fight for the independence of our Nation, to the G.I. equipped with night vision goggles, a Kevlar helmet, and the battle-proven M16A2 rifle on patrol along the DMZ in Korea, our soldiers have always distinguished themselves. The battle streamers of the Army flag stand as testament to the courage, fortitude, and abilities of those who have fought under this banner: Valley

Forge; New Orleans; Mexico City; Gettysburg; Havana; the Philippines; Verdun; Bataan; North Africa; Monte Cassino; Normandy; Arnhem; the ''Bulge''; Pusan; Seoul; the Ia Drang Valley; Grenada, Panama; Kuwait, and, Iraq represent just a partial list of the places where ordinary men brought distinction to themselves, the Army, and the United States by their actions.

We must also not forget the many other campaigns and operations the Army has undertaken in its history, which have included: surveying the uncharted west coast; protecting western settlers; guarding our borders; assisting in disaster relief; providing humanitarian aid to other nations; and conducting medical research that benefits soldiers and civilians alike. There is simply no question that the U.S. Army has had a tremendous impact, in many different ways, on the history of our Nation and the world.

Soon we on the Senate Armed Services Committee will begin our mark up of the fiscal year 1996 defense authorization budget, including the money needed to support the Army. Often our focus is on what weapon systems we need to fund, how many new tanks, field guns, or rifles we should purchase, but our chief concern is always providing for the soldier. We work to ensure that the young E–3 has a quality of life that is not beneath him, and that the soldier who dedicated his or her career to the Army and Nation is not forgotten. Each of us on the committee, and I am sure in the Senate as well, understands that it is the people—the newest recruit and the most senior general—who make up the Army and guarantee the security and defense of the United States. We may have an arsenal of smart bombs at our disposal, but it is the soldier who must face and defeat our enemies. Ensuring they have the best equipment, training, and quality of life possible are our highest priorities.

This investment in our men and women in uniform pays a handsome dividend beyond the security of the United States. Countless numbers of people who have served in the Army have gone on to hold important positions in both the public and private sectors. Our first President, George Washington, was a general in the Army, as were Ulysses Grant, Zachary Taylor, and Dwight Eisenhower. Additionally, many former soldiers have gone on to serve in the Halls of Congress. In the House, there are some 87 individuals who served in the Army and in the Senate, 27 of our colleagues have worn the Army green. I know that each of us is proud of our association with the Army and that we have been able to serve our Nation as both soldiers and statesmen.

Madam President, over the past 220 years, more than 42 million of our fellow citizens have raised their right hand and sworn to defend our Nation as soldiers. In each instance we have asked our soldiers to carry out a mission, they have done so with a sense of purpose, professionalism, and patriotism. We are grateful for the sacrifices these individuals have made and the example they have set for future soldiers. With a heritage as proud as the one established by our Nation's soldiers over the past 220 years, we know that the U.S. Army will always remain the finest fighting force that history has ever known.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time having expired, morning business is now closed.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 652, which the clerk will report.

The bill clerk read as follows:

A bill (S. 652) to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies, and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Feinstein/Kempthorne amendment No. 1270, to strike the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services.

Gorton amendment No. 1277 (to the language proposed to be stricken by amendment No. 1270), to limit, rather than strike, the preemption language.

The PRESIDING OFFICER. There will now be 20 minutes debate on the Feinstein amendment No. 1270, to be equally divided in the usual form, with the vote on or in relation to the amendment to follow immediately.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, the amendment that is the subject of discussion is one presented by Senator KEMPTHORNE and me. There is a section in this bill entitled ''Removal of Entry to Barriers.'' It is a section about which the cities, the counties and the States are very concerned because it is a section that giveth and a section that taketh away.

Why do I say that? I say it because in section 254, the States and local governments are given certain authority to maintain their jurisdiction and their control over what are called rights-of-way.

Rights-of-way are streets and roads under which cable television companies put lines. How they do it, where they do it and with what they do it is all a matter for local jurisdiction. Both subsections (b) and (c) maintain this regulatory authority of local jurisdictions, but subsection (d) preempts that authority, and this is what is of vital concern to the cities, the counties and the States.

Senator KEMPTHORNE and I have a simple amendment. That amendment, quite simply stated, strikes the preemption and takes away the part of this bill that takes away local government and State governments' jurisdiction and authority over the rights-of-way.

We are very grateful to Senator GORTON who has presented a substitute, which will be voted on following our amendment. However, we must, quite frankly, say this substitute is inadequate.

Why is it inadequate? It is inadequate because cities and counties will continue to face preemption if they take actions which a cable operator asserts constitutes a barrier to entry and is prohibited under section (a) of the bill. As city attorneys state, is a city insurance or bonding requirement a barrier to entry? Is a city requirement that a company pay fees prior to installing any facilities to cover the costs of reviewing plans and inspecting excavation work a barrier to entry? Is the city requirement that a company use a particular type of excavation equipment or a different and specific technique suited to certain local circumstances to minimize the risk of major public health and safety hazards a barrier to entry? Is a city requirement that a cable operator move a cable trunk line away from a public park or place cables underground rather than overhead in order to protect public health a barrier to entry?

These are, we contend, intensely local decisions which could be brought before the FCC in Washington. The Gorton substitute continues to permit cable operators to challenge local government decisions before the FCC.

Why is this objectionable to local jurisdictions? It is objectionable to local jurisdictions because they believe if they are a small city, for example, they would be faced with bringing a team back to Washington, going before a highly specialized telecommunications-oriented Federal Communications Commission and plighting their troth. Then they would be forced to go to court in Washington, DC, rather than Federal district court back where they live.

This constitutes a major financial impediment for small cities. For big cities also, they would much prefer to have the issue settled in their district court rather than having to come back to Washington.

The cable operators are big time in this country. They maintain Washington offices, they maintain special staff, they maintain a bevy of skilled telecommunications attorneys. Cities do not. Cities have a city attorney, period. It is a very different subject.

Suppose a city makes a determination in the case that they wish to have

wiring done evenly throughout their city—I know, and I said this on the floor before, when I was mayor, the local cable operator wanted only to wire the affluent areas of our city.

We wanted some of the less affluent areas wired; we demanded it, and we were able to achieve it. Is this a barrier to entry? Could the cable company then appeal this and bring it back to Washington, meaning that a bevy of attorneys would have to come back, appear before the FCC, go to Federal court here or with the local jurisdiction, and maintain its authority, as it would under the Kempthorne-Feinstein amendment. And then the cable operators, if they did not like it, could take the item to Federal court.

We believe to leave in the preemption is, in effect, to create a Federal mandate without funding. So we ask that subsection (d) be struck and have put forward this amendment to do so.

I yield now to the Senator from Idaho.

Mr. KEMPTHORNE. Madam President, how much time do we have remaining?

The PRESIDING OFFICER. There are 3 minutes 21 seconds remaining.

Mr. KEMPTHORNE. Madam President, I will reserve my time and ask if the Senator from Washington would like to speak at this point.

I yield the floor and reserve the remainder of my time.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Madam President, the section at issue here is a section entitled ''Removal of Barriers to Entry.'' And the substance of that section is that ''No State or local statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.''

Madam President, this is not about cable companies, although cable companies are one of the subjects of the section. This is about all of the telecommunications providers that are the subject of this bill. And it is the goal of this bill to see to it that the maximum degree of competition is available. And in doing so, these fundamental decisions about whether or not an action of the State or local government is an inhibition or a barrier to entry almost certainly must be decided in one central place.

The amendment to strike the preemption section does not change the substance. What it does change is the forum in which any disputes will be conducted. And if this amendment—the Feinstein amendment—in its original form is adopted, that will be some 150 or 160 different district courts with different attitudes. We will have no national uniformity with respect to the very goals of this bill, what constitutes a serious barrier to entry.

This will say that if a State or some local community decides that it does not like the bill and that there should be only one telephone company in its jurisdiction or one cable television provider in its jurisdiction, no national organization, no Federal Communications Commission will have the right to preempt and to frustrate that monopolistic purpose. It will have to be done in a local district court. And then if another community in another part of the country does the same thing, that will be decided in that district court.

So, Madam President, this amendment—the Feinstein amendment—goes far beyond its legitimate scope. But it does have a legitimate scope. I join with the two sponsors of the Feinstein amendment in agreeing that the rules that a city or a county imposes on how its street rights of way are going to be utilized, whether there are aboveground wires or underground wires, what kind of equipment ought to be used in excavations, what hours the excavations should take place, are a matter of primarily local concern and, of course, they are exempted by subsection (c) of this section.

So my modification to the Feinstein amendment says that in the case of these purely local matters dealing with rights of way, there will not be a jurisdiction on the part of the FCC immediately to enjoin the enforcement of those local ordinances. But if, under section (b), a city or county makes quite different rules relating to universal service or the quality of telecommunications services—the very heart of this bill—then there should be a central agency at Washington, DC, which determines whether or not that inhibits the competition and the very goals of this bill.

So, Madam President, I am convinced that Senators FEINSTEIN and KEMPTHORNE are right in the examples that they give, the examples that have to do with local rights of way. And the amendment that I propose to substitute for their amendment will leave that where it is at the present time and will leave disputes in Federal courts in the jurisdictions which are affected.

But if we adopt their amendment, we have destroyed the ability of the very commission which has been in existence for decades to seek uniformity, to promote competition, effectively to do so; and we will have a balkanized situation in every Federal judicial district in the United States. So their amendment simply goes too far.

Now, Madam President, I can see some, including some of the sponsors of the bill, who feel that this preemption ought to be total. And those who feel it ought to be total should vote ''no'' on the Feinstein amendment and ''no'' on mine as well. Those who feel that there should be no national policy, that local control and State control of telecommunications is so important that the national policy should not be enforced by any central agency, should vote for the Feinstein amendment. But those who believe in balance, those who believe that there should be one central entity to make these decisions, subject to judicial review when they have to do with whether or not there is going to be competition, when they have to do with the nature of universal service, when they have to do with the quality of telecommunications service or the protection of consumers, but believe that local government should retain their traditional local control over their rights of way, should vote against the Feinstein amendment and should vote for mine. It is the balance. It meets the goals that they propose their amendment to meet without being overly broad and without destroying the national system of telecommunications competition, which is the goal of this bill.

Mr. KEMPTHORNE. Madam President, I am proud to join Senator FEINSTEIN in this amendment. I also wish to acknowledge the efforts of the Senator from Washington, Senator GORTON, because all of us are trying to correct what is a flaw in this bill. I find it ironic that the title of this bill, the Telecommunications Competition and Deregulation Act of 1995, this flaw that is in this bill smacks right at this whole aspect of deregulation, which this Congress has been very good about reestablishing the rights of States and local units of government.

Madam President, this amendment is not about guaranteeing access to the public right of way. As the Senator from Washington just pointed out, that language is in there. That is section (a). This amendment is not about preserving the ability of a State to advance universal service and to ensure quality in telecommunications services, because, Madam President, that is right here in section (b) of the bill. This amendment is not about ensuring that local governments manage their rights of way in a competitively neutral and nondiscriminatory basis, because that is in section (c) of this bill.

In fact, the Senator from Texas, the Presiding Officer, was instrumental in having section (c) put into this act. It was very helpful. The whole problem is, Madam President, section (d) then preempts all of that. In section (d), it states—and I will summarize—that the commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

I think it is a shame that your good, hard work, Madam President, now has section (d) that preempts it and pulls the plug on that. There are those that would say the reason you have to have that particular section is because there may be instances in local government that may compel a cable company to give what they call extractions. We asked our cable company in Idaho: Can you give us some examples of where a local community has sought extractions, where you might have to go in trees and do something special? We do not have any examples. I find it ironic

that because there are some who believe that these extractions could take place, the remedy is to say that we will now have a Federal commission of nonelected people preempt what local or State governments do. That is backsliding from what we have been trying to do with this Congress.

The Senator from Washington said that we must decide these cases in one place. That message is very clear, Madam President. If there is a problem, then we are now going to say with this legislation, if we leave section (d) in there, they must come to Washington, DC. You must come to Washington, DC.

What has happened to federalism, to States rights and local rights? It was brought to my attention that in the State of Arizona they have pointed out that this, in fact, could preempt the Constitution of the State of Arizona.

This is a flaw in this legislation, Madam President, that, again, a nonelected Commission—which I have a great respect for that Commission—could, in essence, preempt the Constitution of the State.

I ask unanimous consent to have printed in the RECORD a letter from the National Governors' Association, National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors, all in support of this amendment. They point out that this will not be the impediment to the barrier, but it is the right amendment to correct this flaw.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL GOVERNORS' ASSOCIATION, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, AND UNITED STATES CONFERENCE OF MAYORS,

June 6, 1995.

Hon. ROBERT DOLE,
Majority Leader, U.S. Senate,
Hon. TOM DASCHLE,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR DOLE AND SENATOR DASCHLE: On behalf of state and local governments throughout the nation, we are writing to strongly urge your support for two amendments to S. 652, the Telecommunications Competition and Deregulation Act of 1995. Together these amendments would prevent an unwarranted preemption of state and local government authority and speed the transition to a competitive telecommunications environment. The first amendment achieves the appropriate balance between the needed preemption of barriers to entry and the legitimate authority of states and localities, and the second permits states to continue efforts already underway to promote competition.

First, Senator Feinstein will offer an amendment to delete a broad and ambiguous preemption section (section 254(d) of Title II). The Senate's bill's proposal under Section 254(d) for Federal Communications Commission (FCC) review and preemption of state and local government authority is totally inappropriate. Section 254 (a) and (c) provide the necessary safeguard against any possible entry barriers or impediments by state and local governments in the development of the information superhighway. In particular we are concerned that Section 254(d) would preempt local government authority over the management of public rights-of-way and local government's ability to receive fair and reasonable compensation for use of the right-of-way. We strongly opposed any preemption which would have the impact of imposing new unfunded costs upon our states, local governments, and taxpayers.

Second, Senator Leahy will offer an amendment to strike language preempting states from requiring intraLATA toll dialing parity. Ten states have already established this requirement as a means of increasing competition; thirteen more states are considering its adoption. If the goal of S. 652 is to increase competition, the legislation should not take existing authority from states that is already being used to further compensation. We strongly oppose this preemption and urge your support for Senator Leahy's amendment.

Again, we urge you to join Senator Feinstein and Senator Leahy in their efforts to eliminate these two provisions from the bill and avoid unwarranted preemption of state and local government in this critical area.

Sincerely,

TERRY BRANSTAD,
Co-Lead Governor on Telecommunications.
JANE L. CAMPBELL,
President, National Conference of State Legislatures.
RANDALL FRANKE,
President, National Association of Counties.
CAROLYN LONG BANKS,
President, National League of Cities.
VICTOR ASHE,
President, U.S. Conference of Mayors.

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, June 8, 1995.

STATE PREEMPTION IN FEDERAL TELECOMMUNICATIONS DEREGULATION LEGISLATION

SUMMARY

The U.S. Senate has begun consideration of S. 652, a bill to rewrite the Federal Communications Act of 1934 to promote competition. Several provisions in the bill and certain proposed amendments would adversely affect states, and Governors need to communicate their concerns to their senators to:

Support the Feinstein/Kempthorne amendment to strike section 254(d) on FCC preemption;

Support the Leahy/Simpson amendment to protect the state option to require intraLATA toll dialing parity (open, competitive markets for regional phone service); and

Oppose the Packwood/McCain amendment to preempt local and state authority to tax direct broadcast satellite services (DBS).

BACKGROUND

Both the House and the Senate have reported legislation to reform the Federal Communications Act of 1934. The Senate bill, S. 652, would require local phone companies to open their networks to competitors while also permitting those companies to offer video services in competition with local cable television franchises. Once the regional Bell telephone companies open their networks, they can apply to the Federal Communications Commission (FCC) for permission to offer long-distance service.

During the debate over telecommunications in 1994, states and localities banded together to promote three principles for inclusion in federal legislation: strong universal service protections, regulatory flexibility that would retain an effective role for states to manage the transition to a procompetitive environment rather than federal agency preemption, and authority for states and localities to manage the public rights-of-way. At a June 6 meeting of the State and Local Coalition, chaired by Governor George V. Voinovich, the attached letter was signed by local officials and Iowa Governor Terry E. Branstad, NGA co-lead Governor on Telecommunications. The letter calls for the support of two amendments.

Feinstein/Kempthorne Amendment: Deleting Section 254(d). Senator Dianne Feinstein (D–Calif.) and Senator Dirk Kempthorne (R–Idaho) are offering an amendment that would strip broad and ambiguous FCC preemption language from section 254(d) of the bill. Section 254(a) preempts states and localities from erecting barriers to entry, and this preemption is supported by NGA policy. Section 254(b) permits states to set terms and conditions for doing business within a state, including consumer protections and quality of services; section 254(c) ensures the authority of states and local government to manage the public rights-of-way.

Paragraph (c) was inserted in the bill in committee by Senator Kay Bailey Hutchison (R-Tex.), and includes a requirement that any such fees and charges be nondiscriminatory. Paragraph (d) states that if the FCC ''determines that a state or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this section, the FCC shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.'' Because small telephone or cable companies are unlikely to have a presence in Washington, D.C., this provision would result in a bias toward major competitors. Striking paragraph (d) leaves adequate protections for a competitive market.

Leahy/Simpson Amendment: Deleting Preemption of State Authority to Require IntraLATA Toll Dialing Parity. One major reason that competition in long distance service has increased is the requirement that local phone companies permit long-distance carriers dialing parity (i.e., consumers no longer have to dial additional numbers to utilize an alternative long-distance carrier service). Customers choose a carrier, and all interLATA calls are billed through that company. However, calls within a local access and transport area (intraLATA), or so-called short-haul or regional long-distance calls, are under state jurisdiction and not subject to this FCC rule. To date, ten states have required toll dialing parity, and twelve states are currently considering its adoption. Paragraph 255(B)(ii) of S. 652 would preempt the authority of states to order intraLATA toll dialing parity; Senator Patrick S. Leahy (D-Vt.) and Senator Alan K. Simpson (R-Wyo.) are offering an amendment that would remove this preemptive language.

State and Local Taxing Authority. As reported by the Senate Commerce, Science, and Transportation Committee, S. 652 includes language ensuring that state and local government taxation authority is not affected by the bill. Senator Bob Packwood (R-Ore.) and Senator John McCain (R-Ariz.) may offer an amendment exempting the DBS industry from any local taxation, even taxes administered by states. This language is taken from H.R. 1555, recently approved by the House Commerce Committee. States must ensure that the Senate bill avoids the preemption of state and local taxing authority.

ACTIONS NEEDED

Governors need to contact their senator to urge support for both the Feinstein/

Kempthorne amendment and the Leahy/Simpson amendment, and to urge opposition to the Packwood/McCain amendment.

Mr. LEVIN. Madam President, I support the Feinstein amendment to remove the provision in S. 652 which would preempt local control of the public rights-of-way.

The Feinstein amendment would remove section 254(d) of the telecommunications bill currently being considered by the Senate which directs the FCC to examine and preempt any State and local laws or regulations which might prohibit a company from providing telecommunications services.

As a former local official I have always felt it was important that we in Congress pay proper recognition to the rights of local government.

Section 254(d) is the type of legislating that we in Washington should not be doing—preempting State and local decisions in areas where local government has the responsibility and specified knowledge to act in the best interest of their local communities. Washington should not micromanage how local government administers its streets, highways, and other public rights-of-way.

I will vote in favor of the Feinstein amendment and in favor of the right of local governments to retain control over their streets, highways, and rights-of-way.

Mr. KEMPTHORNE. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator's time is expired.

Mr. GORTON. Madam President, how much time is remaining?

The PRESIDING OFFICER. Three minutes, 38 seconds.

Mr. GORTON. Madam President, once again, the alternative proposal, which will be voted on only if this amendment is defeated, retains not only the right of local communities to deal with their rights of way, but their right to meet any challenge on home ground in their local district courts.

The Feinstein amendment itself, Madam President, would deprive the FCC of any jurisdiction over a State law which deliberately prohibited or frustrated the ability of any telecommunications entity to provide competitive service.

It would simply take that right away from the FCC, and each such challenge would have to be decided in each of the various Federal district courts around the country.

The States retain the right under subsection (d) to pass all kinds of legislation that deals with telecommunications providers, subject to the provision that they cannot impede competition.

The determination of whether they have impeded competition, not by the way they manage trees or rights of way, but by the way they deal with substantive law dealing with telecommunications entities. That conflict should be decided in one central place, by the FCC.

The appropriate balance is to leave purely local concerns to local entities, but to make decisions on the natural concerns which are at the heart of this bill in one central place so they can be consistent across the country.

Madam President, the purposes of this bill will be best served by defeating this amendment and adopting the subsequent amendment. I yield back the balance of my time.

Mrs. FEINSTEIN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. CAMPBELL). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Feinstein amendment No. 1270.

The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced— yeas 44, nays 56, as follows:

[Rollcall Vote No. 258 Leg.]

YEAS—44

Abraham	Faircloth	Levin
Akaka	Feingold	Mack
Baucus	Feinstein	McCain
Biden	Ford	Mikulski
Bingaman	Glenn	Moseley-Braun
Bond	Graham	Murray
Boxer	Hatfield	Pell
Bradley	Hutchison	Pryor
Burns	Inhofe	Robb
Byrd	Kempthorne	Roth
Campbell	Kennedy	Sarbanes
Cohen	Kerry	Simpson
Conrad	Kohl	Thomas
DeWine	Lautenberg	Wellstone
Dodd	Leahy	

NAYS—56

Ashcroft	Gramm	Moynihan
Bennett	Grams	Murkowski
Breaux	Grassley	Nickles
Brown	Gregg	Nunn
Bryan	Harkin	Packwood
Bumpers	Hatch	Pressler
Chafee	Heflin	Reid
Coats	Helms	Rockefeller
Cochran	Hollings	Santorum
Coverdell	Inouye	Shelby
Craig	Jeffords	Simon
D'Amato	Johnston	Smith
Daschle	Kassebaum	Snowe
Dole	Kerrey	Specter
Domenici	Kyl	Stevens
Dorgan	Lieberman	Thompson
Exon	Lott	Thurmond
Frist	Lugar	Warner
Gorton	McConnell	

So the amendment (No. 1270) was rejected.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PRESSLER. I ask unanimous consent that the Gorton amendment now be adopted by voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

So the amendment (No. 1277) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

AMENDMENTS NOS. 1284, AS MODIFIED, AND 1282, AS MODIFIED, EN BLOC

(Purpose: To require audits to ensure that the Bell operating companies meet the separate subsidiary requirements and safeguards)

(Purpose: To recognize the National Education Technology Funding Corporation as a nonprofit corporation operating under the laws of the District of Columbia, to provide authority for Federal departments and agencies to provide assistance to such corporation, and for other purposes)

Mr. PRESSLER. Mr. President, I send two amendments to the desk and ask for their immediate consideration en bloc. The amendments are modified versions of the amendments Nos. 1284 and 1282 by Senators SIMON and MOSELEY-BRAUN. They are acceptable to the bill managers and have been cleared on both sides of the aisle.

Mr. FORD. Mr. President, he may be giving away the dome on the Capitol Building. We want to know.

The PRESIDING OFFICER. The Senate will be in order. Senators wishing to hold conversations will retire to the cloakroom.

Will the Senator from South Dakota repeat his request.

Mr. PRESSLER. I ask adoption of the Simon amendment and the Moseley-Braun amendment.

The PRESIDING OFFICER. Without objection, the amendments may be considered en bloc at this time. The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER], for Mr. SIMON, proposes amendment numbered 1284, as modified; and, for Ms. MOSELEY-BRAUN, amendment numbered 1282, as modified.

The amendments (Nos. 1284 and 1282), as modified, are as follows:

AMENDMENT NO. 1284

On page 31, insert at the appreciate place the following:

''(d) BIENNIAL AUDIT.—

''(1) GENERAL REQUIREMENT.—A company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor selected by the Commission, and working at the direction of, the Commission and the State commission of each State in which such company provides service, to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b).

''(2) RESULTS SUBMITTED TO COMMISSION; STATE COMMISSIONS.—The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

''(3) ACCESS TO DOCUMENTS.—For purposes of conducting audits and reviews under this subsection—

''(A) the independent auditor, the Commission, and the State commission shall have

access to the final accounts and records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

''(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

''(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

AMENDMENT NO. 1282

At the end of the bill, insert the following:

TITLE —NATIONAL EDUCATION TECHNOLOGY FUNDING CORPORATION

SEC. 01. SHORT TITLE.

This title may be cited as the ''National Education Technology Funding Corporation Act of 1995''.

SEC. 02. FINDINGS; PURPOSE.

(a) FINDINGS.—The Congress finds as follows:

(1) CORPORATION.—There has been established in the District of Columbia a private, nonprofit corporation known as the National Education Technology Funding Corporation which is not an agency or independent establishment of the Federal Government.

(2) BOARD OF DIRECTORS.—The Corporation is governed by a Board of Directors, as prescribed in the Corporation's articles of incorporation, consisting of 15 members, of which—

(A) five members are representative of public agencies representative of schools and public libraries;

(B) five members are representative of State government, including persons knowledgeable about State finance, technology and education; and

(C) five members are representative of the private sector, with expertise in network technology, finance and management.

(3) CORPORATE PURPOSES.—The purposes of the Corporation, as set forth in its articles of incorporation, are—

(A) to leverage resources and stimulate private investment in education technology infrastructure;

(B) to designate State education technology agencies to receive loans, grants or other forms of assistance from the Corporation;

(C) to establish criteria for encouraging States to—

(i) create, maintain, utilize and upgrade interactive high capacity networks capable of providing audio, visual and data communications for elementary schools, secondary schools and public libraries;

(ii) distribute resources to assure equitable aid to all elementary schools and secondary schools in the State and achieve universal access to network technology; and

(iii) upgrade the delivery and development of learning through innovative technology-based instructional tools and applications;

(D) to provide loans, grants and other forms of assistance to State education technology agencies, with due regard for providing a fair balance among types of school districts and public libraries assisted and the disparate needs of such districts and libraries;

(E) to leverage resources to provide maximum aid to elementary schools, secondary schools and public libraries; and

(F) to encourage the development of education telecommunications and information technologies through public-private ventures, by serving as a clearinghouse for information on new education technologies, and by providing technical assistance, including assistance to States, if needed, to establish State education technology agencies.

(b) PURPOSE.—The purpose of this title is to recognize the Corporation as a nonprofit corporation operating under the laws of the District of Columbia, and to provide authority for Federal departments and agencies to provide assistance to the Corporation.

SEC. 03. DEFINITIONS.

For the purpose of this title—

(1) the term ''Corporation'' means the National Education Technology Funding Corporation described in section 02(a)(1);

(2) the terms ''elementary school'' and ''secondary school'' have the same meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965; and

(3) the term ''public library'' has the same meaning given such term in section 3 of the Library Services and Construction Act.

SEC. 04. ASSISTANCE FOR EDUCATION TECHNOLOGY PURPOSES.

(a) RECEIPT BY CORPORATION.—Notwithstanding any other provision of law, in order to carry out the corporate purposes described in section 02(a)(3), the Corporation shall be eligible to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any federal department or agency, to the extent otherwise permitted by law.

(b) AGREEMENT.—In order to receive any assistance described in subsection (a) the Corporation shall enter into an agreement with the Federal department or agency providing such assistance, under which the Corporation agrees—

(1) to use such assistance to provide funding and technical assistance only for activities which the Board of Directors of the Corporation determines are consistent with the corporate purposes described in section 02(a)(3);

(2) to review the activities of State education technology agencies and other entities receiving assistance from the Corporation to assure that the corporate purposes described in section 02(a)(3) are carried out;

(3) that no part of the assets of the Corporation shall accrue to the benefit of any member of the Board of Directors of the Corporation, any officer or employee of the Corporation, or any other individual, except as salary or reasonable compensation for services;

(4) that the Board of Directors of the Corporation will adopt policies and procedures to prevent conflicts of interest;

(5) to maintain a Board of Directors of the Corporation consistent with section 02(a)(2);

(6) that the Corporation, and any entity receiving the assistance from the Corporation, are subject to the appropriate oversight procedures of the Congress; and

(7) to comply with—

(A) the audit requirements described in section 05; and

(B) the reporting and testimony requirements described in section 06.

(c) CONSTRUCTION.—Nothing in this title shall be construed to establish the Corporation as an agency or independent establishment of the Federal Government, or to establish the members of the Board of Directors of the Corporation, or the officers and employees of the Corporation, as officers or employees of the Federal Government.

SEC. 05. AUDITS.

(a) AUDITS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS.—

(2) REPORTING REQUIREMENTS.—The report of each annual audit described in paragraph (1) shall be included in the annual report required by section 06(a).

(b) RECORDKEEPING REQUIREMENTS; AUDIT AND EXAMINATION OF BOOKS.—

(1) RECORDKEEPING REQUIREMENTS.—The Corporation shall ensure that each recipient of assistance from the Corporation keeps—

(A) separate accounts with respect to such assistance;

(B) such records as may be reasonably necessary to fully disclose—

(i) the amount and the disposition by such recipient of the proceeds of such assistance;

(ii) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(iii) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(C) such other records as will facilitate an effective audit.

(2) AUDIT AND EXAMINATION OF BOOKS.—The Corporation shall ensure that the Corporation, or any of the Corporation's duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance from the Corporation that are pertinent to such assistance. Representatives of the Comptroller General shall also have such access for such purpose.

SEC. 06. ANNUAL REPORT; TESTIMONY TO THE CONGRESS.

(a) ANNUAL REPORT.—Not later than April 30 of each year, the Corporation shall publish an annual report for the preceding fiscal year and submit that report to the President and the Congress. The report shall include a comprehensive and detailed evaluation of the Corporation's operations, activities, financial condition, and accomplishments under this title and may include such recommendations as the Corporation deems appropriate.

(b) TESTIMONY BEFORE CONGRESS.—The members of the Board of Directors, and officers, of the Corporation shall be available to testify before appropriate committees of the Congress with respect to the report described in subsection (a), the report of any audit made by the Comptroller General pursuant to this title, or any other matter which any such committee may determine appropriate.

Ms. MOSELEY-BRAUN. Mr. President, this amendment is identical to S. 792, legislation designed to connect public schools and public libraries to the information superhighway, which I introduced earlier this year.

If there is any objective that should command complete American consensus, it is to ensure that every American has a chance to succeed. That is the core concept of the American dream—the chance to achieve as much and to go as far as your ability and talent will take you. Public education has always been a part of that core concept. In this country, the chance to be educated has always gone hand in hand with the chance to succeed.

TECHNOLOGY

Nonetheless, I am convinced that it will be difficult if not impossible for us to prepare all of our children to compete in the emerging global economy

unless they all have access to the technology available on the information superhighway. Technology can help teachers and students play the new roles that are being required of them in the emerging global economy. It can help teachers use resources from across the globe or across the street to create different learning environments for their students without ever leaving the classroom. Technology can also allow students to access the vast array of material, available electronically, necessary to engage in the analysis of real world problems and questions.

GAO REPORTS

Last year, I asked the General Accounting Office to conduct a comprehensive, nationwide study of our Nation's education infrastructure. The GAO decided to meet my request with five separate reports. The first report entitled—''The Condition of America's Schools''—concluded that our Nation's public schools need $112 billion to restore their facilities to good overall condition.

The most recent GAO report entitled—''America's Schools Not Designed or Equipped for the 21st Century''—concluded that more than half of our Nation's public schools lack six or more of the technology elements necessary to reform the way teachers teach and students learn including: computers, printers, modems, cable TV, laser disc players, VCR's, and TV's. The report states that: 86.8 percent of all public schools lack fiber-optic cable; 46.1 percent lack sufficient electrical wiring; 34.6 percent lack sufficient electrical power for computers; 51.8 percent lack sufficient computer networks; 61.2 percent lack sufficient phone lines for instructional use; 60.6 percent lack sufficient conduits and raceways; and 55.5 percent lack sufficient phone lines for modems.

LOCAL PROPERTY TAXES

The most recent GAO report did find that students in some schools are taking advantage of the benefits associated with education technology. The bottom line, however, is that we are still failing to provide all of our Nation's children with the best technology resources in the world because the American system of public education has forced local school districts to maintain our public schools primarily with local property taxes.

In Illinois, the local share of public education funding increased from 48 percent during the 1980–81 school year to 58 percent during the 1992–93 school year, while the State share fell from 43 to 34 percent during this same period. The Federal Government's share of public education funding has also fallen from 9.1 percent during the 1980–81 school year to 5.6 percent during the 1993–94 school year.

INFORMATION SUPERHIGHWAY

These statistics as well as the results of the second GAO report suggest to me that the Federal Government must do more to help build the education portion of the information superhighway. Federal support for the acquisition and use of technology in elementary and secondary schools is currently fragmented, coming from a diverse group of programs and departments. Although the full extent to which the Federal Government currently supports investments in education technology at the precollegiate level is not known, the Office of Technology Assessment estimated in its report—''Power On!''—that the programs administered by the Department of Education provided $208 million for education technology in 1988.

There is little doubt that substantial costs will accompany efforts to bring education technologies into public schools in any comprehensive fashion. In his written testimony before the House Telecommunications and Finance Subcommittee on September 30, 1994, Secretary of Education Richard Riley estimated that it will cost anywhere from $3 to $8 billion annually to build the education portion of the national information infrastructure.

NATIONAL EDUCATION TECHNOLOGY FUNDING CORPORATION

Mr. President, three leaders in the areas of education and finance came together recently to help public schools and public libraries meet these costs. On April 4, John Danforth, former U.S. Senator from Missouri, Jim Murray, former president of Fannie Mae, and Dr. Mary Hatwood Futrell, former president of the National Education Association, created the National Education Technology Funding Corp.

As outlined in its articles of incorporation, the National Education Technology Funding Corp. will stimulate public and private investment in our Nation's education technology infrastructure by providing States with loans, loan guarantees, grants, and other forms of assistance.

AMENDMENT

Mr. President, I introduced S. 792, the National Education Technology Funding Corporation Act, on May 11, 1995, to help provide the seed money necessary to get this exciting private sector initiative off the ground. Rather than supporting our Nation's education technology infrastructure by creating another Federal program, this legislation would simply authorize Federal departments and agencies to make grants to the NETFC.

The amendment I am introducing today would not create the NETFC or recognize it as an agency or establishment of the U.S. Government; it would only recognize its incorporation as a private, nonprofit organization by private citizens. However, since NETFC would be using public funds to connect public schools and public libraries to the information superhighway, my amendment would require the corporation to submit itself and its grantees to appropriate congressional oversight procedures and annual audits.

This amendment will not infringe on local control over public education in any way. Rather, it will supplement, augment, and assist local efforts to support education technology in the least intrusive way possible by helping local school districts build their own on-ramps to the information superhighway.

S. 792 has been cosponsored by Senators BURNS, CAMPBELL, KERRY, and ROBB and endorsed by the National Education Association, the National School Boards Association, the American Library Association, the Council for Education Development and Research, and organizations concerned about rural education.

CONCLUSION

Mr. President, I urge my colleagues to take this important step to help connect public schools and public libraries to the information superhighway by quickly enacting my amendment into law.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

Without objection, the amendments are agreed to.

So the amendments (Nos. 1282 and 1284), as modified, were agreed to.

Mr. SIMON. I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will now report the motion to invoke cloture on S. 652.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to close debate on Calendar No. 45, S. 652, the Telecommunications Competition and Deregulation Act:

Trent Lott, Larry Pressler, Judd Gregg, Don Nickles, Rod Grams, Rick Santorum, Craig Thomas, Spencer Abraham, J. James Exon, Bob Dole, Ted Stevens, Larry E. Craig, Mike DeWine, John Ashcroft, Robert F. Bennett, Hank Brown, Conrad R. Burns.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question now occurs, Is it the sense of the Senate that debate on S. 652, the telecommunications bill, shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 89, nays 11, as follows:

[Rollcall Vote No. 259 Leg.]

YEAS—89

Abraham	Frist	McCain
Akaka	Glenn	McConnell
Ashcroft	Gorton	Mikulski
Baucus	Graham	Moseley-Braun
Bennett	Gramm	Moynihan
Biden	Grams	Murkowski
Bingaman	Grassley	Murray
Bond	Gregg	Nickles
Boxer	Harkin	Nunn
Breaux	Hatch	Packwood
Brown	Hatfield	Pell
Bryan	Heflin	Pressler
Burns	Helms	Pryor
Campbell	Hollings	Reid
Chafee	Hutchison	Robb
Coats	Inhofe	Rockefeller
Cochran	Inouye	Roth
Cohen	Jeffords	Santorum
Coverdell	Johnston	Sarbanes
Craig	Kassebaum	Shelby
D'Amato	Kempthorne	Simpson
Daschle	Kennedy	Smith
DeWine	Kerry	Snowe
Dodd	Kohl	Specter
Dole	Kyl	Stevens
Domenici	Leahy	Thomas
Exon	Lieberman	Thompson
Faircloth	Lott	Thurmond
Feinstein	Lugar	Warner
Ford	Mack	

NAYS—11

Bradley	Dorgan	Levin
Bumpers	Feingold	Simon
Byrd	Kerrey	Wellstone
Conrad	Lautenberg	

The PRESIDING OFFICER. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I want to thank all Senators for that outstanding cloture vote and to say that now in this postcloture period, I hope Senators will bring their amendments to the floor. We are ready to proceed. Senator DOLE has indicated a desire of possibly finishing the bill today or tonight. We hope we can do that.

I think we are on the way to passing a deregulatory, procompetitive telecommunications bill. I thank all Senators for their cooperation. We hope that Senators who have speeches or amendments will bring them to the floor.

AMENDMENT NO. 1306

(Purpose: To protect ratepayers from having to pay civil penalties for violations by local exchange carriers of interconnection and other duties)

Mr. KERREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 1306.

On page 107, after line 23, insert the following:

''(d) PAYMENT OF CIVIL PENALTIES.—No civil penalties assessed against a local exchange carrier as a result of a violation of this section will be charged directly or indirectly to that company's ratepayers.''

Mr. KERREY. Mr. President, I have discussed this with the managers of the bill, and I have a modification that I would like to get unanimous consent to be included which does not change the substance of the bill; it merely clarifies to what civil penalties it refers. It says ''civil penalties, damages or interests,'' as opposed to just ''civil penalties.''

I ask unanimous consent that this amendment be modified in that fashion.

Mr. PRESSLER. Reserving the right to object until we can get a copy of it over here. We are trying to be cooperative and move the process forward. Some of these amendments have been modified at the very last minute. We have a system of reading these over here, and we would like to get a copy of it.

Mr. HOLLINGS. If the Senator will yield. I understand, Mr. President, the distinguished Senator from Nebraska has a one-line amendment. ''No civil penalties assessed against the local exchange carrier as a result of a violation of the section will be charged directly or indirectly to that company's ratepayers.''

Trying that amendment on for size, let us assume I ran a public utility, whether it be, say, a telephone company, cellular or otherwise. I am running a public company and I am trying to comply. Let us say I am president. Unless I take the money out of my pocket, how else am I going to avoid paying the penalty against the company directly or indirectly? How do I do it? It is bound to come out one way or the other. My company, Hollings Communications, has been assessed a $5,000 fine.

Mr. KERREY. I have an easy answer for that. For example, when the companies get into providing ancillary services, they will always say, no, this is not coming from the ratepayers, it is coming from the shareholders. They do this all the time. When the company is offering a defense of something, or when we are identifying something that we are concerned may be billed to the ratepayer, they will provide information to the FCC saying that it is being charged to the shareholders, not the ratepayers.

The bill provides, in section 224, civil penalties and damages if the company violates the interconnection requirements. But my concern is that there is uncertainty as to whether these are going to be imposed, and even if they are, what the level is going to be. And what the amendment attempts to do is protect the ratepayer from having to shoulder the burden of any civil penalty that might end up being imposed, damage or interest, assessed against the local exchange carrier for violating the interconnection duties imposed on them by the legislation.

It seems to me——

Mr. HOLLINGS. I am willing to be educated and go along. In my mind, like Government, we do not have anything to give that we do not take. You and I have the same idea in mind. If that is what the Senator says and that is what they do, I am not the head of the company, but I think I could make it appear that the ratepayers were not paying for it. But come what may, I am afraid they would be.

Mr. KERREY. What the Senator from South Carolina is saying is exactly right. It has always been a dispute with consumers who object to things a certain company is doing, as to whether or not a charge is being assessed to the shareholder or the ratepayer. That has always been in dispute. At both the FCC and the State public service commissions, they have attempted to answer this, and they have mechanisms that allow them to do this kind of separation.

This is an attempt to protect the ratepayer in the event that the local exchange company is fined. As I said, there is considerable uncertainty. The fines are rather substantial—in some cases, a million dollars a day, and in one case $500 million, which could potentially be assessed against a local exchange company if they violated the terms and conditions of this new law. If you presume that a $5 million fine is levied against a local exchange company, it seems to me the ratepayer should not be penalized as a consequence of a mistake being made by a company that is trying to move from a monopoly situation to a competitive environment.

This amendment says that, if civil penalties are imposed or damages or interests are imposed according to the law, we just merely make sure that they are not going to pass it in particular to a captive ratepayer that has no other option.

Mr. HOLLINGS. Will the distinguished Senator yield?

Mr. KERREY. I am happy to yield to the Senator.

Mr. HOLLINGS. This could make the head of a corporation at least far more careful. Perhaps it could be allocated against him individually.

I hearken back, in the past, when I was talking with the former distinguished Attorney General of the United States, Robert Kennedy, and we had the Mississippi case down at Oxford. He was asking me about the enforcement of these decisions of the Court.

I met Senator Kennedy long before being Senators, otherwise we were very close. I said, ''You know our distinguished friend Governor Barnett has a building right across the street from the capital. If you had a $10,000 a day civil fine imposed, I think you would get his attention.''

We public officials act and the public will have to pick up, but when we are individually responsible, that is a different thing.

I am confident that the Attorney General Kennedy communicated that with Governor Barnett, and thus the admission of James Meredith to Oxford. The idea is a good idea. It is one I used some years back. I do not see any objection to it. I will have to listen to our distinguished chairman.

The PRESIDING OFFICER. Is there an objection to the modification of the amendment?

Mr. PRESSLER. Reserving the right to object, I do not think my colleague from South Carolina has a copy of the modified amendment with the handwritten changes.

This is a problem procedurally that we have here with these modifications. Amendments must be modified, sometimes.

Let me ask, this is written in longhand. I cannot see, ''damages or interest'' is inserted where?

Mr. KERREY. With civil penalty damages.

Mr. PRESSLER. It should read ''payment of civil penalties, damages or interest,'' and then no civil penalties?

Mr. KERREY. That is correct, and no civil penalty damages.

Mr. PRESSLER. ''Damages or interest, no civil penalties;'' and then does ''damages or interest'' occur again? We have damages and interest written again.

Mr. KERREY. Mr. President, I gave the desk the only copy of the modification I have. I am not even able to look at my own copy.

Mr. PRESSLER. Even the modification, I cannot tell——

Mr. KERREY. It should be both in the heading and the text. The change needs to be in the heading and the text.

Mr. PRESSLER. I think we need a clean copy.

Mr. KERREY. Would you like block letters?

Let me have staff work on this while I talk about the amendment.

Mr. PRESSLER. I do not think we have an objection to the basic idea.

Are damages and interest different from civil penalties?

Mr. KERREY. Civil penalties is not clear. That is the interpretation that I was given. I was attempting to clarify this thing. I was told civil penalties is not clear.

Mr. PRESSLER. Is the Senator taking ''civil penalties'' out and putting ''damages or interest'' in?

Mr. KERREY. No, I am putting ''interest'' and ''damages'' in.

Mr. PRESSLER. Let me say, generally speaking, I agree with the thrust of the amendment. But if we could get a clean copy of the amendment, this is a very confusing, the way it is written. It is confusing to me at least.

Mr. KERREY. I will.

The PRESIDING OFFICER. The Chair will ask the Senator from Nebraska if he would like to temporarily lay this aside?

Mr. KERREY. Mr. President, it takes almost no time at all. I would like to get staff to clear this up. It is a single-line amendment. It should not be that difficult to have staff write this up in block letters.

Mr. PRESSLER. I am not trying to be difficult.

Mr. KERREY. I understand. I put insertions in this thing, and I need it written out in a single line. I do not need to lay the amendment aside.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. I ask unanimous consent that my request for modification of this amendment be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, we have no problem with the amendment and we are prepared to accept it.

Mr. KERREY. Mr. President, I ask unanimous consent that a modification of my amendment be accepted.

The PRESIDING OFFICER. Is there objection to the modification of the amendment being accepted?

Mr. KERREY. I earlier withdrew it, but I heard the Senator from South Dakota say——

Mr. HOLLINGS. The Senator from South Dakota was accepting the amendment once the modification had been withdrawn.

Mr. PRESSLER. That is right.

Mr. HOLLINGS. Is that correct, Senator?

Mr. KERREY. Let me withdraw the modification, and I would like to have the modification sent to the Senator from South Dakota.

I, personally, would prefer not to have the amendment without this clarification. I would like to have the manager of the bill look at the modification before it is accepted, and I would like to talk about the bill or the amendment for a little while, so we can look at a clean copy.

Mr. PRESSLER. We are prepared to accept the amendment as it is written and drafted.

Mr. KERREY. Without modification?

Mr. PRESSLER. Without modifications.

Mr. KERREY. You are saying you object to modifications?

Mr. PRESSLER. No, no, I did not say that. I thought you had withdrawn your modification.

Mr. KERREY. I am withdrawing the modification so I can get the language clear enough so that the Senator from South Dakota can evaluate the modification itself. Then I can proceed and discuss the amendment while the modification is being sent to the Senator. I can redo it here so it is a cleaner copy.

The PRESIDING OFFICER. Is there an objection to temporarily withdrawing the modification?

Mr. PRESSLER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1306, AS MODIFIED

Mr. KERREY. Mr. President, I ask the modification that I have now reviewed with the distinguished manager of the bill be included as part of this amendment.

Mr. PRESSLER. We have no problem with the amendment and we are prepared to accept it.

The PRESIDING OFFICER. Without objection the amendment is so modified.

The amendment, No. 1306, as modified, is as follows:

On page 107, after line 23, insert the following:

''(d) PAYMENT OF CIVIL PENALTIES, DAMAGES, OR INTEREST.—No civil penalties, damages, or interest assessed against any local exchange carrier as a result of a violation referred to in this section will be charged directly or indirectly to that company's ratepayers.''

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1306), as modified, was agreed to.

Mr. KERREY. While I understand the Senator has some additional amendments—I have some other ones I would send down—let me describe a little bit what was in this amendment so colleagues understand how this bill has been modified.

I think it is an important amendment because we are moving from a system of assessing rates for your local telephone service, based upon a rate base. That typically is calculated, presented to the public service commission or the public utility commission of the State, and the public service commission or public utility commission makes a determination about local telephone charges based upon that rate.

There are a number of States that have moved to a more competitive type of situation. I think there are seven, eight, or nine States that have done so—I believe Colorado just recently passed legislation. This legislation, S. 652 preempts the States and says we are going to go to a price cap system of regulation as opposed to rate base.

So, all 50 State public utility commissions or public service commissions would be required to use a price cap system under this legislation.

I think it is going to be important, as you move to this widespread use of price cap regulation, to say very clearly, given the rather substantial penalties for failure to provide interconnection—and they are rather substantial; as I said, I believe it is $1 million a day and up to $5 million a day—that you will not tap the ratepayer. I believe it is important, if penalties or damages get assessed, it does not get passed on to that individual ratepayer.

Regulators are inevitably going to be asked by local telephone companies or local providers of service, as new competitors come on line, to adjust these caps. When they do, it is going to be very difficult if not impossible to exclude consideration of costs in making that adjustment. In making that adjustment they may not be able to identify and exclude penalties effectively.

This amendment will, as a consequence, protect ratepayers.

Mr. President, I am proposing an amendment designed to protect ratepayers from having to shoulder the burden of any civil penalties, damages or interest assessed against local exchange carriers for violating the interconnection and other duties imposed on them by this legislation.

Section 224 of the bill contains enforcement provisions. Under these provisions, a telecommunications carrier that fails to implement the requirements of sections 251 and 255 can be punished by a civil penalty of up to $1 million for each offense. A Bell company that repeatedly, knowingly, and without reasonable cause fails to implement an interconnection agreement, to live up to the agreement after implementing it, or to comply with the bill's separate subsidiary requirements can be fined up to $500 million. These penalties are intended to deter companies from evading their responsibilities to provide effective interconnection. The section also provides that private parties injured by such conduct can recover damages and interest.

I have very serious doubts, Mr. President, about the efficacy of the civil penalties and the prospect of damages. I think there will be a lot of uncertainty as to whether sanctions will be imposed. This uncertainty is inherent in the nature of the interconnection requirements in the bill. For example, the very first duty under section 251 is the duty to enter into good faith negotiations with any telecommunications carrier requesting interconnection. The lawyers could litigate until kingdom come about whether a company has failed to negotiate in good faith.

A similar example is found under the minimum standards of interconnection. The local exchange carrier must take whatever action under its control is necessary, as soon as it is technically feasible, to provide telecommunications number portability and local dialing parity. Now these two things—number portability and local dialing parity—sound a little arcane, but they are both essential to having any kind of meaningful local competition.

Number portability means that customers can keep their telephone numbers when they switch phone companies. Quite simply, telephone customers—both business and residential—are not as willing to switch phone companies if they also have to switch phone numbers. If I'm a small company in Omaha, NE, I can't afford to change telephone companies if it means that I have to change phone numbers, even if the competitor offers an otherwise better deal. My customers wouldn't know how to get a hold of me. All my listings, stationery, and business cards would have to be redone.

So new phone companies who want to compete with the established carrier will be at a tremendous competitive disadvantage if there is not number portability.

But the local exchange carrier doesn't have to take any action until number portability is technically feasible. Who is going to decide that issue? You can bet the lawyers will have something to say about it, as well as platoons of experts.

Same situation with local dialing parity. Local dialing parity means that a customer who subscribes to a competitor can make calls by dialing the same number of digits as they would if they were customers of the established phone company. That's a big deal. People don't like to dial any more numbers than they have to. Back in the days of the old Bell system, that was one of the ways the monopoly disadvantaged MCI and other long distance competitors. You had to dial access codes if you wanted to use MCI. That discouraged people from switching.

So the bill says that a local exchange carrier has to provide number portability and local dialing parity as soon as it is technically feasible, or there will be penalties. Well, it could be years before the lawyers and the experts and the FCC and the courts figure out what is technically feasible. By that time, the penalties or a private action to recover damages may not mean too much.

Which brings me to my next point, Mr. President. Even if penalties eventually are imposed, we don't know how significant the penalties actually would be. The bill sets upper limits on the amount of penalties. But it doesn't offer any assurance that a penalty would ever approach those figures. Actual penalties, if they are imposed at all, could be a fraction of the possible amount.

A private party seeking damages would also face daunting prospects in proving the level of those damages, since in many cases the injured party might never have gotten its business going because of the very violation complained of. The speculative nature of damages might be a serious barrier to recovery for the injured party.

This balance of uncertain high penalties or damages against the certain and enormous financial benefit to local exchange carriers—especially the Bell companies—of not providing effective interconnection to would-be competitors suggests that the deterrence effect of this penalty scheme will be minimal.

So I have my doubts, Mr. President, that this enforcement approach is going to provide much encouragement to local telephone monopolies to cooperate in opening up the local market to competition.

But if civil penalties are imposed or damages assessed, one thing we need to make sure of is that they are not passed on to local ratepayers. That is what my amendment does, Mr. President. It states that—

> . . . [n]o civil penalties, damages, or interest assessed against any local exchange carrier as a result of a violation referred to in this section will be charged directly or indirectly to that company's ratepayers.

This amendment is necessary, because the ratepayers are captive to the local exchange carriers. They don't have any choice. Without this amendment, the carrier could just pass the penalty or damages along to ratepayers—who would have to pay, because of that lack of choice. And, in that case, the carrier would have succeeded in evading the requirements of the bill twice—first by not meeting its interconnection obligations and second by making captive ratepayers foot the bill for the penalty or damages.

Moving to a price cap form of regulation will not solve this problem. In fact, a price cap system may increase the chances that ratepayers will end up paying the local exchange carrier's civil penalties and damage judgments if this amendment is not adopted. Under traditional rate of return regulation, at least, the State regulators can conduct a rate case and scrutinize the claim and tell the carrier, No, that's a penalty, you can't pass that along.

Under price cap regulation, regulators will inevitably be asked to adjust the caps. And when they do adjust them, it will be impossible for them to exclude consideration of costs in making that adjustment. But in making that adjustment, they may not be able effectively to exclude penalties and damages from the adjustment.

This amendment will put the burden on the local exchange carrier to make sure that penalties, damages and interest don't end up burdening ratepayers. It makes sure that the penalties penalize the local exchange carrier, not the captive ratepayers.

AMENDMENT NO. 1344

(Purpose: To provide for the representation of consumers on the Federal-State Joint Board on universal service)

Mr. KERREY. Mr. President, I have an amendment at the desk. I ask for its immediate consideration. It is amendment No. 1344.

Mr. President, there is under provision of this amendment creation of a new Federal-State joint board.

The PRESIDING OFFICER. The Senator will withhold. The clerk has not yet reported the amendment. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 1344.
>
> On page 37, line 7, insert after ''service,'' the following: ''In addition to the members of the Joint Board required under such section 410(c), one member of the Joint Board shall be an appointed utility consumer advocate of a State who is nominated by a national organization of State utility consumer advocates.''.

Mr. KERREY. Mr. President, the amendment is very straightforward. It merely asks for a consumer advocate to be appointed to be a member of this joint Federal-State board.

The PRESIDING OFFICER. Is there further debate? The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I am going to have to question this amendment. I want to confer here. Do we have a copy of this amendment here?

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I say to the Senator from Nebraska, as I understand the idea here it is to add a consumer representative to the joint board, which is now comprised of four State commissioners and three Federal commissioners. They have the general overall concern of consumers as well as industry.

What you have suggested now, by the amendment, is that a consumer representative be added on. The industry friends, then, will say ''We want an industry friend.'' If there is one thing that sort the rankles this particular Senator—and it is not the Senator from Nebraska; Heavens above, I have the greatest admiration for him—but it is this idea of classifications around this town: middle class and lower class and upper class and rich class and poor.

I represent the high, the low, the rich, the poor and all classes. I really look upon our public utility commission at the several States to be very much attuned to the interests of consumers as well as the industry, and similarly with respect to the FCC Members. Mr. Coelho and the Federal Communications Commission were just commended by the U.S. Circuit Court of Appeals here in the District of Columbia last week for the outstanding job in measuring competition in the market and how they balance the interests of consumers versus the needs of the industry and otherwise.

So I really am not enthused about this amendment but I yield to my distinguished chairman.

Mr. PRESSLER. Mr. President, I must oppose this amendment reluctantly. I am all for consumers. But to have a person appointed who is nominated by the National Organization of State Utility Consumer Advocates, then we would say we need a corporate advocate. We need a racial minority advocate. We need this and that.

So I feel strongly this would not be an appropriate amendment. It is my present intention to move to table it and to ask for the yeas and nays. I think we would have serious problems that this would create, serious problems. I just do not believe in legislating, appointing one type or one group having access to the board.

The PRESIDING OFFICER. Is there further debate? The Senator from Nebraska [Mr. KERREY].

Mr. KERREY. Mr. President, I acknowledge those are reasonable objections. I suspect the Senator from South Carolina in particular has had experience as a Governor. Very often a statute ends up saying you have to have one from this legislative district, four Republicans, three Democrats, or vice versa. Very often in the legislative process you get quite detailed in trying to narrow down or debate who is going to be on this board. I am not doing that.

Indeed, this provision is in H.R. 1555. It is in the House bill. So I am not asking we come in and designate that you have ''x'' number of corporate members and this number of Democrats and this number of Republicans. I am merely saying there should at least be one consumer advocate. As I said, it is consistent with what is already in the House bill.

Philosophically I am with both the Senator from South Dakota and South Carolina. I think any amendment that would come in and say with specific language here how each one of these board members have to look before you can appoint them would complicate the matter and not likely result in the kind of board that is going to be needed. I merely argue, with respect, that this conforms with the language of the House bill. I would have loved to have a situation where I was appointing boards where this is all I had to worry about, only appointing one consumer advocate as opposed to all the typical balancing requirements that are specified in legislation.

The PRESIDING OFFICER. The Senator from South Carolina [Mr. HOLLINGS].

Mr. HOLLINGS. Mr. President, in the interests of all parties, as I understand it, should we have a motion and a rollcall ordered, I hope these rollcalls could be stacked beginning at 2 o'clock. We have a meeting of the leadership at the White House. We have Members down, bipartisanly, at a luncheon for the President of France, President Chirac.

With that in mind, we can facilitate and move right along with any particular votes. I hope we can start at 2 o'clock, if the chairman gives us permission to do so.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. Mr. President, is the current business my previous amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. KERREY. Mr. President, I ask unanimous consent that the amendment be laid aside temporarily.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. Mr. President, I have an amendment numbered 1313.

AMENDMENT NO. 1313

(Purpose: Clarifies state rate-making authority)

Mr. KERREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 1313.

On page 116, between lines 2 and 3 insert the following:

(D) Nothing in this section shall prohibit the Commission, for interstate services, and the States, for interstate services, from considering the profitability of telecommunications carriers when using alternative forms of regulation other than rate of return regulation (including price regulation and incentive regulation) to ensure that regulated rates are just and reasonable.

Mr. PRESSLER. Mr. President, I am told by leadership that they are now prepared to vote. If we could lay aside this amendment and come back to the Kerrey amendment No. 1344, I will move to table at that time, if that is agreeable with my friend from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. I ask unanimous consent that the amendment I just sent to the desk be laid aside and that the previous amendment be the order of business. And I will speak a little bit further on that before a tabling motion is made.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1344

Mr. KERREY. Mr. President, we are about to vote on a motion by the Senator from South Dakota to table an amendment that provides for a single consumer on the joint Federal-State board. This provision is in the House bill. I call to my colleagues' attention, who are trying to figure out exactly whether or not to support an amendment that will provide one consumer representative on this board, that it references the universal services section. As we move from this monopoly that has been established to provide universal service—understand, that is the purpose of the monopoly. The monopoly is put together to provide universal telephone service. It has gotten the job done. Now we are going to move from a monopoly situation to a competitive situation.

I support changing the law to get that done. But as we make the transition, Members should understand that we are putting universal service at risk because we are basically moving over time so that these companies—currently monopolies, currently pricing in the vast majority based upon a system of rate-based rate of return—are going to move to a system of price caps, and eventually they are going to price based on cost.

Currently, you will have situations in a metropolitan area, say Omaha,

NE, where residential rates are about $14 a month, and business rates are $30 a month. It does not cost the company any difference. There is no difference in running a line to a business and running a line to a resident. The law as set up gives the monopoly the authority to earn a rate of return. But it is also given the ability to subsidize the residential rates, to shift costs; in other words, so we can keep the residential rates lower than they otherwise might be.

I do not know whether the rates are going to go from $14 to $18, or whether in a competitive environment they are going to go down. I do not know. We are going to allow them to price differently.

In transition, one of the biggest questions is, How do we continue to provide universal service to these residential consumers? These are the consumers. There is already in place a Federal-State joint board.

It is going to be entitled for 1 year at least ''Federal-State Joint Board on Universal Service.''

The statute says that:

> Within one month after the date of enactment of this Act, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) of the Communications Act of 1934 a proceeding to recommend rules regarding the implementation of section 253 of that Act——

Which is the Universal Provisions Act.

> including the definition of universal service. The Joint Board shall, after notice and public comment, make its recommendations to the Commission no later than 9 months after the date of enactment of this Act.

In other words, this joint board is going to make the recommendations about universal service to the FCC.

The FCC then:

> . . . may periodically, but no less than once every 4 years, institute and refer to the Joint Board a proceeding to review the implementation of section 253 of that act and to make new recommendations, as necessary, with respect to any modifications or additions that may be needed. As part of any such proceeding, the Joint Board shall review the definition of, and adequacy of support for, universal service and shall evaluate the extent to which universal service has been protected and advanced.

In paragraph (b), the Commission then is told to act.

> The Commission shall initiate a single proceeding to implement recommendations from the initial Joint Board required by subsection (a) . . .

And then it is supposed to complete this proceeding within a year after the date of enactment of this act.

So this joint board is going to be making a very important recommendation about how we maintain this universal service that our consumers, our taxpayers, ratepayers, voters out there have grown accustomed to.

All this amendment does is say that the joint board should have on it a single consumer representative. It is something that I understand is a philosophical problem of specifying what each one of these members are going to look like and which political parties and how many corporations.

This merely says one individual. It is the same language that is in 1555, the House bill. If there is going to be a tabling motion, I urge my colleagues to vote against tabling. This is a proconsumer vote.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question occurs on the motion to table amendment 1344 offered by the Senator from Nebraska [Mr. KERREY]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 55, nays 45, as follows:

[Rollcall Vote No. 260 Leg.]

YEAS—55

Abraham	Frist	Mack
Ashcroft	Gorton	McCain
Bennett	Gramm	McConnell
Bond	Grams	Murkowski
Breaux	Grassley	Nickles
Brown	Gregg	Packwood
Burns	Hatch	Pressler
Campbell	Hatfield	Roth
Chafee	Helms	Santorum
Coats	Hollings	Shelby
Cochran	Hutchison	Simpson
Coverdell	Inhofe	Smith
Craig	Jeffords	Stevens
D'Amato	Johnston	Thomas
DeWine	Kassebaum	Thompson
Dole	Kempthorne	Thurmond
Domenici	Kyl	Warner
Faircloth	Lott	
Ford	Lugar	

NAYS—45

Akaka	Feingold	Mikulski
Baucus	Feinstein	Moseley-Braun
Biden	Glenn	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Nunn
Bradley	Heflin	Pell
Bryan	Inouye	Pryor
Bumpers	Kennedy	Reid
Byrd	Kerrey	Robb
Cohen	Kerry	Rockefeller
Conrad	Kohl	Sarbanes
Daschle	Lautenberg	Simon
Dodd	Leahy	Snowe
Dorgan	Levin	Specter
Exon	Lieberman	Wellstone

So the motion to table the amendment (No. 1344) was agreed to.

AMENDMENT NO. 1313

The PRESIDING OFFICER. The pending question is the Kerrey amendment No. 1313.

Mr. KERREY. Mr. President, this amendment would go into the bill, for colleagues who are checking the language out, on page 116. And it refers to the duty to subscriber. Well, it would add to the rate-of-return regulation elimination. In the third title of this bill, we are at the end of the transition. I do not know when that is going to be—3, 4 years, it could be sooner, depending upon the local area.

This amendment goes after those areas where you may still have some monopoly constraint. We are going to move, again, for emphasis, so that Senators understand what this bill does. This bill preempts State legislatures, State Governors, regulatory commissions that say you can no longer have rate-based return regulation. We are going to move to a price cap system of regulation.

I happen to think price cap in almost all situations can be better than rate-based. But there are some, Mr. President, where we could have trouble. This amendment tries to address those situations by saying that ''Nothing in this section shall prohibit the commission for interstate services and States for interstate services from considering the profitability or earnings of telecommunications carriers when using alternative forms of regulation other than the rate of return regulation.'' It does not say they have to. It says nothing in this law shall prohibit them from considering the profitability of the companies.

Mr. President, residential and business consumer representatives and telecommunications competitors alike support this legislation's goal of encouraging effective competition in the local telephone service market. However, what I am calling the monopoly telephone rate amendment is necessary to protect ratepayers of noncompetitive telecommunications services from experiencing multibillion dollar rate increases for these services during the transition to effective local competition.

State regulators—that is to say, the National Association of Regulatory Commissioners; consumer representatives, the American Association of Retired Persons, the Consumer Federation of America, Consumers Union, the National Association of State Utility Consumer Advocates, as well as business telephone users—that is to say, the customers of telephone companies, business users, the International Telecommunications Association—all are concerned about section 301 of this bill.

In mandating price flexibility and prohibiting rate of return regulation, section 301 also prohibits State and Federal regulators from considering earnings when determining whether prices for noncompetitive services are just reasonable and affordable, while the FCC and many State commissions have instituted various price flexibility plans, typically based upon the principles of price cap regulation. Almost all of those plans involve some consideration of earnings.

If regulators are prohibited from considering the earnings factor when determining the appropriateness of prices for noncompetitive services, then the captive ratepayers of these services will be subject to billions of dollars in rate increases that regulators could otherwise prevent.

The monopoly telephone rates amendment does not change the bill's prohibition on rate-of-return regulation, but would merely allow State and

Federal commissions to consider earnings when authorizing the prices of those noncompetitive services.

The ratepayer stake in the monopoly telephone rates amendment is dramatically demonstrated by reviewing the role of earnings within the regulatory structure for the 4-year period from 1991 to 1994. During that period, if the regulators of both interstate and intrastate operations of the local telephone companies had been prohibited from considering earnings when approving rates under their price cap plans, the excess revenue over existing authorized rate levels could have easily exceeded $18 billion. In other words, if S. 652 had become law in 1991, telephone ratepayers of noncompetitive services—and I keep emphasizing that where you have competition, there is no problem—but ratepayers in noncompetitive areas and services would have had to pay $18 billion more in telephone rates than they did between 1991 and 1994. Future pocketbook hits will be even higher unless this legislation is amended. The monopoly telephone rates amendment provides a safeguard against a rate impact for the future.

A recent study by Montgomery Associates, located in Massachusetts, estimated the rate impact over the next 4 years of S. 652, if its current form were enacted. Based upon an examination of regulatory and industry data, the study conservatively estimates that local rates would increase by $6 per month over the next 4 years.

The monopoly telephone rates amendment recognizes it is highly appropriate that State regulators continue to have a role in determining the appropriate price of noncompetitive services in their States, and in so doing, have the discretion to consider the earnings of the local telephone company. Approximately 75 cents of every dollar consumers spend on their overall telephone bills is for calls made within their State. As we learned when deregulating other industries, the legislative goal of local telephone competition advanced in this legislation will not be achieved overnight. In the interim, State regulators and legislatures will continue to be responsible for ensuring quality service and fair rates for noncompetitive telephone services. Their hands will be tied if Congress strips them of the authority to even look at the company's earnings before considering the price level of noncompetitive services.

At a time when the Federal Government is committed to better recognize the appropriate role of local government in assessing and protecting the citizens of its State, it makes no sense to handicap the States as they promote the emergence of competition in local telephone markets.

As the chairman of the Vermont Public Service Board recently described in testimony before the Judiciary Committee on antitrust business rights and property rights:

In truly competitive markets, prices are the result of the forces of supply and demand and don't need to be regulated at all. However, because local exchange, ancillary services, and interLATA toll markets are at best partially competitive, regulatory oversight is still needed and—no one expects this situation to be remedied within the next 12 months.

How are prices in these markets to be set? They necessarily involve the careful consideration of each provider's rate of return on noncompetitive services. A judgment about that rate of return must underlie the initial determination of the starting prices allowed. How else can regulators determine whether the prices charged for their noncompetitive services are ''just and reasonable,'' or whether excessive revenues from such services will be available to subsidize competitive service and keep out potential competitors?

The monopoly telephone rates amendment, Mr. President, recognizes that the earnings of local telephone companies are formidable. Each of the 7 Baby Bells is among the Fortune Top 50, with most in or approaching to the Fortune Top 20 list.

According to the most recently available statistics from the FCC, Statistics of Common Carriers, 1993–94 edition, those local telephone companies required to report their earnings to the FCC billed $90 billion in rates for 1993 and had net earnings of more than $5 billion.

Since the competition we strive for in this legislation will not become an instant reality, the monopoly telephone rates amendment recognizes the need to provide State and Federal officials with the tools necessary to ensure that the noncompetitive service of the local telephone companies are not priced at excessive levels. Accordingly, I urge my colleagues to support the monopoly telephone rates amendment.

Mr. WELLSTONE. Mr. President, first of all, let me thank my colleague from Nebraska for his very eloquent and strong voice on the floor of the Senate for the past several days, especially in behalf of consumers in this country; especially in behalf of making sure there is, in fact, real competition.

Mr. President, I come to the floor today to address what I consider the merits and the faults of what may be one of the most important economic development bills this session of Congress will consider, namely, the Telecommunications Competition and Deregulation Act.

Mr. President, we have had some enlightening discussions and some solid disagreements on this bill. But this much, I think, all of my colleagues could agree on: The debate we have had on this bill has opened all our eyes to the dazzling world of possibilities provided by our emerging information technologies.

It is a world that, at least from my perspective, appears to have virtually no limits in terms of the potential for bettering the health, education, and economy of the residents of my State of Minnesota.

I can imagine workers in rural Minnesota telecommuting to and from work as far away as New York or Washington without ever having to leave their homes or families. Or schoolchildren in a distressed Minneapolis school district reading the latest publications at the Library of Congress via thin glowing fiber cables. That excites me as a teacher.

Or rural health care providers on the Iron Range, consulting with the top medical researchers at the Mayo Clinic in Rochester to better treat their patients.

I can imagine, Mr. President, things like these, but I do not have to. Already, communication miracles like these are occurring with greater frequency across our Nation. It is fascinating to live in such exciting times. I think there is a consensus among Senators on both sides of the aisle on this question.

Mr. President, this bill presents the elected representatives of our States with a particularly exciting and at times daunting responsibility. How do we help dissolve the current artificially divided and fragmented telecommunications industry to nurture the rapid development of these types of communications, while ensuring that these services remain available, and I think the Senator from Nebraska has said this over and over again, and affordable to everyone in the Nation, not merely the most privileged and wealthy.

How do we ensure that this bill benefits not just the multibillion-dollar alphabet soup of corporations—IBM, MCI, AT&T, TCI, GTE, ABC, and the rest—but the consumers of St. Paul, and Mankato, Fergus Falls, and Duluth, MN. How do we guarantee, Mr. President, fairness, access, and affordability in the telecommunications industry?

We have had several opportunities already. For example, last week the Senate, to its great credit, refused to strip away provisions to keep telecommunication rates low for schools and hospitals. I am proud to say that I and a majority of my distinguished colleagues voted to defend those protections.

With that vote I believe we took a major step toward keeping our communication technologies affordable for future generations, as well as reaffirming the primacy of the consumer in this debate.

Monday night the Senate voted to approve an amendment that I believe will help keep adult-oriented cable video programs away from children. Again, I am proud to say I cast my vote in support of a measure to ensure that such programming be fully scrambled before entering the consumer's household, giving those who know best, the parents, the ability to control the flow of new services into the home.

I am saddened, however, Mr. President, that the Senate has chosen now to table a measure that I and many of my colleagues believe is central, absolutely central, to this entire debate of

competition and consumer protection: Providing a role for the Department of Justice to keep telephone monopolies from reassembling themselves.

Mr. President, I have listened to the debate on this issue and I thank my colleagues for some stimulating and insightful comments on this subject. Some of my colleagues say that these protections, such as providing consumers a voice in the process through the Department of Justice, or other amendments that my colleague from Nebraska has introduced over and over again to make sure that the consumers are at the table and that there is a voice for consumers, some of my colleagues have said that this is too much, too bureaucratic, too inefficient to enable businesses to compete.

I ask these same colleagues, after you remove the protections against huge rate increases, against monopoly, against service just for the privileged, what would you replace them with? Words, Mr. President. Promises, guarantees, reassurances that this time, although many of these companies have misbehaved in the past, and have been fined repeatedly for violating promises to protect consumers, this time the corporations promise to behave themselves and to conduct themselves in the consumer's best interest.

Mr. President, I have said it before, and I will say it again. I do not buy it. I would rather put my trust in solid protections, written in law, to make sure that rates remain affordable, services are available for everyone, and no one is left behind in the stampede for corporate profits. This extends across the board: Let me make it clear that I intend to fight efforts to strip out of this bill any consumer protections that ensure affordability, fairness, and access in local and long distance phone service and cable TV. Unfortunately, many of the strongest consumer protection amendments have been defeated to date.

I have noticed a lot of lobbyists out in the halls these days; lobbyists that as my colleagues know too well are just outside those doors. For the benefit of the RECORD, Mr. President, let me take a moment and tell America who is out there: NYNEX is out there, Mr. President, and so is Time-Warner, and Ameritech, and Northern Telecomm, Bell South and Bell Atlantic and Southwestern Bell, Sprint and General Electric and Gannett—they are all out there, Mr. President. It has been called Gucci Gulch in the past, maybe this time we should call it Cell-Phone Canyon. There can be no mistaking it; there are billions and billions and billions of dollars at stake in this bill.

But there is something else at stake here—something much more important than all the billions and billions and billions of dollars. The fate of the American consumer is at stake here, I urge my colleagues to remember their needs, and their voice, in the coming debate and amendments.

For this reason I support this Kerrey amendment, as I have past Kerrey amendments. I believe that what is lacking is where do the consumers fit in? Where is their voice? Where are their advocates? Do they get an opportunity to sit down at the table? And will, in fact, we have true competition as opposed to monopoly?

I hope the Cell-Phone Canyon out there does not dominate the final vote on these key amendments and the final vote on this piece of legislation. I hope the vast majority of consumers who are not out in these halls are the ones who in the last analysis we listen to.

Mr. President, I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from South Dakota.

Mr. PRESSLER. We are prepared to endorse this, to accept this amendment. Let me say to our friends that our bill has been endorsed by the White House Conference on Small Business—by small businessmen across the country—and consumers are interested in this bill. I have predicted that consumer prices will drop dramatically for telephone calls and cable television, just as they dropped when we deregulated natural gas, just as they dropped when cellular phones were deregulated.

In any event, we are prepared to accept this amendment. Mr. President, I urge the adoption of the Kerrey amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1313) was agreed to.

Mr. PRESSLER. Mr. President, now the Senate is open for business. Do we have Senators who wish to offer amendments?

I thank all Senators for their cooperation. Senator KERREY has another one? Great. I have been waiting eagerly for his amendment.

Mr. KERREY. Mr. President, I say to the chairman and ranking member of the committee, I have some amendments filed. I am not sure I am going to bring them all up. I filed them under the cloture rules. Some I am not quite sure I want to bring up. My understanding is under the cloture rules, each Member has an hour to talk. At some point, I am going to want to make a closing statement.

I know I control some time. I just want to make sure I reserve about 30 minutes so I can make a final statement.

Mr. PRESSLER. If my friend would be willing, perhaps he can begin to state them now and if he were in the proper mood, then when an amendment came to the floor we could set the speech aside and hear the amendment?

Mr. KERREY. That is an unusual request. I will take a different course. I will take the road less traveled.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Let me observe each Member should not feel obligated to take their hour.

Mr. PRESSLER. I think the bill is moving very nicely. But we do have a number of amendments filed, I think particularly in certain areas. We are eager for Senators to bring their amendments. I do not see any Senator on the floor. We are open for business and are going to try to stack votes at 2 o'clock, now. Any Senator having an amendment, please bring it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1310

(Purpose: Clarifies that pricing flexibility should not have the effect of shifting revenues form competitive services to non-competitive services)

Mr. KERREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 1310.

Mr. KERREY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 112, at the end of line 17, insert the following sentence: ''Pricing flexibility implemented pursuant to this section shall be for the purpose of allowing a regulated telecommunications provider to respond fairly to competition by repricing services subject to competition but shall not have the effect of shifting revenues from competitive services to non-competitive services.''

Mr. KERREY. Mr. President, this is a very simple amendment. Once again, it references title III. Title III is a section where we describe how we are going to end regulation. It is a section where we come in very directly, and make the transition to a competitive pricing situation.

For citizens, consumers, taxpayers, voters and everyone else trying to figure out what this bill is all about, we currently allow local telephone companies to set prices based upon a rate-of-return methodology. Most of the States are set up that way. We are moving to price caps. States are beginning to experiment with price caps, even with restrictions on them.

We are going to make a transition to a different method of pricing, eventually allowing the price to be set upon the cost of the service that is being provided. The language of title III lays out a framework for transition from a rate-based-rate-of-return system to a price cap system.

This amendment simply adds to the description under ''in general''—a paragraph that makes certain that:

Pricing flexibility implemented pursuant to this section shall be for the purpose of allowing a regulated telecommunications provider to respond fairly to competition by repricing services subject to competition but shall not have the effect of shifting revenues from competitive services to non-competitive services.

Mr. President, this is merely language under the general section of section 301, that attempts to say let us make certain that we do not have any language in this bill that permits the pricing and the shifting of revenues from a competitive situation to a noncompetitive situation.

I yield the floor.

Mr. HOLLINGS. Mr. President, looking at this amendment with respect to the phrasing in the purpose whereby in pricing flexibility and responding to competition by repricing services the intent as I understand it is that you not raise the noncompetitive services. When you say shifting revenues or raising costs, then you get into the concern about cost-based operations whereby I think the intent here is when you say shifting revenues—that is what is disturbing to this Senator.

Is it the case that what the Senator is trying to say is that as you respond to that pricing flexibility, and you are responding to the repricing services competition that you do not raise competitive rates?

Mr. KERREY. That is correct.

Mr. HOLLINGS. I mean noncompetitive.

Mr. KERREY. The Senator is correct; that we do not end up with noncompetitive rates.

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1310, AS MODIFIED

Mr. KERREY. Mr. President, I failed to ask unanimous consent to modify this amendment. It says page 112 and it should be page 113.

So I ask unanimous consent for that now.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1310), as modified, is as follows:

On page 113, at the end of line 17, insert the following sentence: ''Pricing flexibility implemented pursuant to this section shall be for the purpose of allowing a regulated telecommunications provider to respond fairly to competition by repricing services subject to competition but shall not have the effect of shifting revenues from competitive services to non-competitive services.''

Mr. KERREY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, if I may ask the author of the amendment a couple of questions about the amendment, as I understand it, ''Pricing flexibility implemented pursuant to this section shall be for the purpose of allowing a regulated telecommunications provider to respond fairly to competition by repricing services subject to competition but shall not have the effect of shifting revenues from competitive services to non-competitive services.''

Why would the Senator want to prevent a company from shifting from competitive services to noncompetitive? First of all, what does the Senator mean?

Mr. KERREY. Generally speaking, what I am trying to do with the language, I say to the Senator from South Dakota, Mr. President, is to prevent a continuation of a pricing scheme that allows a shifting of revenue and in a noncompetitive environment prices to be higher than they otherwise would be. That is the intent.

Mr. PRESSLER. What does the Senator consider competitive services to be?

Mr. KERREY. Mr. President, I consider this to be one of the most important questions that should be asked repeatedly on the floor. I consider competitive service to mean a choice. When I as a consumer—whether I am a business person, whether I am in my household, regardless of where I am—I have choice.

I do not like the service that the company is providing. I do not like the price. So I am going to shift and go someplace else. I have alternatives to what I have right now. Right now, I have very few alternatives at the local level.

It is a very important question. What will happen, I suspect, initially is that you are going to get competition at the higher end, as we currently do, in fact. We have, as the Senator knows, all kinds of competition coming into the local level, a relatively small percent of the overall pie, but we are starting to get competition at the local level at that higher end.

Mr. PRESSLER. What would be an example of a problem with a company shifting revenues from competitive services to noncompetitive services? Give me an example.

Mr. KERREY. The concern I have is that I can keep my noncompetitive prices higher than I otherwise would, that I could keep the prices in a noncompetitive environment higher. If I am a company with, let us say, $1 billion of cash flow a year and the law now allows me at the local level to meet a competitive alternative and price in order to be able to get the business, and now I have that business, what I am concerned about is shifting that revenue in a fashion that enables me to keep my noncompetitive prices higher than I otherwise would. That is the intent of the amendment.

Mr. PRESSLER. But the way the amendment reads, it would have the effect of shifting revenues from competitive services to noncompetitive services. Was the intent of that——

Mr. KERREY. Right. That is exactly right. Let us say I am the Acme Telephone Co., and I am currently given a regulatory monopoly at the local level. If I am the CEO of that company and I am performing for my shareowners, I am sitting there right now saying I have all kinds of companies that are coming into my local market. They are trying to get my high-end users. So I go to that high-end business user and say I will meet that price. I am now liberated in a competitive environment. I will meet that price.

What I am trying to do with this language is to prevent the use of that kind of revenue to keep, in an artificial fashion, the price for that noncompetitive service higher.

Mr. PRESSLER. Does my colleague mean shifting cost or shifting revenues? Because it would seem that it would be logical you were shifting costs.

Mr. KERREY. I mean shifting the cost of the service, the revenue that would be required to be paid in that noncompetitive environment. So the noncompetitive guy ends up paying a higher rate as a consequence of my being able now to go out and say I will meet the competition; I will lower the price; I will give you a lower price. This amendment attempts to prevent the use of that revenue in a noncompetitive environment.

Mr. PRESSLER. On this amendment, I will have to oppose it because we do not feel it does what the Senator seems to be saying it does. I am not questioning the draftsmanship. But I wonder if our staffs could discuss it a little bit and see if we cannot—very frankly, we cannot——

Mr. KERREY. I would be pleased to.

Mr. PRESSLER. Quite understand because we think it means you are trying to shift costs and also it would be very rare that a company would want to shift competitive services revenues to noncompetitive services revenues as far as we can see. But I would have to oppose this amendment as it is presently drafted.

Mr. KERREY. I will be glad, Mr. President, in a quorum call to sit down and look at the language in here. I understand there may be some potential confusion over precisely what it is doing.

I will say again for emphasis, the intent here is to make certain when we open up competition, we are basically saying to a company that right now is trying—I have heard the Senator from South Dakota talk about it as well, so I think we are basically on the same wavelength. If there is some confusion, it may be that in drafting this I have

created it. If the Senator is willing to identify a problem, I am perfectly willing to modify the amendment to make the language clear.

But my intent is to create a situation where we say to a local company, as I think we should by the way, OK, meet the competitive alternative. Go ahead and price your service and meet that competitive alternative. I just want to make certain in a noncompetitive environment the revenue stream does not end up being higher as a consequence of liberating, allowing that competition to be met.

Mr. PRESSLER. I would say before we go into a quorum call that we welcome other amendments and speeches by Senators. The Senate is open for business, and we will conceivably lay this aside if somebody else comes with an amendment. And with that I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order for me to address the Senate as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

(The remarks of Mr. HELMS pertaining to the submission of S. Res. 133 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

Mr. HOLLINGS. Mr. President, while it appears we do not have an immediate amendment, we are reconciling differences, including one on universal services and otherwise.

While we are engaged in that negotiation, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the Kerrey amendment No. 1310.

Mr. KERREY. I ask unanimous consent to withdraw amendment No. 1310.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1310) was withdrawn.

AMENDMENT NO. 1307

(Purpose: To require more than ''an'' interconnection agreement prior to long distance entry by a Bell operating company)

Mr. KERREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 1307.

Mr. KERREY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 83, strike out line 12 and all that follows through line 20 and insert in lieu thereof the following:

''(b) SPECIFIC INTERLATA INTERCONNECTION REQUIREMENTS—

''(1) IN GENERAL.—A Bell operating company may provide InterLATA services in accordance with this section only if that company has reached interconnection agreements under section 251 with telecommunications carriers that have requested interconnection for the purpose of providing telephone exchange service or exchange access service, including telecommunications carriers capable of providing a substantial number of business and residential customers with telephone exchange or exchange access service. Those agreements shall provide, at a minimum, for interconnection that meets the competitive checklist requirements of paragraph (2).

Mr. KERREY. Mr. President, this is an amendment to section 255 of the Communications Act of 1934. I discussed it with the managers of the bill. I will briefly describe it.

The requirement of the current provision is an attempt to deal with actually section 251 as well by saying that my concern with 255 is that it might allow a local telephone company to get into interLATA after having satisfied in a very minimal fashion the interconnection requirement either of the competitive checklist or of 251. The requirement of the current provision should be satisfied as a local telephone company reached an interconnection agreement with only a single telecommunications carrier, although in many markets a substantial number of carriers will request interconnection. Under the current provision, a Bell company needs only a single entity requesting interconnection without regard to whether the requesting company is weak, undercapitalized, or lacking in other expertise or business planning.

This amendment would ensure that a local telephone company which enters into more than one interconnection agreement, that the agreement includes telecommunications carriers capable of serving a substantial portion of the business in a residential local telephone market. Although it could not ensure that competition will develop, it ensures the interconnection agreements are reached before the long distance entry of the company capable of providing local services to both business and residential customers.

This amendment would remedy a provision in the bill which concerns me, a provision which I believe is very dangerous and susceptible to interpretation in a manner counter to the overall intentions of S. 652. Under the current provision, a Bell operating company could gain entry into the long distance market on the basis of one interconnection agreement with a competitor. It would not matter whether that competitor was weak, undercapitalized, or lacking either expertise or a business plan—that one competitor could facilitate Bell entry into markets which at that time may, or may not, be competitive.

One of the goals of this bill is to open the door, to provide incentives to facilitate local competition. Unless amended, this provision may counter that intended goal, in fact removing incentives for the Bells to reach agreement quickly with their strongest potential competitors. If the Bells think that they can gain entry without having to complete more than one agreement, we are in fact inviting them to game the process. Instead of helping to facilitate local competition, they might gain entry at a time when they still monopolize their local markets, perhaps both stunting the development of local competition and endangering the gains that have been made over the past decade in the increasingly competitive long distance industry.

This amendment would clarify the current provision and move it into line with the bill's overall intentions by ensuring that a BOC enters into more than one interconnection agreement and by ensuring that those agreements are reached with telecommunications carriers capable of serving a substantial portion of the business and residential loop telephone markets. This clarification strengthens the incentives and the conditions for competition to develop.

The requirement in the current provision could be satisfied after a BOC reached an interconnection agreement with only a single telecommunications carrier, although in many markets it is probable that a substantial number of carriers will request interconnection. Under the current provision, a BOC need reach agreement with only a single entity requesting interconnection, without regard to whether the requesting company is weak, undercapitalized, and lacking either expertise or a business plan.

The amendment would ensure that a BOC enters into more than one interconnection agreement and that the agreements include telecommunications carriers capable of serving a substantial portion of the business and residential local telephone markets. Although this does not ensure that competition will develop, it does ensure that interconnection agreements are reached before long distance entry with companies capable of providing local service to a substantial number of both business and residential customers.

Mr. President, it is a pretty straightforward, clarifying amendment. As I have said on a number of occasions, as the managers have as well, this piece of legislation is unprecedented. We are

trying to manage a transition from a current regulated monopoly into a competitive arena. It is very difficult to do. What we have established is in section 251, be it a long distance company or other carrier, it can be anybody who wants to get into local business, they can either negotiate an agreement or satisfy, I believe, 10 things in section 251; that is to say, the Communications Act of 1934, section 251. Once they have satisfied those agreements—they have to satisfy those agreements in order to satisfy the law—251 describes what they have to do when somebody comes and says, ''I want to get into local service, I want to approach your customers.'' Section 251 says what they have to do.

In addition, in 255, there is a 14-part competitive checklist before the local Bell company can get into interLATA to provide long distance service. This amendment provides language to make certain that we do not end up with an application occurring after having satisfied a minimal requirement. In other words, I have competition but it is a relatively small company. They really are not effective competition. This attempts to strengthen the competitive requirement prior to the FCC giving interLATA approval.

Mr. President, I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, may I request that the clerk read the current provision on line 12, most specifically the interLATA interconnection requirement, just the first paragraph as it appears in the bill as it appears now. I believe there is one change in it. I want to make sure that is the case.

Mr. KERREY. Mr. President, which page are you going to read?

Mr. STEVENS. This is page 83, which is the current specific requirement pertaining to section 251. I just want to see if the bill I have is the same as the one that is before the clerk. Are there any changes?

The PRESIDING OFFICER. There have been no changes to the bill on that page.

Mr. STEVENS. Mr. President, on that page is the requirement, specifically the interLATA interconnection requirement, which specifically states that a Bell operating company may provide interLATA services in accordance with the section only if that company has reached an interconnection agreement under section 251 and that agreement provides at a minimum for interconnection that meets the competitive checklist requirements of paragraph 2. Paragraph 2 is the competitive checklist. I am certain that the Senator from Nebraska and the Senators involved in this debate know what is in that checklist.

What the Senator attempts to do with his amendment is to expand that agreement in a way that, in effect, as I understand his intent, will preclude any small company not capable of providing substantial coverage for both business and residential customers in the exchange access areas.

Under the circumstances, what that would do is really prevent the transition from taking place as we envision it.

There is no question, as the Senator from Nebraska stated, we are going from a period of regulation both under the courts and under the FCC to a new type of regulation in which this checklist is one of the predominant features. Under the circumstances of the bill as it stands, size is not material but compliance is. And it will take some time in the transition period for that to happen.

This is one reason why we have opposed changes in the public interest section of the bill, because it may well be that in this transition period there is going to be several different entities trying to get through the gate at the same time, so to speak. And the question of public interest is going to weigh in terms of which of those entities should be approved under this section of having met with the requirement of the competitive checklist.

I think the Senator's amendment narrows that group that can be at the gate to be reviewed by the FCC and as such it would be restrictive of competition in the very essence, in the beginning, and therefore we would oppose the Senator's amendment as changing the concept which is, again I read, compliance under the bill is that the agreement provides at a minimum for interconnection, it meets the requirements of the checklist, the competitive checklist. This adds to the minimum, saying, in effect, that you have to have size, a large enough carrier that is capable of providing a substantial number of business and residential customers within the telephone exchange or exchange access service. Under the circumstances, the Senator from Nebraska limits those who can get to the gate first. It says the only ones that can get to the gate first are the large carriers.

Mr. KERREY. No.

Mr. STEVENS. That is my contention. Until the Senator disabuses me of that, I intend to move to table his amendment.

Mr. KERREY. Mr. President, let me read the language. Certainly I believe the language is clear on that point. I am not trying to preclude at all. You can still have a small carrier, a very small company come in and be given the interconnection requirement at the local level. It would be less likely to happen. This amendment does not say that that company is precluded. It does not use the language ''preclude'' at all. It says interconnection for the purpose of providing—only if that company reaches ''interconnection agreements under section 251 with telecommunications carriers that have requested interconnection for the purpose of providing telephone exchange service or exchange access service, including telecommunications carriers capable of providing a substantial number of business and residential customers.''

What it is attempting to do—and I left the language relatively general, in fact, because what I am trying to do, I say to the Senator from Alaska, what I am trying to do is to make sure—we tried earlier unsuccessfully. In fact, I have a couple other amendments that I do not believe I am going to send to the desk refighting the battle over whether or not the Justice Department should be the arbiter of whether or not there is competition.

In S. 1822, last year's bill, what we said was that once the Department of Justice has determined there is local competition, the local company then can do long distance. That was the method by which we made certain that there was local competition prior to the company getting into long distance. That was the idea.

Well, now what we have done is replaced the Department of Justice determination with a checklist so that we have this checklist and we have language in 251 that allows for these interconnections.

Well, what this simply does is it tries to make sure we get a little more certainty of competition because the FCC does not make any judgment about competition other than the connection. The FCC takes the 14-point checklist. The FCC has to certify that the checklist has been satisfied and that the company has reached an interconnection agreement under section 251 that provides at a minimum for interconnection that meets the competitive checklist requirements.

I understand that it says at a minimum, and there needs to be more. What this attempts to do is bulk that up and describe something a bit more than what is required currently under 251.

Mr. STEVENS. Mr. President, if the Senator is finished, let me state that as it is, as I see it and my adviser, Earl Comstock, sees it, we agree that the impact of this could be that a Bell operating company could not enter the service area, interLATA, if there was a carrier seeking to provide service and had met the minimum requirements of the checklist, the competitive checklist but was a small carrier. As a matter of fact, as I said, I think there could well be several small carriers at the gate, plus there could be a larger carrier at the gate and the question would be in terms of the public interest who would be involved in getting approval under section 251. But as a practical matter the Bell company cannot come in until someone provides that service. The Senator's amendment raises the threshold on the level of that service and as such will say the Bell companies cannot come in until there is a substantial competitor there to provide the service.

Mr. KERREY. That is correct.

Mr. STEVENS. I tried to explain that before but I apparently did not get the

communication correctly as far as the Senator from Nebraska is concerned. That is precisely what we are trying to avoid. We want to make sure that the checklist is met at a minimum and the public interest provision comes in at that point. The FCC might delay a smaller company if there is another one coming through the process that would provide a greater service in the area involved. I think that the Senator would understand that. But as a practical matter we do not look at size as being determinative of whether or not the Bell company could enter the area and provide service in the interLATA area.

I will be happy to yield.

Mr. KERREY. What the bill does not do, as I read it, is give me at least confidence in the 14-point checklist. What it says is—Mr. President, 255 is the new section. It is actually called section 221 in the bill, but it creates a new section 255 in the 1934 act, and it is called interexchange telecommunications services, but it is the point where we were removing the restrictions that are currently in place.

Currently, a local company cannot do long distance. What this does is says here are the terms and circumstances under which it can do long distance.

We fought the battle yesterday saying that I thought that the test that was in last year's legislation, S. 1822, and I think it was H.R. 3626, the House bill, that the test there was the right one; it had the Department of Justice determine the competition, and when there is no substantial possibility that the monopoly could use their power to impede competition, have at it. Go to it. Let the Department of Justice make that determination.

We lost that battle. Now what I am attempting to do is to say that the language, as I read the current language in the bill it sets specific interLATA interconnection requirements under, whatever it is, (b) of section 255, specific interLATA interconnection requirements. There are two sections, two paragraphs in there that are important. The first one is the general paragraph which this amendment replaces, and the second one is the competitive checklist.

The current general paragraph says a Bell operating company may provide interLATA, do long-distance service, in accordance with this section only if that company has reached an interconnection agreement under section 251 and that agreement provides at a minimum for interconnection that meets the competitive checklist requirements of paragraph 2.

As I read this, what I can do, if I am a Bell company, and let us say I have 50 people applying to go into interconnection, all I have to do is get one of them on line. I could have relatively stable competition. I just do not get into an agreement with them. I wish to get into long distance.

What I am trying to do is to make sure that I have that competitive choice at the local level before permission is granted. And so I do not say in my substitute paragraph that any company is precluded from an interconnection agreement under section 251. It says instead that ''a Bell operating company may provide interLATA service in accordance with this section only if that company has reached''—which is in the language here—''only if that company has reached an interconnection agreement under section 251''—all that is the same as the paragraph I am replacing—''with telecommunications carriers.'' And here is where it differs: ''Telecommunications carriers that have requested interconnection for the purpose of providing telephone exchange service or exchange access service, including telecommunications carriers capable''—it does not say it is going to preclude anybody. It just has to include ''carriers capable of providing a substantial number of business and residential customers with telephone exchange or exchange access service.''

It says these agreements shall provide at a minimum the competitive checklist which is also in this other language. It does not say any company is precluded. It does not in fact say it has to be *x* percent of the market or anything like that.

It just says that it has to be more than a relatively small company that does not really provide that competitive alternative for that consumer, that customer, that household at the local level.

The Senator from Alaska may still move to table. I hope not, based upon the language precluding a small company from still coming—a small company could still come and be allowed under the interconnection agreements of 251 to interconnect at the local level. This means I need a little bit more than a small company before the interLATA approval is granted.

Mr. STEVENS. Mr. President, I understand the Senator's intent. I call his attention to the provision of subsection (g) of 251 on page 25:

> A local exchange carrier shall make available any service, facility, or function provided under an interconnection agreement to which it is a party to any other telecommunications carrier that requests such interconnection upon the same terms and conditions as those provided in the agreement.

We interpret that section to mean if there is a small carrier involved and it comes into the area, which means the Bell carrier can then enter long distance, that other carriers can come in easily; as a matter of fact, they would not have to comply with 251.

The problem is that as we see it in rural areas where only a small carrier may seek the interconnection to provide competing local service in the beginning, it means that that small carrier cannot enter this picture until there is a larger carrier that would be able to handle the substantial test of the Senator's amendment. The Senator's amendment would require that you have a carrier capable of providing service to a substantial number of businesses and residential customers. Obviously, the small carrier cannot do that.

One is looking at the test for the Bell companies; the other is looking at the test for entry. We believe the predominant issue in regard to 251 is that there be no requirement other than the minimum compliance with the competitive checklist, as provided in subparagraph (2) of subsection (b) that I read from section 251.

Mr. KERREY. Mr. President, I understand the concern, but the larger concern, I believe, still remains, which is expressed by the findings in the bill and the description of the bill of what it is attempting to do, which is: We want to make sure we have competition before we get into long distance. That is the idea.

Currently, if I am a consumer, a household in Omaha, NE, I have one choice. That is what I have. My telephone company wants to get into long distance. The intent here is before you get into long distance, you get some competitive choice at the local level. If all I have to do is sign an interconnection agreement with one small company before that occurs, that hardly provides the kind of competitive choice, as I understand the intent of the bill.

I understand the Senator's concern about rural carriers, but I do not believe, at least as I read it, that the amendment precludes the possibility of a rural carrier, a smaller carrier interconnecting.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, it is, in our judgment, that the language of the bill, as it stands, provides an incentive to the long-distance companies, who are worried about Bell companies' entry into long distance, to come forward and use the provisions of section 251 to negotiate the interconnection agreements.

If they do not do that and a small carrier does come forward, it still meets the requirements of this section and, therefore, it is sort of an incentive to the other long distance companies to come forward and get involved in the negotiations regarding section 251, in our judgment.

In any event, it adds a level to the threshold. It increases the minimum requirements that we have associated with compliance with the checklist and, as such, it adds another burden to future competition, which is something that we disagree with the Senator on.

Mr. KERREY. Mr. President, it unquestionably asks for a minimum requirement. That is unquestionably true. I believe if this amendment were adopted, it would be a reasonable substitute for the Department of Justice role. It makes sure you have competition. The concern ought not to be for most of these companies trying to figure out whether you have competition;

the concern really ought to be is there a competitive choice: Do I have in my residence in Omaha, NE, or do I have in my residence in any other area a competitive choice?

It does not insert ''no substantial possibility'' language. It does not insert any specific language. It just says that it has to be more than a single, small interconnection.

Mr. STEVENS. Mr. President, it is not my desire to limit in any way the Senator's debate on this amendment.

Mr. KERREY. I conclude my debate. Mr. President, I yield the floor.

Mr. STEVENS. Mr. President, again I say what the Senator from Nebraska is looking for is something to increase the effective competition tests that are in this bill. The section we have been debating, section 255(b)(1), sets a minimum requirement for the Bell operating companies to enter into interLATA services. We think that is sufficient, in view of the requirements of the checklist itself.

Unless the Senator wishes to make additional comments, I intend to move to table his amendment, but I will be happy to let him have the last word, if he wishes to do so.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, the last word merely is that the Senator from Alaska is right, I am not worried about the minimum requirement in 255. I think it needs to be strengthened. This amendment does precisely that, it attempts to strengthen the requirements of 255 prior to being given permission for interLATA service.

Mr. STEVENS. The Senators's definition is the difference between us.

I move to table Kerrey amendment No. 1307, and I ask unanimous consent that the vote on this motion to table occur at 2:30 p.m. today and that there be no second-degree amendments in order to the amendment prior to the vote on the motion to table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. Mr. President, in view of the fact that there is approximately an hour left, I ask unanimous consent to lay this amendment aside until the time established for the vote on my motion to table, in the hope someone might come forward with another amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, how long?

Mr. DORGAN. Ten minutes.

Mr. STEVENS. I have no objection.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. I thank the Chair.

(The remarks of Mr. DORGAN pertaining to the introduction of legislation are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

Mr. STEVENS. The Senator from California has two amendments. One is an amendment to the other. We have no objection to the motion she is going to make to consolidate those amendments.

If she wishes to take it up at this time, we would be happy to do so on the basis of a time agreement, 30 minutes to be divided, 20 minutes on the side of the proponent, 10 minutes over here, with no second-degree or other amendments in order.

We will have a vote on or in relation to the amendment following the vote on the motion to table that has already been agreed to.

I ask unanimous consent that that be the agreement under which the Senator takes up this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, and I shall not object, the distinguished senior Senator from Nebraska and I, Mr. President, have a couple of amendments regarding the Internet that I think we can do in a relatively short period of time.

I wonder if it might be possible for these two Senators to then follow the amendment we just discussed.

Mr. STEVENS. Mr. President, I say to my friend that we have amendments already scheduled to come up for a vote at 2:30. It is our hope we will have this vote on Senator BOXER's amendment right after that, and we would be pleased to take up your amendments following that, if the Senator would like to do so.

Mr. LEAHY. Fine.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1340 AND AMENDMENT NO. 1354

(Purpose: To preserve the basic tier of cable services)

Mrs. BOXER. Mr. President, I want to thank the Senator from Alaska for his courtesy he extended to this Senator and to the Senator from Michigan, Senator LEVIN.

We are anxious to put our amendment forward. It is very straightforward. I ask that my amendment numbered 1340 be modified by my second-degree amendment, which is also at the desk, amendment No. 1354.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, I ask unanimous consent that I yield myself, out of the 20 minutes, 7 minutes.

Mr. President there has been a lot of debate on this bill, the Telecommunications Competition and Deregulation Act of 1995. A lot of it is quite technical. A lot of it is difficult to follow.

I do believe that the amendment that the Senator from Michigan, Senator LEVIN, and I are proposing is quite straightforward.

What we want to do with this amendment is to protect—protect—the people who currently have cable service from losing channels that they have grown used to that are in their basic service.

We are very fearful that because of the changes made in this bill, cable companies will move certain channels out of their basic tier of service, and the public that has grown used to this basic service will now be forced to pay for these channels on a second tier.

For example, there are many viewers that in their basic service get stations like CNN or TNT. What we are fearful of—if we do not pass the Boxer-Levin amendment—is that cable companies will jettison stations like CNN or TNT and tell the customers who have been receiving those programs in their basic service that they will have to pay extra. Now CNN and TNT will go into another tier, and the people who have been watching them will have to now pay more.

It is very straightforward. What we are saying is, if you want to reduce the level of service that you currently have as a cable operator, you first need to get approval from the local franchise authority, which is usually the board of supervisors or the county commissioners or the city council or the mayor.

So we are taking, I think, in this amendment, some commonsense steps. We are saying before the competition fully comes in, and we look forward to that day, before the competition really comes in, for a period of 3 years—we have sunsetted this at 3 years—we want to protect the people who rely on cable. We want to protect them so they do not suddenly find themselves without channels that they have grown to rely on and, in addition, they would have to spend more money to order these channels in another tier of service.

I am very hopeful we will get broad bipartisan support for this amendment. Because, whether Mrs. Smith or Mr. Smith lives in Washington or California or Michigan or South Dakota or Ohio, wherever they may live, they

may be finding out that they will suddenly have to pay more for programming they had on their basic rate.

Let me tell my colleagues what is going to happen to Senators. Whether they are from California or Michigan or South Dakota or Ohio—wherever they are from—they are going to get the call from that senior citizen who has come to rely on that programming. They will say, ''Senator, why did you not protect me? Why do I now have to pay extra money for CNN?'' Then, if you voted against Boxer-Levin, you will have to explain it. You will say, ''Well, Mrs. Smith, I thought competition would come in and you would not get stuck.''

Mrs. Smith will say, ''Well, good, I will send you my bill. You pay it. Because you should have protected me at least in a transition period and I deserve that protection. By voting against the Boxer-Levin amendment you left me exposed to a situation where I lose programming and suddenly have to pay more for it.''

Mr. President, I retain the remainder of my time and yield 7 minutes to my friend from Michigan, Senator LEVIN.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank my friend from California for taking the initiative on this bill.

The amendment she is offering really, I believe, is intended to carry out the purpose of the bill. What the bill intends to do is deregulate the rates on upper tiers. But as part of this compromise, it is intended that the basic rate—the basic tier continue to be subject to regulation by the local franchise authority. That is the structure of this bill. Basic tier is going to continue to be regulated. The upper tiers are going to be deregulated. That, it seems to me, is quite an important decision on the part of the sponsors of this bill, and one that is a very reasonable decision.

But the problem then becomes, since the upper tiers are deregulated, the cable operator who currently shows, for instance, ESPN as part of the basic tier and provides it as part of the basic rate would then have an incentive to move ESPN to a higher tier and out of the basic tier, unless this amendment is adopted.

I believe the sponsors of the language in the bill would say it is their intent that the basic tier remain and that it remain regulated. I think that is the intent of this bill. But there is a loophole which we should close with this amendment. That loophole is that, since the upper tiers are deregulated and therefore price is deregulated and cable companies then can raise prices on upper tier, there would be an incentive to move channels that are currently provided as part of the basic cable out of basic cable into the upper tier, unless there is at least a period of a couple of years until competition comes in, which will take care of this problem.

Competition is the answer. We all know that. The problem is there is going to be an interim period here, and that is why the Boxer amendment in its second-degree portion which is now part of the principal amendment has a 3-year statute of limitations on this provision. We recognize that competition is intended to correct this problem. But we also recognize it is going to be a period of time before competition effectively can do that.

So, in order to avoid the, I believe, unintended consequence of someone who currently is given basic cable at a certain rate suddenly finding the channels, that were previously part of that basic cable, still subject to price regulation, are now shifted out of that basic cable into the unregulated upper tiers, this amendment is essential.

That is the heart of it. It is a fairly straightforward amendment. It is a very proconsumer amendment, but it is not only proconsumer. I think it is also a way of our carrying out our commitment to our constituents. And that commitment is we are going to continue to regulate the basic cable. Yes, the upper tiers are going to be deregulated but there is not going to be a surprise.

If you have been getting—and I emphasize ''if'' you have been getting—ESPN, or CNN or whatever on your basic cable, you are not going to find suddenly that rug is pulled out from under you, those channels are suddenly removed to a higher tier.

Unless we adopt something like this we are going to find our constituents coming to us and saying, ''Wait a minute, I thought you said basic cable was going to continue to be regulated by the local franchising authority. That was the representation you made. The local franchise authority was going to continue to regulate basic cable. I have been watching ESPN every night and all of a sudden, ESPN is not on my basic cable anymore. What happened? That was supposed to continue regulated and now we find it is in the higher tier. My basic cable, which is all I get, does not have channels which I am accustomed to and which you folks said would continue to be regulated.''

So I think, in order for us to carry out what is the intention of this bill, that it is necessary to have this transition amendment that the Senator from California and I are offering to the Senate. Again, it is a way I truly believe that carries out the intent of the sponsors of this bill and the basic compromise which they have reached, which is that we are going to continue to regulate or allow the local franchise, more accurately, to regulate the basic cable while we are deregulating the upper tiers.

So, Mr. President, again, with the sunset provision, I think that would address any concerns that regulation is going to continue after it is needed. It is not going to be needed when competition takes over but there is this period we all know when competition cannot quite yet do the job. It has been recognized in a number of ways in this bill. This amendment would be, if adopted, another recognition of the reality that, until competition comes in, we should have an interim period where we are going to protect consumers against the unintended consequences which otherwise might occur.

I congratulate my friend from California. This is a straightforward amendment. We hope the managers of the bill would accept this amendment but, if not, we hope the Senate then would adopt it on a bipartisan basis.

I yield the remainder of my time, if I have any, and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from California.

Mrs. BOXER. Mr. President, would the Chair inform the Senator how much time she has remaining?

The PRESIDING OFFICER. The Senator has 9 minutes.

Mrs. BOXER. I ask the Senator from South Dakota if he is going to speak either in favor of or opposing the amendment of the Senator?

Mr. PRESSLER. I will be opposing the amendment. I ask the Chair, how much time do I have?

The PRESIDING OFFICER. The Senator has the 10 minutes that was allocated.

Mr. PRESSLER. The parliamentary situation is that there is a vote scheduled at 2:30?

The PRESIDING OFFICER. There is a vote scheduled at 2:30 p.m., tabling the Kerrey amendment.

Mr. PRESSLER. Yes, I will be speaking against the amendment and I will offer a motion to table at some appropriate time. I could do that now and stack the vote, this next vote, if that would be agreeable to my friend?

Mrs. BOXER. As long as the Senator from California has 9 minutes to complete a presentation, we have no objection and will be happy for the yeas and nays on the motion.

Mr. PRESSLER. I ask unanimous-consent that it be in order at this time, and may I ask unanimous consent that at 2:45, at the conclusion of the first vote, the Senate then proceed immediately, and I will make a motion to table at that time, but that we continue to debate?

Mrs. BOXER. Will the Senator repeat the unanimous-consent request?

Mr. PRESSLER. First of all, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. PRESSLER. I ask unanimous consent that at the conclusion of the first vote, it be in order to move to table the Boxer-Levin amendment. So we can have two back-to-back votes.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. I say to my friend, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. I will speak against this amendment, if I may do so now.

I yield myself, Mr. President, 5 minutes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. PRESSLER. Mr. President, I urge Senators to vote ''no'' on the Boxer-Levin amendment. The business of cable TV has been much debated, and we have settled on a bipartisan approach in the committee bill and it has been settled by the Dole and Daschle subsequent amendments and by leadership amendments. The cable TV issue should be left as it is in the bill.

This amendment forbids a cable operator from taking any program service off basic service without approval of the local franchising authority. We feel strongly that would violate the spirit of the agreement that has been reached on a bipartisan basis regarding cable television pricing and cable television servicing throughout the United States.

The Cable Act of 1984 specifically forbids authorities from specifying particular services to be carried. I am very touchy about giving any authority the power to pick programming or the power of the mayor of the city, for example, to decide what is going to be in the local newspaper or what columns are going to be carried, and which newspapers are going to operate in that city, or what comic strip characters are going to be allowed in that particular city, or what editorial writers are going to operate in that particular area.

The Cable Act of 1984 did so to protect the first amendment. It specifically prohibited franchising authorities, and it did so to protect the first amendment right to decide what to carry. This amendment would take that away. It is a major reversal of longstanding cable policy that carefully balances the rights of cities and operators.

For instance, if a cable operator wanted to replace a home shopping service with a news service, it could not do so without getting approval or, if it wanted to replace one classic movie channel with another, it would be forbidden unless the city agreed.

The amendment is not needed to protect the channel location of local broadcasters. They cannot be removed, in any case. The cable operator must already carry local TV stations on the basic tier. It is not needed to protect access channels on basic, either. The Cable Act requires them to be carried on basic along with broadcast signals, and cities already can require these channels as a part of any franchise that is granted.

This amendment would freeze certain programming lineups on smaller systems for no good reason except to give cities editorial power over a cable operator's programming.

Mr. President, the cable agreement, or the agreements in relationship to pricing of cable television, have been worked out very laboriously in the committee, and again in the manager's amendment, and again in the leadership amendment. I think we have the cable thing settled down, or at least I hope so.

The Boxer-Levin amendment supposedly prevents an operator from moving a popular service from a regulated basic tier and offering it on a less regulated cable programming service—CPS—tier. But most such migration has already occurred off the basic tier.

The PRESIDING OFFICER. The Chair wishes to inform the Senator that he has used 5 minutes of the 10 minutes.

Mr. PRESSLER. Thank you very much.

Mrs. BOXER. Mr. President, I understand my friend has reserved 4 or 5 minutes at this time.

The PRESIDING OFFICER. He has 5 minutes left.

Mrs. BOXER. I would like to at this time ask for 5 minutes so I may close the debate on my amendment.

The PRESIDING OFFICER. The Senator may proceed.

Mrs. BOXER. I appreciate that very much, Mr. President.

I want to say to my friend from South Dakota that I thought he had a very thoughtful response to the Boxer-Levin amendment. But I want to take these issues one at a time in my hope that my colleagues are listening to this debate because I am putting up a warning flag to my colleagues that the first time a cable company moves CNN or TNT or ESPN off basic service, your phones are going to be lighting up. You are going to have to explain why you did not protect your people.

The answer that my friend from South Dakota puts forward is one that I take issue with. He says we have had a bipartisan approach to the cable part of this bill. It has been settled. With all due respect, I say to my friend, it may well be that there are Senators who are not on the committee of jurisdiction who may have thought of the problem that Senators on both sides of the aisle did not think about.

This amendment does no violence at all. I would characterize it as a transitional ratepayer protection amendment. Why do I say transitional? It only lasts for 3 years. If a cable company wants to rip off a cable channel that you have been watching and you have been getting in your basic tier, you have the ability to say to the local franchising authority, please, take a look at this and see if it is fair.

I say to my friend from South Dakota, if he has a farming family in South Dakota and they are used to getting a certain program on their basic tier, and they are not extremely wealthy, and they are paying $20 a month for their basic service, and they love the channels in their basic service and those channels are ripped away, then they have to pay another say $15 or $10 a month for those channels they were getting. I say to my friend, the committee probably did not deal with that issue because I cannot imagine Senators want to have a situation where their phones are ringing off the hook.

Look, the Boxer-Levin amendment is supported by the Consumer Federation of America and it is supported by the Consumers Union. And I am saying that for the 3 years that this bill is working its way through, let us protect our consumers. Let us protect our ratepayers, whatever State they happen to be in. It is a very simple process. It is a very simple amendment. Yes, when we have real competition in the cable industry, there will not be any need for the Boxer-Levin amendment. That is why we have sunsetted that amendment.

My friend is concerned about giving local government too much power. On the one hand, I have my colleagues on the Republican side saying that is where the power ought to be; not here in Washington but with the local mayors, city councils, boards of commissioners, boards of supervisors because they are close to the people. And this amendment, the Boxer-Levin approach, gives them the ability to protect the people in their communities from being ripped off by a cable company, and having to pay more for something they always got in their basic tier.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, I yield myself my remaining 5 minutes. That will give the Senator from California a chance to finish.

Let me say that I urge my colleagues to vote ''no'' on the Boxer-Levin amendment because we have resolved the cable television issue, we have achieved a good compromise and a good settlement. But let me go on and say that the amendment supposedly prevents an operator from moving a popular service in a regulated basic tier and offering it on a less regulated cable programming service, a CPS tier. But most such migration has already occurred off the basic tier. Only a few mostly smaller systems have large basic tiers. The Senate bill already provides protection against higher prices on the CPS tier should an operator migrate services and seek a steep rate increase. I think that is called the bad actor provision that is in the legislation.

The amendment is not needed to protect the channel location of local broadcasters. I have already pointed out that they are already there and under the must-carry provisions. It is not needed to protect access channels on basic tier, either. The Cable Act requires them to be carried on basic along with broadcast signals, and cities already can require these channels as part of any franchise that is granted.

The amendment freezes certain program lineups on smaller systems for no

good reason except it gives cities editorial power over a cable operator's programming.

Let me conclude by saying that I think the Boxer-Levin amendment is not a good idea.

It is a regulatory idea. This is supposed to be a deregulatory bill. It is said: What will the family do on the farm in South Dakota? I come from a farm in South Dakota. There is a direct satellite broadcasting competitive alternative. There is going to be a video dial competitive alternative. We are going to have the electric utilities able to get into telecommunications. If we pass this bill, there is going to be so much competition and so many alternative voices and sources that prices are going to collapse. There are going to be more services available, and they are going to be competitive. We do not need regulation.

For example, if we look at what has shown up in the last few years, the Learning Channel, the History Channel, even ''MacNeil/Lehrer'' has been sold to a private company and is going to make additional public affairs programs for profit.

Times are changing. There is more competition out there, more alternatives. The thinking of the 1950's and 1960's and 1970's and 1980's that regulation will bring things to smaller cities and rural areas is not necessarily true. My State is a State of smaller cities and rural areas, but we will benefit greatly from the telecommunications revolution. This bill will help small business and small towns. I have with me the signatures of 500 delegates to the White House Conference on Small Business—meeting this week here in Washington—telling about how much this telecommunications bill will help small business. More than 500 delegates to the White House Conference on Small Business this week have written to President Clinton urging him to support our reform bill, S. 652.

We have heard a lot in this Chamber about how corporate interests are influencing this, and so forth. Occurring at this moment over at the White House is the small business conference, and we have 500 of those delegates who sent a petition urging that President Clinton support this bill and that the Congress pass it quickly and that it not put more regulation in it. But this amendment is for more regulation.

Mr. President, I will read into the RECORD portions of a letter to me from the small business owners of America:

> . . . strongly urging you to enact legislation that will open all telecommunications markets to full and complete competition, ensuring that all Americans enjoy the lower prices and innovative services that unfettered competition will produce.
>
> We are pleased to present you with copies of more than 500 letters to President Clinton from delegates to the White House Conference on Small Business seeking White House support for Senator Pressler's Telecommunications Competition Deregulation Act, S. 652 . . .
>
> Of all the solutions offered, S. 652 best achieves the goal of streamlined regulation, enhanced competition and consumer protection. By opening the marketplace to all competitors on equal terms and conditions, you will ensure vigorous competition that will deliver economic growth, improve services and lower prices to all Americans.
>
> We urge you to pass this legislation in its present form and without delay.

So they want this legislation, the small business people of America, and self-employed Americans. And I have heard some people talking about lobbyists out here. Of course there are lobbyists everywhere. They have the right to petition our Government. But here, signing these letters, we have 500 of the leading small businessmen of America gathered in President Clinton's offices for a conference. The small business people of America are for this bill. They do not support over-regulation such as the Boxer amendment.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. Mr. President, I yield myself the remainder of my time.

I did not know the small business people took a stand against the Boxer amendment, but I have to just say this to my friend. The Consumer Federation of America supports it, and there are 60 million cable subscribers. And I say to my friend the minute a cable operator throws a station off of the basic tier——

Mr. PRESSLER. If my friend will yield——

Mrs. BOXER. I will yield on the Senator's time. I do not have enough time; I am sorry.

Mr. PRESSLER. I did not specifically mean they were opposed to the Boxer-Levin amendment. They are for the bill and the Boxer-Levin amendment would change the bill. But I should not say that they are against the Senator's amendment specifically.

Mrs. BOXER. I thank the Senator. I appreciate my friend clarifying that on his time because I have so little time. I think it is important not to confuse the debate. This is not about the whole bill, I say to my friend from South Dakota. Let us not engage in overstatement. This is a small provision, a small provision that deals with one issue. It is a transitional amendment. It says let us protect the ratepayers for 3 years, those people who sit in their homes and pay for cable and get certain channels in their basic tier.

Under this bill, a cable company—and by the way, they are not a ''bad actor'' if they do this because it is totally allowable under the bill—can knock out several of those channels, put them on another tier and charge you for it, and you are sitting there like a chump. I hope you will call your Senator and ask that Senator if they voted for Boxer-Levin, because we will protect you. I think we are doing the right thing for the small business people. I think we are doing the right thing for the cable companies because they sometimes do not know what they are up against when they do this—the outrage that will follow.

I am a Senator. I have served here for 3 years. I served in the House of Representatives for 10 years. I served on a local board of supervisors for 6 years, and I swear when I go to a community meeting now as a Senator people will raise their hand more about cable service than almost anything else. Oh, they are interested in Bosnia. They care a lot about the big global issues, of course. But nothing impacts their daily life more, it seems to me, than what they bring to a Senator regarding their cable rates and the quality of their programming.

So I think we have a chance to stand up for the little people out there who look forward to these programs. And, yes, maybe we are stepping on a few toes of the cable people. But I am not worried about them. Do you know what they did, the cable companies? From 1984 to 1992, when they were unregulated, they raised basic cable service rates by 40 percent. So at that time the same arguments were heard: Oh, competition is around the corner.

My friend talks about satellite dishes. I say to my friend from South Dakota, maybe he does not know the numbers. But only one-half of 1 percent of consumers receive digital broadcast satellite service. So he can talk about his people in South Dakota getting satellite service, but only one-half of 1 percent can afford it.

Will they get it soon? Yes, they will get it soon. Yes, there will be more competition. And I applaud that. I love the thrust of the bill, that we are going to invite people in and have competition. But I have to warn my friends. Until that day that there is enough competition, that the satellite dishes are affordable and everyone moves into this business, you are going to get the calls from your consumers, whether they are in Kentucky or California or North Carolina, South Carolina, Indiana, I do not care, Michigan, whatever.

Mr. FORD. Will the Senator yield for just 1 minute?

Mrs. BOXER. I will be glad to yield.

Mr. FORD. The Senator from California used the rate increase of 40 percent. That was from GAO sending out a postcard and asking you to respond. And only those responded that had a very low increased rate. Some areas went as high as 200 percent. And I can name those to you. So 40 percent is a low figure. And I think we ought to remember that and pay attention to the Senator's amendment.

Mrs. BOXER. I thank my friend so much. It means so much to me that he sees there is merit in this amendment.

Senator LEVIN and myself thought long and hard, and we decided it was important to stand up for the consumers, protect the consumers so the cable companies, just in this 3-year interim period, cannot pull out from under you a basic, important channel that you have grown used to, that you have paid for in your basic service, and charge you more for it.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. I thank my friend very much. I yield the floor at this time. I hope Senators will support Boxer-Levin.

VOTE ON AMENDMENT NO. 1307

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion to lay on the table amendment No. 1307, offered by the Senator from Nebraska. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 21, as follows:

[Rollcall Vote No. 261 Leg.]

YEAS—79

Abraham	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Glenn	Moseley-Braun
Biden	Gorton	Moynihan
Bond	Gramm	Murkowski
Breaux	Grams	Nickles
Brown	Grassley	Nunn
Bryan	Gregg	Packwood
Bumpers	Harkin	Pressler
Burns	Hatch	Pryor
Byrd	Hatfield	Rockefeller
Campbell	Heflin	Roth
Chafee	Helms	Santorum
Coats	Hollings	Sarbanes
Cochran	Hutchison	Shelby
Cohen	Inhofe	Simpson
Coverdell	Jeffords	Smith
Craig	Johnston	Snowe
D'Amato	Kassebaum	Specter
Daschle	Kempthorne	Stevens
DeWine	Kennedy	Thomas
Dole	Kerry	Thompson
Domenici	Kohl	Thurmond
Dorgan	Lott	Warner
Exon	Lugar	
Faircloth	Mack	

NAYS—21

Akaka	Graham	Lieberman
Bingaman	Inouye	Murray
Boxer	Kerrey	Pell
Bradley	Kyl	Reid
Conrad	Lautenberg	Robb
Dodd	Leahy	Simon
Feingold	Levin	Wellstone

So the motion to lay on the table the amendment (No. 1307) was agreed to.

AMENDMENT NO. 1340 AND AMENDMENT NO. 1354

The PRESIDING OFFICER. The clerk will report amendments 1340 and 1354.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER] and Mr. LEVIN proposes amendments numbered 1340 and 1354 thereto.

The amendments are as follows:

AMENDMENT NO. 1340

On page 71, between lines 2 and 3, insert the following:

(d) PRESERVATION OF BASIC TIER SERVICE.—Section 623 (47 U.S.C. 543) is further amended by adding at the end the following:

''(n) PRESERVATION OF BASIC TIER SERVICE.—A cable operator may not cease to furnish as part of its basic service tier any programming that is part of such basic service tier on January 1, 1995, unless the franchising authority for the franchise area concerned approves the action.''.

AMENDMENT NO. 1354

Strike all after ''(d)'' in the pending amendment and insert the following:

PRESERVATION OF BASIC TIER SERVICE.—Section 623 (47 U.S.C. 543) is further amended by adding at the end the following:

''(n) PRESERVATION OF BASIC TIER SERVICE.—A cable operator may not cease to furnish as part of its basic service tier any programming that is part of such basic service tier on January 1, 1995, unless the franchising authority for the franchise area concerned approves the action. This provision shall expire three (3) years after the date of enactment.''

AMENDMENT NO. 1340, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, amendment 1340 is modified by the language of amendment 1354.

The amendment (No. 1340), as modified, is as follows:

On page 71, between lines 2 and 3, insert the following:

(d) PRESERVATION OF BASIC TIER SERVICE.—Section 623 (47 U.S.C. 543) is further amended by adding at the end the following:

''(n) PRESERVATION OF BASIC TIER SERVICE.—A cable operator may not cease to furnish as part of its basic service tier any programming that is part of such basic service tier on January 1, 1995, unless the franchising authority for the franchise area concerned approves the action. This provision shall expire three (3) years after the date of enactment.''

The PRESIDING OFFICER. The Senator from South Dakota [Mr. PRESSLER] is recognized to make a motion to table.

Mr. PRESSLER. Mr. President, I move to table the Boxer amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MACK (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Vermont [Mr. JEFFORDS] is necessarily absent.

The PRESIDING OFFICER (Mr. GREGG). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 38, as follows:

[Rollcall Vote No. 262 Leg.]

YEAS—60

Abraham	Frist	McCain
Ashcroft	Glenn	McConnell
Baucus	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Nunn
Breaux	Grassley	Packwood
Brown	Gregg	Pressler
Burns	Hatch	Reid
Campbell	Hatfield	Rockefeller
Chafee	Heflin	Roth
Coats	Helms	Santorum
Cochran	Hollings	Shelby
Coverdell	Hutchison	Simpson
Craig	Inhofe	Smith
D'Amato	Kassebaum	Specter
Daschle	Kempthorne	Stevens
DeWine	Kerry	Thomas
Dole	Kyl	Thompson
Domenici	Lott	Thurmond
Faircloth	Lugar	Warner

NAYS—38

Akaka	Boxer	Bumpers
Biden	Bradley	Byrd
Bingaman	Bryan	Cohen
Conrad	Johnston	Moynihan
Dodd	Kennedy	Murray
Dorgan	Kerrey	Pell
Exon	Kohl	Pryor
Feingold	Lautenberg	Robb
Feinstein	Leahy	Sarbanes
Ford	Levin	Simon
Graham	Lieberman	Snowe
Harkin	Mikulski	Wellstone
Inouye	Moseley-Braun	

ANSWERED ''PRESENT''—1

Mack

NOT VOTING—1

Jeffords

So the motion to lay on the table the amendment (No. 1340), as modified, was agreed to.

Mr. DOLE. Mr. President, I want to urge my colleagues on both sides—if there are any amendments on this side, too—we want to try to complete action on this bill today. The chairman has indicated his willingness to stay all night and keep the hours running. Thirty hours will expire tomorrow at 4 p.m. If we stay all night that would be 4 p.m. Or, if we can get an agreement to vote final passage by 12 noon tomorrow, otherwise, I think we may seriously consider the first option—staying all night.

I believe that most of the amendments will be tabled. I do not know of any serious amendments at all. Most of the amendments are on the other side. There are still some 50 amendments pending which is sort of par for the course, so far. But we hope that if people are serious about their amendments, they will offer them today so that we can dispose of this.

The managers have been on the floor now for almost a week. They have done an outstanding job on both sides. They are prepared to complete action on this bill late, late, late tonight. I urge my colleagues. Maybe some amendments will be accepted. I do not know what the status of many of these amendments are. But it would be our intention to table every amendment from now on unless the managers indicate otherwise.

We are having a Republican conference. I will make that clear to them that, if we are going to finish this bill, we have to have some discipline on this side to help table amendments for both managers of the bill, not just the manager on this side.

So I urge my colleagues to finish today. If you want to agree to an agreement, we will have final passage no later than noon tomorrow. Otherwise, I will leave it up to the managers. The chairman has indicated to me that he prefers to stay here all night and dispose of amendments between now and 4 o'clock tomorrow.

The PRESIDING OFFICER. Under the previous order, the Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, while the distinguished majority leader is on the floor, I note that many of us have been trying to work out a time agreement. There is cooperation on both sides of the aisle. For example, I am about to call up an amendment which will by

prearrangement have a second-degree amendment by Senators EXON and COATS. We will keep that on a relatively short time agreement, and we will wrap that one up. I will also be yielding to Senator KERREY, who has an amendment which I understand is going to be accepted. Senator BREAUX and I have been trying to work out one of the major issues, which I think both sides agree is a major issue that must be debated, an intraLATA amendment, to try to see if we can reach an area of agreement by which we would speed that one up.

Mr. President, with that, I yield, if I might, to the Senator from Nebraska, Senator KERREY.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Is there an amendment before the body?

The PRESIDING OFFICER. There is no amendment pending.

AMENDMENT NO. 1310, AS MODIFIED

(Purpose: Clarifies that pricing flexibility should not have the effect of using noncompetitive services to subsidize competitive services)

Mr. KERREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration, amendment 1310.

The PRESIDING OFFICER. The clerk will report.

Mr. KERREY. Mr. President, I ask unanimous consent to modify the amendment in accordance with the agreement of both managers.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. Reserving the right to object, and I will not object, I just want to explain to the Members of the Senate that it is unusual to allow an amendment in this cloture situation, but we view this as duplicative; we already have cross-subsidization, but we do not think it changes the nature of the bill, and we are prepared to accept this amendment.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? Without objection, it is so ordered. The clerk will report the amendment, as modified.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 1310, as modified.

Mr. KERREY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 113, at the end of line 17, insert the following sentence: ''Pricing flexibility implemented pursuant to this section for the purpose of allowing a regulated telecommunications provider to respond to competition by repricing services subject to competition shall not have the effect of using noncompetitive services to subsidize competitive services.''

Mr. PRESSLER. I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1310), as modified, was agreed to.

Mr. EXON. Mr. President, I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 1288, AS MODIFIED

(Purpose: To revise title IV of the bill and provide for a study of the legal and technical means of restricting access to obscenity on interactive telecommunications systems)

Mr. LEAHY. Mr. President, I ask it be in order to call up amendment No. 1288.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. LEAHY. I will note while the clerk is getting the amendment, it is an amendment proposed by myself, Senators MOSELEY-BRAUN, FEINGOLD, and KERREY of Nebraska.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY, proposes an amendment numbered 1288.

Mr. LEAHY. Mr. President, we are under postcloture, so I would ask unanimous consent that I may be allowed, on behalf of myself and the same cosponsors, to modify my amendment.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. Reserving the right to object and I shall not object, this is the modification——

Mr. LEAHY. Modifying the amendment that is at the desk, I would tell the distinguished manager.

Mr. PRESSLER. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1288), as modified, is as follows:

On page 137, strike out line 7 and all that follows through page 144, line 19, and insert in lieu thereof the following:

SEC. 402. OBSCENE PROGRAMMING ON CABLE TELEVISION.

Section 639 (47 U.S.C. 559) is amended by striking ''$10,000'' and inserting ''$100,000''.

SEC. 403. BROADCASTING OBSCENE LANGUAGE ON RADIO.

Section 1464 of title 18, United States Code, is amended by striking ''$10,000'' and inserting ''$100,000''.

SEC. 404. REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.

(a) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and House of Representatives a report containing—

(1) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(2) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(3) an evaluation of the technical means available—

(A) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(B) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(C) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(4) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in subparagraphs (A) and (B) of paragraph (3).

(b) CONSULTATION.—In preparing the report under subsection (a), the Attorney General shall consult with the Assistant Secretary of Commerce for Communication and Information.

''SEC. 405. EXPEDITED CONGRESSIONAL REVIEW PROCEDURE.

''(a) REQUIREMENT OF LEGISLATIVE PROPOSAL.—The report on means of restricting access to unwanted material in interactive telecommunications systems shall be accompanied by a legislative proposal in the form of a bill reflecting the recommendations of the Attorney General as described in the report.

''(b) IN GENERAL.—A legislative proposal described in (a) shall be introduced by the Majority Leader or his designee as a bill upon submission and referred to the committees in each House of Congress with jurisdiction. Such a bill may not be reported before the eighth day after the date upon which it was submitted to the Congress as a legislative proposal.

''(c) DISCHARGE.—If the committee to which is referred a bill described in subsection (a) has not reported such bill at the end of 20 calendar days after the submission date referred to in (b), such committee may be discharged from further consideration of such bill in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) FLOOR CONSIDERATION.—

''(1) IN GENERAL.—When the committee to which such a bill is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of such bill, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the bill. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the bill is

agreed to, the bill shall remain the unfinished business of the respective House until disposed of.

''(2) FINAL PASSAGE.—Immediately following the conclusion of the debate on such a bill described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the bill shall occur.

''(3) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a bill described in subsection (b) shall be decided without debate.

''(e) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a bill described in subsection (b), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at anytime, in the same manner, and to the same extent as in the case of any other rule of that House.

''SEC. 405. ADDITIONAL PROHIBITION ON BILLING FOR TOLL-FREE TELEPHONE CALLS.''

Mr. LEAHY. Mr. President, I yield to the distinguished Senator from Nebraska.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. I thank my friend from Vermont and I thank the Chair.

AMENDMENT NO. 1362 TO AMENDMENT NO. 1288, AS MODIFIED

(Purpose: To provide protections against harassment, obscenity, and indecency to minors by means of telecommunications devices)

Mr. EXON. Mr. President, I call up amendment No. 1362, which is at the desk, and I am introducing this on behalf of myself and Senator COATS.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. EXON] for himself and Mr. COATS, proposes an amendment numbered 1362 to amendment No. 1288, as modified.

Mr. EXON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Mr. LEAHY. Reserving the right to object, and I shall not object, Mr. President, am I correct this is in the form of a second-degree amendment to my amendment?

The PRESIDING OFFICER. The Chair is trying to determine that.

Mr. EXON. The amendment that I am offering is a second-degree amendment to the Leahy amendment that is pending, am I correct?

The PRESIDING OFFICER. This amendment is a second-degree substitute.

Without objection, reading of the amendment is dispensed with.

The amendment is as follows:

In lieu of the matter to be inserted, insert the following:

SEC. OBSCENE OR HARASSING USE OF TELECOMMUNICATIONS FACILITIES UNDER THE COMMUNICATIONS ACT 1934.

(a) OFFENSES.—Section 223 (47 U.S.C. 223) is amended—

''(1) by striking subsection (a) and inserting in lieu thereof:

''(a) Whoever—

''(1) in the District of Columbia or in interstate or foreign communications

''(A) by means of telecommunications device knowingly—

''(i) makes, creates, or solicits, and

''(i) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

''(B) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communications:

''(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

''(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication;

or

''(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years, or both.''; and

(2) by adding at the end the following new subsections:

''(d) Whoever—

''(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any obscene communication in any form including any comment, request, suggestion, proposal, or image regardless of whether the maker of such communication placed the call or initiated the communications; or

''(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by subsection (d)(1) with the intent that it be used for such activity;

shall be fined not more than $100,000 or imprisoned not more than two years or both.

(e) Whoever—

''(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any indecent communication in any form including any comment request, suggestion, proposal, image, to any person under 18 years of age regardless of whether the maker of such communication placed the call or initiated the communication; or

''(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years or both.

''(f) Defense to the subsections (a), (d), and (e), restrictions on access, judicial remedies respecting restrictions for persons providing information services and access to information services—

''(1) No person shall be held to have violated subsections (a), (d), or (e) solely for providing access or connection to or from a facility, system, or network over which that person has no control, including related capabilities which are incidental to providing access or connection. This subsection shall not be applicable to an individual who is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing or knowing distribution of communications which violate this section.

''(2) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

''(3) It is a defense to prosecution under subsection (a), (d)(2), or (e) that a person has taken reasonable, effective and appropriate actions in good faith to restrict or prevent the transmission of, or access to a communication specified in such subsections, or complied with procedures as the Commission may prescribe in furtherance of this section. Until such regulations become effective, it is a defense to prosecution that the person has complied with the procedures prescribed by regulation pursuant to subsection (b)(3). Nothing in this subsection shall be construed to treat enhanced information services as common carriage.

''(4) No cause of action may be brought in any court or administrative agency against any person on account of any activity which is not in violation of any law punishable by criminal or civil penalty, which activity the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

''(g) No State or local government may impose any liability for commercial activities or actions by commercial entities in connection with an activity or action which constitutes a violation described in subsection (a)(2), (d)(2), or (e)(2) that is inconsistent with the treatment of those activities or actions under this section provided, however, that nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

''(h) Nothing in subsection (a), (d), (e), or (f) or in the defense to prosecution under (a), (d), or (e) shall be construed to affect or limit the application or enforcement of any other Federal law.

''(i) The use of the term 'telecommunications device' in this section shall not impose new obligations on (one-way) broadcast radio or (one-way) broadcast television operators licensed by the Commission or (one-way) cable service registered with the Federal Communications Commission and covered by obscenity and indecency provisions elsewhere in this Act.

''(j) Within two years from the date of enactment and every two years thereafter, the Commission shall report on the effectiveness of this section.

"SEC. . OBSCENE PROGRAMMING ON CABLE TELEVISION.

''Section 639 (47 U.S.C. 559) is amended by striking '$10,000' and inserting '$100,000'.

"SEC. . BROADCASTING OBSCENE LANGUAGE ON RADIO.

''Section 1464 of Title 18, United States Code, is amended by striking out '$10,000' and inserting '$100,000'.

"SEC. . SEPARABILITY.

''(a) If any provision of this Title, including amendments to this Title or the application thereof to any person or circumstance is held invalid, the remainder of this Title and the application of such provision to other persons or circumstances shall not be affected thereby.

"SEC. . ADDITIONAL PROHIBITION ON BILLING FOR TOLL-FREE TELEPHONE CALLS."

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. I ask in a spirit of moving things along, I think there has been general agreement among the principals that we could have a time agreement on this matter and then a vote, and I would like to ask my friend from Vermont if he is prepared to propose the unanimous consent agreement that we all had agreed to.

Mr. LEAHY. Mr. President, if the Senator will yield, I will soon propose—let me just outline what I propose—we agree to have a 2-hour time agreement evenly divided between the Senator from Nebraska and myself on a second-degree amendment, with a 20-minute time agreement evenly divided between the Senator from Nebraska and myself on the underlying Leahy, et al amendment, with the understanding, of course, that either or both sides could yield back time.

So with that understanding, I ask unanimous consent that there be a 2-hour time agreement on the Exon amendment evenly divided, at the expiration of which or the yielding back of time there be a vote on or in relation to the Exon amendment, and then, if the Exon amendment is not adopted, we go to the underlying Leahy amendment with a 20-minute time agreement evenly divided, with a vote following on or in relation to it.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Merely a matter of clarification. Did I understand the Senator from Vermont to include that after we finish the 2 hours equally divided or yielded back, we would have a vote at the end of that time?

Mr. LEAHY. That was part of the unanimous consent, Mr. President; on the understanding that if the Exon amendment was defeated, then, of course, we would go to the underlying Leahy amendment. If it was not, then obviously the underlying Leahy amendment would be moot.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. Reserving the right to object, and I shall not, perhaps I should——

Mr. LEAHY. Let me add that no other amendments be in order prior to the disposition of these amendments under the unanimous consent request.

Mr. PRESSLER. I wonder if I should not try to reserve 10 minutes of time within that in case some Senator, from whom we have not heard, feels an irrepressible urge to make a speech.

Mr. LEAHY. Might I suggest this to the Senator from South Dakota, that the two managers each have 5 minutes of that time.

Mr. PRESSLER. Fine. I do not intend to use it, but someone may feel an irrepressible urge to make a speech.

Mr. LEAHY. That sometimes happens, Mr. President, in this body. It is rare, but it sometimes happens.

Mr. PRESSLER. The Senator will accommodate them.

Mr. COATS. Mr. President, I also reserve the right to object. I wish to just clarify that in all of that request the Senator from Indiana will have an opportunity to speak on the contingency that—we are offering this together with the Senator from Nebraska, but on the contingency that in the event the amendment, the Exon-Coats amendment is defeated, I would like to have 5 minutes or so of that time before a vote on the underlying amendment.

Mr. EXON. I am happy to agree to that.

Mr. COATS. I do not object.

Mr. PRESSLER. I just want to be sure to protect the rights of Senators who may be in committee. They are having two or three markups. This subject is of great concern to our Nation and to a lot of Senators who may be in a markup at this moment who want to speak. I am sure the managers will work them in for 5 minutes and perhaps the Senator from Indiana could help allocate that time.

Mr. COATS. It is certainly not unheard of that Senators might have an irrepressible urge to speak on this or any other amendment.

Mr. PRESSLER. I have no objection.

Mr. LEAHY. I hope as the time goes on perhaps the points will be made and we may be able to yield back time and not use it all.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Who yields time?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I wish to thank my fine colleague from Indiana for all the help he has been and for a lot of work we have put in on this. I would be glad to yield to him for whatever time he wants to begin debate or, if he wishes me to proceed, I will do so at this time.

Mr. President, I yield myself 10 minutes.

Mr. President, I would like to start out this debate by reading a prayer that was offered by the Chaplain of the Senate on Monday, June 12, that I hope will guide us once again. It was so much on point to what this Senator and the Senator from Indiana and others are attempting to do that I think it is worthy of repetition:

Almighty God, Lord of all life, we praise You for the advancements in computerized communications that we enjoy in our time. Sadly, however, there are those who are littering this information superhighway with obscene, indecent, and destructive pornography. Virtual but virtueless reality is projected in the most twisted, sick misuse of sexuality. Violent people with sexual pathology are able to stalk and harass the innocent. Cyber solicitation of teenagers reveals the dark side of online victimization.

Lord, we are profoundly concerned about the impact of this on our children. We have learned from careful study how children can become addicted to pornography at an early age. Their understanding and appreciation of Your gift of sexuality can be denigrated and eventually debilitated. Pornography disallowed in print and the mail is now readily available to young children who learn how to use the computer.

Oh God, help us care for our children. Give us wisdom to create regulations that will protect the innocent. In times past, You have used the Senate to deal with problems of air and water pollution, and the misuse of our natural resources. Lord, give us courage to balance our reverence for freedom of speech with responsibility for what is said and depicted.

Now, guide the Senators when they consider ways of controlling the pollution of computer communications and how to preserve one of our greatest resources: The minds of our children and the future and moral strength of our Nation. Amen.

Mr. President, that is the end of the quote of the Chaplain of the Senate that I referenced earlier.

If in any American neighborhood an individual were distributing pornographic photos, cartoons, videos, and stories to children, or if someone were posting lewd photographs on lampposts and telephone poles for all to see, or if children were welcome to enter and browse adult book stores and triple X rated video arcades, there would be a public outrage. I suspect and I hope that most people, under those circumstances, would immediately call the police to arrest and charge any person responsible for such offenses.

I regret to report that these very offenses are occurring everyday in America's electronic neighborhood. It is not right to permit this type of activity in your neighborhoods and it is not right to ignore such activities via a child's computer.

Section 402 of the Communications Decency Act, that I have just offered on behalf of myself and my colleague from Indiana, Senator COATS, a version of that, which has been slightly amended, was approved by the Senate Commerce Committee and added to S. 652, the Telecommunications Competition and Deregulation Act that stands for a simple proposition; that is, the laws which already apply to obscene, indecent, and harassing telephone use and the use of the mails should also apply to computer communications. That is the heart and soul of our amendment.

Not only are children being exposed to the most perverted pornography and inappropriate communications, but adults are also being electronically stalked and harassed.

I have had the opportunity to share with several Members of the Senate, on

both sides of the aisle, what I refer to as the ''blue book.'' When I have shown this to Members on both sides of the aisle, there has been shock registered, obviously, on the faces of my colleagues, shock because few understand what is going on today with regard to the pollution of the Internet. I cannot and would not show these pictures to the Senate. I would not want our cameras to pick them up. But I think they probably are best described by some other material that has come to my attention by people who are strongly supporting our proposition. It says:

Warning. Do not open until further instructions. Offensive material enclosed. Keep out of reach of children.

I hope that all of my colleagues, if they are interested, will come by my desk and take a look at this disgusting material, pictures of which were copied off the free Internet only last week, to give you an idea of the depravity on our children, possibly our society, that is being practiced on the Internet today. This is what the Coats-Exon amendment is trying to correct.

Mr. President, it is no exaggeration to say that the most disgusting, repulsive pornography is only a few clicks away from any child with a computer. I am not talking just about Playboy and Penthouse magazines. By comparison, those magazines pale in offensiveness with the other things that are readily available. I am talking about the most hardcore, perverse types of pornography, photos, and stories featuring torture, child abuse, and bestiality.

These images and stories and conversations are all available in public spaces free of charge. If nothing is done now, the pornographers may become the primary beneficiary of the information revolution.

I am the first to admit that solutions to this problem are not easy ones. It requires careful balance which protects legitimate use of this exciting new technology, respects the Constitution and, most importantly, provides the maximum protection possible for America's families and America's children.

After months of discussion, negotiations, and research, I am pleased to offer the Exon-Coats refinement of the Communications Decency Act provisions included in the committee-reported bill. This modification represents a carefully balanced response to growing concerns about inappropriate use of telecommunications technologies.

In committee, the decency provisions were refined to clarify and to focus on wrongdoers and to avoid imposing vicarious liability on innocent information service and Internet access providers who simply act as the mailmen, if you will, for computer messages. The modification now before the Senate further clarifies that the proposed legislation does not breach constitutionally protected speech between consenting adults nor interfere with legitimate privacy rights. The revision also provides strong protection for children.

Mr. President, these revisions also make it certain that provisions of the Communications Decency Act in no way adversely affect the well-litigated dial-a-porn statutes generally referred to as 47 U.S.C. 223 (b) and (c).

The Communications Decency Act is not a panacea. What the legislation will do is give law enforcement new tools to prosecute those who would use the computer to make the equivalent of obscene telephone calls, to prosecute electronic stalkers who terrorize their victims, to clamp down on the electronic distributors of obscene materials, and to enhance the chances of prosecution of those who would provide pornography to children via the computer.

Parents, teachers and law enforcement should not be lulled into a false sense of security. Their vigilance will still be required even after this much-needed legislation is enacted into law. New voice, video, data and imaging options will soon enter every home or be available to America's children and neighborhood schools and libraries. This information revolution will give Americans unprecedented opportunities to enrich their lives, gain knowledge, and enhance their productivity.

This legislation attempts to make the information superhighway a little bit safer for families and children to travel. The time to act is now. Delay only serves those who would endanger the Nation's children and those who use the new technology to distribute obscene materials or use the secrecy of the computer medium to harass others.

I urge my colleagues to stand up for families and children and vote for the Communications Decency Act. Let us put politics aside and work together to protect the children.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I yield myself whatever time I may consume.

Nobody in here would disagree with the fact that we want to keep hardcore pornography away from our children. I am the proud parent of three children, and the proud father-in-law of three others. I cherish the time when those children were growing up.

I had the advantage of growing up in a family where we learned to read at an early age. My parents had published a weekly newspaper when I was a child and owned a printing business throughout the time I was growing up until my adult life when they retired.

They read to us as children and encouraged our reading. By the time I was 4 years old, I was reading books actively. By the time I finished third grade, I had read all of Dickens and most of Robert Louis Stevenson. I say that not to brag but because it happened with the encouragement of my parents. They guided me; they encouraged me to read and to read a good deal. They knew that, periodically, I might read something that they probably wished I would not, but they got me to read and read and read. It helped me through college, it helped me through law school, it helped me through my days as a district attorney, and it certainly helped me become a U.S. Senator.

I also use Internet. I do town meetings on the Internet. I correspond with people around the world with the Internet. I call up information I need and plan trips to other countries. I call up information and maps, and so on. I find it is a most marvelous tool. Somebody raised the question about something in Australia the other day, and I could click into the Internet and pull up something from a country thousands of miles away, instantaneously.

Now, I have not seen the things on the Internet—I do not doubt that they are there—that the Senator from Nebraska speaks of. I am six-foot-four, and I looked over the shoulders of a huddle of Senators going through the blue book of the Senator from Nebraska. I saw one page of it, but I do not care to see that kind of filth. I also know that I use the Internet probably more than most, and I have not been able to find some of these things. But I do not question that they are there. I do worry about the universal revulsion for that kind of pornography—I assume it is universal in this body—and that we not unnecessarily destroy in reaction what has been one of the most remarkable technological advances, certainly in my lifetime—the Internet.

It has grown as well as it has, as remarkably as it has, primarily because it has not had a whole lot of people restricting it, regulating it, and touching it and saying, do not do that or do this or the other thing. Can you imagine if it had been set up as a Government entity and we all voted on these regulations for it? We would probably be able to correspond electrically with our next-door neighbor, if we ran a wire back and forth, and that would be it. Had we had the Government involved every step of the way and had us engaged in micromanaging it every step of the way, we would not have the Internet that we have today.

I think there is a better way to reach the goal that the Senator from Nebraska and I share. The goal is—and I yield to nobody in this body—to keep really filthy material out of the hands of children.

Maybe we can do it the same way my parents did. They guided me when we read. We have software that can allow parents to know what their children see on the Internet. Maybe some day we will accept the fact that there is some responsibility on the part of parents, not on the part of the U.S. Congress to tell children exactly what they should do and read and see and talk about as they are growing up. Maybe mothers and fathers ought to do what mine did and what my wife and I did with our children.

In that regard, Mr. President, I also suggest that if we are going to get involved, maybe we should allow the elected Members of this body to do it. I was concerned when I heard the new Chaplain. I have not had a chance to meet him. Some day I will. After listening to his prayer, it seems like he was part of the debate. It reminds me of his predecessor who gave a long, long prayer here shortly after the arrest of O.J. Simpson saying that he worried about poor O.J. Simpson's state of being, and that we should pray for him and hopefully he would feel OK. Some of us suggested that maybe there ought to have also been prayers for the two people that were murdered. I do not mean in any way to suggest who committed the crime. But I recall suggesting that maybe if we are going to have the chaplains interject themselves into public debate, they may want to be evenhanded enough, at least, to pray for those who have died and not just for somebody who may be a wealthy ex-football star.

By the same token, I suggest to the Chaplain—who may be a very fine man, for all I know—that perhaps he should allow us to debate these issues and determine how they come out and maybe pray for our guidance, but allow us to debate them. He may find that he has enough other duties, such as composing a prayer each morning for us, to keep him busy.

The concern I had in my amendment—my amendment speaks to the need to have a real study of just how we do this. I suggest one way, of course, is to have the kind of software that is now available, where parents can find out exactly who their children have been corresponding with or what they have been looking at on the Internet. Parents can make it very clear that if you want to use the computer, there are certain areas you do not go into.

It is the same way we do it today. A parent can say, hey, you are going to bring books home and there are certain things that are going to be off limits—at least at your age. It is not that much different just because they might be able to call up the books, or whatever, at home. That is no different than calling up the books from the corner bookstore. I suspect that a number of these things are available there.

My bill would require the Attorney General, in consultation with the National Telecommunications Information Administration of the Department of Commerce, to transmit to the Judiciary Committees in the Senate and in the House of Representatives a report of evaluating current laws and resources for prosecuting online obscenity and child pornography.

If pornographers are out there, prosecute them. I have voted, as most of us have, to go after them. As a former prosecutor and as a parent, I find them the most disgusting people.

What they do to our children is terrible, allowing authorities to go directly after them. Let us find out how we do that without destroying the Internet.

For example, the first part of the amendment from the Senator from Nebraska and the Senator from Indiana would make it a felony not only to send obscene messages to another person, but apply the same penalty to sending an e-mail message with indecent or filthy words that you hope will annoy another person.

For example, if someone sends you an annoying e-mail message and you respond with a filthy four-letter word, you may land in jail for 2 years with $100,000 fine. If you picked up the phone and did the exact same thing, you are perfectly OK. But if you type it out and send it to the person electronically, no matter how annoyed you might be, tough.

I do not think under this amendment a computer user would be able to send a private or public e-mail message with the so-called seven dirty words. Who knows when a recipient would feel annoyed by seeing a four-letter word online?

The second part of the amendment makes it a felony to send or receive over computer networks any obscene material. There is no requirement that the person soliciting and receiving the material knew it was obscene.

In other words, you click on your Internet—and you can go through thousands and thousands of words—and find out that something you called up expecting it to be innocent is not, you could be prosecuted for receiving it under this statute.

I think that goes too far. I think that could be far better worded. I think that if we had the Justice Department study the area and make recommendations that we then act upon within a very short period of time, which is also in my amendment, I think it would be far better.

What I worry about is not to protect pornographers. Child pornographers, in my mind, ought to be in prison. The longer the better. I am trying to protect the Internet, and make sure that when we finally have something that really works in this country, that we do not step in and screw it up, as sometimes happens with Government regulation.

When it came out that I was looking for an alternative approach, one that would allow the Justice Department to find a way to go after pornographers but to protect the free use of the Internet, I received these petitions almost immediately.

Every page of this stack of documents that I am holding has dozens and dozens of names from across the Internet. These are people saying yes, that is the way to do it. Find out how to go after the pornographers, but keep our Internet working. There were 35,000 petitions, in a matter of days.

In that regard, Mr. President, I ask unanimous consent that an article in the New York Times magazine this Sunday by James Gleick, titled, ''This Is Sex?'' be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times Magazine, June 11, 1995]

THIS IS SEX?

(By James Gleick)

At first glance, there's a lot of sex on the Internet. Or, not at first glance—nobody can find anything on the Internet at first glance. But if you have time on your hands, if you're comfortable with computing, and if you have an unflagging curiosity about sex—in other words, if you're a teen-ager—you may think you've suddenly landed in pornography heaven. Nude pictures! Foul language! Weird bathroom humor! No wonder the Christian Coalition thinks the Internet is turning into a red-light district. There's even a ''Red Light District'' World Wide Web page.

So we explore. Some sites make you promise to be a grown-up. (O.K.: you promise.) You try ''Girls,'' a link leading to a computer at the University of Bordeaux, France. The message flashes back: Document Contains No Data. ''Girls'' at Funet, Finland, seems to offer lots of pictures (Dolly Parton! Ivana Trump!)—Connect Timed Out. ''Girls,'' courtesy of Liberac University of Technology, Czech Republic, does finally, with painful slowness, deliver itself of a 112,696-byte image of Madchen Amick. You could watch it spread across your screen, pixel by tantalizing pixel, but instead you go have lunch during the download, and when you return, there she is—in black-and-white and wearing clothes.

These pictures, by the way, are obviously scanned from magazines. And magazines are the ideal medium for them. Clearly the battle cry of the on-line voyeur is ''Host Contacted—Waiting for Reply.''

With old Internet technology, retrieving and viewing any graphic image on a PC at home could be laborious. New Internet technology, like browsers for the Web, makes all this easier, though it still takes minutes for the typical picture to squeeze its way through your modem. Meanwhile, though, ease of use has killed off the typical purveyor of dirty pictures, capable of serving hundreds of users a day but uninterested in handling hundreds of thousands. The Conservatoire National des Arts et Métiers has turned off its ''Femmes femmes femmes je vous aime'' Web page. The good news for erotica fans is that users are redirected to a new site where ''You can find naked women, including topless and total nudity''; the bad news is that this new site is the Louvre.

The Internet does offer access to hundreds of sex ''newsgroups,'' forums for discussion encompassing an amazing spectrum of interests. They're easy to find—in the newsgroup hierarchy ''alt.sex'' (''alt'' for alternative) comes right after ''alt.sewing.'' And yes, alt.sex is busier than alt.sewing. But quite a few of them turn out to be sham and self-parody. Look at alt.sex.fish—practically nothing. Alt.sex.bestiality—aha! just what Jesse Helms fears most—gives way to alt.sex.bestiality.hamster.duct-tape, and fascinating as this sounds, when you call it up you find it's empty, presumably the vestige of a short-lived joke. Alt.sex.bondage.particle-physics is followed by alt.sex.sheep.baaa.baaa.baaa.moo—help!

Still, if you look hard enough, there is grotesque stuff available. If pornography doesn't bother you, your stomach may be curdled by the vulgar commentary and clinical how-to's in the militia and gun newsgroups. Your local newsstand is a far more user-friendly source of obscenity than the on-line world,

but it's also true that, if you work at it, you can find plenty on line that will disgust you, and possibly even disgust your children.

This is the justification for an effort in Congress to give the Federal Government tools to control the content available on the Internet. The Communications Decency Act, making its way through Congress, aims to transform the obscene-phone-call laws into a vehicle for prosecuting any Internet user, bulletin-board operator, or on-line service that knowingly makes obscene material available.

As originally written, the bill would not only have made it a crime to write lewd E-mail to your lover; it would also have made it a crime for your Internet provider to transmit it. After a round of lobbying from the large on-line services, the bill's authors have added ''defenses'' that could exempt mere unwitting carriers of data, and they say it is children, not consenting adults, they aim to protect. Nevertheless, the legislation is a historically far-reaching attempt at censorship on a national scale.

The Senate authors of this language do not use E-mail themselves, or browse the Web, or chat in newsgroups, and their legislation reflects a mental picture of how the on-line world works that does not match the reality. The existing models for Federal regulation of otherwise protected speech—for example, censorship of broadcast television and prohibition of harassing telephone calls—come from a world that is already vanishing over the horizon. There aren't three big television networks now, serving a unified mass market; there are thousands of television broadcasters serving, ever-narrower special interests. And on the Internet, the number of broadcasters is rapidly approaching the number of users: uncountable.

With Internet use spreading globally, most live sources of erotic images already seem to be overseas. The sad reality for Federal authorities is that they cannot cut those off without forcing the middlemen—on-line services in the United States—to do the work of censorship, and that work is a practical impossibility. Any teen-ager with an account on Prodigy can use its new Web browser to search for the word ''pornography'' and click his way to ''Femmes femmes femmes'' (oh, well, better luck next time). Policing discussion groups presents the would-be censor with an even more hopeless set of choices. A typical Internet provider carries more than 10,000 groups. As many as 100 million new words flow through them every day. The actual technology of these discussion groups is hard to fathom at first. They are utterly decentralized. Every new message begins on one person's computer and propagates outward in waves, like a chain letter that could eventually reach every mailbox in the world. Legislators would like to cut off a group like alt.sex.bondage.particle-physics at the source, or at its home—but it has no source and no home, or rather, it has as many homes as there are computers carrying newsgroups.

This is the town-square speech the First Amendment was for: often rancorous, sometimes harsh and occasionally obscene. Voices do carry farther now. The world has never been this global and this intimate at once. Even seasoned Internet users sometimes forget that, lurking just behind the dozen visible participants in an out-of-the-way newsgroup, tens of millions of potential readers can examine every word they post.

If a handful of people wish to share their private experiences with like-minded people in alt.sex.fetish.hair, they can do so, efficiently—the most fervent wishes of Congress notwithstanding—and for better or worse, they'll have to learn that children can listen in. Meanwhile, if gun-wielding extremists wish to discuss the vulnerable points in the anatomy of F.B.I. agents, they too can do so. At least the rest of us can listen in on them, too. Perhaps there is a grain of consolation there—instead of censorship, exposure to the light. Anyway, the only real alternative now would be to unwire the Information Superhighway altogether.

Mr. LEAHY. I would note a couple things from the article. It points out that it is a sad reality for Federal authorities that they cannot cut off pornographers without forcing the middleman—the on-line services of the United States—to do the work of censorship. That work is a practical impossibility.

A typical Internet provider carries more than 10,000 groups. As many as 100 million new words go through them every day. Are we going to have a whole new group in the Justice Department checking these 100 million new words to find out if they are wrong?

Some of the words might appear, just looking at their listings, to be something wild. There may, in fact, be nothing there.

The article notes a listing for ''Femmes, Femmes, Femmes'', a French word for women. If you call up the listing, it is a catalog to the Louvre in Paris. Somebody has a sense of humor. But it gives everyone an idea. Is this person suddenly going to be under investigation because of his or her sense of humor?

I am about to yield the floor, Mr. President, and reserve the balance of my time. Before I do that, I ask unanimous consent to have printed in the RECORD a list of groups ranging from the Association of American Publishers to the American Library Association, the Newspaper Association of America, to the Times Mirror, all of whom support my idea of a study in finding a better way of doing this.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUPPORTERS OF LEAHY STUDY

Association of American Publishers (AAP).
Association of American University Presses (AAUP).
The Faculty of the City University of New York.
Interactive Working Group.
Online Operators Policy Committee of the Interactive.
Services Association.
American Advertising Federation.
American Association of Advertising Agencies.
American Library Association.
American Society of Newspaper Editors.
Association of National Advertisers, Inc.
Association of Research Libraries.
Business Software Alliance.
Center for Democracy and Technology.
Computer and Communications Industry Association.
Direct Marketing Association.
Electronic Frontier Foundation.
Feminists For Free Expression.
Magazine Publishers of America.
Media Access Project.
National Public Telecomputing Network.
Newspaper Association of America.
People for the American Way Action Fund.
Recreational Software Advisory Counsel
Software Publishers Association.
Times Mirror.

Mr. LEAHY. I yield the floor, and I reserve the balance of my time.

Mr. EXON. Mr. President, I yield 10 minutes to the Senator from Indiana.

Mr. COATS. Mr. President, I want to start by thanking my colleague from Nebraska for his interest in this subject and for his willingness to work with me and our staff in putting together what I think is an important piece of legislation, and a very effective piece of legislation.

Obviously, it is a difficult task, balancing first amendment rights with protections that go toward placing restrictions, in reasonable ways, so that particularly children are not recipients of obscene or indecent material.

Mr. President, sometimes our technology races beyond our ability to stop and reflect. We are left with a very dangerous gap, a period of time when society is unprepared to deal with the results of such rapid change. That is the situation we face with the Internet. The Internet is a tool of great potential.

Senator LEAHY has said it opens a new world of opportunity. It has become, without, I believe, anybody specifically planning it or anticipating it, it has become one of the largest distributors of pornography in the world.

One study found more than 450,000 pornographic images and text files are available to anyone with a modem. This vast library of obscenity and indecency was accessed 6.4 million times in just the last year.

Now, we need to make sure what we are talking about here. We are not talking about what most people now have images in their mind as to what is available off the Internet. I looked at the Senator's blue book, and I would urge every Senator to look at that before they make a final decision on what we are doing here. It is important to understand the kind of material that is available. Everything imaginable. We are talking about images and text that deal with the sexual abuse of children. We are talking about images and words and sexual abuse of infants.

By one estimate about a quarter of the images available involve the torture of women. We are dealing in many, many cases with perversion and brutality beyond normal imagination and beyond the boundaries of a civil society.

These facts are clear, because it is available now in the Internet, and we have pictures of it if anybody wants to see it, or copies of the text that is available on the Internet.

There is one more fact that ought to move the Senate from great and deep concern to immediate action here today. That is the fact that the Internet is the one area of communication technology that has no protection at all for children.

Now, we face a somewhat unique, disturbing and urgent circumstance, because it is children who are the computer experts in our Nation's families.

My generation—I have not figured out how to use the VCR yet. I have a blinking 12 I do not know how to get rid of. It is the children today who are trained from almost kindergarten on, on how to access the computer.

They have technology available at their fingertips that most adults do not have. Sometimes in the interest of helping with their homework or for the development of our children, we place the computer either in a special room or even in their bedrooms.

Of the 6.8 million homes with on-line accounts currently available, 35 percent have children under the age of 18. The only barriers between those children and the material—the obscene and indecent material on the Internet—are perfunctory onscreen warnings which inform minors they are on their honor not to look at this. The Internet is like taking a porn shop and putting it in the bedroom of your children and then saying ''Do not look.''

I think anybody who is a parent understands that is a pretty difficult situation to enforce. That really is a miscarriage of the responsibility that I think adults hold to our society, to our children in our society.

We have all read the worst abuses of this new technology. Children, not realizing the danger, give out their names, their addresses, their phone numbers to people they meet over the Internet. They become easy targets for sexual abuse. Recently, one man, in an attempt to find out just how difficult a problem this was, posed—typed in on the computer—posed himself as a 13-year-old. In the course of one evening on-line he was approached by more than 20 pedophiles.

I suggest that, as difficult and as horrendous as these stories are, the effect of this kind of material, this kind of practice is far broader. It does not turn all who see it into rapists and killers, but it does kill something about our spirit, particularly the spirit of our children. I think we have always felt a special responsibility and obligation to defend childhood through parents, through society; to make it, to the best extent we can, a safe harbor of innocence. It is a privileged time to develop values in an environment that is not hostile to our children.

But the Internet has invaded that protected place and destroys that innocence. It takes the worst excesses of sexual depravity and places it directly into the child's bedroom, on the computer that their parents purchased in the thought it would help them do their homework or develop their intellect. When sexual violence and gross indecency are available to anyone at the touch of a button, both an individual or a culture become desensitized. It is not always that people emulate this material, but often you can become immune to it. The images and messages act like a novocaine on our national conscience. They numb our capacity for outrage.

What used to outrage us now becomes almost commonplace. They have invaded our homes. They have invaded the minds of our children. I think they have numbed us to the shock that used to be present when this kind of material was exposed.

This is an issue beyond partisanship. It is sponsored by a Democrat and Republican. I hope our concern will unite people across the ideological spectrum. A vote for the Exon-Coats amendment is a way to side with women endangered by rape and violence, to side with children threatened by abuse, to side with families concerned about the innocence of their children and the decency of our culture.

The question, in my mind, is not if we should act but what we should we do. I believe the Exon-Coats amendment is a serious, thoughtful answer to that question. It is carefully crafted to be constitutional, to address the constitutional questions. But it is also designed to leave pornographers on the Internet, who would provide their material to children, with no place to hide.

The approach we are taking has been legally upheld in the dial-a-porn statutes. It extends that approach, which has already proven its worth, to this new technology.

What we are doing here is not new. What we are doing here is not something that has not been debated before this body. We are taking the standards adopted by the Senate, by the Congress, signed into law, that apply to the use of these kinds of communications over the phone wires and applied it, now, over the computer wires. It is just simply a different means of bringing a communication into a home—through the computer rather than through the phone. We are taking the same standards.

This Senate, on November 16, 1989, voted 96 to 4 to adopt these standards; 96 Members of the Senate have already voted to adopt these standards and apply it to the telephone communication of obscenity and indecency. All Senator EXON and I are trying to do is apply those same standards now to this new means of reaching into our homes.

The bottom line is simple. We are removing indecency from areas of cyberspace that are easily accessible to children. If individuals want to provide that material, they have to do so with barriers to minors. If adults want access to the material, they have to make an affirmative, positive effort to get it.

Let me repeat that. That is the critical part of this bill. We are simply saying here if you are in the business of providing this material, you have a responsibility, and it is punishable by penalty of law if you violate that responsibility—I ask the Senator for 5 additional minutes.

Mr. EXON. I wish to yield whatever additional time the Senator from Indiana requires.

Mr. COATS. I thank the Senator from Nebraska for the additional time.

Mr. President, all we are saying is, if you are in the business of providing this material, you have to provide barriers so it does not get in the hands of children. If you are an adult who wants to receive this material, you have to call up and get it. You have to subscribe to it. You have to prove you are an adult before you receive it.

What would our amendment do? It would clean up the Internet. We ban obscenity. And we require that indecency be walled off so children cannot have access.

We also require commercial on-line services to adopt this standard. If they wish to provide indecent material, they have to make what we call an effective, good-faith effort to segregate it from access to children and, as the Senator from Nebraska has said, we protect women and children from sexual predators who use this technology to harass and to stalk.

Critics of the amendment are going to say it will cripple or close the Internet. Nothing could be further from the truth. Our legislation includes reasonable protections for businesses and service providers who act in good faith to shield children from indecency. We provide defenses for those who do nothing more than merely provide access to the Internet. This means that small businessmen and others who simply have a computer in their office are not going to be subjected to the penalties when that computer is misused. It is important to note that both the chamber of commerce, representing business, and a number of national family groups concerned about pornography, have both endorsed this legislation. They have understood we have defined an approach that is strong but reasonable and realistic.

Critics may also charge the standards we have set are too high and this will force businesses to deny children access to the Internet entirely, but that is not true. That is a scare tactic, not an argument. Our legislation simply provides the same protections for children that currently exist in every other sector of our society.

Pornographic magazines today cannot be sold to minors. Telephones today cannot be used to provide indecent messages to minors. But magazine stores and telephone companies are alive and well. They still succeed because the reasonable efforts that we ask in the interests of children are not crippling demands.

Mr. President, one of the most urgent questions in any modern society is how we humanize our technology, how we make it serve us instead of corrupt us. America is on the frontier of human knowledge but it is incomplete without applying human values.

One of our most important values is the protection of our children, not only the protection of their bodies from violence but the protection of their minds and souls from abuse.

We cannot and we should not resist change. But our brave new world must

not be hostile to the innocence of our children. The Exon-Coats amendment is a reasonable amendment. I hope that Members will support it.

I am pleased to join the Senator from Nebraska in offering it to the Senate for its consideration.

I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, unless the distinguished Senator from Nebraska is seeking recognition, I yield 20 minutes to the distinguished Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I thank the Chair.

Mr. President, I rise in support of the amendment offered by the Senator from Vermont, and I am pleased to be a cosponsor of the amendment because I think that is the right approach. I oppose the second-degree amendment offered by the Senator from Nebraska.

But I first want to applaud the Senator from Nebraska, Senator EXON, for his concern about the need to protect children from obscene and indecent material.

No one has done more than he to raise the awareness of parents, educators, and legislators about the need to address the problem of materials on computer networks that may not be appropriate for children. One needs only to ''surf the net'' bulletin boards, read newspapers, periodicals, and listen to broadcast media to know that the question of obscenity and indecency on computer networks is one of the hottest topics around. The Senator for Nebraska is responsible for the debate on this important issue and I applaud his very genuine concern, his good intentions, and hard work to protect children.

I have children of my own, and there are materials available through the Internet that would not be appropriate for them. Some of those materials skirt the boundaries of indecency or obscenity and other materials, while not indecent, are of an adult nature that my children may not have the maturity to understand at their age.

So I, too, want to find methods to allow parents to protect their children from material on computer networks which they view as inappropriate without trampling on first amendment rights of the users of interactive telecommunications systems.

I regret to say that I do not believe the Senator from Nebraska has revised the language as reflected in this second-degree amendment, which achieves that end.

The Senator from Nebraska has gone a long way to revise the language of the Communications Decency Act to allay the concerns of antipornography groups, civil liberties organizations, and law enforcement officials who raised objections to the bill. His efforts to accommodate his colleagues only underscore his commitment to the welfare of our children.

The language, as modified, now makes it a criminal offense, punishable by up to 2 years in prison and/or a $100,000 fine, to knowingly make, create, or solicit and initiate the transmission of, or purposefully make available any indecent—I emphasize the word ''indecent''—communication, request, suggestion, proposal, image, or other communication to a person under 18 years of age.

That would appear, on its face, to be within the scope of the Government's authority to regulate indecent speech directed at minors. The Supreme Court in the Pacifica Foundation case and other decisions has made it clear that the State may well have an interest in prohibiting indecency to minors.

However, I, along with my colleague from Vermont, continue to have concerns about this provision. We share the goal of this provision, but disagree on the means to achieve that end.

The crux of the problem, however, is that due to the unique nature of interactive telecommunications systems, attempts to prohibit indecent speech to minors on these networks raises questions of constitutionality.

The Supreme Court, in the Sable decision, made it clear that any attempts to regulate indecent communications directed at minors must take into account the medium being used and the least restrictive means to achieve the goal of prohibiting indecency to minors. Thus, under Pacifica, offensive works could be banned from radio broadcasts during certain hours because there was, in effect, no other less restrictive means of preventing minors from being exposed to such materials.

In contrast, Sable struck down broad Federal legislation seeking to ban certain communication via the telephone because there were alternative, less restrictive means available. The Federal statute in the Sable case was finally upheld when it was modified to require providers of sexually explicit telephone services, the so-called Dial-A-Porn services, to adopt mechanisms such as credit card authorization or other means of verifying age to prevent minors from accessing such services.

In other words, where alternative means are available to block access by minors to these services, those methods must be implemented rather than denying adults their constitutionally protected right to such material.

The proposed amendment not only adopts an approach that is not the least restrictive, it has the potential to retard significantly the development of this new type of interactive telecommunications.

CHILLING EFFECT ON CYBERSPACE SPEECH

I am concerned that this legislation will have a chilling effect on constitutionally protected speech on interactive communication networks, potentially slowing the rapid technological advances that are being made in this new technology.

Because of the unique nature of interactive telecommunications networks, prohibiting indecency to minors without impacting constitutionally protected communications between adults must be carefully tailored.

One of the most popular services accessed via the Internet is USENET, a series of interactive bulletin boards, news groups, and other participatory forums which are dedicated to different topics. They are literally thousands of these groups available on computer networks and they are used widely for discussion of everything from current events such as the legislation we are discussing today to completely obscure subjects. They are used for recreation, entertainment, business, research, and many other purposes.

Users participating in those newsgroups may simply read the messages or they may post their own. There is no way to know who will be reading your message.

Since it is possible that any minor whose home computer can access the Internet would also have access to the public bulletin board, one could make the case that the adult posting the so-called indecent message did so knowing that a minor might see the message.

Thus, if this legislation became law, an adult participant on a bulletin board who posted a profane message using some of the ''seven dirty words'' on any subject could be subject to criminal penalties of up to 2 years in prison or a $100,000 fine, if a minor might read the message posted on that bulletin board.

This threat of criminal sanctions could have a dramatic chilling effect on free speech on interactive telecommunications systems, and in particular, these newsgroups and bulletin boards accessed through the Internet. Quite simply, adults will have to watch what they say on these forums.

Let me provide an example of how that might occur. According to an article in the Phoenix Gazette earlier this year, a large computer bulletin board was raided by the Arizona State Department of Public Safety and the local police for providing obscene material on their service. While months later the operators of that service had not yet been charged, it was reported that ''The crackdown had a chilling effect on providers of on-line services. Within days, operators of similar boards removed obscene files or eliminated public access to them.''

Now, Mr. President, there is no issue raised when the legitimate law enforcement efforts to enforce anti-obscenity laws and ordinances have a chilling effect on the distribution of obscene materials. Under a constitutional interpretation in our country, obscenity does not have the same constitutionally protected status as nonobscene speech.

However, Senator EXON's bill would likely have a chilling effect on protected speech—or speech which may be perceived to be indecent, but not obscene.

Communication between adults through the Internet would likely be

reduced to the lowest common denominator—that which is appropriate for children. Mr. President, that is not free speech.

INDECENCY DEFINED BY COMMUNITY STANDARDS

Second, Mr. President, the threat of criminal sanctions despite a user's lack of control over, or knowledge of, who views his/her message, is of additional concern given that indecency is defined based on community standards.

The definition of indecency for computer networks hasn't been fully explored. For broadcast media, FCC has defined indecency as ''language or material that, in context, depicts or describes in terms patently offensive as measured by contemporary community standards for broadcast medium, sexual or excretory activities or organs''—including the so-called seven dirty words.

The nature of interactive telecommunications makes even the ''community standard'' and entirely different matter. As a bulletin board user you may not even be aware of who will be reading your communication, let alone where they are located for purposes of figuring out what a community standard might be.

It is unclear what would constitute a community standard for indecency? Whose community? That of the initiator or that of the recipient? Will all free speech on the Internet be diminished to what might be considered decent in the most conservative community in the United States?

An article in the San Diego Union-Tribune in February of this year documented a case in which a Tennessee court convicted a California couple of violating obscenity laws with their sexually explicit bulletin board based and operated in California. The jury applied the community standards of Memphis because the materials from the bulletin board were downloaded there.

Again, in the case of obscenity, the community standard is of less concern because obscene speech is not protected. But in S. 652, we are prohibiting protected speech, so-called indecent speech. The uncharted community standards for indecency pose a risk that few users will be willing to bear.

INDECENCY PROVISIONS COULD MAKE ILLEGAL SOCIALLY VALUABLE FORUMS

Based on the definition which has been applied to broadcast media, we could declare the content of many bulletin boards indecent—including those containing medical and academic discussions, on-line support groups where users discuss the trauma of sexual and physical abuse, or bulletin boards which contain information on sexually transmitted diseases and AIDS and how one might prevent them.

Arguably, while the content is of a mature nature, these types of forums have tremendous social value. However, if minors gained access to these services, those making the indecent comment could be subject to 2 years in prison. Many of these bulletin boards for adults would simply cease to exist.

Would the threat of criminal sanctions and the unclear nature of an indecency standard have a chilling effect on free speech via computer networks? I say it will. You bet it will.

Adults will be forced to self-censor their words, even if they did not intend those words for children and even if they are protected by the first amendment.

Mr. President, the use of computer networks holds tremendous potential for the expansion of public dialog and discourse advancing the value of the first amendment. It is an industry that is growing by leaps and bounds.

The business, educational, and social welfare potential of the information superhighway is almost without limit. It would be devastating to limit the potential of this medium by taking steps that could have the effect of silencing its users.

DIFFERENT STANDARDS FOR THE SAME MATERIALS

An additional concern, Mr. President, is that this legislation will establish different standards for material which appears in print and on the computer screen. The legislation would make certain individuals subject to criminal penalties if they made their materials and publications available on computer networks to which minors had access. However, that same material, the same message would be perfectly legal, and fully protected under the Constitution, in a bookstore, or a library. If a minor stumbled across, or purposefully sought, indecent materials in a bookstore and simply looked at that material, the author of that material would not be subject to criminal penalties nor would the bookstore or library that stocked the material.

I urge my colleagues to keep in mind that many published works are available over the World Wide Web through the Internet. There is even a ''Virtual Library'' on the World Wide Web. Therefore it is entirely conceivable that we would have two separate standards for legality of the same works published in the print media and on electronic communications systems.

Civil liberties advocates point out that under this bill it is possible that an individual who makes available electronically the novels such as ''Lady Chatterley's Lover,'' ''Catcher in the Rye'' by J.D. Salinger, or the many novels of Kurt Vonnegut such that they are potentially accessible to minors, could be subject to criminal penalties while could be found in any library and bookstore. Why the different standard?

INTERACTIVE MEDIA'S UNIQUE TECHNOLOGICAL CHARACTERISTICS MUST BE CONSIDERED

The fundamental flaw in the language proposed by Senator EXON is that it attempts to regulate computer networks as we regulate broadcasting and telephones when it has little in common with either of them. Although the materials transmitted through interactive telecommunications systems often bear a greater resemblance to the print media, the fact remains that these interactive telecommunications systems have some entirely unique characteristics which need to be considered.

It is a unique form of media posing differing challenges and opportunities. Unlike broadcast or print media, an individual on the Internet can be both a communications recipient and originator simultaneously. Congress needs to understand these differences before we can determine how best to protect children and the constitutional rights of Americans.

SUPREME COURT ADDRESSES CONSTITUTIONALITY OF CONTENT REGULATION BASED ON CHARACTERISTICS OF THE MEDIUM

The way in which the Supreme Court has dealt with obscenity and indecency questions as they relate to the first amendment has a lot to do with the structural characteristics of the medium in question.

The Supreme Court has taken into consideration the scarcity of the medium as a public resource as well as the ability of the user to control the material he or she might view over the medium. The print media has been afforded a greater degree of first amendment protection because of the decentralized and nonintrusive nature of the medium. Newspapers are inexpensive to produce and to purchase, virtually unlimited in number, and are noninvasive—that is, it is easy for a consumer to avoid the media if they wish.

Broadcasting, which uses the scarce public spectrum and which is more difficult to control from an end-user standpoint, has not enjoyed the same protection as print media. It is easier to come across indecent or offensive material while flipping through the channels on your television. Broadcast spectrum is also limited so courts have upheld content regulation to ensure that public resources furthered the public interest.

Interactive communications are different, Mr. President. There is a greater ability on computer networks to avoid materials end users do not wish to receive than exists for either broadcast media or telephony, but arguably less than exists in print media.

Users of the Internet and other on-line functions typically do not stumble across information, but go out surfing for materials on a particular subject. As such, they use search words, message headings, and the so-called gopher as their guide. Most newsgroups or bulletin boards that have sexually explicit materials are named such that there can be little doubt what types of materials one might encounter if you try to get into that area.

RESTRICTION OF PROTECTED SPEECH JUSTIFIED TO SERVE COMPELLING GOVERNMENT INTEREST ONLY FOR LEAST RESTRICTIVE MEANS

In addition to characteristics of scarcity and user control, the Supreme Court has allowed the abridgement of

protected speech based on certain criteria. Over the years, the Court has carefully examined two factors when determining the extent to which content shall be subject to government controls without violating the first amendment:

Whether there is a compelling government interest to abridge protected speech;

Whether abridgement is accomplished in the least restrictive means.

Mr. President, while the Supreme Court has recognized that there may be a compelling government interest in shielding minors from indecent communications, I do not believe that the provision in the Exon bill will serve that interest in the least restrictive means. The provision, while appearing to apply only to minors, will in fact restrict the free speech of adults.

The interactive electronic communications market is growing and the technology is evolving rapidly. Contrary to what others might contend, it is not clear that there are not adequate technical means available to parents and service providers to screen out objectionable material for children.

There is currently software available which allows parents and employers to screen out objectionable services or newsgroups on the Internet. On-line service providers also have the ability to provide parents with a choice of what types of information their children should access. Schools and universities that provide the service of connection to the Internet can also decide which types of news groups on USENET they will make available. Carnegie-Mellon University recently made offensive-news groups less accessible to students by taking their names off their master list.

I want to clarify one other technical matter. The Senator from Nebraska presented a chart which indicated that one's home computer is connected directly to the Internet.

That is not always accurate, Mr. President. In many cases, users need to access first a remote computer or connect with an access provider.

In some cases, that service provider is an online service, like Prodigy or America On-Line. Other services merely provide the connection services, much like a common carrier to the home users.

Why is this a crucial distinction? Because it makes clear there are ways to control what one receives on a computer. Because the access provider acts as an intermediary between the user and the Internet, they can also eliminate access to certain services. Many of those Internet access providers are already recognizing the market potential of providing parents and schools with the opportunity to control the access of children to some services on the network. And I am not just talking about the big ones like Prodigy and CompuServe. I am talking about Siecom, Inc., which is an Internet service provider in Grand Rapids, MI, which supplies 20 elementary and secondary schools with restricted one-way access to USENET discussion groups through the Internet. The company does not make available the news groups on USENET which may be inappropriate for children. That company is realizing that the simple service of not providing access to all the USENET services has been a marketing advantage for them.

The PRESIDING OFFICER. The Senator has now used 20 minutes.

Mr. FEINGOLD. I ask that I be yielded 5 minutes.

Mr. LEAHY. I yield the Senator 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 additional minutes.

Mr. FEINGOLD. Mr. Krol states in his book, when explaining the technical needs of Internet users:

> No matter what level you're at, Internet access always comes via an access provider; an organization whose job it is to sell Internet access.

He further indicates that Internet service providers are participating in a competitive market. That means the opportunity exists to solve at least part of the problem through the marketplace today, not through governmental prohibitions.

None of the technical safeguards available, such as blocking software and provider screening, are perfect, but the nice thing is they do not violate the first amendment.

Mr. President, I ask unanimous consent to print an article in the RECORD from the Wall Street Journal describing some of these technologies.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, May 15, 1995]

NEW SOFTWARE FILTERS SEXUAL, RACIST FARE CIRCULATED ON INTERNET

SURFWATCH PROGRAM ADDRESSES RENEWED CYBERSPACE FEARS FOLLOWING OKLAHOMA BLAST

(By Jared Sandberg)

Think of it as a parental hand shielding children's eyes from the evils of cyberspace.

That's the gist of a software program developed by SurfWatch Software Inc., a Los Altos, Calif., start-up. The program, expected to be released today, will allow Internet users to block sexually oriented data transmitted via the global computer network.

''The goal is to allow people to have a choice over what they see on the Internet by allowing them to filter or block sexually explicit material,'' said Jay Friedland, SurfWatch's vice president of marketing. Mr. Friedland said the software will also allow users to filter out files such as bomb-making manuals and neo-Nazi screeds, which have been circulated by hate groups on the Internet.

A growing number of firms are racing to provide tools to filter out pornographic and racist fare stored on the Internet before the government takes action itself. The proposed telecommunications-reform bill before the Senate makes it illegal for individuals and corporations to put sexually explicit material on the Internet. Last week, the Senate held hearings in the wake of the Oklahoma bombing regarding the use of computer networks to disseminate hate literature that could incite violence.

The government moves concern free-speech advocates, who prefer a technological fix. ''We don't have to rely on the government to attempt to censor everything on the Internet,'' said Daniel Weitzner, deputy director of the Center for Democracy and Technology, a civil-liberties group that testified at last week's hearings. Users have no control of broadcast media, other than to change channels or turn it off. But in cyberspace, ''SurfWatch is a great example of the flexibility and user control that is inherent in interactive media,'' Mr. Weitzner said.

On-line services such as Prodigy Services Co. only grant Internet access to children with parental permission. Jostens Inc. recently released software for schools that allows teachers to block electronic bulletin boards that contain pornographic pictures.

SurfWatch's Mr. Friedland said the software contains the Internet addresses of computers storing sexually explicit material, blocking a user's attempt to access those computers. But such porno-troves often are a moving target: once users find out about them, those computers tend to get overwhelmed by traffic, shut down and move elsewhere on the network and take a new address.

To counter that problem, SurfWatch will charge users a subscription fee for software updates that include new offending Internet addresses. The company is using a database to search the Internet for words such as ''pornography'' and ''pedophilia'' and make a list of Internet sites, which won't be visible to users.

Mr. FEINGOLD. Mr. President, clearly there are ways parents can exact control over what their children can access on their home computers. It is clearly preferable to leave this responsibility in the hands of parents, rather than have the Government step in and assert control over telecommunications. Whenever there is a choice between Government intervention and empowering people to make their own decisions, we ought to try first to use the situation of the approach that involves less Government control of our lives.

It is also not clear that existing criminal statutes are incapable of enforcing laws to protect children on interactive telecommunications. There have been many reports of prosecution of illegal activity related to the transmission of obscenity using interactive telecommunications.

So, Mr. President, I do not even think it is clear we do not have the authority today to prosecute online obscenity. The truth is we just do not know at this point. We need more information. However, it is entirely clear to me that Congress certainly should not abridge constitutionally protected speech if there are less restrictive means of serving the compelling Government interest.

To conclude, that is why I strongly support, as an alternative, the efforts of the Senator from Vermont. This amendment requires an expeditious evaluation by the Department of Justice of the technology available now to allow parents to protect their children

from objectionable materials while upholding the values of the first amendment. The Attorney General must also evaluate whether existing laws are adequate to enforce criminal laws governing obscenity.

This study, which has to be completed within 5 months, will provide Congress with the information we need before we consider legislation. Given the first amendment issues at stake here, I believe the Judiciary Committee of the Senate should also be given an opportunity to review this matter. I do not, in theory, object to some legislation.

I simply want to work with my colleagues to determine how best to protect children, while at the same time protecting the rights of Americans to free speech.

I will close with these remarks from an article in the Federal Communications Law Journal by Prof. Fred Cate. In the article, he discussed how electronic communications have changed the way we communicate and have even greater potential to revolutionize communications. He stated:

> If 60 years of the Communications Act of 1934 has taught us nothing else, it must caution against excluding communications media from the full protection of the first amendment. To do so with today's electronic information technologies would create an exception that would make the rule of freedom of expression meaningless.

Mr. President, I believe the Exon amendment, unfortunately, does create such an exception, and I urge my colleagues to oppose this language and support, as an alternative, the amendment of the Senator from Vermont.

I urge my colleagues to vote accordingly when we vote. I thank the Chair and yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I yield myself 10 minutes.

I have been listening with keen interest to my friends and colleagues, the Senator from Vermont and the Senator from Wisconsin. I hope that they will listen very carefully to some of the things this Senator has to say, because everything that they have brought up are things that I considered very long and very hard when I started working on this difficult situation a year ago. Nothing they said is new. I just think they are, without malice aforethought, putting some spin on the Exon-Coats amendment that simply is not there.

I ask unanimous consent that Senator BYRD and Senator HEFLIN both be added as original cosponsors to the Exon-Coats amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. I appreciate very much Senator BYRD and Senator HEFLIN, two very distinguished lawyers, the latter, Senator HEFLIN, being the former chief justice of the supreme court of Alabama. I think both of them would not be a cosponsor of this Exon-Coats amendment unless they felt it had adequate constitutional safeguards.

At this time, Mr. President, I ask unanimous consent that the following letters in support of the Exon-Coats amendment be printed in the RECORD.

The first is from the Christian Coalition headed: ''Senators EXON and COATS Have Joined the Efforts. Support the Exon-Coats Antipornography Amendment.'' And we have the support of that organization.

Next, a letter from the National Coalition for the Protection of Children and Families that has essentially the same message in different words.

Next, Mr. President, a reference that Senator COATS made earlier in his excellent presentation. I pause for just a moment to thank him for all of his help and cooperation and for the excellent, forthright, factual statement he made in explaining what we are attempting to do and how seriously we consider this to be. That is why we are acting. Senator COATS mentioned the chamber of commerce supports this legislation. I have a letter from the chamber of commerce that I likewise will include in the unanimous-consent request.

Next is the Family Research Council, along the same general line.

Next is a news release from the National Law Center for Children and Families, of Fairfax, VA, that follows the same general category.

Last but not least, a news release from Women of America Say ''Enough Is Enough.''

I ask unanimous consent that those letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SENATORS EXON AND COATS HAVE JOINED THEIR EFFORTS. SUPPORT THE EXON-COATS ANTI-PORNOGRAPHY AMENDMENT

CHRISTIAN COALITION,
Washington, DC, June 13, 1995.

DEAR SENATOR: You may have received an earlier letter from the Christian Coalition urging your support for the Coats amendment to S. 652, the Telecommunications Reform Act. We are pleased to see that the competing versions of anti-pornography legislation proposed by Senators James Exon and Dan Coats have subsequently been reconciled into a joint amendment. I write you now to urge your support for this bipartisan computer pornography amendment.

Pornography on the computer superhighway has become so prevalent and accessible to children that it necessitates congressional action. The comprehensive telecommunications legislation which the Senate is currently debating is an appropriate vehicle to address this critical problem, and we urge the Senate not to let this opportunity go by.

Although Senator Patrick Leahy and others may urge that the matter be referred to the U.S. Department of Justice for its review and analysis, we oppose such a course of action. The increasing existence of computer pornography today requires action, not more study.

On behalf of the 1.6 million members and supporters of the Christian Coalition, we urge you to support the Exon-Coats amendment when it comes to the Senate floor. Thank you for your attention to our concerns.

Sincerely,

BRIAN C. LOPINA,
Director,
Governmental Affairs Office.

NATIONAL COALITION FOR THE PROTECTION OF CHILDREN & FAMILIES,
Cincinnati, OH, June 13, 1995.

Hon. JAMES EXON,
U.S. Senate,
Washington, DC.

DEAR SENATOR EXON: I am writing you on behalf of the National Coalition for the Protection of Children & Families to offer our strong support for your willingness to introduce an amendment, along with Senator Coats, to the Telecom legislation dealing with the problem of children's access to pornography on computer networks. We believe that such legislation is *vital* to the well being of our nation's most important resource, its children.

Unless the problem of computer pornography is addressed now, millions of children will have access to the worst and most violent forms of pornography via computer networks and the Internet. Currently, almost any child with access to the Internet can quickly download and view bestiality, torture, rape, mutilation, bondage, necrophilia and other unspeakable acts. The pornography industry has opened up a free store on the Internet and invited our children to get whatever they want. Pornographers have no right to hijack Cyberspace, which offers a host of promising technologies which should be available to children and families without fear of encountering violent, degrading pornography. Our society now faces a fundamental choice of whether we really believe that the Internet is a public network where children will be welcome, or rather, one which belongs just to pornographers and their consumers.

We have had the opportunity to review the language of the ''Exon-Coats'' amendment in detail. We believe your careful approach to amending the telecommunications legislation is constitutional, wisely tailored to help protect children from this heinous material, and effective in navigating complex court precedents in this area.

Thank you for your willingness to address these critical issues. Your leadership on this issue is a great service to the world's children.

Sincerely,

DEEN KAPLAN,
Vice President, Public Policy.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, June 13, 1995.

Members of the United States Senate:

On behalf of the U.S. Chamber of Commerce Federation of 215,000 business members, 3,000 state and local chambers of commerce, 1,200 trade and professional associations, and 72 American Chambers of Commerce abroad, we strongly urge your support for the amendment to be offered by Senators Exon (D-NE) and Coats (R-IN) to S. 652, the ''Telecommunications Competition and Deregulation Act of 1995,'' regarding revisions to the Communications Decency Act.

The Exon-Coats amendment firmly protects children against obscene, indecent, and other types of objectionable communications. It also preserves the interests of business users of information systems. The language is rightfully targeted to reach and prosecute the ''bad actors'' who exploit the capabilities of information technologies to reach children and unconsenting adults,

which we support fully. Yet adequate defenses and safe harbors are provided to ensure that American businesses can utilize these telecommunications-based products and services to enhance their competitiveness, address major business problems such as employee training and customer service, and reach new domestic and global market shares and suppliers—without fearing unintended or uncertain liabilities flowing from the actions of others.

Unlike some previous proposals, this legislation provides the certainty that businesses need to ensure that they can employ online information technologies. The absence of this certainty would create a broad and potent disincentive, especially for small businesses, to the use of online systems and the interconnection of private business systems with the NII. The Chamber membership is calling on Congress to enact telecommunications reform legislation to enhance our children's lives and our business' productivity. This amendment does both.

Please vote ''Yes'' for the Exon-Coats amendment to S. 652.

Sincerely,

R. BRUCE JOSTEN,
Senior Vice President.

FAMILY RESEARCH COUNCIL,
Washington, DC, June 13, 1995.

DEAR SENATOR: I wrote to you last week with my concern about the pending anti-pornography amendments to the Telecommunications Bill and urging your support of the proposed Coats Amendment. Last night, Senator Exon agreed to join Senator Coats in his legislative approach against the obscenity and indecency polluting cyberspace. The Family Research Council commends these Senators for their willingness to take a stand on this unpopular issue. Today or tomorrow, the Exon-Coats Amendment will be offered which will criminalize commercial and non-commercial distribution of hard-core pornography through computers, as well as keep all forms of pornography out of the hands of the most vulnerable ''Net surfers''—our children.

I urge you to support the Exon-Coats Amendment to eliminate ''cyberspace'' as a safe haven for pornographers.

The Exon-Coats Amendment breaks new legal ground in the fight against porn by criminalizing ''free'' obscenity traded on the Internet, and by making it illegal to make indecent material available to children.

Importantly, the Exon-Coats Amendment still addresses the problem of porn on basic cable packages. It will prohibit cable programmers from forcing upon families channels which feature indecent programs when they sign up for cable. The indecent channels will be provided only upon specific request.

Computer pornography is the next great threat to our children's hearts and minds. I commend Senator Coats and Senator Exon for fighting an evil which transcends party lines.

Sincerely,

GARY L. BAUER,
President.

SUPPORT EXON-COATS COMPUTER PORN AMENDMENT SAYS NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES

The National Law Center for Children and Families (''NLC'') is a non-profit legal advice organization which supports law enforcement and governmental agencies in the prosecution and improvement of federal and state laws dealing with obscenity and the protection of children. NLC's Chief Counsel, Bruce Taylor, feels that today's version of the ''Exon-Coats'' amendment is both effective and constitutional. It would criminalize the distribution of obscenity on the burgeoning computer service networks, such as the ''Internet'', ''Use Net'', and ''World Wide Web''. The amendment also criminalizes the knowing distribution of ''indecent'' material to minor children. Both provisions cover noncommercial, as well as commercial, transmissions. This is important, since present law does not cover indecency to minors except for commercial dial-porn messages over the phone lines. Also, the Exon-Coats amendment would clearly cover all distributions of hard-core obscenity over the computer networks, whereas existing law has been enforced only against commercial sales of obscenity by common carrier and computer.

The vast amount of hard-core pornography on today's computer bulletin boards is placed there indiscriminately by ''porn pirates'' who post freely available pictures of violence, rape, bestiality, torture, excretory functions, group sex, and other forms of hard and soft core pornography which are as available to teenager computer users as to men who are addicted to pornography. A tough federal law is needed to deter such unprotected and viciously harmful activity and the Exon-Coats bill does just that, making such activity a felony punishable by up to two years in prison and $100,000 in fines.

Many of the previous provisions of the Exon bill were criticized by pro-family groups as too lenient and providing too many defenses for pornographers, as well as for the on-line computer service access providers, such as Prodigy, CompuServe, NETCOM, and America On Line. The present version of the Exon-Coats amendment would exempt the phone company carriers and computer access providers only to the extent that they provide mere access for users to connect to the services and boards of other companies and individuals beyond their control. To the extent any phone or computer access company would offer obscenity on their own boards, they would be as liable as anyone else. Likewise for making indecent material available to minors under age 18, if they do it—they are liable, but if they don't do it—they aren't liable if someone else does it. This puts the primary criminal liability on those who distribute obscenity to anyone and on those who make indecency available to minors without taking reasonable steps to limit it to adults. Although some people and groups may feel that the phone and computer access providers should bear responsibility for the traffic in obscenity and indecency that is available to minors, there are Constitutional limitations that apply by law to any act of Congress in these regards. One, regulations to protect minors from indecent speech must be the ''least restrictive means'' to protect minors while allowing adults access to non-obscene speech. Second, the law cannot impose strict liability for obscenity. The Exon-Coats amendment is designed to satisfy both constitutional requirements, while still providing a serious criminal deterrent to those who would put obscenity onto the computer nets or who would publicly post indecent materials within easy reach of children.

The amendment, therefore, contains ''good faith'' defenses that would allow any company, carrier, internet connector, or private individual to create reasonable and effective ways to screen children out of adult conversations and allow adults to use indecent, nonobscene, speech among adults. This should encourage the access providers to take steps to enforce corporate responsibility and family friendly policies and monitor their systems against abuse. When they do take such steps, the good faith defense would protect them from becoming liable for unfound or unknown abuses by others, and that is all we think the law can ask of them at this point. There is only so much that can be done in a way that is ''technically feasible'' at any point in time, and the Exon-Coats bill would not require anyone to take steps that are not technically feasible and does not, and should not, expect anyone to take all steps that may be technically possible. This bill would also allow the States to enforce their own obscenity and ''harmful to minors'' laws against the pornographers and porn pirates. If the chose to regulate the carriers and connectors, they would be bound by the Supremacy Clause of the Constitution and the First Amendment to using consistent measures. This is not inconsistent with existing requirements for the States to meet under any criminal law. The joint role of federal and state prosecution of those who distribute the obscenity, and indecency to minors, is thus preserved.

The good faith defense also allows responsible users and providers to utilize the existing regulations from the F.C.C. for dial-porn systems until such time as the F.C.C. makes new regulations specifically for the computer networks. This means that a company or individual who takes a credit card, pin number, or access code would be protected under present F.C.C. rules if a minor stole his parent's Visa card or dad's porn pin number. In other words, some responsibility still resides with parents to watch what their kids are watching on the computer. This is serious business and there is a lot of very harmful pornography on the ''Internet'', so parents better take an interest in what their children have access to, but cannot expect every one else to solve the entire problem for them. Federal law can make it a crime to post hard-core obscenity on the computer boards, but many people are willing to break that law. The porn pirates are posting the kind of porn that hasn't been sold by the pornography syndicate in their ''adult'' bookstores in nearly 20 years. This law should deter them from doing that any longer and it would allow federal prosecutors to charge them for it now.

The defenses to indecency are available to every one, so that every one has a chance to act responsibly as adults in protecting children from indecency. This is what the Supreme Court will require for the indecency provisions to be upheld as ''least restrictive'' under the First Amendment. Conversely, no one has a defense to obscenity when they distribute or make obscenity available. The only exception to this is for the carriers and connectors in their role as mere access connectors, only then would they be exempt from the obscenity traffic of others. However, if the on-line service providers go beyond solely providing access, and attempt to pander or conspire with pornographers, for instance, then they would lose their obscenity exemption and be liable along with every one else. This is a limited remedy to prevent the bill from causing a ''prior restraint'' on First Amendment rights. This bill would be nothing at all if it were struck down or enjoined before it could be used against those who are posting, selling, and disseminating all the pornography on the computer networks.

There has been some criticism that this bill in adopting good faith defenses, would make it ineffectual and that this would weaken the bill in the same way that the existing dial-porn law is not completely effective. We disagree. The defenses in the dial-porn law were necessary to having that law upheld by the courts. Without them, it was struck down by the Supreme Court. Only after the F.C.C. provided its technical screening defenses was the law upheld by the federal appeals courts. This law adopts those

constitutionally required measures for indecency and for obscenity only for the mere access providers. The dial-porn law has removed the pre-recorded message services from the phone lines. The pornographers have gone to live credit card calls. To the extent they are still obscene, they can and should be prosecuted by the Department of Justice, with the help of the F.B.I. That is what it will take to remove the rest of the illegal dial-porn services. The most ineffective part of the dial-porn law is not the F.C.C. defenses, they are fine. What is broken is the phone company defense in the statute, 47 U.S.C. §223(c)(2)(B), that allows the bell companies to rely on ''the lack of any representation by a provider'' of dial-porn that the provider is offering illegal messages. This means that if the dial-porn company does not tell the phone company that the messages are obscene or going to children as indecency, then the phone company doesn't have to block all the dial-porn lines until an adult subscribes in writing. This is not workable and should be fixed by Congress. The dial-porn law should also be amended to give good faith reliance only on a false representation by a dial-porn provider. If the phone company doesn't know about a dial-porn service, then they should not be responsible. However, the phone company should block all the dial-porn lines and only unblock them on adult request. This is the provision that is causing the phone companies not to act, not the F.C.C. defenses. There is no such provision in the Exon-Coats amendment that would allow the carriers or connectors to wait for the pornographers to confess guilt before they must act. If they know, they must act in good faith. No more, no less. This computer porn law is, therefore, better than the existing dial-porn law in that respect.

This amendment would allow federal prosecutions against the pornographers and porn pirates immediately, thus removing much of the hard-core material from the networks that the carriers would be providing access to anyway. This can't wait several months or years. If Congress has to exempt the connectors as long as they merely carry the signal and otherwise act in good faith, then so be it. It they abuse it, then Congress can take that break away when it is shown that they don't deserve it. In the meantime, this law will give federal law enforcement agencies a tool to get at those who are responsible for distributing the obscenity that we all complain of right now. It is a good and constitutional law and arguments that it is not enough are not true, not realistic, and could cause Congress to bypass this opportunity to enact an effective remedy to protect the public and our children from this insidious problem. Senators Exon and Coats have done an admirable and honorable job in forcing this issue to a resolution. They have agreed to a tough and fair law, with reasonable exemptions and defenses for legitimate and good faith interests. The effective role of alternative measures, like that of Senators Grassley and Dole, cannot be overlooked as part of the pressure that brought this matter to a successful point. The efforts to kill all effective action, such as the pornography protection and delay the bill of Senator Leahy of Vermont would offer to forego a criminal bill in favor of more ''study'', must be rejected as unreasonable and Congress should act immediately to criminalize obscenity on the computer networks and forbid indecent material being sent or made available to minors.

''ENOUGH IS ENOUGH!'' CAMPAIGN,
Washington, DC, June 14, 1995.

WOMEN OF AMERICA SAY ''ENOUGH IS ENOUGH!'' IN SUPPORT OF EXON-COATS COMPUTER PORN AMENDMENT

The ''Enough is Enough!'' campaign is a non-partisan non-profit organization which educates citizens about the harms of pornography and its link to sexual violence. ''Enough is Enough!'' is dedicated to eliminating child pornography and removing illegal pornography from the marketplace.

According to Dee Jepsen, President of ''Enough is Enough!'', ''We represent thousands of women and concerned men across America standing together in support of sound legislative measures that will enhance law enforcement and prosecution of the distribution of illegal pornography to children.''

''Furthermore'', states Donna Rice Hughes, Communications Director for the campaign, ''the current version of the Exon-Coats amendment will provide greater protection for children from computer pornography's invasion into America's homes and schools and still meet constitutional scrutiny.''

This measure is an essential step in protecting children from heinous forms of pornography available online.

Mr. EXON. Mr. President, let me now, if I might, go into some matters that I think are tremendously important.

First, I notice that my friend and colleague from Vermont indicated he has some 25,000 signatures that he has piled up on the desk down there from people who support his efforts, and his efforts are supported, of course, by my friend and colleague from Wisconsin.

What they propose to do with the underlying amendment is to punt, to recognize there is a problem that they both have, but what they are suggesting we do is just delay a punt.

We come from the football State of Nebraska. That is what the Nebraska football team does, Mr. President. Fourth down and 32 yards to go on their own 3-yard line, they always punt, except when they are down near the end of the game and they recognize the serious situation that they might be in and they might not get the ball back. Then they do not punt. They move aggressively forward, which is what we are trying to do in the thoughtful manner embodied in the Exon-Coats proposal.

Those people that my friend and colleague from Vermont is supporting in carrying the ball would be interested in knowing, I am sure, what generated many of those letters that have been offered in debate by the Senator from Vermont.

I happen to have a copy of a letter in this regard, which generated many of those letters, provided to me by my grandson. My grandson is 25 years old, and he is old enough to take care of himself. But he thought that I would be interested in this. This is a letter that has been widely distributed on the e-mail system. It says: ''The obscenity of decency. With the introduction of Senator J.J. EXON's Communications Decency Act, the barbarians are really at the gate.''

I have been called many things in my life, but never before have I been called a barbarian. I would hope that the Senator from Vermont would advise the people that he is using here as support for his position that his mutual friend, JIM EXON, is not a barbarian under any normally accepted definition of the term.

Let me go into some of the things that I have been hearing and listening to and attempt, as best I can, to maybe straighten out some of the concerns that I think are very real and sincere, as stated by my colleague from Vermont and my colleague from the State of Wisconsin.

First, let me say that the Exon-Coats amendment does not destroy, does not retard, does not chill accepted information, pictures, or speech. To the contrary. We are trying to make the Internet system, which is displayed here on this chart before me, safer, better, and to make it more frequently used.

I do not know the authenticity of the statement that I am about to make. But I have read that it has been estimated that up to 75 percent, Mr. President, of present computer owners have refused to join the Internet system with their home computer, precisely because they know and they fear—and evidently they have seen or been advised as to what I have here in the blue book. Once again, before anyone votes against the Exon-Coats amendment, if they are interested, I am willing to share this information with them. It has pictures in it that were taken directly off the Internet system last week. So I simply say we are not trying to destroy, we are not trying to retard and we are certainly not trying to chill the great system that is the Internet. Anyone who believes that is very badly misinformed.

I have also heard a great deal today about the parents' responsibilities, which, I guess, means that the parents that have such responsibilities must follow their children around all of the time. This is not simply something that the children have available to them at home. More likely, they are going to be introduced to it not at home, but in the schools. We have just made a concession in the telecommunications bill before us to give the schools and libraries a break, if you will, because we want them involved in this. The schools will be sources of the information that Senator COATS and I have been describing. The library is a place where they can pick it up. We also talk about some of the software and the off-limits proposition that some of the software may or may not provide.

I simply say, Mr. President, that those who know what is going on with the Internet today—those who have seen it firsthand, those who are concerned about making the Internet the greatest thing that has ever happened as far as communications exchange is concerned—are the ones that are supporting the Exon-Coats amendment. We want to make it even bigger, and

we want to make it even better, but not for raunchy pornography that would turn most people off. And to the 25,000 people who want to call this Senator a barbarian, I simply say that, evidently, they are so selfish—at least their actions are so selfish, that they simply say: We do not want to give up anything. We want to be able to see what we want to see, where we want to see it, any time we want to see it.

I simply say that what we are trying to do is constructively make some changes that are necessary. Let me review for just a moment, if I can, and make sure that everyone understands what the Internet is all about. The Internet, basically, is in the center of this chart or graph. From listening to many of my colleagues today, those who do not support the Exon-Coats amendment, I think that they view this as the way the Internet is. First, you have a child at home or an adult at home entering the Internet, and they have to buy that service from one of the many people who make money charging the entry into the Internet, where they have special provisions, special facilities which that particular provider might apply.

In addition to that, they apply for entry into the massive Internet itself. From the Internet, the child or the adult can go worldwide. We can go into all kinds of sources of information—the Library of Congress, any of the great universities, and all of the other massive sources of information. I think too many people believe that because the pornography bulletin board is sitting out here to the side, that you have to work to get to the pornography bulletin board. Mr. President, that is simply not the case. The pornographers have invaded the Internet down here, so that it is freely available, without cost—all of the outlandish, disgusting, pornographic pictures of the worst type, that some of my colleagues think we can handle by punting. This is not a time to punt; this is the time to act.

I want to bring reference to the fact that this is the system that the Coats-Exon amendment is trying to create—one that is envisioned as the way the Internet system works. Actually, the way the Internet system is working today—especially with regard to totally rampant pornography—is that when the child or adult at home goes into the Internet system, all too often he is looking for something other than basic information. He would have to pay if he wants to subscribe to the pornography bulletin board. But, Mr. President, it goes both ways. These people—the moneymakers on pornography up here—are feeding information because it can be fed free of charge into the Internet system. The pictures I have here in the blue book—there are a whole series of them—were taken freely off of the Internet system free of charge and readily available to anyone who has a computer and has the basic knowledge.

What these pornographers do is place free-of-charge material on the Internet that is designed to lure people over to their bulletin board so they can maybe hook them into a monthly charge of some type, to have available whenever they want from their pornography which is a library full of everything you can imagine.

What they are doing is taking previews of what they have in here. They are putting them, open and at large, on the Internet system for all people to see, not unlike, Mr. President, the previews of coming attractions that we see when we go to the movies. This is what we will see next.

Obviously, many of the pictures, as evidenced by the blue book, are things that are readily available. They, of course, have a way of referencing back. If you like this picture, come into our porno shop over here. For a small fee, we will show you the real thing. The real thing is right here when it comes to pornography.

Mr. President, I simply say, once again, that while I am sure my friend from Vermont and my friend from Wisconsin are sincere, I appreciate very much the very kind things that both have said about the efforts of this Senator and Senator COATS because we have brought attention to this.

It is the intention of the Senator from Nebraska and the Senator from Indiana, though, now that we have called attention to it, we are going to do something about it. We do something about it in a fully constitutional way. We are not going to trample on the constitutional rights of anyone.

I reserve the remainder of my time.

Mr. LEAHY. Mr. President?

Mr. COATS. Mr. President, could the Senator yield for a question, so we can get a sense where we might be with time.

Mr. LEAHY. I yield.

Mr. COATS. Mr. President, I am not aware of any specific requests for time from anyone on our side. We might be able to yield some time back.

Mr. LEAHY. Mr. President, I would be happy to. I wanted to respond, as I am sure the Senator from Indiana realized I would, to a couple of points.

Mr. COATS. We could get the word to Members.

Mr. LEAHY. I hope we can vote by 5 o'clock.

Mr. COATS. I thank the Senator.

Mr. LEAHY. I have spoken before on the floor of my concerns with the Exon-Coats amendment. Last Friday, my good friend from Nebraska, Senator EXON, filed a revised version of the Decency Act as amendment No. 1268. The revisions made by Senator EXON reflect a diligent and considered effort by him and his staff to correct serious problems that the Department of Justice, I and others have pointed out with this section of the bill.

I commend Senator EXON for proposing in his amendment the striking of the provision in the bill that would impose a blanket prohibition on wiretapping digital communications. This section would have totally undermined the legal authority for law enforcement to use court-authorized wiretaps, one of the most significant tools in law enforcement's arsenal for fighting crime.

If that particular section were passed as introduced, the FBI would not have been able to use court-ordered wiretaps to listen in on digital calls made by kidnappers, terrorists, mobsters, or other criminals. This is an excellent change that I heartily endorse.

PROBLEMS WITH SENATOR EXON'S AMENDMENT

But, even with this fix, serious constitutional and practical problems remain in Senator EXON's proposed legislation.

The first part of the amendment would make it a felony not only to send obscene electronic messages to harass another person, but would apply the same penalty to sending an e-mail message with an indecent or filthy word that you hope will annoy another person.

For example, if someone sends you an annoying e-mail message and you respond with a filthy, four-letter word, you may land in jail for 2 years or with a $100,000 fine.

Under this amendment, no computer user will be able to send a private or public e-mail message with the seven dirty words in it. Who knows when any recipient will decide to feel annoyed by seeing a four-letter word online?

The second part of the amendment would make it a felony to send out or receive over computer networks any obscene material. There is no requirement that the person soliciting and receiving the material knew it was obscene. This means that a computer user could be guilty of committing this crime at the moment of clicking to receive material, and before the user has looked at the material, let alone knows the material to be, obscene.

This means that an adult sitting at his computer in the privacy of his own home, who wants to get a copy—consistent with our copyright laws—of a magazine article on stock car racing, could be subject to 2 years in jail and a $100,000 fine for downloading the magazine, which unbeknownst to the user also contains obscene material.

This also means that if you are part of an online discussion group on rape victims, your computer is programmed to automatically download messages sent into the discussion group. If a participant sends into the group a graphic story about a rape, which could be deemed obscene, this story will automatically be downloaded onto your computer, and you would be criminally liable under this amendment, even before you read the story.

This may mark the end of online discussion groups on the Internet, since many users do not want to risk 2 years in jail because of what they might receive from online discussion groups. This amendment would chill free speech and the free flow of information

over the Internet and computer networks.

The amendment does give one out to users who meet some government, FCC determined standards to take steps to protect themselves from receiving material the government has determined to be obscene or indecent. This may mean that any user with a connection to the Internet or an electronic communications service may be required to go out and buy special FCC endorsed and expensive software programs to stop obscene materials from reaching their computers. That way they could show that they have at least tried to avoid the receipt of obscene materials. Otherwise, they may risk criminal liability.

Take another example. What if a user wants to join a campaign to stop obscenity on computer networks, and sends out the message to others on the campaign to send him examples of the obscene materials they are fighting to stop. Under this amendment, any receipt of these materials would be a crime. If this amendment had been the law, when my good friend from Nebraska collected the materials in his blue notebook, he would have committed a felony.

How will anti-obscenity or pornography groups that now monitor online obscenity be able to do so without criminal liability?

The third part of Senator EXON's amendment would make it a felony to purposefully make available, either privately or publicly, any indecent message to a minor.

We all share my good friend's concern over the kind of material that may be available and harmful to minors on the Internet and other online computer networks. But this provision is not the way to address the problem.

Under this provision, no indecent speech could be used on electronic bulletin boards dedicated to political debates, since kids under 18 may access these boards.

This will certainly insure that civility is reintroduced into our political discourse when we are online. But this also means that works of fiction, ranging from ''Lady Chatterly's Lover'' to NEWT GINGRICH's science fiction novel ''1945,'' which contains some steamy scenes, could not be put out on the Internet because of the risk that a minor might download it. Rap music with bad words could not be distributed online. This provision would censor the Internet in a way that threatens to chill our first amendment rights on electronic communications systems.

Under the amendment offered by my good friend from Nebraska, those of us who are users of computer e-mail and other network systems would have to speak as if we were in Sunday School every time we went on-line.

I, too, support raising our level of civility in communications in this country, but not with a government sanction and possible prison sentence when someone uses an expletive. All users of Internet and other information services would have to clean up their language when they go on-line, whether or not they are communicating with children.

There is no question that we are now living through a revolution in telecommunications with cheaper, easier to use and faster ways to communicate electronically with people within our own homes and communities, and around the globe. A byproduct of this technical revolution is that supervising our children takes on a new dimension of responsibility.

Very young children are so adept with computers that they can sit at a keypad in front of a computer screen at home or at school and connect to the outside world through the Internet or some other on-line service. Many of us are justifiably concerned about the accessibility of obscene and indecent materials on-line and the ability of parents to monitor and control the materials to which their children are exposed.

But government regulation of the content of all computer communications, even private communications, under the rubric of protecting kids and in violation of the first amendment is not the answer.

EXISTING LAWS

One could get the incorrect idea that we in Congress have ignored the problem of protecting kids from harms that could befall them from materials they get online. This could not be further from the truth. We have a number of laws on the books that the Justice Department has successfully used to prosecute child pornography and obscenity transmitted over computer networks.

Our criminal laws already prohibit the sale or distribution over computer networks of obscene or filthy material—18 U.S.C. §§1465, 1466, 2252 and 2423(a). We already impose criminal liability for transmitting any threatening message over computer networks—18 U.S.C. §875(c). Our existing criminal laws also criminalize the solicitation of minors over computers for any sexual activity—18 U.S.C. §2452—and illegal luring of minors into sexual activity through computer conversations—18 U.S.C. §2423(b). Just this weekend, there were reports of two instances in which the FBI successfully tracked down teenagers who were solicited online.

Congress took action 2 months ago to pass the Sexual Crimes Against Children Prevention Act of 1995 to increase the penalties and make these various laws even tougher.

Congress has not been ignoring this problem. This does not mean we cannot or should not do better. But, the problem of policing the Internet is complex and involves many important constitutional issues.

LEAHY AMENDMENT REQUIRING A STUDY

The amendment I am offering with Senators KERREY, FEINGOLD, and MOSELEY-BRAUN would require a study by the Department of Justice, in consultation with the U.S. Department of Commerce, on how we can empower parents and users of interactive telecommunications systems.

We should examine the recommendations of these experts before we start imposing liability in ways that could severely damage electronic communications systems, sweep away important constitutional rights, and possibly undercut law enforcement at the same time.

We should avoid quick fixes today that would interrupt and limit the rapid evolution of electronic information systems—for the public benefit far exceeds the problems it invariably creates by the force of its momentum.

A number of groups support the approach of the Leahy study, including civil liberties groups, librarians, online providers, newspaper editors, and others. I ask that a list of the supporters of the Leahy study be placed in the RECORD.

An electronic petition has been circulated on the Internet for the past few weeks. Over 35,000 people have signed on in support of the Leahy study, as an alternative to the proposed Communications Decency Act.

A number of organizations have signed onto the electronic petition to support the Leahy study as an alternative to Government content regulation of electronic communications. These organizations, including the American Council for the Arts, Center for Democracy and Technology, Voters Telecommunications Watch, and others are helping to circulate the petition. Anyone is allowed to sign it or circulate it—this is a free country. Since May 19, when the petition was launched, over 35,000 people have signed on.

The Leahy study approach is supported by civil liberties groups, librarians, online service providers and newspaper groups, including: Association of American Publishers [AAP]; Association of American University Presses [AAUP]; The faculty of the City University of New York; Interactive Working Group; Online Operators Policy Committee of the Interactive Services Association; American Advertising Federation; American Association of Advertising Agencies; and American Library Association.

Also American Society of Newspaper Editors; Association of National Advertisers, Inc.; Association of Research Libraries; Business Software Alliance; Center for Democracy and Technology; Computer and Communications Industry Association; Direct Marketing Association; Electronic Frontier Foundation; Feminists For Free Expression; Magazine Publishers of America; Media Access Project; National Public Telecomputing Network; Newspaper Association of America; People For the American Way Action Fund; Recreational Software Advisory Counsel; Software Publishers Association; and Times Mirror.

I have also asked a coalition of industry and civil liberties groups, called

the Interactive Working Group, to address the legal and technical issues for policing electronic interactive services.

There is no question that we need to educate parents about the types of materials available on the Internet which they may want to stop their children from accessing. By focusing attention on this issue, Senator EXON's efforts to legislate in this area have already made strides in alerting parents to the material available online that may be harmful to kids, such as the Internet, to control the material transmitted to them over those systems. We must find ways to do this that do not invite invasions of privacy, lead to censorship of private online communications, and undercut important constitutional protections.

Before legislating to impose Government regulation on the content of communications in this enormously complex area, I feel we need more information from law enforcement and telecommunications experts. My bill calls for just such a fast-track study of this issue.

Mr. President, I tell my good friend from Nebraska, I hope he realizes I would never call him a barbarian. We know each other too well and we are too good of friends for that.

I have to admit, when he talks about football, he has the good grace to live in a State where the team has had some modicum of success. He has rightly achieved bragging rights on that.

But when he talks about punting on this, with all due respect, Mr. President, I believe the Exon-Coats amendment punts, because it punts to the FCC the task of finding ways to restrict minors' access to indecent communications so users can implement them and have a defense to criminal prosecution.

What we have to understand is that nobody in this place wants to give pornography to children. I do not. The distinguished Senator from Nebraska, the distinguished Senator from Indiana, the distinguished Senator from Wisconsin, all who have spoken on this issue this afternoon, none wants to give pornography to children.

Many Members also do not want to destroy the Internet as we try to find how to do protect children from harmful material on the Internet. We can accomplish the goal of keeping pornography from children without putting on a huge Government layer of censorship and without destroying the Internet.

Now, my friend from Nebraska says his amendment takes the same approach as the dial-a-porn statute. Not really. On dial-a-porn, it took 10 years of litigation for the FCC to find a way to implement the dial-a-porn statute in a constitutional way. That is why I say his amendment punts to the FCC the task of finding ways to restrict.

Why not instead follow the Leahy amendment, which will require a study, a group of experts, an accelerated legislative path, so that we will pass responsible legislation that will not be attacked constitutionally for years thereafter.

I note that the House Commerce Committee adopted basically the Leahy study in its markup of the House telecommunications legislation. This was Republicans and Democrats, across the political spectrum, trying to find the best way to handle this. They did what I have recommended here.

In fact, some provisions in my friend's amendment could hurt prosecution of those who are not law-abiding users of the Internet but use it to distribute obscenity and child pornography.

As a former prosecutor, I want prosecutors to have the best tools to go after criminals. I received a letter today from the Justice Department that makes several points. They say a study of the issue is needed. They also confirm that the Exon proposal would regulate indecent speech between consenting adults. And, third, the defenses in this proposal would undermine the ability of the Justice Department to prosecute online service providers even though they knowingly profit from the distribution of obscenity and child pornography.

The Department says, ''We still have concerns. We continue to believe that comprehensive review should be undertaken to guide the response to the problems the Communications Decency Act seeks to address.''

I ask unanimous consent to have that letter printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 3, 1995.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: I write to respond to your letter of March 1, 1995 concerning our prosecution of violations of federal child pornography and obscenity laws and your April 21, 1995 request for the views of the United States Department of Justice on the ''Communications Decency Act,'' which has been incorporated as title IV of the proposed ''Telecommunications Competition and Deregulation Act of 1995,'' S. 652. In accordance with your request, the analysis of the Communications Decency Act focuses on sections 402 and 405 of the bill.

The Department's Criminal Division has, indeed, successfully prosecuted violations of federal child pornography and obscenity laws which were perpetrated with computer technology. In addition we have applied current law to this emerging problem while also discovering areas where the new technology may present challenges to successful prosecution. While we agree with the goal of various legislative proposals designed to keep obscenity and child pornography off of the information superhighway, we are currently developing a legislative proposal that will best meet these challenges and provide additional prosecutorial tools. This legislative package is being developed while taking into consideration the need to protect fundamental rights guaranteed by the First Amendment.

With respect to the Communications Decency Act, while we understand that section 402 is intended to provide users of online services the same protection against obscene and harassing communications afforded to telephone subscribers, this provision would not accomplish that goal. Instead, it would significantly thwart enforcement of existing laws regarding obscenity and child pornography, create several ways for distributors and packagers of obscenity and child pornography to avoid criminal liability, and threaten important First Amendment and privacy rights.

Similarly, while we understand that section 405 of this bill is intended to expand privacy protections to ''digital'' communications, such communications are already protected under existing law. Moreover, this provision would have the unintended consequences of jeopardizing law enforcement's authority to conduct lawful, court-ordered wiretaps and would prevent system administrators from protecting their systems when they are under attack by computer hackers.

Despite the flaws in these provisions, the Administration applauds the primary goal of this legislation: prevent obscenity from being widely transmitted over telecommunications networks to which minors have access. However, the legislation raises complex policy issues that merit close examination prior to Congressional action. We recommend that a comprehensive review be undertaken of current laws and law enforcement resources for prosecuting online obscenity and child pornography, and the technical means available to enable parents and users to control the commercial and noncommercial communications they receive over interactive telecommunications systems.

The following are the Department's primary objections to sections 402 and 405 of the pending telecommunications bill:

First, section 402 of the bill would impose criminal sanctions on the transmission of constitutionally protected speech. Specifically, subsections 402(a)(1) and (b)(2) of the bill would criminalize the transmission of indecent communications, which are protected by the First Amendment. In Sable Communications of Cal. v. FCC, 492 U.S. 115 (1989), the Supreme Court ruled that any restrictions on the content of protected speech in media other than broadcast media must advance a compelling state interest and be accomplished by the ''least restrictive means.'' By relying on technology relevant only to 900 number services, section 402 fails to take into account less restrictive alternatives utilizing existing and emerging technologies which enable parents and other adult users to control access to content.

Nearly ten years of litigation, along with modifications of the regulations, were necessary before the current statute as applied to audiotext services, or ''dial-a-porn'' calling numbers, was upheld as constitutional. See Dial Information Services v. Thornburg, 938 F. 2d 1535 (2d Cir. 1991). The proposed amendment in section 402 of the bill would jeopardize the enforcement of the existing dial-a-porn statute by inviting additional constitutional challenges, with the concomitant diversion of law enforcement resources.

Second, the definition of ''knowingly'' in section 402 of the bill would cripple obscenity prosecutions. Under subsection 402(e), only those persons with ''actual knowledge'' of the ''specific content of the communication'' could be held criminally liable. This definition would make it difficult, if not impossible, to prove guilt, and the standard is higher than the prevailing knowledge requirements under existing obscenity and child sexual exploitation statutes. Under Miller v. California, 413 U.S. 629 (1973), the

government must only prove that a person being prosecuted under an obscenity statute had knowledge of the general nature of the material being distributed. Large-scale distributors of child pornography and other obscene materials—among the most egregious violators—do not read or view each obscene item they distribute. The proposed definition in subsection 402(e) would make it nearly impossible for the government to establish the necessary knowledge requirement and would thereby severely handicap enforcement of existing statutes.

Third, section 402 would add new terms and defenses that would thwart ongoing enforcement of the dial-a-porn statute. Currently, the government is vigorously enforcing the existing dial-a-porn statute. It took more than ten years for the government to be able to do so, due to constitutional challenges. The proposed amendment to this statute fundamentally changes its provisions and subjects it to renewed constitutional attack which would hinder current enforcement efforts.

Fourth, section 402 would do significant harm by inserting new and sweeping defenses that may be applied to nullify existing federal criminal statutes. The government currently enforces federal criminal laws preventing the distribution over computer networks of obscene and other pornographic material that is harmful to minors (under 18 U.S.C. §§1465, 2252 & 2423(a)), the illegal solicitation of a minor by way of a computer network (under 18 U.S.C. §2252), and illegal ''luring'' of a minor into sexual activity through computer conversations (under 18 U.S.C. §2423(b)). These statutes apply to all methods of ''distribution'' including over computer networks. The new defenses proposed in subsection 402(d) would thwart ongoing government obscenity and child sexual exploitation prosecutions in several important ways:

The first defense under subsection 402(d)(1) would immunize from prosecution ''any action'' by a defendant who operates a computer bulletin board service as an outlet for the distribution of pornography and obscenity so long as he does not create or alter the material. In fact, this defense would establish a system under which distributors of pornographic material by way of computer would be subject to fewer criminal sanctions than distributors of obscene videos, books or magazines.

The second defense provided in subsection 402(d)(2) would exculpate defendants who ''lacked editorial control over the communications.'' Such a defense may significantly harm the goal of ensuring that obscene or pornographic material is not available on the Internet or other computer networks by creating a disincentive for operators of public bulletin board services to control the postings on their boards. Moreover, persons who provide critical links in the pornography and obscenity distribution chains by serving as ''package fulfillment centers'' filling orders for obscene materials, could assert the defense that they lack the requisite ''editorial control.'' This proposed defense would complicate prosecutions of entire obscenity distribution chains.

The third defense provided in subsection 402(d)(3), containing five subparts, would be available to pornographic bulletin boards operators who take such innocuous steps as (A) directing users to their ''on/off'' switches on their computers as a ''means to restrict access'' to certain communications; (B) warning, or advertising to, users that they could receive obscene material; and (C) responding to complaints about such minimum, this proposed defense would lead to litigation over whether such actions constitute ''good faith'' steps to avoid prosecution for violating the section 402, and could thwart existing child pornography and obscenity prosecutions.

The fourth defense provided in subsection 402(d)(4) would exculpate defendants whose pornography business does not have the ''predominate purpose'' of engaging in unlawful activity. This defense would severely undercut law enforcement's efforts to prosecute makers and distributors of noncommercial pornography and obscenity.

The fifth defense provided in subsection 402(d)(5) would preclude any cause of action from being brought against any person who has taken good faith steps to, *inter alia*, ''restrict or prevent the transmission of, or access to,'' a communication deemed unlawful under section 402. This defense would encourage intrusion by on-line service providers into the private electronic mail communications of individual users. The defense actually promotes intrusions into private electronic mail by making it ''safer'' to monitor private communications than to risk liability. At the same time, this defense would defeat efforts by the government to enforce federal privacy protections against illegal eavesdropping.

Finally, but no less significantly, section 405 amends the federal wiretap statute in several respects, each of which creates considerable problems. First, it amends the wiretap statute to add the term ''digital'' to 18 U.S.C. §2511,[1] without considering the effect of this amendment on other statutory provisions. For example, 18 U.S.C. §2516(1) provides that certain government officials may authorize an application for a wiretap order for wire or oral communications while 18 U.S.C. §2516(3) provides that other government officials may authorize an application for a wiretap order for electronic communications. Since section 405 does not amend 18 U.S.C. §2516 to include the term ''digital,'' it would appear that no government official has the authority to authorize an application for a wiretap order for digital communications. This is particularly problematic, since this investigative tool is reserved for the most serious cases, including those involving terrorists, organized crime, and narcotics.

Equally disconcerting, the amendment serves to protect computer hackers at the expense of all users of the National Information Infrastructure (NII), including businesses, government agencies and individuals. Prior to 1994, the wiretap statute allowed electronic communication service providers to monitor voice communications to protect their systems from abuse. 18 U.S.C. §2511(2)(a)(i) (1986 version). Thus, when hackers attacked computer systems and system administrators monitored these communications, they had no clear statutory authority to do so. In October 1994, Congress finally remedied this defect by amending 18 U.S.C. §2511(2)(a)(i) to permit the monitoring of electronic (i.e., digital, non-voice) communications. If section 405 is enacted and these hacker communications are deemed digital, system administrators will once again be denied the statutory authority to monitor hacker communications. It would be most unfortunate if, at the same time Congress is encouraging the widespread use of the NII, it passed a law giving system administrator's a Hobson's choice: either allow hackers to attack systems unobserved or violate federal law.

There are three other concerns as well. First, by adding the term ''digital'' without amending the suppression provisions of 18 U.S.C. §2515, voice communications—if they are deemed ''digital''—will no longer be protected by the statute's exclusionary rule. This would serve to reduce the privacy protections for phone calls.

Second, section 405 would replace the words ''oral communication'' with ''communication'' in 18 U.S.C. §2511(1)(B). This would have undesirable consequences for law enforcement because it would criminalize the interception of communications as to which there was no reasonable expectation of privacy.[2]

From the law enforcement perspective, there is simply no sound reason for eliminating this highly desirable feature of present law. Additionally, the amendment might also impact upon the news gathering process. For example, if the conversation of two individuals shouting in a hotel room were recorded by a news reporter standing outside the room, the reporter would, under section 405, be violating the wiretap statute. Under current law, of course, the individuals could not complain about the recording because, by shouting loud enough to be heard outside the room, they lack any reasonable expectation of privacy.

Last, the provision in section 402(d)(5) provides that ''no cause of action may be brought in any court * * * against any person on account of any action which the person has taken in good faith to implement a defense authorized under this section. * * *'' This would seem to suggest that any person can freely engage in electronic surveillance otherwise prohibited by Title III so long as they claim to be implementing a section 402 defense. As such, section 402(d)(5) severely weakens the privacy protections currently offered by the wiretap statute.

In sum, sections 402 and 405 of the bill would hamper the government's ongoing work in stopping the dissemination of obscenity and child pornography and threaten law enforcement's continued ability to use court-authorized wiretaps. We believe that a comprehensive review be undertaken to guide response to the problems that the Communications Decency Act seeks to address.

I assure you that the Department is aware of the growing use of computers to transmit and traffic obscenity and child pornography. The Criminal Division's Child Exploitation and Obscenity Section is aggressively investigating and prosecuting the distribution of child pornography and obscenity through computer networks, and the use of computers to locate minors of the purpose of sexual exploitation. As we have discussed with your staff in a meeting focussed on these issues, we remain committed to an aggressive effort to halt the use of computers to sexually exploit children and distribute obscenity.

Sincerely,

KENT MARKUS,
Acting Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC.

Senator PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: This is in response to your June 14, 1995 letter to me posing

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[1] It should be noted that ''digital'' communications are already covered by the wiretap statute. Under current law, a ''digital'' communication is either a wire communication under 18 U.S.C. §2510(1) (if it contains voice) or an ''electronic communication'' under 18 U.S.C. §2510(12) (if it does not contain voice). Since such communications are already covered, the reason for enacting section 405 is unclear, and it is difficult to predict how the courts will interpret the amendment.

[2] The definition of ''oral communication'' in 18 U.S.C. §2510(2) contains a requirement that the communication to be protected must have been made under circumstances justifying an expectation of privacy.

questions about my June 13 letter to Senator Exon concerning his proposed Communications Decency Act.

My letter to Senator Exon commented on the version of his proposal circulated in his ''dear colleague'' letter of June 7, 1995 (the ''Exon proposal''). Senator Exon had requested that we comment on the extent to which that revised proposal satisfied the concerns I detailed to you in my May 3 letter. The letter does not address the Exon-Coats proposal, which we had not seen nor were aware of until today. We have just begun to review this new proposal.

As stated in my letter to Senator Exon, his proposal still raises a number of complex legal and policy issues that call for in-depth analysis prior to congressional action. Because we still have concerns, we continue to believe that a comprehensive review should be undertaken to guide response to the problems the Communications Decency Act seeks to address.

Among these concerns are constitutional questions raised primarily by the lack of scienter required for the age element of subsection (e) of the Exon proposal. In our view, this subsection would consequently have the effect of regulating indecent speech between consenting adults.[1] Subsection (a) does not have the same constitutional infirmity because of the specific intent requirement that the communication be done ''with intent to annoy, abuse, threaten, or harass * * *'', which we believe is inconsistent with the concept of ''consenting adults.''

As described in my June 13 letter, we continue to have a concern with the ''knowledge'' requirements that were re-inserted in the Exon proposal as defenses for certain parties.

The defenses included in the Exon proposal would undermine the ability of the Department of Justice to prosecute an on-line service provider even though it knowingly profits from the distribution of obscenity or child pornography.[2] Although the existence of the defenses in the Exon proposal would make prosecutions under the proposal's offenses difficult, if not impossible, they would not threaten obscenity prosecutions under existing statutes.

I hope this information is helpful to you.

Sincerely,

KENT MARKUS,
Acting Assistant Attorney General.

Mr. LEAHY. Mr. President, let me conclude with this: No Member disagrees that we want to keep smut out of the hands of our children. I would remind everybody that the Internet has become the tremendous success it is because it did not have Big Brother, the Federal Government, trying to micromanage what it does and trying to tell users what it could do.

If the Government had been in charge of figuring out how to expand the Internet or make it more available and so on, I guarantee it would not be one-tenth the success it is today.

In our appropriate zeal to go after child pornographers, let the Senate not kill the Internet or smother it for the 99.9 percent of the people who use it legitimately, the scholars who use it legitimately, the people who use it for legitimate on-line discussion groups, the people who gather information from it, the constituents who use it to contact my office and other offices, and those who find a way to access information that they have never had before in their lives.

That is why, Mr. President, earlier I printed in the RECORD a list of everybody from librarians to publishers to newspaper editors to civil liberties groups who support my alternative approach in my amendment.

I am perfectly willing, if the managers are here and they want to move forward, to yield back the remaining time.

Mr. EXON. Mr. President, I am prepared to yield back the remainder of our time, I think about 20 minutes. All I need to do is insert some additional material in the RECORD. If I could have 1 more minute, I would be prepared to yield back the remainder of my time.

I thank my friend from Vermont for mentioning the Nebraska football again. I had a letter from Tom Osborne, the head football coach at the University of Nebraska, who wrote, ''Dear Jim: Thank you for what you are doing. I hope you are successful in passing the legislation.''

I ask unanimous consent that the Osborne letter be printed in the RECORD, and I ask unanimous consent to have printed in the RECORD ''No Time to Study.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NEBRASKA FOOTBALL,
Lincoln, NE, February 10, 1995.

Senator EXON,
Washington, DC.

DEAR JIM: Thanks so much for what you are doing in your effort to stop pornography. I realize this is always a somewhat unpopular issue to tackle, however, my experience has been that pornography is tremendously damaging to young people and women in particular.

I hope you are successful in passing the legislation.

Best wishes,

TOM OSBORNE,
Head Football Coach.

NO TIME TO STUDY

Further study does not solve the problem. The larger telecommunications reform bill before the Senate will help link up schools to new telecommunications services and Internet services. As one of the Snowe-Rockefeller-Exon-Kerrey amendment authors, I am very proud of that fact.

In addition, at least two Bell Companies plan to offer Internet access as one of their common carrier services; basic computer software manufacturers now offer ''easy Internet access'' with their programs and thousands of homes every day subscribe to new information service providers which homes Internet access. Let's not lose sight of the fact that this is a very good thing. This is a national policy objective.

But let us not turn a blind eye to a very serious problem of obscenity, indecency, electronic stalking and pornography in the digital world. Every day the Congress delays in dealing with this problem the pornographers, pedophiles and predators secure a much stronger foothold in what will be a universal service network. That network was initially created by the U.S. government and still, in part, is supported by American tax dollars.

Technology will help. But there is no technological magic bullet. That is why industry is so concerned about vicarious liability. Even the largest computer companies can not figure out a ''fool proof'' way to prevent access. It is odd to expect American tax dollars to pay for the development and expansion of this marvelous system, only to turn it over to pornographers. The Congress should not turn its eyes from what is on the Internet and issue a mere request to parents that they buy expensive products to keep this smut from their homes and keep pedophiles away from their children.

The American people need not pay twice in order to keep pornography and filth from tarnishing the sanctity of their homes, the pornographers and the pornography addicts must find their own, secure adults-only stomping grounds and let our kids and families enjoy this universal, public service for education, enlightenment and entertainment.

I introduced a version of this legislation nearly a year ago. The time for study is over. The Congress must step up to the plate. The law will facilitate free speech by creating an environment through constitutional means where families and children can enjoy the benefits of the Internet.

This is a fundamental question of burdens. The ''hands off crowd'' say that the burden lies entirely on the parent. The parent must spend hundreds of dollars on ''blocking'' software and must be with the children 24 hours a day to assure that they do not access improper material. The Exon-Coats approach says that parents have responsibilities, but so do on-line service providers, and publishers and so does law enforcement. If you operate an on-line adult pornographic book store, movie house or swap meet, you have the burden to assure that children do not enter, and that you are not trading in illegal obscenity. Those engaging in pornography and indecency should install electronic ''bouncers'' at their electronic doorways. The Supreme Court in the Sable case indicated that such a burden was not a constitutional impediment.

For all the talk about ''technological fixes'' it is ironic that one group, the Electronic Frontier Foundation, who opposes this measure in favor of more of the so-called ''parental control'' posts on the Internet instructions on ''How-to Access Blocked Groups.'' The fact of the matter is that kids, not their parents know ''how-to'' access everything.

The Supreme Court noted that daytime radio is ''uniquely accessible to children.'' I submit that computers are not only ''uniquely accessible to children,'' but also ''uniquely inaccessible to their parents.'' I expect that any child or grandchild with basic computer skills can outperform any member of this body when it comes to operating a computer.

As the Supreme Court has noted in a number of cases, the Congress has a compelling state interest in protecting the physical and psychological health of America's children. We should not throw our hands up and allow every child's computer to become a branch office of Pornography Incorporated.

Mr. HATCH. As chairman of the Committee on the Judiciary, I would like to ask the Senator from Nebraska for clarification on one point. Title IV of this legislation, the Communications Decency Act, includes provisions

[1] Subsection (e) of the Exon-Coats measure exacerbates the constitutional concerns because it is even more expansive than the similar subsection (e) in the Exon proposal.

[2] The defense in subsection (f)(1) of the Exon-Coats measure is particularly problematic as it focusses on whether the service provider has control over the bulletin board service. If the provider does not have control, regardless of whether it has guilty knowledge or intent, it is immune from prosecution.

amending section 223 of the Communications Act to address, among other issues, the circumstances under which providers of network services may be held criminally liable for the transmission or distribution of obscene, indecent, or harassing materials.

Copyright matters are, of course, within the jurisdiction of the Judiciary Committee, and it is my understanding that those provisions in title IV of the bill, as reported by the Commerce Committee, were not intended to—and in fact do not—serve as a precedent for addressing copyright infringement carried out over online services or other telecommunications or digital networks. Am I correct in that understanding?

Mr. EXON. The Senator is correct. The liability standards contained in my proposal have no applicability to liability for copyright infringement. Nor are they intended to set any precedent in the copyright field.

Mr. HATCH. I thank my colleague for this clarification.

Mr. COATS. I wanted to clarify that it is the intent of this legislation that persons who are providing access to or connection with Internet or other electronic services not under their control are exempted under this legislation.

Mr. EXON. Defense (f)(1) explicitly exempts a person who merely provides access to or connection with a network like the Internet for the act of providing such access. Understanding that providing access or connection to online services is an action which can include other incidental acts, this legislation is intended to exempt from prosecution the provision of access including transmission, downloading, storage, and certain navigational functions which are incidental to providing access or connection to a network like the Internet. An online service that is providing its customers with a gateway to networks like the Internet or the worldwide web over which it has no control is generally not aware of the contents of the communications which are being made on these networks, and therefore it should not be responsible for those communications. To the extent that service providers are doing more than merely providing access to a facility or network over which they have no control, the exemption would no longer apply. For instance, if an access provider were to create a menu to assist its customers in finding the pornographic areas of the network, then that access provider would be doing more than solely providing access to the network. Further, this exemption clearly does not apply where the service provider is owned or controlled by or is in conspiracy with a pornographer who is making communications in violation of this legislation.

Mr. COATS. I understand that in a recent N.Y. State decision, Stratton Oakmont versus Prodigy, the court held that an online provider who screened for obscenities was exerting editorial content control. This led the court to treat the online provider as a publisher, not simply a distributor, and to therefore hold the provider responsible for defamatory statements made by others on the system. I want to be sure that the intend of the amendment is not to hold a company who tries to prevent obscene or indecent material under this section from being held liable as a publisher for defamatory statements for which they would not otherwise have been liable.

Mr. EXON. Yes; that is the intent of the amendment.

Mr. COATS. And am I further correct that the subsection (f)(4) defense is intended to protect companies from being put in such a catch-22 position? If they try to comply with this section by preventing or removing objectionable material, we don't intend that a court could hold that this is assertion of editorial content control, such that the company must be treated under the high standard of a publisher for the purposes of offenses such as libel.

Mr. EXON. Yes; that is the intent of section (f)(4).

Mr. COATS. Similarly, if a system operator discontinued service to a customer who was generating objectionable material, it is the intent in offering this amendment, and specifically the intent of subsection (f)(4), that no breach of contract action would lie against the system operator?

Mr. EXON. Yes; that is our intent.

Mr. COATS. I wanted to clarify that it is the intent of this legislation that persons who are providing access to or connection with the Internet or other electronic service not under their control are exempted under this legislation.

Mr. EXON. Yes, defense (f)(1) explicitly exempts a person who provides access to or connection with a network like Internet that is not under that person's control. Providing access or connection is meant to include transmission, downloading, storage, navigational tools, and related capabilities which are incidental to the transmission of communications. An online service that is providing such services is not aware of the contents of the communications and should not be responsible for its contents. Of course this exemption does not apply where the service provider is owned or controlled by or is in conspiracy with a maker of communications that is determined to be in violation of this statute.

Mr. HELMS. Mr. President, I would inquire of the Senator from Indiana if my understanding is correct that, under subsection (f)(1) of your amendment, a person is protected solely for providing access. Is that correct?

Mr. COATS. The Senator is correct, this is a narrow defense. The defense is for solely providing access or connection and not a defense for any person or entity that provides anything more than solely providing access. This does not create a defense for someone who has some level of control over the material or the provision of material. To the extent that enhanced access would be an offense, this defense does not apply to someone who, among other things, manages the prohibited or restricted material, charges a fee for such material, provides instructions on how to access such material or provides an index of the material. This is merely an illustrative list and not an exhaustive list of the types of activities that would not qualify as solely providing access or connection under subsection (f)(1).

Mr. EXON. I agree with the Senator from Indiana.

Mr. BIDEN. Mr. President, I oppose the Exon-Coats second-degree amendment, I oppose it not because I disagree with its mission—which is to keep children out of the redlight districts of the Internet. With that, I wholeheartedly agree. As has become all too clear, the new information superhighway has its gritty roadside attractions: as the Senator from Nebraska has documented, some of the information traveling over the Internet is tasteless, offensive, and downright spine-tingling. I stand with him and the Senator from Indiana in condemning and deploring this stuff—and I agree that we should do something here and now to help keep it out of the hands of our kids.

But I respectfully disagree with them about how we should go about doing that. I believe there is a better, faster, and more effective way to make the information superhighway safe traveling for our children. If the Exon-Coats provision passes, we will have mountains of litigation over its constitutionality, dragging on for years and years—and all the while, our kids will be doing what they do best: finding new and better ways to satisfy their curiosity.

The Exon-Coats amendment would make it a crime to send an indecent communications over the Internet to anyone under 18. Although that certainly sounds good, the problem is this: in the world of the Internet—where communications are sent out to hundreds and sometimes hundreds of thousands of people all at once—a ban on material that might reach a child is tantamount to a complete outright ban.

That's where the constitutional problem comes in. In the case of Sable Communications versus FCC, the Supreme Court held that indecent speech—unlike obscenity—is protected first amendment expression. The Court also ruled that although indecent speech cannot be outlawed, it nevertheless can be restricted to protect children—provided, however, that the restrictions are drawn as narrowly as possible so as not to unduly limit adult access. This is known by lawyers as the least restrictive means requirement. Or put another way by Justice Frankfurter, you can't ''burn the house to roast the pig''—which is exactly what I believe the Exon-Coats provision would do.

So I believe there will be a heated and protracted constitutional challenge to this provision. In fact, with history as our guide, such a challenge is virtually guaranteed: when Congress banned Dial-a-Porn services to minors, it took 10 years—and many different attempts by the FCC to write narrowly tailored regulations, all of which were challenged and fully litigated—for the statute to be upheld as constitutional.

Ten years. Multiple rulemaking proceedings. Four different trips up to the court of appeals. I, for one, just can't wait that long. But more importantly, our children shouldn't have to wait that long. I want to get to work right now—and come up with the best and fastest way to get at this problem.

That is why I support the underlying Leahy amendment. The Leahy amendment will get us going right now. It directs the Departments of Justice and Commerce to quickly come up with technological solutions—ways by which parents can screen out of their computer systems violent, sexually explicit, harassing, offensive, or otherwise unwanted material. The Leahy measure also directs the Departments to evaluate whether current criminal laws are fully enforceable in interactive media, and to assess law enforcement resources currently available to enforce these laws.

The Leahy amendment doesn't stop there: it requires that the Departments also submit a legislative proposal with their study—outlining how best, technologically, to empower parents to protect their kids; how to amend, if necessary, our laws to better crack down on pornographers; how law enforcement resources should be allocated more effectively.

What's more, the Leahy amendment puts that legislation on a fast-track schedule. That means that it would only be a matter of months—not 1 year, 5 years, or 10 years—for us to have taken smart and effective action to get at this problem.

Government censorship, in this instance, is not just a bad idea in the eyes of first amendment scholars and activists. It's also a bad idea when it comes to the eyes and minds of our children. While we might be able to shut down some of the filthy talk on the net, we simply can't do the job right this way—we can't prevent access to sexually explicit information from Finland, Sweden, Japan or other countries, all of which are part of the Internet community.

I also want to say that I—and I'm sure I'm joined by many parents across the country—am also very concerned about violent material on the net. As the Judiciary Committee has learned in some detail, you can learn all about bomb-building and other ways of war and destruction online. The Exon-Coats provision doesn't address violence. The Leahy amendment, with its headlights aimed at technology to screen out violent as well as offensive and sexually explicit material, does.

I believe that a technology-based solution, as advanced in Senator LEAHY's amendment, is a better answer—constitutionally and practically. The market, as we speak, is already developing software and hardware to enable parents to block children's access to filth, violence, and other objectionable material. I believe it makes more sense, and will be more effective, to empower users to protect themselves and their children than to attempt a topdown model of governmental regulation.

LEVIN ON EXON AMENDMENT TO S. 652, THE TELECOMMUNICATIONS BILL

Mr. LEVIN. Mr. President, I support keeping obscene material off the internet and other electronic media. This amendment goes significantly beyond that. The language of the amendment before us is so broad and vague that it would subject an American citizen to criminal liability and possible imprisonment for two years, a $100,000 fine or both for making what is termed a "filthy comment" on the internet which, in the words of the amendment, is intended to annoy.

Annoying filthy comments that are put on the internet are reprehensible. But, I am afraid the attempt to make such language criminal will backfire and make it more difficult for us to effectively prohibit abusive and threatening activities and pornographic material aimed at children and adults. Our best chance to meet this objective is through means which are Constitutional.

That is why I support the underlying Leahy amendment to protect the internet and other electronic media from obscene material. The Leahy Amendment would require the Attorney General of the United States within 150 days to produce Constitutional legislation to address the problem. The Leahy Amendment also provides for expedited procedures which would permit the Congress to consider such legislation quickly. I believe this is the more effective course to protect the internet and other telecommunications media.

Mr. President, I ask unanimous consent to have a letter printed from the Department of Justice at this point in the CONGRESSIONAL RECORD. The letter states, in part, "Defenses included in the Exon proposal would undermine the ability of the Department of Justice to prosecute an on-line service provider even though it knowingly profits from the distribution of obscenity or child pornography."

The Department of Justice letter also states that for many other reasons a comprehensive review should be made before Congress acts.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC.

Senator PATRICK J. LEAHY,
United States Senate, Washington, DC.

DEAR SENATOR LEAHY: This is in response to your June 14, 1995 letter to me posing questions about my June 13 letter to Senator Exon concerning his proposed Communications Decency Act.

My letter to Senator Exon commented on the version of his proposal circulated in his "dear colleague" letter of June 7, 1995 (the "Exon proposal"). Senator Exon had requested that we comment on the extent to which that revised proposal satisfied the concerns I detailed to you in my May 3 letter. The letter does not address the Exon-Coats proposal, which we had not seen nor were aware of until today. We have just begun to review this new proposal.

As stated in my letter to Senator Exon, his proposal still raises a number of complex legal and policy issues that call for in-depth analysis prior to congressional action. Because we still have concerns, we continue to believe that a comprehensive review should be undertaken to guide response to the problems the Communications Decency Act seeks to address.

Among these concerns are constitutional questions raised primarily by the lack of scienter required for the age element of subsection (e) of the Exon proposal. In our view, this subsection would consequently have the effect of regulating indecent speech between consenting adults.[1] Subsection (a) does not have the same constitutional infirmity because of the specific intent requirement that the communication be done "with intent to annoy, abuse, threaten, or harass . . .", which we believe is inconsistent with the concept of "consenting adults."

As described in my June 13 letter, we continue to have a concern with the "knowledge" requirements that were re-inserted in the Exon proposal as defenses for certain parties.

The defenses included in the Exon proposal would undermine the ability of the Department of Justice to prosecute an on-line service provider even though it knowingly profits from the distribution of obscenity or child pornography.[2] Although the existence of the defenses in the Exon proposal would make prosecutions under the proposal's offenses difficult, if not impossible, they would not threaten obscenity prosecutions under existing statutes.

I hope this information is helpful to you.

Sincerely,

KENT MARKUS,
Acting Assistant Attorney General.

FOOTNOTES

[1] Subsection (e) of the Exon-Coats measure exacerbates the constitutional concerns because it is even more expansive than the similar subsection (e) in the Exon proposal.

[2] The defense is subsection (f)(1) of the Exon-Coats measure is particularly problematic as it focuses on whether the service provider has control over the bulletin board service. If the provider does not have control, regardless of whether it has guilty knowledge or intent, it is immune from prosecution.

Mr. EXON. With that, if the Senator from Vermont is ready to yield back, I am ready to yield back our time.

Mr. LEAHY. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 1362.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nebraska.

The clerk will call the roll.

The bill clerk called the roll.

[1] Footnotes at end of letter.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 84, nays 16, as follows:

[Rollcall Vote No. 263 Leg.]

YEAS—84

Abraham	Exon	Lott
Akaka	Faircloth	Lugar
Ashcroft	Feinstein	Mack
Baucus	Ford	McCain
Bennett	Frist	McConnell
Bond	Gorton	Mikulski
Boxer	Graham	Murkowski
Bradley	Gramm	Nickles
Breaux	Grams	Nunn
Brown	Grassley	Packwood
Bryan	Gregg	Pell
Bumpers	Harkin	Pressler
Burns	Hatch	Pryor
Byrd	Hatfield	Reid
Campbell	Heflin	Rockefeller
Coats	Helms	Roth
Cochran	Hollings	Santorum
Cohen	Hutchison	Sarbanes
Conrad	Inhofe	Shelby
Coverdell	Inouye	Simpson
Craig	Johnston	Smith
D'Amato	Kassebaum	Snowe
Daschle	Kempthorne	Specter
DeWine	Kerrey	Stevens
Dodd	Kerry	Thomas
Dole	Kohl	Thompson
Domenici	Kyl	Thurmond
Dorgan	Lautenberg	Warner

NAYS—16

Biden	Kennedy	Murray
Bingaman	Leahy	Robb
Chafee	Levin	Simon
Feingold	Lieberman	Wellstone
Glenn	Moseley-Braun	
Jeffords	Moynihan	

So, the amendment (No. 1362) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. COATS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. DEWINE). The majority leader is recognized.

SUBMITTED AMENDMENT NO. 1286, AS MODIFIED

Mr. SIMON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. DOLE. I yield to the Senator from Illinois for a unanimous-consent request.

Mr. SIMON. Mr. President, I thank the majority leader for yielding.

On my amendment No. 1286, there is a technical error. I ask unanimous consent to correct that error. There is no objection by Senators.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The submitted amendment (No. 1286), as modified, is as follows:

On page 79, line 11, in the language added by the Dole Amendment No. 1255 as modified, insert the following:

(b)(3) SUPERSEDING RULE ON RADIO OWNERSHIP.—In lieu of making the modification required by the first sentence of subsection (b)(2), the Commission shall modify its rules set forth in 47 CFR 73,3555 by limiting to 50 AM and 50 FM broadcast stations the number of such stations which may be owned or controlled by one entity nationally.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. As I understand, they need to take care of the underlying amendment.

Mr. LEAHY. Mr. President, if the majority leader will yield, the Leahy amendment has now been amended by the Exon amendment. Because many, many Senators supported the amendment as one by itself—obviously, the majority support the Exon amendment—there is really no reason to have a rollcall vote on my amendment.

I recommend we adopt the Leahy amendment, as amended by the Exon amendment, by voice vote.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1288, as modified, as amended.

The amendment (No. 1228) was agreed to.

Mr. EXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I am trying to determine when we can complete action on this bill. We had a heavy, positive vote on cloture. I am going to read a statement that I think satisfies the managers of the bill to see if we can get some agreement, some accommodation. The managers have been working toward a final resolution of this bill that encompasses the following request. I am not going to try to get the agreement, but I will read it:

That all amendments qualified postcloture must be called up by number by 7:30 p.m.; that all amendments be limited to 15 minutes, 30 minutes for second degrees, for the debate to occur—we are not certain about this—either tonight or beginning at 9 o'clock in the morning. If some of those can be debated tonight, it can save us time tomorrow morning. If we can get the agreement, then rollcall votes will be stacked to begin at 12:30 p.m. I would rather begin at an earlier time tomorrow, but I understand there is a problem on that side. If we can resolve that, they will begin earlier, with the last vote in the voting sequence being final passage of the telecommunications bill.

After that, if get consent, we will go to the highway bill, S. 440, which I understand there are a couple major issues, but, otherwise, we should be able to finish that by Friday sometime.

So if Senators have amendments, the point is they ought to be letting the managers know. We think there are only about six, maybe a few more than that. I understand Senator STEVENS has some that may be accepted. Senator LEAHY has one that is going to be accepted. That would leave one by Senator LIEBERMAN, one by Senator SIMON, one by Senator MCCAIN, one by Senator HARKIN, and then the managers' amendment.

Mr. LEAHY. If the Senator will yield, the major one that I had was dialing parity. At one time, we thought it would take several hours. I think Senator BREAUX and I have worked out a consensus. I suspect, once you have gotten your unanimous consent, if the managers yield to us, we can probably dispose of it in 10 minutes.

Mr. DOLE. Let us do that right now. Then I will come back after that and try to get consent on these other things. In the meantime, if somebody else has an amendment they feel a compelling desire to offer, we would appreciate that information, because it might determine how long we stay tonight.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, personally, I like the plan that the majority leader has laid down. As he knows, we tried on this other one to move as quickly as we could, and we moved it much faster than some thought. I note in that regard, I appreciate those who expressed their concern in wanting to protect the Internet but also to protect children from being exposed to smut and pornography. I will state again, the protection of children is something we all want equally in this body. We just have different ways of trying to figure out ultimately how to protect them and the first amendment at the same time.

I hope we go to the dialing parity. I ask unanimous consent that it be in order for me to yield to the Senator from Louisiana to bring up an amendment on behalf of himself and myself. That may settle that part and save us several hours.

Mr. STEVENS. Reserving the right to object, if that is a request, we have worked out an agreement on three technical amendments that deal with an amendment I previously offered, and I would like to get an agreement on those. We will proceed with them later in the evening, but I want to make sure we have an agreement before we get into this other unanimous-consent agreement.

Will the Senator yield to me for the purpose of a unanimous-consent request?

Mr. LEAHY. Mr. President, I yield to the Senator from Alaska for the purpose of making a unanimous-consent request without losing my right to the floor.

Mr. STEVENS. Mr. President, I ask unanimous consent that there be 10 minutes equally divided for the consideration of my amendments 1301, 1302, and 1304; that at the end of that 10 minutes, we then proceed to consider, without any intervening action or debate, each of the three amendments. I will at that time ask that they be considered en bloc, but I think they should be explained first; in addition, that after consultation with the Members involved, I ask unanimous consent that

a modification to amendment No. 1301 be permitted prior to the vote on that amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I believe I still have the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, as I stated earlier, I think there was general agreement among the body that we wanted to find a way to approach what many see as a problem on the Internet. We had different ways of approaching it. I note that only because those who supported the underlying amendment were trying to find the most constitutional way of doing it. It was not a case of anybody—anybody—in this body being in favor of providing pornography to children, it simply should go without saying, but so there will not be any mistake on that point.

Mr. President, I yield to my friend from Louisiana. He has an amendment on behalf of the two of us.

AMENDMENT NO. 1421

Mr. BREAUX. Mr. President, I ask unanimous consent that the Breaux-Leahy amendment at the desk be in order.

The PRESIDING OFFICER. Will the Senator state the number?

Mr. BREAUX. It is an amendment entitled Breaux-Leahy at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for himself and Mr. LEAHY, proposes an amendment numbered 1421.

Mr. BREAUX. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 93, strike lines 7–12 and insert the following:

''(ii) Except for single-LATA States and States which have issued an order by June 1, 1995 requiring a Bell operating company to implement toll dealing parity, a State may not require a Bell operating company to implement toll dialing parity in an intraLATA area before a Bell operating company has been granted authority under this subsection to provide interLATA services in that area or before three years after the date of enactment of the Telecommunications Act of 1995, whichever is earlier. Nothing in this clause precludes a State from issuing an order requiring toll dialing parity in an intraLATA area prior to either such date so long as such order does not take effect until after the earlier of either such dates.

(iii) In any State in which intraLATA toll dialing parity has been implemented prior to the earlier date specified in clause (ii), no telecommunications carrier that serves greater than five percent of the nation's presubscribed access lines may jointly market interLATA telecommunications services and intraLATA toll telecommunications services in a telephone exchange area in such state until a Bell operating company is authorized under this subsection to provide interLATA services in such telephone exchange area or until three years after the date of enactment of the Telecommunications Act of 1995, whichever is earlier.''

Mr. BREAUX. Mr. President, I thank the Senator from Vermont for yielding to me for this purpose and thank him for working with me and with the distinguished chairman of the committee, as well as the distinguished ranking member of the committee, as well as a number of other Members in the body.

We have tried to work really for the past 2 to 3 days on trying to develop a consensus amendment, which I think we now have, which I think solves the problem both from a sense of fairness as well as a sense of trying to encourage additional companies to do what they can do best.

I think the basic thrust of this telecommunications bill is to promote competition. I think the Commerce Committee has done a tremendous job in reporting to the body a bill that, in fact, does say to all of the companies, whether they be long distance companies or whether they be the so-called regional Bell companies, that we want you to be able to do what you do best, we want you to compete, we want you to provide good service at a good price to the consumers of America. And the big problem is then trying to manage these various companies to make sure everybody is treated fairly. We wanted to try to make sure no company got an economic advantage, because of legislation, over any other company. I think the bill does do that. One of the features of the legislation is that we sort of said, when you can do long distance service, the long distance companies can do local service. It is sort of saying that everybody is going to be able to start competing at the same time. One of the provisions in the bill dealt with a prohibition. It said simply that States could not order long distance companies to be able to receive dialing parity when they do long distance service within an intraLATA situation, within a State.

Mr. President, we thought that the Commerce Committee provision that restricted that ability of a State was a good idea. It was consistent with what Judge Greene said. But there were concerns, particularly by the Senator from Vermont, who said that, no, the States should be able to move forward. We have crafted an amendment that the Senator from Vermont really was helpful in putting together, which said that those States that have only one LATA and already have issued orders to require dialing parity would be exempted from that prohibition in a way that would allow that State to take action on ordering parity.

This amendment specifies that clearly. It also says, as a precaution and a protection that guarantees equal opportunity for all of the companies, that those States, while they would be able to order dialing parity, they would not be able to allow for joint marketing in those areas. I think that is a good balance and is fair treatment.

One of the things I have always advocated is that companies, when they are allowed to move into another area, know that their competition will also be able to compete in their areas at the same time.

So, Mr. President, I think that the amendment is clear, as clear as it possibly can be, in dealing with a very complicated situation. I think it continues with the thrust of the committee product, which says we want a level playing field. That is what this amendment addresses dealing with dialing parity.

I thank all of the Members who had major input in helping us craft this. It has been a bipartisan effort, worked on by people whose concerns were making sure we treated long distance companies fairly, as well as Members who were concerned about making sure we treated regional Bells fairly at the same time. I think both sides have given a product that we now have pending before the Senate, and it is a good one.

I urge my colleagues to support it by a voice vote, which is what I hope we will be able to do to dispose of it.

Mr. GRAHAM. Will the Senator yield?

Mr. BREAUX. Yes.

Mr. GRAHAM. I briefly had an opportunity to look at the amendment. I asked for a copy to review it in more detail. Let me ask a question from the perspective of my State. The recent Florida legislature of this spring passed an interLATA dialing parity bill. That legislation goes into effect on January 1, 1996. What effect will this amendment have on my State's ability to adopt dialing parity?

Mr. BREAUX. I will respond to the Senator by saying that we have tried to take into consideration two types of States in our amendment. The first would be about 10 States that are single-LATA States, which means they only have one division of what can happen in their State. That does not include Florida. The second category includes Florida—except States which have issued an order by June 1, 1995, requiring this dialing parity, those States would be able to go forward with those orders, and they would be able to implement those orders. The only protection that is required—which I think is a level playing field—is that they would not be able to have joint marketing agreements in those areas. But the State of Florida would be able to go forward with that order and implement it. In essence, the State of Florida would be grandfathered in because they are a State that already issued the order at the State level.

Mr. GRAHAM. Well, I am not certain if they have issued an order or not. My information is that the legislation goes into effect on January 1, 1996. I am not certain if that is the threshold that brings a State into the category of those which will still be allowed to exercise some degree of State regulation over dialing parity.

Mr. BREAUX. My answer to the Senator from Florida is simply, yes. The explanation is that it is based on the States' issuing the order, not the effective date. The State of Florida, for instance, would have issued the order in a timely fashion in order to be one of the excepted States.

Mr. LEAHY. If the Senator will yield, the Senator from Louisiana is absolutely correct. Florida, having ordered it, even though they have not implemented it, would be covered by the Breaux-Leahy amendment and would be protected.

Mr. GRAHAM. Thank you.

Mr. BREAUX. Mr. President, I have no additional requests for time on behalf of my amendment.

Mr. LEAHY. The Breaux-Leahy amendment makes a significant improvement in S. 652, and will permit States, at a time certain, to create a more competitive market for their in-state toll calls.

Without this amendment, S. 652 would have prohibited all States from ordering a Bell operating company to provide dialing parity for in-State toll calls before the company is authorized to provide long-distance service in that area. The bill preempted States' prerogative to open up the in-State toll market to meaningful competition. This preemption would persist under the bill, as reported by the committee, until the Bell operating company in the State satisfied the unbundling and interconnection requirements in the bill and was permitted into the long-distance market.

In addition, as introduced, the bill rolled back the actions of 10 States that have already ordered local telephone companies to provide dialing parity for in-State toll calls.

The 10 States that would have had to undo their dialing parity requirements are: Illinois, Wyoming, Wisconsin, Michigan, Florida, Connecticut, Georgia, Kentucky, Minnesota, and New York.

These States recognize that dialing parity is a key to healthy competition for in-State toll calls.

They should not be second-guessed and preempted on the Federal level. The bill would have stopped and reversed this progress toward a competitive market. The bill would also forbid all other States, many of which are considering changes, from implementing dialing parity until the regional Bell operating companies [RBOCs] are allowed into the intraLATA long distance market as a result, the States were left with no time certain for when they could require dialing parity for intraLATA calls.

Without dialing parity for toll calls, Bell company customers can place an in-State toll call simply by dialing 1 plus the seven-digit telephone number, for a total of eight digits to complete the call.

By contrast, customers who want to use their long distance company to complete that same call must dial 1 plus a special 5-digit access code plus the 7-digit telephone number, for a total of 13 digits to complete the call. Dialing these extra digits severely handicaps competition and gives an artificial advantage to Bell companies. This handicap is anticompetitive and anticonsumer.

Dialing parity for in-State toll calls enhances competition for toll services. Requiring dialing parity overcomes the primary obstacle to meaningful competition in these short-haul long distance markets.

Without dialing parity, intraLATA toll calls are simply carried by the local exchange carrier.

For Vermont, a one ''LATA'' State, this means that NYNEX carries the bulk of in-State toll calls, because other toll call carriers may only be accessed by dialing cumbersome access codes. Consumers are the losers.

When dialing parity is implemented, customers will be able to choose the carrier that carries their in-State toll calls with the same convenient ''1+'' dialing that they have had available for long-distance calling for many years. Customers will be able to pre-select their carrier for these calls, just as there is presubscription for long-distance carriers.

The availability of dialing parity for in-State toll service should substantially increase competition in this multibillion dollar telecommunications market. Increased competition, in turn, would bring lower prices for consumers and less need for regulation of such services by State public service commissions.

A recent Wall Street Journal article stated, ''in California, MCI's direct-dial toll rates are as much as 30 percent cheaper than Pacific Bell's in some cases. Similar savings can be had in other major markets across the country.'' In general, in-State toll calls are significantly lower-priced where effective competition is introduced. Implementation of toll dialing parity would help accomplish that result.

By preserving the Bell companies' dominant position in these markets until they secure long distance entry, the bill as reported would have diminished, rather than increased, the Bell companies' incentives to open their markets to competition as rapidly as possible.

S. 652 provided a disincentive for the Bell companies to open their local exchange markets so that they could compete in all segments of the long distance market. Instead, the bill might have encouraged the Bell companies' to fight competition in their local markets, because as long as they do not enter the interLATA market, their lucrative intraLATA toll markets are protected.

The bill, as reported, also puts unwarranted pressure on the regulatory agencies to approve Bell companies entry into the long-distance market, interLATA entry, regardless of the status of local competition under the bill, until the Bell companies got into the interexchange long-distance market, real competition would not come to the multibillion-dollar in-State toll market.

I have heard some concern that in-State dialing parity might increase local rates and thereby harm universal service. The 10 States that have ordered dialing parity have carefully analyzed and considered the effect of dialing parity on local rates.

They have ordered dialing parity after determining that universal service will not be harmed, and that equal access is necessary for effective competition. Competition reduces total costs for consumers and results in new services and technological advancements. These advances in technology have reduced the cost of providing basic service and provided new revenue sources for the Bell companies.

Some States may decide that circumstances in their regions are such that dialing parity for in-State toll calls is not in the public interest. In 1987, Vermont decided against requiring presubscription and dialing parity, but this issue is currently being reconsidered. The Breaux-Leahy amendment would permit the 10 States that have already ordered it, based upon the particular circumstances present in the State, to continue implementation of dialing parity.

The intraLATA toll dialing parity preemption provision in S. 652, as reported, is opposed by consumer groups, long-distance carriers, alternative local transport providers, and State organizations such as the National Association of Regulatory Utility Commissioners [NARUC], and the Attorneys General of 22 States and Guam.

In March 31, 1995 letter to Senator PRESSLER, NARUC wrote that:

> The blanket preemption of states that have already mandated dialing parity will undercut state efforts, already in place, to encourage competition and bring lower prices and more choice to consumers.

The Breaux-Leahy amendment would permit single-LATA States, including Vermont, Maine, Wyoming, New Hampshire, Rhode Island, New Mexico, Utah and South Dakota, and the 10 States, which have ordered intraLATA toll dialing parity, to implement dialing parity, whether or not the RBOC in the State has been authorized to provide interexchange service.

In addition, the Breaux-Leahy amendment provides a time certain for all other States to be able to implement such dialing parity of the earlier of 3 years after enactment or when the RBOC is granted authority to provide interexchange service. The preemption ''sunset'' of 3 years permits those 13 States, Arizona, California, Delaware, Indiana, Kansas, Louisiana, Massachusetts, New Jersey, Pennsylvania, Texas, Vermont, Washington, and West Virginia—with proceedings underway, time to complete their proceedings, issue any order for intraLATA toll dialing parity and make plans for implementation, though those States may

not implement until the earlier of 36 months or until the RBDOC is authorized to provide inter-exchange services.

Finally, in those States where intraLATA toll dialing parity has been implemented—not merely ordered—during the 3 years after enactment or before the RBOC in the State has been authorized to provide interexchange service, whichever is earlier, the Breaux-Leahy amendment would bar telecommunications carriers in that State from jointly marketing interLATA and intraLATA services. This ban would be lifted or ''sunset'', 3 years after enactment or when the RBOC in the State was authorized to offer interexchange services, whichever is earlier. Furthermore, this ban only applies to carriers serving greater than 5 percent of the Nation's presubscribed access lines.

The biggest telecommunications legislative reform package in more than 60 years should not include provisions that reverse progress toward competition. Supporting this amendment is proconsumer, procompetitive, and pro-States' rights.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1421) was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. BREAUX. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PRESSLER. Mr. President, I sincerely thank the Senators and their staffs who worked that out. That was truly a remarkable compromise. I thank them very much.

I urge Senators to bring their amendments to the floor. We are marching forward, but we need everybody who has an amendment to get over here.

AMENDMENTS NOS. 1317 AND 1318, EN BLOC

Mr. BROWN. Mr. President, I send two amendments to the desk, en bloc, and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes amendments numbered 1317 and 1318, en bloc.

Mr. BROWN. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 1317

In managers' amendment, on page 13, line 20, after ''programming'' insert: ''by any means''.

AMENDMENT NO. 1318

On page 12, line 10 insert after ''services'': ''or its affiliate''.

Mr. BROWN. Mr. President, these are technical amendments. Both sides have had a chance to review them, and I believe they have signed off. What they do is deal with program access. They make it clear that the rules are the same for both cable operators and telephone companies. This is an area in which, it seemed to me, it was appropriate to have consistent rules and treat both of them the same.

The PRESIDING OFFICER. Is there further debate?

Mr. PRESSLER. Mr. President, perhaps my colleague will speak on the amendments, and then we will be sure we get an agreement here.

Mr. BROWN. Mr. President, on amendment No. 1317, the amendment to the managers' amendment, on page 13, line 20, after the word ''programming'' we insert the words ''by any means.'' And on amendment No. 1318, which deals with page 12 of the managers' amendment, line 10, after the word ''service,'' it inserts ''or its affiliates.''

The purpose of these two amendments is to make it clear that the rules were the same for both cable operators and telephone companies in the area of program access. It seemed appropriate to treat both kinds of firms the same under these circumstances.

I believe the amendment is more in terms of a technical amendment than a substantive amendment, in terms of the major policy issues this body has been dealing with.

Mr. President, if I might correct something. Amendment No. 1318 is an amendment to the bill itself. Amendment No. 1317 is the amendment to the managers' amendment.

Mr. PRESSLER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I am advised that I can make the following request that has been cleared on both sides.

I ask unanimous consent all remaining first-degree amendments be offered by 7:30 p.m. this evening.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Let me indicate, at 7:30, we will assess and see where we are. If we can work it out, we will try to accommodate most of my colleagues.

I understand there may be a movie tonight—Batman or something—that many of my colleagues are headed for. It is a good movie, I understand, too.

VOTE ON AMENDMENT NO. 1317

Mr. BROWN. Mr. President, we have worked out approval of amendment No. 1317. My understanding is it has been signed off on both sides.

Mr. PRESSLER. We have no objection, and we are in support of that amendment.

The PRESIDING OFFICER. Amendment 1317 will now be considered separately. The question is on agreeing to the amendment.

The amendment (No. 1317) was agreed to.

Mr. PRESSLER. I move to reconsider the vote.

Mr. BROWN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BROWN. Mr. President, I ask unanimous consent to set aside amendment No. 1318.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1319 WITHDRAWN

Mr. BROWN. Mr. President, I ask unanimous consent to withdraw amendment No. 1319. That is not one we have been able to reach agreement on.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the amendment (No. 1319) was withdrawn.

Mr. BROWN. Mr. President, my amendment No. 1320 is one we are attempting to clear on both sides. It is an amendment which I believe both sides have a copy of. My hope is that we will shortly be able to deal with both amendments numbered 1318 and 1320. I yield the floor.

AMENDMENT NO. 1272

(Purpose: To require broadcasters to review viewer input on the violent content of programming upon license renewal)

Mr. DORGAN. Mr. President, I send to the desk amendment No. 1272 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] PROPOSES AN AMENDMENT NUMBERED 1272.

Mr. DORGAN. Mr. President, I ask that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 82, between lines 4 and 5, insert the following:

(3) This section shall operate only if the Commission shall amend its ''Application for renewal of License for AM, FM, TV, Translator or LPTV Station'' (FCC Form 303–S) to require that, for commercial TV applicants only, the applicant attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee in accordance with 47 C.F.R. sec. 73.1202 that comment on the applicant's programming, if any, characterized by the commentor as constituting violent programming.

Mr. DORGAN. Mr. President, this is a very simple amendment. I shall not take a great deal of time to explain it. We have visited with both the chairman of the committee and the minority member, the ranking minority member, on this issue. I know the ranking minority member is inclined to accept. I have not heard back from the Chair.

Let me describe exactly what this does. It follows on the vote that we had

yesterday on the issue of television violence. I had originally thought about bringing to the floor the television violence report card, but I decided not to do that.

My amendment would do something that is very simple: It would deal with the application to renewal of licenses for televisions and say that for commercial television applicants, for renewal, the applicants would attach as an exhibit for the application for renewal a summary of written comments and suggestions received by the public and maintained by the licensee—which is, incidentally, now required—and that comment on the applicants programming, if characterized by the commenters as constituting violent programming.

What this says is, when you are doing a renewal of application, you are a television station and you are filing for a renewal of your license, that in your application, you shall provide a summary of written comments and suggestions that are in your file that you are required to keep, anyway, with respect to those who comment on violent programming that your viewers have witnessed and felt they wanted to bring to your attention, and that that information should be available to the FCC.

It does not in any way expand the power of the FCC. It simply will require the disclosure and summary of information that is already in the file that is now required by law to be kept, and I think it will emphasize in a renewal for application any information that would exist in those files about viewers' concerns about violent programming.

I think that that would be something the FCC would find useful in reviewing the renewal of applications. I think it also follows on the vote that we had yesterday on television violence. My colleague, Senator CONRAD from North Dakota, offered an amendment with Senator LIEBERMAN, which I voted for, on the issue of television violence.

I have a piece of legislation that I cosponsored with Senator KAY BAILEY HUTCHISON on television violence, calling for the development of a television violence report card so that parents would know which are the most violent programs, which programs have the most violence in them, and who sponsors them. Parents would, therefore, be able to better supervise their children's viewing habits and send messages to those who are sponsoring the violence.

I have not offered that. Instead, I am offering something that I think complements what we did last evening and something that I think is simple, something I hope will not be controversial, and something I hope the committee Chair, the floor manager, will accept.

I do not intend or need to take additional time on this. I think it is easily understood by everyone, and it is complementary to legislation the Senate passed last evening.

As I indicated, it does not expand the FCC powers or authority, and does not require the television stations to collect information that they are not now collecting. It simply requires that the information they now have that is in their files must be disclosed and summarized with respect to comments they have received from viewers on television violence when they file for renewal of their license.

Mr. President, I yield the floor.

Mr. PRESSLER. Mr. President, we are prepared to accept the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment numbered 1272.

The amendment (No. 1272) was agreed to.

Mr. PRESSLER. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, if Senators will bring their amendments to the floor, we are eagerly awaiting. We want to do business here. We only have an hour and a half.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 1282, AS FURTHER MODIFIED

Mr. HOLLINGS. On behalf of Senator MOSELEY-BRAUN, I ask unanimous consent amendment 1282 be further modified as indicated in the modification that I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1282), as further modified, is as follows:

At the end of the bill, insert the following:

TITLE —NATIONAL EDUCATION TECHNOLOGY FUNDING CORPORATION

SEC. —01. SHORT TITLE.

This title may be cited as the ''National Education Technology Funding Corporation Act of 1995''.

SEC. —02. FINDINGS; PURPOSE.

(a) FINDINGS.—The Congress finds as follows:

(1) CORPORATION.—There has been established in the District of Columbia a private, nonprofit corporation known as the National Education Technology Funding Corporation which is not an agency or independent establishment of the Federal Government.

(2) BOARD OF DIRECTORS.—The Corporation is governed by a Board of Directors, as prescribed in the Corporation's articles of incorporation, consisting of 15 members, of which—

(A) five members are representative of public agencies representative of schools and public libraries;

(B) five members are representative of State government, including persons knowledgeable about State finance, technology and education; and

(C) five members are representative of the private sector, with expertise in network technology, finance and management.

(3) CORPORATE PURPOSES.—The purposes of the Corporation, as set forth in its articles of incorporation, are—

(A) to leverage resources and stimulate private investment in education technology infrastructure;

(B) to designate State education technology agencies to receive loans, grants or other forms of assistance from the Corporation;

(C) to establish criteria for encouraging States to—

(i) create, maintain, utilize and upgrade interactive high capacity networks capable of providing audio, visual and data communications for elementary schools, secondary schools and public libraries;

(ii) distribute resources to assure equitable aid to all elementary schools and secondary schools in the State and achieve universal access to network technology; and

(iii) upgrade the delivery and development of learning through innovative technology-based instructional tools and applications;

(D) to provide loans, grants and other forms of assistance to State education technology agencies, with due regard for providing a fair balance among types of school districts and public libraries assisted and the disparate needs of such districts and libraries;

(E) to leverage resources to provide maximum aid to elementary schools, secondary schools and public libraries; and

(F) to encourage the development of education telecommunications and information technologies through public-private ventures, by serving as a clearinghouse for information on new education technologies, and by providing technical assistance, including assistance to States, if needed, to establish State education technology agencies.

(b) PURPOSE.—The purpose of this title is to recognize the Corporation as a nonprofit corporation operating under the laws of the District of Columbia, and to provide authority for Federal departments and agencies to provide assistance to the Corporation.

SEC. —03. DEFINITIONS.

For the purpose of this title—

(1) the term ''Corporation'' means the National Education Technology Funding Corporation described in section ____ 02(a)(1);

(2) the terms ''elementary school'' and ''secondary school'' have the same meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965; and

(3) the term ''public library'' has the same meaning given such term in section 3 of the Library Services and Construction Act.

SEC. —04. ASSISTANCE FOR EDUCATION TECHNOLOGY PURPOSES.

(a) RECEIPT BY CORPORATION.—Notwithstanding any other provision of law, in order to carry out the corporate purposes described in section ____ 02(a)(3), the Corporation shall be eligible to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any federal department or agency, to the extent otherwise permitted by law.

(b) AGREEMENT.—In order to receive any assistance described in subsection (a) the Corporation shall enter into an agreement with the Federal department or agency pro viding such assistance, under which the Corporation agrees—

(1) to use such assistance to provide funding and technical assistance only for activities which the Board of Directors of the Corporation determines are consistent with the corporate purposes described in section —— 02(a)(3);

(2) to review the activities of State education technology agencies and other entities receiving assistance from the Corporation to assure that the corporate purposes described in section —— 02(a)(3) are carried out;

(3) that no part of the assets of the Corporation shall accrue to the benefit of any member of the Board of Directors of the Corporation, any officer or employee of the Corporation, or any other individual, except as salary or reasonable compensation for services;

(4) that the Board of Directors of the Corporation will adopt policies and procedures to prevent conflicts of interest;

(5) to maintain a Board of Directors of the Corporation consistent with section —— 02(a)(2);

(6) that the Corporation, and any entity receiving the assistance from the Corporation, are subject to the appropriate oversight procedures of the Congress; and

(7) to comply with—

(A) the audit requirements described in section 05; and

(B) the reporting and testimony requirements described in section 06.

(c) CONSTRUCTION.—Nothing in this title shall be construed to establish the Corporation as an agency or independent establishment of the Federal Government, or to establish the members of the Board of Directors of the Corporation, or the officers and employees of the Corporation, as officers or employees of the Federal Government.

SEC. 05. AUDITS.

(A) AUDITS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS.—

(1) IN GENERAL.—The Corporation's financial statements shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants who are members of a nationally recognized accounting firm and who are certified by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(2) REPORTING REQUIREMENTS.—The report of each annual audit described in paragraph (1) shall be included in the annual report required by section 06(a).

(b) RECORDKEEPING REQUIREMENTS; AUDIT AND EXAMINATION OF BOOKS.—

(1) RECORDKEEPING REQUIREMENTS.—The Corporation shall ensure that each recipient of assistance from the Corporation keeps—

(A) separate accounts with respect to such assistance;

(B) such records as may be reasonably necessary to fully disclose—

(i) the amount and the disposition by such recipient of the proceeds of such assistance;

(ii) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(iii) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(C) such other records as will facilitate an effective audit.

(2) AUDIT AND EXAMINATION OF BOOKS.—The Corporation shall ensure that the Corporation, or any of the Corporation's duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance from the Corporation that are pertinent to such assistance. Representatives of the Comptroller General shall also have such access for such purpose.

SEC. 06. ANNUAL REPORT; TESTIMONY TO THE CONGRESS.

(a) ANNUAL REPORT.—Not later than April 30 of each year, the Corporation shall publish an annual report for the preceding fiscal year and submit that report to the President and the Congress. The report shall include a comprehensive and detailed evaluation of the Corporation's operations, activities, financial condition, and accomplishments under this title and may include such recommendations as the Corporation deems appropriate.

(b) TESTIMONY BEFORE CONGRESS.—The members of the Board of Directors, and officers, of the Corporation shall be available to testify before appropriate committees of the Congress with respect to the report described in subsection (a), the report of any audit made by the Comptroller General pursuant to this title, or any other matter which any such committee may determine appropriate.

AMENDMENT NO. 1318, AS MODIFIED

The PRESIDING OFFICER. The question recurs on the Brown amendment, No. 1318.

Is there further debate? The Senator from Colorado.

Mr. BROWN. Mr. President, I ask unanimous consent to amend 1318 into a form the chairman of the committee and distinguished ranking member——

Mr. PRESSLER. If my colleague will yield, he is not trying to amend the Moseley-Braun amendment?

The PRESIDING OFFICER. The pending amendment is the amendment of the Senator from Colorado.

Mr. BROWN. Mr. President, I send to the desk a revised version of amendment No. 1318, and ask unanimous consent I be allowed to offer the revised version.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 1318), as modified, is as follows:

On page 13, line 20 insert after ''carrier'': ''or its affiliate''.

Mr. BROWN. It is my understanding both sides have agreed to this version. I think it more clearly states the intent that was involved. I urge its approval.

The PRESIDING OFFICER. Is there further debate? If not the question occurs on amendment No. 1318, as modified.

Mr. HOLLINGS. Mr. President, let me see a copy of it. I have not seen the modification. We had made suggestions as to the modification. Can we look at it?

Mr. PRESSLER. Mr. President, is it possible the Senator from Pennsylvania could offer an amendment at this point? I ask unanimous consent whatever the pending business is it be set aside so the Senator from Pennsylvania can offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Pennsylvania.

AMENDMENT NO. 1294, AS MODIFIED

(Purpose: To promote the use of telecommuting by the American work force)

Mr. SPECTER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to considering the amendment?

Mr. SPECTER. It has been previously filed.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], proposes an amendment numbered 1294, as modified.

Mr. SPECTER. I ask unanimous consent there be no reporting of the amendment so I may explain it.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. . TELECOMMUTING PUBLIC INFORMATION PROGRAM.

(a) FINDINGS.—Congress makes the following findings—

(1) Telecommuting is the practice of allowing people to work either at home or in nearby centers located closer to home during their normal working hours, substituting telecommunications services, either partially or completely, for transportation to a more traditional workplace;

(2) Telecommuting is now practiced by an estimated two to seven million Americans, including individuals with impaired mobility, who are taking advantage of computer and telecommunications advances in recent years;

(3) Telecommuting has the potential to dramatically reduce fuel consumption, mobile source air pollution, vehicle miles traveled, and time spent commuting, thus contributing to an improvement in the quality of life for millions of Americans; and

(4) It is in the public interest for the Federal Government to collect and disseminate information encouraging the increased use of telecommuting and identifying the potential benefits and costs of telecommuting.

(b) The Secretary of Transportation, in consultation with the Secretary of Labor and the Administrator of the Environmental Protection Agency, shall, within three months of the date of enactment of this Act, carry out research to identify successful telecommuting programs in the public and private sectors and provide for the dissemination to the public of information regarding—

(1) the establishment of successful telecommuting programs; and

(2) the benefits and costs of telecommuting.

(c) REPORT.—Within one year of the date of enactment of this Act, the Secretary of Transportation shall report to Congress its findings, conclusions, and recommendations regarding telecommuting developed under this section.

Mr. SPECTER. This amendment directs the Secretary of Transportation, in consultation with the Labor Department and EPA, to identify successful governmental and business telecommuting programs and to disseminate information about such programs, including the benefits of telecommuting, to the general public. The amendment is intended to promote the increased use of telecommuting through a broader awareness of the benefits, including flexibility, profamily employment, reduced traffic congestion, and lower fuel consumption. The Secretary of Transportation will be required to report to Congress on his findings, conclusions, and recommendations regarding telecommuting within 1 year of enactment.

It is my understanding this amendment is acceptable on both sides.

Mr. PRESSLER. We are prepared to accept this amendment by Senator Specter from Pennsylvania. I commend him for his efforts.

I believe the Specter amendment has been cleared on both sides.

Mr. HOLLINGS. It has been cleared.

Mr. PRESSLER. Mr. President, I urge the adoption of the amendment.

The PRESIDING OFFICER. The pending question is amendment 1294, as modified.

If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1294) was agreed to.

Mr. SPECTER. Mr. President, I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1343

(Purpose: To provide for Commission notification of the Attorney General of any approval of Bell Company entry into long distance)

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have amendment No. 1343 at the desk. I ask for its consideration.

The PRESIDING OFFICER. Without objection the pending amendment is set aside. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 1343.

Mr. DORGAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

The amendment is as follows:

On page 93, after line 12, insert the following:

''(6) NOTIFICATION OF ATTORNEY GENERAL.—

''(A) NOTIFICATION.—The Commission shall immediately notify the Attorney General of any approval of an application under paragraph (1).

''(B) ACTION BY ATTORNEY GENERAL.—Upon notification of an approval of an application under paragraph (1), the Attorney General may commence an action in any United States District Court if

''(i) the Attorney General determines that the authorization granted by the Commission may substantially lessen competition or tend to create a monopoly; or

''(ii) the Attorney General determines that the authorization granted by the Commission is inconsistent with any recommendation of the Attorney General provided to the Commission pursuant to paragraph (2) of this section.

''The commencement of such an action shall stay the effectiveness of the Commission's approval unless the court shall otherwise specifically order.

''(C) STANDARD OF REVIEW.—In any such action, the court shall review de novo the issues presented. The court may only uphold the Commission's authorization if the court finds that the effect of such authorization will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country. The court may uphold all or part of the authorization.''

Mr. DORGAN. Madam President, because of the time constraint that amendments must be offered by 7:30, I feel constrained to offer the amendment but I admit this is a very controversial issue. This is a different approach on the issue that we have debated at some length with respect to the role of the Justice Department.

I would not, in this amendment, preserve the same role for the Justice Department that we had previously debated, but the amendment I have offered, that is germane and I had previously at the desk, is one that would provide, upon notification by the Federal Communications Commission of an approval of an application under paragraph 1, that the Attorney General may commence an action in U.S. District Court and seek a stay, if the Attorney General determines the authorization granted by the Commission may substantially lessen competition or tend to create a monopoly.

Mr. HOLLINGS. What is the last wording there? I am trying to hear.

Mr. DORGAN. Let me read the paragraph again. Essentially what this amendment would do is to provide that, if the Federal Communications Commission approved an application under paragraph 1 in the bill, the Attorney General may commence an action in a U.S. District Court:

. . . if . . . the Attorney General determines that the authorization granted by the Commission may substantially lessen competition or tend to create a monopoly; or, if the Attorney General determines that the authorization granted by the Commission is inconsistent with any recommendation of the Attorney General provided to the Commission pursuant to paragraph (2) of this section.

The commencement of such an action shall stay the effectiveness of the Commission's approval unless the court shall otherwise specifically order.

I recognize this is a very controversial issue. We have already debated a couple of versions of the Justice Department involvement. I do want to have this called up, as I have just done, prior to 7:30 to have the right to ask for a vote on this different approach with respect to the Justice Department prior to final passage of this bill. I do not intend to speak at length this evening but I did want to have this introduced. I will be happy to have it set aside.

Mr. PRESSLER. I will be prepared to table right now and get a vote on it. Then it will be behind us. Would that be agreeable?

Mr. DORGAN. My understanding is we are going to vote on a good number of amendments tomorrow en bloc. Or at least stacked amendments. I expect there may be some others who discussed the Justice Department role who may want to add some comments to this.

Mr. PRESSLER. Madam President, if my friend will yield, we have had a long debate on the Senate floor. I thought we had a general agreement. We allowed the Thurmond amendment to be voted on first, in consideration of my friend from North Dakota. We bent over backward to give everybody every chance for this. The bill has been in for a week. I would plead with him, we would like to vote now before Members leave. This subject has been debated so thoroughly and for so many days. We are prepared to vote here on his amendment.

Mr. DORGAN. The Senator from South Dakota is absolutely correct. He has been eminently fair. I have not referenced an amendment this evening that is identical to the Justice Department amendments that we have discussed before. This is a different amendment.

It provides that the Attorney General will have the opportunity to seek a stay in U.S. District Court if and only if, upon approval of an application by the Federal Communications Commission, the Attorney General would determine the authorization granted by the Commission may substantially lessen competition or tend to create a monopoly.

This is a different approach and it is gradations lower than the stuff, rather the approaches that we were talking about earlier.

There may be some others who would like to discuss this. But, in any event, the Senator certainly has a right to table this. At the moment, I hope he will refrain from doing so in the event some others would like to discuss it.

Mr. PRESSLER. If my friend will yield, I hate to do this because at 7:30 we are supposed to have the potential list of amendments that we are trying to move forward. There is very little time tomorrow morning. Senator DOLE has asked that we vote on as many of these amendments as we can. This has been debated thoroughly.

Mr. DORGAN. Let me ask the Senator from South Dakota, as well as the ranking minority member on this issue—the Senator realizes that we have had substantial debate on the Justice Department role. Those of us who offered the Justice amendment understood that we lost, and it was a very close vote. But, nonetheless, we lost. Many of us feel very strongly about the need to update the 1934 law, that we ought to move forward in the rewrite of the telecommunications laws. We also feel very strongly that if we proceed just as we are now with this bill, we could find ourselves in a heck of a fix having dealt the Justice Department out of a legitimate role here.

I guess my question is, Does the chairman of the Commerce Committee and the ranking member intend to hold oversight hearings in the next couple of years, next year, or the year after, so that you can, through the committee structure, address this issue of the Justice role and what has happened since the passage of the bill, if this bill in fact passes?

If I had some assurance that maybe we would have aggressive oversight, and if we find in that oversight that we

have made a mistake here, then perhaps I would be persuaded to let this go. I am uncomfortable with where this rests. This amendment is not the same as the previous amendment. It is a different approach.

I ask the chairman of the committee and the ranking minority member about their intentions with respect to evaluating whether what we have done works or does not work and whether dealing out the Justice Department the way they have been dealt out of this process has been helpful or hurtful to the consumers.

Mr. PRESSLER. Let me first of all commend the Senator from North Dakota. He is my friend. We work together on all kinds of issues, and we will in the future. We will try to make this a part of a hearing or hearings. I cannot guarantee it. There is so much authorization legislation to do in the Commerce, Science, and Transportation Committee, a stack of authorizing legislation to do when we are getting a letter from Senator DOMENICI as to how to raise about $25 or $30 billion. So we have a lot of work to do in the Commerce, Science, and Transportation Committee. But we will be holding hearings. This will be a part of it.

I really wish that my friend from North Dakota would give us a chance in good faith to address this after the proper hearings and take it up legislatively later, if that would be possible.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Let me join in the comments with our distinguished chairman. What happens here is, with the amendment of the Senator from North Dakota, as this Senator sees it, it just comes back around and reiterates the amendment which was defeated. I do not think it was unjustifiably defeated or casually defeated, or whatever was the expression used by my friend from North Dakota. Yes, we should have oversight hearings. This is a really complex measure. I cannot see, as a member of that communications subcommittee, that we not have hearings each year to see the progress made, how they have managed to set down the rules for the unbundling, the dial parity, the interconnection, the number portability, and all of these particular things to move everything along down this information superhighway.

So I agree with the Senator from North Dakota on that. But I agree with our chairman. We do not want to come back around now, and have it all settled—one-stop shopping, so to speak, that the FCC comes back around here at the last minute saying: By the way, we want to put the Attorney General back in there again.

I am back in, if you want to hear those arguments again about antitrust lawyers.

Mr. DORGAN. That is fine. The Senator does not need to repeat those arguments. But I was entertained by them the first time. I am sure I would be the second time, as well. In fact, I share some of them. But at least with respect to the Justice Department, the antitrust enforcement, now with Anne Bingaman down at the Attorney General's office, I am pretty pleased with what is going on.

Let me ask one additional question. I guess if I get some feeling that you are willing to do oversight hearings and be aggressive, and find out whether this works or does not work, or whether the consumers are advantaged or disadvantaged, I would have some better feeling about it. When we go to conference with this bill, if this bill passes the Senate and the House comes to a conference with a Justice Department role in it, as you know, it is a lesser standard than we were proposing. I know that 43 percent of the membership of the Senate on the issue of the Justice role felt differently than the majority, but a substantial minority, nonetheless.

I hope we can find a way in the conference to resolve this issue in a slightly different way, as well.

I am happy to yield.

Mr. PRESSLER. Madam President, I want to thank the Senator from North Dakota because I feel comfortable that our Commerce, Science, and Transportation Committee should be an oversight committee for part of the time. We have had two of the larger bills, the tort reform bill, and the product liability bill, coming through our committee. And then the telecommunications bill has occupied a lot of our time. Because we have the NASA space issue, we have the reauthorization of the Magnuson Act, which has had field hearings, we have had a lot of legislation.

But I am hopeful that we can have a lot of oversight hearings because I am one who believes strongly that we should have a Congress oversight. David Boren used to say that in his discussions about reforms. That was one of the reforms we were going to have, was to have a Congress with no legislation and oversight, which is kind of the ''Blue Monday'' work of Congress where you just sit and try to improve the Government we already have.

So I think the Senator makes a good point. We hope to get into those types of hearings. We have had some already. We will have more. I hear what he is saying. But I think at this particular time in this bill, after all these negotiations and so forth have gone on, that we would have to oppose his amendment at this time. But we hope to work with him on it in the future.

Mr. DORGAN. Madam President, whether we count votes or weigh votes, I do not think there is any reason to believe a tabling motion made by the chairman of the committee would produce a different result than I saw last evening. So I shall not pursue this, and I will ask unanimous consent to withdraw the amendment in a moment.

But I will say to you that I think this issue will not dissolve. The issue of the Justice Department role and dealing with anticompetitive or antitrust issues will not go away and will show up again, certainly when some of us think we have the votes to win. When it does show up, you will know that we have counted differently. But in any event, if the chairman and the ranking member will permit me, I ask unanimous consent to withdraw the amendment at this point.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

So the amendment (No. 1343) was withdrawn.

Mr. PRESSLER. I thank my friend from North Dakota very much for his cooperation on this.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

VOTE ON AMENDMENT NO. 1318, AS MODIFIED

Mr. BROWN. Madam President, I call up amendment No. 1318, as modified. I believe all parties have had a chance to review it. It has been cleared now.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1318), as modified, was agreed to.

The PRESIDING OFFICER. Who seeks recognition?

Mr. PRESSLER. Madam President, I again urge Senators to please come to the floor with their amendments. We are open for business. By 7:30, Senator DOLE will return to the floor and look over the amendments that people wish to offer. We are eager to do business over here. I plead with Senators. We are trying to finish up. Please come to the floor with your speeches or amendments.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. I thank the distinguished Chair.

AMENDMENT NO. 1299

Mr. HOLLINGS. Madam President, on behalf of the Senator from Louisiana [Mr. BREAUX], he wanted to make sure he qualified amendment No. 1299 to be called up but not necessarily to be voted on at this particular time. He is not present, but I would like to call it up and then set it aside, 1299.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for Mr. BREAUX, proposes an amendment numbered 1299.

Mr. HOLLINGS. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 123, line 10, add the following new sentence: ''This section shall take effect upon a determination by the United States Coast Guard that at least 80% of vessels required to implement the Global Maritime Distress and Safety System have the equipment required by such System installed and operating in good working condition.''

Mr. HOLLINGS. And I ask unanimous consent now that the amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1285

(Purpose: To means test the eligibility of the community users in the act)

Mr. PRESSLER. Madam President, I would like to call up amendment No. 1285 on behalf of Senator JOHN MCCAIN. The intention is for this amendment to be debated and possibly voted on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER], for Mr. MCCAIN, for himself, Ms. SNOWE, Mr. ROCKEFELLER, Mr. EXON, Mr. KERREY, and Mr. CRAIG, proposes an amendment numbered 1285.

Mr. PRESSLER. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of section 310 of the Act, add the following:

( ) No entity listed in this section shall be entitled for preferential rates or treatment as required by this section, if such entity operates as a for-profit business, is a school as defined in section 264(d)(1) with an endowment of more than $50 million, or is a library not eligible for participation in state-based plane for Library Services and Construction Act title III funds.

Mr. PRESSLER. I ask unanimous consent the amendment be laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 1323, AS MODIFIED

(Purpose: To postpone the effective date of the authority to provide alarm monitoring services)

Mr. HARKIN. Madam President, I would like to call up my amendment. I believe it is amendment No. 1323.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and Mr. PACKWOOD, proposes an amendment numbered 1323.

Mr. HARKIN. Madam President, I would like just to take a couple of minutes to talk about this amendment. I do not want to take a great deal of time; I know the managers want to move on to other amendments, and I have two more amendments I want to offer.

I believe this amendment as it has been modified will be acceptable to both sides. I wish to thank both Senator HOLLINGS and Senator PRESSLER for being willing to accommodate me and to work this out. I thank the esteemed Senator from Kentucky also for his willingness to help work this matter out in an acceptable manner.

Madam President, I ask unanimous consent to strike the number 6 and insert in lieu thereof the number 4.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

The amendment (No. 1323), as modified, is as follows:

On page 109, line 4, strike out ''3 years'' and insert in lieu thereof ''4 years''.

Mr. HARKIN. Madam President, I know that most of any Senate colleagues share my belief that small business people are the backbone of both the economic and community life of this country. We know that the small business people in our villages, towns and cities back home help to provide neighborhood stability and pride by being the individuals who can be depended upon to participate in community affairs, and we all know small businesses are where the jobs are created.

Today, in the midst of these great battles among corporate titans like the baby Bells, the major long distance carriers, the large cable television companies and the large broadcasters, this amendment helps the little person. The amendment that I have just introduced on behalf of myself and Senator PACKWOOD is very simple. It merely changes the waiting period before the Bell companies could enter the alarm monitoring service business to 4 years.

Now, some of my colleagues might ask why we are doing this. Well, this amendment would partially restore an agreement reached in the last Congress through good faith negotiations between the alarm industry and the Bells. They were asked by Members of Congress to work out a deal, and they did. There was give and take on both sides and they came to an agreement. It is the purpose of the HARKIN-Packwood amendment to restore one key element in that agreement.

And why was this agreement struck in the first place? First of all, the burglar and fire alarm industry is unique. It is the only information service which is competitively available in every community across the Nation. If you want to verify this, I urge you to go back to your offices and check the yellow pages in the phone book for your State. What you will find is that the alarm security services are widely and competitively available.

What is less apparent is the fact that this highly competitive, $10 billion industry is not dominated by large companies. Instead, it is dominated by small businesses which employ on average less than 10 workers. There are over 13,000 alarm companies across the Nation. The top 100 control less than 25 percent of the marketplace and the 100th largest company has annual revenues of less than $3 million a year. The eight largest companies control merely 11 percent of the marketplace.

Many of these businesses epitomize the American dream. Alarm companies are started by people with all kinds of backgrounds. A military veteran who learned electronics in the service, someone who worked in the building trades, or a retired police officer, they start their own businesses; they work hard; they succeed; and they want to pass on their business to their children.

All of that is at risk. The industry is an open marketplace where small companies compete successfully every day with a few large national companies because no single company has the ability to control access to service or how it is delivered.

Furthermore, no single individual or group of companies has the ability to set the price in the marketplace. It is the American consumer who has the most to lose because the consumer benefits from this competitive marketplace. Over the past decade, the average price of the installation of a home security system has declined 40 percent. Today, you can have a system installed in your home for as little as $200, and some companies are even offering free installation in order to promote alarm monitoring services.

The alarm industry also has an excellent job creation record. Over the past 20 years, the alarm industry has more than tripled employment from 40,000 jobs to well over 140,000 jobs.

This is a very vibrant sector of the American economy. So vigorous alarm industry competition benefits the consumer in another way—the development of an industry-wide culture which promotes prompt, reliable service.

This is vitally important in an industry where the service involved is a protection of life, safety, and property in one's home or business. Knowing that a service person will be there next week sometime in the morning or afternoon is not good enough. Consumers benefit from the knowledge that if they do not like the service they are receiving, there is always another alarm company that will provide the service they want and need at a competitive price.

Another compelling reason for increasing the transition period for the Bell entry into the alarm monitoring service is the fact most experts agree that the vast majority of small business alarm companies will be driven out of business if the regional Bell operating companies enter before a level playing field exists.

The industry felt it had an excellent chance of developing that level playing field in its prior agreement with the Bells. That agreement included a ban on Bell company access to the customer lists of existing alarm companies, an expedited complaint process at the FCC, a Department of Justice-administered VIII(c) antitrust entry test, and an adequate waiting period to ensure that an overburdened FCC should actually address the industry's complaints when Bell entry occurs.

While the first two of those provisions remain in the bill, the critical VIII(c) antitrust entry test is gone and the term of years prior to entry was cut in half to 3 years.

So, Madam President, while S. 652 requires the RBOC's meet a checklist of requirements designed to establish conditions necessary for competition in the local exchange, it does not require actual competition to exist. An VIII(c) antitrust test is no longer available. Competition in the local telephone exchange is the next best assurance of a level playing field.

So, Madam President, the goal of this amendment is to make sure that these small companies out there, indeed, have some period of time to ensure that there is a level playing field before the Bells can enter the alarm and service industry.

This period, has been agreed upon for 4 years, and I am hopeful that would be the minimum length of time that we would have. I still believe that the initial agreement of 6 years should have been adhered to, but I understand that this has been worked out for 4 years here in the Senate, with the assurance of the committee that this would be acceptable. I am hopeful that a longer period can be worked out in the conference committee. Again, I want to thank Senators PRESSLER and HOLLINGS for helping work out this agreement.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Madam President, these carveouts are always difficult because when there is a carveout, there are problems for new entrants. I agree with the Senator from Iowa that this is small business. There has been a lot of discussion on this, whether the burglar alarm people should be given a certain period of protection.

We hope in a deregulatory bill to get everybody competing as soon as possible. In fact, we had a big thing—at least it was big to me—in the Commerce Committee of keeping even the newspaper publishers without a carveout, without a period of years—they have 5 or 6 years in the House bill.

If we are going to have deregulation, we have to get people competing, because new people want to get into the field also out there, new small businesses.

As I understand it, there is an informal agreement, if we can use that term, reached that they will not seek beyond 4 years in conference, hopefully. With that understanding, we can accept this amendment.

I urge adoption of the amendment.

The PRESIDING OFFICER. Does the Senator have any further debate on this amendment?

Mr. HARKIN. No.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1323), as modified, was agreed to.

Mr. PRESSLER. Madam President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 1322

(Purpose: To prevent unfair billing practices for information or services provided over calls to 800 numbers)

Mr. HARKIN. Madam President, if my friend from Massachusetts will yield, I just have two other amendments that have been accepted. I call up amendment No. 1322 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 1322.

Mr. HARKIN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 146, below line 14, add the following:

SEC. 409. PREVENTION OF UNFAIR BILLING PRACTICES FOR INFORMATION OR SERVICES PROVIDED OVER TOLL-FREE TELEPHONE CALLS.

(a) FINDINGS.—Congress makes the following findings:

(1) Reforms required by the Telephone Disclosure and Dispute Resolution Act of 1992 have improved the reputation of the pay-per-call industry and resulted in regulations that have reduced the incidence of misleading practices that are harmful to the public interest.

(2) Among the successful reforms is a restriction on charges being assessed for calls to 800 telephone numbers or other telephone numbers advertised or widely understood to be toll free.

(3) Nevertheless, certain interstate pay-per-call businesses are taking advantage of an exception in the restriction on charging for information conveyed during a call to a ''toll-free'' number to continue to engage in misleading practices. These practices are not in compliance with the intent of Congress in passing the Telephone Disclosure and Dispute Resolution Act.

(4) It is necessary for Congress to clarify that its intent is that charges for information provided during a call to an 800 number or other number widely advertised and understood to be toll free shall not be assessed to the calling party unless the calling party agrees to be billed according to the terms of a written subscription agreement or by other appropriate means.

(b) PREVENTION OF UNFAIR BILLING PRACTICES.—

(1) IN GENERAL.—Section 228(c) (47 U.S.C. 228(c)) is amended—

(A) by striking out subparagraph (C) of paragraph (7) and inserting in lieu thereof the following:

''(C) the calling party being charged for information conveyed during the call unless—

''(i) the calling party has a written agreement (including an agreement transmitted through electronic medium) that meets the requirements of paragraph (8); or

''(ii) the calling party is charged for the information in accordance with paragraph (9); or''; and

(B) by adding at the end the following new paragraphs:

''(8) SUBSCRIPTION AGREEMENTS FOR BILLING FOR INFORMATION PROVIDED VIA TOLL-FREE CALLS.—

''(A) IN GENERAL.—For purposes of paragraph (7)(C), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes—

''(i) the rate at which charges are assessed for the information;

''(ii) the information provider's name;

''(iii) the information provider's business address;

''(iv) the information provider's regular business telephone number;

''(v) the information provider's agreement to notify the subscriber of all future changes in the rates charged for the information; and

''(vi) the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill or credit or calling card.

''(B) BILLING ARRANGEMENTS.—If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill—

''(i) the agreement shall clearly explain that charges for the service will appear on the subscriber's phone bill;

''(ii) the phone bill shall include, in prominent type, the following disclaimer:

'Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services.'; and

''(iii) the phone bill shall clearly list the 800 number dialed.

''(C) USE OF PINS TO PREVENT UNAUTHORIZED USE.—A written agreement does not meet the requirements of this paragraph unless it requires the subscriber to use a personal identification number to obtain access to the information provided, and includes instructions on its use.

''(D) EXCEPTIONS.—Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required—

''(i) for calls utilizing telecommunications devices for the deaf;

''(ii) for services provided pursuant to a tariff that has been approved or permitted to take effect by the Commission or a State commission; or

''(iii) for any purchase of goods or of services that are not information services.

''(E) TERMINATION OF SERVICE.—On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall—

''(i) promptly investigate the complaint; and

''(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

''(F) TREATMENT OF REMEDIES.—The remedies provided in this paragraph are in addition to any other remedies that are available under title V of this Act.

''(9) CHARGES IN ABSENCE OF AGREEMENT.—A calling party is charged for a call in accordance with this paragraph if the provider of the information conveyed during the call—

''(A) clearly states to the calling party the total cost per minute of the information provided during the call and for any other information or service provided by the provider to which the calling party requests connection during the call; and

''(B) receives from the calling party—

''(i) an agreement to accept the charges for any information or services provided by the provider during the call; and

''(ii) a credit, calling, or charge card number or verification of a prepaid account to which such charges are to be billed.

''(10) DEFINITION.—As used in paragraphs (8) and (9), the term 'calling card' means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.''

(2) REGULATIONS.—The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) not later than 180 days after the date of the enactment of this Act.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(c) CLARIFICATION OF ''PAY-PER-CALL SERVICES'' UNDER TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT.—Section 204(1) of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5714(1)) is amended to read as follows:

''(1) The term 'pay-per-call services' has the meaning provided in section 228(j)(1) of the Communications Act of 1934, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of such section, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a).''.

Mr. HARKIN. Madam President, I want to speak about a problem being faced by families across the country—a problem that has cost families hundreds and even thousands of dollars. This problem exposes families to ripoff schemes in their own homes. Worst of all, young people are being exposed to dial-a-porn phone sex services, even when the families take the step of placing a block on extra cost 900 number calls from their home.

Most people believe that when they dial 1–800 at the beginning of a call, they are calling toll free. Toll free 800 number calling has had a dramatically positive impact on many businesses, allowing catalog sales to take off, and providing helpful customer services. My State of Iowa is prominent in providing these telemarketing services. So I strongly believe that we must ensure public confidence in toll-free 800 numbers.

Federal law prohibits most practices that would allow people calling to an 800 number to be charged for the call. Callers cannot be assessed a charge by virtue of completing the call, and they cannot be connected to a pay-per-call service—which are usually called 900 number services. They also cannot charge for information conveyed during the call—with one exception. If there is a preexisting agreement to be charged, a charge is allowed. This provision was added, because there was concern that the provision might be read to prevent people buying merchandise with a credit card on an 800 number, or for nationwide access numbers for long distance providers.

Unfortunately, this small loophole has allowed some sleazy operators to set up phone sex services on 800 numbers—and to make the caller pay the bill. They use the loophole allowing a charge when there is a preexisting arrangement to turn a toll-free 800 number call into a toll call.

Families are being hurt by these services. Youngsters run across the ads, and, thinking the call will be free, call numbers like 1–800 HOT TALK. These numbers appear in all kinds of publications—from the city paper here in Washington; Rolling Stone magazine; and a host of adult magazines.

Here are just two examples of this outrageous behavior that has come to my attention recently. I would bet that every Senator has received calls from constituents about this problem, but here are just two from Iowa.

Madam President, I ask unanimous consent to print some constituent letters in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

CONSUMER ADVOCATE, OFFICE OF UTILITIES, LUCAS STATE OFFICE BLDG.,
Des Moines, IA January 28, 1995.

To Whom It May Concern:

This letter is regarding my recent encounter with U.S. West Communications.

On Tuesday January 24, 1995 I called U.S. West to change our service. Because of a recent problem with the so called ''chat line'' and because of past problems with the 1–800's that conveniently turn into the 1–900 charges. I asked U.S. West to take my husband off the account completely and to have all long distance service blocked from our home. I wanted no access to any 1+ dialing, 1–800/1–900 calls. I also cancelled all calling cards. My husband agreed and the calling cards were stopped that same day and everything was switched to only my access.

On Thursday January 26th I thought I had better check to see that my order was completed. I had no 1+ direct dialing but I could still call 1–800 numbers. I was shocked.

On Saturday January 28, 1995 I called U.S. West to see why I still had 1–800 access. They informed me that there was no way to block 1–800 calls. I explained to the lady that I had been misinformed because I was told my husband would not be able to make any long distance calls from our house. She put me on hold then came back to me and said I could not block 1–800 calls. I waited a few hours, thinking about everything I had been told and then I recalled U.S. West and asked to speak to a supervisor. I was told that there were no supervisors around to talk to. The representative offered to help. I explained the situation to her. She read a new department memo on the 1–800 information while I waited to get some answers. I explained to her that I really needed to speak to a supervisor and was told that the supervisor would just do the same thing that she was doing (read the memo on 1–800).

I am discouraged for many reasons: I could not speak to a supervisor and it was not offered.

For a minor to buy alcohol or cigarettes they must show an I.D. They are face to face with the seller. These phone conversations have a recording saying you must be 18 years or older or have parents permission. They have no actual contact with the buyer and in turn are selling to minors, and unfortunately it's the parents who pay.

In closing I would like to urge you to please find a way to stop this problem. I would love to find a way to stop the phone scam operations but I do not know where to begin. I plan to send a copy of this letter to Senators Tom Harkin and Charles Grassley. I can only hope that the more of us who complain the easier it will be to put an end to it all.

Thank you for your time in reading my concerns.

Sincerely,

SHEILA WENGER.

IOWA UTILITIES BOARD,
UTILITIES DIVISION,
Des Moines, IA.

DEAR SIRS: My name is Sue Tappe and I work as the Clinton County Protective Payee. I work with clients that receive some type of benefit, such as SS or SSI, VA etc., and cannot handle their own funds for a variety of reasons.

I am writing today in reference to a client that had a phone service installed in Sept. 1994. This service, at the time of order, had a long distance block set up on it, so I assumed there would be no long distance calling. WRONG assumption. My client got a hold of some advertisements that offered 800 numbers, and went to town dialing them. They then turned into 900 numbers by requesting the caller to push another button. He can only read to approximately 3rd grade level, but he can follow instructions. He said 800 numbers do not cost anything when I questioned him on the subject.

I have called all the long distance companies and have asked for credits because of the long distance block. I have gotten cooperation from a couple of the companies, but they also let me know that the normal procedure is to have them then turned over to a collection agency.

What can be done about these pay talk telephone companies who take advantage of clients who cannot understand the consequences of their actions much less the value of their money?

By the way, my client no longer has a phone service, and that, he does understand. But until there is complete credit back, he will never have service again.

I am enclosing copies of bills and sending copies to Senator Tom Harkin and Congressman Jim Leach. We need to take action for a change in laws, and to protect ourselves, all of us, from this situation happening again.

Thank you for listening and hope you might provide some suggestions to me and certainly some action can be taken in this area.

SUE TAPPE, *Payee.*

Mr. HARKIN. Madam President, here is how the companies do it. A caller calls an 800 number. He or she is directed to enter an ''access code,'' in order to be connected to a service—without knowing that, by entering the number, they are authorizing the service to charge for the call. Another scam is for the call to be switched to international numbers in small countries around the world, or to give an international phone number without disclosing the extremely high international calling rates. Phone sex companies set up in these companies, where local law in the host country allows them to receive a cut from the charges. One service operated out of Suriname charges some $50 per minute.

Under another so-called preexisting agreement, the first call from a number establishes the agreement, and subsequent calls are charged to the phone number the first call was made from. This means that anyone making a telephone call from your phone could make you liable for hundreds of dollars of calls—even if the person never makes another call from that phone. A person making a call from a motel can set up one of these agreements with a phone-sex service, and the motel could be forced to pay for subsequent calls from anywhere in the country. At the Motel 6 chain alone, porn calls have cost a quarter of a million dollars in the last year. In our own offices here at the Senate, a courier who uses the courtesy telephone, supposedly to call his dispatcher, could charge phone-sex calls back to your office account.

How many people are concerned about this problem? All you need to know is how many families have signed up for 900 number blocking. These families have said that they have no intention of using pay-per-call services. In Iowa, about one in four lines are restricted from calling 900 numbers, most of which are homes, rather than businesses.

Today, I am offering an amendment that would prohibit this abuse. My amendment, which is similar to one that has been included in the House Commerce Committee-passed version of this legislation by our House colleague, Representative BART GORDON of Tennessee, would alleviate this problem. Representative GORDON has been a leader on this issue for many years, and has fought hard to get control of the phone-sex industry. This amendment would clarify that a preexisting agreement must be in writing, which would end the supposed preexisting agreements that are initiated by pressing a button on a phone. It also expands the definition of pay-per-call service to include the international calls, to allow the FCC to regulate them.

Alternatively, it would allow information services on 800 numbers without a preexisting agreement. The service provider would have to disclose their rates on each call. If the caller agreed to pay and gave a credit, charge or calling card to pay for the information, the service could be provided.

The bill as reported by committee purports to address this problem, in section 406. However, this section would not go as far as the language I am offering. My amendment was developed after extensive consultation with industry representatives, to try to take into account problems beyond the 800 numbers, and also to take into account the new legitimate information systems that are going to be offered in the new information environment that this bill will create. Further, a similar amendment has already been accepted in the House subcommittee markup. I urge my colleagues to support this important amendment to close the loophole on the phone sex peddlers.

Madam President, again, I believe this amendment has been agreed to.

The PRESIDING OFFICER. Is there further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1322) was agreed to.

Mr. PRESSLER. Madam President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1324

(Purpose: To combat telemarketing fraud through reasonable disclosure of certain records for telemarketing investigations)

Mr. HARKIN. Madam President, I call up amendment No. 1324.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 1324.

Mr. HARKIN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 146, below line 14, add the following:

SEC. 409. DISCLOSURE OF CERTAIN RECORDS FOR INVESTIGATIONS OF TELEMARKETING FRAUD.

Section 2703(c)(1)(B) of title 18, United States Code, is amended—

(1) by striking out ''or'' at the end of clause (ii);

(2) by striking out the period at the end of clause (iii) and inserting in lieu thereof ''; or''; and

(3) by adding at the end the following:

''(iv) submits a formal written request for information relevant to a legitimate law enforcement investigation of the governmental entity for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is in section 2325 of this title).''.

Mr. HARKIN. Madam President, every year thousands of Americans are victimized by fraudulent telemarketing promotions. And, unfortunately, these scam artists prey most often on our senior citizens. The losses every year are estimated to be in the billions of dollars. I send an amendment to the desk that would help law enforcement to more effectively combat these abuses.

How do these rip-offs occur and why is my amendment necessary to stop them? Advertisements regarding sweepstakes, contests, loans, credit report and other promotions appear in newspapers, magazines, and other direct mail and telephone solicitations. The operators of many of these phoney promotions set up a telephone boiler room in which a number of phones are operated to receive calls responding to their ads and to make direct phone appeals, run their promotion for two to three months, ripping people off for thousands and even millions of dollars, and then discontinue the operation and move on to another location and rip-off promotion.

By the time law enforcement authorities have received enough information to support obtaining the grand jury subpoenas required under current law, the business and the operators are gone. And the often elderly victims are out of luck. Law enforcement authorities currently do not have a mechanism available to quickly identify the location of the boiler room before the promotion is discontinued. So, they often cannot get after these scam artists until many people have been victimized and the operation has closed down.

Law enforcement agencies have this problem because often these promotions furnish only a phone number, leaving no other means of identification or location. My amendment addresses this shortcoming by providing law enforcement authorities with a narrowly drawn procedure to more quickly obtain the name, address, and physical location of businesses suspected of being involved in telemarketing fraud. Phone companies would have to provide law enforcement officials only the name, address, and physical location of a telemarketing business holding a phone number if the officials submitted a formal written request for this information relevant to a legitimate law enforcement investigation.

The need for this change was brought to my attention by the U.S. Postal Inspection Service, the Federal agency which investigates many of the telemarketing schemes. It is necessary to crack down on serious consumer fraud. With this change, we will have many more successful efforts to shut down these rip-off artists like several recent cases in my home State of Iowa.

Gregory Dean Garrison of Red Oak, IA was recently indicted for operating a telemarketing promotion. He is alleged to have obtained lists of people who had previously been victimized by telemarketing schemes. Using the company named Teletrieve, he offered for a fee, of course, to help individuals recover all the money they previously lost to telemarketers. No money was ever recovered. Most of the victims were in their eighties.

Approximately 30,000 Iowans received solicitations for another scam. Sweepstakes International, Inc., mailed these Iowans and others around the Nation postcards that enticed recipients to call a 900 number in order to receive a ''valuable prize.'' Callers were charged $9.95 on their phone bill. Based on a Postal Service investigation, civil action was initiated in U.S. District Court in Iowa. As a result of the court action the promotion was halted and $1.7 million was frozen. This represented just one and a half month's revenue from the scam.

In a similar case, Disc Sweepstakes, Limited of West Des Moines mailed

about 1.5 million postcards during a three month period to individuals throughout the country, representing that they had won a valuable prize. To collect the ''prize'' people had to again call a 900 number for which they were billed $9.90. This scheme brought in over $1 million.

These are obviously cases in which the Postal Inspection Service was able to take action. But for every scam they close down, there are many more that go unstopped. It is frustrating for our law enforcement professionals and it is costing consumers, particularly the elderly, millions of dollars every day.

My amendment simply would allow law enforcement to more easily identify and locate these operations. To get any further information about the company, they would have to go through the current law subpoena process. For post office boxes rented for commercial purposes, any individual, let alone just law enforcement for a legitimate law enforcement purpose, can obtain the name and address of the box holder. So my proposal is very modest in comparison.

I want to make it very clear that this amendment is not about privacy. It should in no way set a precedent for allowing the Government easier access to company or client records or other information from businesses. I share the concerns of those who seek to protect privacy rights generally. I want to work with them and others who may have a concern with this amendment to see how we can work together before this bill is subject to conference and final consideration by the Senate.

I urge my colleagues to support this narrow but important amendment to give law enforcement a simple tool to better protect Americans from telemarketing scams.

Mr. PRESSLER. I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1324) was agreed to.

Mr. PRESSLER. Madam President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 1342

Mr. KERRY. Madam President, I ask unanimous consent that amendment No. 1342 be brought up at this time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KERRY] proposes an amendment numbered 1342.

Mr. KERRY. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 146, strike line 14 and insert in lieu the following: ''cency, or nudity''.

This section shall not become effective unless the Commission shall prohibit any telecommunications carrier from excluding from any of such carrier's services any high-cost area, or any area on the basis of the rural location or the income of the residents of such area; provided that a carrier may exclude an area in which the carrier can demonstrate that—

(1) providing a service to such area will be less profitable for the carrier than providing the service in areas to which the carrier is already providing or has proposed to provide the service; and—

(2) there will be insufficient consumer demand for the carrier to earn some return over the long term on the capital invested to provide such service to such area.

The Commission shall provide for public comment on the adequacy of the carrier's proposed service area on the basis of the requirements of this section.

AMENDMENT NO. 1342, AS MODIFIED

Mr. KERRY. Madam President, I ask unanimous consent that the amendment be modified with the changes that I now send to the desk, and I do this on behalf of myself, Senator LOTT, Senator HOLLINGS, and Senator PRESSLER. This amendment has been worked out on both sides. I advise the Senate that this modification makes no substantive change in the amendment. It merely places the amendment in a more appropriate place in the bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is so modified.

The amendment, as modified, is as follows:

At the appropriate place insert:

''(k) PROHIBITION ON EXCLUSION OF AREAS FROM SERVICE BASED ON RURAL LOCATION, HIGH COSTS, OR INCOME.—Part II of title II (47 U.S.C. 201 et seq.) as amended by this Act, is amended by adding after section 261 the following:

''SEC. 253A. PROHIBITION ON EXCLUSION OF AREAS FROM SERVICE BASED ON RURAL LOCATION, HIGH COSTS, OR INCOME.

''The Commission shall prohibit any telecommunications carrier from excluding from any of such carrier's services any high-cost area, or any area on the basis of the rural location or the income of the residents of such area; provided that a carrier may exclude an area in which the carrier can demonstrate that—

''(1) there will be insufficient consumer demand for the carrier to earn some return over the long term on the capital invested to provide such service to such area, and—

''(2) providing a service to such area will be less profitable for the carrier than providing the service in areas to which the carrier is already providing or has proposed to provide the service.

''The Commission shall provide for public comment on the adequacy of the carrier's proposed service area on the basis of the requirements of this section.

Mr. KERRY. Madam President, I rise to offer a bipartisan amendment, with Senators LOTT, HOLLINGS, and PRESSLER, that will go a long way to make the intentions of the Senate clear in its recognition of the need for every segment of our society to have access to the information super-highway as it begins to weave its way across the Nation.

In presenting this amendment, we recognize that there is a fear among many groups and community organizations that the infrastructure of the information super highway will leave out and leave behind those who most need access to it, families in parts of Boston, or in parts of South Dakota, South Carolina, or Mississippi, or other areas of the country.

Ironically, in the 1950's the infrastructure debate was about which neighborhoods and which rural areas would be plowed under by bulldozers building the Federal highway system.

And, here we are again, in the contemporary equivalent of that same debate.

When the Federal highway system was developed, we plowed under the poorer areas of many cities and the poorest land in rural areas. We were willing then to lay roads and build bridges through the backyards of these areas in our good faith efforts to connect States and cities coast to coast. It was the key to commerce and economic opportunity. It was the future.

Now, in the 1990's, the information super highway holds the same key to economic opportunity, and it would be unforgivable for us to ignore and avoid the same backyards that we were so willing to plow under when we built the interstates beginning in the 1950's.

Without access to the information super highway there are those in our country who will surely be left behind, and we cannot let that happen.

Let me make it clear that this is a bipartisan amendment, and that it does not imply that there is anyone in this Chamber or anyone who has participated in the development of this legislation who has intended in any way to allow the redlining of any area. It is equally true that no one is seeking to force telecommunications companies, in their good-faith effort to provide universal service, to lose money by providing advanced telecommunications services to every road and home in the Nation no matter how remote or how impractical.

That is not the intent of anyone.

But, having said that, the intent of the Senate must be clear: that everyone, especially those less fortunate in our society, those poorer inner-city areas and poorer more remote rural areas struggling to keep up and move on, should have access to the equipment that will hold the keys to success and the tools to compete in the 21st century, even where it may not produce great profit for the provider companies.

Fairness, in this case, means access; and, though there is no intent with this amendment to punish telecommunications companies or to force them to lose money by providing a service to an area where it is clear they will lose money in their effort, we also recognize the importance of universal access.

The bill, of course, embodies this philosophy in several ways. But nowhere is the principle set forth as straightforwardly as it should be, and as this amendment does.

In summary, this amendment prohibits the exclusion of areas from access to service based on either rural location or income; and it requires the Federal Communications Commission to adopt rules and regulations to prohibit any telecommunications carrier from excluding an area from service based on the income of its residents, or the rural nature of the area; but it does allow the company to make a decision not to offer an advanced telecommunication service if it can demonstrate that there will be insufficient consumer demand for the carrier to earn some return over the long term on its capital investment in providing the service in that area.

I think this is a fair amendment. It is fair to the consumer and to the industry. It establishes in law the principle that all our citizens should have access to these telecommunications services and it respects the complexity of providing those services on a universal basis.

With this legislation we will move into a new age of information and communication—a promising future that demands our careful consideration. We will either establish an infrastructure that brings every American along, or leaves some behind.

We must remember, that access to and knowledge of the information super-highway will define the economic and political power of this democracy. We can no more deny any American access to that power than we can deny them access to a decent education, or to the ballot, or to the voting booth, for in access to them are the fundamental freedoms of this democracy and the individual opportunities that those freedoms provide.

Madam President, I urge passage of this amendment. It is fair. It is responsible. It is right. It places the benefit of the doubt where it ought to be.

I thank the managers of the bill for their cooperation and assistance. I thank the committee staff. I especially appreciate the cooperation and efforts of the Senator from Mississippi [Mr. LOTT] and his staff, both in committee and now as the bill is considered on the floor.

I will just say very quickly that this amendment will empower the Commission to try to guarantee that, as we build an information highway structure, no part of America is left out of that for reasons of discrimination or oversight that no one in the Senate, I think, would embrace.

I believe this will help us to have a fair and equitable approach. I appreciate the help of the managers of the bill in arriving at an agreement on this.

Mr. PRESSLER. I commend my friend from Massachusetts. I urge the adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment No. 1342, as modified.

The amendment (No. 1342), as modified, was agreed to.

Mr. PRESSLER. Madam President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 1283, AS MODIFIED

(Purpose: To revise the authority relating to Federal Communications Commission rules on radio ownership)

Mr. SIMON. Madam President, I offer amendment No. 1283, as modified. I will discuss it tomorrow.

The PRESIDING OFFICER. The clerk will report the amendment, as modified.

The legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON] proposes an amendment numbered 1283, as modified.

Mr. SIMON. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 79, line 11, in the language added by the Dole amendment No. 1255, as modified, insert the following:

(b)(3) SUPERSEDING RULE ON RADIO OWNERSHIP.—In lieu of making the modification required by the first sentence of subsection (b)(2), the Commission shall modify its rules set forth in 47 CFR 73,3555 by limiting to 50 AM and 50 FM broadcast stations the number of such stations which may be owned or controlled by one entity nationally.

Mr. SIMON. Madam President, I am not sure we have the right amendment here.

Mr. PRESSLER. Madam President, I will take this opportunity to urge Senators to bring their additional amendments to the floor and also to say that I am very proud that 500 delegates at the small business conference today sent over individual letters endorsing the passage of this bill and also urging President Clinton to strongly support it.

I know the White House has been a little cool toward this bill, but I hope that they are warmed up by the small businessmen who are in the White House Conference on Small Business. I have a whole stack of letters here, which I will not put in the RECORD. I might put in the names, but they are from all over the Nation, small businessmen who have come to Washington, who have sent letters urging that the Telecommunications Competition and Deregulation Act of 1995 be passed and that the White House support it and that the Senate version is the version that they are interested in.

So I am very proud of that. There has been some talk about big corporate interests and so forth. There has been talk about the cellular valley out here. But these are 500 small business men and women from across the Nation wanting to pass this bill because small business will benefit and small business will be able to participate.

Mr. PRESSLER. Madam President, I hope that Senators will come to the floor with their amendments because the hour of 7:30 p.m. is approaching, and Senator DOLE will be back here then.

So I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator suspend his request for a moment?

The Senator from Illinois wanted a vote on his amendment tomorrow.

The amendment will be set aside until tomorrow.

AMENDMENT NO. 1367

Mr. HEFLIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. HEFLIN] proposes an amendment numbered 1367.

Mr. HEFLIN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the amendment, insert the following:

SEC. . AUTHORITY TO ACQUIRE CABLE SYSTEMS.

(a) IN GENERAL.—Notwithstanding the provisions of section 613(b)(6) of the Communications Act of 1934, as added by section 203(a) of this Act, a local exchange carrier (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest, or any management interest, or enter into a joint venture or partnership with any cable system described in subsection (b) within the local exchange carrier's telephone service area.

(b) COVERED CABLE SYSTEMS.—Subsection (a) applies to any cable system serving no more than 20,000 cable subscribers of which no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

(c) DEFINITION.—For purposes of this section, the term ''local exchange carrier'' has the meaning given such term in section 3 (kk) of the Communications Act of 1934, as added by section 8(b) of this Act.

Mr. HEFLIN. Madam President, I ask unanimous consent that this amendment be laid aside until later.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. Who seeks recognition?

Mr. PRESSLER. Madam President, I ask unanimous consent that the Senate now turn to the consideration of amendment 1341.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1341

(Purpose: To strike the volume discounts provision)

Mr. PRESSLER. Madam President, I send an amendment to the desk for Mr.

DOLE and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER], for Mr. DOLE, proposes an amendment numbered 1341.

Mr. PRESSLER. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 70, beginning with line 22, strike through line 2 on page 71.

Mr. PRESSLER. Madam President, I ask unanimous consent that the amendment be set aside and carried over until tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1325

(Purpose: To require additional rules as a precondition to the authority for the Bell operating companies to engage in research and design activities relating to manufacturing)

Mr. WARNER. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 1325.

Mr. WARNER. Madam President, my amendment No. 1325 is a bipartisan proposal. I am joined by a number of my colleagues on both sides of the aisle, including my colleague Senator ROBB as well as Senators DOMENICI, GRAHAM, KENNEDY, KERRY, LIEBERMAN, and MCCAIN.

This amendment is intended to improve the procompetitive thrust of this bill as it relates to the manufacture of communications products, both telecommunications equipment and customer premises equipment. It will make the bill more workable, and most important it will support the bill's effort to generate more jobs, stimulate innovation, and deliver more consumer choices and lower prices.

I want to express my thanks to the managers of this bill for their tireless efforts to draft and to enact telecommunications reform legislation. I had the privilege of serving on the Commerce Committee in the 1970's when we began to address the Federal policies that would be needed because of the then impending and dramatic changes in telecommunications technology. We learned two important things in those early efforts. First, changes in communications and information technology would transform our society and our economy. Second, drafting the appropriate policies to support this transformation would be a complex and controversial undertaking. Our floor consideration of S. 652 bears out the validity of these two points and demonstrates the challenges which the bill's managers have successfully faced.

Our amendment deals with the manufacturing sector, which will develop the ''brick and mortar'' of the information highway. As with all key communication industries, the stakes for manufacturers in this bill are very high. We cannot jeopardize the current competitive nature of this sector as the MFJ restrictions are removed. It has been a very successful and competitive area, sparked by the innovation and growth made possible by the postdivestiture environment. This has become a $44 billion sector, and it has created tens of thousands of jobs.

The manufacturing sector came alive after the 1984 Modified Final Judgment ended practices which had discriminated against nontelephone company manufacturing. The heart of this discrimination was the control which the local Bell telephone company had—and still has—over the local telephone exchange. Equipment had to connect to and use the local exchange network. Companies who wanted to make telephone equipment needed to deal with the local exchange company as the exclusive designer of the network and the exclusive buyer of equipment to run the network. The MFJ eliminated the local telephone company's incentive to discriminate in manufacturing by preventing their direct participation in this sector, and that MFJ policy has been successful. Manufacturing has flourished while the BOC's have managed their networks in cooperation with the manufacturing community.

S. 652 develops rules which will guide the local telephone companies and policymakers as the BOC's reenter manufacturing. Recognizing the continued potential for competitive problems associated with the local exchange monopoly, the bill also encourages the end to this local exchange monopoly by eliminating restrictions—government and facility—on local exchange competition. However, because we do not know how or when local competition will develop, the bill contains safeguards intended to preclude recurrence of the practices that hurt the manufacturing industry before 1984. These safeguards will be needed for so long as the local exchange monopoly persists.

S. 652 contains two important principles for the manufacturing sector which are intended to maintain the current competitiveness in the manufacturing sector and to build on this competition. First, the bill treats elimination of the long distance and the manufacturing line of business restrictions in the same manner. The Bell operating company must comply with the ''competitive checklist'' before it is eligible to enter either the long distance or the manufacturing line of business. It is very important to retain this ''parity'' in the timing and the requirements for entry into both lines of business, and I commend the managers of the bill for establishing this important principle.

The second important principle contained in this bill is one that we have relied upon for twenty years, namely, the requirement of a structural separation between the competitive and monopoly activities of the Bell operating company. S. 652 requires the Bell operating company to provide all competitive services, including manufacturing activities, through a fully separate affiliate. Without such a requirement, it would be virtually impossible to assure the ratepayers of this country that they were not underwriting the BOCs competitive ventures. Both the Courts and the FCC have said on many occasions that accounting separation alone is insufficient to protect ratepayers in this type of situation.

I urge the bill's managers to continue to defend these important principles.

Unfortunately, from a manufacturing perspective, and in my opinion, S. 652 has created a potential loophole. The bill would permit the Bell operating company to undertake research and design aspects of manufacturing and to enter into royalty agreements with third parties as soon as the separate subsidiary rules are adopted. This provision means that the operating company will not necessarily have complied with the ''competitive checklist'' before it is able to engage in these two activities. This provision has created an exception to the parity between manufacturing and long distance services, and in my opinion, it may become a very troubling distraction and loophole.

In their package of amendments adopted last week, the managers of the bill have clarified that these exceptions are not effective until the separate affiliate rules have been adopted. This is an important clarification.

In my opinion, these exceptions should be removed from the bill, and in my discussions with the bill's managers I am hopeful that you will keep an open mind on this question as you proceed forward to conference.

For now, the presence of these exceptions in the bill highlights two areas where the bill's safeguards should be improved. In my view this amendment would be an important improvement to the bill even if the exceptions were not in the bill. But they are made more important because of the exceptions.

First, the bill does not require full and ongoing information disclosure about the telephone exchange network. In order to develop the products and the services that would connect with and use the network, manufacturers need to know the protocols and technical requirements that control connection to and use of the network. As

currently written, the bill focuses on requiring disclosure of vital network information when the Bell operating company transfers that information to its affiliate. This trigger is important, but it begs the fundamental point that information should be available when manufacturers need it, not merely when the BOC may decide to transfer it to the affiliate. This trigger also does not address situations where information is transferred to preferred third party suppliers. A trigger based on a transfer to the affiliate invites ''gaming'' by the BOC and it can encourage considerable debate about when information was given to the affiliate whether information was provided to competitors on the timely basis.

In my opinion, information regarding protocols and technical requirements for connecting to the network should be on file with the FCC and kept current at all times. This is not a regulatory burden. This is good business and sound, pro-competitive policy. And it will reduce regulation because it will reduce debates about the timing and the caliber of information available to competitors. Our amendment would call on the Commission to establish this filing requirement at the same time that it establishes the separate affiliate rules.

Second, the bill recognizes that relationships between the Bell operating companies and third parties can be a source of discrimination and cross subsidy. However, the development of rules to prevent such activities are discretionary. Given the royalty and design activities, it is especially important for the FCC to address this area at the same time it develops its separate affiliate rules, and our amendment includes this directive.

Last, the amendment attempts to address the murky distinction between ''research and design'' and the other aspects of manufacturing which remain prohibited until the BOC has complied with the checklist and is authorized to offer long distance service. If the Bell operating company is to be allowed to engage in research and design activities before it is permitted to engage in other manufacturing activities, then it is critical for the Commission to clearly identify and articulate these activities which are permitted to distinguish these activities from the other aspects of manufacturing and from BOC activities. This definitional undertaking must be part of the separate subsidiary rulemaking process in order to ensure that ''research and design'' are completely separate from other aspects of manufacturing and from BOC activities.

The design area is the most important part of the manufacturing process. It is the area where considerable value is created, and it is the activity which largely determines the functionality and complexion of the products. The MFJ Court has repeatedly found that design presents the greatest opportunity for anticompetitive behavior. When the MFJ was adopted, the Court found that ''design'' had been a significant source of discrimination. More recently, in this report to the Justice Department, Peter Huber concluded that should the BOCs be permitted to again engage directly in manufacturing, then ''research and development costs, especially for system design and software development, would surely offer an important opportunity for cross-subsidy.''

For these reasons I oppose the idea of a more rapid elimination of the entry restrictions for ''design,'' but at the very least the Commission must confront the opportunities and risks associated with this exception as part of its development of separate affiliate safeguards rules.

Mr. President, our amendment has broad support in the manufacturing community. The primary telecommunications manufacturing trade associations, including the Telecommunications Industry Associations, the Electronic Industries Association, the Independent Data Communications Manufacturers Association, and the MultiMedia Telecommunications Association, support this amendment. These manufacturers account for an overwhelming majority of the $55 billion generated by the telecommunications manufacturing industry in 1994. I ask by unanimous consent that a letter of support from these organizations be included in the RECORD at this point.

Again I thank my colleagues, the managers of S. 652, for their efforts on this bill and for their cooperation on our amendment.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

The Hon. JOHN WARNER,
225 Russell Senate Office Building, Washington, DC.

DEAR SENATOR WARNER: On behalf of the Telecommunications Industry Association, I want to thank you for your efforts to improve S. 652, the Telecommunications Competition and Deregulation Act of 1995. We share your belief that the ''design'' carve-out in the manufacturing section of S. 652 creates a dangerous exception to the bill's otherwise reasonable proposal that a Bell operating company must comply with the bill's ''competitive checklist'' and establish a separate subsidiary before being granted relief from the line-of-business restrictions imposed by the Modification of Final Judgment. Accordingly, although we do not concede that the ''design'' exception in Section 256(a)(2) is appropriate communications policy, and while we continue to believe that Section 256(a)(2) should be dropped from the bill, we strongly support your proposed amendment to S. 652.

There is a broad consensus that ''design'' activities are the most important part of the manufacturing process, and that it presents the greatest opportunity for anticompetitive behavior. Thus, the Court administering the MFJ has stated that:

''[I]n virtually every manufacturing episode' that was the subject of a pretrial charge by the government or that produced evidence at the trial, it was design and development manipulation that was the focus or sole subject rather than discrimination with respect to fabrication.'' See *United States* v. *Western Electric Co.,* 675 F.Supp. 655 (D.D.C. 1987).

In his report to the Justice Department, Peter Huber reached the same conclusion, stating that ''research and development costs, especially for system design and software development, would surely offer a[n] opportunity for cross-subsidy,'' and that such ''cross-subsidy by U.S. telcos comes at the expense of U.S. ratepayers.'' See Peter Huber, The Geodesic Network (Washington: U.S. Government Printing Office, 1987) at 14.20 and 14.23n. 93. Therefore, allowing the Bell companies to engage in these activities before they have satisfied the ''competitive checklist'' could allow significant anticompetitive conduct by the Bell companies.

In addition to providing a check against cross-subsidization, your amendment will help reduce the likelihood that the ''design'' exception will lead to the type of regulatory and judicial disputes that the sponsors of S. 652 are seeking to avoid and ensure that manufacturers have access to the interconnection information necessary to compete equitably for Bell operating company procurement contracts.

We are joined in our support for your amendment by several other manufacturing organizations, including the Electronic Industries Association, the Independent Data Communications Manufacturers Association and the MultiMedia Telecommunications Association. Collectively, these organizations represents manufacturers which collectively account for an overwhelming majority of the $55 billion in revenues generated by the telecommunications manufacturing industry in 1994.

Sincerely,

MATTHEW J. FLANIGAN.

Mr. WARNER. Madam President, this is an amendment which the managers have under consideration and, as yet, there has not been a resolution between the managers as to whether or not it can be accepted. Pending their decision, I have to make a decision as to whether or not to present it to the entire Senate.

If I might briefly state it, I have concerns about the provision in S. 652 that permits the Bell operating companies into design aspects of manufacturing as soon as the separate affiliate rules are established. This amendment provides an exception to the bill's important principle that entry into manufacturing in long distance will not occur until the checklist for local exchange competition has been adopted.

Short of delaying the design inception, it would be my hope that we could explore the possibility that the provision can be modified to mitigate what we view—that is my constituents—as serious potential for discrimination and cross-subsidization, which we view as the current situation. Given that the managers are reviewing this, I will ask that the amendment be laid aside until some future time.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. Madam President, I understand that some Senators have a problem with this amendment, and I think we will have to resolve those problems at a future time.

Does the Senator from Virginia visage this coming up tomorrow?

Mr. WARNER. Yes, that would be quite agreeable.

AMENDMENT NO. 1325, AS MODIFIED

Mr. WARNER. Madam President, to correct what seems to be an imperfection, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment (No. 1325), as modified, is as follows:

At the end of section 222 of the bill, insert the following:

(c) ADDITIONAL REQUIREMENTS RELATING TO RESEARCH AND DESIGN ACTIVITIES WITH RESPECT TO MANUFACTURING.—(1) In addition to the rules required under section 256(a)(2) of the Communications Act of 1934, as added by subsection (a), a Bell operating company may not engage in the activities or enter into the agreements referred to in such section 256(a)(2) until the Commission adopts the rules required under paragraph (2).

(2) The Commission shall adopt rules that—

(A) provide for the full, ongoing disclosure by the Bell operating companies of all protocols and technical specifications required for connection with and to the telephone exchange networks of such companies, and of any proposed research and design activities or other planned revisions to the networks that might require a revision of such protocols or specifications,

(B) prevent discrimination and cross-subsidization by the Bell operating companies in their transactions with third parties and with the affiliates of such companies; and

(C) ensure that the research and design activities are clearly delineated and kept separate from other manufacturing activities.

Mr. PRESSLER. We have no objection to this amendment being laid over until tomorrow.

I ask unanimous consent that amendment No. 1325, as modified, be set aside until tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. PRESSLER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Madam President, I mentioned earlier that over 500 delegates of the, I think, about 1,600 or 1,700 delegates to the Small Business Conference going on now at the White House have written me letters—and also have written President Clinton—urging that he support the Senate version of the Telecommunications Competition and Deregulation Act and that the Senate pass it.

I just pulled out of this packet of 500 letters, one letter from a Mr. Robbie Smith, Smith Communications in Chicago, IL. I do not know him, but he is a delegate to the Small Business Conference now going on at the White House. He wrote the following, and I think it is important, because it is illustrative that small business strongly supports this legislation.

I am writing to urge you to support S. 652, the Telecommunications Competition and Deregulation Act, which would bring about changes in how telecommunications products and services are sold that would greatly benefit the small businesses of our state.

A recent survey, sponsored by the National Federation of Independent Business Foundation, found that a full 86 percent of small business owners said they want the convenience of ''one-stop shopping'' for telecommunications services.

S. 652 would bring us one-stop shopping. By creating a more competitive marketplace that will let local Bell companies and long-distance companies and cable companies all compete in each other's traditional businesses, it will provide small businesses with the convenience and lower prices we need.

In enacting legislation, we urge Members of Congress to keep in mind ''Five Easy Pieces'' of guidance from small business on what constitutes good telecommunications policy.

1. For small businesses as customers, we need legislation that maximizes choice and affordability by simultaneously opening all telecommunications markets—at the earliest possible date—to full and equal competition among vendors.

2. For small businesses as customers, we need legislation that minimizes confusion and complexity by letting all vendors compete to offer us one-stop shopping for the full array of telecommunications products and services.

3. For all small businesses, we need legislation that maximizes flexibility and minimizes regulation, so introduction of new products and services can keep pace with rapid technological and market changes.

4. For small businesses as vendors, we need legislation that maximizes opportunities for us to create and sell innovative new products and services by removing regulatory constraints.

5. For small businesses in rural or high-cost areas, we need legislation that maximizes universal opportunity by insuring—through a fair system of cost sharing—that some parts of our country do not become too costly in which to operate, or technological backwaters.

We believe S. 652 achieves these objectives. Please support S. 652.

The small businesses of our state thank you for your consideration.

What this letter is saying and seems to represent, talking of small businessmen, the majority of small businessmen—and indeed I guess there might be at some point some resolutions adopted over there. They made it a point to get to the Senate today over 500 letters supporting the Senate version of the Telecommunications Competition and Deregulation Act. They have also given the same letters to President Clinton, urging him to support it. I hope he is listening closely to the small businessmen in his White House conference.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. BOXER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Madam President, I ask unanimous consent to speak as in morning business for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

DR. HENRY FOSTER DESERVES A VOTE

Mrs. BOXER. Madam President, perhaps I am interrupting the flow of the telecommunications bill for just 1 or 2 minutes because I promised that I would do so every day until we hear that there are plans to bring the nomination of Dr. Henry Foster for Surgeon General to the Senate for a vote.

Senator Pat MURRAY from Washington and I brought this issue up yesterday. We noted very clearly that Dr. Foster was nominated by President Clinton in February. This country has no Surgeon General.

We still have an AIDS epidemic, Madam President. We have an epidemic of teen pregnancy. I know my friend who is sitting in the chair now strongly supports efforts to reduce the rate of teen pregnancy and strongly supports efforts to reduce the rate of AIDS.

We now have a tuberculosis epidemic that has reemerged, after we thought we had solved the problem. We have teens smoking in great numbers.

This is the business of the Surgeon General, to look over the health issues. In the Senate we look over so many issues—telecommunications—complicated issues, difficult issues. They change every day. The Surgeon General will look after the health of this country.

We know when we have healthy babies and they are immunized and there is prenatal care for women, and we know when there is less drug use and alcohol use in our Nation, we become a much more productive nation. Certainly, as we are going to look a the welfare reform bill, we know one of the greatest causes of welfare is, simply put, that teens are having babies. This is a problem we must deal with.

Again, I call on the majority leader to please move forward this nomination. Dr. Foster showed he had the true grit to stand the criticism. He emerged out of the committee with a bipartisan, favorable vote.

I look forward to debating this nomination on the floor. I certainly hope that because an individual is an ob/gyn, an obstetrician/gynecologist, and in that practice performed a small number of abortions and yet brought 10,000 babies into the world, it would not be used against that individual and that this will not become a pawn in the Presidential nomination. It would be very sad. I think the American people are very fair people. This man deserves a vote. This man deserves a hearing.

I just really hope that the majority leader will come to the floor—perhaps today, tomorrow, this week—and tell Members when we can hope to have the Foster nomination brought before the full Senate.

I thank the Senate. I thank my colleagues. I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ASHCROFT). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1298

(Purpose: To improve the provisions relating to cable rate reform)

Mr. LIEBERMAN. Mr. President, at this time I call up amendment No. 1298.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN] proposes an amendment numbered 1298.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . DETERMINATION OF REASONABLENESS OF CABLE RATES.

(a) COMMISSION CONSIDERATION.—Notwithstanding any other provision of this Act or section 623(c), as amended by this Act, for purposes of section 623(c), the Commission may only consider a rate for cable programming services to be unreasonable if it substantially exceeds the national average rate for comparable programming services in cable systems subject to effective competition.

(b) RATES OF SMALL CABLE COMPANIES.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or the amendments made by this Act, the regulations prescribed under section 623(c) shall not apply to the rates charged by small cable companies for the cable programming services provided by such companies.

(2) DEFINITION.—As used in this subsection, the term 'small cable company' means the following:

(A) A cable operator whose number of subscribers is less than 35,000.

(B) A cable operator that operates multiple cable systems, but only if the total number of subscribers of such operator is less than 400,000 and only with respect to each system of the operator that has less than 35,000 subscribers.

Mr. LIEBERMAN. Mr. President, I am delighted to see occupying the chair at this time, the distinguished former attorney general of the State of Missouri, because my interest in this subject of the regulation of cable rates started in 1984 when I was the attorney general of the State of Connecticut.

We had established a system similar in many ways, different in some ways, to other States and municipalities around the country to deal with the advent of this exciting new technology, cable television, in which our State—during the 1960's, originally, and the 1970's—had given out franchises for cable television in different areas of the State. These were monopolies. Because they were monopolies, which is to say there was only one that any consumer had any access to in the State of Connecticut, they were subject to a kind of public utilities regulation, since there was no competition.

This went on until 1984 when the Congress in its wisdom, without the participation of the occupant of the chair or myself, at that time passed an act which prohibited the States from regulating the cost of cable. As I will document in a moment or two, there was a great outcry from many of us at the State level, first on the basis of federalism, that we had been deprived of this opportunity to exercise our capacity and obligation to protect our consumers in the State of Connecticut or elsewhere as we saw fit, but also because the effect of the congressional act of 1984 was to leave cable consumers facing monopolies, only one cable provider, without the benefit of protection from consumer protection legislation, and without the benefit of competition.

What happened I will document in a moment or two, but it ultimately led to a very successful effort in 1992 to adopt a cable act which was passed with strong bipartisan majorities, and was vetoed by President Bush. It turned out to be the only veto of the Bush years that was overridden by this Congress. The Cable Act of 1992 went into effect, with positive effect, as I will describe in a moment. Then, suddenly as part of this major reform of telecommunications, there appears what amounts to the evisceration of that cable consumer protection.

So just 3 years after passing that landmark legislation to bring competition to cable television and keep regulation until that competition came, just 3 years after the effort began once again to hold down cable rates for the millions of cable consumers around America until competition emerges, we are now considering a bill that I am afraid will undo many of the consumer protection benefits of the 1992 Cable Act.

The amendment that I have introduced this evening, No. 1298, will prevent the dismantling of the cable consumer protections of the 1992 act.

Mr. President, I assume we all agree—I certainly do—that competition is the best way to set prices. Markets can set prices much more accurately and effectively than regulators can. Although consumers cannot really reap the benefits of competition, obviously, until there is effective competition in their local markets, the amendment that I am introducing, I think, will provide consumers with some of the advantages of competition. Without competition, monopolies have the license to unreasonable rate increases. So we have a choice. When there is no competition, we can have regulation, or we can just simply say let the monopolies go.

The cable rate regulation included in the current underlying bill before us, in my opinion, does not prevent monopoly abuses, and virtually deregulates cable, which means that without this amendment we are inviting the majority of cable companies to raise their rates. And, unfortunately, we are guaranteeing that the majority of our constituents, many of whom may be watching tonight, are going to see increases in the cost of cable television every month, unless we act to amend this bill. And I believe the amendment I am offering is a good procompetitive way to do so, consistent with the overall procompetitive spirit of this legislation.

Mr. President, before my colleagues vote on this matter, I think it is imperative to review the current status of cable regulation and how it is working.

First of all, let us ask what has happened since we passed the Cable Act of 1992; and, second, what impact will this legislation before us have? My concern again is that this legislation, if unamended, virtually guarantees significant cable rate increases before competition comes to the cable market. And today, the FCC tells us that only 50 of the more than 10,000 cable markets in America have effective competition. That means if we have constituents in the 9,950-plus other markets, and if this legislation goes forward as it is, they are probably going to see a cable rate increase.

What I see happening here is the potential for this Congress to make the same mistake that was made in 1984 when the cable industry was deregulated based on the promise or the hope that competition was right around the corner.

In 1984, it was the promise of competition from satellites to the traditional cable. Now it is again and still the promise of satellite competition plus the promise of telephone company competition. After the 1984 act passed the Congress, the fact is that the cost of cable television skyrocketed. Today only one-half of 1 percent of cable consumers receiving satellite service from DBS, direct broadcast satellite, which is the new satellite competitor, and only experimental efforts exist today to transmit cable over telephone lines. It is only natural to fear that cable rates will shoot up again under the current bill.

Let me just go back over that. The promise of satellite reception for cable consumers, television consumers, was ripe in the air in 1984 when cable was deregulated. Today, 11 years later, one-half of 1 percent of the television consumers with multichannel service receive that service from the Direct Broadcast Satellite.

The last time Congress prematurely deregulated cable rates, the General Accounting Office found that the price of basic cable service rose more than 40 percent in the first 3 years without regulation. And 40 percent is three times the rate of inflation during that same period of time, 1986 to 1989, and four times the level of increases experienced under regulation.

Mr. President, the Commerce Committee received testimony from local officials that demonstrated real price exorbitance. Mayor Sharpe James of Newark testified that rates increased by more than 130 percent from 1986 to 1989 in his community. Mayor Eddy Patterson of Henderson, TN, noted rates rose 40 percent in the same period in his area. Rates shot up as much as 99 percent in communities in Hawaii, according to Robert Alm from Hawaii's Department of Commerce. David Adkisson, Mayor of Owensboro, KY, testified that basic receipts rose 40 percent in just 1 year. And I can report that rates in Connecticut jumped 52 percent in those 3 years in the mid-1980's, led by one company which actually hiked its rates by an unbelievable 222 percent when there was no regulation and no competition, which effectively is what this bill will bring us back to.

Consumer groups testified to the Commerce Committee demonstrating that in the few communities where there was competition, which is to say two cable companies going head to head, rates were about 30 percent lower than in the monopoly markets.

So on the basis of that evidence this Congress moved in a bipartisan fashion in 1992 to pass the Cable Act. Let me now remind my colleagues briefly what that law does. The Cable Act—that is the law in effect today, before this bill—allows Federal and local officials to limit cable rates to a reasonable level until there is effective competition to the cable monopoly. This is not permanent regulation. This is not the heavy, immovable hand of Government. This says let us get regulation out of here as soon as there is competition. In other words, regulation sunsets, disappears. And the standard here is it disappears when half the residents of a community have more than one choice for cable service and 15 percent of them, only 15 percent of that community, actually select the service from the cable competitor.

Let us talk about the results of the law. Mr. President, according to the Consumer Price Index for cable service, rates are down about 11 percent from their trend line when cable was deregulated. I plotted here on this chart the trend of cable rate increases before rate regulation extrapolated to the present. That is the blue line.

Also plotted are cable rates after rate regulation, and cable rates subject to competition. So the red line is the difference here in rates after the 1992 act went into effect, and this actually is a projection of what has happened in those 50 markets where there is competition, which is great for consumers.

Regulation is modestly controlling monopolies. That is what the red line tells us. But competition is the real solution. Competition works at keeping cable rates under control. Without competition, regulation is necessary to control those price increases. On a nationwide basis—this is an interesting number—this translates into a consumer savings of $2.5 billion to $3 billion per year since the adoption of the Cable Act of 1992.

Furthermore, consumers were not hit by the two to three times inflation rate increases they used to face when cable was deregulated. So not only did we not have the increases, we actually had $2.5 billion to $3 billion of consumer savings, and there is not much that we can look at in the way of the cost of living in our society that went down during this period of time.

While consumers have come out ahead, I want to point out that the cable industry has done well, contrary to its fears, under this new act. They have been busy developing new service and increasing revenue streams, and as far as I am concerned that is great news. With pay channels, increased advertising revenue and digital audio services, the cable industry has made up all of the money consumers saved from regulation. In addition, cable has had the money to prosper through expansion. And you can see in this plot the increase in subscribers that cable companies have had since the regulations imposed by the Cable Act.

The impact of the Cable Consumer Act of 1992 saved consumers a substantial amount of money, $2.5 billion to $3 billion a year, and rates went down 11 percent. But the great news about it is that all that happened and the cable companies still remained healthy.

In this chart, I am showing the increase in the number of subscribers the cable companies have had since the regulations imposed in the cable act. This is 1990, a 4.4 percent increase; 1991; and then after the act, 1993–1994, you can see they go up 2.8 percent; and then in 1994, when the act really kicked in for the full year, a 5-percent increase in subscriber growth to cable, which shows that the business remained healthy during that period of time.

Last year, cable systems expanded their infrastructure to reach 1 million additional homes, 1.4 additional households subscribed to basic cable service, and 1.1 million families purchased expanded cable packages.

Pay services were taken by an additional 2 million homes, and dozens of new programming channels were developed and offered to the public, all of that growth occurring during these 2 years in which regulation has been in place.

Equally important, some would say most important, the cable industry has been investing to compete with telephone companies in the multimedia services. I know that one of the arguments that the cable company folks have made against this amendment and for deregulation now before there is any competition to them has been that they have to be able to raise money to compete, build an infrastructure with the telephone companies when they get into the cable business.

But the fact is that the chart illustrates during this period in which regulation has existed again for a couple of years, the capital expenditures of the cable industry have been very healthy. In fact, they have dramatically increased in the years that regulation has been on. We go from 1993, up to almost $3 billion; in 1994, up to almost $4 billion, $3.7 billion.

Since last summer, 1994, major cable companies have raised and invested over $15 billion in new competitive ventures. Most recently, a consortium that includes TCI, Comcast and Cox, raised and spent more than $2 billion to buy, if you will, the spectrum that was auctioned, a figure higher than any other set of bidders paid in the spectrum auction.

Let us talk about the profit margin for the cable industry during this period of time. For 1993, it was 20 percent, the highest profit margin of any segment of the telecommunications industry, and this is after regulation went into effect, because there was no competition. Cable companies have been successful in acquiring and spending money, and that is the way it ought to be. I want them to grow and prosper.

Finally, here I have plotted the average value of cable stocks as compared to the S&P 500. As you can see, regulation has not hurt the performance of cable stocks. In blue, we have cable industry stocks charted. The S&P 500 is in red. Here, again, you can see how healthy the cable industry has been—and the stock market, after all, is a measurement of consumer confidence in the future of this industry. Here we go, 1993 and 1994, during that period of time when regulation was instituted because there was no competition, the cable industry stock index performed significantly better than the Standard & Poor's 500.

Obviously, investors do not think regulation has been bad for the cable industry. Just about every day newspapers announce new examples of major cable advancement or system upgrades or system expansion. Again, that is good news.

Finally, it is critical to understand that the cable act and the FCC regulations allow cable operators to respond to both the threat of competition or actual competition in the same manner that any reasonable business in an unregulated market would react to such threats. In the face of competition, a cable operator may either improve service—that is what competition is all about—without any regulatory filings, reduce prices for any tier of service—that is what a normal business does when they have competition without any regulatory OK, they reduce their prices—they may offer new services at any price, all this without regulation. And, of course, under the act, all pay services—this is the 1992 act—all pay services and premium channels are already unregulated.

Mr. President, there is only one thing the cable operator may not do under the Cable Act of 1992 and that is to raise rates above a reasonable level.

Why would any cable operator who faced real competition want to raise prices above a reasonable level? Obviously, most sensible business people would not raise prices in the face of that competition. But does that not all change if there is no competition?

I am sorry to say that the committee bill with its repeal of these cable consumer protections that have worked for the consumer and the industry will allow the industry to raise its rates again before competition ever arrives and literally takes us back to 1984.

Although proponents of this bill, S. 652, note that it does explicitly deregulate all cable services immediately, the bill provides cable operators an opportunity to raise rates back to about the level they would have been if we had not passed the Cable Act of 1992.

Let me briefly explain. In this bill, S. 652 before us now, the standard for determining that a cable company is charging unreasonable rates for program services would be a comparison to the national average of cable system rates as of June 1, 1995, a few weeks ago. A cable company would have to charge rates that are substantially above the national average on June 1, 1995, before that company could be regulated.

And this deals with what we all consider to be cable. The bill, S. 652, leaves basic services regulated. There are three tiers of cable: basic, which is what you can get without cable over antenna, in most cases, the networks and maybe public television; the middle tier, what most people think of as cable—CNN, ESPN, Nickelodeon, whatever; and the third tier is channels unregulated.

Today, the basic tier and middle tier are regulated. Premium channels are not. Under this legislation, the basic tier remains regulated, the middle tier is unregulated, unless the rates are found to be substantially above the national average. The national average will be recalculated every 2 years.

So, there again, we have an incentive for the industry to increase its prices. Ironically, it is as if instead of a reason to reduce prices or hold prices, we are giving in this legislation the industry an incentive to increase prices, because the standard will be changed every 2 years. With almost 40 percent of the market dominated by two cable companies, the national average will be controlled by a small number of companies.

For example, an average package of cable programming around this country now costs about $15 or $20 a month. Every cable consumer whose company currently charges less than this average will have a green light to increase their rates to $20 to $25 per month without being substantially above the national average, which is the standard in this legislation.

In other words, consumers are likely to face at least a $5 a month rate increase for stations like ESPN, CNN, Discovery, Lifetime, USA and, in many cases, C-SPAN. Rate increases in this range would drive cable prices back up to the levels experienced from 1986 to 1992 when there was no consumer protection.

What we are presenting here is an opportunity for the cable operators to go back to their old ways. What I am saying is you do not need to do this to keep them healthy, as the numbers I have shown indicated. Even if the Congress completely deregulated cable again, it—well, basically this amounts to complete deregulation.

In my amendment, No. 1298, the national average would be calculated not by what exists on June 1, 1995, or on what exists 2 years from now after raising the rates. It will be calculated by including markets that currently have effective competition and those who become competitive over time, allowing the markets, not regulators to set prices.

That is the point of this amendment, and that is why I think this amendment is so consistent with the overall thrust of this bill. It is procompetitive. It says let the markets, not regulators, set reasonable prices. Small cable companies, because they have their own economic pressures that control their rates, in my opinion, would be exempt from regulation under this amendment.

I want to emphasize that the negotiations that resulted in some changes in the calculation of the national average, while moving in the direction of putting some pressure on these monopolies and protecting consumers, in my opinion, just do not go far enough. The national average would be calculated using the rates from June 1 of this year. Using a fixed date when regulation is in effect is supposed to result in a fair value for the national average for cable rates. But that date, June 1, occurs after some significant deregulation for certain cable systems under the FCC procedure. Using that date will increase the national average, therefore, leading to higher cable rates. The method of calculation spelled out in the bill, which is complicated, uses a per-channel approach, cost per channel. So let me give you an example based on numbers from a compilation of cost per channel rates in an article that appeared in Consumers Research.

In 1990, monopoly cable systems were charging 50 percent more than cable companies in competitive markets on a cost per channel basis. Using the complex calculation described in the current bill, as modified by the managers amendment, there would be a significant increase in the cost per channel over the rates charged in competitive markets.

So taking inflation into account, the average cost per channel would be 20 percent higher in the current bill than by simply comparing rates to competitive markets, as occurs in my amendment.

So to summarize, the current bill defines a very complex method of calculation dreamed up by regulators. Not only is the system illogical, it is also unfair. And though the system of calculation may be complex, the result, in my opinion, will be plain and simple, and that is that the consumer of cable services—the millions out there across America, who depend on cable for their entertainment, for their information, in many cases today, even for their shopping—are going to be the ones to lose their rates. Their rates will go up. My amendment uses markets to set prices, not arcane formulas devised by regulators.

In conclusion, I want to make sure we do not make the same mistake I believe Congress made in 1984 and that Congress recognized it made in 1992. Consumers paid a hefty price for premature deregulation of cable over the last decade. I say ''premature'' because competition effectively exists in very few cable markets. I do not want to redo that mistake.

This amendment will prevent excessive deregulation before there is competition, while maintaining the spirit of the underlying bill. I am in favor of competition. I hope it comes quickly. I hope there are more than one-half of 1 percent who get a competitive cable service from the direct broadcast satellites. I hope that the telephone companies move as rapidly as some suggest they will—though, I doubt it—into providing multi-channel services and competition with existing cable systems.

Let competition set rates and protect consumers, not regulators. That is what my amendment is all about.

I thank the Chair for the courtesy and the opportunity to address my colleagues on behalf of this amendment.

I urge support for it, and I yield the floor.

Mr. ROCKEFELLER. Just for the sake of the hour of 7:30, I simply ask unanimous consent, Mr. President, for 10 seconds to call up amendment No. 1292.

The PRESIDING OFFICER. Is there objection? In the absence of objection, the Senator from West Virginia is recognized.

Mr. ROCKEFELLER. I thank the Senator.

AMENDMENT NO. 1292

(Purpose: To eliminate any possible jurisdictional question arising from universal service references in the health care providers for rural areas provision)

The PRESIDING OFFICER. Does the Senator call up an amendment? Would you repeat the number again, please?

Mr. ROCKEFELLER. Yes. 1292.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER] proposes an amendment numbered 1292.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 264 of the Communications Act of 1934, as added by section 310 of the bill beginning on page 132, strike subsections (a) and (b) and insert the following:

''(a) IN GENERAL.—

''(1) HEALTH CARE PROVIDERS FOR RURAL AREAS.—A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services, including instruction relating to such services, at rates that are reasonably comparable to rates charged for similar services in urban areas to any public or nonprofit health care provider that serves persons who reside in rural areas. A telecommunications carrier providing service pursuant to this paragraph shall be entitled to have an amount equal to the difference, if any, between the price for services provided to health care providers for rural areas and the price for services provided to other customers in comparable urban areas treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service under section 253(c).

''(2) EDUCATIONAL PROVIDERS AND LIBRARIES.—All telecommunications carriers serving a geographic area shall, upon a bona fide request, provide to elementary schools, secondary schools, and libraries universal services (as defined in section 253) that permit such schools and libraries to provide or receive telecommunications services for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission and the States determine is appropriate and necessary to ensure affordable access to and use of such telecommunications by such entities. A telecommunications carrier providing service pursuant to this paragraph shall be entitled to have an amount equal to the amount of the discount treated as a service obligation as part of its obligation to participate in the mechanisms to preserve and advance universal service under section 253(c).

''(b) UNIVERSAL SERVICE MECHANISMS.—The Commission shall include consideration of the universal service provided to public institutional telecommunications users in any universal service mechanism it may establish under section 253.

Mr. ROCKEFELLER. I thank the Chair.

The PRESIDING OFFICER. Without objection, the amendment will be set aside.

Mr. STEVENS. Mr. President, I want to comply with the majority leader.

I would like to call up my amendments 1301, 1302, 1304, already covered, and 1300. And I will offer a second-degree amendment to the 1300.

Thank you very much.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. I move to lay this aside in order to continue with the consideration of Senator LIEBERMAN's presentation.

The PRESIDING OFFICER. Will the Senator suspend for just a moment?

Was the Senator intending to call up amendment No. 1300?

Mr. STEVENS. Yes.

AMENDMENT NO. 1300

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] offers an amendment numbered 1300.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 36, between lines 23 and 24, insert the following new subsection and renumber the remaining subsections accordingly:

(a) FINDINGS.—The Congress finds that—

(1) the existing system of universal service has evolved since 1930 through an ongoing dialogue between industry, various Federal-State Joint Boards, the Commission, and the courts;

(2) this system has been predicated on rates established by the Commission and the States that require implicit cost shifting by monopoly providers of telephone exchange service through both local rates and access charges to interexchange carriers;

(3) the advent of competition for the provision of telephone exchange service has led to industry requests that the existing system be modified to make support for universal service explicit and to require that all telecommunications carriers participate in the modified system on a competitively neutral basis; and

(4) modification of the existing system is necessary to promote competition in the provision of telecommunications services and to allow competition and new technologies to reduce the need for universal service support mechanisms.

On page 38, beginning on line 15, strike all through page 43, line 2, and insert the following:

''SEC. 253. UNIVERSAL SERVICE.

''(a) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

''(1) Quality services are to be provided at just, reasonable, and affordable rates.

''(2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.

''(3) Consumers in rural and high cost areas should have access to telecommunications and information services, including interexchange services, that are reasonably comparable to those services provided in urban areas.

''(4) Consumers in rural and high cost areas should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

''(5) Consumers in rural and high cost areas should have access to the benefits of advanced telecommunications and information services for health care, education, economic development, and other public purposes.

''(6) There should be a coordinated Federal-State universal service system to preserve and advance universal service using specific and predictable Federal and State mechanisms administered by an independent, nongovernmental entity or entities.

''(7) Elementary and secondary schools and classrooms should have access to advanced telecommunications services.

''(b) DEFINITION.—

''(1) IN GENERAL.—Universal service is an evolving level of intrastate and interstate telecommunications services that the Commission, based on recommendations from the public, Congress, and the Federal-State Joint Board periodically convened under section 103 of the Telecommunications Act of 1995, and taking into account advances in telecommunications and information technologies and services, determines—

''(A) should be provided at just, reasonable, and affordable rates to all Americans, including those in rural and high cost areas and those with disabilities;

''(B) are essential in order for Americans to participate effectively in the economic, academic, medical, and democratic processes of the Nation; and

''(C) are, through the operation of market choices, subscribed to by a substantial majority of residential customers.

''(2) DIFFERENT DEFINITION FOR CERTAIN PURPOSES.—The Commission may establish a different definition of universal service for schools, libraries, and health care providers for the purposes of section 264.

''(c) ALL TELECOMMUNICATIONS CARRIERS MUST PARTICIPATE.—Every telecommunications carrier engaged in intrastate, interstate, or foreign communication shall participate, on an equitable and nondiscriminatory basis, in the specific and predictable mechanisms established by the Commission and the States to preserve and advance universal service. Such participation shall be in the manner determined by the Commission and the States to be reasonably necessary to preserve and advance universal service. Any other provider of telecommunications may be required to participate in the preservation and advancement of universal service, if the public interest so requires.

''(d) STATE AUTHORITY.—A State may adopt regulations to carry out its responsibilities under this section, or to provide for additional definitions, mechanisms, and standards to reserve and advance universal service within that State, to the extent that such regulations do not conflict with the Commission's rules to implement this section. A State may only enforce additional definitions or standards to the extent that it adopts additional specific and predictable mechanisms to support such definitions or standards.

''(e) ELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT.—To the extent necessary to provide for specific and predictable mechanisms to achieve the purposes of this section, the Commission shall modify its existing rules for the preservation and advancement of universal service. Only essential telecommunications carriers designated under section 214(d) shall be eligible to receive support for the provision of universal service. Such support, if any, shall accurately reflect what is necessary to preserve and advance universal service in accordance with this section and the other requirements of this Act.

''(f) UNIVERSAL SERVICE SUPPORT.—The Commission and the States shall have as their goal the need to make any support for universal service explicit, and to target that support to those essential telecommunications carriers that serve areas for which such support is necessary. The specific and predictable mechanisms adopted by the Commission and the States shall ensure that essential telecommunications carriers are able to provide universal service at just, reasonable, and affordable rates. A carrier that receives universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

''(g) INTEREXCHANGE SERVICES.—The rates charged by any provider of interexchange telecommunications service to customers in rural and high cost areas shall be no higher than those charged by such provider to its customers in urban areas.

''(h) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.—A telecommunications carrier may not use services that are not competitive to subsidize competitive services. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service

bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

''(i) CONGRESSIONAL NOTIFICATION REQUIRED.—

''(1) IN GENERAL.—The Commission may not take action to require participation by telecommunications carriers or other providers of telecommunications under subsection (c), or to modify its rules to increase support for the preservation and advancement of universal service, until—

''(A) the Commission submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives a report on the participation required, or the increase of support proposed, as appropriate; and

''(B) a period of 120 days has elapsed since the date the report required under paragraph (1) was submitted.

''(2) NOT APPLICABLE TO REDUCTIONS.—This subsection shall not apply to any action taken to reduce costs to carriers or consumers.

''(j) EFFECT ON COMMISSION'S AUTHORITY.—Nothing in this section shall be construed to expand or limit the authority of the Commission to preserve and advance universal service under this Act. Further, nothing in this section shall be construed to require or prohibit the adoption of any specific type of mechanism for the preservation and advancement of universal service.

''(k) EFFECTIVE DATE.—This section takes effect on the date of enactment of the Telecommunications Act of 1995, except for subsections (c), (d), (e), (f), and (i) which take effect one year after the date of enactment of that Act.''.

On page 43, beginning with ''receive'' on line 25, through ''253.'' on page 44, line 1, is deemed to read ''receive universal service support under section 253.''.

In section 264 of the Communications Act of 1934, as added by section 310 of the bill beginning on page 132, strike subsections (a) and (b) and insert the following:

''(a) IN GENERAL.—

''(1) HEALTH CARE PROVIDERS FOR RURAL AREAS.—A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health services, including instruction relating to such services, at rates that are reasonably comparable to rates charged for similar services in urban areas to any public or nonprofit health care provider that serves persons who reside in rural areas. A telecommunications carrier providing service pursuant to this paragraph shall be entitled to have an amount equal to the difference, if any, between the price for services provided to health care providers for rural areas and the price for similar services provided to other customers in comparable urban areas treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service under section 253(c).

''(2) EDUCATIONAL PROVIDERS AND LIBRARIES.—All telecommunications carriers serving a geographic area shall, upon a bona fide request, provide to elementary schools, secondary schools, and libraries universal services (as defined in section 253) that permit such schools and libraries to provide or receive telecommunications services for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission and the States determine is appropriate and necessary to ensure affordable access to and use of such telecommunications by such entities. A telecommunications carrier providing service pursuant to this paragraph shall be entitled to have an amount equal to the amount of the discount treated as a service obligation as part of its obligation to participate in the mechanisms to preserve and advance universal service under section 253(c).

''(b) UNIVERSAL SERVICE MECHANISMS.—The Commission shall include consideration of the universal service provided to public institutional telecommunications users in any universal service mechanism it may establish under section 253.

Mr. STEVENS. Mr. President, parliamentary inquiry: My amendments 1301, 1302, and 1304 are covered by the unanimous consent agreement. Do I have to call them up at this time?

The PRESIDING OFFICER. The Senator needs to call them up at this time, and they need to be reported.

Mr. STEVENS. I ask that they be reported. I ask unanimous consent that we may proceed in this manner.

AMENDMENTS NOS. 1301, 1302, AND 1304

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes amendments numbered 1301, 1302, and 1304.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 1301

(Purpose: To modify the definition of LATA as it applies to commercial mobile services)

At the appropriate place insert the following:

In section 3(tt) of the Communications Act of 1934, as added by section 8(b) of the bill on page 14, strike ''services.'' and insert the following: ''Provided, however, that in the case of a Bill operating company affiliate, such geographic area shall be no smaller than the LATA area for such affiliate on the date of enactment of the Telecommunications Act of 1995.''

AMENDMENT NO. 1302

(Purpose: To provide interconnection rules for Commercial Mobile Service Providers)

On page 28 before line 6 inset the following:

''(m) COMMERCIAL MOBILE SERVICE PROVIDERS.—The requirements of this section shall not apply to commercial mobile services provided by a wireline local exchange carrier unless the Commission determines under subsection (a)(3) that such carrier has market power in the provision of commercial mobile service.''

AMENDMENT NO. 1304

(Purpose: To ensure that resale of local services and functions is offered at an appropriate price for providing such services)

In subsection (d) of the section captioned ''SPECTRUM AUCTIONS'' added to the bill by amendment, strike ''three frequency bands (225–400 megahertz, 3625–3650 megahertz,'' and insert ''two frequency bands (3625–3650 megahertz''.

Mr. STEVENS. All of my amendments will now be called up later?

The PRESIDING OFFICER. The four amendments are now pending.

Mr. STEVENS. I ask unanimous consent that they be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendments are set aside.

Will the Senator indicate to which amendment he intended to offer a second-degree amendment?

Mr. STEVENS. I intend to call up an amendment to amendment numbered 1300, and that has been filed.

The PRESIDING OFFICER. Thank you. Under the unanimous consent order, amendments are to be called up prior to 7:30. It may be that there will be Members of the Senate who will come forward.

Mr. INOUYE. Mr. President, I thank the Chair.

AMENDMENT NO. 1280

(Purpose: To encourage steps to prevent the access by children to obscene and indecent material through the Internet and other electronic information networks)

Mr. INOUYE. On behalf of the Senator from Virginia, [Mr. ROBB], I call up Amendment No. 1280 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows.

The Senator from Hawaii [Mr. INOUYE], for Mr. ROBB, proposes an amendment numbered 1280.

Mr. INOUYE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 146, below line 14, add the following:

SEC. 409. RESTRICTIONS ON ACCESS BY CHILDREN TO OBSCENE AND INDECENT MATERIAL ON ELECTRONIC INFORMATION NETWORKS OPEN TO THE PUBLIC.

. . . In order—

(1) to encourage the voluntary use of tags in the names, addresses, or text of electronic files containing obscene, indecent, or mature text or graphics that are made available to the public through public information networks in order to ensure the ready identification of files containing such text or graphics;

(2) to encourage developers of computer software that provide access to or interface with a public information network to develop software that permits users of such software to block access to or interface with text or graphics identified by such tags; and

(3) to encourage the telecommunications industry and the providers and users of public information networks to take practical actions (including the establishment of a board consisting of appropriate members of such industry, providers, and users) to develop a highly effective means of preventing the access of children through public information networks to electronic files that contain such text or graphics,

The Secretary of Commerce shall take appropriate steps to make information on the tags established and utilized in voluntary compliance with subsection (a) available to the public through public information networks.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit the Congress a report on the tags established and utilized in voluntary compliance with this section. The report shall—

(1) describe the tags so established and utilized;

(2) assess the effectiveness of such tags in preventing the access of children to electronic files that contain obscene, indecent,

or mature text or graphics through public information networks; and

(3) provide recommendations for additional means of preventing such access.

(d) DEFINITIONS.—In this section:

(1) The term ''public information network'' means the Internet, electronic bulletin boards, and other electronic information networks that are open to the public.

(2) The term ''tag'' means a part or segment of the name, address, or text of an electronic file.

Mr. INOUYE. Mr. President, I ask unanimous consent that this amendment be in order to be taken up tomorrow.

The PRESIDING OFFICER. Without objection, it will be set aside.

Mr. INOUYE. I thank the Chair.

Mr. STEVENS. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 1303

(Purpose: To ensure that resale of local services and functions is offered at an appropriate price for providing such services)

Mr. STEVENS. Mr. President, in order to comply with the previous order, I would call up my amendment 1303 and ask unanimous consent to call it up at this time to qualify.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself and Mr. INOUYE, proposes an amendment numbered 1303.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 86, line 25, after ''basis'' insert a comma and ''reflecting the actual cost of providing those services or functions to another carrier,''

Mr. STEVENS. Mr. President, I might state that it is not my present intention to call this up. We are working on this, and we may not call this up. I just want to qualify it for the purposes of the RECORD.

The PRESIDING OFFICER. Without objection, the amendment will be set aside.

Mr. INOUYE. Mr. President, the amendment Senator STEVENS and I are introducing provides an essential mechanism for achieving a central goal of this bill—to open the local exchange to competition for the first time. Today's highly competitive long distance market has its roots in a 1976 order by the Federal Communications Commission that ushered in the unrestricted resale of AT&T's telecommunications services by its competitors. The FCC order allowed competitors to purchase AT&T's excess long distance capacity in bulk, at non-discriminatory and often deeply discounted rates, and then resell those services to their own customers at competitive retail rates. Three companies—Sprint, MCI, and LDDS—exploited this resale capability to grow and eventually build their own state-of-the-art national networks. Those networks now allow nationwide, long distance competition with AT&T. What's more, excess capacity in the three new national networks has given birth to an entire industry of more than 500 resellers around the country. The benefits of this new competition among carriers and resellers have been enormous—rapid technological innovations, greater consumer choice, and lower consumer prices.

If our Nation's experience with competitive long distance service is any model—and I am convinced it is our best model—resale will be the essential first step in developing competitive local exchange markets. Given the enormous cost of building sophisticated communications networks throughout the country, local exchange competition will never have a chance to develop if competitors have to start by building networks that are comparable to the vast and well-established Bell networks. For this reason, affordable resale opportunities are the key to stimulating local competition. But these resale opportunities must be based on economically reasonable prices that reflect the actual cost of providing those services and functions to another carrier and not monopoly mark-up prices. The amendment we are offering today will ensure that resale opportunities in the local exchange will in fact stimulate the development local competition.

Make no mistake—we want to be sure that the Bell companies are compensated for the actual cost of providing these facilities, services, and functions to competing carriers. We are not asking them to subsidize their competitors. But neither should these competitors be asked to subsidize the Bell companies. Therefore, resale prices must reflect the very substantial savings that will be realized by the Bell companies by selling their facilities on a wholesale, rather than a resale, basis. As a wholesaler, a Bell company is relieved of the obligation to provide a wide variety of services to the retail customer, such as billing and maintenance, that add to the cost of service. Similarly, the costs associated with marketing, advertising, and collecting on receivables are eliminated when the Bell company acts as a wholesaler. By ensuring that these cost-savings are accurately reflected in the resale prices charged to competing local carriers, we can guarantee a viable resale industry that will serve as an early stimulus for local competition.

The amendment also leaves undisturbed pricing structuring that benefit residential consumers of local exchange service. As the Bell companies have told us, to keep residential prices affordable, they sometimes sell these services below their actual costs and recover the shortfall, where it occurs, by pricing other services above their costs, thereby indirectly subsidizing their residential retail rates. The amendment we offer today will not affect those subsidies, which will be counted towards the recovery of costs in setting resale prices.

We believe the amendment properly balances the interests here in permitting the Bell companies to recover their costs and indeed to make a reasonable profit while assuring that a viable resale business can jump-start local competition. We simply cannot expect competitors to build out their own networks before they can provide full, unrestricted competition to current local exchange service providers. Nor can we expect them to enter the market if the wholesale rates offer them no margins for profit, such as in the Rochester experiment. The creation of full-scale, vigorous competition in the market for local exchange services is critical if our Nation's telecommunications industry is to provide a wide array of the best technology at low costs to consumers. Resale is a proven policy for achieving that competition. I urge my colleagues to adopt this amendment.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. What is the pending business?

The PRESIDING OFFICER. At this point, all the amendments offered have been set aside.

AMENDMENTS NOS. 1301, 1302, 1304

Mr. STEVENS. Mr. President, is it in order to call up my three amendments, 1301, 1302 and 1304?

The PRESIDING OFFICER. It is in order.

Mr. STEVENS. I yield myself 5 minutes on the amendments, and I will make a simple statement on each one.

Amendment No. 1301 is a technical clarification of the definition of LATA—Local Access and Transport Area—in the bill. This amendment clarifies that a Bell company cellular operation will continue to have the same size LATA as they do today.

Mr. President, amendment No. 1302 is a technical clarification of the interconnection requirements of section 251, to ensure that the commercial mobile service portion of a local exchange carrier's network is not subject to the requirements of section 251, unless that carrier has market power in the provision of commercial mobile services.

Mr. President, amendment No. 1304 is a technical amendment to my earlier amendment on spectrum auctions that the Senate adopted this past week. The amendment deletes the requirement that the Secretary of Commerce submit a timetable for the reallocation of the 225 to 400 megahertz band of spectrum.

I have had several discussions on this matter with the Department of Defense and the National Telecommunications and Information Agency. Both have recommended that this frequency continue to be reserved for military and public safety uses.

I might point out that my amendment did not mandate the transfer of

that spectrum. It merely made the spectrum subject to the requirement that the Secretary provide a schedule for transfer. The Secretary could have indicated no intent to transfer. But since there was a problem, I am going to ask the adoption of this amendment.

I am informed that amendment No. 1304 has no budgetary impact on the statement I have previously made to the Senate concerning the estimate of revenues pursuant to the CBO estimate process for my spectrum auction amendment that was adopted last week.

If there are any questions from any Member about these three technical amendments, I would be pleased to respond at this time.

I reserve the remainder of my time.

Mr. HOLLINGS. The amendments have been cleared on this side.

Mr. STEVENS. Mr. President, I am pleased to have the statement of the Senator from South Carolina that these three amendments are cleared on his side. I ask my friend, the chairman of the Commerce Committee, if he is prepared to similarly support these amendments?

Mr. PRESSLER. Yes, we are prepared to do that. We thank the Senator for taking care of them in such a good manner.

Mr. STEVENS. I yield the remainder of my time.

Who controls the other time?

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. I propose that, if we can, we adopt the amendments.

Mr. STEVENS. I ask unanimous consent that the amendments be considered, en bloc, and adopted, en bloc.

The PRESIDING OFFICER. Without objection, the amendments are agreed to, en bloc.

So the amendments (Nos. 1301, 1302, and 1304) were agreed to, en bloc.

Mr. PRESSLER. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1300, AS MODIFIED

Mr. STEVENS. I send a modification to amendment No. 1300 to the desk.

The PRESIDING OFFICER. The Senator has that right.

The amendment is so modified.

The amendment (No. 1300), as modified, is as follows:

On page 36, between lines 23 and 24, insert the following new subsection and renumber the remaining subsections accordingly:

(a) FINDINGS.—The Congress finds that—

(1) the existing system of universal service has evolved since 1930 through an ongoing dialogue between industry, various Federal-State Joint Boards, the Commission, and the courts;

(2) this system has been predicated on rates established by the Commission and the States that require implicit cost shifting by monopoly providers of telephone exchange service through both local rates and access charges to interexchange carriers;

(3) the advent of competition for the provision of telephone exchange service has led to industry requests that the existing system be modified to make support for universal service explicit and to require that all telecommunications carriers participate in the modified system on a competitively neutral basis; and

(4) modification of the existing system is necessary to promote competition in the provision of telecommunications services and to allow competition and new technologies to reduce the need for universal service support mechanisms.

On page 38, beginning on line 15, strike all through page 43, line 2, and insert the following:

"SEC. 253. UNIVERSAL SERVICE.

"(a) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

"(1) Quality services are to be provided at just, reasonable, and affordable rates.

"(2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.

"(3) Consumers in rural and high cost areas should have access to telecommunications and information services, including interexchange services, that are reasonably comparable to those services provided in urban areas.

"(4) Consumers in rural and high cost areas should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

"(5) Consumers in rural and high cost areas should have access to the benefits of advanced telecommunications and information services for health care, education, economic development, and other public purposes.

"(6) There should be a coordinated Federal-State universal service system to preserve and advance universal service using specific and predictable Federal and State mechanisms administered by an independent, nongovernmental entity or entities.

"(7) Elementary and secondary schools and classrooms should have access to advanced telecommunications services.

"(b) DEFINITION.—

"(1) IN GENERAL.—Universal service is an evolving level of intrastate and interstate telecommunications services that the Commission, based on recommendations from the public, Congress, and the Federal-State Joint Board periodically convened under section 103 of the Telecommunications Act of 1995, and taking into account advances in telecommunications and information technologies and services, determines—

"(A) should be provided at just, reasonable, and affordable rates to all Americans, including those in rural and high cost areas and those with disabilities;

"(B) are essential in order for Americans to participate effectively in the economic, academic, medical, and democratic processes of the Nation; and

"(C) are, through the operation of market choices, subscribed to by a substantial majority of residential customers.

"(2) DIFFERENT DEFINITION FOR CERTAIN PURPOSES.—The Commission may establish a different definition of universal service for schools, libraries, and health care providers for the purposes of section 264.

"(c) ALL TELECOMMUNICATIONS CARRIERS MUST PARTICIPATE.—Every telecommunications carrier engaged in intrastate, interstate, or foreign communication shall participate, on an equitable and nondiscriminatory basis, in the specific and predictable mechanisms established by the Commission and the States to preserve and advance universal service. Such participation shall be in the manner determined by the Commission and the States to be reasonably necessary to preserve and advance universal service. Any other provider of telecommunications may be required to participate in the preservation and advancement of universal service, if the public interest so requires.

"(d) STATE AUTHORITY.—A State may adopt regulations to carry out its responsibilities under this section, or to provide for additional definitions, mechanisms, and standards to preserve and advance universal service within that State, to the extent that such regulations do not conflict with the Commission's rules to implement this section. A State may only enforce additional definitions or standards to the extent that it adopts additional specific and predictable mechanisms to support such definitions or standards.

"(e) ELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT.—To the extent necessary to provide for specific and predictable mechanisms to achieve the purposes of this section, the Commission shall modify its existing rules for the preservation and advancement of universal service. Only essential telecommunications carriers designated under section 214(d) shall be eligible to receive support for the provision of universal service. Such support, if any, shall accurately reflect what is necessary to preserve and advance universal service in accordance with this section and the other requirements of this Act.

"(f) UNIVERSAL SERVICE SUPPORT.—The Commission and the States shall have as their goal the need to make any support for universal service explicit, and to target that support to those essential telecommunications carriers that serve areas for which such support is necessary. The specific and predictable mechanisms adopted by the Commission and the States shall ensure that essential telecommunications carriers are able to provide universal service at just, reasonable, and affordable rates. A carrier that receives universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

"(g) INTEREXCHANGE SERVICES.—The rates charged by any provider of interexchange telecommunications service to customers in rural and high cost areas shall be no higher than those charged by such provider to its customers in urban areas.

"(h) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.—A telecommunications carrier may not use services that are not competitive to subsidize competitive services. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

"(i) CONGRESSIONAL NOTIFICATION REQUIRED.—

"(1) IN GENERAL.—The Commission may not take action to require participation by telecommunications carriers or other providers of telecommunications under subsection (c), or to modify its rules to increase support for the preservation and advancement of universal service, until—

"(A) the Commission submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives a report on the participation required, or the increase in support proposed, as appropriate; and

"(B) a period of 120 days has elapsed since the date the report required under paragraph (1) was submitted.

''(2) NOT APPLICABLE TO * * * .— * * *

''(j) EFFECT ON COMMISSION'S AUTHORITY.—Nothing in this section shall be construed to expand or limit the authority of the Commission to preserve and advance universal service under this Act. Further, nothing in this section shall be construed to require or prohibit the adoption of any specific type of mechanism for the preservation and advancement of universal

''(k) EFFECTIVE DATE.—This section takes effect on the date of enactment of the Telecommunications Act of 1995, except for subsections (c), (d), (e), (f), and (i) which take effect one year after the date of enactment of that Act.''.

On page 43, beginning with ''receive'' on line 25, through ''253.'' on page 44, line 1, is deemed to read ''receive universal service support under section 253.''.

In section 264 of the Communications Act of 1934, as added by section 310 of the bill beginning on page 132, strike subsections (a) and (b) and insert the following:

''(a) IN GENERAL.—

''(1) HEALTH CARE PROVIDERS FOR RURAL AREAS.—A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services, including instruction relating to such services, at rates that are reasonably comparable to rates charged for similar services in urban areas to any public or nonprofit health care provider that serves persons who reside in rural areas. A telecommunications carrier providing service pursuant to this paragraph shall be entitled to have an amount equal of the difference, if any, between the price for services provided to health care providers for rural areas and the price for similar services provided to other customers in comparable urban areas treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service under section 253(e).

''(2) EDUCATIONAL PROVIDERS AND LIBRARIES.—All telecommunications carriers serving a geographic area shall, upon a bona fide request, provide to elementary schools, secondary schools, and libraries universal services (as defined in section 253) that permit such schools and libraries to provide or receive telecommunications services for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission and the States determine is appropriate and necessary to ensure affordable access to and use of such telecommunications by such entities. A telecommunications carrier providing service pursuant to this paragraph shall be entitled to have an amount equal to the amount of the discount treated as a service obligation as part of its obligation to participation in the mechanisms to preserve and advance universal service under section 253(c).

''(b) UNIVERSAL SERVICE MECHANISMS.—The Commission shall include consideration of the universal service provided to public institutional telecommunications users in any universal service mechanism it may establish under section 253.

I have a second-degree amendment which I filed to this amendment numbered 1300.

I send that amendment to the desk and ask that my amendment numbered 1300, be amended by that amendment in the second degree.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. HOLLINGS. Reserving the right to object, Mr. President, what we are trying to do is see that amendment in the second degree. We do not have that.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1280

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of amendment 1280, that it be considered as read, adopted and the motion to reconsider be laid upon the table, all without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the amendment (No. 1280) was agreed to.

Mr. PRESSLER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1300

Mr. STEVENS. Mr. President, I renew my request that amendment 1300 be amended by the second-degree amendment that is at the desk.

What the second-degree amendment does is delete a provision that I added in the modification to clarify a concern that I thought had been expressed by the House. It was in order, and I ask to delete that one sentence in accordance with that amendment.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. STEVENS. Mr. President, this amendment modifies the universal service provisions of the bill to address concerns that were raised by the House Ways and Means Committee.

As we know, bills that concern the raising of revenues must originate in the House. We did not intend to raise revenues, and this bill does not do so, either before or after this amendment.

The amendment has been cleared by both sides of the Senate, and the second-degree amendment has now made this amendment consistent with the position, as we understand it, that has been brought by the House Members who raised concerns about the original language in the bill concerning universal service.

As amended, these universal service provisions more clearly address the goal of the bill, which is to target universal service support where it is needed.

I will submit a statement later tomorrow, discussing in detail the House concerns. Again, I want to state we are doing our best to meet the concerns that have been expressed by the House Ways and Means Committee.

There is no intention here to make this bill a revenue-raising measure, and it is not one. It merely intends to modify the existing universal service concept in telecommunications. As I pointed out before, the CBO has informed Members that the universal service concept in this bill will cost less than the current system. Therefore, it is not a revenue-raising measure.

I do ask now that this amendment 1300 be adopted. I hope that my two friends, the managers of the bill, will agree with me that the amendment—which, incidentally, I assume will be printed in the RECORD before my remarks. Is that the case?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. I point out to the Senate that the amendment makes specific findings of the Congress with regard to the universal service system that exists and has been developed through an ongoing dialog between industry, the various Federal-State joint boards, the FCC, and the courts.

It is an ongoing system that has been predicated on rights established by the dialog. I believe that the findings we have now put in the bill clarify our intent with regard to the concept of continuing universal service through the use of essential telecommunications carriers.

It is a modification of the existing concept, as I said, and it will save money for the system. I believe it will provide universal service in the future that will meet the expanding needs of the country, particularly the rural areas.

Are my friends ready to accept the amendment numbered 1300, may I inquire of the distinguished Senator from South Carolina?

Mr. HOLLINGS. Mr. President, No. 1300 has been cleared on this side.

Mr. STEVENS. May I make a similar inquiry of the Senator from South Dakota? Is that amendment acceptable to the chairman of the committee?

Mr. PRESSLER. That amendment is acceptable to the ranking member and I. I commend the Senator from Alaska for his efforts.

Mr. STEVENS. Mr. President, I ask for the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1300), as modified, was agreed to.

Mr. STEVENS. I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. I thank both the chairman and ranking member.

I am pleased to see we were able to work this out. I hope it is worked out now between the Senate and the House,

particularly with regard to concerns raised by the House Ways and Means Committee members.

Mr. BURNS. While the Senator from Alaska is on the floor, I want to express my appreciation for his work on this, as a supporter of universal service, which is the core of our telecommunications industry, and he has worked this out to the good, I think, of the industry. He has been a tireless worker in this. I appreciate his efforts, along with many who serve with him on the committee. We appreciate that very much.

Mr. STEVENS. Mr. President, if the Senator will yield, I think due credit has to be given to the staff of the committee on both sides, of the majority and minority, and my able assistant, Earl Comstock, who has worked extensively and tirelessly on the subject. To us in rural America this is the core of this bill.

Mr. BURNS. Mr. President, I would just want to make a few remarks with regard to the Lieberman amendment which the Senator spoke on just a little while ago.

I want to set the record straight, because with this amendment we are going down the old road of reregulation. In fact, more regulation than was placed on the cable industry a couple of years ago.

We saw the figures of the stock and the worth of these companies, and even though I want to pass along these figures, make no mistake, regulation is not too much of a friend to those entrepreneurial people who have built probably one of the greatest cable systems in the world.

What we have done is regulated an industry, basically, that is not a necessity in the home. In other words, the homeowner, or whomever, has the freedom of not taking the service. There is still over-the-air free broadcast television that can be received almost everywhere in the United States. There may be some specific spots that do not receive free over-the-air television.

Also, in my State, looking at the rates where I can remember when we only got the two local stations, and I think three stations from Salt Lake City, and maybe a public television station when cable first came to Billings, MT. That service cost about $5.50, I think, to $6, something like that. Today we receive between 40 or 45 channels for $21. When you figure the cost per channel, cable rates have not gone up any.

And that was done at a time when there was no regulation in the cable industry. The explanation for the explosion in the jobs that were provided, the opportunity in programming, new ideas, new channels, exciting Discovery—all of those channels came to be under an era when there was no regulation.

Since we passed the 1994 reregulation of cable, cable revenues have remained flat. In other words, around $23 billion in 1993; $23 billion in 1994.

If you look at the cash flows on the reports of the major companies, companies like TCI—their cash flow, $60 billion; Time WARNER Cable, $46 billion; Comcast, $30 billion; and Cox at $27.2 billion—those are flat from 1993 to 1994 and 1995.

Stock values have dropped about 10.1 percent between September 1993 and April 1995, while the S&P and NASDAQ indexes have risen 12.2 percent and 14 percent respectively.

According to A.C. Nielsen, subscriber growth rates have declined from 3.14 percent in 1993 to 2.85 percent in 1994.

It is very dangerous, when we start down this road of reregulating. Right now competition in the entertainment business and in the television business has never been better. And I ask my friend from Connecticut, why would anybody, even a telco, want to go into the cable business with a regulated environment where they could not recover their costs of investment? This is anticompetitive legislation, if I have ever seen it. In other words, it is, I would imagine, to those who are regulated, those who are already in the business—they would stay there. They are warm and comfortable in that cocoon. But whoever wants to go into the business—the investment and ability to recover under a regulatory environment is very, very difficult.

So, if we want to promote competition, and that is the very heart and soul of this legislation, you create competition, you also create new technologies and new tools and force those technologies into the areas that need them so; and that technology gives them the tools for distance learning, telemedicine, and a host of services that we just would not see in States as remote as my home State of Montana.

So, the argument just does not hold water. Additional regulation or additional rules in order to lift regulatory control is counterproductive, and that is what this amendment would be.

I am sure we will have a lot of time tomorrow to make our statements on this. It all depends on what the agreement is. But this is a damaging amendment. It slows the growth in one of the most dynamic industries, the industry that has the potential for the most growth and the potential to really push new services out into America. Do you know what? They always talk about the glass highway, the information highway. If one wants to think a little bit, maybe the information highway is already there and it could have been built in an era where there was no regulation and it could be called cable.

Think about that. Whenever we provide a competitive environment for both the telcos and personal communications, and also in telecommunications, and then in cable communications, we set the environment for a lot of competition, I imagine the big winner will be the consumers of this country and the services they receive and the price those services will be.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. INHOFE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I want to identify myself with the remarks of the Senator from Montana. I think Senator BURNS is very accurate on this cable thing.

As reported by the Commerce Committee on March 30, this bill would maintain regulation of basic cable rates until there is effective competition; deregulate upper tiers of cable programming services only if they do not ''substantially exceed'' the ''national average'' for comparable programming service and redefine the effective competition standard to include a telephone company offering video services.

On June 9, the Senate adopted, 77 to 8, a Dole-Daschle leadership amendment, of which I was also a cosponsor, which met the concerns of those who believe that, despite the safeguards already contained in S. 652, it might lead to unreasonable rate increases by large cable operators. The Dole-Daschle amendment also deregulated small operators, a feature of the pending Lieberman amendment, which proposes to narrow the definition of effective competition and tie ''national average'' to systems that already face effective competition. As such, the Lieberman amendment is excessive and unwarranted.

As modified by our amendment, S. 652 will now, first, establish a fixed date, June 1, 1995, for measuring the ''national average'' price for cable services and only allow adjustments every 2 years. This provision eliminates the possibility that large cable operators could collude to artificially inflate rates immediately following enactment of S. 652. The bill as amended, establishes a ''national average'' based on cable rates in effect prior to passage of S. 652, when rate regulation was in full force, and excludes rates charged by small cable operators in determining the ''national average'' rate for cable services.

This provision addresses the concerns that deregulation of small system rates, which was included as part of the Dole-Daschle amendment to S. 652, would inflate the ''national average'' against which the rates of large cable companies would be measured. It specifies that ''national average'' rates are to be calculated on a per-channel basis.

This provision ensures that ''national average'' is standardized, and takes into account variations in the number of channels offered by different companies as part of their expanded program packages. It specifies that a market is effectively competitive only when an alternative multichannel video provider offers services ''comparable'' to cable television service.

This provision enables cable operators not to be prematurely deregulated under the effective competition provision if, for example, only a single channel of video programming is being delivered by telco, video, and dial tone providers in an operator's market.

What the bill does: The basic tier, broadcast and PEG, remains regulated until, one, telco offers video programming, or, two, direct broadcast satellite, or any other competitor reaches 15 percent of the market penetration.

I think that is very important because the basic tier remains regulated until the telco in the area has competition or until there is at least 15 percent of a direct broadcast satellite.

The upper tiers of cable rates are subject to bad actor review when the price of program packages significantly exceeds the national average. I have been in some parts of the country where you see a cable rate that is much higher, sort out of the blue, and I think that under this legislation that could fall under the so-called bad actor provision of the legislation.

The point we are making is that, as we move toward deregulation of these cable rates, there are safeguards built into this bill.

I am very concerned that the Lieberman amendment would undo the carefully crafted compromise on cable deregulation that has been agreed to by Democrats and Republicans, and we have had several votes in committee and on the floor already. We have the leadership packet. This would tend to unravel all of that at this late moment.

The fact of the matter is that rates continue to rise with regulation. Cable rates will continue to increase with regulations. Indeed, they have been increasing with regulations. The FCC rules allow rates to increase for inflation, added program costs, new equipment charges, and other factors.

Actual and potential competition spurred by our bill will result in lower cable rates.

I have said that, if we can pass this bill, we will have much lower cable rates than we would under a regulated system because we will have more providers, we will have direct broadcast satellite, we will have the video dial, and we will have the opportunity for utilities to come into the television market.

We are really talking about, with this type of regulation, the 1950's and 1960's and 1970's when maybe you could conceivably say some of this was necessary when you just had one or two providers. But in the 1990's and on into the year 2000, we will have a broad range of competition. I hope that we can take advantage of that. It will result in lower cable rates.

Regulation harms the cable industry. In 1994, for the first time ever, cable revenues remained flat—$23.021 billion in 1993, and $23 billion again in 1994. Cash flows for major companies declined. TCI, $60 billion; Time Warner Cable, $46 billion; Comcast, $30.1 billion; Cox, $27.2 billion.

Cable stock values dropped 10.1 percent between December 1993 and April 1995 while the S&P and NASDAQ indexes rose by 12.2 percent and 14 percent, respectively. That is about a 20-percent spread.

During the last year 16 major cable companies, representing 20 percent of the industry, serving 12 million subscribers have sold or announced their intentions to exit the industry.

Capital raised for public debt and equity offerings declined 81 percent in 1994, $8.6 billion in 1993 to $1.6 billion in 1994.

According to A.C. Nielsen, subscriber growth rates declined from 3.14 percent in 1993 to 2.85 percent in 1994.

Existing and potential competition: Direct broadcast satellite is the fastest growing consumer electronics product in history with 2,000 new subscribers a day projected to grow to 2.2 million subscribers by year's end and over 5 million by 2000.

Due to program access, direct broadcast satellite offers every program service available on cable plus exclusive direct broadcast satellite programming, such as movies and sports; for example, 400 NBA games this season and 700 games next season.

Cable also faces competition from 4 million C-band dishes.

Wireless cable has 600,000 subscribers, expected to grow 158 percent in 2 years to 1.5 million and to 3.4 million by 2000. Bell Atlantic, NYNEX, and PacTel have recently invested in wireless cable.

So the point is there are new services being offered. There is new competition coming forward.

Telcos have numerous video programming trials all over the United States. Meanwhile the Clinton/Gore administration continues to fight in court to keep the cable-telco ban firmly in place.

Cable deregulation is a prerequisite for competition in telecommunications.

A central goal of this bill is to create a competitive market for telecommunications services.

Cable television companies are the most likely competitors to local phone monopolies, but in order to develop advanced, competitive telecommunications infrastructures, cable companies must invest billions in new technologies.

Federal regulation of television has restricted the cable industry's access to capital, has made investors concerned about future investments in the capable industry, and reduced the ability of cable companies to invest in technology and programming.

Concerns about cable rate increases should be mitigated by cable's new competitive pressures from direct broadcast satellite services and from telco-delivered video programming.

Deregulation of cable television services is a prerequisite to bringing competition to telecommunications and is essential to making the competitive model embodied in S. 652 viable.

Cable systems pass over 96 percent of Americans homes with coaxial cables that carry up to 900 times as much information as the local phone company's twisted pair.

Cable companies are leaders in the use of fiber optics and digital compression technology.

Cable's high-capacity systems will ultimately provide virtually every type of communication service conceivable and allow consumers to choose between competing providers of advanced voice, video, and data services.

Mr. President, I feel very strongly that we have reached a proper balance regarding cable in this bill, and to adopt the Lieberman amendment would undo that package that has been worked out.

I also feel very strongly that the American public will benefit from what we are doing here. I mentioned earlier that I have received 500 letters from the small business people at the White House Conference on Small Business who want to pass the Senate-passed bill and also urge President Clinton to endorse the Senate-passed bill.

I think that we all want that pro-competitive deregulatory environment. Everybody says that. But many of the folks out there are arguing to preserve regulation. I frequently see large companies using Government regulation to block out competition.

I look upon this telecommunications area as a group of people in a room with a huge buffet of food stacked on the table. But they are all worried that somebody else is going to get an extra carrot. I think we are going to find there is plenty for all, and the consumers will benefit with lower telephone prices, lower cable prices, more services, more services for senior citizens, more services for farmers, and our small cities will be able to flourish.

And it is my strongest feeling that we should continue, as we have done all day, to defeat these amendments tomorrow. We had a very good day today and yesterday in terms of holding this committee bill together.

I see one of my colleagues is in the Chamber and wishes to speak. I am glad to have any speakers. We are trying to move forward. I thank you very much.

I yield the floor.

Mr. DASCHLE. Mr. President, this debate on S. 652 has clearly demonstrated the potential of emerging telecommunications technologies. It is truly exciting to contemplate what this legislation could mean for American society.

A particularly intriguing new development in the telecommunications field is the creation of personal communications service [PCS]. These devices will revolutionize the way Americans talk, work, and play.

While this new technology opens new vistas for personal communications services, its emergence also highlights the potential downside of entering untested areas. Specifically, concerns

have been raised about the potential side-effects of some new PCS technology on other devices such as hearing aids.

Recently, the Government completed an auction that netted $7 billion for the right to provide advanced digital portable telephone service. It is my understanding that some of the companies that obtained these PCS licenses have considered utilizing a technology known as GSM—global system for mobile communications. I am informed that people who wear hearing aids cannot operate GSM PCS devices, and some even report physical discomfort and pain if they are near other people using GSM technology.

It should not be our intent to cause problems for the hearing impaired in promoting the personal communications services market. It is my view that the Federal Communications Commission [FCC] should carefully consider the impact new technologies have on existing ones, especially as they relate to public safety and potential signal interference problems. An FFC review is in keeping with the intent of S. 652, which includes criteria for accessibility and usability by people with disabilities for all providers and manufacturers of telecommunications services and equipment.

Mr. HOLLINGS. Will the Senator yield?

Mr. DASCHLE. I will be glad to yield to the honorable ranking member of the Commerce Committee.

Mr. HOLLINGS. I thank the Senator for yielding and support his suggestion that the FCC investigate technologies that may cause problems for significant segments of our population before they are introduced into the U.S. market. Such review is prudent for consumers, and it will help all companies by answering questions of safety interference before money is spent deploying this technology here in the United States.

Four million Americans wear hearing aids, and the Senator from South Dakota has raised an important issue. GSM has been introduced in other countries, and problems have been reported. It is reasonable that these problems be investigated before the growth of this technology effectively shuts out a large sector of our population.

Mr. DASCHLE. I thank the Senator for his remarks, and would also like to commend his role in bringing telecommunications reform to the floor. His leadership and patience throughout this 3-year exercise that has spanned two Congresses is well known and widely appreciated.

Mr. President, the public record indicates that if companies are allowed to introduce GSM in its presemt form, serious consequences could face individuals wearing hearing aids. I would urge the FCC to investigate the safety, interference and economic issues raised by this technology. I also would urge the appropriate congressional committees to consider scheduling hearings on this issue.

AMENDMENTS NO. 1256 AND 1257

Mr. HOLLINGS. I would direct a question to my colleague with regard to the Stevens amendment on expanded auction authority for the FCC, as amended by the Pressler amendment. These amendments will auction spectrum currently assigned to broadcast auxiliary licensees, and were adopted by voice vote Wednesday evening. This bill now conforms with the Budget Act. Specifically, I do not believe that it is the intention of the sponsors to impede the ability of local broadcasters to continue to deliver on-the-spot news and information.

Mr. STEVENS. That is correct. Several concerns have been raised about auction of certain spectrum which we intend to address as this bill proceeds to conference with its companion bill in the House. In addition, some of these same concerns will be considered within the budget reconciliation bills later this summer. Therefore, we will continue to review these provisions to determine whether the newly-assigned spectrum will adequately satisfy the needs of electronic news gathering, what, if any, interference problems will arise, and how the costs of such transfers should be borne.

Mr. HOLLINGS. I thank my colleague for his comments.

MONOPOLY TELEPHONE RATES

Mr. GLENN. Mr. President, I rise in support of Senator KERREY's monopoly telephone rates amendment. This amendment offers critical protection for ratepayers from potential multibillion rate increases for telecommunications services during the transition to effective local competition.

In mandating price flexibility and prohibiting rate-of-return regulation, section 301 of the bill also prohibits State and Federal regulators from considering earnings when determining whether prices for noncompetitive services are just, reasonable, and affordable. While the Federal Communications Commission [FCC] and many State commissions have instituted various price flexibility plans, most of those plans involve some consideration of earning. If regulators are prohibited from considering the earnings factor when determining the appropriateness of prices for noncompetitive services, the captive ratepayers of these services will be subject to unwarranted rate increases.

Mr. President, this amendment does not change the bill's prohibition on rate-of-return regulation. The amendment would simply allow State and Federal commissions to consider earnings when authorizing the prices of those noncompetitive services. In this way, the amendment provides a safeguard against excess rate impacts in the future.

Mr. President, the monopoly telephone rates amendment recognizes that it is appropriate and in the consumers' interest for State regulators to continue to have a roll in determining the price of noncompetitive services in their States, and in having the discretion to consider the earnings of the local telephone company. Approximately 75 cents of every dollar consumers spend on their overall telephone bills is for calls made within their State. The goal of local telephone competition advanced in this legislation will not be achieved overnight. In the interim, State regulators should have the authority to consider a company's earnings before setting the price level of noncompetitive services. I urge my colleagues to join me in voting for this amendment.

PREEMPTION OF STATE-ORDERED INTRALATA DIALING PARITY

Mr. FEINGOLD. Mr. President, as an original cosponsor of the amendment filed yesterday by the Senator from Vermont [Senator LEAHY], amendment number 1289, I want to discuss the important issue of intraLATA dialing parity.

Mr. President, Senator LEAHY's amendment was very simple. It would have merely clarified the rights of the States to implement pro-competitive measures for telecommunications markets within their State borders, a role which we have always provided to our States. As is often the case in other policy areas, many States, including Wisconsin, are ahead of the Federal Government in deregulating telecommunications markets. In the case of my State, efforts to begin deregulation of telecommunications markets have been on-going for many years, culminating in a major telecommunications bill passed by Wisconsin's State legislature last year and signed by our Governor.

Unfortunately, while S. 652 has the laudable goal of increasing competition in all telecommunications markets, without the changes that the Senator from Vermont and I are promoting, it would actually cripple existing State efforts to enhance competition in markets within their own borders. The legislation would prevent States from ordering intraLATA dialing parity in local telecommunications markets until the incumbent regional bell operating company is allowed access to long distance markets.

IntraLATA dialing parity is complicated phraseology for a very simple concept. Currently, for any long distance calls that consumers make within their own LATA or local access and transport area—also known as short-haul long distance—are by default handled by the local toll provider. In order to use an alternative long distance company to make a short-haul long distance call, a consumer would have to dial a long string of numbers to access that service, in addition to the telephone number they must dial. For most consumers, that is a inconvenience they simply will not tolerate and

provides an advantage to the incumbent toll provider in providing short-haul long distance.

Dialing Parity already exists in interstate long distance markets, which is why any person can place a long distance call simply by dialing 1 plus the area code and phone number. The call is automatically routed through the long distance carrier the consumer has preselected. This convenience simply does not exist for consumers making short-haul long distance calls within their own LATA.

Wisconsin's Public Service Commission has gone through a lengthy multi-year process examining the technical feasibility and cost of requiring dialing parity for short-haul long distance, determining whether competition would be enhanced by this type of dialing parity and whether the public interest would be served by dialing parity for short-haul toll calls.

Their findings indicated that not only was intraLATA dialing parity technically feasible, it was also in the public interest. The Commission stated:

> IntraLATA 1+dialing parity will benefit customers and the State; will encourage the development of new products and services at reduced prices; and will result in local company provision of service more efficiently as the market becomes more competitive.

In 1994, State legislation directed our Wisconsin Public Service Commission to develop rules for 1+dialing parity for intraLATA markets. The Commission has not approached this in a haphazard manner, Mr. President. In fact the Commission has established procedures whereby a provider can request dialing parity and a company asked to provide that service to request a temporary suspension from honoring the request. This provides our PSC with the opportunity to review each request on a case by case basis if necessary. Our State legislature and our Governor endorsed this process in the Telecommunications Deregulation Act passed and signed into law last summer.

That legislation went far beyond the issue of dialing parity but also allowed the toll providers to use price cap regulation instead of rate of return regulation. The bill also stripped certain providers of their monopoly status to allow for greater competition in service areas to which they were not previously allowed access. This legislation was miles ahead of Federal legislation, Mr. President.

Mr. President, the point of this lengthy description of Wisconsin's deregulatory process is to emphasize that the States are well qualified and experienced in deregulating telecommunications markets and are doing so in a well-reasoned and orderly fashion.

Senator LEAHY's amendment would have simply allowed States to continue on their path to deregulation and increased competition in telecommunications markets unhampered by the Federal Government. The amendment would have allowed the 10 States that have already ordered intraLATA dialing parity and the 13 States that are currently considering that option, to continue their efforts without being derailed by this bill.

Those States may, in some instances, determine that competition will, in fact, not be enhanced by providing intraLATA dialing parity in certain markets if the incumbent toll provider is not allowed to enter long distance markets. In other cases, however, a State's Public Service Commission's deliberative process may indicate that, in other markets, dialing parity should be provided regardless of whether the incumbent toll provider has access to long distance service. The State has the expertise to examine the different competitive circumstances for individual markets and they should be allowed to do so.

It is inappropriate for the Congress to attempt to preempt a State's ability to make these types of decisions. Recently, 24 Attorneys General, in a letter to Senators, stated their opposition to the preemption of State's ability to order intraLATA dialing parity. Signing that letter were State Attorneys General from Wisconsin, New Mexico, Arizona, Arkansas, Connecticut, Delaware, Florida, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Montana, North Dakota, Oklahoma, Tennessee, Utah, Vermont, Washington, and West Virginia, among others. I ask unanimous consent that a copy of that letter be printed in the RECORD.

Mr. President, I also ask unanimous consent that a letter from the Chairman of the Public Service Commission of Wisconsin, Cheryl Parrino, in support of this amendment and addressing the issue of Universal Service be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See Exhibit 1.]

Mr. FEINGOLD. The amendment which I have been working on with Senator LEAHY would have simply made clear that the bill before us shall not prevent a State from taking procompetitive steps by requiring intraLATA dialing parity within markets under their regulatory jurisdiction.

Mr. President, however, it is my understanding that there are a number of objections to this amendment. In response to those objections, the Senator from Vermont [Senator LEAHY] and the Senator from Louisiana [Senator BREAUX] have worked out a compromise which will allow the States that have already ordered intraLATA dialing parity, such as Wisconsin, as well as single LATA states to implement it despite the overall preemption contained in this bill. However, the compromise restricts companies seeking to offer competitive intraLATA toll services from jointly marketing their intraLATA toll services with their long distance services for a period of up to 3 years. There may be concerns with respect to this restriction that may need to be addressed before the legislation is enacted.

I appreciate the hard work of my colleagues, Senators LEAHY and BREAUX in reaching this agreement. I thank them for their efforts.

EXHIBIT 1

PUBLIC SERVICE COMMISSION
OF WISCONSIN,
June 12, 1995.

Hon. RUSSELL FEINGOLD,
U.S. Senator, Washington, DC.

DEAR SENATOR FEINGOLD: I applaud your efforts to remove preemptive language from the telecommunications bill pending before the Senate. This letter is to express support for your amendment that eliminates a preemption clause that prohibits state actions that require intraLATA dialing parity. In Wisconsin, the Public Service Commission of Wisconsin has ordered full intraLATA dialing parity (1 + presubscription), and it is our belief that implementation of our orders on that issue will enhance competition and serve the public interest. It would be a disservice to the telecommunications customers of Wisconsin if federal action negated our decision on this issue.

Proponents of preemption have suggested that state actions to order full dialing parity prior to federal court action allowing the entry of the Regional Bell Operating Companies (RBOCs) into the interLATA toll market would constitute a threat to universal service. This argument is simply off base.

States, particularly state regulatory commissions, are inexorably attuned to the needs of the citizens of the states and are very cognizant of the need to maintain universal service. Any state commission considering an order for full dialing parity will have every opportunity to consider the costs of that decision and the related implications for universal service. The orders of the Wisconsin Commission that mandate intraLATA 1 + presubscription include a process whereby individual local exchange companies may request Commission waivers of the requirements for dialing parity implementation. This Commission will certainly consider the potential costs of dialing parity implementation and modify our requirements when it is in the best interests of the consumers. I am confident that other state commissions would give this same consideration.

Further, in Wisconsin, legislation passed last summer mandates a universal service program. This Commission will be promulgating rules to assure service is available and affordable to all parts of the state and to all segments of the public. The safeguards available through that program offer further support to actions by this Commission to move forward with the introduction of competition and fair competitive service standards at a pace that is reflective of the specific needs of this state. Universal mandates or activities are being addressed in numerous other states. Those state plans should be allowed to move forward based on the respective wisdom of the state legislatures or commissions in those states. A blanket hold on all intraLATA dialing parity by Congressional fiat gives no weight to the evidence of competitive need and regulatory safeguards in any individual state.

Another argument advanced by those who support preemption is that full dialing parity may cause the loss of the carrier-of-last-resort obligation by the incumbent local exchange carrier. In recent hearings in Wisconsin on this very subject, this argument was raised. It was met by a commitment from other carriers to fill that carrier-of-last-resort role if in fact the incumbent is no longer

taking on that obligation. This argument about the loss of universal service because of the carrier-of-last-resort impacts is without merit.

Competition is coming to the telecommunications industry. This bodes well for telecommunications customers. Federal action to stunt competition in parts of the market, while arguments are hashed out on the interLATA front, is a move in the wrong direction. State commissions should decide on the need for and pace of competition in the states. While there are many advantages to establishing a national policy on telecommunications, and many good points are spelled out in the legislation, the preemption of the states on dialing parity is not one of them.

Again, I commend your attempts to rectify this portion of the pending telecommunications bill. Please contact me if you have questions on my position on this matter.

This letter of support for your amendment is independent of the merits of and schedule for interLATA relief for the RBOCs.

Sincerely,

CHERYL L. PARRINO,
Chairman.

STATE OF WISCONSIN,
DEPARTMENT OF JUSTICE,
June 2, 1995.

Hon. RUSSELL D. FEINGOLD,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINGOLD: The undersigned state attorneys general would like to address several telecommunications deregulation bills that are now pending in Congress. One of the objectives in any such legislation must be the promotion that fosters competition while at the same time protecting consumers from anticompetitive practices.

In our opinion, our citizens will be able to look forward to an advanced, efficient, and innovative information network only if such legislation incorporates basic antitrust principles and recognizes the essential role of the states in ensuring that citizens have universal and affordable access to the telecommunications network. The antitrust laws ensure competition and promote efficiency, innovation, low prices, better management, and greater consumer choice. If telecommunications reform legislation includes a strong commitment to antitrust principles, then the legislation can help preserve existing competition and prevent parties from using market power to tilt the playing field to the detriment of competition and consumers.

Each of the bills pending in Congress would lift the court-ordered restrictions that are currently in place on the Regional Bell Operating Companies (RBOCs). After sufficient competition exists in their local service areas, the bills would allow RBOCs to enter the fields of long distance services and equipment manufacturing. These provisions raise a number of antitrust concerns. Therefore, telecommunications deregulation legislation should include the following features:

First, the United States Department of Justice should have a meaningful role in determining, in advance, whether competition at the local level is sufficient to allow an RBOC to enter the long distance services and equipment manufacturing markets for a particular region. The Department of Justice has unmatched experience and expertise in evaluating competition in the telecommunications field. Such a role is vital regardless of whether Congress adopts a ''competitive checklist'' or ''modified final judgment safeguard'' approach to evaluating competition in local markets. The Department of Justice will be less likely to raise antitrust challenges if it participates in a case-by-case analysis of the actual and potential state of competition in each local market before RBOC entry into other markets.

Second, legislation should continue to prohibit mergers of cable and telephone companies in the same service area. Such a prohibition is essential because local cable companies are the likely competitors of telephone companies. Permitting such mergers raises the possibility of a ''one-wire world,'' with only successful antitrust litigation to prevent it. Congress should narrowly draft any exceptions to this general prohibition.

Third, Congress should not preempt the states from ordering 1+intraLATA dialing parity in appropriate cases, including cases where the incumbent RBOC has yet to receive permission to enter the interLATA long distance market. With a mere flip of a switch, the RBOCs can immediately offer ''one-stop shopping'' (both local and long distance services). New entrants, however, may take some time before they can offer such services, and only after they incur significant capital expenses will they be able to develop such capabilities.

In conclusion, we urge you to support telecommunications reform legislation that incorporates provisions that would maintain an important decision-making role for the Department of Justice; preserve the existing prohibition against mergers of telephone companies and cable television companies located in the same service areas; and protect the states' ability to order 1+intraLATA dialing parity in appropriate cases.

Thank you for considering our views.

Very truly yours,

Tom Udall, Attorney General of New Mexico; James E. Doyle, Attorney General of Wisconsin; Grant Woods, Attorney General of Arizona; Winston Bryant, Attorney General of Arkansas; Richard Blumenthal, Attorney General of Connecticut; M. Jane Brady, Attorney General of Delaware; Garland Pinkston, Jr., Acting Corporation Counsel of the District of Columbia; Robert A. Butterworth, Attorney General of Florida; Calvin E. Holloway, Sr., Attorney General of Guam; Jim Ryan, Attorney General of Illinois; Tom Miller, Attorney General of Iowa; Carla J. Stovall, Attorney General of Kansas; Chris Gorman, Attorney General of Kentucky; Scott Harshbarger, Attorney General of Massachusetts; Hubert H. Humphrey, III, Attorney General of Minnesota; Jeremiah W. Nixon, Attorney General of Missouri; Joseph P. Mazurek, Attorney General of Montana; Heidi Heitkamp, Attorney General of North Dakota; Drew Edmondson, Attorney General of Oklahoma; Charles W. Burson, Attorney General of Tennessee; Jan Graham, Attorney General of Utah; Jeffrey L. Amestoy, Attorney General of Vermont; Christine O. Gregoire, Attorney General of Washington; and Darrell V. McGraw, Jr., Attorney General of West Virginia.

Ms. MOSELEY-BRAUN. I thank the Chair. I say to my colleague, I am not here to speak on this specific legislation, although it is obviously important and significant legislation. I am here to speak as if in morning business and with the indulgence of the sponsors and managers of the bill, I ask unanimous consent to be allowed to speak in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MOSELEY-BRAUN. I thank the Chair.

WELL WISHES TO CARDINAL BERNARDIN

Ms. MOSELEY-BRAUN. At the outset, Mr. President, I would like to call to the attention of my colleagues and call for the prayers of the American people in behalf of his eminence, Cardinal Joseph Bernardin. It has been recently diagnosed that Cardinal Bernardin is suffering from a form of cancer that is very difficult to overcome, and certainly we are all saddened by his condition and the physical pain that he must be undergoing presently but at the same time confident that secure in his faith he will find comfort at this time in the prayers and the well wishes from the millions of people in this country who love him dearly.

Cardinal Bernardin has been the leader of the archdiocese of Chicago for over a decade now and is an integral part of the community and Illinois and, indeed, of the church community throughout this Nation. We all wish him the very best. We wish his health returns to him. But in the event that it might not, we wish him the strength of his faith and the prayers of people who care about him and the leadership he has provided in regard to matters of faith for our country.

SUPREME COURT DECISION IN ADARAND VERSUS PENA

Ms. MOSELEY-BRAUN. Mr. President, I should like to address the issue of the Supreme Court decision in Adarand versus Pena.

Mr. President, on Monday, a closely divided Supreme Court handed down a 5 to 4 decision in the case of Adarand versus Pena. Adarand involved a challenge to the provision in the small business act that gives general contractors on Government procurement projects a financial incentive to hire socially and economically disadvantaged businesses as subcontractors. In its opinion, the Court held that all racial classifications imposed by the Federal Government will henceforth be subjected to a strict scrutiny analysis. Strict scrutiny, Mr. President, is a very difficult standard to meet. Indeed, it is the most difficult standard the Court applies. Accordingly, Federal racial classifications will be found constitutional only if they are narrowly tailored measures that entail further compelling Government interests.

At the outset I think it is important to note that under our system of government, the Constitution is what the Supreme Court says it is. Accordingly, ''strict scrutiny'' for Federal Government race programs is now the law of the land. Ever since I studied constitutional law in law school, I have had a profound respect for the Supreme Court and all that it represents in our system of laws.

Having said that, however, Mr. President, I still believe that the Adarand decision was bad law. Clearly, the

Adarand case would not be the first time that the Supreme Court has ruled in a way that was just plain wrong. Who can forget the infamous Dred Scott case in which the Court stated that a black man had no rights which whites were bound to uphold, and that they were, indeed, mere property? Or Plessy versus Ferguson, which held that segregated facilities were in fact constitutional? Or the Bradwell case, in which the Supreme Court upheld Illinois' refusal to grant a law license to women and stating:

> Man is, or should be, women's defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.

And certainly, Mr. President, a number of my more conservative colleagues would say that the Court was wrong in its ruling in Roe versus Wade.

Nevertheless, the Adarand decision is now the law of the land. The question now before us is how will we achieve the goal of true equality in light of this new hurdle? What should we as a Nation do with the continuing legacy of what was called ''the peculiar institution'' of slavery and Jim Crow and its aftermaths?

The most important step I believe that we can take in light of this decision is to begin an honest dialog on the issue of race. The racial issue is clearly the most volatile and controversial issue to come before the Court. Indeed, it is one of the most volatile and controversial issues of our time.

As Justice Ginsburg noted in her dissent, the Court applies a mere ''intermediate'' review for classifications based on gender, while reserving its highest review of strict scrutiny for classifications based on race.

The irony of the Adarand case is that the individual who won the contract at issue, Mr. Gonzalez, is not black; he is Hispanic. The contract at issue was awarded to a Hispanic subcontractor, yet every opinion, both the majority opinions and the dissents, including Justice Thomas' opinion implies but does not state that the driving issue at stake in Adarand is affirmative action for blacks. The opinions in the Adarand case underscore the myth that affirmative action only helps black people. The reality of affirmative action is that other minorities, and women, have benefited as much if not more than blacks as a group, and particularly black men.

Affirmative action, Mr. President, was a response to the legacy of slavery. It was a positive action to give a boost or, if you will, to mainstream a community which had been segregated by law and which had threatened to become a permanent caste in American society.

I believe that the originators of affirmative action showed great wisdom and forethought in the programs that they designed to bring black people into the economic mainstream. They recognized that black people had been legally disbarred from the opportunity to pursue quality education, to serve in the military, to hold a decent, high paying job, to pursue employment, and to participate fully in our economy as well as in our society. The creators of affirmative action sought to give a boost to black people by lifting them up, by allowing specific preferences for groups.

Now, the issue of preferences when it comes to affirmative action is really a curious intellectual side bar. We have and take for granted all kinds of preferences which serve policy goals and reflect our society's values. There are preferences for veterans, never mind whether the individual veteran ever saw a battle. And I think we would all agree that it is a good thing to reward people who took time out of their private lives to serve our country in the military. There are preferences for seniors. I do not know too many people who would disagree that getting to the golden years ought to have some support from society as a whole. There are preferences for residents of a State or city in public employment, and a host of others that we could mention.

So why then is the notion of affirmative action so fraught with controversy? And why are preferences so bad only when they arrive in the context of race? Justice Scalia, who wrote separately in the Adarand case, argues the following: He argues that it is tough cookies; slavery happened; it is too bad; and now you are on your own and nothing ought to be done about that.

What Judge Scalia's decision fails to recognize is that it is in the interests of the entire country, of all of us, to take steps to resolve the legacy of slavery and of Jim Crow. If affirmative action is undone, there will be a very real cost to society as a whole, black and white, and others alike, all of us. The imperative for change, the imperative for diversity that affirmative action provided will have been removed and once again minorities and women will find it more difficult, if not impossible, to enter the economic mainstream.

And that cost will not just be borne by the women and minorities who are likely to see opportunity shrink away. It will be borne by our society as a whole. Affirmative action is about far more than just equal opportunity. It is about our country's economic prosperity. We are one people. We are one America. We share a collective responsibility to guide our Nation in a constructive direction of opportunity for all. And we will all win when America makes it possible to tap the talent of 100 percent of its workers.

Now, I know there is a particular controversy about why members of this generation should be required or called on to do anything to pay for, if you will, the ''sins of their fathers'' and what happened in this country 100 years ago. Justice Scalia again expressed this antipathy when he argued in this opinion in Adarand that there can be no ''creditor'' or ''debtor'' races. There is a great deal of resentment, we are told, by the angry white male toward the favoritism shown to blacks in this country.

But, Mr. President, if blacks were so favored as a group in America, how many white Americans do you know would want to wake up tomorrow and change places? How many white males would want to wake up tomorrow morning and be black? The fact is that racism is a reality in this country, an unfortunate one but reality, and affirmative action is one method by which we attempt to change that reality.

The majority opinion in Adarand fails completely to address this. Those in the majority I think would prefer to close their eyes and pretend that racism simply does not exist, but it does. And the fact that it does is what makes the Adarand decision such bad law.

Some have suggested that in response to the Adarand decision we work on a case-by-case basis to evaluate every Federal affirmative action program and save those that can meet the strict scrutiny test. I agree that this is an appropriate and necessary activity and one that needs to be part of our response.

The fact is we have an obligation to make Government accountable to review all programs to see if they are achieving the ends for which they have been designed. And so the issue is not one of review but one of retreat and one of retrenchment.

Mr. President, others have suggested that the approach ought to be one now, instead of affirmative action, to speak of reparations—the old ''40 acres and a mule'' analogy. This approach may seem absurd at first blush but, quite frankly, if you read the Court's opinion in the Adarand case, it really becomes the logical conclusion. Justice O'Connor's majority opinion stated group remedies were inherently suspect; instead, Justice O'Connor stated that remedies should be targeted to individuals who have been the victims of racism. So descendants of slaves who were promised 40 acres and a mule would, therefore, be the logical beneficiaries of Justice O'Connor's formula.

Still others have called for a nationwide apology about slavery, similar to that apology that many are currently pressing the Japanese to issue in response to their actions in World War II —or similarly, frankly, to the apology recently given by the United States Government for its internment of Japanese Americans during World War II.

The point is that what we really need and what we have to search for are new solutions, solutions that will provide opportunity to those who face the higher barriers imposed by racism and discrimination. These solutions, I believe, will come in as many different forms as the problems that we face as a Nation. For blacks, those solutions

must include access to quality education, access to capital, and assistance with institution building.

For women, we must make efforts to shatter the glass ceiling that limits participation at the highest levels and perpetuates the old boy network. For Asian Americans, we must seek to remove the mystery that surrounds the Asian community, when even fourth- and fifth-generation Americans are viewed with suspicion as foreign or not real Americans. I am certain, Mr. President, there are as many other worthwhile suggestions that will come forward in the coming weeks, and I look forward to considering and debating these and other suggestions. But the point is that I think the Adarand decision becomes a starting point, a take-off point for us to begin to have an honest dialog about where we are going in this Nation and how we can go there together.

While I have the utmost respect for those who come forward with new ways to provide opportunity to all, I still, frankly, find it irresponsible that some would merely seek to limit opportunity without putting forward any new proposals, folks who would suggest that repealing our current efforts to provide opportunity without proposing any new solutions. This, in my opinion, is nothing more than a thinly veiled laissez-faire attitude toward diversity that is, at best, shortsighted.

Instead of a deconstructionist approach, tearing down affirmative action and putting nothing in its place, I encourage my colleagues to join in developing creative solutions to the legacy of discrimination in this country. For guidance, I believe we can look to the countless individuals, the men and women around this country who are already working in the communities to ensure that the American dream is available for all of us and not just for some of us.

And consider for a moment the example of LISC, Local Initiative Support Corporation. LISC was established in 1979 to provide financing and technical know-how to nonprofit community organizations, know-how these groups used to develop low- and moderately affordable housing and attract commercial investments, create jobs and expand services in underserved neighborhoods. We need to build on successes such as these rather than give up on the dream of true equality in America. There are enough success stories out there, there are enough examples of people working together to forge a true network, a true quilt of diversity that will reflect the best that is America. I believe we have an obligation to look to those examples and to replicate them wherever we can.

Mr. President, also, I would like to add that while some uncertainty may surround Federal Government set-aside programs, there are a host of other activities which are in no way jeopardized by the Adarand ruling. While efforts such as the set-asides in the Small Business Act have been extremely important in helping to bring minorities into the economic mainstream, they, frankly, do not comprise the heart of this Government's efforts in regard to affirmative action.

Despite all the attention that has been focused on the set-aside program, the heart of affirmative action is not set-asides. The heart of affirmative action, on the other hand, is, in fact, to create a climate in which diversity can thrive and which allows women and minorities to succeed. The heart of affirmative action is about ensuring that the qualifications of women and minorities will be considered and not ignored.

Affirmative action does not seek to guarantee any individual a job or a contract. Rather, it seeks to give women and minorities a chance to succeed or fail, sink or swim, based on ability, not race or gender. Affirmative action, therefore, encompasses efforts such as recruiting at historically black colleges and universities, in addition to the Big Ten and Ivy League schools so that the most talented young African Americans will be considered for jobs and careers along with most talented white Americans. It includes the Executive order on affirmative action which requires the Federal contractors to maximize the percentages of women and minorities in their work force without ever requiring quotas or preferences.

In short, affirmative action is, at its heart, about ensuring equal opportunity, not equal results. Affirmative action is not a zero sum gain. It does not have winners and losers. We all win when we open up opportunity and stir the competitive pot to allow a real meritocracy to develop in this country, one that is color blind and gender neutral and does not insist that the shackles of the past are just accidents of birth for which we have no collective obligation as a Nation to remove and overcome.

Diversity is our strength, not our weakness—or it can be, anyway, so long as we do not allow those who would separate us on the basis of race or gender to prevail. This is not, Mr. President, ''Let's all get along,'' and this is not paternalism, it is an acknowledgment that we are all in this together. We will all rise or fall, sink or swim, together as Americans. Recognizing that, let us not retreat. Instead, let us go forward together to build on the progress that has been made so far. It is in our collective and national interest that we do so. The future of our country, and nothing less important than that, hinges on our response at this time in our history to this very important longstanding issue of the character of the American society.

Thank you very much, Mr. President. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1301, AS MODIFIED

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Stevens amendment No. 1301 be modified with the language I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is so modified.

The amendment (No. 1301), as modified, is as follows:

At the appropriate place insert the following:

In section 3(tt) of the Communications Act of 1934, as added by section 8(b) of the bill on page 14, strike ''services.'' and insert the following: ''services: *Provided, however,* That in the case of a Bell operating company cellular affiliate, such geographic area shall be no smaller than the LATA area for such affiliate on the date of enactment of the Telecommunications Act of 1995.''.

Mr. PRESSLER. I suggest the absence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I have a unanimous-consent agreement that has been read and approved by the distinguished Democratic leader. I would be glad to yield if he has a comment to make.

Mr. DASCHLE. I thank the Senator from Mississippi for yielding. This does represent a very good-faith effort on both sides to try to accommodate all Senators who have remaining amendments, and I think that as a result of this agreement, there is a likelihood that we can finish our work in the morning and begin voting sometime in the early afternoon.

I appreciate all Senators' cooperation and hope that we can agree that as a result of this, we will finish our work tomorrow sometime. I thank the Senator from Mississippi.

Mr. LOTT. I thank the Democratic leader. I commend him and our leader for working together to help bring this to a conclusion. Our two committee leaders, the Senator from South Dakota and the Senator from South Carolina, have certainly done their part. We are getting close. I hope we can finish tomorrow.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, I ask unanimous consent that debate on the 9

amendments be in order tomorrow and debate on any remaining pending first degree amendments be limited to 30 minutes, with the exception of amendments Nos. 1299 and 1341, with time on any second-degree amendments limited to 15 minutes; that the Senate begin voting on or in relation to the remaining pending amendments beginning at 12:15 p.m. tomorrow; that upon disposition of the pending amendments, the bill be read the third time, and a vote on final passage occur without any intervening action or debate; further, if an amendment has not had any debate on Thursday due to the time constraints prior to 12:15 p.m., it be given 10 minutes on the first degree amendment and 5 minutes on any second degree thereto; provided further that in between the stacked votes beginning at 12:15 p.m., there be 2 minutes for explanation prior to each vote; and that all time limits be equally divided in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, JUNE 15, 1995

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 a.m. on Thursday, June 15, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, and the time for 2 leaders be reserved for their use later in the day, and the Senate then immediately resume consideration of S. 652, the telecommunications bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. LOTT. Under the previous provisions of the agreement entered earlier this evening, on Thursday, debate time will be limited to 30 minutes on each of the pending amendments to the telecommunications bill.

Members should be aware at approximately 12:15 on Thursday there will be a series of rollcall votes, possibly as many as nine votes, on or in relation to the amendments on the telecommunications bill. The last vote in that series will be final passage. Senators should be aware that rollcall votes will occur throughout Thursday's session of the Senate.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

Mr. HOLLINGS. While the distinguished Senator from Virginia is here, there is no one I admire more, and I would be ready, willing, and able to try to respond. It came to my attention in discussing this just in the last hour that they had a provision in here relative to getting into—I did not realize, Mr. President, on page 99, the language appeared about getting into the manufacturing.

It reads:

> . . . if the Commission authorizes a Bell operating company to provide interLATA services. . ., then that company may be authorized by the Commission to manufacture and provide telecommunications equipment, and to manufacture customer premises equipment, at any time after that determination is made, subject to the requirements of this section. . . .

So the work of the distinguished Senator from Virginia is accurate. I had always contended that the manufacturer had no relation whatever to long distance. I think it ought to be written somewhere in the CONGRESSIONAL RECORD that I worked with the Bell operating companies for a good many years on the manufacturing bill.

At the time we passed it in the U.S. Senate, 2 years ago—3 years ago now—by a bipartisan 74 votes, it had no relation not only to long distance, but the RBOC's told this particular Senator time and time again, ''We are not interested in getting into long distance. We are not interested at all in long distance. We are trying to get into manufacturing.''

Now, there was a difference. The distinguished chairman and Senators on his side, although we voted it, and that is the way it provided in last year's bill, S. 1822, they had a provision that manufacturing could not commence for 3 years. The compromise was made as appears on page 99 that it was after they got into interLATA it was authorized.

I do not question the logic, in a sense, of the distinguished Senator from Virginia. However, then our side, in the negotiations and drawing this measure, said that irrespective of that particular production, namely, the development and actual manufacture of equipment, that we could immediately get into the design, saying:

> Upon the enactment of the Telecommunications Act of 1995, a Bell operating company may—
>
> (A) engage in research and design activities related to manufacturing, and
>
> (B) enter into royalty agreements with manufacturers of telecommunications equipment.

And then in section (b) you have to have a separate subsidiary. So long as they have that separate subsidiary, and they cannot cross subsidize, in any fashion, their research and design activities, the research and design activities have no relation whatever to the checklist, or the checklist is premised on getting in, of course, to long distance service. There is no connection, whatever. And I really think if we were not this far along in the bill I would be talking to my chairman to knock that page 99 out and that provision out. We have agreed to support the bill as is.

I understand that some in that particular manufacturing business realize that the research and design, the software, is 90 percent of the business. That is the developmental part. They do not want anyone to get into it as long as they can possibly prevent anyone getting into research and design.

Now, if this Senator were king for a day, I would have them into research and design tomorrow morning. I would have no relation whatever to the interLATA services getting into long distance or the checklist. That is why I wanted the Senator to lay that clearly on top of the table here. I am not trying to oppose the Senator, I am trying to support him. There is the reason I cannot support it at this time.

Mr. WARNER. Mr. President, I thank my distinguished colleague. My distinguished colleague took the time to meet with my constituents a few minutes ago and expressed to them his concerns about it.

Might I suggest that we endeavor to get back to the distinguished Senator from South Carolina tomorrow morning and, indeed, both managers of the bill, with perhaps some language that would resolve this problem.

The Senator from South Carolina has spoken with clarity now. He has defined the issue far more clearly. We will take another try in the morning. I thank him for his cooperation.

Mr. PRESSLER. Mr. President, I would like to say that I join in Senator HOLLINGS' earlier remarks on manufacturing, and I thank my good friend from Virginia for reconsidering. I hope he will be able—this bill has been crafted in this area.

I know that the Senator from South Carolina had the amendment a couple years ago about manufacturing. I know this has been worked on day and night during the drafting sessions, and of course all Senators are welcome to offer amendments, but I do hope and I should say that I would stand with the Senator from South Carolina, based on the information I have at this moment.

Mr. WARNER. I thank the other distinguished manager from South Dakota. I hope that we will remain with open mind until tomorrow morning and I can address the issue.

MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted.)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Governmental Affairs.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:28 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 349. An act to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program; and

S. 441. An act to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. THURMOND).

At 4 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 962. An act to amend the Immigration Act of 1990 relating to the membership of the United States Commission on Immigration Reform.

H.R. 1561. An act to consolidate the foreign affairs agencies of the United States; to authorize appropriations for the Department of State and related agencies for fiscal years 1996 and 1997; to responsibly reduce the authorizations of appropriations for United States foreign assistance programs for fiscal years 1996 and 1997, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 962. An act to amend the Immigration Act of 1990 relating to the membership of the United States Commission on Immigration Reform; to the Committee on the Judiciary.

H.R. 1561. An act to consolidate the foreign affairs agencies of the United States; to authorize appropriations for the Department of State and related agencies for fiscal years 1996 and 1997; to responsibly reduce the authorizations of appropriations for United States foreign assistance programs for fiscal years 1996 and 1997, and for other purposes; to the Committee on Foreign Relations.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on June 14, 1995, he had presented to the President of the United States, the following enrolled bills:

S. 349. An act to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

S. 441. An act to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–984. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the report on programs for the utilization and donation of Federal personal property; to the Committee on Governmental Affairs.

EC–985. A communication from the Chief Judge of the U.S. Court of Veterans Appeals, transmitting, pursuant to law, the report of an estimate of the expenditures and appropriations necessary for the maintenance and operation of the Court of Veterans Appeals Retirement Fund; to the Committee on Governmental Affairs.

EC–986. A communication from the Postal Rate Commission, transmitting, pursuant to law, the opinion and further recommended descision of the Commission relative to postal rate and fee changes, 1994; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPECTER, from the Select Committee on Intelligence, without amendment:

S. 922. An original bill to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. No. 104–97).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources:

James John Hoecker, of Virginia, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2000.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PRESSLER:

S. 920. A bill to assist the preservation of rail infrastructure, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MURKOWSKI (for himself, Mr. BROWN, and Mr. JOHNSTON):

S. 921. A bill to establish a Minerals Management Service within the Department of the Interior; and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SPECTER:

S. 922. An original bill to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government and the Central Intelligence Agency Retirement and Disability System, and for other purposes; from the Select Committee on Intelligence; placed on the calendar.

By Mr. DORGAN:

S. 923. A bill to amend title 23, United States Code, to provide for a national program concerning motor vehicle pursuits by law enforcement officers, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HELMS (for himself, Mr. LOTT, Mr. ABRAHAM, Mr. ASHCROFT, Mr. COATS, Mr. CRAIG, Mr. DEWINE, Mr. FAIRCLOTH, Mr. FRIST, Mr. GRAMM, Mr. GRAMS, Mr. HATCH, Mr. KEMPTHORNE, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. SANTORUM, Mr. SMITH, and Mr. THURMOND):

S. Res. 133. A resolution expressing the sense of the Senate that the primary safeguard for the well-being and protection of children is the family, and that, because the United Nations Convention on the Rights of the Child could undermine the rights of the family, the President should not sign and transmit it to the Senate; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRESSLER:

S. 920. A bill to assist the preservation of rail infrastructure, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE RAIL INFRASTRUCTURE PRESERVATION ACT OF 1995

Mr. PRESSLER. Mr. President, today I am introducing the Rail Infrastructure Preservation Act of 1995. This legislation is designed to target rail freight investment needs in neglected regions of the country. I urge my colleagues to join me in supporting this legislation.

The primary purpose of this bill is to provide a blueprint for rebuilding and improving the rail lines serving our smaller cities and rural areas. These lines, run mainly by short-line and regional railroads, are critical to the survival of rural America's economy. Yet, the capital needed to maintain these secondary rail lines is very limited.

My colleagues may recall I introduced a similar bill during the last Congress. I continue to believe Federal involvement is necessary to preparing our Nation's rail transportation network for the next century. A national commitment to the future of rail freight service is critical to the advancement of our overall transportation system.

Mr. President, we are facing very serious Federal budget constraints. I support comprehensive deficit reduction proposals and have backed that support with my voting record. I will continue to do so. In our efforts to tackle the deficit, it is important to allocate our limited tax dollars wisely.

In my view, adequate investment in our Nation's transportation infrastructure provides for wise use of these dollars. However, as we consider national transportation infrastructure investment, we must not overlook one very critical transportation mode—rail freight service.

During the 1970's and 1980's, the large railroads abandoned thousands of miles

of rail lines throughout the United States. Much of our former rail infrastructure has been abandoned. Fortunately, many independent regional and short-line railroads have filled the gap, keeping many essential rail lines in service.

Despite the remarkable efforts by regional and short-line entrepreneurs to keep alive our Nation's secondary rail lines, the demand for capital investment to maintain these lines far outpaces supply. This situation keeps far too many rural communities on the brink of losing their rail service or having inadequate service due to unsound track conditions. Unfortunately, the Federal commitment to maintaining necessary rail lifelines has diminished almost to the point of nonexistence.

It would help address the capital investment needs of our rail freight transportation system. Specifically, my legislation would permanently authorize the Local Rail Freight Assistance [LRFA] Program. However, due to legitimate funding constraints, my bill would reduce the authorization level by 17 percent from the amount approved by the Senate Commerce Committee during the last Congress. It also updates the existing section 511 railroad loan guarantee program as I first proposed in the last Congress.

The LRFA Program has proven to play a vital role in our Nation's rail transportation system. Created in 1973, LRFA provides matching funds to help States save rail lines that otherwise would be abandoned. For instance, over the past few years, several rail improvement projects in my home State of South Dakota have been made possible through LRFA funding assistance. Without LRFA, our freight funding needs would go largely unmet.

Of particular importance is how LRFA's matching requirements enable limited Federal, State, and local resources to be leveraged. Indeed, LRFA's success has been in part due to its ability to promote investment partnerships, thus, maximizing very limited Federal assistance.

Historically, LRFA has received only a very modest level of Federal funding. For example, $17 million was provided for LRFA in fiscal year 1995. But a substantial portion of this very limited appropriation—$6.5 million—was rescinded recently by Public Law 104–6. Yet, LRFA remains very popular since it has been the only Federal program that provides infrastructure investment in short-line and regional railroads in the absence of section 511 appropriations.

For example, in fiscal year 1995, 31 States requested LRFA assistance for 59 projects, totaling more than $32 million in funding requests. Unfortunately, less than one-third of funding was available to meet these rail infrastructure needs. With continued railroad restructuring, these legitimate funding needs will only increase. LRFA is a worthy program and should be continued.

In addition, adequate funding for the section 511 Loan Guarantee Program would permit high priority railroad transportation infrastructure investment on lines operated by short-line and regional railroads. In this era of significant budgetary pressures, the 511 program provides a cost effective method to insure modest infrastructure investment on a repayable basis.

The 511 Program requires a processing fee paid to the Federal Government and the money borrowed is repaid with interest. The cost to the taxpayers should range from negligible to a positive return. In this time of fiscal pressure, we should support programs like the 511 Program and LRFA that provide excellent leverage of our limited Federal dollars.

The 511 Railroad Loan Guarantee Program is permanently authorized at $1 billion, of which approximately $980 million currently is available for commitment. The Credit Reform Act rules require an appropriation for the 511 Loan Program to cover the anticipated loss to the Government over the life of each loan. Based on a fiscal year 1994 appropriation for a 511 project in New York State—the first 511 application processed under the rules of the Credit Reform Act—5 percent of the total obligation level must be appropriated.

Several regional and short-line railroads are ready to submit loan applications as soon as the program is appropriated funding. For example, the Dakota, Minnesota & Eastern [DM&E] Railroad, headquartered in Brookings, SD, is prepared to file an application for a 511 loan guarantee as part of a project to be matched by financing from revenue bonds issued by the State of South Dakota.

It also is important to note that recently the House Transportation and Infrastructure Railroad Subcommittee approved an Amtrak reauthorization bill that includes a 511 loan guarantee provision specifically permitting $50 million of the $1 billion authorized for the section 511 program to be available for Amtrak for fiscal years 1996 through 1999. Indeed, the 511 program is gaining increased Congressional attention and support.

My legislation is intended to make the loan guarantee program more user friendly. My overall objective is to ensure the 511 Loan Program can best serve its customers. I am eager to explore all options to enable us to reach this goal.

Mr. President, in my judgment, we need to help preserve our rural freight rail systems. Building up these systems would allow more freight to be shipped by rail and would help to alleviate highway traffic and congestion. Our national transportation needs can best be measured on this type of intermodal perspective. Therefore, I urge my colleagues to support this legislation while we work to address the larger issues of transportation investment policy.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 920

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rail Infrastructure Preservation Act of 1995''.

SEC. 2. LOCAL RAIL FREIGHT ASSISTANCE; AUTHORIZATION OF APPROPRIATIONS.

Section 22108 of title 49, United States Code, is amended—

(1) by striking out so much of subsection (a) as precedes paragraph (2) and inserting the following:

''(a) GENERAL.—(1) There is authorized to be appropriated to the Secretary of Transportation to carry out this chapter the sum of $25,000,000 for the fiscal year ending September 30, 1996, and for each subsequent fiscal year.''; and

(2) by striking subsection (a)(3).

SEC. 3. DISASTER FUNDING FOR RAILROADS.

Section 22101 of title 49, United States Code, is amended by redesignating subsection (d) as (e), and by inserting after subsection (c) the following—

''(d) DISASTER FUNDING FOR RAILROADS.—

''(1) The Secretary may declare that a disaster has occurred and that it is necessary to repair and rebuild rail lines damaged as a result of such disaster. If the Secretary makes the declaration under this paragraph, the Secretary may—

''(A) waive the requirements of this section; and

''(B) prescribe the form and time for applications for assistance made available herein.

''(2) The Secretary may not provide assistance under this subsection unless emergency disaster relief funds are appropriated for that purpose.

''(3) Funds provided for under this subsection shall remain available until extended.''.

SEC. 4. DECLARATION OF POLICY.

Section 101(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801(a)(4)) is amended to read as follows:

''(4) continuation of service on, or preservation of, light density lines that are necessary to continued employment and community well-being throughout the United States;''.

SEC. 5. RAILROAD LOAN GUARANTEES; MAXIMUM RATE OF INTEREST.

Section 511(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(f)) is amended by striking ''shall not exceed an annual percentage rate which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates for similar obligations in the private market.'' and inserting in lieu thereof ''shall not exceed the annual percentage rate charged equivalent to the cost of money to Government.''.

SEC. 6. RAILROAD LOAN GUARANTEES; MINIMUM REPAYMENT PERIOD AND PREPAYMENT PENALTIES.

Section 511(g)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(g)(2)) is amended to read as follows:

''(2) payment of the obligation is required by its terms to be made not less than 15 years nor more than 25 years from the date

of its execution, with no penalty imposed for prepayment after 5 years;''.

SEC. 7. RAILROAD LOANS GUARANTEES; DETERMINATION OF REPAYABILITY.

Section 511(g)(5) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(g)(5)) is amended to read as follows:

''(5) either the loan can reasonably be repaid by the applicant or the loan is collaterallized at no more than the current value of assets being financed under this section to provide protection to the United States;''.

SEC. 8. RAILROAD LOANS GUARANTEES; RIGHTS OF SECRETARY.

Section 511(i) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(i)) is amended by adding at the end the following;

''(4) The Secretary shall not require, as a condition for guarantee of an obligation, that all preexisting secured obligations of an obligor be subordinated to the rights of the Secretary in the event of a default.''.

By Mr. MURKOWSKI (for himself, Mr. BROWN, and Mr. JOHNSTON):

S. 921. A bill to establish a Minerals Management Service within the Department of the Interior; and for other purposes; to the Committee on Energy and Natural Resources.

THE MINERALS MANAGEMENT SERVICE ORGANIC ACT

Mr. MURKOWSKI. Mr. President, I rise today to introduce legislation to establish the Minerals Management Service as a permanent agency at the Department of the Interior. I am pleased to be joined in this effort by my colleague from Colorado, Senator BROWN, and by the ranking member on the Committee on Energy and Natural Resources, Senator JOHNSTON.

The legislation I sponsor is very straightforward. It would simply authorize the establishment of a Minerals Management Service at the Department of the Interior, require that it be headed by a Director who is to be appointment by the President and confirmed with the advice and consent of the Senate, and direct that it administer royalty management and Outer Continental Shelf lands programs. The Minerals Management Service already exists although, as I will explain, the Clinton administration has proposed to dismantle it. My bill, which is an MMS organic act, would authorize and preserve MMS.

Mr. President, the Minerals Management Service—or MMS—was established by Secretarial order in 1982 in response to concerns about the amount of money the United States was receiving for Federal coal leases in the West and for the job that was being done in collecting mineral royalties owed the United States.

When MMS was created, it was given two basic functions: first, to assure that there is timely and efficient collection, disbursement, accounting for and auditing of the royalties owed the United States for mineral leases both onshore and offshore. MMS has principal responsibility for handling the mineral receipts under provisions of the Mineral Leasing Act, the Federal Oil and Gas Royalty Management Act, and the Outer Continental Shelf Lands Act.

Second, MMS was given responsibility for managing a program to promote and regulate the use of lands on the Outer Continental Shelf for purposes of mineral exploration, development and production. The OCS contains abundant supplies of oil and natural gas, as well as other minerals used for industrial and commercial purposes, such as sulfur.

When MMS was formed, many good Federal employees from the Interior Department's Bureau of Land Management and U.S. Geological Survey, as well as some from the Department of Energy, were selected to staff this new agency. Most of these people brought a particular expertise to their jobs, with some having experience at the General Accounting Office and the Internal Revenue Service.

What has MMS and its employees done with its responsibilities in last 13 years, Mr. President? Well, it has significantly improved the royalty management program. It has reduced the number of data-related errors and royalty payor mistakes from about 39 percent in 1982 to less than 5 percent. In increased the percentage of monies being distributed on time from 92 to about 99 percent in a period of about 10 years. For its handling of the royalty management functions, MMS received an award for management excellence from the President's Council on Management Improvement in 1991, and twice in the last 5 years has been a finalist for the Federal Quality Institute's Quality Improvement Prototype Awards.

Besides the IRS, the MMS is the second largest source of revenues for the Federal Government, handling more than 4 billion in mineral royalties, bonus bids, and rental payments each year. That is tremendous responsibility, and MMS is handling it well. Sure, there are disagreement over policy issues. But, for the most part, people would say MMS is doing a good job.

As for its responsibilities over the OCS lands program, Mr. President, I believe MMS can take great pride in the fact that the OCS is contributing to our Nation's energy supply in an environmentally sound and safe manner. The OCS accounts for about 23 percent of the Nation's natural gas production and after 14 percent of our crude oil production. The OCS contains about 25 percent of our known natural gas reserves and about 15 percent of our known oil reserves. Historically, the OCS has accounted for more than 106 trillion cubic feet of natural gas produced and the production of 9 billion barrels of oil.

Remarkably, there has never been a blow-out from an oil well on the Federal OCS. The amount of oil spilled as a percentage of oil produced on the OCS amounts to one-one thousandth of a percent [.001 percent]. And, the Department has never lost a challenge to one of its 5-year oil and gas plans, which are the activity planning documents laying out the Department's proposed oil and gas leasing program each 5 years. For its part in assuring that NEPA [the National Environmental Policy Act] and other environmental requirements are fully implemented and adhered to with respect to oil and gas exploration, development and production activities on the OCS, MMS received the President's Council on Environmental Quality Award in 1994 for making environmental considerations an integral part of the agency's mission and decision-making process.

These are achievements of which MMS can be proud. All this from an agency that is not even 15 years old. Compare the effectiveness of MMS to one of its sister agencies at Interior, the Office of Surface Mining, and you have an example of one agency that functions well and one that is an absolute mess.

Now, however, Mr. President, along come President Clinton and Secretary Babbitt and their half-baked reinvention of government proposal to dismantle MMS, to devolve some of its functions to the States, and to absorb the other functions elsewhere in Interior. If it weren't for the fact that we know the President and the Secretary are not economists, I'd swear the MMS devolution idea is the work of an economist. Economists have been described as people who sit around and wonder whether things that actually work in practice can work in theory.

Here, we have the same kind of genius at work. MMS is recognized by people inside and outside of government as an effective agency. Yet President Clinton and Secretary Babbitt want to give States the task of collecting, disbursing, and auditing royalties, have the Federal Government keep responsibility for all major substantive functions, and double the States' contribution to administrative costs. What a deal!

Under the present system, States are assessed 25 percent of the total administrative costs of royalty collection, disbursement and auditing. Under the Babbitt devolution proposal, the States would be assessed the present 25 percent, plus another 25 percent. Wyoming, New Mexico, Colorado, and Utah would pay an additional $3.2 million, $3.3 million, $1.5 million, and $1.1 million, respectively, for the privilege of doing MMS's job.

At first blush, Mr. President, the concept of devolving responsibility to the States sounds like a good idea. It's one that Republicans have been espousing for years and one that Democrats only recently have begun to imitate. Give States primacy. Give them the ability to make decisions regarding issues affecting their economic well-being. Give them a greater say in how public lands and natural resources are managed. That is what Republicans

have been advocating for years. The Clinton-Babbitt proposal gives States more work at greater cost. This is their idea of reinventing government.

Well, the President and his friend Secretary Babbitt have got it wrong. The devolution proposal was not clearly thought out beforehand, because it doesn't really pass true responsibility to the States. All it passes to the States is the ministerial function of royalty collection, disbursement, and auditing. And, as I just stated, for an added 25 percent administrative charge. Under the President's proposal, the Federal Government would retain rulemaking authority, responsibility to make valuation determinations, and other important responsibility. So the devolution of MMS responsibility is not really what it's cracked up to be.

We have yet to see an explanation of the economic effects of the President's proposal that fully sets out the benefits of this proposal. We haven't seen a rush by the States to accept this responsibility, because many are still trying—as we are—to figure out the proposal, whether they are equipped to handle the responsibilities, and whether the proposal would impose an unfunded mandate. I suspect that some of the numbers used by the President and Secretary Babbitt came from the same creative genius that thought up the MMS devolution proposal in the first place.

Mr. President, the long and short of it is this: President Clinton and Secretary Babbitt have missed the mark with their MMS devolution proposal. The President's efforts would be better directed in improving the Office of Surface Mining, or in significantly eliminating functions of the Department of Energy. MMS is not broken, and does not need to be dismembered as proposed by this ill conceived devolution.

Mr. President, I am concerned that all the good things MMS has achieved will be lost if it is dismantled and its functions are spread to the wind. We are likely to get inconsistent interpretations, rulings and policies from the States on the few functions they will be given, while we still have the major ''inherently federal functions'' retained by the Interior Department. This will lead to costly litigation and an inefficient use of private and public sector resources.

In addition, Mr. President, if the OCS minerals management function is absorbed—or more likely buried—elsewhere in the Department, who will be the advocate for the offshore oil and gas program? Who will assure that the OCS continues to be a vital contributor to our Nation's energy security and energy policy?

The answer, I submit Mr. President, is that no single person and no agency will assure that responsibility. The President has not assumed responsibility for a national energy policy, and has no energy security program. The President is AWOL—absent without leadership—on our Nation's energy policy. The dismantling of MMS is consistent with that AWOL approach to executive management.

Mr. President, I urge my colleagues to join me in supporting this legislation. I urge them not to succumb to the baiting that is likely to come from President Clinton, his friend Secretary Babbitt and others who are attempting to ''reinvent government'' by destroying an agency that works and claiming that Republicans are against government reform, reduction of the Federal work force, and saving money. The MMS devolution is a bad idea, and is forced on an agency that works. I urge my colleagues to join me in sending a message to the President that he has completely missed the mark on this one.

By Mr. DORGAN.

S. 923. A bill to amend title 23, United States Code, to provide for a national program concerning motor vehicle pursuits by law enforcement officers, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE NATIONAL POLICE PURSUIT POLICY ACT OF 1995

Mr. DORGAN.

Mr. President, I intend to send some legislation to the desk of the Senate today dealing with an issue that does not command many headlines but that is a critically important issue, in my judgment. It is the issue of the policy of police pursuit in this country and the dangers resulting from people who flee from police.

I received a letter about a month or two ago from a woman in Falls Church, VA. I had written to her 2 years ago. Her husband and two children, on a Sunday morning, on the way to church, were involved in a circumstance where a young fellow who was drunk and stole a car was being chased by the police at high rates of speed. This young fellow, being chased at a high rate of speed, crashed into the car of the father and his two daughters and all three were killed.

Of course, the fellow who was drunk and fleeing from the police was not hurt so badly. He eventually recovered and not very much happened to him as far as court action. By contrast, this Virginia woman lost her husband and two children in a circumstance where there was a high-speed police chase in a city.

I wrote her a long letter when I read about it, because I sympathized substantially with her. I have written letters to others who suffered similar fates.

My mother was killed in a high-speed police chase, and I understand that there are others around this country who, when confronted with this, become angry about the chases that occur on city streets. I have, for some years, felt we should do something about that.

The police are not the villains. It is the folks who run from the police who are the villains. I have believed that for a long time and have introduced legislation in both the House and Senate to respond to this problem.

It is not just the woman in Falls Church, VA, who lost her family in a senseless accident, or my mother who was senselessly killed in a similar circumstance in a police chase in Bismarck, ND, but let me expand on my own experience.

Eyewitnesses said that particular chase occurred at speeds up to 80 to 100 miles an hour on the city streets. My mother, coming home from the hospital, was a victim of that accident.

The villain there was a fellow in the pickup truck who was drunk and who fishtailed his pickup truck because he was pushing the accelerator too hard, showing off. He took flight from the police at a very rapid rate of speed, and the result was that a wonderful woman was killed. She senselessly lost her life.

Here's another tragic incident. On November 25, last year, a car carrying a family of four on their way to a movie in Houston, TX, was struck by a speeding car during a high-speed chase.

I could stand here for some hours and talk about the number of people killed as a result of high-speed chases. In fact, a lot of people do not know, but more innocent people in this country are killed as a result of an accident that occurs from a high-speed police pursuit or chase on city streets than are killed as a result of an accidental shooting from a policeman's gun. We do not know how many, but we estimate probably a thousand people a year or more. Thousands and thousands more are injured as a result of these chases.

The fact is that it is not the police that are the source of the problem, it is the people who run from the police. But it is also a fact that there are some circumstances where the police should not conduct a chase. If a motorist has a broken taillight and that results in a policeman trying to stop that person, and the person takes flight, that does not justify a 100-mile-an-hour chase through the city streets.

There is an organization called STOPP, whose board of directors is meeting today in Washington, DC. And I believe one of the members of the board of directors is from the State of the Presiding Officer, the State of Pennsylvania. Every one of the folks on that board will tell you a similar story. Some member of their family or some friend was an innocent bystander or passenger, but yet a victim of a high-speed pursuit.

Now, what ought we do about this?

Well, I think we should do a couple of things. First, I like the system in Europe, where in most countries people who go out to drink understand that one of that group ought not to be drinking because they are going to drive. If you drive and get picked up drunk, you are in very serious trouble.

In this country the consequence has been all too often sort of a smirk and

a smack on the wrist. We ought to understand in this country that both for drinking, and especially for those who are willing to flee from police and take flight when they are trying to apprehend you, two things are going to happen.

One, you are going to be put in jail for 3 months, and second, you are going to lose your vehicle. There ought to be certainty in this country about that. If you take flight from the police, there ought to be certainty in every State in this country that you are going to be put in jail for doing it, and you are going to lose your vehicle.

I propose legislation that puts this into law. It requires the States to adopt policies to comply with those goals. And second, it requires that at every law enforcement agency in this country there be uniform training about police pursuit, when to pursue and when not to pursue.

Interestingly, I was talking to a county sheriff recently and I was talking about my legislation. He said to me, ''It is interesting, because just the night before, my deputies found a person who was dead drunk driving in a very dangerous way on the city streets, and my deputy turned on the light and siren to apprehend this person, and this person took off at an enormous rate of speed through the city streets.

Later on, my deputy saw two small children in the back seat. My deputy and the person on the radio decided between them that this was not a chase that should continue. They broke off the pursuit.

An hour later, they went and arrested the person at his home because the police had the license number. That is all they needed to do. They could have decided that nobody is going to outrun us and that at the end of this, a couple kids are going to be dead in the street. That probably is what would have happened. Fortunately, they made the right decision because these folks were trained and used proper procedures.

The fact is that in a lot of law enforcement jurisdictions, there is not adequate training about when or when not to pursue. There are not adequate policies, and there ought to be. I want uniform training and policies across this country on police pursuits.

This issue affects the lives of literally thousands of Americans. I would like to see—and my legislation provides for it—that in exchange for receiving the highway safety funds, we insist that States meet a list of criteria. I simply add to the list one feature. That feature is that you shall have certain punishment for those that flee, and the punishment is that they will do jail time and lose their vehicles. In turn, my legislation also requires a certification that the law enforcement jurisdictions have uniform policies and training on police pursuit.

So I intend to offer this legislation again, and I well understand that it is hard to pass legislation like this. But it is legislation that will, I think, save lives and families the grief and heartache of losing loved ones.

While I am on my feet, let me describe another piece of legislation that I will introduce, and which I introduced before, again without success partly because people feel we should not meddle.

Most Members of the Senate will not probably know that you can reasonably drive across this country in a meandering line and either drink while you drive and be perfectly legal, or have other folks in the car drinking and be perfectly legal. You can do so because there are about 10 States in America where there is no prohibition against the driver drinking. You can get in the car, put a key in the ignition, have one hand on the steering wheel and the other on a bottle of whiskey and drink and drive to your little heart's content.

As long as you are not drunk, you can drive in these States. Well, there ought not be any State in this country that does not have a law prohibiting an open container of liquor, of alcohol in a vehicle. There ought not be one. There is no justification in this country to allow anybody to move down the highways in a vehicle, that is a noncommercial vehicle, and have drinking involved in the vehicle.

Yet, sadly, there are 10 States in which you can drink and drive and you are perfectly legal. You can start on the east coast, meander across the country to the west coast, and either drink yourself or have somebody else in the vehicle drinking, and do so legally.

I also believe we ought to change that. Some people say that is meddling. That is the State's judgment. Well, I do not want my family, I do not want my friends, driving from one jurisdiction to another, across a river or across a State line, and discover all of a sudden in this State you can drink whiskey and drive. And it is hard to catch people who are drinking, whether they are drunk or sober.

I do not want people to go across those lines and discover in this jurisdiction you can drive and drink, and it is fine. It is not fine with me. I want to change that law someday. What I would like to see is a circumstance where we have decided as a country, much of what the European countries have already decided, that drinking and driving turns drunk people into murderers. We ought to do what is necessary to tell the American people you cannot drink and drive. To do so will cause severe penalties.

The legislation I will introduce this afternoon, dealing with police pursuit, sends a message that is just as strong on the issue of fleeing from police. If the police are trying to apprehend you and you flee from the police, you will face certain and tough penalties.

I hope we will consider and discuss such discuss legislation this year. I know it comes from things that have happened in my family. I have lost two members of our family to drunk drivers. I lost my mother to an accident from police pursuit, a person fleeing from the police.

I know we are all charged with doing things in our self-interest. Yes, it is my self-interest, but it is in the self-interest of a lot of people in this country who suffer the anguish they should never have to suffer. They suffer the loss of innocent lives because of people who drink and drive and people who flee from the police. As a result of that, police initiate pursuits in city streets that end in death, all too often, for innocent Americans.

This is something we can do something about. This is not some mysterious disease. I hope some of my colleagues who might be interested in this legislation will join me in finally allowing the Senate to make some progress.

Mr. President, one January morning in 1993 a high speed chase occurred in Arlington, VA, where a teenager, driving a stolen vehicle and allegedly drunk, fled the police. As the stolen car and police cruiser raced through Falls Church, VA, the fleeing teen ran a red light and crashed into a car carrying a family on its way to Sunday morning church. This high speed chase, one of many that occur every year, ended in tragedy: One elementary principal and his two daughters, ages 12 and 8, were killed, and the teenager driving the fleeing car was hospitalized.

Public outrage erupted after this incident, with angry citizens calling the police department to say, ''* * * a stolen car is not worth a life.'' Mr. President, it seems to me that we need to ask ourselves: ''Is a stolen car or a traffic violation worth the cost of an innocent life?'' Unfortunately, this question is not being adequately answered by hundreds of police officers who on a regular basis pursue stolen cars and law breakers at reckless speeds through city streets.

There are countless other tragic examples, and I want to mention just a few. On November 25, 1994, a car carrying a family of 4, on their way to a movie in Houston, TX, was struck by a speeding car during a high speed police chase. Innocent passengers Laura Madrid, Robert Romero, and Maria Torres Romero later died as a result of injuries suffered in the accident. In fact, that same year in Houston, a total of 11 people were killed, amid 191 hot pursuit chases, prompting the Houston police department to reexamine and ultimately change its pursuit policy.

In March of this year, police officers collided with a pickup truck while on pursuit, killing three passengers and injuring four others in Los Angeles, CA. That same month in Miami, FL, a woman was killed when a car full of burglary suspects being chased by police sped off a highway, broad-siding her car. That very same day, three police cruisers in Florida City, FL, chased a car at speeds of up to 100 miles per hour. The chase began when

police attempted to pull over a woman who was actually driving too slowly. The woman sped away from the police, and eventually veered into oncoming traffic, killing herself and two young men in an oncoming car.

These were senseless deaths that could have—and should have—been avoided. All of these deaths the result of high speed chases, that simply did not justify putting so many innocent lives in the line of fire. Something's got to be done.

Approximately hundreds of Americans are killed and many thousands of people are injured every year as a result of high speed chases that are started when motorists, whether out of fright, panic, or guilt, flee at high speeds instead of stopping when a police vehicle turns on its lights and siren. Some police become determined to apprehend the fleeing motorist at all costs, what is alarming is that about 60 to 80 percent of all police pursuits are originated for minor traffic violations. The result is that the safety of the general public—the dangers that will be created by a high-speed chase in city traffic through stop signs and traffic lights—becomes secondary to catching someone whose initial offense may have been no greater than driving a car with a broken tail light. Tragically, as in the high-speed chase last January in Virginia, many people are dying unnecessarily from these ill advised pursuits.

What needs to happen is for every single law enforcement jurisdiction in the United States to adopt a reasoned, well-balanced pursuit policy. Police officers should be trained to comply with their departments' pursuit policies and regularly retrained if needed to guarantee that all citizens, both civilians and police, receive the benefit of uniform awareness of this problem. A drive across country should not be a pot luck regarding one's chances of being maimed or killed by a police pursuit. We must strive for universal attention to this public safety problem.

In addition, we need to focus on the people who are initiating these chases—the people who are fleeing from police. The punishment for fleeing the police should be certain and severe. People should be aware that if they flee they will pay a big price for doing so.

I rise today, Mr. President, to introduce the National Police Pursuit Policy Act of 1995. It is my hope that this legislation, if enacted, will help prevent tragic losses like the episode that occurred in 1993 in Arlington, as well as the thousands of other tragedies that occur each year all across America, including my own State of North Dakota.

It's also my hope that the legislation I introduce today will reverse the trend of the past several years of ever increasing high-speed police pursuits that have caused human losses to steadily mount.

Although we are finally seeing some initiative being taken by various States and local communities, there is still no coordinated effort in this country to attack this problem.

The legislation that I am introducing today would require the enactment of State laws making it unlawful for the driver of a motor vehicle to take evasive action if pursued by police and would establish a standard minimum penalty of 3 months imprisonment and the seizure of the driver's vehicle. In addition, my bill would require each public agency in every State to establish a hot pursuit policy and provide that all law enforcement officers receive adequate training in accordance with that policy.

I believe that these requirements, if passed, will demonstrate strong Federal leadership in responding to this problem. I am happy to be able to note that one important aspect of this issue, a severe under reporting of the accidents and deaths caused by police pursuits, has been addressed under provisions enacted in the Intermodal Surface Transportation Efficiency Act of 1991. Under that statute, the Secretary of Transportation is required to begin to collect accident statistics from each State, including statistics on deaths and injuries caused by police pursuits.

Mr. President, the problem of hot pursuits is not an easy issue to solve. I understand that it will always be difficult for police officers to judge when a chase is getting out of hand and the public safety best served by holding back. However, we can make things better if we do everything we can to ensure that police officers are trained on how best to make these difficult judgments and if we send a message to motorists that if you flee, you will do time in jail and lose your car.

I ask unanimous consent that the full text of this bill be printed in the RECORD and I urge my colleagues to support this important measure.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 923

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Police Pursuit Policy Act of 1995''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) accidents occurring as a result of high speed motor vehicle pursuits of fleeing motor vehicles by law enforcement officers are becoming increasingly common across the United States;

(2) the extent of the problem of those pursuits is evident despite significant underreporting;

(3) because the problem of those pursuits is extensive, it is essential for all law enforcement agencies to develop and implement policies and training procedures for dealing with high speed motor vehicle pursuits;

(4) a high speed motor vehicle pursuit in a community by a law enforcement officer should be treated in the same manner as the firing of a police firearm because a high speed motor vehicle pursuit involves the use of a deadly force with the potential for causing harm or death to pedestrians and motorists;

(5) the Federal Government should provide an incentive for States to enact laws to prevent high speed motor vehicle pursuits;

(6) to demonstrate leadership in response to the national problem of high speed motor vehicle pursuits, all Federal law enforcement agencies should—

(A) develop policies and procedures governing motor vehicle pursuits; and

(B) provide assistance to State and local law enforcement agencies in instituting such policies and procedures and in conducting training; and

(7) the policies referred to in paragraph (6) should balance reasonably the need—

(A) to apprehend promptly dangerous criminals; and

(B) to address the threat to the safety of the general public posed by high speed pursuits.

SEC. 3. MOTOR VEHICLE PURSUIT REQUIREMENTS FOR STATE HIGHWAY SAFETY PROGRAMS.

Section 402(b)(1) of title 23, United States Code, is amended—

(1) in each of subparagraphs (A) through (D), by striking the period at the end and inserting a semicolon;

(2) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(F) on and after January 1, 1997, have in effect throughout the State—

''(i) a law that—

''(I) makes it unlawful for the driver of a motor vehicle to increase speed or to take any other deliberately evasive action if a law enforcement officer clearly signals the driver to stop the motor vehicle; and

''(II) provides that any driver who violates that law shall be subject to a minimum penalty of—

''(aa) imprisonment for a period of not less 3 months; and

''(bb) seizure of the motor vehicle at issue; and

''(ii) a requirement that each State agency and each agency of a political subdivision of the State that employs law enforcement officers who, in the course of employment, may conduct a motor vehicle pursuit shall—

''(I) have in effect a policy that meets requirements that the Secretary shall establish concerning the manner and circumstances in which a motor vehicle pursuit may be conducted by law enforcement officers;

''(II) train all law enforcement officers of the agency in accordance with the policy referred to in subclause (I); and

''(III) for each fiscal year, transmit to the chief executive officer of the State a report containing information on each motor vehicle pursuit conducted by a law enforcement officer of the agency.''.

SEC. 4. REPORTING REQUIREMENT.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General of the United States, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of the Treasury, the Chief of the Capitol Police, and the Administrator of General Services shall each transmit to the Congress a report containing—

(1) the policy of the department or agency headed by that individual concerning motor vehicle pursuits by law enforcement officers of that department or agency; and

(2) a description of the procedures that the department or agency uses to train law enforcement officers in the implementation of the policy referred to in paragraph (1).

(b) REQUIREMENT.—Each policy referred to in subsection (a)(1) shall meet the requirements established by the Secretary of Transportation pursuant to section

402(b)(1)(F)(ii)(I) of title 23, United States Code, concerning the manner and circumstances in which a motor vehicle pursuit may be conducted.

ADDITIONAL COSPONSORS

S. 240

At the request of Mr. DODD, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

S. 388

At the request of Ms. SNOWE, the names of the Senator from Alaska [Mr. STEVENS] and the Senator from Florida [Mr. MACK] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 426

At the request of Mr. WARNER, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 426, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia, and for other purposes.

S. 456

At the request of Mr. BRADLEY, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 456, a bill to improve and strengthen the child support collection system, and for other purposes.

S. 641

At the request of Mrs. KASSEBAUM, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

S. 770

At the request of Mr. DOLE, the names of the Senator from Kentucky [Mr. FORD] and the Senator from Tennessee [Mr. FRIST] were added as cosponsors of S. 770, a bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the names of the Senator from New Jersey [Mr. BRADLEY] and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

AMENDMENT NO. 1282

At the request of Mr. ROBB his name was added as a cosponsor of amendment No. 1282 proposed to S. 652, an original bill to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

At the request of Ms. MOSELEY-BRAUN the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of amendment No. 1282 proposed to S. 652, supra.

AMENDMENT NO. 1288

At the request of Mr. LEAHY the names of the Senator from Minnesota [Mr. WELLSTONE] and the Senator from Virginia [Mr. ROBB] were added as cosponsors of amendment No. 1288 proposed to S. 652, an original bill to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

AMENDMENTS SUBMITTED

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT OF 1995 COMMUNICATIONS DECENCY ACT OF 1995

EXON (AND OTHERS) AMENDMENT NO. 1362

Mr. EXON (for himself, Mr. COATS, Mr. BYRD, and Mr. HEFLIN) proposed an amendment to amendment No. 1288 proposed by Mr. LEAHY to the bill (S. 652) to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes; as follows:

In lieu of the matter to be inserted, insert the following:

"SEC. . OBSCENE OR HARASSING USE OF TELECOMMUNICATIONS FACILITIES UNDER THE COMMUNICATIONS ACT 1934.

(a) OFFENSES.—Section 223 (47 U.S.C. 223) is amended—

"(1) by striking subsection (a) and inserting in lieu thereof:

"(a) Whoever—

"(1) in the District of Columbia or in interstate or foreign communications

"(A) by means of telecommunications device knowingly—

"(i) makes, creates, or solicits, and

"(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

"(B) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication;

"(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

"(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

"(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity.

shall be fined not more than $100,000 or imprisoned not more than two years, or both."; and

(2) by adding at the end the following new subsections:

"(d) Whoever—

"(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any obscene communication in any form including any comment, request, suggestion, proposal, or image regardless of whether the maker of such communication placed the call or initiated the communications; or

"(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by subsection (d)(1) with the intent that it be used for such activity;

shall be fined not more than $100,000 or imprisoned not more than two years or both.

(e) Whoever—

"(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any indecent communication in any form including any comment, request, suggestion, proposal, image, to any person under 18 years of age regardless of whether the maker of such communication placed the call or initiated the communication; or

"(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (l) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years or both.

"(f) Defenses to the subsections (a), (d), and (e), restrictions on access, judicial remedies respecting restrictions for persons providing information services and access to information services—

"(1) No person shall be held to have violated subsection (a), (d), or (e) solely for providing access or connection to or from a facility, system, or network over which that person has no control, including related capabilities which are incidental to providing access or connection. This subsection shall not be applicable to an individual who is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing or knowing distribution of communications which violate this section.

"(2) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of this employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

"(3) It is a defense to prosecution under subsection (a), (d)(2), or (e) that a person has taken reasonable, effective and appropriate actions in good faith to restrict or prevent the transmission of, or access to a communication specified in such subsections, or complied with procedures as the Commission may prescribe in furtherance of this section.

Until such regulations become effective, it is a defense to prosecution that the person has complied with the procedures prescribed by regulation pursuant to subsection (b)(3). Nothing in this subsection shall be construed to treat enhanced information services as common carriage.

''(4) No cause of action may be brought in any court or administrative agency against any person on account of any activity which is not in violation of any law punishable by criminal or civil penalty, which activity the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

''(g) No State or local government may impose any liability for commercial activities or actions by commercial entities in connection with an activity or action which constitutes a violation described in subsection (a)(2), (d)(2), or (e)(2) that is inconsistent with the treatment of those activities or actions under this section provided, however, that nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

''(h) Nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under (a), (d), or (e) shall be construed to affect or limit the application or enforcement of any other Federal law.

''(i) The use of the term 'telecommunications device' in this section shall not impose new obligations on (one-way) broadcast radio or (one-way) broadcast television operators licensed by the Commission or (one-way) cable service registered with the Federal Communications Commission and covered by obscenity and indecency provisions elsewhere in this Act.''

''(j) Within two years from the date of enactment and every two years thereafter, the Commission shall report on the effectiveness of this section.

SEC. . OBSCENE PROGRAMMING ON CABLE TELEVISION.

Section 639 (47 U.S.C. 559) is amended by striking ''$10,000'' and inserting ''$100,000''.

SEC. . BROADCASTING OBSCENE LANGUAGE ON RADIO.

Section 1464 of Title 18, United States Code, is amended by striking out $10,000'' and inserting ''$100,000''.

SEC. . SEPARABILITY.

''(a) If any provision of this Title, including amendments to this Title or the application thereof to any person or circumstance is held invalid, the remainder of this Title and the application of such provision to other persons or circumstances shall not be affected thereby.''.

SEC. . ADDITIONAL PROHIBITION ON BILLING FOR TOLL-FREE TELEPHONE CALLS.

EXON (AND COATS) AMENDMENTS NOS. 1363–1364

(Ordered to lie on the table.)

Mr. EXON (for himself and Mr. COATS) submitted 2 amendments intended to be proposed by them to amendments to the bill S. 652, supra, as follows:

AMENDMENT NO. 1363

In lieu of the matter to be inserted, insert the following:

''SEC. . OBSCENE OR HARASSING USE OF TELECOMMUNICATIONS FACILITIES UNDER THE COMMUNICATIONS ACT 1934.

(a) OFFENSES.—Section 223 (47 U.S.C. 223) is amended—

''(1) by striking subsection (a) and inserting in lieu thereof:

''(a) Whoever—

''(1) in the District of Columbia or in interstate or foreign communications

''(A) by means of telecommunications device knowingly—

''(i) makes, creates, or solicits, and

''(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

''(B) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication;

''(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

''(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication;

''(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years, or both.''; and

(2) by adding at the end the following new subsections:

''(d) Whoever—

''(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any obscene communication in any form including any comment, request, suggestion, proposal, or image regardless of whether the maker of such communication placed the call or initiated the communications; or

''(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by subsection (d)(1) with the intent that it be used for such activity;

shall be fined not more than $100,000 or imprisoned not more than two years or both.

(e) Whoever—

''(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any indecent communication in any form including any comment, request, suggestion, proposal, image, to any person under 18 years of age regardless of whether the maker of such communication placed the call or initiated the communication; or

''(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years or both.

''(f) Defenses to the subsections (a), (d), and (e), restrictions on access, judicial remedies respecting restrictions for persons providing information services and access to information services—

''(1) No person shall be held to have violated subsections (a), (d), or (e) solely for providing access or connection to or from a facility, system, or network over which that person has no control, including related capabilities which are incidental to providing access or connection. This subsection shall not be applicable to an individual who is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing or knowing distribution of communications which violate this section.

''(2) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

''(3) It is a defense to prosecution under subsection (a), (d)(2), or (e) that a person has taken reasonable, effective and appropriate actions in good faith to restrict or prevent the transmission of, or access to a communication specified in such subsections, or complied with procedures as the Commission may prescribe in furtherance of this section. Until such regulations become effective, it is a defense to prosecution that the person has complied with the procedures prescribed by regulations pursuant to subsection (b)(3). Nothing in this subsection shall be construed to treat enhanced information services as common carriage.

''(4) No cause of action may be brought in any court or administrative agency against any person on account of any activity which is not in violation of any law punishable by criminal or civil penalty, which activity the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

''(g) No State or local government may impose any liability for commercial activities or actions by commercial entities in connection with an activity or action which constitutes a violation described in subsection (a)(2), (d)(2), or (e)(2) that is inconsistent with the treatment of those activities or actions under this section provided, however, that nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

(h) Nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under (a), (d), or (e) shall be construed to affect or limit the application or enforcement of any other Federal law.

''(i) The use of the term 'telecommunications device' in this section shall not impose new obligations on (one-way) broadcast radio or (one-way) broadcast television operators licensed by the Commission or (one-way) cable service registered with the Federal Communications Commission and covered by obscenity and indecency provisions elsewhere in this Act.''

''(j) Within two years from the date of enactment and every two years thereafter, the Commission shall report on the effectiveness of this section.

SEC. . DISSEMINATION OF INDECENT MATERIAL ON CABLE TELEVISION

Section 1464 of title 18, United States Code, is amended by inserting after section 1464 the following:

''(a) Whoever knowingly disseminates any indecent material on any channel provided to all subscribers as part of a basic cable television package shall be imprisoned not more than two years or fined under this title, or both.

''(b) As used in this section, the term 'basic cable television package' means those channels provided by any means for a basic cable subscription fee to all cable subscribers, including 'basic cable service' and 'other programming service' as those terms are defined in section 602 of the Communications Act of 1934 but does not include separate channels that are provided to subscribers upon specific request, whether or not a separate or additional fee is charged.''.

''(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United states Code, is amended by inserting after the item relating to section 1464 the following new item:

''1464A. Dissemination of indecent material on cable television.''.

SEC. . OBSCENE PROGRAMMING ON CABLE TELEVISION.

Section 639 (47 .S.C. 559) is amended by striking ''$10,000'' and inserting $100,000''.

SEC. . BROADCASTING OBSCENE LANGUAGE ON RADIO.

Section 1464 of Title 18, United States Code, is amended by striking our $10,000'' and inserting ''$100,000''.

SEC. . SEPARABILITY

''(a) If any provision of this Title, including amendments to this Title or the application thereof to any person or circumstance is held invalid, the remainder of this Title and the application of such provision to other persons or circumstances shall not be affected thereby.''.

SEC. . ADDITIONAL PROHIBITION FOR BILLING FOR TOLL-FREE TELEPHONE CALLS.

AMENDMENT NO. 1364

In lieu of the matter proposed to be inserted, insert the following:

SEC. 402. OBSCENE OR HARASSING USE OF TELECOMMUNICATIONS FACILITIES UNDER THE COMMUNICATIONS ACT OF 1934.

(a) OFFENSES.—Section 223 (47 U.S.C. 223) is amended—

(1) by striking subsection (a) and inserting in lieu thereof:

''(a) Whoever—

''(1) in the District of Columbia or in interstate or foreign communications

''(A) by means of telecommunications device knowingly—

''(i) makes, creates, or solicits, and

''(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

''(B) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication;

''(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

''(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

''(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years, or both.''; and

(2) by adding at the end the following new subsections:

''(d) Whoever—

''(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any obscene communication in any form including any comment, request, suggestion, proposal, or image regardless of whether the maker of such communication placed the call or initiated the communications; or

''(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by subsection (d)(1) with the intent that it be used for such activity;

shall be fined not more than $100,000 or imprisoned not more than two years or both.

''(e) Whoever—

''(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes or makes available any indecent communication in any form including any comment, request, suggestion, proposal, image, to any person under 18 years of age regardless of whether the maker of such communication placed the call or initiated the communication; or

''(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years or both.

''(f) Defenses to the subsections (a), (d), and (e), restrictions on access, judicial remedies respecting restrictions for persons providing information services and access to information services—

''(1) No person shall be held to have violated subsections (a), (d), or (e) solely for providing access or connection to or from a facility, system, or network over which that person has no control, including related capabilities which are incidental to providing access or connection. This subsection shall not be applicable to an individual who is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing or knowing distribution of communications which violate this section.

''(2) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

''(3) It is a defense to prosecution under subsection (a), (d)(2), or (e) that a person has taken reasonable, effective and appropriate actions in good faith to restrict or prevent the transmission of, or access to a communication specified in such subsections, or complied with procedures as the Commission may prescribe in furtherance of this section. Until such regulations become effective, it is a defense to prosecution that the person has complied with the procedures prescribed by regulation pursuant to subsection (b)(3). Nothing in this subsection shall be construed to treat enhanced information services as common carriage.

''(4) No cause of action may be brought in any court or administrative agency against any person on account of any activity which is not in violation of any law punishable by criminal or civil penalty, which activity the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

''(g) No State or local government may impose any liability for commercial activities or actions by commercial entities in connection with an activity or action which constitutes a violation described in subsection (a)(2), (d)(2), or (e)(2) that is inconsistent with the treatment of those activities or actions under this section provided, however, that nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

(h) Nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under (a), (d), or (e) shall be construed to affect or limit the application or enforcement of any other Federal law.

''(i) The use of the term 'telecommunications device' in this section shall not impose new obligations on (one-way) broadcast radio or (one-way) broadcast television operators licensed by the Commission or (one-way) cable service registered with the Federal Communications Commission and covered by obscenity and indecency provisions elsewhere in this Act.''

''(j) Within two years from the date of enactment and every two years thereafter, the Commission shall report on the effectiveness of this section.''

(e) CONFORMING AMENDMENT.—The section heading for section 223 is amended to read as follows:

''SEC. 223. OBSCENE OR HARASSING UTILIZATION OF TELECOMMUNICATIONS DEVICES AND FACILITIES IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMUNICATIONS''.

SEC. 403. OBSCENE PROGRAMMING ON CABLE TELEVISION.

Section 639 (47 U.S.C. 559) is amended by striking ''$10,000'' and inserting ''100,000''.

SEC. 404. BROADCASTING OBSCENE LANGUAGE ON RADIO.

Section 1464 of title 18, United States Code, is amended by striking out ''$10,000'' and inserting ''$100,000''.

SEC. 405. DISSEMINATION OF INDECENT MATERIAL ON CABLE TELEVISION SERVICE.

(a) IN GENERAL.—Chapter 71 of title 18, United States Code, is amended by inserting after section 1464 the following:

''§ 1464A. Dissemination of indecent material on cable television

''(a) Whoever knowingly disseminates any indecent material on any channel provided to all subscribers as part of a basic cable television package shall be imprisoned not more than two years or fined under this title, or both.

''(b) As used in this section, the term 'basic cable television package' means those channels provided by any means for a basic cable subscription fee to all cable subscribers, including 'basic cable service' and 'other programming service' as those terms are defined in section 602 of the Communications Act of 1934 but does not include separate channels

that are provided to subscribers upon specific request, whether or not a separate or additional fee is charged.''.

''(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by inserting after the item relating to section 1464 the following new item:

''1464A. Dissemination of indecent material on cable television.''.

SEC. SEPARABILITY.

If any pronoun of this Title, including amendments to this Title or the application thereof to any person or circumstance is held invalid, the remainder of this Title and the application of such provision to other persons or circumstances shall not be affected thereby.

FEINGOLD AMENDMENT NO. 1365

(Ordered to lie on the table.)

Mr. FEINGOLD submitted an amendment intended to be proposed by him to an amendment to the bill S. 652, supra; as follows:

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following: ''nothing in this subsection shall prevent a State from ordering the implementation of toll dialing parity in an intraLATA area by a Bell operating company before or after the Bell operating company has been granted authority under this subsection to provide interLATA services in that area.

HEFLIN AMENDMENT NO. 1366

Mr. HEFLIN submitted an amendment intended to be proposed by him to an amendment to the bill S. 652, supra; as follows:

At the appropriate place in the amendment, insert the following:

SEC. ———. AUTHORITY TO ACQUIRE CABLE SYSTEMS.

(a) IN GENERAL.—Notwithstanding the provisions of section 613(b)(6) of the Communications Act of 1934, as added by section 213(a) of this Act, or any other provision of law, a local exchange carrier (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with any cable system described in subsection (b).

(b) COVERED CABLE SYSTEMS.—Subsection (a) applies to any cable system that serves incorporated or unincorporated places or territories having fewer than 50,000 inhabitants if more than ——— percent the subscriber base of such system serves individuals living outside an urbanized area, as defined by the Bureau of the Census.

(c) DEFINITION.—For purposes of this section, the term ''local exchange carrier'' has the meaning given such term in section 3(kk) of the Communications Act of 1934, as added by section 8(b) of this Act.

HEFLIN AMENDMENT NO. 1367

Mr. HEFLIN proposed an amendment to an amendment to the bill S. 652, supra; as follows:

At the appropriate place in the amendment, insert the following:

SEC. . AUTHORITY TO ACQUIRE CABLE SYSTEMS.

(a) IN GENERAL.—Notwithstanding the provisions of section 613(b)(6) of the Communications Act of 1934, as added by section 203(a) of this Act, a local exchange carrier (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest, or any management interest, or enter into a joint venture or partnership with any cable system described in subsection (b) within the local exchange carrier's telephone service area.

(b) COVERED CABLE SYSTEMS.—Subsection (a) applies to any cable system serving no more than 20,000 cable subscribers of which no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

(c) DEFINITION.—For purposes of this section, the term ''local exchange carrier'' has the meaning given such term in section 3(kk) of the Communications Act of 1934, as added by section 8(b) of this Act.

BREAUX AMENDMENT NO. 1368

(Ordered to lie on the table.)

Mr. BREAUX submitted an amendment intended to be proposed by him to an amendment to the bill S. 652, supra; as follows:

In the amendment, after the first word, insert the following:

''Notwithstanding any other provisions of this Act.

(ii) Except for single-LATA States, a State may not require a Bell operating company to implement toll dialing parity in an intra-LATA area before a Bell operating company has been granted authority under this subsection to provide inter-LATA services in that area or before three years after the date of enactment of the Telecommunications Act, whichever is earlier. Nothing in this clause precludes a State from issuing an order requiring toll dialing parity in an intra-LATA area prior to either such date so long as such order does not take effect until after the earlier of either such dates.''

STEVENS AMENDMENT NO. 1369

(Ordered to lie on the table.)

Mr. STEVENS submitted an amendment intended to be proposed by him to an amendment to the bill S. 652, supra; as follows:

On page 6 of amendment number 1300, beginning with ''Further,'' on line 23, strike all through the end of line 1 on page 7.

STEVENS AMENDMENT NO. 1370

(Ordered to lie on the table.)

Mr. STEVENS submitted an amendment intended to be proposed by him to an amendment submitted by him to the bill, S. 652, supra; as follows:

On line 2 of amendment number 1303, after ''costs'' insert ''(which shall be determined without reference to a rate-of-return or other rate-based proceeding, and shall take into account the price structure of telecommunications services within the State, and which may include a reasonable profit)''.

LEAHY AMENDMENTS NOS. 1371–1375

(Ordered to lie on the table.)

Mr. LEAHY submitted five amendments intended to be proposed by him to amendments to the bill, S. 652, supra; as follows:

AMENDMENT NO. 1371

On page 2, line 2, insert ''300 percent of'' before ''the percentage''.

AMENDMENT NO. 1372

On page 2, line 2, insert ''150 percent of'' before ''the percentage''.

AMENDMENT NO. 1373

On page 2, line 2, insert ''125 percent of'' before ''the percentage''.

AMENDMENT NO. 1374

On page 2, line 2, insert ''175 percent of'' before ''the percentage''.

AMENDMENT NO. 1375

On page 2, line 2, insert ''200 percent of'' before ''the percentage''.

LEAHY AMENDMENT NO. 1376

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to amendment No. 1326 proposed by Mr. GORTON to the bill S. 652, supra; as follows:

Strike all after the first word and insert in lieu thereof the following:

REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY (AND OTHERS) AMENDMENT NO. 1377

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted an amendment intended to be proposed by them to an amendment to the bill, S. 652, supra; as follows:

Strike out the matter proposed to be inserted and insert in lieu thereof the following:

(1) in subsection (a), by striking out ''section'' and inserting in lieu thereof ''subsection''; and

(2) by striking out ''$50,000'' each place it appears and inserting in lieu thereof ''$100,000''.

(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY AMENDMENT NO. 1378

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to an amendment to the bill S. 652, supra; as follows:

Strike all after the first word and insert in lieu thereof the following:

''Notwithstanding any other provision of law, the Commission shall have the authority to prescribe technical standards for the digital transmission and reception of the signals of video programming for the purposes of promoting compatibility or competitive availability of consumer electronics devices. The Commission shall, to the extent, possible, rely on standards originating in the private sector.''.

LEAHY AMENDMENTS NOS. 1379–1381

(Ordered to lie on the table.)

Mr. LEAHY submitted three amendments intended to be proposed by him to amendment No. 1319 submitted by Mr. BROWN to the bill S. 652, supra; as follows:

AMENDMENT NO. 1379

On page 1, line 7, strike all after ''programming.'' and insert the following:

''The Commission shall, to the extent possible, rely on standards originating in the private sector.''

AMENDMENT NO. 1380

Strike all after the first word and insert in lieu thereof the following:

''Notwithstanding any other provision of law, the Commission shall have the authority to prescribe technical standards for the digital transmission and reception of the signals of video programming for the purposes of promoting compatibility or competitive availability of consumer electronics devices. The Commission shall, to the extent, possible, rely on standards originating in the private sector.''.

AMENDMENT NO. 1381

On page 1, line 7, strike all after ''programming.'' and insert the following:

''Notwithstanding any other provision of law, the Commission shall have the authority to prescribe technical standards for the digital transmission and reception of the signals of video programming for the purposes of promoting compatibility or competitive availability of consumer electronics devices. The Commission shall, to the extent, possible, rely on standards originating in the private sector.''.

LEAHY (AND OTHERS) AMENDMENT NO. 1382

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted an amendment intended to be proposed by them to amendment No. 1328 submitted by Mr. EXON to the bill S. 652, supra; as follows:

Strike out all matter proposed by the amendment and insert in lieu thereof the following:

(a) not amended;

(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY (AND OTHERS) AMENDMENT NO. 1383

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSLEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted an amendment intended to be proposed by them to amendment No. 1280 submitted by Mr. ROBB to the bill S. 652, supra; as follows:

Strike out the last word proposed to be inserted and insert in lieu thereof the following:

transmission or file

(e) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY AMENDMENT NO. 1384

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to amendment No. 1281, proposed by Mr. EXON, to the bill, S. 652, supra; as follows:

Strike out the matter proposed to be inserted and insert in lieu thereof the following:

''(1) by striking subsection (a) and inserting in lieu thereof:

''(a) Whoever—

''(1) in the District of Columbia or in interstate or foreign communications

''(A) by means of telecommunications device knowingly—

''(i) makes, creates, or solicits, and

''(ii) initiates the transmission of,

any obscene, lewd, lascivious, filthy or indecent comment, request, suggestion, proposal, image, or other communication with knowledge that such communication is obscene, lewd, lascivious, filthy, or indecent, with intent to abuse, threaten, or harass another person;

''(B) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to abuse, threaten, or harass any person at the called number or who receives the communication;

''(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

''(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

shall be fined not more than $100,000 or imprisoned not more than two years, or both.''; and

(2) by adding at the end the following new subsections:

''(d) Whoever—

''(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device makes available any obscene communication, knowing that such communication is obscene, in any form including any comment, request, suggestion, proposal, or image regardless of whether the maker of such communication placed the call or initiated the communications; or

shall be fined not more than $100,000 or imprisoned not more than two years or both.

''(f) Defenses to the subsections (a) and (d) restrictions on access, judicial remedies respecting restrictions for persons providing information services and access to information services—

''(1) No person shall be held to have violated subsections (a) or (d), solely for providing access or connection to or from a facility, system, or network over which that person has no control, including related capabilities which are incidental to providing access or connection. This subsection shall not be applicable to an individual who is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing or knowing distribution of communications which violate this section.

''(2) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer has knowledge of, authorizes or ratifies the employee's or agent's conduct.

''(3) It is a defense to prosecution under subsection (a), that a person has taken reasonable, effective and appropriate actions in good faith to restrict or prevent the transmission of, or access to a communication specified in such subsections, or complied with procedures as the Commission may prescribe in furtherance of this section. Until such regulations become effective, it is a defense to prosecution that the person has complied with the procedures prescribed by regulation pursuant to subsection (b)(3). Nothing in this subsection shall be construed to treat enhanced information services as common carriage.

''(4) No cause of action may be brought in any court or administrative agency against any person on account of any activity which is not in violation of any law punishable by criminal or civil penalty, which activity the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

(h) Nothing in subsection (a), (d), or (f) or in the defenses to prosecution under (a) or (d) shall be construed to affect or limit the application or enforcement of any other Federal law.

''(i) The use of the term 'telecommunications device' in this section shall not impose new obligations on (one-way) broadcast radio or (one-way) broadcast television operators licensed by the Commission or (one-way) cable service registered with the Federal Communications Commission and covered by obscenity and indecency provisions elsewhere in this Act.''

''(j) Within two years from the date of enactment and every two years thereafter, the Commission shall report on the effectiveness of this section.

REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY (AND OTHERS) AMENDMENT NO. 1385

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted an amendment intended to be proposed by them to amendment No. 1328 submitted by Mr. EXON to the bill S. 652, supra; as follows:

Strike out all matter proposed by the amendment and insert in lieu thereof the following:

(a) not amended;

(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

(3) ACTION.—The Senate shall act upon the recommendations in the report referred to is under paragraph (1) within three months of receipt.

LEAHY (AND OTHERS) AMENDMENTS NOS. 1386–1387

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted two amendments intended to be proposed by them to amendment No. 1281 submitted by Mr. EXON to the bill S. 652, supra; as follows:

AMENDMENT NO. 1386

Strike out the matter proposed to be inserted and insert in lieu thereof the following:

(1) in subsection (a), by striking out ''section'' and inserting in lieu thereof ''subsection''; and

(2) by striking out ''$50,000'' each place it appears and inserting in lieu thereof ''$100,000''.

(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems do that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

AMENDMENT NO. 1387

Strike out the matter proposed to be inserted and insert in lieu thereof the following:

(1) in subsection (a), by striking out ''section'' and inserting in lieu thereof ''subsection''; and

(2) by striking out ''$50,000'' each place it appears and inserting in lieu thereof ''$100,000''.

(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY AMENDMENTS NOS. 1388–1395

(Ordered to lie on the table.)

Mr. LEAHY submitted eight amendments intended to be proposed by him to amendments to the bill, S. 652, supra; as follows:

AMENDMENT NO. 1388

On page 3, strike out line 6 and all that follows through page 3, line 15, and insert in lieu thereof the following:

(D)(1) The Office of the United States Trade Representative, the Department of Commerce, the Federal Communications Commission and other appropriate federal agencies and departments, when engaging in consultations, negotiations or other international discussions, shall pursue policies and advocate objectives with the aim of securing non-discriminatory export opportunities for U.S. exporters of telecommunications products and services, information content and information appliances. Measures which deny non-discriminatory export opportunities, include measures which:

(a) hinder or impede competition among technologies, providers, content and media, based on national origin;

(b) encumber or retard the rapid development of the global information and communications infrastructure; or

(c) unfairly deny access to users and vendors of products, content and services.

(2) The Secretary of Commerce, in consultation with the United States Trade Representative and the Federal Communications Commission, shall conduct a study of the competitiveness of the United States in the global information infrastructure and the effects of foreign policies, practices and measures affecting such U.S. competitiveness, in order to assist the Congress and the President in determining what actions might be needed to promote and preserve the competitiveness of United States information industries. The Secretaries shall, no later than one year after the date of enactment of this Act, submit to the Congress and the President a report on the findings and recommendations reached as a result of the study.

AMENDMENT NO. 1389

On page 3, strike out line 6 and all that follows through page 3, line 15, and insert in lieu thereof the following:

''(D) to ensure, consistent with paragraph (1)(B), that any standards or regulations prescribed under this section to assure compatibility between televisions, video cassette recorders, and multichannel video programming distribution systems do not unfairly impair competition in the markets for home automation, computer network services, and telecommunications interface equipment.'' and

(C) by inserting after new subparagraph (F) the following new subparagraph (G):

''(G) Nothing in this subsection shall be interpreted as diminishing the authority of the Commission to engage in any lawful proceeding in furtherance of the objectives of this section to enhance compatibility and competitiveness with respect to services and devices.''.

AMENDMENT NO. 1390

On Page 3, strike out line 6 and all that follows through page 3, line 15, and insert in lieu thereof the following:

''(D) to ensure, consistent with paragraph (1)(B), that any standards or regulations prescribed under this section to assure compatibility between televisions, video cassette recorders, and multichannel video programming distribution systems do not unfairly impair competition in the markets for home automation, computer network services, and telecommunications interface equipment.'' and

(C) by inserting after new subparagraph (F) the following new subparagraph (G):

''(G) Nothing in this subsection shall be interpreted as diminishing the authority of the Commission to engage in any lawful proceeding in furtherance of the objectives of this section to enhance compatibility and competitiveness with respect to services and devices.''.

AMENDMENT NO. 1391

Strike all after the first word and insert the following:

''(D) to ensure, consistent with paragraph (1)(B), that any standards or regulations prescribed under this section to assure compatibility between televisions, video cassette recorders, and multichannel video programming distribution systems do not unfairly impair competition in the markets for home automation, computer network services, and telecommunications interface equipment.'' and

(C) by inserting after new subparagraph (F) the following new subparagraph (G):

''(G) Noting in this subsection shall be interpreted as diminishing the authority of the Commission to engage in any lawful proceeding in furtherance of the objectives of this section to enhance compatibility and competitiveness with respect to services and devices.''.

AMENDMENT NO. 1392

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following:

(1) The Office of the United States Trade Representative, the Department of Commerce, the Federal Communications Commission and other appropriate federal agencies and departments, when engaging in consultations, negotiations or other international discussions, shall pursue policies and advocate objectives with the aim of securing non-discriminatory export opportunities for U.S. exporters of telecommunications products and services, information content and information appliances. Measures which deny non-discriminatory export opportunities, include measures which:

(a) hinder or impede competition among technologies, providers, content and media, based on national origin;

(b) encumber or retard the rapid development of the global information and communications infrastructure; or

(c) unfairly deny access to users and vendors of products, content and services.

(2) The Secretary of Commerce, in consultation with the United States Trade Representative and the Federal Communications Commission, shall conduct a study of the competitiveness of the United States in the global information infrastructure and the effects of foreign policies, practices and measures affecting such U.S. competitiveness, in

order to assist the Congress and the President in determining what actions might be needed to promote and preserve the competitiveness of United States information industries. The Secretary shall, no later than one year after the date of enactment of this Act, submit to the Congress and the President a report on the findings and recommendations reached as a result of the study.

AMENDMENT NO. 1393

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following:

''; provided, however, that

(A) any state that has issued an order with respect to intraLATA toll dialing parity as of June 12, 1995 may implement any order requiring the provision of such dialing parity;

(B) any state that has not issued an order by June 12, 1995 with respect to intraLATA toll dialing parity may not implement any order requiring the provision of such dialing parity for 36 months following the enactment of this Act; and

(C) any state that contains no more than one LATA shall be exempt from this subsection.

AMENDMENT NO. 1394

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following:

''; provided, however, that

(A) any state that has issued an order with respect to intraLATA toll dialing parity as of June 12, 1995 may implement any order requiring the provision of such dialing parity;

(B) any state that has initiated a proceeding with respect to intraLATA toll dialing parity as of June 12, 1995 may complete such proceeding but shall not implement any order requiring the provision of such dialing parity for 24 months following the enactment of this Act;

(C) any state that has neither issued an order nor initiated a proceeding on June 12, 1995 with respect to intraLATA toll dialing parity may not implement any order requiring the provision of such dialing parity for 36 months following the enactment of this Act; and

(D) any state that contains no more than one LATA shall be exempt from this subsection.

AMENDMENT NO. 1395

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following:

''; *Provided*, however, that

(A) any state that has issued an order with respect to intraLATA toll dialing parity as of June 12, 1995 may implement any order requiring the provision of such dialing parity;

(B) any state that has initiated a proceeding with respect to intraLATA toll dialing parity as of June 12, 1995 may complete such proceeding but shall not implement any order requiring the provision of such dialing parity for twelve months following the enactment of this Act;

(C) any state that has neither issued an order nor initiated a proceeding on June 12, 1995 with respect to intraLATA toll dialing parity may not implement any order requiring the provision of such dialing parity for twenty four months following the enactment of this Act; and

(D) any state that contains no more than one LATA shall be exempt from this subsection.

LEAHY AMENDMENTS NOS. 1396–1397

(Ordered to lie on the table.)

Mr. LEAHY submitted two amendments intended to be proposed by him to amendment No. 1346, proposed by Mr. HEFLIN, to the bill, S. 652, supra; as follows:

AMENDMENT NO. 1396

Strike all after the first word in the pending amendment and insert the following:

''(2) UNREASONABLE RATES.—

''(A) STANDARDS.—The Commission may only consider a rate for cable programming services to be unreasonable if it substantially exceeds the national average rate for comparable programming services in cable systems subject to effective competition.

''(B) RATES OF SMALL CABLE COMPANIES.—

''(i) IN GENERAL.—The regulations prescribed under this subsection shall not apply to the rates charged by small cable companies for the cable programming services provided by such companies.

''(ii) DEFINITION.—As used in this subparagraph, the term 'small cable company' means the following:

''(I) A cable operator whose number of subscribers is less than 35,000.

''(II) A cable operator that operates multiple cable systems, but only if the total number of subscribers of such operator is less than 400,000 and only with respect to each system of the operator that has less than 35,000 subscribers.''.

AMENDMENT NO. 1397

Strike the last word in the pending amendment and insert the following:

(d) Insert the word ''act'' at the end of the definition section.

''(2) UNREASONABLE RATES.—

''(A) STANDARDS.—The Commission may only consider a rate for cable programming services to be unreasonable if it substantially exceeds the national average rate for comparable programming in cable systems subject to effective competition.

''(B) RATES OF SMALL CABLE COMPANIES.—

''(i) IN GENERAL.—The regulations prescribed under this subsection shall not apply to the rates charged by small cable companies for the cable programming services provided by such companies.

''(ii) DEFINITION.—As used in this subparagraph, the term 'small cable company' means the following:

''(I) A cable operator whose number of subscribers is less than 35,000.

''(II) A cable operator that operates multiple cable systems, but only if the total number of subscribers of such operator is less than 400,000 and only with respect to each system of the operator that has less than 35,000 subscribers.''.

LEAHY (AND OTHERS) AMENDMENT NO. 1398

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted an amendment intended to be proposed by them to amendment No. 1327 submitted by Mr. EXON to the bill S. 652, supra; as follows:

Strike out the matter proposed to be inserted on page 2 of the Exon Amendment and insert in lieu thereof the following:

(c) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY AMENDMENT NO. 1399

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to an amendment to the bill, S. 652, supra; as follows:

On page 3, strike out line 6 and all that follows through page 3, line 15, and insert in lieu thereof the following:

''(D) to ensure, consistent with paragraph (1)(B), that any standards or regulations prescribed under this section to assure compatibility between televisions, video cassette recorders, and multichannel video programming distribution systems do not unfairly impair competition in the markets for home automation, computer network services, and telecommunications interface equipment.'' and

(C) by inserting after new subparagraph (F) the following new subparagraph (G):

''(G) Nothing in this subsection shall be interpreted as diminishing the authority of the Commission to engage in any lawful proceeding in furtherance of the objectives of this section to enhance compatibility and competitiveness with respect to services and devices.''.

LEAHY AMENDMENT NO. 1400

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to amendment No. 1346, proposed by Mr. HEFLIN, to the bill, S. 652, supra; as follows:

Strike the last word in the pending amendment and insert the following:

(d) Insert the word ''Act'' at the end of the definition section (1) The Office of the United States Trade Representative, the Department of Commerce, the Federal Communications Commission and other appropriate federal agencies and departments, when engaging in consultations, negotiations or other

international discussions, shall pursue policies and advocate objectives with the aim of securing non-discriminatory export opportunities for U.S. exporters of telecommunications products and services, information content and information appliances. Measures which deny non-discriminatory export opportunities, include measures which:

(a) hinder or impede competition among technologies, providers, content and media, based on national origin;

(b) encumber or retard the rapid development of the global information and communications infrastructure; or

(c) unfairly deny access to users and vendors of products, content and services.

(2) The Secretary of Commerce, in consultation with the United States Trade Representative and the Federal Communications Commission, shall conduct a study of the competitiveness of the United States in the global information infrastructure and the effects of foreign policies, practices and measures affecting such U.S. competitiveness, in order to assist the Congress and the President in determining what actions might be needed to promote and preserve the competitiveness of United States information industries. The Secretary shall, no later than one year after the date of enactment of this Act, submit to the Congress and the President a report on the findings and recommendations reached as a result of the study.

LEAHY AMENDMENT NO. 1401

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to an amendment to the bill, S. 652, supra; as follows:

On page 3, strike out line 6 and all that follows through page 3, line 15, and insert in lieu there of the following:

(D)(1) The Office of the United States Trade Representative, the Department of Commerce, the Federal Communications Commission and other appropriate federal agencies and departments, when engaging in consultations, negotiations or other international discussions, shall pursue policies and advocate objectives with the aim of securing non-discriminatory export opportunities for U.S. exporters of telecommunications products and services, information content and information appliances. Measures which deny non-discriminatory export opportunities, include measures which:

(a) hinder or impede competition among technologies, providers, content and media, based on national origin;

(b) encumber or retard the rapid development of the global information and communications infrastructure; or

(c) unfairly deny access to users and vendors of products, content and services.

(2) The Secretary of Commerce, in consultation with the United States Trade Representative and the Federal Communications Commission, shall conduct a study of the competitiveness of the United States in the global information infrastructure and the effects of foreign policies, practices and measures affecting such U.S. competitiveness, in order to assist the Congress and the President in determining what actions might be needed to promote and preserve the competitiveness of United States information industries. The Secretary shall, no later than one year after the date of enactment of this Act, submit to the Congress and the President a report on the findings and recommendations reached as a result of the study.

LEAHY AMENDMENTS NOS. 1402–1404

(Ordered to lie on the table.)

Mr. LEAHY submitted three amendments intended to be proposed by him to amendment No. 1305, proposed by Mr. DASCHLE, to the bill, S. 652, supra; as follows:

AMENDMENT NO. 1402

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following:

; provided however, that

(A) any state that has issued an order with respect to intraLATA toll dialing parity as of June 12, 1995 may implement any order requiring the provision of such dialing parity;

(B) any state that has initiated a proceeding with respect to intraLATA toll dialing parity as of June 12, 1995 may complete such proceeding but shall not implement any order requiring the provision of such dialing parity for twelve months following the enactment of this Act;

(C) any state that has neither issued an order nor initiated a proceeding on June 12, 1995 with respect to interLATA toll dialing parity may not implement any order requiring the provision of such dialing parity for twenty-four months following the enactment of this Act; and

(D) any state that contains more than one LATA shall not be subject to this subsection.

AMENDMENT NO. 1403

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following:

; provided, however, that

(A) any state that has issued an order with respect to intraLATA toll dialing parity as of June 12, 1995 may implement any order requiring the provision of such dialing parity;

(B) any state that has not issued an order nor initiated a proceeding on June 12, 1995 with respect to intraLATA toll dialing parity may not implement any order requiring the provision of such dialing parity for 36 months following the enactment of this Act; and

(C) any state that contains no more than one LATA shall be exempt from this subsection.

AMENDMENT NO. 1404

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following:

; provided, however, that

(A) any state that has issued an order with respect to intraLATA toll dialing parity as of June 12, 1995 may implement any order requiring the provision of such dialing parity;

(B) any state that has initiated a proceeding with respect to intraLATA toll dialing parity as of June 12, 1995 may complete such proceeding but shall not implement any order requiring the provisions of such dialing parity for 24 months following the enactment of this Act;

(C) any state that has neither issued an order nor initiated a proceeding on June 12, 1995 with respect to intraLATA toll dialing parity may not implement any order requiring the provision of such dialing parity for 36 months following the enactment of this Act; and

(D) any state that contains no more than one LATA shall not be subject to this subsection.

LEAHY AMENDMENT NO. 1405

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to an amendment to the bill, S. 652, supra; as follows:

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following: ''Nothing in this subsection shall prevent a State from ordering the implementation of toll dialing parity in an intraLATA area by a Bell operating company before or after the Bell operating company has been granted authority under this subsection to provide interLATA services in that area.

LEAHY AMENDMENT NO. 1406

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to amendment No. 1305, proposed by Mr. DASCHLE, to the bill, S. 652, supra; as follows:

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following.

''; provided, however, that

(A) any state that has issued an order with respect to intraLATA toll dialing parity as of June 12, 1995 may implement any order requiring the provision of such dialing parity;

(B) any state that has initiated a proceeding with respect to intraLATA toll dialing parity as of June 12, 1995 may complete such proceedings but shall not implement any order requiring the provision of such dialing parity for 12 months following the enactment of this Act;

(C) any state that has neither issued an order nor initiated a proceeding on June 12, 1995 with respect to intraLATA toll dialing parity may not implement any order requiring the provision of such dialing for 24 months following the enactment of this Act; and

(D) any state that contains no more than one LATA shall not be subject to this subsection.

LEAHY AMENDMENT NO. 1407

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to an amendment to the bill, S. 652, supra; as follows:

Strike all after the first word and insert the following:

(D)(1) The Office of the United States Trade Representative, the Department of Commerce, the Federal Communications Commission and other appropriate federal agencies and departments, when engaging in consultations, negotiations or other international discussions, shall pursue policies and advocate objectives with the aim of securing non-discriminatory export opportunities for U.S. exporters of telecommunications products and services, information content and information appliances. Measures which deny non-discriminatory export opportunities, includes measures which:

(a) hinder or impede competition among technologies, providers, content and media, based on national origin;

(b) encumber or retard the rapid development of the global information and communications infrastructure; or

(c) unfairly deny access to users and vendors of products, content and services.

(2) The Secretary of Commerce, in consultation with the United States Trade Representative and the Federal Communications Commission, shall conduct a study of the competitiveness of the United States in the global information infrastructure and the effects of foreign policies, practices and measures affecting such U.S. competitiveness, in order to assist the Congress and the President in determining what actions might be

needed to promote and preserve the competitiveness of United States information industries. The Secretary shall, no later than one year after the date of enactment of this Act, submit to the Congress and the President a report on the findings and recommendations reached as a result of the study.

LEAHY (AND OTHERS) AMENDMENT NO. 1408

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted an amendment intended to be proposed by them to an amendment to the bill S. 652, supra; as follows:

Strike out the matter proposed to be inserted and insert in lieu thereof the following:

(1) in subsection (a), by striking out ''section'' and inserting in lieu thereof ''subsection''; and

(2) by striking out ''$50,000'' each place it appears and inserting in lieu thereof ''$100,000''.

(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

''(3) IN GENERAL.—Any legislative proposal in the report described in (1) shall be introduced by the Majority Leader of his designee as a bill upon submission and referred to the committees in each House of Congress with jurisdiction. Such a bill may not be reported before the eighth day after the date upon which it was submitted to the Congress as a legislative proposal.

''(4) DISCHARGE.—If the committee to which is referred a bill described in (3) has not reported such bill at the end of 20 calendar days after the submission date referred to in (3), such committee may be discharged from further consideration of such bill in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

''(5) FLOOR CONSIDERATION.—

''(d) IN GENERAL.—When the committee to which such a bill is referred has reported, or when a committee is discharged (under (4)) from further consideration of such bill, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the bill. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the bill is agreed to, the bill shall remain the unfinished business of the respective House until disposed of.

''(b) FINAL PASSAGE.—Immediately following the conclusion of the debate on such a bill described in subsection (3), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the bill shall occur.

''(c) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a bill described in (3) shall be decided without debate.

''(6) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

''(a) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a bill described in (3), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(b) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at anytime, in the same manner, and to the same extent as in the case of any other rule of that House.''

LEAHY (AND OTHERS) AMENDMENT NO. 1409

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted an amendment intended to be proposed by them to amendment No. 1268 submitted by Mr. EXON to the bill S. 652, supra; as follows:

Strike out the matter proposed to be inserted and insert in lieu thereof the following:

(1) in subsection (a), by striking out ''section'' and inserting in lieu thereof ''subsection''; and

(2) by striking out ''$50,000'' each place it appears and inserting in lieu thereof ''$100,000''.

(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY (AND OTHERS) AMENDMENT NO. 1410

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Mr. FEINGOLD, Mr. SIMPSON, Mr. KERREY, and Mr. KOHL) submitted an amendment intended to be proposed by them to an amendment to the bill S. 652, supra; as follows:

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following: ''Nothing in this subsection shall prevent a State from ordering the implementation of toll dialing parity in an intraLATA area by a Bell operating company before the Bell operating company has been granted authority under this subsection to provide interLATA services in that area.''.

LEAHY AMENDMENT NO. 1411

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to an amendment to the bill, S. 652 supra; as follows:

Strike all after the first word and insert the following:

(1) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the

creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

''(3) IN GENERAL.—Any legislative proposal included in the report described in (1) shall be introduced by the Majority Leader or his designee as a bill upon submission and referred to the committees in each House of Congress with jurisdiction. Such a bill may not be reported before the eighth day after the date upon which it was submitted to the Congress as a legislative proposal.

''(4) DISCHARGE.—If the committee to which is referred a bill described in (3) has not reported such bill at the end of 20 calendar days after the submission date referred to in (3), such committee may be discharged from further consideration of such bill in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

''(5) FLOOR CONSIDERATION.—

''(a) IN GENERAL.—When the committee to which such a bill is referred has reported, or when a committee is discharged (under (4)) from further consideration of such bill, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the bill. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the bill is agreed to, the bill shall remain the unfinished business of the respective House until disposed of.

''(b) FINAL PASSAGE.—Immediately following the conclusion of the debate on such a bill described in (3), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the bills hall occur.

''(c) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a bill described in (3) shall be decided without debate.

''(6) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

''(a) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a bill described in (3), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(b) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at anytime, in the same manner, and to the same extent as in the case of any other rule of that House.''

LEAHY AMENDMENT NO. 1412

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to amendment No. 1305, proposed by Mr. DASCHLE, to the bill, S. 652, supra; as follows:

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following:

''; provided, however, that

(A) any state that has issued an order with respect to intraLATA toll dialing parity as of June 12, 1995 may implement any order requiring the provision of such dialing parity;

(B) any state that has initiated a proceeding with respect to intraLATA toll dialing parity as of June 12, 1995 may complete such proceeding but shall not implement any order requiring the provision of such dialing parity for 24 months following the enactment of this Act;

(C) any state that has neither issued an order nor initiated a proceeding on June 12, 1995 with respect to intraLATA toll dialing parity may not implement any order requiring the provision of such dialing parity for 36 months following the enactment of this Act; and

(D) any state that contains no more than one LATA shall not be subject to this subsection.

LEAHY (AND OTHERS) AMENDMENTS NO. 1413

(Ordered to lie on the table.)

Mr. LEAHY (for himself, Ms. MOSELEY-BRAUN, Mr. FEINGOLD, and Mr. KERREY) submitted an amendment intended to be proposed by them to amendment No. 1268 submitted by Mr. EXON to the bill S. 652, supra; as follows:

Strike out the matter proposed to be inserted and insert in lieu thereof the following:

(1) in subsection (a), by striking out ''section'' and inserting in lieu thereof ''subsection''; and

(2) by striking out ''$50,000'' each place it appears and inserting in lieu thereof ''$100,000''.

(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report containing—

(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(C) an evaluation of the technical means available—

(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

LEAHY AMENDMENT NO. 1414

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to amendment No. 1305, proposed by Mr. DASCHLE, to the bill, S. 652, supra; as follows:

Strike all after the first word of the language proposed to be inserted and insert in lieu thereof the following: ''Nothing in this subsection shall prevent a State from ordering the implementation of toll dialing parity in an intraLATA area by a Bell operating company before or after the Bell operating company has been granted authority under this subsection to provide interLATA services in that area.

WELLSTONE AMENDMENTS NOS. 1415–1416

(Ordered to lie on the table.)

Mr. WELLSTONE submitted two amendments intended to be proposed by him to the bill, S. 652, supra; as follows:

AMENDMENT NO. 1415

At an appropriate place insert the following:

''SEC. . EXPEDITED CONGRESSIONAL REVIEW PROCEDURE.

''(a) REQUIREMENT OF LEGISLATIVE PROPOSAL.—The report on means of restricting access to unwanted material in interactive telecommunications systems shall be accompanied by a legislative proposal in the form of a bill reflecting the recommendations of the Attorney General as described in the report.

''(b) IN GENERAL.—A legislative proposal described in (a) shall be introduced by the Majority Leader or his designee as a bill upon submission and referred to the committees in each House of Congress with jurisdiction. Such a bill may not be reported before the eighth day after the date upon which it was submitted to the Congress as a legislative proposal.

''(c) DISCHARGE.—If the committee to which is referred a bill described in subsection (a) has not reported such bill at the

end of 20 calendar days after the submission date referred to in (b), such committee may be discharged from further consideration of such bill in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) FLOOR CONSIDERATION.—

''(1) IN GENERAL.—When the committee to which such a bill is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of such bill, it is at any time thereafter in order (even though a previous motion to the same effect has been discharged to) for a motion to proceed to the consideration of the bill. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the bill is agreed to, the bill shall remain the unfinished business of the respective House until disposed of.

''(2) FINAL PASSAGE.—Immediately following the conclusion of the debate on such a bill described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the bill shall occur.

''(3) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a bill described in subsection (b) shall be decided without debate.

''(e) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a bill described in subsection (b), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at anytime, in the same manner, and to the same extent as in the case of any other rule of that House.''

AMENDMENT NO. 1416

Strike out all matter proposed by the amendment and insert in lieu thereof the following:

''On page 144, strike lines 4 through 17 and insert the following:

''(b) REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.—

''(1) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the judiciary of the Senate and the House of Representatives a report containing—

''(A) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

''(B) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

''(C) an evaluation of the technical means available—

''(i) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

''(ii) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

''(iii) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

''(D) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in clauses (i) and (ii) of subparagraph (C).

''(2) CONSULTATION.—In preparing the report under paragraph (1), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

''(c) EXPEDITED CONGRESSIONAL REVIEW PROCEDURE.—

''(1) REQUIREMENT OF LEGISLATIVE PROPOSAL.—The report on means of restricting access to unwanted material in interactive telecommunications systems shall be accompanied by a legislative proposal in the form of a bill reflecting the recommendations of the Attorney General as described in the report.

''(2) IN GENERAL.—A legislative proposal described in (1) shall be introduced by the Majority Leader or his designee as a bill upon submission and referred to the committees in each House of Congress with jurisdiction. Such a bill may not be reported before the eighth day after the date upon which it was submitted to the Congress as a legislative proposal.

''(3) DISCHARGE.—If the committee to which is referred a bill described in paragraph (1) has not reported such bill at the end of 20 calendar days after the submission date referred to in (2), such committee may be discharged from further consideration of such bill in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the house involved.

''(4) FLOOR CONSIDERATION.—

''(A) IN GENERAL.—When the committee to which such a bill is referred has reported, or when a committee is discharged (under paragraph (3)) from further consideration of such a bill, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the bill. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the bill is agreed to, the bill shall remain the unfinished business of the respective House until disposed of.

''(B) FINAL PASSAGE.—Immediately following the conclusion of the debate on such a bill described in (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the bill shall occur.

''(C) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a bill described in (2) shall be decided without debate.

''(5) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

''(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a bill described in (2), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at anytime, in the same manner, and to the same extent as in the case of any other rule of that House.''

KERRY AMENDMENTS NOS. 1417–1418

(Ordered to lie on the table.)

Mr. KERRY submitted two amendments intended to be proposed by him to amendments to the bill, S. 652, supra; as follows:

AMENDMENT NO. 1417

Strike all beginning with the words ''Part II'' on line 4 of page 1 of the amendment and insert the following:

Part II of title II (47 U.S.C. 251 et seq.), as amended by this Act, is amended by adding after section 264 the following new section:

''SEC. 265. PROVISION OF PAYPHONE SERVICES AND TELEMESSAGING SERVICES.

''(a) NONDISCRIMINATION SAFEGUARDS.—On the date that the regulations issued pursuant to subsection (b) take effect, any Bell operating company that provides payphone services or telemessaging services—

''(1) shall not subsidize its payphone services or telemessaging services directly or indirectly with revenue from its telephone exchange services or its exchange access services; and

''(2) shall not prefer or discriminate in favor of its payphone services or telemessaging services.

''(b) REGULATIONS.—

''(1) In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, the Commission shall conduct a rulemaking, with such rulemaking to be concluded not later than six months after the date of enactment of this section and with all such rules as the Commission may adopt in such rulemaking to take effect concurrently no later than nine months after the date of enactment of this section, in which the Commission shall determine how each payphone service provider shall be compensated for all completed interstate and intrastate calls placed on its payphones. In the rulemaking, the Commission shall determine—

''(A) the type of compensation plan that best ensures fair compensation to payphone services providers for completed interstate and intrastate calls, except emergency calls and telecommunications relay service calls for hearing-impaired individuals which shall not be subject to such compensation, and whether the current intrastate and interstate carrier access charge payphone service elements and payments should be continued or should be discontinued and replaced;

''(B) whether to prescribe a set of nonstructural safeguards for Bell operating company payphone services to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards, if prescribed,

shall at a minimum include nonstructural safeguards equal to those adopted in the Computer Inquiry-III, CC Docket No. 90–623, proceeding; and

''(C) if Bell operating company payphone service providers should have the right to negotiate an agreement with any one or more payphone location providers which would permit said Bell operating company payphone service providers to select and contract with the carriers that carry interLATA calls to carry interLATA calls from that payphone location provider's payphones and to select and contract with the carriers that carry intraLATA calls to carry intraLATA calls from that payphone location provider's payphones; provided that nothing in this section or in any regulation adopted by the Commission shall affect any contracts between location providers and payphone service providers or between payphone location providers and interLATA or intraLATA carriers that are in force and effect as of the date of enactment of this section.

''(c) STATE PREEMPTION.—To the extent that the requirements of any State are inconsistent with the Commission's regulations adopted in the rulemaking conducted pursuant to subsection (b), the Commission's regulations on such matters shall preempt such State requirements.

''(d) RULEMAKING FOR TELEMESSAGING.—In a separate proceeding, the Commission shall determine if, in order to enforce the requirements of this section, it is appropriate to require the Bell operating companies to provide telemessaging services through a separate subsidiary that meets the requirements of Section 252.

''(e) MODIFICATION OF FINAL JUDGMENT.—Notwithstanding any other provision of law, or any prior prohibition or limitation established pursuant to the Modification of Final Judgment, the Commission is directed and authorized to implement this section.

''(f) DEFINITIONS.—As used in this section—

''(1) The term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephones in correctional institutions, and ancillary services.

''(2) The term 'telemessaging services' means voice mail and voice storage retrieval services provided over telephone lines, any live operator services used to retranscribe or relay messages (other than telecommunication relay services for the hearing-impaired), and ancillary services offered in combination with these services.''

AMENDMENT NO. 1418

At the end of the amendment, add the following:

SEC. . PROHIBITION ON EXCLUSION OF AREAS FROM SERVICE BASED ON RURAL LOCATION, HIGH COST, OR INCOME.

Part II of title II (47 U.S.C. 201 et seq.) as amended by this Act, is amended by adding after section 261 the following:

''SEC. 262. PROHIBITION ON EXCLUSION OF AREAS FROM SERVICE BASED ON RURAL LOCATION, HIGH COSTS, OR INCOME.

The Commission shall prohibit any telecommunications carrier from excluding from any of such carrier's services any high-cost area, or any area on the basis of the rural location or the income of the residents of such area; provided that a carrier may exclude an area in which the carrier can demonstrate that—

(1) there will be insufficient consumer demand for the carrier to earn some return over the long term on the capital invested to provide such service to such area, and—

(2) providing a service to such area will be less profitable for the carrier than providing the service in areas to which the carrier is already providing or has proposed to provide the service.

The Commission shall provide for public comment on the adequacy of the carrier's proposed service area on the basis of the requirements of this section.''

HOLLINGS AMENDMENT NO. 1419

(Ordered to lie on the table.)

Mr. HOLLINGS submitted an amendment intended to be proposed by him to an amendment to the bill, S. 652, supra; as follows:

At the end of the amendment, add the following:

''(c) UNIVERSAL SERVICE; ESSENTIAL TELECOMMUNICATION CARRIERS.—

''(1) APPLICABILITY.—Notwithstanding sections 103 and 104 of the Telecommunications Competition and Deregulation Act of 1995, the provisions of this subsection shall govern universal service and essential telecommunications carriers, respectively.

''(2) FINDINGS.—The Congress finds that—

''(A) the existing system of universal service has evolved since 1930 through an ongoing dialogue between industry, various Federal-State Joint Boards, the Commission, and the courts;

''(B) this system has been predicated on rates established by the Commission and the States that require implicit cost shifting by monopoly providers of telephone exchange service through both local rates and access charges to interexchange carriers;

''(C) the advent of competition for the provision of telephone exchange service has led to industry requests that the existing system be modified to make support for universal service explicit and to require that all telecommunications carriers participate in the modified system on a competitively neutral basis; and

''(D) modification of the existing system is necessary to promote competition in the provision of telecommunications services and to allow competition and new technologies to reduce the need for universal service support mechanisms.

''(3) FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE.—

''(A) Within one month after the date of enactment of this section, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) of this Act a proceeding to recommend rules regarding the implementation of section 253 of this Act, including the definition of universal service. The Joint Board shall, after notice and public comment, make its recommendations to the Commission no later than 9 months after the date of enactment of this section .

''(B) The Commission may periodically, but no less than once every 4 years, institute and refer to the Joint Board a proceeding to review the implementation of section 253 of this Act and to make new recommendations, as necessary, with respect to any modifications or additions that may be needed. As part of any such proceeding the Joint Board shall review the definition of, and adequacy of support for, universal service and shall evaluate the extent to which universal service has been protected and advanced.

''(4) COMMISSION ACTION.—The Commission shall initiate a single proceeding to implement recommendations from the initial Joint Board required by paragraph (3) and shall complete such proceeding within 1 year after the date of enactment of this section. Thereafter, the Commission shall complete any proceeding to implement recommendations from any further Joint Board required under paragraph (3) within one year after receiving such recommendations.

''(5) SEPARATIONS RULES.—Nothing in the amendments made by the Telecommunications Competition and Deregulation Act of 1995 to this Act shall affect the Commission's separations rules for local exchange carriers or interexchange carriers in effect on the date of enactment of this section.

''(6) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

''(A) Quality services are to be provided at just, reasonable, and affordable rates.

''(B) Access to advanced telecommunications and information services should be provided in all regions of the Nation.

''(C) Consumers in rural and high cost areas should have access to telecommunications and information services, including interexchange services, that are reasonably comparable to those services provided in urban areas.

''(D) Consumers in rural and high cost areas should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

''(E) Consumers in rural and high cost areas should have access to the benefits of advanced telecommunications and information services for health care, education, economic development, and other public purposes.

''(F) There should be a coordinated Federal-State universal service system to preserve and advance universal service using specific and predictable Federal and State mechanisms administered by an independent, non-governmental entity or entities.

''(G) Elementary and secondary schools and classrooms should have access to advanced telecommunications services.

''(7) DEFINITION.—

''(A) IN GENERAL.—Universal service is an evolving level of intrastate and interstate telecommunications services that the Commission, based on recommendations from the public, Congress, and the Federal-State Joint Board periodically convened under this subsection, and taking into account advances in telecommunications and information technologies and services, determines—

''(i) should be provided at just, reasonable, and affordable rates to all Americans, including those in rural and high cost areas and those with disabilities;

''(ii) are essential in order for Americans to participate effectively in the economic, academic, medical, and democratic processes of the Nation; and

''(iii) are, through the operation of market choices, subscribed to by a substantial majority of residential customers.

''(B) DIFFERENT DEFINITION FOR CERTAIN PURPOSES.—The Commission may establish a different definition of universal service for schools, libraries, and health care providers for the purposes of this section.

''(8) ALL TELECOMMUNICATIONS CARRIERS MUST PARTICIPATE.—Every telecommunications carrier engaged in intrastate, interstate, or foreign communication shall participate, on an equitable and nondiscriminatory basis, in the specific and predictable mechanisms established by the Commission and the States to preserve and advance universal service. Such participation shall be in the manner determined by the Commission and the States to be reasonably necessary to preserve and advance universal service. Any other provider of telecommunications may be required to participate in the preservation and advancement of universal service, if the public interest so requires.

''(9) STATE AUTHORITY.—A State may adopt regulations to carry out its responsibilities

under this subsection, or to provide for additional definitions, mechanisms, and standards to preserve and advance universal service within that State, to the extent that such regulations do not conflict with the Commission's rules to implement this subsection. A State may only enforce additional definitions or standards to the extent that it adopts additional specific and predictable mechanisms to support such definitions or standards.

''(10) ELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT.—To the extent necessary to provide for specific and predictable mechanisms to achieve the purposes of this subsection, the Commission shall modify its existing rules for the preservation and advancement of universal service. Only essential telecommunications carriers designated under section 214(d) shall be eligible to receive support for the provision of universal service. Such support, if any, shall accurately reflect what is necessary to preserve and advance universal service in accordance with this subsection and the other requirements of this Act.

''(11) UNIVERSAL SERVICE SUPPORT.—The Commission and the States shall have as their goal the need to make any support for universal service explicit, and to target that support to those essential telecommunications carriers that serve areas for which such support is necessary. The specific and predictable mechanisms adopted by the Commission and the States shall ensure that essential telecommunications carriers are able to provide universal service at just, reasonable, and affordable rates. A carrier that receive universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended

''(12) INTEREXCHANGE SERVICES.—The rates charged by any provider of interexchange telecommunications service to customers in rural and high cost areas shall be no higher than those charged by such provider to its customers in urban areas.

''(13) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.—A telecommunications carrier may not use services that are not competitive to subsidize competitive services. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

''(14) CONGRESSIONAL NOTIFICATION REQUIRED.—

''(A) IN GENERAL.—The Commission may not take action to require participation by telecommunications carriers or other providers of telecommunications under paragraph (8), or to modify its rules to increase support for the preservation and advancement of universal service, until—

''(i) the Commission submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives a report on the participation required, or the increase in support proposed, as appropriate; and

''(ii) a period of 120 days had elapsed since the date the report required under clause (i) was submitted.

''(B) NOT APPLICABLE TO REDUCTIONS.—This paragraph shall not apply to any action taken to reduce costs to carriers or consumers.

''(15) EFFECT ON COMMISSION'S AUTHORITY.—Nothing in this subsection shall be construed to expand or limit the authority of the Commission to preserve and advance universal service under this Act. Further, nothing in this subsection shall be construed to require or prohibit the adoption of any specific type of mechanism for the preservation and advancement of universal service.

''(16) EFFECTIVE DATE.—This subsection takes effect on the date of enactment of the Telecommunications Act of 1995, except for paragraphs (8), (9), (10), (11), and (14) which take effect one year after the date of enactment of that Act.''.

''(17) ESSENTIAL TELECOMMUNICATIONS CARRIERS—

''(A) DESIGNATION OF ESSENTIAL CARRIER.—If one or more common carriers provide telecommunications service to a geographic area, and no common carrier will provide universal service to an unserved community or any portion thereof that requests such service within such area, then the Commission, with respect to interstate services, or a State, with respect to intrastate services, shall determine which common carrier serving that area is best able to provide universal service to the requesting unserved community or portion thereof, and shall designate that common carrier as an essential telecommunications carrier for that unserved community or portion thereof.

''(B) ESSENTIAL CARRIER OBLIGATIONS.—A common carrier may be designated by the Commission, or by a State, as appropriate, as an essential telecommunications carrier for a specific service area and become eligible to receive universal service support under section 253. A carrier designated as an essential telecommunications carrier shall—

''(i) provide through its own facilities or through a combination of its own facilities and resale of services using another carrier's facilities, universal service and any additional service (such as 911 service) required by the Commission or the State, to any community or portion thereof which requests such service;

''(ii) offer such services at nondiscriminatory rates established by the Commission, for interstate services, and the State, for intrastate services, throughout the service area; and

''(iii) advertise throughout the service area the availability of such services and the rates for such services using media of general distribution.

''(C) MULTIPLE ESSENTIAL CARRIERS.—If the Commission, with respect to interstate services, or a State, with respect to intrastate services, designates more than one common carrier as an essential telecommunications carrier for a specific service area, such carrier shall meet the service, rate, and advertising requirements imposed by the Commission or State on any other essential telecommunications carrier for that service area. A State shall require that, before designating an additional essential telecommunications carrier, the State agency authorized to make the designation shall find that—

''(i) the designation of an additional essential telecommunications carrier is in the public interest and that there will not be a significant adverse impact on users of telecommunications services or on the provision of universal service;

''(ii) the designation encourages the development and deployment of advanced telecommunications infrastructure and services in rural areas; and

''(iii) the designation protects the public safety and welfare, ensures the continued quality of telecommunications services, or safeguards the rights of consumers.

''(D) RESALE OF UNIVERSAL SERVICE.—The Commission, for interstate services, and the States, for intrastate services, shall establish rules to govern the resale of universal service to allocate any support received for the provision of such service in a manner that ensures that the carrier whose facilities are being resold is adequately compensated for their use, taking into account the impact of the resale on that carrier's ability to maintain and deploy its network as a whole. The Commission shall also establish, based on the recommendations of the Federal-State Joint Board instituted to implement this paragraph, rules to permit a carrier designated as an essential telecommunications carrier to relinquish that designation for a specific service area if another telecommunications carrier is also designated as an essential telecommunications carrier for that area. The rules—

''(i) shall ensure that all customers served by the relinquishing carrier continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining essential telecommunications carrier if such remaining carrier provided universal service through resale of the facilities of the relinquishing carrier; and

''(ii) shall establish criteria for determining when a carrier which intends to utilize resale to meet the requirements for designation under this paragraph has adequate resources to purchase, construct, or otherwise obtain the facilities necessary to meet its obligation if the reselling carrier is no longer able or obligated to resell the service.

''(E) ENFORCEMENT.—A common carrier designated by the Commission or a State as an essential telecommunications carrier that refuses to provide universal service within a reasonable period to an unserved community or portion thereof which requests such service shall forfeit to the United States, in the case of interstate services, or the State, in the case of intrastate services, a sum of up to $10,000 for each day that such carrier refuses to provide such service. In determining a reasonable period the Commission or the State, as appropriate, shall consider the nature of any construction required to serve such requesting unserved community or portion thereof, as well as the construction intervals normally attending such construction, and shall allow adequate time for regulatory approvals and acquisition of necessary financing.

''(F) INTEREXCHANGE SERVICES.—The Commission, for interstate services, or a State, for intrastate services, shall designate an essential telecommunications carrier for interexchange services for any unserved community or portion thereof requesting such services. Any common carrier designated as an essential telecommunications carrier for interexchange services under this subparagraph shall provide interexchange services included in universal service to any unserved community or portion thereof which requests such service. The service shall be provided at nationwide geographically averaged rates for interstate interexchange services and at geographically averaged rates for intrastate interexchange services, and shall be just and reasonable and not unjustly or unreasonably discriminatory. A common carrier designated as an essential telecommunications carrier for interexchange services under this subparagraph that refuses to provide interexchange service in accordance with this subparagraph to an unserved community or portion thereof that requests such service within 180 days of such request shall forfeit to the United States a sum of up to $50,000 for each day that such carrier refuses to provide such service. The Commission or the State, as appropriate, may extend the 180-day period for providing interexchange service upon a showing by the common carrier of good faith efforts to comply within such period.

''(G) IMPLEMENTATION.—The Commission may, by regulation, establish guidelines by which States may implement the provisions of this paragraph.

INOUYE AMENDMENT NO. 1420

(Ordered to lie on the table.)

Mr. INOUYE submitted an amendment intended to be proposed by him to amendment No. 1303, proposed by Mr. STEVENS, to the bill S. 652, supra; as follows:

On line 1, strike ''reflecting'' and all that follows through the end of line 3 and insert in lieu thereof ''at charges that are based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the unbundled element, non-discriminatory, individually-priced to the smallest element that is technically feasible and economically reasonable to provide and based on providing a reasonable profit to the Bell operating company,''.

BREAUX (AND LEAHY) AMENDMENT NO. 1421

Mr. BREAUX (for himself and Mr. LEAHY) proposed an amendment to the bill S. 652, supra; as follows:

On page 93, strike lines 7–12 and insert the following:

''(ii) Except for single-LATA States and States which have issued an order by June 1, 1995 requiring a Bell operating company to implement toll dialing parity, a State may not require a Bell operating company to implement toll dialing parity in an intra-LATA area before a Bell operating company has been granted authority under this subsection to provide inter-LATA services in that area or before three years after the date of enactment of the Telecommunications Act of 1995, whichever is earlier. Nothing in this clause precludes a State from issuing an order requiring toll dialing parity in an intra-LATA area prior to either such date so long as such order does not take effect until after the earlier of either such dates.

''(iii) In any State in which intra-LATA toll dialing parity has been implemented prior to the earlier date specified in clause (ii), no telecommunications carrier that serves greater than five percent of the nation's presubscribed access lines may jointly market inter-LATA telecommunications services and intra-LATA toll telecommunications services in a telephone exchange area in such state until a Bell operating company is authorized under this subsection to provide inter-LATA services in such telephone exchange area or until three years after the date of enactment of the Telecommunications Act of 1995, whichever is earlier.''.

SENATE RESOLUTION 133—RELATIVE TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Mr. HELMS (for himself, Mr. LOTT, Mr. ABRAHAM, Mr. ASHCROFT, Mr. COATS, Mr. CRAIG, Mr. DEWINE, Mr. FAIRCLOTH, Mr. FRIST, Mr. GRAMM, Mr. GRAMS, Mr. HATCH, Mr. KEMPTHORNE, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. SANTORUM, Mr. SMITH, and Mr. THURMOND) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 133

Whereas the Senate affirms the commitment of the United States to work with other nations to enhance the protection of children, the advancement of education, the eradication of disease, and the protection of human rights;

Whereas the Constitution and laws of the United States are the best guarantees against mistreatment of children in our country;

Whereas the laws and traditions of the United States affirm the right of parents to raise their children and to transmit to them their values and religious beliefs;

Whereas the United Nations Convention on the Rights of the Child, if ratified, would become the supreme law of the land, taking precedence over State and Federal laws regarding family life;

Whereas that Convention establishes a ''universal standard'' which must be met by all parties to the Convention, thereby inhibiting the rights of the States and the Federal Government to enact child protection and support laws inconsistent with that standard; and

Whereas the Convention's intrusion into national sovereignty was manifested by the Convention's 1995 committee report faulting the United Kingdom for permitting parents to make decisions for their children without consulting those children: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United Nations Convention on the Rights of the Child is incompatible with the God-given right and responsibility of parents to raise their children;

(2) the Convention has the potential to severely restrict States and the Federal Government in their efforts to protect children and to enhance family life;

(3) the United States Constitution is the ultimate guarantor of rights and privileges to every American, including children; and

(4) the President should not sign and transmit to the Senate that fundamentally flawed Convention.

Mr. HELMS. Mr. President, every so often around this place we are asked to confront an idea whose time should never come, and the Senate resolution that I shall shortly send to the desk for appropriate reference is one of those very, very bad ideas.

Eighteen other Senators feel the same way about the proposed treaty called ''The United Nations Convention on the Rights of the Child.''

In addition to the Senator from North Carolina, other cosponsors are Senators LOTT, ABRAHAM, ASHCROFT, COATS, CRAIG, DEWINE, FAIRCLOTH, FRIST, GRAMM, GRAMS, HATCH, KEMPTHORNE, MCCONNELL, MURKOWSKI, NICKLES, SANTORUM, SMITH and THURMOND. I am honored to stand with such a distinguished group of Senators who feel, as I do, that President Clinton—indeed no PresidenT—should sign and transmit such a document to the U.S. Senate. If the President does attempt to push this unwise proposal through the Senate, I want him to know, and I want the Senate to know, that I intend to do everything possible to make sure that he is not successful.

Mr. President, more than 5,000 letters from across this country have poured into my office in opposition to the so-called ''Convention on the Rights of the Child.'' I have received only one letter in support of this proposed treaty. The consensus is so evident in this mass of letters. It is stated, as a matter of fact, by Ron Christensen, of Fullerton, NE, who put it this way: ''Every facet of our life is already being regulated by some 'politically correct' do-gooder. Our freedom is gradually being eroded under the pretext of 'protecting us.' This Convention, if ratified, would give children rights and privileges that they are not mature enough to handle, and would make any guidance and discipline from parents extremely difficult.'' That was Ron Christensen of Fullerton, NE.

Mr. President, the truth is, the American people are just not buying this bag of worms.

This proposed treaty is yet another attempt, in a growing list of United Nations ill-conceived efforts, to chip away at the U.S. Constitution. If ratified, this treaty would leave the United States open to hostile attacks on several fronts, particularly for any reservations to the treaty placed to try to safeguard U.S. Constitutional liberties. And from whom would those attacks come? From such gentle souls as Saddam Hussein and Fidel Castro, and other tyrants, who are just some of the parties who are signatories to that treaty.

Mr. President, let me state just one example. Recently, a United Nations committee—(established under another human rights treaty, The U.N. Covenant on Civil and Political Rights)—issued a document that would rewrite international law by reserving for itself the right to approve reservations to treaties approved by the U.S. Senate. As the saying goes, ''how do you like them apples?'' General comment No. 24 issued by the United Nations committee arrogantly states,

It necessarily falls to the United Nations committee to determine whether a specific reservation is compatible with the object and purpose of the covenant. This is in part because it is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions.

It goes on to say,

The normal consequence of an unacceptable reservation is not that the covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the covenant will be operative for the reserving party without the benefit of the reservation.

Bullfeathers, Mr. President. These reservations attached to treaties by the U.S. Senate are put there to protect the rights of the American citizens and protect the meaning of the U.S. Constitution. Yet, the United Nations claims for itself the right to strip U.S. reservations to any treaty, and nevertheless hold the U.S. bound to all of the obligations of the treaty. This attempt by the United Nations undermines the U.S. Constitution and is an outrage. I cannot believe any Senator

is naive enough to subscribe to such nonsense.

Anybody wanting to know why Americans are becoming increasingly fed up with the United Nations need only consider the words of one U.N. official who said, regarding the U.S. human rights report to the United Nations, ''The United States Constitution was not sacrosanct and had required some amendment over the years. The judiciary must be made aware of the evolving legal standards coming out of the application of the Covenant.''

So, Mr. President, the United Nations' view of the U.S. Constitution and the U.S. Senate reservations to human rights treaties is quite clear. The United Nations, not the U.S. Senate, claims to know what is best for Americans. To which the majority of Americans will reply, and I say again: ''Bullfeathers.''

In light of these statements and this insane interpretation of international law, any Senate reservation to the U.N. Convention on the Rights of the Child regarding, say, the death penalty, or routine protections of the constitutional liberties, very well could unilaterally be discarded by the United Nations, leaving the United States open to attack for failing to ''compl'' with the treaty. This treaty must be rejected on its merits, or lack thereof. The United Nations' absurd posture regarding the Senate reservations to treaties is enough to dismiss any possibility of U.S. ratification of any United Nations human rights treaty.

I will say parenthetically, Mr. President, as long as I am chairman of the Senate Committee on Foreign Relations, it is going to be very difficult for this treaty even to be given a hearing.

As for specifics of this treaty, Mr. President, Article 12 of the Convention on the Rights of the Child requires that States Parties ''shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'' What on earth does this mean? Will the U.S. be censured because a parent did not leave it to a child to choose which school to attend? Will the U.S. be censured because a parent did not allow a child to decide whether to accompany the family to church? Will the U.S. be censured because a parent did not consult a child before requiring that he or she complete family chores?

These are not Jesse Helms' hypothetical questions. A report by a Committee, established under the Convention, indicates that failure to consult a child in the previously mentioned areas are potential violations of the Convention. That report stated:

> In relation to the possibility for parents in England and Wales to withdraw their children from parts of the sex education programs in schools, the Committee is concerned that in this and other decisions, including exclusion from school, the right of the child to express his or her opinion is not solicited. Thereby the opinion of the child may not be given due weight and taken into account as required under article 12 of the Convention.

Does this mean, Mr. President, that American parents will be forced to allow their children to attend sex education classes?

The constituent whom I quoted when I began these remarks lamented the possibility of more politically correct do-gooders regulating every facet of our lives. The American people do not need yet another body determining what is in the best interest of U.S. families. And the Senate should not inflict one on them. The U.N. Convention is incompatible with God-given rights and responsibilities of parents to raise their children. It is grotesque even to imagine handing this important privilege over to U.N. bureaucrats. The laws and traditions of the United States affirm the right of parents to raise their children and to transmit to them their values and religious beliefs.

Mr. President, the United States Senate must not dignify this strange document by allowing the U.N. Convention on the Rights of the Child to be considered. That is why my distinguished colleagues and I are pleased to offer this Resolution requesting that the President refrain from any temptation to submit this proposed treaty to the Senate.

NOTICE OF HEARING

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that three field hearings have been scheduled before the Subcommittee on Forests and Public Land Management.

The first hearing will take place on Wednesday, July 5, 1995, at 9 a.m. at the Senior Citizen's Center, County Road Route 1, Grangeville, Idaho, 83530. The purpose of the hearing is to: First, review and assess the nature and extent of impacts—both immediate and long term—on local communities caused by significant changes in Forest Service programs; and second, determine to what extent, if any, the Forest Service takes these impacts into account in initiating program changes. The hearing also will evaluate the Forest Service's record in setting and achieving output goals, and the reasons for significant problems in this area.

The second hearing will also take place on Wednesday, July 5, 1995, and will begin at 2 p.m. at the Clearwater River Room; Williams Conference Center; Lewis-Clark State College, 500 8th Avenue, Lewiston, Idaho, 83501. The purpose of the hearing will be to receive testimony on a property line dispute within the Nez Perce Indian reservation in Idaho.

The third field hearing will take place on Friday, July 7, 1995, at 9:30 a.m. at the Quality Inn, Westwater, in the Fir Room, 2300 Evergreen Park Drive, Olympia, Washington, 98502. The purpose of this oversight hearing is to: First, review the Forest Service's use of the RPA Timber Assessment for developing timber harvest programs and budgets; and second, determine if the process adequately addresses ways to solve emerging international environmental impacts as a result of domestic timber supply shortages.

Because of the limited time available for the hearings, witnesses may testify by invitation only. It will be necessary to place witnesses in panels and place time limits on oral testimony. Witnesses are requested to submit one copy of their testimony to the committee by close of business Friday, June 30, 1995, and to bring three copies of their testimony with them on the day of the hearing.

The hearing record will remain open for two weeks following each hearing. If you wish to submit a written statement for the hearing record, please send one copy of your statement to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Wednesday, June 14, 1995, at 9 a.m., in SR–332, to mark up welfare reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 10 a.m. on Wednesday, June 14, 1995, in open session, to receive testimony on the situation in Bosnia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session on the Senate on Wednesday, June 14, 1995, to conduct a hearing on S. 648, the D'oench Duhme Reform Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for an executive session, during the session of the Senate on Wednesday, June 14, 1995, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, June 14, 1995, at 2 p.m. to hold an open hearing on the nomination of George Tenet to be Deputy Director of Central Intelligence.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON IMMIGRATION

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Subcommittee on Immigration, of the Committee on the Judiciary, be authorized to hold a business meeting during the session of the Senate on Wednesday, June 14, 1995, at 9:30 a.m., to consider S. 269.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WESTERN HEMISPHERE AND PEACE CORPS AFFAIRS

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Subcommittee on Western Hemisphere and Peace Corps Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 14, 1995, at 10:30 a.m. to hear testimony on the Cuban Liberty and Democratic Solidarity Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE REAUTHORIZATION OF INDIVIDUALS WITH DISABILITY EDUCATION ACT [IDEA]

• Mr. HATFIELD. Mr. President, soon this Congress will consider the reauthorization of what we used to know as special education, and is now referred to as the Individuals With Disability Education Act or IDEA.

In an effort to determine how well IDEA is accomplishing its purpose and to learn of possible improvements in the existing law, I recently requested input from my constituents on this important piece of legislation. As a result of this request, I have received more than 100 responses including letters, phone calls, faxes, and visits. I have included with this floor statement a summary of the comments from Oregonians.

I have a longstanding interest in flexibility in the application of Federal education regulations. IDEA is one of the most heavily regulated education programs provided by the Federal Government. As Congress begins to review the authorization for IDEA, I am hopeful we will examine flexibility which can be provided to improve its implementation.

I ask that this report be printed in the RECORD following my remarks.

The report follows.

COMMENTS ON REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITY EDUCATION ACT (IDEA)

In February, the office of Senator Mark O. HATFIELD sent out letters requesting an evaluation of the Individuals with Disabilities Education Act (IDEA). Letters were sent to Oregon education agencies, professional organizations, advocacy groups, parents, and school districts. More than 100 responses were received. The following is a summary of the comments and suggestions made by these constituents. Only those components of IDEA that were the most frequently identified are included in this report.

POLICIES AND PROCEDURES

The policies and procedures implemented by IDEA were identified as positive factors by many writers. Many letters from parents, support groups, and friends indicated that they feel the policies and procedures are basically working and do help families with the education of disabled children. Many expressed that the involvement of parents was valuable and the MDT (Multi-Disciplinary Team) approach was beneficial. Building access was also mentioned as one of the benefits of IDEA.

Many constituents listed litigation as a primary concern. It is costly in time, resources, and money. Parents and professionals often do not have a strong relationship at school. The legal system has made the relationship adversarial rather than cooperative.

Suggestions were made for Congress to limit litigation by requiring mediation prior to due process, to create a parent/professional relationship by mandating in-services for parents and professionals working together, and to make the law less adversarial.

The disproportionate amounts of money being spent on a relatively few handicapped students is a serious source of conflict between the Special Ed and general education groups—particularly parents. Some contend that students suffer in overloaded and underfunded classrooms because of the high costs of Special Ed.

Congress should consider a limit or elimination of the disproportionate areas of funding of the law, limit parent claims or cap the amount that can be spent on one child, and work to eliminate or reduce the high cost of litigation and high cost services.

FUNDING

The lack of adequate funding was frequently mentioned. The financial burden of IDEA on the local district is egregious.

The Federal government needs to increase level of funding. Mandates without funding should be seriously reviewed and reconsidered. Regulations should restrict or limit the funds available to lawyers, for private treatments and schools, and costs of Special Ed.

INDIVIDUAL EDUCATION PLANS [IEP'S], EVALUATION, AND TRANSITION

Many letters supported the IEP's as being worthwhile. The IEP system is working and is a great help to parents and students. However, many writers expressed dissatisfaction over the structure of the form stating that the IEP's are not appropriately structured now, especially for high school students. IEP's may also inhibit a teachers approach and often do not involve parents. IEP's are labor intensive and require extensive amounts of time on the part of personnel who should be serving the child.

It was suggested that high school IEP's should reflect the high school educational system and requirements. Teachers should be allowed to focus on outcomes and be allowed flexibility. One suggestion was to eliminate the short-term instructional objectives. Regulations should ease technicalities and make teachers and parents more a part of the IEP process.

CURRENT CLASSROOM PRACTICES

One of the classroom practices praised most often is the placement of disabled students into the least restrictive environment. A few mentioned the practice of inclusion, however many more were concerned about the recent trend by the courts to require inclusion for ALL students.

Many people felt that Special Ed students are over protected when it comes to causing hazardous situations. Schools should be allowed to remove violent students for long periods of time, regardless of their disabilities. There should not be two sets of standards for schools when it comes to handling dangerous students.

Another area of concern involved the classroom practices for deaf students. Deaf students and parents are often not informed of the many options available to educate deaf students. Schools tended to offer only ''signing'' and ignored other forms of training.

Alternative placements and programs should be offered and considered by the placement team for deaf students.

TEACHERS AND STAFF

Many letters from parents praised the dedication and hard working teachers and related staff.

Education institutions reported that the amount of paper work is horrendous. Time requirements (doing reports and attending meetings, hearings, and conferences) on the part of teachers is burdensome. Burnout and drop-outs are common with Special Ed teachers and staff.

Teachers should be allowed flexibility in meeting the needs of students in a more expeditious fashion, i.e., the parental notification requirements should be streamlined. Focus should be on outcomes and successes and less on the legal technicalities.

Another weakness that was mentioned in several of the communications concerned the regular classroom teacher. It was felt that many of these teachers do not have the training needed to cope with the needs of special ed students. Teachers should be trained in communication skills and in the needs of Special Ed youngsters.

CONCLUSIONS

Most of the comments were supportive of the intent and operation of the current law. However, many had serious problems with certain key aspects. The concern most frequently mentioned was with the safety issue when Special Ed children were dangerous to the classroom environment. This received the most serious discussion and emotional responses.

Following closely behind was the issue of litigation. School districts are concerned with the costs of this process, both in time and money, to the district. The conclusion of due process is often not in the best interest of the child but satisfies the parents and lawyers. Litigation is also responsible for the adversarial nature of the relationship between families and the district. However, families feel that the threat of due process forces the district to seriously consider the needs of the Special Ed child and gives parents needed clout.

Another major concern is the lack of funding for this mandated program. The Federal share is only a very small part of the required costs. As was mentioned above, litigation has become an ever increasing cost to the districts. The fear of due process hearings and the associated costs are forcing districts into expensive procedures to please parents to avoid court. Of concern to districts is the tremendous cost to the district to provide Special Ed services to one child resulting in a lack of services to the majority of students.

The burnout and dropout of teachers in Special Ed programs is a major concern of those in the profession. The pressure of possible and actual litigation, the required paperwork, the lack of funds, the time required

for meetings, and the process of inclusion all work to drive qualified teachers from this area of education. Many districts are now finding it impossible to fill Special Ed vacancies with qualified applicants. It is anticipated that this trend will continue with new teachers taking Special Ed teaching jobs to enter the profession, then moving to the regular classroom as opportunities arise, and the Special Ed teaching position left open to try to fill again.●

PRECISION AGRICULTURE

● Mr. MCCONNELL. Mr. President, emerging technologies in production agriculture are changing and improving the way farmers produce food and fiber in this country. New technologies such as global positioning satellite field mapping, geo-reference information systems, grid soil sampling, variable rate seeding and input applications, portable electronic pest scouting, on-the-go yield monitoring, and computerized field history and record keeping are just a few of the next generation technological tools in use today.

These technologies allow the agriculture producer to adjust hundreds of variables in the farm field, from soil pH to nutrient levels to crop yield, on a 2-foot-by-2-foot grid that were previously far too costly calculate for each field. Today, these technologies can map these variables and data instantaneously as an applicator or combine drives across the field. In short, each farm field using precision technology becomes a research pilot. And in the down months or winter season a farmer can collect the data from the previous growing season and adjust dozens of important agronomic variables to maximize the efficient use of all the farmers inputs: time, fuel, commercial inputs, seed rate, irrigation—the light goes on and on.

These precision farming tools are already proving to help farmers increase field productivity, improve input efficiency, protect the environment, maximize farm profitability, and create computerized field histories that may help increase land values. Collectively, these and other emerging technologies are being used in a holistic, site-specific systems approach called precision agriculture. Progressive and production minded farmers are already using these technologies. In a decade they may be as common place on the farm as air conditioned tractor cabs and power steering.

Precision farming seems to offer great promise for improving production performance. Inherently, it just sounds very appealing to be able to evaluate production conditions on an individual square foot, yard or acre basis rather than that of a whole field. It would seem that we should be able to treat any situation more appropriately the smaller the plot we are considering. There have been great strides in measuring things on the basis of smaller and smaller units on the ground than we have ever realistically envisioned in the past. Measuring yields as we harvest. Being able to collect soil samples on a very small pilot basis and apply prescribed corrective measures on the go. All of these things are possible. They are being done on an experimental basis in many locations. Some producers have adopted the new technology and are using it.

Precision farming is, in its simplest sense, a management system for crop production that uses site-specific data to maximize yields and more efficiently use inputs. The technology is quickly gaining acceptance and use by producers, farm suppliers, crop consultants, and custom applicators.

Precision farming links the data-management abilities of computers with sophisticated farm equipment that can vary applications rates and monitor yields throughout a field.

In my home State of Kentucky, the University of Kentucky has been involved in research and application of global positioning systems and yield mapping capability and will be demonstrating these technologies at the University of Kentucky's biannual Field Day, July 20.

These space-age technologies that allow farmers nationwide to increase yields while protecting the environment will be on display June 19, from 9 a.m. to 4 p.m. at the Congressional Field Day on Precision Agriculture at the USDA Agriculture Research Center in Beltsville, MD.●

SALUTE TO TENNESSEANS FOR VALIANT RESCUE EFFORT

● Mr. FRIST. Mr. President, I rise today to commend two Tennesseans for their heroic effort in rescuing Air Force Capt. Scott O'Grady last week. Marine S.SGT. Michael Robert Brooks and Marine Lance Cpl. Glenn Miller both participated in the helicopter rescue mission in hostile Bosnian territory, and they deserve our greatest thanks.

Not only did Sergeant Brooks and Corporal Miller display tremendous valor in their service to the United States, but their participation, as well as Captain O'Grady's will to survive, helped restore confidence in our military readiness, and finally brought a small bit of good news from this war torn part of the world.

Based aboard the U.S.S. *Kearsarge*, both Miller and Brooks had been specially trained for missions like this one. That training helped them to successfully locate O'Grady in the heavily forested Bosnian countryside and to dodge at least one anti-aircraft missile as the helicopter returned to its base.

Regardless of whether the United States' involvement in the war in Bosnia is right or wrong, Tennesseans and all Americans can look to Brooks and Miller as true heroes. And as Independence Day nears, they and their colleagues remind us of the soldiers who have gone before them, those who have fought and those who have given their lives to preserve our freedoms, liberties, and well-being.

Mike Brooks graduated from Hillwood High School in West Nashville in 1982. His parents, James Robert and Raye Brooks, live in Bellevue. He is married with a 4-year-old daughter, and will continue his service aboard the U.S.S. *Kearsarge* until October. Glenn Miller graduated from Greeneville High School in 1992. Before joining the Marines, he attended Northeast State Technical College near Blountville. His mother, Nancy Miller, lives in Greeneville.

This week, I talked with each of their parents, and asked them to convey to their sons my congratulations and the best wishes of the entire U.S. Senate for a job well done. They should be proud of their continued service to our Nation.

Sergeant Brooks' and Corporal Miller's bravery and heroism in locating our missing pilot have made the entire State of Tennessee proud. Today, Mr. President, on behalf of all Tennesseans and all Americans, I would like to thank them for their patriotism and service to this great country.●

COL. LARRY R. SLOAN

● Mr. WARNER. Mr. President, I rise today to honor Col. Larry R. Sloan, U.S. Army, on the occasion of his retirement from the military following 26 years of honorable and distinguished service to the Nation.

The majority of Colonel Sloan's service has been within the realm of Army and Special Operations Forces aviation, where he flew numerous combat missions spanning two different conflicts. In Vietnam, he served as an OH–6 pilot, performing numerous perilous scout missions, during which he was often exposed to intense enemy fire. Then in 1982, as a member of the Army's Special Operations Force, he flew missions in the early stages of Operation Urgent Fury in Grenada. During that action, Colonel Sloan sustained wounds for which he was awarded the Purple Heart.

During his 26 years as an officer and soldier, Colonel Sloan has performed in a number of critical jobs of increasing responsibility, including leading troops at all levels up to battalion command. During the past 5 years Colonel Sloan has served as the Director of Legislative Affairs for the U.S. Special Operations Command. In that capacity, Colonel Sloan has established a solid reputation, among members and staff, as a knowledgeable, candid and totally professional representative of both the military and the special operations community. His consummate expertise and ''can do'' attitude have played a significant role in giving our Special Operations Forces strong credibility on Capitol Hill.

I trust that my colleagues will join me in commending and extending the appreciation of the U.S. Senate to Colonel Sloan for his distinguished service to the people of the United States. I wish him well for continued success in all his future endeavors.●

PRESSLER AMENDMENT TO THE CONCURRENT BUDGET RESOLUTION

● Mr. MCCONNELL. Mr. President, I rise to clarify my vote on the Pressler amendment #1178 (rollcall vote No. 212)

to the concurrent budget resolution opposing the sale of Power Marketing Administrations [PMA's]. I did not intend to cast my vote in favor of the sale of the PMA's. However, my vote would not have affected the final outcome.

Mr. President, I have subsequently joined 18 of my colleagues in cosigning a letter by Senator PRESSLER requesting the Senate Budget Conferees honor the recommendation of the Senate on this matter. I ask that a copy of the Pressler letter be printed in the RECORD.

The letter follows:

U.S. SENATE,
Washington, DC, June 9, 1995.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: During consideration of the FY 1996 Concurrent Resolution on the Budget, the Senate overwhelmingly supported an amendment which opposed the sale of the Power Marketing Administrations (PMAs) within the 48 contiguous states. The purpose of this letter is to ask you to honor that recommendation and refrain from including any language regarding PMA sales in the final Budget Resolution and adjust the current instructions to the authorizing committees accordingly.

As you know, the PMAs provide affordable and reliable electricity to small cities and rural communities throughout the U.S. without adding to the federal deficit. In fact, the PMAs provide a steady revenue stream to the Federal Treasury. The Treasury will net more than $240 million from the PMAs this year, and has realized more than $9 billion in interest payments during the life of federal investment in the PMAs. Far from being a drain on the Treasury, the PMAs contribute revenue.

In addition, sale of the PMAs would mean electric rate increases for consumers. While estimates of rate increases vary from 30 percent to 300 percent, any increase would amount to nothing more than a backdoor tax on the middle class. Higher electric rates also would adversely impact homeowners, small businesses, farmers, ranchers who irrigate, and school districts—people who can ill afford another hit to their pocketbook by the Federal Government.

The PMAs are a vital part of our Nation's utility infrastructure. Therefore, we urge the conferees not to include the sale of the PMAs in the final version of the Congressional budget resolution and to adjust the present instructions to the authorizing committees accordingly.

Thank you for your attention to this matter of great importance to PMA providers and consumers.●

REMEMBER THE FLAG

● Mr. CRAIG. Mr. President, today is a day of remembrance and a day of reflection. Today is a day to rejoice that we are citizens of the United States. Today is Flag Day.

Many flags are flown on numerous occasions throughout the year, on buildings, houses, and lodges. Many Americans proudly wear the flag every day on a pin or necklace. However, the American flag is not just a piece of cloth, metal, or plastic. It is a symbol of America and what she stands for. It is a symbol of the values our Founding Fathers protected in our Constitution.

Those values—freedom, liberty, and independence, remain vital to every American, regardless of race, creed, color, cultural heritage, or national origin.

Our country has undergone many changes over the centuries, some subtle and some drastic. Our flag has also changed since its birth over 200 years ago, yet it has remained a symbol of justice and freedom recognized around the globe.

These reasons are exactly why we need an amendment to the Constitution enabling Congress and the States to protect our flag. We owe it to those men and women who fought under the flag to protect our country and our freedoms. We owe it to those who are fighting for freedom around the world, inspired by American ideals embodied in the flag. We owe it to our future generations.

Mr. President, I hope my colleagues will join me in celebrating our flag—not just on this Flag Day 1995, but every day.●

FLAG DAY, JUNE 14, 1995

● Mr. D'AMATO. Mr. President, I rise today to celebrate an important holiday in this country, Flag Day. Since the birth of our Nation, the flag has waved in triumph over tyranny. It has been the symbol for freedom and democracy across the world. For generations, Americans have proudly and fiercely fought for our flag and the freedom that it represents.

In 1916, President Woodrow Wilson decided that our flag deserved a day of recognition. Proclaiming June 14th as Flag Day, the stars and stripes gained the respect that it deserved. Every year since, Senators have come to the floor to express their devotion to the flag and to pay respects for those who have fought to defend it. For all the soldiers who gave their lives and for their families who lost a loved one, the flag should be cherished and revered, not burned and trashed merely as a means of expression.

On Flag Day, I would like to renew my pledge to support efforts to protect our Nation's flag.●

EARNED INCOME TAX CREDIT

● Mr. ROTH. Mr. President, I join Senator NICKLES to introduce legislation to reform fraud, abuse, and runaway spending in the Federal Earned Income Tax Credit [EITC] Program.

As you know, the EITC Program was created back in the seventies as an alternative to President Nixon's proposal to provide cash welfare to poor two-parent families; later, it was expanded to encourage the working poor to remain working—to get off welfare, altogether. The original purpose of the EITC was to help poor families—families with children—pay their regressive Social Security taxes. It was a modest program in the beginning. The credit maximum was $400, and it helped offset the sting of Federal taxation for those who weren't making a lot of money.

Today the program needs to be reformed for three primary reasons:

The first reason is because over the years the EITC has been a target for those who would commit fraud and abuse the original intent of the program. It's hard to put an exact number on how much money is being lost to fraud and abuse. Treasury estimates that today the losses are in the billions of dollars per year—in fact, up to $5 billion a year—and the GAO has estimated that some $25 billion has been lost since the program began.

The second reason the program needs to be reformed is because it, like many other Government programs, has grown out of control. In 1982, the program cost less than $2.1 billion. By 1988, the price tag was $5.6 billion. After President Clinton expanded the program—claiming it as a middle-class tax break—it grew to $15 billion, and is expected to cost our taxpayers $36 billion by 2002. In fact, in the last 10 years, the program has grown an incredible 1,425 percent. In all this, the original intent of the program has been lost as the EITC has been turned into another Federal giveaway program. Yearly expenses associated with the EITC have grown more than five-fold since 1988 alone. Today, one in five American families collect the EITC. It is the fastest growing entitlement program in America. This growth—the sheer size of the program—makes the EITC even a more attractive target for fraud and abuse.

And the third reason the program needs to be reformed is because over the years Congress and the President have opened the EITC to those who do not even need the Federal welfare assistance. President Clinton has called his opening of the EITC a middle-class tax break. But this is a misleading definition. This program actually hits the middle class with higher taxes, and transfers that wealth to any and all who can simply meet Federal requirements. The people meeting those Federal requirements may actually be enjoying a higher standard of living than those who get taxed to pay for their welfare benefit. In fact, millionaires can qualify for EITC assistance, if their wealth is held in assets such as a million-dollar home.

This is not what the program intended. For example, under the program as it is currently in law, a family of four, living in Wilmington, DE, earning $29 thousand a year gets taxed so the Federal Government can give their money to a family making just a couple of thousand less a year, even though the second family lives in a part of America that has a much lower cost of living. Their money could go to an individual or family who have millions of dollars in real estate or other assets, but who keep their annual income below the qualifying income level. Their money could also go to a graduate student who works during the

summer, makes less than $9 thousand, and claims EITC assistance when filing his or her income tax. In fact, their money, under current law, could even go to pay EITC to illegal aliens. This money comes from hard-working, middle-class Americans—men, women, and families who, in many cases, are not any better off than the folks receiving the welfare assistance from the EITC.

These abuses are not what we intended when the program was passed in the mid-1970's. The program was intended to assist families with children. Our effort with this bill is to get the program back to this mission.

Under our bill, the growth rate of the EITC program would be slowed; the top income eligibility level would be retained—rather than increased—to concentrate the program on the poor and reduced waste, fraud, and abuse. Our bill would deny the tax credit to illegal aliens and include nontaxed sources of income and substantial amounts of wealth to determine eligibility. Our measure would also repeal the 1993 extension of the credit to taxpayers without children. The program was originally intended to assist our Nation's children, and we must get back to that most basic of requirements. We also add significant compliance rules in order to help the IRS wring the fraud and abuse out of this program.

These measures, Mr. President, according to the Joint Committee on Taxation, would save our taxpaying families some $125 billion over 10 years—$125 billion—a significant amount of money, especially in this time of budget constraints and increased fiscal responsibility. This bill is a good first shot not only at tax reform, but welfare reform. It is fair. It will help promote honesty and restore integrity to what is an important Federal program, while retaining the full program for those most in need.

Both the working poor who receive the tax credit and taxpayer who pays for it, deserve an earned income tax credit program that works efficiently and effectively. This bill is a strong step in the right direction. I encourage my colleagues to join us to see it passed, and I ask that a few articles outlining the EITC, a copy of our bill—S.899—and its summary, follow my remarks in the RECORD.

The material follows:

EITC REFORM PROPOSALS SUMMARY

1. Deny the EITC to Illegal Aliens: Under this proposal, only individuals who are authorized to work in the U.S. would be eligible for the EITC. Taxpayers claiming the EITC would be required to provide a valid social security number for themselves, their spouses, and qualifying children. Social security numbers would have to be valid for employment purposes in the U.S. In addition, the IRS would be authorized to use the math-error procedures, which are simpler than deficiency procedures, to resolve questions about the validity of a social security number. Under this approach, the failure to provide a correct social security number would be treated as a math error. Taxpayers would have 60 days in which they could either provide a correct social security number, or request that the IRS follow the current-law deficiency procedures. If a taxpayer failed to respond within this period, he or she would be required to refile with correct social security numbers in order to obtain the EITC. Effective date of enactment. (From President Clinton's FY 1996 Budget proposals)

JCT REVENUE ESTIMATE

[In billions of dollars, in fiscal years]

	1995	1996	1997	1998	1999	2000	5 year total	10 year total
Math-error procedure	.....	.007	.137	.142	.142	.144	0.571	1.301
Require SSNs work-related for primary and secondary taxpayers	.....	.004	.082	.085	.088	.091	0.350	0.858

2. Repeal the Childless Portion of the EITC: In the 1993 Budget Reconciliation bill, effective beginning in 1994, the EITC was expanded to include taxpayers with no qualifying children for the first time. Since about 85% of the EITC is a ''budget outlay,'' and therefor primarily a welfare program, and since welfare programs have traditionally been aimed at helping children rather than able-bodied adults, this part of the program should be eliminated. In addition, this part of the EITC provides for a maximum credit of only $314 in 1995, and begins to phase-out at as little as $5,140, and therefor is of such insignificance as to offer little or no real work incentive. Since the EITC is designed primarily as a ''work incentive,'' this part of the program should be eliminated.

JCT REVENUE ESTIMATE

[In billions of dollars, in fiscal years]

	1995	1996	1997	1998	1999	2000	5 year total	10 year total
Repeal of childless EITC		.031	.616	.641	.669	.702	2.659	6.636

3. Freeze EITC at 1995 Levels to Reduce Fraud: Just since 1988, the EITC expenditures have grown five-fold. In addition, fraud and error rates have consistently remained in the range of 30 to 40% of expenditures for about 15 years—since studies began on the issue. Until 1990, the credit was limited to a maximum rate of 14%, but since that time the maximum rate of the EITC under the law has been increased to a maximum of 40% beginning in 1996—or almost three-fold. When the level of the credit was closer to the payroll tax level (7.65/15.30%) there was considerably less incentive for tax cheats and fraud artists to game the system, however, as a result of the dramatic increase in the level of the credit, the fraud incentives are significantly higher. Under current law, the size of the benefit available from the program no longer bears any relationship to taxes owed by the person making the claim. Accordingly, given our self-assessment tax system, it is just too easy to file a fraudulent claim that is virtually undetectable by the IRS. Suspending the rate of the credit at a maximum 36% (reducing it slightly to 35% in 1996) will discourage fraud artists, and also slow the growth of this program, which is by far the fastest growing entitlement in the federal budget.

Some have argued that the EITC is merely a refund of social security taxes, income taxes and excise taxes. However, almost all of the EITC is a ''refundable'' amount in excess of income taxes actually paid (approximately 85% of the EITC). In addition, neither social security taxes, nor excise tax burdens are increasing for those eligible for the EITC. Thus, the argument that further increases in the EITC are necessary in order to offset taxes paid by EITC beneficiaries is not valid. As a result, the EITC should not be allowed to continue to increase annually, since the tax burden on EITC recipients is not increasing.

In addition, the phase-out range for the credit has increased from 20,264 in 1990, to a scheduled level of $28,553 in 1996—for an increase of over 40% in just 6 years, which is about twice the rate of inflation over the period. Because this growth is unprecedented during a period of high budget deficits the outlays for this program's growth should be suspended, to allow true inflation to catch up. If later Congress should decide to increase the size of the program, when budgets allow, then the inflation growth factor in this welfare program could be voted on at that time. Under this amendment, EITC indexing would be suspended indefinitely.

ICT REVENUE ESTIMATE

[In billions of dollars, in fiscal years]

	1995	1996	1997	1998	1999	2000	5 year total	10 year total
Freeze EITC rates in phaseout at 1995 Level	.....	.192	3.918	5.625	7.457	9.407	24.835	91.911

4. Increased Scrutiny for Wealth Tests: As a result of the President's budget proposals and concerns from several Congressional offices, changes were passed as part of H.R. 831 to attempt to restrict the EITC to truly low-income working Americans. Under current

law, many wealthier Americans can claim the EITC resulting in the unfair result of poorer Americans paying taxes to pay welfare benefits to those wealthier than they are. Substantial progress was made by denying the EITC to taxpayers with aggregate ''disqualified income'' exceeding $2,350. This income includes: (1) interest and dividends, (2) tax-exempt interest income, and (3) net income from rents and royalties.

This proposal would go further in tightening this loophole by adding net estate and trust income, net passive income from business assets and net capital gains to the wealth test. In addition, the current level of $2,350 equates to financial assets of about $40,000 based on a 6% simple annual realized return, which is much higher than asset/wealth tests for other welfare programs. For example, under the AFDC program, if a family has more than $1,000 in assets they lose their welfare benefits. While under this proposal, a threshold of $1,000 of income would equate to a presumed value of underlying assets of about $16,700 (assuming a 6% simple annual realized return), which although generous compared to the AFDC rules, would be more appropriate than the current wealth test. The value of homes, cars and other personal assets would still remain outside of this asset test. If this wealth test is not substantially improved, the result will continue to be that taxpayers with significantly less wealth will be paying taxes into a system which will redistribute the income to those with greater wealth under this welfare program, resulting in more unfairness in the income tax system than otherwise would exist.

JCT REVENUE ESTIMATE

[In billions of dollars, in fiscal years]

	1995	1996	1997	1998	1999	2000	5 year total	10 year total
Add estate and trust income, net passive business income and net capital gains income	.....	.006	.115	.123	.136	.150	0.529	1.468
Reduce threshold to $1,000	.....	.019	.385	.400	.427	.464	1.696	4.200

5. Fairness Requires Equal Income Tests: Under the EITC, the credit is phased-out as the taxpayer receives more ''earned income,'' or as the taxpayer's adjusted gross income (AGI) increases. The phase-out ranges for both tests are the same. In addition to earned income, AGI includes income from other sources, such as investment, alimony and unemployment. However, AGI does not include other sources of income that nevertheless provide financial support and economic income to families. In general, welfare programs like the EITC should not be paid to beneficiaries who are financially better off than other taxpayers who may be less well off. Particularly if those less well off are still paying income taxes to the Federal Government.

Under this proposal, the AGI test under the EITC would be expanded to include other forms of income offering substantial non-taxed, economic benefits to families. These other sources would be: (1) non-taxable social security income, (2) child support payments, (3) tax-exempt interest, and (4) non-taxable private pension distributions.

In addition, Treasury would be asked to undertake a study to determine if the current law tax treatment of child support payments is appropriate, or if alternatives should be considered to encourage payment of child support liabilities by parents of the child, and what alternatives would make both parents more responsible for the child's economic well-being.

JCT REVENUE ESTIMATE

[In billions of dollars, in fiscal years]

	1995	1996	1997	1998	1999	2000	5 year total	10 year total
Modify AGI to include non-taxed Society Security income, child support payments, tax-exempt interest and non-taxed private pensions	.....	.102	2.037	2.125	2.205	2.327	8.797	21.668

6. Deny or Delay the EITC Until the IRS has a Matching W–2: This rule would preclude a taxpayer from receiving the refundable portion of EITC unless the taxpayer's earnings are listed on a W–2 form, or for which self-employment tax has been paid in the case of a self-employed taxpayer. If quarterly payroll taxes have been filed, or once W–2s have been filed by an employer, the IRS could refund the EITC. This program would not take effect until 1997 in order to allow the IRS to put into place the proper monitoring facilities. Within one year of passage the Treasury would be required to report to the Congress likely time delays that would result for refundable earned income tax credits.

JCT REVENUE ESTIMATE

[In billions of dollars, in fiscal years]

	1995	1996	1997	1998	1999	2000	5 year total	10 year total
W–2 Match Requirement	.....	?	?	?	?	?	?	?

7. Electronic Return Originators Must be Checked: During the 1995 filing season, the IRS instituted fingerprint and credit checks on new ERO applicants to better ensure that only appropriate and responsible individuals participate in electronic filing. Of the 33,000 applications this year that had to undergo suitability checks, 1,500 applicants were rejected because of failure to meet the admission requirements. This provision would require that IRS complete these same tests for all EROs, and not just new applicants. Thousands of EROs from prior years are still in the system have not been checked. This change would require that all EROs have this minimum check completed before electronic returns are processed by the IRS.

JCT REVENUE ESTIMATE

[In billions of dollars, in fiscal years]

	1995	1996	1997	1998	1999	2000	5 year total	10 year total
ERO Background Check	.....	?	?	?	?	?	?	?

TOTAL PACKAGE 1–7 JCT ESTIMATE

[In billions of dollars, in fiscal years]

	1995	1996	1997	1998	1999	2000	5 year total	10 year total
Totals	.....	.361	7.290	9.141	11.124	13.285	39.437	128.042

[From The Tax Racket—Government Extortion from A to Z]

CHAPTER 8—EARNED INCOME TAX CREDIT

(By Martin L. Gross)

Washington has had the middle class in its fiscal gunsights for the longest time. Let's see how much we can take out of their pockets, say Washington tax experts, and give it away to everybody else.

To whom? It makes no difference as long as we hit the cash cow, the working families who make from $30,000 to $90,000 a year and pay most of the individual income taxes.

The fastest wrinkle in this nefarious plan is the Earned Income Tax Credit, a gimmick that Washington propagandists have labeled a boon to taxpayers.

Let's say you live in Little Rock, Arkansas, and earn only $24,000 a year. Chances are you're not so bad off. After all, even the full-

-time lieutenant governor of the state makes only $29,000.

You've got a $75,000 three-bedroom house and your property tax is only $950, a real laughter. (It's closer to $500 in the rest of the state.) You've got enough money for a decent life, even for a good $6 dinner.

Still, Uncle Sam feels sorry for you. In fact, you're eligible for a reverse tax—a burgeoning welfare program called Earned Income Tax Credit, which grants tax credits, even delivers checks from the IRS. This is not peanuts. The EITC bonanza will soon run as high as $3,370 per family and cost us $28 billion a year annually!

Is this government tax scheme, which was enormously expanded by President Clinton in 1994, just for the poorest of the poor?

Hardly. In fact, the Little Rock homeowner, who needs no federal handout, is included in the EITC dole. By 1996, it will go to families of four making as much as $27,000.

Is EITC just for a handful of Americans? Hardly. In 1995, credits and checks will go out to some 17 million American families—or some 55 million people. And beginning this year, families without children and even single folks will be eligible—the opposite of the family program's intent.

So what, you say? Isn't it a good idea that keeps the working poor off welfare?

That was the concept. It's OK at first glance, but the closer you get the more it looks like a tax scandal that takes money from the already-drained middle class and moves it, wholesale, from one part of the country to the other, and from high-cost suburbs to cheaper rural areas, and even from one neighbor in a town to the other.

It's the biggest geographic transfer swindle in the history of the nation, and one of the many hidden taxes invented by Washington.

The truth is that the EITC money for the Arkansas family (and people in other low-cost, low-tax states) comes from the taxes and out of the pocket of the very same type of family, living in the same kind of house, but in a more expensive part of the country.

The new tax sucker may have a larger income on paper, but because of his higher cost of living, including higher local and state taxes, he's actually much poorer than many people getting EITC tax relief. He has a miserable fiscal existence, and he's the one paying for the EITC!

Let's look at the Smith family on Long Island, New York. They're making $33,000 a year, the average national household income, but they're not eligible for EITC. They live in the same size house as the family in Arkansas, but instead of costing $75,000, the house set them back $200,000. And instead of under $1,000 property taxes as in Little Rock, they're paying, so help me God, six times as much. They're also saddled with higher state income taxes.

Yet that New York suburbanite, who can't make ends meet, is dispatching some of his sweat money all around America, courtesy of the U.S. Congress, the president of the United States, and their faithful tool, the IRS, and its crazy tax code.

Go figure.

Who's going to pay for it all? Guess? The middle class, the true targets of the green eyeshade guys in the basement of the Treasury building.

In effect, Washington is ripping off Mr. and Mrs. Taxpayer in New York, Michigan, California, Massachusetts, New Jersey, Connecticut, et al., and sending it, in the greatest money transfer in American history, to families in the poorer states who may be living much better on much less. EITC is just the latest assault on the great, disappearing, abused American middle class.

The EITC program began quite modestly, as do most of Washington's nonsensical ideas. It started out reasonably in 1975 to help poor families pay their regressive Social Security taxes. The credit maximum was $400, welcome help for working people.

But now? Washington went into its usual overdrive, and EITC is the fastest growing of all federal programs. In 1982, it cost less than $2 billion. By 1988, it took $5.6 billion out of the treasury. In 1993, the tab was $15 billion—which is just the beginning. By 1996, it will cost $28 billion and still be growing!

Congress has continuously raised the eligibility income limits. In 1987, it was $15,432 for a family of four, then rose to $20,264 in 1990 and is now a ridiculous $27,000. This despite the fact that the typical American paycheck is only $25,000 a year.

With the continuous lifting of the income ceiling, millions flocked into EITC. From less than 2 million, it expanded to 15 million families by 1993, and will take in 21 million by 1996.

If we don't stop it, and its drain on the middle class, we can easily project that 35 million families, or some 100 million Americans, will be on this IRS dole by the year 2000—taking tax money from the people just barely above them in earnings, and often below them in purchasing power.

And the size of the EITC checks and credits are growing apace. Just as recently as 1990, the EITC maximum given by the IRS was $953. In 1996, it will be $3,370 a year per family and rising.

What if the EITC beneficiary wants to get his hand on some of your tax money before the end of the year? Easy. The new Clinton plan allows him to claim 60 percent of the credit, or cash, and have it added to his paycheck by the IRS.

Poverty has been defined by the Census Bureau as $14,700 for a family of four. But when it comes to the EITC, the limits are almost double that. Even the $14,700 poverty level is meaningless geographically. In rural Mississippi, you can eat fine on that. In a New York or Chicago suburb, you'd better get on a fast-moving soup kitchen line.

And do people try to cheat on the EITC? You bet they do, shamelessly.

The government rejects some 30 percent of claims because they're not eligible. On top of that, EITC is the largest center of fraud in the tax system. In 1995, the IRS held up millions of tax refund checks while they took a closer look for EITC connivers who purposely understate their income.

Surprisingly, you don't even have to apply for EITC. The IRS, which can hound middle-class taxpayers into a nervous breakdown for $20, will graciously go over the tax return and send the filer a credit, or a check, without his ever asking for it!

How can we bring some reason to this asinine runaway program?

Easy as pie. We can be both compassionate and reasonable, and still make the ridiculous tax code saner.

1. Limit EITC tax welfare to truly poor families. Use the government's own poverty level of $15,000 as an upper limit. Let's not take tax money from people making $33,000 in high-income areas and give it to richer people making $27,000 in poorer areas.

2. Figure the poverty level state by state, as we do with some welfare programs. $20,000 might be the poverty level in the New York metropolitan area, and $10,000 in rural Arkansas, with $15,000 as an average. That will stop bleeding the budget and be fairer as well.

3. Generous (with your money) President Clinton has extended EITC to couples without children. That violates the spirit of the plan and should be discontinued immediately.

4. Cut out all EITC credits and payments to single people, a program now clicking in which will take more tax billions from middle-class families.

5. Eureka! We now learn that Washington has been sending EITC tax credits and cash to illegal immigrants all these years. Frightened by Proposition 187 in California, embarrassed former Treasury secretary Lloyd Bentsen stated that the IRS will try to eliminate the program for non-Americans. They should be cut off forthwith.

6. Here's a total solution to the whole EITC tax fiasco—one that will solve the tax problem of hard-pressed families with children, poor or middle class.

Immediately eliminate the EITC. Instead give every man, woman, and child an additional $2,500 personal deduction regardless of income, the system under Harry Truman. Forget the class-conscious means test and remember that we're all Americans.

That deduction will not only help poor families (a $10,000 deduction for four) more than the EITC, but it will stop the unfair transfer of money from the middle class, who can't take it anymore. And the way the EITC tax dole is growing, my plan will end up being cheaper.

Scream at your member of Congress. Tell him you want tax relief for everyone and not crazy tax transfers that always hit middle-class families the hardest.

What, you say, he doesn't listen? Just remind him of the 1994 election and that there's another one just like it coming up.

Do you have a personal alternative?

Yes, you can pack up, leave the high-cost, high-tax areas and move to Little Rock. Or better still, go to clean, low-cost Boise, Idaho, or even rural Montana, where life will be cheaper and better, if a little chillier in winter.

And until the president and the Congress regain their sanity, you might be able to get on the EITC tax dole yourself.

[From Tax Notes, March, 1995]

ECONOMIC PERSPECTIVE

(By Gene Steuerle)

On February 27, IRS Commissioner Margaret Milner Richardson was grilled over difficulties that have arisen in the 1995 tax filing season. The president of HR Block called the season the worst in 40 years, at least in terms of ''internal preparations and customer dissatisfaction.'' (See *Tax Notes*, Mar. 6, 1995, pp. 1380–1382.) At one level, accusations are traded back and forth: private lending institutions and members of Congress criticize the IRS while the IRS argues it is not in business to help private firms make a profit. At another level, the debate focuses on arcane terms like refund anticipation loans and direct deposit indicators. The real issue—designing policy that is administrable in the first place—is swept under the table.

In the 1990 budget agreement, Congress and the previous administration for the first time increased the rate of credit in the earned income tax credit (EITC) above the combined employer and employee Social Security tax rate. In the 1993 budget agreement, that rate was increased even further, so that a household with modest earnings could receive a net credit (that is, credit less all taxes paid) of nearly 15 percent in 1994, rising to nearly 25 percent in 1996. As the rate of credit has grown, so have the gains from overdeclaring income on the tax return. Several years ago, I began noting the problems that were inevitably going to arise with the incentive for overreporting income in this new ''superterranean economy''—an economy that works in the opposite direction from the historic subterranean economy where the taxpayer or welfare recipient gains by underreporting income. I warned

then that in the long run the EITC was in jeopardy unless some policy changes were made to counteract this problem.

Since these warnings have gone unheeded, I view the debate over the filing season as just the latest of ways that these problems are playing themselves out. The growth in fraud was predictable, as was the IRS's rear guard reactions to try to contain it, as were the reactions of parts of the private sector to the costs of those rear guard actions. Interestingly, however, almost no one is talking about the basic problem. There are reasons why many interested parties can't or won't deal with the problem at a more fundamental level.

Start with the current administration. When it advocated an increase in the rate of the EITC, it decided not to deal with the new incentives for fraud and abuse that had been created before then and that would be enhanced. The president, moreover, likes to claim the 1993 EITC changes as among the great successes of his administration. Even though the problem was initially created with EITC rate increases scheduled by the 1990 budget agreement with President Bush, the current administration has for some time avoided sharing credit for recent rate increases, so it has trouble simultaneously trying to share blame for the administrative problems that have arisen.

The IRS, of course, hasn't been able to say much for some time now. It is very reluctant to provide information that may appear critical of a current administration's policy, and the past two administrations together have supported the increases that created the IRS dilemma. Its job, moreover, is administration, not policy. So it talks around the problem, always indicating new procedures and methods it will apply to try to reduce the level of noncompliance. The verdict on those new methods, however, usually will not be known for some time, often years, at which point more new procedures will be tried.

Congress isn't sure it wants to tackle the basic problem either. Almost any policy change is likely to create losers. In this case, for instance, it is almost impossible to monitor claims of self-employment income from painting, baby-sitting, and similar activities. Suppose the EITC were limited to amounts of tax paid by the firm hiring the worker. The employer would be pulled into an indirect role of monitoring the credit, a job that many would be willing to take, but some would not. Most individuals would still get an EITC and complain little, but some currently eligible could lose the credit. There are many alternatives that might also be considered, but each of them involves equally difficult choices.

When tax preparer services and lenders complain about dealing with the IRS, they often comment fairly on some of their clients' difficulties. Some types of policy reform, however, could reduce demand for their services. Their comments, therefore, will seldom be addressed to the policy issues but, instead, focus criticism on the IRS—an action likely to meet with popular approval, as well.

Finally, there is a community of individuals interested in reforming welfare by increasing subsidies to work relative to more traditional welfare. To be honest, I include myself in this community. Many in this community, however, are afraid of discussing abuse of existing provisions, for fear that the subsidies would be pared.

It is not hard to argue that each of these groups is serving only its short-run interests. An administration is hardly going to be given historical credit for ''reform'' if it is not made to work or is eventually overturned because of inattention to detail. The IRS only reduces its long-term credibility by making it appear that a policy problem is only one of administrative failure in the past, and maybe the future, but not today. Congress only delays the day of reckoning, not a new phenomenon. The tax preparer and lender community know that there business cannot depend for long on a part of the code that is unenforceable, and they only encourage Congress to enact more sweeping reform that would remove the individual more completely from filing responsibilities. The welfare reform community does little to enhance the long-term prospects for subsidizing work as long as stories of abuse and fraud are allowed to surround current subsidies.

So the story behind the story is that there is no filing season foul-up, but, instead, a policy failure to make the tough choices necessary to make the EITC administrable. Is anyone interested?

[From the Philadelphia Inquirer Washington Bureau]

FRAUD CASTS A SHADOW ON TAX CREDIT FOR POOR

(By R.A. Zaldivar)

WASHINGTON.—It was meant to be a different kind of federal program—one that would help struggling families without fostering dependency and inviting abuse.

Called the Earned Income Tax Credit (EITC), the program uses the tax system to pay low-income families up to $2,528 a year to supplement their earnings. The goal: Reward the working poor and encourage them to stay off welfare.

But with one in five American families now getting EITC payments, fraud is costing taxpayers an estimated $1 billion a year. Erroneous overpayments are costing at least as much.

Fraud has become a critical issue for the program, which has had a politically charmed life. It now stands at almost $20 billion a year—and growing.

Spending on the EITC increased tenfold under Presidents Reagan, Bush and Clinton. It is growing faster than any other program for the poor, including welfare, Medicaid and food stamps. Indeed, the federal government now spends nearly as much on EITC as it and the states spend on Aid to Families With Dependent Children, the main welfare program.

''The only way to keep support for a program like this is to make sure you address the issue of fraud,'' said Laura D'Andrea Tyson, a top Clinton economic adviser. ''If you don't do that, you will see the political support dissipate.''

This tax season, the Internal Revenue Service is trying to crack down on fraud. And Sen. William V. Roth Jr. (R., Del.) plans to hold hearings soon in the watchdog Governmental Affairs Committee, which he chairs.

With the future of all federal programs for the poor now at stake on Capitol Hill, the EITC is a study in contrasts.

It shows how a government benefit can do great good and invite brazen abuse at the same time.

The positive effect of the tax credit is undeniable. It provides powerful, life-changing help to working families in financial distress: a reprieve from foreclosure for a working mother in Minnesota; or money to pour a concrete floor for a Texas farm-worker family living in a ram-shackle cabin with a dirt floor.

Nearly 70 percent of benefits go to single-parent families, with an average check this year of $1,088. Families with one child can get up to $2,038. Families with two or more children can get the maximum benefit of $2,528. This year, for the first time, childless workers with very low incomes can get up to $306.

To receive the money, people must file a tax return. The IRS then sends out a check—just like a tax refund. There is none of the stigma of going to the welfare office. But millions of those checks could be held up this year, as the IRS tries to stamp out fraud and overpayment.

That's because the EITC has become a favorite target for crooks.

Nickel-and-dime con artists lie about their dependents and bilk the government out of $1,000 or $2,000. Million-dollar criminal entrepreneurs file thousands of false EITC claims by computer, hoping to reap a harvest of checks from the IRS.

And the government has sent out billions of dollars in EITC overpayments over the years, due mainly to taxpayer errors involving the complicated rules for qualifying for benefits.

A survey by the IRS last year found that 29 percent of taxpayers who put in for the EITC claimed too large a credit, including 13 percent of taxpayers who appeared to be intentionally inflating their claim. Congressional auditors suspect the actual rates of error and fraud are higher.

During the 1980s, IRS studies estimated that anywhere from 29 percent to 37 percent of the benefits were paid out erroneously. By comparison, welfare and food stamps had excessive claims rates in 1990 of 6 percent and 7 percent, respectively.

Not even the IRS has been immune from mistakes. In 1992, the agency tried an experiment: It would pay EITC benefits to taxpayers who had not claimed the credit, but seemed to be entitled. Later checking showed that IRS made the wrong call in 45 percent of the cases, sending out $175 million to taxpayers who should not have gotten a dime. The experiment was shut down.

Part of the reason the EITC has run into trouble is that presidents and lawmakers of both parties have enthusiastically expanded the program without taking a clear-eyed look at how well it was working.

* * * * *

But debate is brewing over how well the program accomplishes its control goal of encouraging work.

At conservative think tanks around Washington—idea mills for the Republican Congress—analysts are worried that the EITC may actually discourage work.

That's because 61 percent of EITC beneficiaries fall into the income range where benefits are being phased out. Benefits peak at about $8,000 of income and are gradually eliminated for families making between $11,000 and $25,000.

* * * * *

And if EITC fraud is bad now, it could get much worse with planned increases in the size of the program.

''It gets much scarier as the credit is being expanded,'' said University of Wisconsin economist John Karl Schoiz, a supporter of the program who is critical of its vulnerability to fraud. ''By 1996, the amounts of money available will be much, much larger. People filing false claims will all of a sudden stand to gain much more.''

The EITC began as a modest program in 1975, but about 18 million families now receive EITC payments, compared with five million families on welfare. The EITC cost $19.6 billion in 1994, while the federal share of AFDC was $12.5 billion. States paid an additional $10.2 billion to AFDC.

For Clinton, the EITC is a cornerstone of his effort to ''make work pay'' for all Americans. The President has declared the EITC ''the most significant thing done in the last 20 years to make the tax code fairer to working people.''

Clinton pushed a major expansion of EITC benefits through Congress in his first year in

office, more than doubling the maximum benefit to a projected $3,560 by 1996.

The program is expected to grow to $22.8 billion this year and $25 billion in 1996.

That meant the EITC could offer more help to cash-strapped families. But it also made the program a juicier target for con artists, particularly in the age of quick-refund, electronic tax filing.

''In the electronic era, it's particularly a program because of the speed with which you can get your money,'' said George Yin, a University of Virginia law professor who believes the EITC needs reforms. ''If you're of the criminal mind . . . the electronic system cuts your exposure considerably.''

* * * * *

An EITC check saved Kathy Spagenske's home from foreclosure last year in the middle of the Minnesota winter.

Spagenske, who lives near Minneapolis and works in telephone sales, separated from her husband in 1993. She and her two sons kept the house, but she soon started falling behind on payments. She was finally given a deadline of Jan. 20, 1994, to come up with money or lose the house.

Desperate, she called HOME Line, a local community service program that helps people in foreclosure. A counselor told her about the EITC. It was the first time she had heard about it.

''It was pure luck,'' said Spagenske.

She filed her taxes immediately, via computer. An EITC payment of $1,300 enabled her to leverage additional aid from the county government. The money arrived in the nick of time. She got the check to her lender on deadline day.

''Thank God,'' says Spagenske. ''My kids had gone through enough changes for a while.''

On the other side of the EITC spectrum is the case of Charles Hunter and Brenda Jean Noiles. The couple were arrested in Wichita, Kan., Jan. 31 by IRS agents and charged with making false claims against the government.

According to court papers, it all started with a tip from an H&R Block employee. Noiles had filed a tax return with a W–2 earnings statement that appeared to be doctored. And Hunter's W–2 was strikingly similar.

Hunter claimed a refund of $3,315, including an EITC of $2,258. Noiles claimed a refund of $3,421, including $2,523 from the EITC. They filed by computer, hoping for a quick refund.

IRS agents investigated and found that the W–2 forms were forged. Hunter and Noiles were arrested when they came to the local IRS office to pick up their checks.

Prosecutor Richard Schodorf alleged the two had claimed dependent children for whom they were not providing support.

Other cases have made news:

Federal prosecutors in Houston indicted eight people this January on charges of filing 800 computerized tax returns claiming bogus EITC benefits, with refunds totaling $1.9 million. The case is allegedly part of a conspiracy going back to 1990 and involved 24 other defendants.

IRS agents in New York City arrested four people last year suspected of filing 11,000 fraudulent tax returns claiming EITC benefits, with refunds totaling $13.6 million. The returns were filed on behalf of women on welfare who did not work and were not entitled to EITC. The government was able to stop all but $80,000 of the money from going out.

After years of working under orders to get the EITC checks out, IRS began clamping down last tax season. This year, the agency is trying to wring fraud and error out of the program by verifying all Social Security numbers on EITC claims, and by using computer analysis and profiles to identify suspect returns.

* * * * *

[From the Wall Street Journal, May 10, 1994]

CLINTON'S BIGGEST WELFARE FRAUD

(By James Bovard)

President Clinton has declared that the expansion of the earned income tax credit in August was ''the most significant pro-work, pro-family economic reform we have enacted in 20 years.'' In fact, the EITC program is the nation's most politically popular, fastest growing, and most fraud-prone welfare program—and one that is a building block of the Clinton welfare reform.

The EITC was created in 1975 to provide rebates of Social Security taxes to low-income workers, thereby counteracting the antiwork incentives of Social Security payroll taxes. But following sharp expansions in 1990 and 1993, the EITC is now far more of a direct handout than a tax refund. The program will cost more than $16 billion this year—more than the federal cost of Aid to Families with Dependent Children. Almost one-fifth of all tax returns claimed the benefit for 1993, and the Internal Revenue Service mailed out more than 10 million letters April 22 encouraging more people to sign up for the program. In Mississippi, 45.1% of families will become eligible for the EITC by 1996; in the District of Columbia, 42.3% of families will qualify.

While Mr. Clinton claims that the EITC rewards work, the details prove otherwise. Households with children with earned income below $25,300 (not counting welfare received) are eligible for EITC benefits of up to $2,528. Families earning up to $8,425 receive an EITC handout equal to 30% of earnings. Those earning between $8,425 and $11,000 get a flat $2,528. And families earning between $11,000 and $25,300 receive $2,528 minus 17.68 cents for each dollar they earn above $11,000.

While people in the lowest tier receive a bonus for each additional dollar they earn, the EITC benefit schedule effectively imposes a punitive tax on those earning over $11,000—slashing their benefits for each extra dollar they earn. American Enterprise Institute economist Marvin Kosters estimated last year that almost three times more EITC recipients are in the phase-out range than in the phase-in range. Thus, the EITC discourages work for far more low- and moderate-income people than it rewards work. (Benefits and eligibility limits are scheduled to rise sharply through 1996.)

The General Accounting Office noted in a 1993 report: ''Before qualifying for the credit, a worker may view taking a second job as worth the sacrifice of forgoing leisure time. But after qualifying for the credit, the extra income the credit offers partly replaces the income the worker would lose if he or she were to quit the second job. * * * Also, full-time workers may shift to part-time jobs to get the leisure time they now prefer.'' GAO estimated that hours worked by EITC beneficiaries may have been cut by 3.6% overall, and by more than 10% for working wives, as a result of this subsidy in 1988. The disincentive to work is probably much greater now, as the benefits are much higher.

Clinton chief economic adviser Laura Tyson declared on April 15 that the earned income credit is ''a way to reward hard-working Americans who work full-time.'' Yet, GAO found that the average EITC recipient worked only 1,300 hours, compared with a normal work year of 2,000 hours. Last month, one nonprofit organization informed potential beneficiaries that they could qualify if they worked only one day a year.

The EITC is structured to subsidize low incomes, regardless of how much or little recipients work. University of Oklahoma Law Prof. Jonathan Forman observed in Tax Notes, ''The maximum earned income credit is equally available to both a salesclerk who works 2,000 hours per year at $5.00 per hour and a part-time lobbyist who works 100 hours per year at $100 per hour.''

The EITC has long been a gravy train for con artists. GAO noted last year that, before the 1990 expansion of the program, ''about a third of the taxpayers who received the credit were not entitled to it.'' The IRS estimates that between 30% and 40% of EITC benefits are given in violation of federal tax law. Johnny Rose, IRS criminal investigation chief for the Arkansas-Tennessee district, declared in January: ''Today, nearly all fraudulent returns involve two things: (1) claiming the EITC and (2) filing electronically through a business that offers a quick loan against the refund.''

Recently Rep. Dan Rostenkowski and three ranking members of the House Ways and Means Committee wrote to Treasury Secretary Lloyd Bentsen that ''the federal government has an extremely serious and growing problem in the area of tax refund fraud.'' Rep. Bill Archer, one of the signatories, observed that the EITC is by far the biggest source of fraudulent return losses, with the average EITC fraud estimated at $1,800. Yet the IRS makes almost no effort to require people to pay back undeserved or fraudulently received EITC benefits.

Moreover, Mr. Clinton's new EITC creates perhaps the harshest marriage penalty in the history of the U.S. tax code. An unmarried couple, each with two children and $11,000 in income, would lose $5,686 in EITC benefits by marrying, according to Tax Notes magazine. So much for a pro-family policy.

Mr. Clinton declared in February: ''When tax bills come due this April, 15 million families with a total of about, we estimate, 50 million Americans, will be lifted beyond the poverty line by getting tax reductions under the earned-income tax credit.'' But the GAO found that the EITC has been a dismal failure at raising people out of poverty. In 1991, the EITC decreased the poverty rate by less than one percentage point. And, even when the EITC lifts families out of poverty, receiving the credit does not affect eligibility or benefit levels for families already receiving food stamps, housing subsidies or AFDC.

According to Assistant Treasury Secretary Alicia Munnell, August's EITC increase is the first step toward the Clinton welfare reform plan. Ms. Munnell declared last November: ''We are already looking at consolidating the application for food stamps and the EITC. This would reduce transaction costs and eliminate any stigma that may accompany participation.'' But reducing the stigma on welfare recipients is not the same as making people self-reliant.

Designing government handout programs to encourage people to work is the ultimate liberal pipedream. Instead of glorifying new benefits for low- to moderate-income groups, the Clinton administration should devote its attention to lowering the burden of taxes on all working Americans.

[From the Washington Post, June 26, 1994]

THE MYTH OF THE WORKING POOR

FACE IT, CLINTON. VERY FEW POOR PEOPLE ARE HARD-WORKING WORTHIES

(By Bradley R. Schiller)

No one who works 40 hours a week should have a family in poverty. This concept, frequently articulated by President Clinton, is one of this administration's foremost domestic goals. From health-care reform to a higher minimum wage to more training opportunities to increased earned income tax credits

to mandatory fringe benefits, the Clinton administration wants to increase dramatically the income security of the more than 6 million American adults that it classifies as the ''working poor.''

Who are these legions of working poor, by the Clinton administration count? Consider these possibilities:

Barden, a catfish farmer in Mississippi. Several years ago he spent over $1 million to convert his cotton farm into a commercial catfish operation. Intense competition has depressed catfish prices, however, causing Barden to lose over $100,000 in 1993.

Barbara, a single mother living on Capitol Hill. She worked 35 hours per week as a $5-an-hour receptionist all of last year. In January, she went on maternity leave and gave birth to a girl in February.

Hector, who graduated from college in May 1993. While in school, he was working 16 hours per week to augment the education loans he and his wife received. Within one month of graduating he landed a public relations job that pays $15,000 a year to start.

Johnnie, who dropped out of high school in 1992 and has been working at the federal minimum wage ever since.

Who among these should we count as the working poor? The official answer is Barden the catfish farmer, Barbara the single mother and Hector the college graduate. The only one not counted as ''working poor'' is Johnnie, the high school dropout who continues to toil away at the minimum wage. Several features of the way in which the U.S. Census Bureau compiles its official poverty counts help produce this bizarre enumeration. Among them are:

Equating Business Income and Wages—The catfish farmer gets counted because the Census Bureau lumps together both people who work for wages and those who operate their own businesses. More than 250,000 of the families counted as poor by the Census actually have negative incomes, as Barden does. These negative incomes most certainly result from self-employment and not from a bad wage contract. Indeed, more than 1 out of 4 individuals officially counted as year-round, full-time members of the ''working poor'' class report that they are self-employed and may actually have substantial assets to draw upon.

Changing Family Composition—Barbara gets counted as one of America's working poor because she had a baby in February and the Census Bureau does its household income survey in March. In 1993, Barbara earned $9,100, which was not a lot of money but was comfortably above the official poverty line for a single individual (about $7,500). By the time of the March survey, however, Barbara was no longer a one-person household. The Census Bureau concludes that she is one of America's ''working poor'' because her 1993 income does not exceed the poverty threshold ($9,700) for the two-person household she has in March 1994. Because the Census Bureau compares last year's income to this year's household size, it exaggerates the poverty of growing (younger) households.

The Illusion of Full-Time Work—Hector gets counted as poor because the $9,580 he actually earned last year fell just short of the two-person poverty line. What makes this case misleading is that the Census Bureau counts Hector as a year-round, full-time (YR–FT) worker. The Census Bureau doesn't ask how many hours Hector actually worked (1,386). It instead asks whether Hector ''usually'' worked at least 35 hours per week when employed. When Hector's wife (the likely respondent to the household survey) replies in the affirmative, Hector statistically became a YR–FT worker, the quintessential White House example of the working poor.

Hector's case is not unique: Previous studies of Census data reveal that roughly 1 in 10 poor persons classified as ''full-time, year-round workers'' actually worked part-time during at least six weeks of the year.

This overcount of YR–FT workers not only exaggerates the number of working poor persons, but also tends to understate actual wages. As incredible as it may seem, the Census does not ask what hourly wage rate workers were paid. Instead, hourly wage rates are imputed by dividing annual earnings by the estimated (''usual'') hours employed. If hours of employment for YR–FT workers are overestimated, then imputed hourly wages are consistently underestimated. In Hector's case, his wage will be estimated by dividing his annual income ($9,580) by the hours of a YR–FT worker (2,080). The implied wage rate of $4.60 an hour, though not factual, will be used as the justification for greater ''worker security'' initiatives.

A perfunctory look at Census data on the working poor reveals the kinds of misperceptions that result from these statistical procedures. Nearly half a million unrelated individuals are officially counted among the ranks of the working poor. Yet, true YR–FT experience would entail at least 1,750 hours of employment (50 weeks of 35 hours each) and more commonly 2,080 hours (52 weeks of 40 hours each). Accordingly, a job paying just the federal minimum wage of $4.25 an hour would be sufficient to keep any unrelated individual working YR–FT above the poverty line, which is $7,500 for an individual. One must conclude that either the Census depiction of sub-poverty work experience is exaggerated or that these individuals are being paid wages far below the federal minimum.

Even if we ignored these and other technical problems, however, the image of low-paid parents unable to lift their families out of poverty by working would still be distorted. The Clinton administration repeatedly cites the 6 million people in families who work yet remain poor. Of these 6 million ''working poor,'' however, only half are ''householders'' in families with children. The Census Bureau says that only one-third of these householders work year-round, full-time. Hence, even if one were to accept the flawed Census estimates as an approximation of reality, only 1 million householders would be counted among the ranks of the working poor. In reality, the number would be far smaller, for all the reasons discussed above. The number of working poor would shrink even further if we adjusted official Census estimates for other well-known shortcomings including the omission of in-kind income (e.g., Food Stamps, Medicaid, housing subsidies), the Earned Income Tax Credit not counted by the Census and intentional underreporting of income.

Where does this leave us? This exploration of Census data and methods is not intended to deny the co-existence of work and poverty, much less a broad swath of deprivation in an otherwise affluent America. One cannot avoid the conclusion, however, that there are far fewer working poor Americans than the White House perceives and thus less justification for so many new and expensive worker security initiatives. It may be true that over 60 percent of the poverty population lives in families where at least one person had some work experience during the year. The amount of work experience is often minimal, however, and the self-reported reasons for not working are typically personal rather than market based.

Not working is the proximate cause of most poverty. What the country needs to cure poverty is not so much more ''worker security'' programs, but more workers.

[From the National Review, Apr. 17, 1995]

THE CHECKS ARE IN THE MAIL

(By Roy Beck)

WASHINGTON, DC.—Once again it is the season when the Internal Revenue Service takes money sent in by Americans and mails some of it back to illegal aliens as a kind of end-of-the-year bonus through the Earned Income Credit program.

When IRS officials first confirmed this long-standing practice to me last spring, they said they had no other option because Congress had never prohibited it. Senator William Roth requested a study by the General Accounting Office, which reported last fall that illegal aliens can receive direct cash payments of up to $2,528. Foreign nationals who are working illegally in this country can get the checks if they have a dependent child and make less than $23,755 a year.

The GAO report was ignored or overlooked by the news media. But it caught the attention of then Treasury Secretary Lloyd Bentsen, who said the practice should cease. Tucked inside the Clinton Administration's latest recommendations on tax policy is a provision to stop the subsidy for illegal low-wage workers—but not until next year.

To assume that these bonuses will soon be ended is to underestimate the resilience of a pervasive system of incentives and loopholes that the United States provides for citizens of other nations to violate our immigration laws. It was public cynicism about the government's good faith in ending this system that fueled the overwhelming passage of California's Proposition 187 last fall and spurs imitators today.

The Earned Income Credit program was set up in 1975 as a work incentive for Americans with low-paying jobs. The credit sometimes works like most tax credits, reducing the tax owed. But the program often requires the IRS to send recipients a check for considerably more money than was withheld by their employers (if indeed any was withheld) the previous year. ''We regard EIC as a form of welfare,'' says Mark Mullett, an aide to Senator Roth.

The Federal Government tries to make sure that illegal aliens don't miss out on these payments. David Simcox, a fellow at the Center for Immigration Studies, says federal funds are provided to religious and immigrant-aid groups to persuade and assist immigrants (whether legal or illegal) to file for the EIC checks. Publications for immigration lawyers advise them that immigration status is irrelevant in filing for the benefit.

The IRS does not know for certain which applicants for EIC checks are illegal aliens, but it has a fairly good idea that they account for most of the applications lacking valid Social Security numbers. (Virtually every legal resident over the age of one year has a valid number, according to Social Security spokeswoman Lynn Shiller.) Forms without valid numbers are sent to the ''Unpostable Unit'' at one of the ten IRS service centers, where a bureaucrat assigns them temporary Taxpayer Identification Numbers, which look like Social Security numbers. That enables the IRS to keep its paperwork organized so that it can proceed to send checks to filers who are probably illegal aliens.

Federal law forbids anyone who is not a U.S. citizen to enter the country without government approval and to stay longer than his visa allows. If a foreigner succeeds in violating the law, 1986 legislation makes it a crime for that person to be hired. Nonetheless, if a foreign worker succeeds in violating both laws without getting caught, the IRS will send him a cash bonus.

Even if this practice is halted in a quick display of bipartisanship, at least three troubling issues remain:

1. Resourceful illegal aliens can continue to get the annual EIC bonus if they obtain valid Social Security cards by using fraudulent birth certificates. Dan Stein of the Federation for American Immigration Reform suggests that the only lasting solution is to adopt a form of the proposal of Barbara Jordan and her Immigration Reform Commission: establish a national computer verification system to coordinate birth and death records of all fifty states.

2. Congress should consider changing the presumption that all government programs and benefits are intended to extend to illegal aliens unless otherwise specified. Congress might pass legislation that prohibits illegal aliens from participating in any federal program or benefit unless specifically included.

3. As usual, the cumulative costs from legal immigration tower over those from illegal. Simcox says his studies of IRS records indicate some $250 million in EIC subsidies for illegal aliens in 1990. But he found five times that amount going to legal immigrants. ''EIC has become another case study in the baffling dilemma of operating and funding complex income-transfer programs for poor residents, while the number of these residents is continuously being expanded by mass illegal and legal immigration and refugee policies which import about half a million additional needy people each year,'' Simcox says.

If Congress does focus on the taxpayer-provided bonus checks for illegal aliens, it should also consider a larger question: Why should the government continue to allow legal entry of hundreds of thousands of low-skilled foreign workers when U.S. taxpayers end up subsidizing them (and their employers) because they cannot command high enough wages to pay the taxes that would cover their share of infrastructure and social services? Eliminating future importations of low-wage workers would not only reduce EIC payments that otherwise would go to them but might also reduce EIC expenditures for American laborers who, without competition from immigrants, would be more likely to earn nonpoverty wages.

[From the Arizona Republic]

BORDER WELFARE BOUNTY

MEXICANS GET U.S. CHECKS

(By Mark Shaffer)

SAN LUIS.—This dusty pueblo where the irrigated lettuce fields stop against the Mexican border could be the fraud capital of the Southwest.

Its postmistress and vice mayor, Josefina Rodriguez, would be the last to disagree. Around the first of every month, she sees thousands of government checks arrive and a flow of people crossing the border to collect them.

Rodriguez considered it a little weird when she took over the postmistress job 10 years ago and found that the town had as many P.O. boxes as people.

Then it dawned on her: A large number of Mexicans were using Arizona postal boxes to receive U.S. government checks through fraud. This time of year, the problem is compounded as income-tax refunds make the rounds.

The mailbox squeeze has gotten a lot worse during the past decade. Now there are 8,100 post-office boxes, more than twice San Luis' estimated population of 4,000. About three-fourths of the post-office boxes are rented by Mexicans, Rodriguez said.

She can't say how many of the mailboxes are being used by Mexicans for legitimate reasons and how many aren't. Many Mexicans living in the border area rent U.S. post-office boxes to communicate with relatives in this country, because mail moves much faster in the United States than in Mexico.

In 1988, Rodriguez said, she added two double-wide trailers to the back of the post office, thinking that would be space enough for well into the next century.

But it was all gone within three years, and the waiting list for boxes is now 400 names long.

Rodriguez sorts thousands of government envelopes containing welfare checks, unemployment checks and food stamps each month. Add to that the 13,500 income-tax refunds that came to San Luis last year.

''It's just totally out of control,'' Rodriguez said. ''We have the volume of mail of a large city. And a large part of it is U.S. government checks that end up in Mexico.''

Former San Luis Mayor Elias Bermudez said there are ''easily 5,000 people on the Mexican side'' in San Luis, Sonora, a city of about 180,000 people, who are receiving U.S. government assistance under false pretenses.

''And I'm just counting one Mexican per post-office box on this side,'' Bermudez said.

''When you consider that some of those boxes have 10 to 15 people using them, there's no telling how much fraud is going on down here.''

Jim Wombacher, former superintendent of the Gadsden School District, says it's a lot.

The way the deception works, Wombacher said, is that a Mexican mother will bring her children across the border and enroll them in the Gadsden School District, using the address of a relative in Arizona as the family home. At that point, the family applies for social services using false documents.

Investigators will visit the residence, and the relative will vouch that the family is residing there. A U.S. Supreme Court decision prohibits school officials from asking the nationality of the parents or students.

''Right after that, we get calls from the (state) Department of Economic Security asking if the kids are properly enrolled in school,'' Wombacher said. ''We have to say yes, and that qualifies them for all the programs like WIC (a nutrition program for pregnant women and infants), AFDC (Aid to Families with Dependent Children) and the supplemental food program.''

And that means another San Luis post-office box for delivery of the checks.

''We know things like this are widespread,'' Wombacher said. ''All the time we had instances of children getting sick and our workers would take them to where we thought they lived. But they would point south and say 'otro lado' (across the border) when we got there.

Wombacher said he got so frustrated in 1990 that he went to the border early one school morning and videotaped 250 high-school students on the Mexican side waiting for school buses. Then, he filmed 200 to 300 junior-high and elementary students walking across the border to classes in San Luis, Ariz.

That tape drew lots of attention—and voters remembered. During a countywide bond election last May, voters turned down by a 3–1 ratio a proposal to build a high school in San Luis.

''The dominant issue was, 'We want to do something about those kids coming from across the border,'" Wombacher said.

Rodriguez has her own worries, like delivering the almost 500 pieces of mail containing food stamps each week. And the 3,000 checks for unemployment each month.

''When those unemployment checks come in, people are packed like sardines in this place. I made a tape of it, and that's when we decided we had to expand this post office,'' Rodriguez said.

As if that weren't enough, postal authorities saw a real jam when more than 13,000 tax returns were filed by April 15 for the 1993 tax year. The Internal Revenue Service also took more than a passing interest, because the 1990 census listed only 3,700 people older than 16 living in San Luis.

Bill Brunson of the Phoenix IRS office said virtually all the tax returns were filed electronically and requested an earned-income credit, a refund for those who live more than six months during the year in the United States, have a minor child residing with them and gross less than $23,050 a year.

Many returns were filled with math errors, omitted information about dependent children and were suspected of containing false information about employment, Brunson said. So the IRS delayed 3,000 refunds, sending letters to the filers in Spanish and English requesting meetings with them.

The agency received fewer than 100 responses, Brunson said, and dispatched a team of investigators to San Luis. They were greeted by sign-carrying Mexican protesters who claimed they had been victimized by unscrupulous tax preparers.

The brouhaha affected all Yuma County taxpayers, said David Cline of Classic Accounting, a Yuma tax-preparation firm. Cline said that many of his clients had to wait months to receive their income-tax refunds because the IRS had targeted all Yuma County returns for review.

Clyde Cummins, a longtime Yuma County supervisor who represents the San Luis area, says it's about time the federal government takes action.

''I'd say that more than half the farm workers around here have two or more Social Security numbers for welfare purposes,'' he said.

''Another big thing is for a bunch of them to get together and claim only one income, then qualify for subsidized housing.

''We've had a lot of government agencies down here say they just don't care about this. But, for the sake of the American taxpayer, they better start caring.''

[From the Washington Post, Feb. 9, 1995]

A HARDER LOOK AT REFUND CLAIMS

IRS TO CHECK SOCIAL SECURITY NUMBERS IN CRACKDOWN ON FRAUD

(By Albert B. Crenshaw)

The Internal Revenue Service, which has been losing as much as $5 billion a year to refund fraud, this year is checking every Social Security number on every return that seeks a refund, and will hold up payment if the names and numbers don't match.

The procedure will cause delays in refunds for about 7 million taxpayers out of the 86 million who will file for refunds this spring, IRS officials said yesterday.

''Some of those [refunds] will never go out, some of those will eventually go out over a period of time, some of those will go out after there's been an examination to determine whether the claim is in fact correct or not correct,'' said Phil Brand, IRS chief compliance officer.

The new program is made possible in part by improved computer capacity and in part by the agency's decision to shift more people to the refund program, officials said.

The IRS staff will type into a computer the Social Security number from a newly filed return, and look for discrepancies with the Social Security Administration database to see if the number exists and if it goes with the name on the return—a privilege allowed by privacy laws. In the past, this process has been such a major time consumer that the agency made only spot checks, officials said.

Those returns, that are legitimate will be processed as quickly as possible, officials

said. Those that are not may lead to criminal investigations.

Officials said checking Social Security numbers will catch taxpayers who claim nonexistent dependents as well as more sophisticated scams, such as creating a fictitious taxpayer and claiming a refund on his or her behalf.

Typically, the IRS processes paper tax returns and mails out refunds in about six weeks, faster in the early part of the year when the load is less, officials said. Returns filed electronically are usually done in three weeks or so. Most returns from legitimate taxpayers with correct Social Security numbers should not be affected, officials said.

A return that the IRS deems questionable but is in fact legitimate could be delayed as much as eight weeks, officials said. An example of this could be a woman who marries and starts using her husband's name, they said.

''There will be some individuals who are held up who are fully entitled to the refund,'' Brand said. ''It's the unfortunate part about a process like this,'' but ''what you say is, 'I've got to weigh the balance'' against fraud losses.

IRS officials said about 1,300 agency employees at service centers throughout the country have been assigned to check questionable refunds.

The IRS has been under heavy pressure from Capitol Hill to deal with incorrect or fraudulent refunds. Programs such as the earned-income tax credit, which provide ''refundable'' credits—meaning that the taxpayer can get back cash beyond mere withholding—have been especially hard hit in recent years.

Many scams have involved electronic returns. A man who had signed up with the IRS to prepare electronic returns told a House hearing last year that he had filed thousands of false W–2 forms indicating that wages had been withheld for a worker, and then claimed refunds for them.

Brand said the new system especially will watch for systematic efforts to bilk the system. He said that in addition to checking Social Security numbers, the IRS will be paying visits to suspicious return preparers. ''As we identify schemes we will be moving to make arrests or anything else that is appropriate,'' he said.

The IRS already has announced other steps to combat fraud, including elimination of the ''direct deposit indicator,'' an acknowledgment to someone filing electronically that a refund could be expected. The indicator was heavily relied on by banks and others that make refund anticipation loans, and they are unhappy with the change.

However, Brand said those lenders should ''make a business decision'' on whether to make a refund anticipation loan and not rely on the IRS for reassurance.

S. 899

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986.

(a) SHORT TITLE.—This Act may be cited as the ''Earned Income Tax Credit Fraud Prevention Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. EARNED INCOME CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.

(a) IN GENERAL.—Section 32(c)(1) (relating to individuals eligible to claim the earned income tax credit) is amended by adding at the end the following new subparagraph:

''(F) IDENTIFICATION NUMBER REQUIREMENT.—The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—

''(i) such individual's taxpayer identification number, and

''(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse.''

(b) SPECIAL IDENTIFICATION NUMBER.—Section 32 is amended by adding at the end the following new subsection:

''(l) IDENTIFICATION NUMBERS.—Solely for purposes of paragraphs (1)(F) and (3)(D) of subsection (c), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).''

(c) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Section 6213(g)(2) (relating to the definition of mathematical or clerical errors) is amended by striking ''and' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting '', and'', and by inserting after subparagraph (E) the following new subparagraph:

''(F) an omission of a correct taxpayer identification number required under section 23 (relating to credit for families with younger children) or section 32 (relating to the earned income tax credit) to be included on a return.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 3. REPEAL OF EARNED INCOME CREDIT FOR INDIVIDUALS WITHOUT CHILDREN.

(a) IN GENERAL.—Subparagraph (A) of section 32(c)(1) (defining eligible individual) is amended to read as follows:

''(A) IN GENERAL.—The term 'eligible individual' means any individual who has a qualifying child for the taxable year.''

(b) CONFORMING AMENDMENTS.—Each of the tables contained in paragraphs (1) and (2) of section 32(b) are amended by striking the items relating to no qualifying children.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 4. DECREASE IN EARNED INCOME CREDIT AMOUNTS AND PHASEOUT RANGES.

(a) DECREASE IN CREDIT RATE.—

(1) IN GENERAL.—Subsection (b) of section 32, as amended by section 3(b), is amended to read as follows:

''(b) PERCENTAGES.—

''(1) IN GENERAL.—The credit percentage and the phaseout percentage shall be determined as follows:

''In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children	36	20.22

In the case of taxable years beginning in 1996, the credit percentage for eligible individuals with 2 or more qualifying children shall be 35 percent.

''(2) AMOUNTS.—The earned income amount and the phaseout amount shall be determined as follows:

''In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	$6,000	$11,000
2 or more qualifying children	$8,425	$11,000.''

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 32(i) is amended by striking ''subsection (b)(2)(A)'' and inserting ''subsection (b)(2)''.

(b) INFLATION ADJUSTMENTS TERMINATED.—Section 32(j) (relating to inflation adjustments) is amended by adding at the end the following new paragraph:

''(3) TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 1995.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 5. RULES RELATING TO DENIAL OF EARNED INCOME CREDIT ON BASIS OF DISQUALIFIED INCOME.

(a) DEFINITION OF DISQUALIFIED INCOME.—Paragraph (2) of section 32(i) (defining disqualified income) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', and'' and by adding at the end the following new subparagraphs:

''(D) capital gain net income,

''(E) the excess (if any) of—

''(i) the aggregate income from all passive activities for the taxable year (determined without regard to any amount described in a preceding subparagraph), over

''(ii) the aggregate losses from all passive activities for the taxable year (as so determined), and

''(F) amounts includible in gross income under section 652 or 662 for the taxable year to the extent not taken into account under any preceding subparagraph.

For purposes of subparagraph (E), the term 'passive activity' has the meaning given such term by section 469.''

(b) DECREASE IN AMOUNT OF DISQUALIFIED INCOME ALLOWED.—Paragraph (1) of section 32(i) (relating to denial of credit) is amended by striking ''$2,350'' and inserting ''$1,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 6. MODIFICATION OF ADJUSTED GROSS INCOME DEFINITION FOR EARNED INCOME CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 32(a)(2) (relating to limitation) is amended by striking ''adjusted gross income'' and inserting ''modified adjusted gross income''.

(b) MODIFIED ADJUSTED GROSS INCOME DEFINED.—Section 32(c) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(5) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income, increased by the sum of—

''(A) social security benefits (as defined in section 86(d)) received to the extent not includible in gross income,

''(B) amounts received by (or on behalf of) a spouse pursuant to a divorce or separation instrument (as defined in section 71(b)(2)) which, under the terms of the instrument, are fixed as payable for the support of the children of the payor spouse (as determined under section 71(c)),

''(C) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

''(D) any amount received by a participant or beneficiary under a qualified retirement plan (as defined in section 4974(c)) to the extent not includible in gross income.

Subparagraph (D) shall not apply to any amount received if the recipient transfers such amount in a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3).''

(c) STUDY.—The Secretary of the Treasury shall conduct a study of the Federal tax

treatment of child support payments to determine whether or not changes in such treatment are necessary. The Secretary shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study, including recommendations (if any) which the Secretary determines appropriate to encourage payment of child support liabilities by parents and to make both parents more responsible for a child's economic well-being.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 7. EARNED INCOME CREDIT NOT ALLOWED UNTIL RECEIPT OF EMPLOYER'S WITHHOLDING STATEMENT.

(a) IN GENERAL.—Section 6401(b) (relating to excessive credits treated as overpayments) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR EARNED INCOME CREDIT.—For purposes of paragraph (1), the earned income credit allowed under section 32 shall not be treated as a credit allowable under subpart C of part IV of subchapter A of chapter 1 unless the Secretary is able to verify the amount of such credit by comparing it with—

''(A) information returns filed with the Secretary under section 6051(d) by employees of the individual claiming the credit,

''(B) self-employment tax returns filed with the Secretary under section 6017, or

''(C) both.

The preceding sentence shall apply to any advanced payment of the earned income credit under section 3507.''

(b) EFFECTIVE DATE; STUDY.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

(2) STUDY.—The Secretary of the Treasury shall conduct a study to determine the delays (if any) which would result in the processing of Federal income tax returns by reason of the amendment made by this section. Not later than 1 year after the date of the enactment of this Act, the Secretary shall report the results of the study to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, including recommendations (if any) on ways to shorten any delay.

SEC. 8. PREVENTION OF FRAUD IN ELECTRONIC RETURNS.

(a) IN GENERAL.—The Secretary of the Treasury shall provide that any person applying to be an electronic return originator on or after the date of the enactment of this Act shall not be approved unless the applicant provides fingerprints and credit information to the satisfaction of the Secretary.

(b) PAST APPLICANTS.—The Secretary of the Treasury shall apply the requirements described in subsection (a) to electronic return originators whose applications were approved before the date of the enactment of this Act without fingerprints and credit check information being provided.●

ORDER FOR RECESS

Mr. LOTT. Mr. President, if no further business is to come before the Senate, I ask unanimous consent that after the Senator from West Virginia, Senator ROCKEFELLER, speaks for not to exceed 15 minutes, the Senate stand in recess as under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

Mr. ROCKEFELLER. Mr. President, I know the American people have some pretty serious questions these days about Congress. Questions like, why is there so much partisan fighting? Why can we not get more done? Why all this talk about issues that do not really matter in people's daily lives?

When I hear the questions from West Virginians, obviously I respect them and I remember them as I try to do my work here in the Senate.

I say that all of this is to highlight the way the chairman of the Commerce Committee, Senator PRESSLER, and the ranking member, Senator HOLLINGS, have pursued this legislation to modernize our Nation's laws affecting telecommunications.

It has, as the Presiding Officer knows, not been an easy task. Nevertheless, we had a bipartisan consensus from the Commerce Committee. That was good. My vote was one in favor of this bill.

I think it is entirely valid that some of our colleagues have insisted, in fact, on spending some thoughtful time here on the Senate floor to dissect this bill and to air whatever differences we have and to consider rescissions.

I refer to my fellow rural colleague from Nebraska, Senator KERREY, who has been vocal about some of the changes we are considering in this bill. I think he has done the Senate a service and our country a service.

I represent a small rural State, West Virginia, that does not want to be excluded from any future involving new technologies and new forms of communication.

I want to make absolutely sure for my State that this legislation serves the general public's interest, not just the big States and the big cities.

The results, I think, of this legislation are very relevant to the people that we represent, that I represent, and are personal and familiar to West Virginians and to our fellow Americans. That is why I have taken this legislation very seriously. The telecommunications industry is one of America's engines for jobs, for new products, for cutting-edge research and new technologies. This bill is needed and it is needed now. And I think we are going to get it because the industry is still bound by the restraints of the law, the Communications Act of 60 years ago, 1934. Just stop and think about how much has changed in telecommunications over the past 60 years, especially over the past 10 years: Personal computers, software, hardware, cable television, cellular, mobile phones—all of these have exploded into our offices, into our homes, into our lives and store shelves in every corner of the country.

Since 1934, all kinds of statutory, regulatory, and judicial measures and rulings have also come along to spell out the policy on various aspects of telecommunications. The best known of them was the historic break up of AT&T in 1982, when our antitrust laws acted as the basis for ending a mammoth monopoly in telephone service.

The bill before us is the work of several years and the intense work of the recent months, to chart another historic change in telecommunications policy. This bill provides a new framework to replace much of the regulation and restraints now governing the telecommunications industry with something which we have decided to call ''the ability to compete.'' The idea is the Federal Government no longer needs to micromanage who can provide what kind of service to America's households and to America's businesses; that, as technology develops to give Americans incredible choices and incredible opportunities from the basics of telephone service to the endless possibilities of computers, the private sector should be able to compete for customers, for business and for profits.

The idea of this legislation is not just to make the telecommunications companies of America the winners. That is not the idea of this at all. We want to shift from regulation and various kinds of monopolies in cable and phone service towards competition; in fact, to competition, in a way that will benefit the American people. When companies actually compete for customers they are going to have to try to offer a better price for better service. Americans know all too well that monopolies protected from competition grow very lazy and sloppy.

Another goal in this legislation is to make sure the United States remains number 1 in an industry that, frankly, generates a lot of jobs, a lot of profits, a great deal of trade, and the economic dividends that have a huge impact on the people we represent. We want the jobs to stay here and we want to be the country that wires and services other countries with our know-how and our products. We have this opportunity.

This is graduation season and I want the graduates of West Virginia's high schools and colleges to know that their studies, their plans for getting an engineering degree or something similar, will pay off in the form of job opportunities. I want them to have that confidence. And they will be able to have that confidence in one of the many fields of telecommunications, as it just opens up and explodes over the next decade or so.

The bill contains a series of provisions to guide the transition from the rules that have piled up over the last 60 years to a new playing field designed for the 1990's. And I think it is fair.

On top of continuing the guarantee of universal telephone service, there is a section in this bill that modernizes that concept and promises affordable rates to a very special category of American institutions, to wit, elementary and secondary schools, libraries, rural health care providers and rural

hospitals. We had a very vigorous debate in committee over this so-called community user section that Senator OLYMPIA SNOWE from Maine and I amended into the bill, and a even more vigorous debate last Thursday on the floor of this Senate when an effort was made to remove that same section.

At a time when Americans and this body are also gravely concerned about a crisis of values that we perceive, I would argue this section of the bill is exactly the kind of effort we should be taking to strengthen the human fabric and values of America.

Let me explain. We deliberately target the institutions in our towns and communities that promote community, where children and adults learn together, gather together, work together. In West Virginia our classrooms and our libraries are often the only way that our children and citizens can tap into the wonders of computers and, therefore, the links to a vast world of information and knowledge now available through something we call telecommunications.

This part of the bill also rewards learning, education, and the art of healing. We want schools to be a place where children delve into computers and hope that distracts them from behavior which is far less useful to them. We want libraries to be vibrant centers of learning for families. We want rural clinics and larger teaching hospitals to band together and use telecommunications to transfer the best of health care into the most distant places.

The Presiding Officer as well as the junior Senator from West Virginia understand the importance of telemedicine to West Virginia, Montana and other rural States.

Mr. President, I also want to take a moment to explain my vote on Friday against the amendment offered by the majority leader and the Democratic leader to change aspects of this bill dealing with cable services. Some elements in the leaders' so-called amendment had merit, no question about that. But my vote against it was to protest one very specific change that I think has no business being a part of this bill. Telecommunications policy is complicated. The language is different. The issues are contentious. Perspectives vary, to say the least, on where the right balance is between giving the industry a free hand on one side and making sure that the American people's interests are best served on the other.

However, it does not take a Ph.D. to understand how our constituents feel about their cable rates. And speaking for myself at least, it is not very difficult to recognize what a telecommunications bill should say about the public interest when it comes to cable rates. This is the reason I insisted on a vote on the DOLE-DASCHLE amendment and, therefore, to be able to go on record in opposition to the provision that is summarized in the following words:

> . . . the deregulatory amendment would completely eliminate rate regulation for cable operators who serve less than 35,000 [people] in one franchise area, and do not serve more than 1 percent of all subscribers nationwide.

The amendment was packaged as an effort to provide ''greater deregulation for small cable TV.'' That is worthy as a goal and I know from some of our small cable operators and owners in my State, that they have valid complaints about the paperwork and some of the hassles of the regulations they are subject to. And regulatory relief for small cable operators should get done.

To conclude, I congratulate everybody in this body. Senators and their staffs, who put in the incredible intellectual and physical energy to work on these most difficult of all issues. The telecommunications industry in America is an arena of enormous possibilities and opportunities. It also is made up of factions and sectors determined to get the upper hand. That is the other side of competition, and it makes it very hard to craft public policy that is truly balanced and in the people's broadest interests.

Representing West Virginia, I have been guided by my desire to unleash an industry that employs our people, invests in research and technology, and will redefine how our children and our citizens learn and communicate and work together in the years unfolding before all of us. To me, it has been very important that the bill take certain principles and values very seriously, especially the idea that West Virginians are included on the information superhighway and this time we do not get left on the back roads, trying to catch up.

Mr. President, I would in fact say that amendment, the Snowe-Rockefeller amendment, when this bill passes—I hope it will tomorrow—will represent, as far as this Senator is concerned, one of the most important parts of public service that I have rendered, in my judgment at least, to the people that I represent, past, present, or future. I am profoundly moved by the importance of that part of the bill.

I further conclude with the hope that we will indeed see the dividends and benefits that we have all fought for in this legislation.

One last point about power. With or without this bill, the power that American communications industry holds with its technology in connection to our people, a theme running through the entire debate on this legislation and in the public dialog, is the concern about exactly what is being transmitted and communicated over all of these lines, fiber optics, airwaves, and the like. America is traditionally at its best whenever part of our society shoulders some part of the responsibility for our children and for our moral fabric.

I urge every last element of this industry, from those that write the programs on television, and the movie screens, to those that design and sell the computer programs and games, to the companies that transmit all of this into households and onto the television screens, to assume your share of civic duty and accountability.

There is a dark side to this explosion of messages and images pervading our communities with too much violence and too much degrading material. If the industry resists the temptation to hide behind excuses and shoulders its part of the citizenship in our democracy that depends on its people, we can spend more time celebrating the good that this new world of telecommunications is all about instead of being forced to fight, as we will then have to, and will, to stop the bad.

Mr. President, I appreciate the indulgence of the Presiding Officer and those in this Chamber.

I yield the floor.

Mr. PRESSLER. Mr. President, I ask unanimous consent to proceed for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I want to commend the Senator from West Virginia, my friend, Senator ROCKEFELLER. He has been one of the architects of this bill, and he deserves much credit for his hard work. We thank him very, very much for what I consider was a great speech.

Mr. President, I would like to sort of bring the business of the day to a close by saying that in this bill, which I hope we will pass tomorrow—I am confident that we will—is the result of a bipartisan effort that has been going on for a long time.

This is a major bill. It affects a vast array; it affects every household in America. It affects all of our broadcasts, all of our cable companies and cable customers. It affects all of our local television, and our long distance. It affects our utilities, our direct broadcast satellites, and lots of other areas that would be too numerous to mention—publishing and their electronic subdivisions, burglar alarm people, the companies, and customers who use telephone lines to transmit information.

In this bill there are vast other issues such as the percentage of national markets that one television group can reach, and many other subjects, even the maritime satellite issues that affects our ships at sea.

So this is a vast bill, and we are trying to get everybody else in the business as much as possible. We are trying to end the regulatory apartheid that was set up in the 1930's. We are trying to have competition, and deregulation.

I believe telephone prices will drop substantially, if we pass this bill. I believe that cable rates will drop. I also believe that there will be an explosion of new jobs and new technologies available to our people. I compare this to the Oklahoma land rush in terms of investment. Our people needed a road map. They need a road map for the

next 10 or 15 years until we get into the wireless age. That is what this telecommunications bill is.

I am also very proud that the White House Conference on Small Business, the participants, over 500 of them, today supplied me with letters urging President Clinton to support the Senate bill on telecommunications, and also saying that on behalf of small business they want the Senate bill to pass.

There has been some talk about this as a corporate bill, this or that. These are small business representatives from all across the United States. Small business supports this bill.

Our effort is to get everybody into everybody else's business, to allow small business, new small businesses, to be formed. There will be small businesses in the local telephone service exchanges. There will be small businesses springing up, and new competition. This is a jobs bill of the highest priority.

So, Mr. President, I conclude by thanking all Senators. I think we have made great progress today. I look forward to the vote on the amendments, and final passage of this bill tomorrow.

I pay special tribute to the Senator in the Chair, Senator BURNS, who has provided great leadership on this subject. He is one of the acknowledged experts in the Senate.

I salute him for his contribution.

I yield the floor.

RECESS UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9 a.m. tomorrow.

Whereupon, the Senate, at 9:16 p.m., recessed until tomorrow, Thursday, June 15, 1995, at 9 a.m.

NOMINATION

Executive nomination received by the Senate June 14, 1995:

MERIT SYSTEMS PROTECTION BOARD

BETH SUSAN SLAVET, OF MASSACHUSETTS, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF 7 YEARS EXPIRING MARCH 1, 2002, VICE JESSICA L. PARKS, TERM EXPIRED.

EXTENSIONS OF REMARKS

HONORING THE ST. JOSEPH HONOR CHOIR

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. GILLMOR. Mr. Speaker, it gives me great pleasure to rise today and pay tribute to an outstanding organization located in Ohio's 5th Congressional District. The St. Joseph Honor Choir of Fremont, OH has been selected as one of only two choirs to represent the United States at the Pueri Cantores International Congress in Quebec, Canada from June 28 to July 9, 1995.

This is an honor for the choir to be Goodwill Ambassadors of the United States to an International Congress of this magnitude. St. Joseph Honor Choir is a proud member of Pueri Cantores. This international organization of children choirs, the name means little singers, has a world wide membership of over 25,000 children and encompasses such internationally renowned choirs as the Sistine Chapel Choir, the Vienna Boys Choir, and the Golden State Boys Choir and Bellringers of San Francisco, who hold the honor of also representing the United States at the Congress.

The St. Joseph Honor Choir consists of 43 children and 16 men. The Choir's repertoire is classical, religious, and secular music. Established in 1993, the Choir has quickly made a name for itself. The 1994–95 year has been and will be a very active and exciting year for the Choir. It began in November when the Choir hosted La Maitrise De Cap De La Madeline, which is recognized as one of the top children choirs in Canada. In December 1994, the St. Joseph Honor Choir went on its first mini-tour to Pittsburgh, PA. Also during the holiday season, the Choir performed for many church and civic organizations throughout the Fremont area. The Choir performed at numerous choir festivals, churches, and organizations throughout Northwest Ohio during the Spring season.

Mr. Speaker, it is obvious that the community and the members of the Choir have greatly benefited from the effort that was started in 1993. I ask my colleagues to join me today in recognizing the achievements of the St. Joseph Honor Choir and encourage them to continue to uphold what has become a standard for excellence.

THE PRESIDENT IS CORRECT REGARDING JAPAN

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. FRANK of Massachusetts. Mr. Speaker, President Clinton deserves great credit for his insistence that the Japanese stop being so restrictive regarding products from overseas. The great imbalance in trade between the United States and Japan is significantly exacerbated by restrictive Japanese practices, and President Clinton is to be congratulated for his unwillingness to simply allow business as usual—which for us in Japan has meant very little business.

For most of the post war period, the United States has put our geostrategic interests ahead of our own legitimate economic needs in dealing with our wealthy allies. That was appropriate when these allies where struggling to emerge from the doldrums of the post war period, and when we all confronted a powerful Soviet Union. Today, it is entirely legitimate for the President of the United States to be assertive about legitimate American economic interests vis-a-vis these wealthy nations. The response for many in the foreign policy establishment has been critical of the President for this legitimate defense of America's interest, and many economists have also—reflexively in my judgment—criticized the President for insisting that Japan follow rules which allow free competition within that country from overseas products.

In the New York Times on June 10, Lawrence Chimerine and James Fallows made a very strong case for the kind of action the President has taken. These two distinguished scholars know a great deal about American/Japanese economic relations, and think their strong support for the President's position should be printed here because of the great light it sheds on this controversy.

JAPAN DESERVES A TARIFF

(By Lawrence Chimerine and James Fallows)

WASHINGTON.—Although European and Asian governments have complained about the Clinton Administration's regrettable but justified proposal to place tariffs of 100 percent on 13 Japanese-made cars, most agree that Japanese trade barriers threaten the world trading system.

Debate in America on the issue has been more primitive. Many free-market economists, some pundits and lobbyists for Japanese and for some European interests question whether there is even a problem to be solved.

Mercifully, most have spared us the old argument that simply driving down the value of the dollar will eliminate trade imbalances. The dollar has lost two-thirds of its value against the yen in the last decade, yet trade between Japan and the United States has been remarkably unchanged, even though American products are much cheaper.

But we are hearing equally tired assertions, which rest on a misleading appearance of economic sophistication. The principal claim is that Americans import too much and save too little and that the Japanese do the reverse. But this supposed insight into the trade imbalance does not tell us which is the cause and which is the effect.

Most economists take it for granted that our low savings rate causes chronic, large trade deficits, because when we spend too heavily, we inevitably buy huge quantities of foreign goods. Yet it is just as proper to argue the reverse—that the large trade deficits caused by artificial barriers to American exports help create the low savings rate. This happens because reduced exports to, say, Japan mean smaller payrolls and profits at home. With less money earned, less is saved. And less is paid in taxes, driving up the Federal deficit and further depressing savings (because the Government borrows to finance the deficit).

The existence of formidable Japanese trade barriers is indisputable. Studies by the Economic Strategy Institute and other research groups estimate that if Japan's markets behaved like those of other industrialized countries, Japan would import up to $200 billion more in goods each year than it now does; of this, almost $50 billion would come from the United States.

The United States should raise its savings rate to limit reliance on foreign capital and to encourage productive investment—the key to vigorous long-term growth. But even if we do, we are likely to have a trade problem with Japan unless Japan changes. South Korea and Singapore, whose savings rates are even higher than Japan's also have large trade deficits with Japan.

Another faulty assertion in the debate over imposing a punitive tariff on Japan is that we're only hurting ourselves. Some claim we should keep our markets open regardless of what anyone else does because any other course would hurt American consumers.

They ask, Why should we punish ourselves by paying more for a Lexus or an Infiniti? And they say, if the Japanese or other Asians want to penalize their own people by running a closed economy, that's their problem. We'll enjoy the benefit of bargain-priced goods.

But Americans need jobs and income to buy even bargain-priced goods. Countries that combine closed markets with aggressive exporting to the United States effectively cut the number of good American jobs and thus consumer income. Closed foreign markets also inhibit our producers from investing, supporting research and development and creating new jobs.

A third argument against the tariff on Japanese luxury cars is that American car companies brought their problems on themselves by being lazy and greedy and not making cars suitable for Japan's left-side driving. This is the oldest red herring of all. Our auto producers make millions of right-hand-drive models for other left-side markets like Britain's.

The real issue is the cartel-like structure that ties Japanese parts makers, auto companies and dealers together in networks that are hard for outsiders to penetrate, no matter how attractive their products are.

In the auto parts business, there is no question of ''wrong side'' spark plugs, microcontrollers or piston rings. At current exchange rates, many American-made auto parts sell for one-third the price of Japanese-made items. American-made parts are of such high quality that the nation has an auto-parts trade surplus with Europe, where they are heavily used by BMW, Mercedes and other demanding manufacturers.

Nonetheless, American parts have captured only 2 percent of the Japanese market. And Japanese-owned auto assembly plants in the United States use at most only 50 to 60 percent American-made parts.

Finally, the silliest assertion is that the Administration's tariff might lead countries

to embrace managed trade—government manipulation of international commerce for national advantage. In raising this warning, the Europeans and Japanese are being hypocritical—and they know it.

The Europeans know it because their trade with Japan has long been managed in a Draconian way. Ever wonder why there are virtually no Japanese cars in France or Italy? It isn't because the Japanese are not trying hard enough or have the wrong steering wheels. It is because Europeans sharply limit the number of Japanese cars they will let in each year.

The Japanese know it because their own diplomats and foreign aid specialists advise the Thais, Russians, Indonesians and anyone else who will listen that careful controls on trade and capital are the best way to preserve an industrial base.

America's economy has its own mass of trade regulations and subsidies. But its markets are the most open of all the big industrialized countries. Japan's are the least open.

Ever freer trade over the last four decades has helped much of the world prosper. If there is a threat to the continued progress of this movement, it comes from those who pretend that problems with free trade—especially those created by the chronic American-Japanese trade imbalance—do not exist.

The Administration is at least trying to deal with this problem, which, if unaddressed, will destroy American support for free trade in general. If those who are most concerned about saving the world trade system don't like the Clinton solution, let them come up with a better and more realistic approach.

CHEER LEADER

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. SANDERS. Mr. Speaker, I am submitting a copy of an article which appeared in the Brattleboro Reformer, Brattleboro, VT today. I think that it will be of interest to many and request that it be included in the RECORD.

[From the Brattleboro (VT) Reformer, June 13, 1995]

CHEER LEADER

Of all the fishermen, in all the rivers, in all the states of the union, why did it have to be Tim Kipp in the Androscoggin River in Milan, N.H., when Speaker of the House Newt Gingrich stopped Sunday to chat?

Kipp, a history teacher at BUHS, is Brattleboro point man for Vermont's independent Congressman Bernard Sanders. Well to the left, his presence in the middle of a river was probably the first time in years Kipp has been in the mainstream. He was waist deep in water and up to here in indignation when Gingrich, in New Hampshire testing the political waters, paused for a photo op. It didn't help that the very waters Kipp was fishing are imperiled by an anti-environment initiative championed by the conservative speaker.

Gingrich, a pawn of Murphy's Law, did not know whom he was greeting when he waved hello.

Kipp seethed back: ''Your politics are some of the meanest politics I have ever heard. You make Calvin Coolidge look like a liberal.''

Gingrich dismissed Kipp's testy greeting with an intriguing summary: ''The guy is from Vermont and he didn't have that cheerful New Hampshire conservatism.'' The key word here is ''cheerful.''

To be cheerful in the face of assaults on the environment and cruel cuts to veterans, children, the elderly, the poor and the sick is evidence of either viciousness or delusion. We trust it is delusion that is behind ''cheerful New Hampshire conservatism.'' Certainly, delusion—plus smoke and mirrors—are the main underpinnings of the Republican congressional agenda. Thus would tax breaks for the wealthy help reduce the budget. Thus would denying the needy simultaneously empower them.

Lately, Gingrich has been hustling a picturesque, even uplifting, vision of an alternative to a national social welfare system he regards as crushingly expensive and lacking a moral soul. In Gingrich's America, private charities would shelter the homeless, feed the hungry and lend a hand to the lame and halt. The welfare state would be dismantled. Government employees would be replaced by volunteers sustained only by their sense of mission.

According to the leaders of the charities that would be called upon to fill the breach left by an obliterated welfare system, however, Gingrich is, well deluded.

Officials of numerous national charitable institutions—Catholic Charities USA, the Salvation Army, the American Red Cross, among others—say private donations to their agencies have dropped off in recent years. Both tax laws and a precarious economy discourage giving, and volunteerism is down in an economy where there are too few non-working Americans with extra time on their hands.

It's hard to be cheerful in the face of the truth, but somebody has to balance the happy horsefeathers offered by the speaker. Maybe Kipp should go on a speaking tour of New Hampshire and Newt ''Don't Worry, Be Happy'' Gingrich should go fishing.

A SPECIAL SALUTE 1995 ARTISTIC DISCOVERY PARTICIPANTS

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. STOKES. Mr. Speaker, I rise today to announce the successful completion of the annual Artistic Discovery competition in the 11th Congressional District. Over the years, Members of Congress have utilized the Artistic Discovery competition to both recognize and encourage the artistic talents of high school students. Throughout the spring, art competitions are held in congressional districts throughout the United States. The winning artwork from the various districts will be on display later this month when the Artistic Discovery national exhibition is unveiled here on Capitol Hill.

I am proud to note that the Artistic Discovery competition has enjoyed great success in my congressional district. This year's competition generated 350 art entries from high school students in 13 area high schools. The student artwork represented some of the best ever. Mr. Gary Thomas, a talented artist who is responsible for preparing the portraits of inductees into the Pro Football Hall of Fame, judged the entries and selected the winning artwork.

Mr. Speaker, the 1995 Artistic Discovery winner from the 11th Congressional District of Ohio is Jermaine Powell of Warrensville Heights. The son of Salley Powell, Jermaine is an 11th grade student at Warrensville Heights High School. His winning artwork is a painting entitled, ''A Mirror Can Dream.'' His artwork makes a strong statement about the need for unity and for people of our Nation to join together—regardless of color.

I am proud to report that Jermaine Powell is not only a talented artist, but he is an outstanding student at Warrensville Heights High School. He was recently inducted into the school's National Honor Society, maintaining a 3.5 grade point average. I extend my personal congratulations to Jermaine; his art instructor at Warrensville Heights, James Evans; and the school principal, Alex Murphy.

Mr. Speaker, it is important that the U.S. Congress recognize the importance of the arts, and take advantage of the opportunity to demonstrate our support for the Nation's youngest artists. I am extremely proud of each of the students who participated in the 11th District Artistic Discovery competition. They are very talented and all are winners.

I would also like to express my appreciation to the Cleveland community for its continued support of this important effort. In particular, I would like to thank officials and staff at the Cleveland Heights City Hall; Dick Bogomolny and Finast stores; Ted Sherron and the Cleveland Institute of Art; and the many others who helped to make our 1995 Artistic Discovery competition a great success. I ask that my colleagues join me in this special salute to the 1995 Artistic Discovery participants.

BEAUMONT SCHOOL

Alyssa Adams, Susan Ancheta, Amy Balbierz, Alithma Bell, Ann Bartek, Crystal Bell, Jennifer Blum, Anne Coburn, Molly Cook, Kelly Costello, Terry DePompei, Susan Dernyer, Julie Engstrom, Jessica Eppich, Katherine Fitzgerald, Sarah Fitzsimons, Elizabeth Havach, Alicia Hernandez, Lori Indriolo, Keisha Jones, Molly Keefe, Lucy Kirchner, Karola Kirsanow, Terre Kraus, Natalie Lanese, Maria Lind, Diane Lloyd, Josephine Lombardi, Brandyn-Marie Manocchio, Sara McCormack, Katie McCullough, Elise McDonough, Katheryn McFadden, Ann McKeever, Bridget Meredith, Nicole Patitucci, Carrie Paul, Sherry Petersen, Eileen Ryan, Micaela Redmond, Maura Schmidt, Kate Schuster, Jean Smith, Kate Sopko, Maureen Standing, Vember Stuart-Lilley, Paola Tartakoff, Tracie Tegel, Jennifer Trausch, Mary Trevathan, Christiana Updegraff, Amelia Vlah, Katy Walter, Aisha White, Vassimo White, Andrea Williams, Allison Wooley.

Art Teachers: Ellen Carreras, Sister M. Lucia, O.S.U.

BEDFORD HIGH SCHOOL

Erik Acevedo, Shannon Bakker, Wendy Bascombe, Betsey Beveridge, Jashin Bey, Paul Biltz, Bryan Braund, Brian Brown, Lutoni Carter, Eboni Davis, Melanie Dusek, Rashaun Elias, Nicole Fenick, Shawna-Nova Foley, Becky Frank, Monica Grevious, Angela Gschwind, Brenna Hallaran, Nicole Hanusek, Aaron Hulin, Phil Jacobs, Robert Kendrick, Jason Koharik, Jon Koharik, Jay Kozar, Josh Kusek, Diamond Lewis, Michael Lovano, Aurora Mallin, Charles Minute, Steve Miracle, Samantha Nechar, Monica Oden, Lisa Pacanovsky, Melissa Petro, Cheryl Ress, Andrea Richardson, Susan Schmidt, Kareem Sharif, Farryn Shy, Larry Stepp, Heather Takacs, Jennifer Taylor, Jonelle Thomas, Laura Thome, Cameron Tullos, Jason Wainwright, Keytsa Warren, Shakhir Warren-Bey.

Art Teachers: Bob Bush, Dagmar Clements, Lou Panutsos, Andrew Rabatin.

BELLEFAIRE SCHOOL

Margaret Perkel.

Art Teacher: Kelly Gutowitz.

CLEVELAND SCHOOL OF THE ARTS

Monique Boyd, Tanya Gonzalez, Alan McClendon, Tonia Thomas, Cleveland Tolliver, Sahara Williamson.

Art Teacher: Andrew Hamlett.

COLLINWOOD HIGH SCHOOL

Tammy Beam, Tiffaney Beasley, Deryck Cleveland, Shawn Powers, Cornell Vernon.

Art Teacher: Jerry Dunningan.

GARFIELD HEIGHTS HIGH SCHOOL

Christine Boozer, Shawn Brady, Cassandra Cox, Michelle D'Angelo, Erik Drotleff, Cheryl Jones, Bernice Kane, Jennifer Langman, Valerie Lubinski, Kelly Markiewicz, Erin Michaels, Leigh Michaels, Erik Miller, Bianca Roberts, Lori Suihlik, Kristen Todaro, Erick Wessel, Chris Wintrich.

Art Teacher: Christine French.

JOHN ADAMS HIGH SCHOOL

Betty Burgett, Morris Terry.

Art Teacher: Harry Petaway.

JOHN HAY HIGH SCHOOL

Tasha Burnett, Nedra Carter, Anthony Glass, Terrence Graves, Nura Hakim, Shamerra Kuykendall, David Moraco, Jr., Wendy Mullins, Latanya Porter, Luis Rodriguez, Andrew Straka, Tyrone Sykes, Rachael Weisenseel.

Art Teachers: Kathleen Yates, Richard Chappini, Harriet Goldner.

MAPLE HEIGHTS HIGH SCHOOL

William Abram, Andre Allen, Christian Allen, Amanda Bates, Emily Bryant, Richard Cannon, John Cary, Jacob Filarski, Elizabeth Fisher, Dan Fulop, Greg Gadowski, Jennifer Gedeon, Traci Lynn Helmick, Charlene Koblinski, Michele Lakatos, Melissa Lenzo, Calvin Little, Alex Mismas, Brent Peters, Carla Ruffo, Charles Rupp, Stefeny Sega, Mike Sindelar, Otis Thomas, Eric Turk, Raheem Tyus, Mike Ulatowski, Jonathan Watts, Kevin Workman.

Art Teacher: Karen Mehling-DeMauro.

SHAKER HEIGHTS HIGH SCHOOL

Becky Beamer, Jessica Bilsky, Jeffrey Brigden, Sean Chang, Paul Daniels, Josh Greenspan, Holly Hukill, Rebecca Littman, Norman Paris, Donald Renner, Kristan Shenk, Alyson Tynes.

Art Teachers: Malcolm Brown, James Hoffman, Susan Weiner, Jody Wohl.

SHAW HIGH SCHOOL

Oscar Alexander, Clifford Allen III, Walter Caldwell, Thames Davis, Mario Gibson, DeAndre Hodges, Travis Rock, Emanuel Silmon, Alicia Stephens.

Art Teachers: Susan Lochar, Rena Reynolds.

SOUTH HIGH SCHOOL

Raysean Arnold, Tikisha Bailey, Tunisia Currie, Yavetta Doster, Erik Klepacki, Vernell Maddox, Dion Mills, Crystal Murray, Carmella Peterson, Kristina Rawls, Lartanna Remmer, Scott Rimar, Tenna Smith, Maria Stewart, Maurice Stubbs, Crystal Weatherspoon, Dante Williams.

Art Teacher: Roman Rakowsky.

WARRENSVILLE HEIGHTS HIGH SCHOOL

Raushanah El-Amin, Todd Moore, Jermaine Powell.

Art Teacher: James Evans.

TRIBUTE TO WOODLAND HIGH SCHOOL AT 100 YEARS

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. FAZIO of California. Mr. Speaker, I rise today to pay tribute to a century of excellence at Woodland High School in Woodland, CA. This month we celebrate the commencement of the 100th graduating class from Woodland High School.

The history and highlights of the past 100 years at Woodland High School are well documented in the commemorative publication ''100 Years of Excellence,'' which was compiled by current students, teachers, staff and alumni. I am pleased to have the opportunity to share a number of these stories with you today.

Over the past 100 years, Woodland High School has been located at a number of sites throughout the city of Woodland. August of 1895 marked the first official meeting of classes with 78 students led by three faculty members at Walnut Street Grammar School. The following year the student body was able to occupy the old Hesperian College.

In 1913, students and faculty occupied the newly constructed 80 acre high school located at the current site of Douglass Junior High School. Enrollment at the high school continued to increase steadily during that decade until the United States entered World War I. 150 students and alumni served their country in Europe during the war.

On the last day of 1923, the main building of the high school was destroyed by fire and had to be rebuilt.

During World War II, Woodland High School played its part in the war effort through War Bond and Stamp drives which raised over $200,000. The superintendent and some members of the faculty left the school to enlist and serve their country. A number of students also enlisted upon graduation. By April of 1945, 41 alumni were listed as dead, missing, or prisoners of war.

During the next two decades enrollment continued to grow and in 1971 classes began at the West Street campus' current location. Today, Woodland High School has grown to an enrollment of over 1,700 students.

Many things have changed at Woodland High School over the past 100 years. Academic offerings have changed. The school paper has been renamed twice from ''The Omega'' to ''The Orange and White'' to ''The Orange Peal''. Clubs and sports teams such as the Costume Actors Club, Civil Air Patrol, archery and croquet have come and gone. Others including the Future Farmer's of America and football have thrived and continue to have a strong presence on the campus today. But with all these changes one thing has remained constant: enthusiasm, spirit and pride for the school.

Mr. Speaker, I ask my colleagues in the House of Representatives to join me today in celebrating the Centennial of Woodland High School. I offer my congratulations to all of the 100 graduating classes of Woodland High School and to the many more who will follow.

DISTINGUISHED JOURNEYMEN SHEET METAL WORKERS

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. VISCLOSKY. Mr. Speaker, over the course of my years as a private citizen and public official, I have witnessed a great, unfolding story. This story is one of pride and principle, enterprise and excellence. It is the story of American workers given the chance to contribute to society, with the labor movement's guiding hand.

Today, I would like to call attention to 16 young men who completed the sheet metal workers' apprenticeship program. On June 12, 1995, Sheet Metal Workers International Association Local Union No. 20 in Gary, IN, initiated these men as journeymen sheet metal workers. The new members are: John Babe, John Bodish, Erik Burkhart, Shane Byers, Andy Cleland, Kevin Frazier, Sam Glover, Phil Grede, Christopher Jenness, Eugene L. Klimazewski, J. Patrick Knox, Duke Popa, Jerry Porter, Richard Sells, Christopher Shaffer, and Matthew Vanbuskirk.

According to Mr. G. Russell Basset, who has almost 20 years of celebrated service as an elected official with Local No. 20, the apprentice program offers a broad overview of the sheet metal craft. Over a 5-year span, each apprentice must attend school once a week in Gary, IN. Moreover, the apprentice spends another 4 days a week working on sites and learning the various skills needed to make a successful and prosperous journeyman. These marketable skills include applied math, metal fabricating, welding, and architectural design as well as many others.

Mr. Speaker, I ask you and my other colleagues to join me in congratulating these fine individuals as they began their distinguished careers as journeymen sheet metal workers. Their futures promise to be successful as they use their intangible and tangible experiences from the apprentice program in their careers as well as their personal lives. May their careers be long and fruitful.

INCREASE COMPETITION AMONG CREDIT CARD ISSUERS

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. SCHUMER. Mr. Speaker, I have long been an advocate of increasing competition among credit care issuers, so that consumers may be offered the widest possible choice and pay the lowest possible fees and interest rates. I have also spoken before about a particular case of anti-competitive, anti-consumer behavior by VISA, the dominant issuer of credit cards in the United States. Unfortunately, this case remains alive because the Tenth Circuit Court of Appeals overturned a jury verdict in the lower courts that found VISA guilty of violating Federal antitrust law when it prevented Dean Witter from offering VISA cards to customers of a bank it owns. Dean Witter has appealed the case to the Supreme Court, where a petition for certiorari is currently pending.

I would like to read into the RECORD an article on this case by Professor Lee Richardson, past president of the Consumer Federation of America and former acting director of the U.S. Office of Consumer Affairs during the Carter administration. It was published in the Wall Street Journal on May 23, and in it Professor Richardson clearly lays out the stakes in this case for ''a market that affects the financial opportunities of tens of millions of American consumers.'' I fully concur with his view that ''the Supreme Court should be willing to listen to both sides,'' and that a writ of certiorari should be granted accordingly.

[From the Wall Street Journal, May 23, 1995]

LET A THOUSAND CREDIT CARDS BLOOM

(By Lee Richardson)

''VISA—It's everywhere you want to be.''

At least that's what VISA's marketers want us to believe. But unless the Supreme Court decides to overrule a recent appellate court decision about who can and cannot offer VISA cards, America's most prominent credit card will only be everywhere VISA wants it to be, to the detriment of consumers.

VISA's presence at some 3 million merchants (and in 180 million wallets and purses) allows it to dominate the domestic credit card market. But because VISA—an association of banks—determines who and under what conditions an organization may issue its card, the company maintains a tight grip on what options are actually available to consumers.

Since 1991, VISA has barred MountainWest Financial Corp. from issuing its card, ostensibly because MountainWest is owned by Dean Witter, which also issues the rival Discover Card. That seems strange because Citicorp, one of VISA's largest members, has long offered its own competing Carte Blanche and Diners Club cards. Indeed, almost all of VISA's members also offer MasterCard, VISA's chief competitor.

Thus, facing what it viewed as baldly anticompetitive practices, in 1991 Dean Witter went to U.S. District Court in Salt Lake City. Although a jury unanimously determined that VISA was significantly inhibiting competition, the 10th Circuit Court of Appeals reversed the jury's decision last September.

Now Dean Witter has asked the Supreme Court to review the case. Should it be accepted by the court before the end of this term, the case will undoubtedly become a critical test case in antitrust law.

More important, it could potentially establish a landmark ruling for the tens of millions of American consumers who want a more competitive and less costly credit card market—a market in which American consumers' credit card debt stood at more than $280 billion early last year, outstripping their auto loan debt. Consumer credit card charges totaled $474 billion in 1993 and are projected to nearly triple to $1.2 trillion by the year 2000.

So, until the Supreme Court renders a decision, the facts of the case provide us with a window into the rigid world of the charge card giant, revealing how far VISA is willing to go to maintain the high cost of credit.

Most consumers probably wonder why VISA should want to prevent a legitimate organization from issuing its cards. After all, VISA is a relatively open organization whose 6,000 members issue the card, charge annual fees, collect payments, and charge interest. All those members compete against each other for customers. The idea that adding one more member to the VISA family would pose a threat seems illogical.

An explanation may be found on the way that Dean Witter has chosen to compete in the lucrative credit card market. It successfully shookup that market with the Discover Card in the late 1980's, and it was prepared to do so again with its VISA program in the 1990s—by offering a card with no annual fee, a generous $3,500 credit line, and an initial interest rate of just 12.9% on each new purchase. VISA's 10 largest bank card issuers at the time—who collectively controlled a majority of all bank card business—were almost uniformly charging a sizable annual fee and a 19.8% interest rate. What Dean Witter was doing, in effect, was introducing a very unwelcome spirit of price competition into a credit card organization whose members were comfortably enjoying over 70% of the volume of the entire American market for general-purpose charge cards. So it is no wonder that the prospect of a Dean Witter VISA card sent tremors through VISA.

VISA had good reason to believe that Dean Witter's lowest-cost card could prove a threat to profits. By one estimate, every 1% decline in credit card interest rates translates into roughly $1.7 billion that consumers won't have to pay. Similarly, The Wall Street Journal estimated that the elimination of credit card annual fees could reduce issuer's profits by up to 40%.

To VISA, these numbers are no theoretical accounting exercise. In 1991, when VISA learned that Dean Witter, through its MountainWest bank, intended to launch a VISA card, VISA invoked a bylaw prohibiting membership to any institution that offers other cards deemed competitive by VISA's board. It is hard to believe that VISA's suddenly invoked bylaw is anything other than a transparent maneuver intended to limit the effectiveness of Dean Witter and other aggressive new competitors.

What is really going on in the legal dispute between Dean Witter and VISA is a battle over how competitive the future market in credit cards will be. The truth is, the market is not nearly competitive enough, and most consumers know this. In the early 1990s, the U.S. Senate, in response to public outcry, passed a bill that, had it become law, would have arbitrarily capped the interest rates on credit cards.

Fortunately, there is probably a better way than heavy handed federal regulation to meet consumer demands. Today, most of the top 10 issuers of bank credit cards still charge an annual fee, and one charges interest rates of as high as 21.9% a year. Surely consumers would benefit from opening this credit card market to new and more aggressive competitors.

VISA's strategy, as Dean Witter proved at trial, is two-pronged: First, it wants to head off a major increase in the level of competition within VISA from new competitors like Dean Witter. Second, it hopes to scare off other financial institutions that might want to follow Dean Witter by introducing their own proprietary card, and thus increase competition against VISA.

The strategy is working. No new competitor has entered the market with a proprietary card since 1985. And, if the Supreme Court allows the lower court decision to stand, it will be a major setback for a more competitive and dynamic market in credit cards. Little wonder that several of the established banking associations are lining up behind VISA on this issue.

But what is at stake here is not the future well-being of the banking industry, but of a market that affects the financial opportunities of tens of millions of American consumers. The Supreme Court should be willing to listen to both sides.

STUDENT LOANS

HON. EARL F. HILLIARD

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. HILLIARD. Mr. Speaker, I rise today to protest yet another one of the Republican plans to kill the American Dream. I am speaking of the budget that was rammed through last week. This budget gutted the student loan program, taking away the dreams and hopes of young people everywhere who will not be able to go to college if the plan is adopted.

The budget plan is BAD. The Republicans have betrayed the future of America, for 30 pieces of silver, by getting rid of student loans and by cutting taxes for their rich friends. In order to finance this despicable debt, they have sold out the young people of America.

When I think of how hard some of these kids have worked, studying and saving to get a college education, it makes me want to cry. And it makes me mad, too.

There are some wonderful kids in Alabama who now may not ever reach their full potential. We have enticed them with dreams of a bright future, and the Republicans have made that dream a nightmare. Wake up Alabama! Wake up America!

LITTLE LEAGUE AMBASSADORS

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. PALLONE. Mr. Speaker, 149 years ago, this June 19, the New York Nine played the Knickerbockers at Elysian Fields in Hoboken, planting the seeds that led to organized baseball in the United States. The rules which were established by Alexander J. Cartwright, who umpired the game, preceded the game between the Knickerbockers and New York 8 months later in Abner Doubleday's Cooperstown, NY.

America's favorite pastime has been a part of the scene in every State across the United States ever since, bringing together people of all backgrounds, races, beliefs, and economic strata in a fun-filled afternoon or evening of recreation, friendly competition, festivity, and vitality.

When Carl Stotz created the Little League in Williamsport, PA, in 1939, and encouraged baseball competition among youths between 9 and 12 years of age in the Keystone State and New Jersey, a competition that has grown to include the entire country, he did it with full knowledge that, as the Newark Evening News had said earlier, ''An American boy can no more be separated from baseball than he can from the dinner table when he's hungry.''

For many, the American pastime, baseball, is the American dream.

For 20 youths in the Sandy Hook Little League, bringing the great American pastime to the shores of the land their ancestors left, is the American dream of 1995.

The youths, accompanied by eight of their coaches, and attired in identical jackets, sweaters, and parkas depicting them as American ambassadors of friendship, will visit seven countries of Europe, beginning June 21,

playing baseball and cricket against competing teams from each of the countries. When they return to their native United States on July 4, the 219th anniversary of the signing of the Declaration of Independence, they will be carrying the message of thousands of European youth who believe, like themselves, that competition on the ballfield as a child will wipe out conflict on the battlefield as an adult.

These youths of the Sandy Hook Little League are astute scholars, all achieving their academics to the best of their abilities. They are dedicated ball players, hard playing and energetic. They represent more than award-winning, unscored against, record-breaking Little Leaguers who can outclass the best that has ever appeared on a baseball diamond.

They are, simply put, good, decent, wholesome American boys, the kind of kid the country can be proud of, the kind of kid who will be the leader of the Nation in the 21st century. They're the youngster with a fishing pole, sitting on the side of the river; the youngster with peanut butter on his nose and a smile across a freckled face; they're the imp who chews on a pencil before finishing that last question on a history quiz, or the big brother who hugs a baby sister, wondering why she cries.

They are the ones who can carry the message of friendship; the message that, while an ocean may separate us from the lands of our ancestors, a common interest in sportsmanship, fun, and friendly competition that can narrow the gap that divides people of different cultures, ethnic backgrounds, or religious beliefs.

While the United States enjoys lazy, languid days of summer, beginning June 21, our ambassadors of friendship will be visiting their contemporaries in England, the Netherlands, Belgium, Luxembourg, Germany, Switzerland, and France, competing with them on the baseball diamond, and learning their backgrounds and beliefs across the dinner table, in the park, or on the slopes of the Alps. While the United States resorts to the shore or mountains for summertime recreation, our youthful ambassadors will be touring the historic sites, enjoying the recreational facilities, learning the cultural highlights of the various nationalities they will meet on their historic journey back to their roots. In short, the Sandy Hook Little League representatives will be representing each and every one of us, using the laces of the baseball glove to tie together friendships and the sparkle of a baseball diamond to demonstrate to our European neighbors the jewels of America.

I ask you to join me in congratulating special ambassadors: Sean Andrews, Howard Paronto, Shane Kochon, Brian Wolcott, John Bellavance, Louis Collins, Ryan Collins, Chris Springsteen, James Murray, Donnie Hinchman, Lee Murchie, Brian Burton, Matt Smock, Brian Martin, Nick Riker, Chris Kaasmann, Sean Alvator, Scott Strohmenger, Matt Morin and Jason VanDeventer. I ask you to join me in wishing a safe journey to these ambassadors and their coaches: Thomas Andrews, Director, Herb Kochon, Substinence specialist, Rich Martin, security and first aid, Art Post, communications officer, Tom Barry, quartermaster, Lou Collins, field marshal, Herb ''Cappy'' Kaasmann, aquatics director, and Howard Paronto, navigator.

I invite you to join me in asking our special ambassadors to carry the message of peace and friendship, of healthy athletic competition and international camaraderie to our friends across the Atlantic Ocean in seven nations of Europe where many of us have roots, memories, or familial ties.

I urge you to applaud the efforts of these special ambassadors to spread their message of sportsmanship, friendship, and international peace as they travel through the nations of Great Britain, The Netherlands, Belgium, Luxembourg, Germany, Switzerland and France.

I call on you to recognize these special ambassadors as they travel by plane, bus, boat, train, and on foot spreading the word of an America that is young enough to enjoy the baseball field yet mature enough to recognize that it is the leaders of tomorrow who will forge the future of a nation still considered a youngster in the eyes of its European friends.

I welcome your wishes for a safe journey, a successful ambassadorial experience and a lifetime memory for these young ambassadors, our hope for the future, the leaders of the greatest Nation in the world during the 21st century.

TRIBUTE TO THE FIRST ARMENIAN PRESBYTERIAN CHURCH OF FRESNO

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor the First Armenian Presbyterian Church of Fresno, CA, which is celebrating its 98th anniversary this year. As the only Member of Congress of Armenian descent, it is a privilege for me to bring this vibrant church to the attention of the House of Representatives.

On July 25, 1897, 34 women and men gathered in a hall on ''F'' Street in Fresno and formally organized the First Armenian Presbyterian Church, the first Armenian Church in the State of California. The congregation was duly received and enrolled in the fellowship of Presbyterian Churches a few months later. It has been providing spiritual guidance and support to the Armenian community ever since.

Over the years, the First Armenian Presbyterian Church has been a source of strength for the Armenian faithful. It has brought our people closer to God through prayer and study. It has encouraged our people to celebrate the joys of life and the wonders of creation. And it has helped our people through times of turbulence, such as the Turkish genocide and the Great Depression.

Ninety-eight years after it began, this church has grown to nearly 400 members, and it is still meeting the religious needs of believers of every age, married couples, single followers, and the Armenian speaking.

Mr. Speaker, the First Armenian Presbyterian Church has been a blessing to the Armenian people, the city of Fresno, and the state of California. I ask my colleagues to join me in saluting this remarkable congregation and extending to it our warmest congratulations on its 98th anniversary.

A TRIBUTE TO DANISH CREAMERY ASSOCIATION ON THE OCCASION OF THEIR CENTENNIAL CELEBRATION

HON. CALVIN M. DOOLEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. DOOLEY. Mr. Speaker, I rise today to pay tribute to Danish Creamery Association, the Nation's oldest continually operated, farmer-owned dairy cooperative. Danish Creamery is celebrating its 100th anniversary.

In the tradition of all agricultural cooperatives, Danish Creamery has a long history of bolstering the economy of the cities and counties of California. Since 1895, the association has helped valley dairy farmers provide markets for their milk and has supplied the entire State with quality butter and dairy products.

The creamery and the member dairy farms are also important employers in the region.

Over the years, the Danish Creamery Association has led the way in the advancement of dairy technology and in interstate and international marketing. It has also been an important voice in the development of national programs for the betterment of the entire dairy industry.

Mr. Speaker, I commend Danish Creamery for reaching its 100th anniversary and wish the association continuing success in providing its members with this valuable service.

TRIBUTE TO ATTORNEY BILL TAMAYO

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. DELLUMS. Mr. Speaker, today I rise to share with you and my colleagues that after 16 years, attorney Bill Tamayo, leaves the Asian Law Caucus [ALC] where he directed the immigrant rights project working on behalf of low-income immigrants and refugees, to join the Equal Employment Opportunity Commission. A 1978 graduate of the Martin Luther King, Jr., School of Law, University of California at Davis, attorney Tamayo has set a standard of commitment, dedication and community activism as an attorney, advocate and as a human being concerned with the quality of life of his fellow citizens.

Bill served as cocounsel on civil and human rights issues including immigration raids—International Molders and Allied Workers Union, Local 164 versus Nelson—and succeeded in legal challenges of Immigration and Naturalization Service [INS] regulations on the exclusion of Asian elderly who received public benefits, deportation of foreign-trained Filipino nurses, restriction on legalization and the building of INS detention centers in Oakland and Vallejo, CA. He was cocounsel in Equal Employment Opportunity Commission versus Tortilleria La Mejor, a landmark 1991 decision holding that undocumented workers are protected by the employment discrimination provision of Title VII of the Civil Rights Act of 1964.

Bill understood the importance of legal challenges; however, what makes him distinct from others in the legal profession is that also

became legislative advocate. He worked and spoke out against various proposals to cut back on legal immigration, due process rights of immigrants and for the battered immigrant spouse provisions of the violence Against Women Act. He has published several articles on immigration rights, and on Asian Americans and public policy on immigration matters and on Asian American political.

Bill has served on the Boards of the Coalition for Immigrant and Refugee Rights and Services, Asian and Pacific Islander American Health Forum, and the Poverty and Race Research Action Council. He served as the chair of the National Network for Immigrant and Refugee Rights. From 1986–88, he was a National vice-president of the National Lawyers Guild.

In the 16 years with the Asian Law Caucus, Bill's accomplishments and achievements are indeed remarkable. It is an indication of the role Bill Tamayo has played and will continue as a leader and participant in the struggle for peace, justice, and social equality. I join with countless other civil rights and community leaders in honoring this dedicated public servant, Attorney Bill Tamayo.

INTRODUCTION OF LEGISLATION TO CORRECT THE IMPLEMENTATION OF THE MARINE DIESEL FUEL TAX

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. FARR. Mr. Speaker, I rise today to call attention to an issue of great importance to the boating community nationwide; the problems caused by the marine diesel fuel tax provisions imposed under the Omnibus Reconciliation Act of 1993.

Under this provision, two types of marine diesel fuel are available to boaters. Clear, taxable fuel is offered for sale to recreational boaters, while blue-dyed non-taxable diesel fuel is offered for sale to commercial boaters. In effect, this provision forces commercial vendors of marine diesel fuel to either dispense two types of diesel fuel which must be stored in separate tanks, often at the unnecessary and excessively burdensome cost of building an additional tank, or to offer only one type of diesel fuel, usually the dyed, which is not readily available for sale to pleasure boaters.

While this tax provision was meant to ensure that recreational boaters pay their fair share of marine diesel fuel taxes, it has instead created a disastrous situation where many recreational boaters cannot find clear, non-dyed taxable fuel for their use. This provision often forces boaters to travel long, often perilous distances at sea, in the search for diesel fuel.

I am offering a practical solution to this problem. My bill would amend the marine diesel fuel tax provision to all boaters, both commercial and recreational, to purchases dyed diesel fuel and pay applicable taxes at the pump. The bill would make it easier for fuel vendors to offer taxable fuel for sale while making it easier and safer for recreational boaters to purchase this fuel. The greater availability of dyed diesel fuel could even lead to an increase in current revenues to the United States Treasury. Commercial boaters would remain exempted from this tax.

Mr. Speaker, this problem is not specific to one particular district or State. Boaters nationwide are suffering from the unavailability of diesel fuel at local marinas. I urge my colleagues in the House to act on this legislation as soon as possible to ensure safe and fair access to diesel fuel for all boaters.

DR. HENRY FOSTER

HON. EARL F. HILLIARD

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. HILLIARD. Mr. Speaker, I rise today to address my colleagues of the House and speak out in support of Dr. Henry Foster. I believe strongly that Dr. Foster is an ideal candidate for this position.

Dr. Foster has devoted his entire career to ministering to impoverished and underprivileged citizens, especially teenagers.

He focused his efforts on addressing the problems of drug abuse and unplanned pregnancy among teenagers. Dr. Foster has recognized that the crisis of teen pregnancy is the root of many problems we face as a nation today. His work focused on motivating underprivileged teens to stay in school and graduate, and to concentrate on their futures.

The program he developed, called I Have a Future, was nationally recognized for its novel and innovative approach to the prevention of teen pregnancy. In 1992, he was honored by President George Bush as one of America's Thousand Points of Light.

In the late 1960's, Dr. Foster resided in Tuskegee, AL, where he was the only obstetrician in the area.

THE INTRODUCTION OF THE VOLUNTARY PROTECTION AUTHORIZATION ACT OF 1995

HON. JAMES A. HAYES

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. HAYES. Mr. Speaker, at a time when our economy demands that American businesses become more efficient to remain competitive, the relationship between management and labor, employer, and employee can no longer afford to be the confrontational one of the past. Improving health and safety in the workplace should not be divisive, but must instead be intuitive and one of our top objectives in facilitating greater productivity.

It is with this in mind that I join today with my fellow Louisiana colleague Congressman RICHARD BAKER to introduce the Voluntary Protection Authorization Act of 1995.

Our bill is intended to codify the highly successful Voluntary Protection Program [VPP] administered by the Occupational Safety and Health Administration. Under the current loose regulatory structure, VPP promotes effective health and safety program management that requires the participation and cooperation of both management and nonmanagement employees. Our legislation establishes framework that maintains the integrity of the existing program by providing the appropriate incentives to businesses to develop and implement high quality health and safety plans.

Authorizing VPP will level the playing field and allow the program the opportunity to compete for scarce dollars with other training and compliance assistance programs which have traditionally received insufficient resources. By doing so, we will endeavor to enhance the commitment to health and safety in the workplace that can never be fully realized through enforcement alone.

There are approximately 155,000 employees and 200 worksites, including two in my southwest Louisiana district, presently participating in VPP. Labor and management have come together to improve among other important things, employee motivation, lower lost workdays, and workers compensation costs and claims. These are just a few examples of the benefits and accomplishments of VPP.

Health and safety is an issue that should not be volatile. Labor, management, and Government must work cooperatively toward the common goal of sustainable economic progress. Our bill represents such an effort. The proposal enjoys the support of representatives of the small businesses community, large industry, the VPP Participants Association, and rank-and-file labor of participating firms. I welcome my colleagues to join us in moving this consensus, bipartisan bill forward.

THE COMPREHENSIVE SURVEY OF YOUNG OFFENDERS ACT

HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. WYDEN. Mr. Speaker, today I am introducing the Comprehensive Survey of Young Offenders Act. While Congress has spent much time and effort, and is about to spend vast sums on measures to address crime committed by adults, it is juvenile crime that is increasing exponentially. Particularly ominous, experts in the field report that while one can collect voluminous information on the national patterns and problems of adult crime and the adult criminal justice system, basic statistical data on the juvenile justice system is sketchy at best. Congress, States and localities have little or no comprehensive data on what the career record of a young offender looks like or how juvenile offenders flow through our country's juvenile justice systems.

A 1994 FBI study on major crimes reported that while the number of murders committed by adults 25 or older dropped 20 percent, the number of homicides committed by 18–24-year-olds increased 65 percent, and those by 14–17-year-olds increased 165 percent. However, according to several experts who study juvenile crime, by the year 2005 the number of teenagers in this county will increase 23 percent, and youth crimes will increase dramatically as well.

To effectively address youth crime, the Federal Government and the States need clear, straightforward data on how the current juvenile system functions. I have worked closely with Dr. James Q. Wilson, the noted UCLA criminologist, to meet this need through the legislation I introduce today. Dr. Wilson correctly pointed out that instead of fighting youth

crime with grandiose rhetorical statements like harsh treatment and mollycoddling, it is time to address the issue with a commonsense look at the facts.

There is a substantial amount of anecdotal evidence that indicates the juvenile system is in trouble. For example:

In Portland, my hometown, the Oregonian, described a case where a child committed 50 crimes, 32 of which were felonies, before the juvenile justice system took action to protect the community.

According to New York magazine, in New York State, 30,000 juveniles picked up for misdemeanors in 1993 were issued youth division cards and then released—essentially the paperwork was filed and the child walked out.

In Chicago, in the case of Yummy Sandifer, Newsweek reported that he averaged a felony a month for the last year and a half of his life (23 felonies and 5 misdemeanors in all). He was actually convicted of two felonies in juvenile court and nothing ever happened to him. Finally, he killed someone and was killed himself.

A system like this neither serves the children who commit crimes nor the community it is supposed to protect. Nationally, only 50 percent of juvenile cases even go to juvenile court. Most cases are handled by some form of social services division. The majority of juveniles who do go to court are given probation.

While this information indicates a system that is overwhelmed with violent offenders and doesn't have the legal remedies necessary to deal with such an influx, a broad overview of the problem is missing. The Comprehensive Survey of Young Offenders Act, would help Congress, States, and localities fill the holes in our knowledge of juvenile crime and our country's juvenile services. Right now there is little or no comprehensive data on the patterns of crime for young offenders, how many times a young offender goes through the juvenile justice system or which punishments or programs effectively protect the community and reduce recidivism.

This legislation would require the Bureau of Justice Statistics [BJS] to look into these issues—to survey available data on the crimes juveniles commit, to examine how young offenders flow through the juvenile justice system, and to report the outcomes of juvenile cases that are both petitioned to juvenile court and those that are handled informally.

Additionally, my legislation would require the BJS to design and estimate costs of a program that will improve data collection on young offenders in the States. While many States are moving in the direction of juvenile reform, few systematically evaluate the outcomes in their juvenile justice programs.

It is obvious that the rate of juvenile crime is climbing. What Congress now needs to do is take a comprehensive look at how our country's juvenile systems are handling that increase in crime and then evaluate where our national policy needs to go to address this enormous challenge.

AGRICULTURE WATER CONSERVATION ACT

HON. GARY A. CONDIT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. CONDIT. Mr. Speaker, I rise today to introduce the Agriculture Water Conservation Act.

During 1992, nearly 1.5 million acres of cropland in the United States irrigated by surface/gravity methods, either was converted to more efficient irrigation systems or was removed from production. At the same time, low-flow irrigation acreage increased by 15 percent and sprinkler acreage grew at a pace of 3 percent. An increasing demand on a limited water supply has created a demand in the agriculture community for water conservation.

Over the last several years I have read countless articles in different publications on the need to conserve water, and the role Federal Government has with this mission. While discussing water conservation methods with farmers in my district, I found cost was their overriding concern. The outlays required to implement water conservation systems—i.e., drip irrigation, sprinkler systems, ditch lining—are a tremendous burden on the agriculture industry. While I firmly believe most agriculture interest are genuinely concerned about conserving water, cost has crippled by the ability to implement conservation methods on farms.

My bill is not a mandate for expensive water conservation systems, it is a tool and an option for the farmer. Specifically, it will allow farmers to receive up to a 30 percent tax credit for the cost of developing and implementing water conservation plans on their farm land. The tax credit could be used primarily for the cost of materials and equipment. This legislation would not require them to change their irrigation practices. However, it would allow those farmers who want to move toward a more conservation approach of irrigation but cannot afford to do it during these tough economic times.

I am currently focusing a great amount of effort on reducing the threats to viable agriculture in the United States. The Agriculture Water Conservation Act, which is similar to legislation I introduced in the last two Congresses, is the kind of incentive we need in order to establish conservation measures which enable farmers to assist in solving water shortage problems. I believe providing for the long term water supply needs of environmental, urban, and agricultural users is a critical part of the solution.

The Agriculture Water Conservation Act is not the end all solution. Since I have introduced this bill in 1992 I have consulted with farmers, local irrigation districts, the Department of Interior's Bureau of Reclamation and the Department of Agriculture's Natural Resources Conservation Service. All these groups have given me helpful and beneficial advice on how to improve on this legislation. I believe farmers will contribute to solving water supply problems when given the opportunity, as they already have through conservation transfers and crop changes. This bill will provide yet another vehicle for farmers to contribute toward a solution while offering a modest credit to share the cost with the true beneficiaries—the public.

USDA INSPECTOR GENERAL'S JANUARY 1995 REPORT ''APHIS ENFORCEMENT OF THE ANIMAL WELFARE ACT''

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. BROWN of California. Mr. Speaker, as a long-time supporter of animal welfare legislation and as one of the Members of Congress intimately involved in the 1985 amendments to the Animal Welfare Act [AWA], I have a keen interest in promoting the humane treatment of animals as well as ensuring the strength and enforceability of the Animal Welare Act.

After an initial review of the USDA inspector general's January, 1995, report, ''Animal and Plant Health Inspector Service (APHIS) Enforcement of the Animal Welfare Act,'' I am deeply concerned with the Agency's ability and willingness to adequately monitor and reasonably ensure the humane care and treatment of animals. The inspector general stated, ''APHIS does not have the authority . . . to effectively enforce the requirements of the Animal Welfare Act.'' While I am pleased to see this unambiguous statement, I am greatly troubled by the USDA's seemingly willful neglect of the law. It took APHIS over 6 years to promulgate regulations based on the amendments to the act that were enacted in 1985. While this delay in responding to the requirements of the amendments was in my view unacceptable, I find it even more disconcerting that the problems associated with the enforcement of this act have not abated.

Lack of adequate resources is part of the problem associated with APHIS's ability to adequately monitor and inspect animals and facilities. In the past I have testified before the Appropriations Committee in favor of increased funding for enforcement of the AWA. I realize that Congress shares the burden of responsibility for not allocating the appropriate resources needed to fully implement this law.

More importantly, however, the inspector general's report indicates that APHIS has been neglecting its statutory obligations and has renewed facility licenses even when cited violations—past and present—had not yet been corrected. Additionally, APHIS is not inspecting research facilities before issuing the initial registrations, therefore noncompliance with the act may go unnoticed until APHIS' first inspection up to a year later.

It was clearly the intent of Congress that facilities should come into compliance before being issued the initial registrations, and that license renewals should be withheld where licenses have been suspended or revoked or in instances where facilities are not in compliance with the provisions of the act. Section 2.3 of the Animal Welfare Act, among others, implicitly gives APHIS the authority to conduct inspections and to deny renewals. The provision reads:

> Each applicant must demonstrate that his or her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use in the business comply with the regulations and standards set forth in parts 2 and 3 of this subchapter. Each applicant for an initial license or license renewal must make his or her animals, premises . . . available for inspection . . . to ascertain the applicant's compliance with the standards and regulations.

While APHIS maintains that it does not have the authority to withhold licenses for failure to comply with AWA requirements once an original license is issued, the agency does in fact have the authority to suspend and revoke the license of any facility that violates the act. I am hopeful that this misunderstanding within the agency can be corrected. If APHIS does not have the authority, under current legislation, to enforce the requirements of the act, then it should seek the authority from Congress or initiate legislation, as the inspector general has recommended, amending the act to provide APHIS with the proper authority:

The report surely provides plenty of ammunition for concerned groups and citizens who have asserted for years that APHIS is not willing to enforce the AWA. I am hopeful that we can move forward from here and begin to provide a more meaningful level of protection for the thousands of animals under the current jurisdiction of APHIS. I look forward to seeing APHIS move forward with a progressive approach toward rectifying the egregious problems associated with the enforcement of the act and its concomitant regulations.

NATIONAL ENDOWMENT FOR DEMOCRACY PROGRAMS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. HAMILTON. Mr. Speaker, I would like to call to the attention of my colleagues a letter I have received from Mr. John Brademas, chairman of the board of directors of the National Endowment for Democracy. The letter is in response to an article in Harper's Magazine criticizing a meeting sponsored by NED in Zagreb.

I agree with Mr. Brandemas that the Harper's article was filled with distortions that do not accurately reflect the purpose or the results of the Zagreb meeting. Those distortions and inaccuracies need to be addressed.

The National Endowment for Democracy has been in the forefront of supporting and promoting democratic values and the democratic system around the world for many years. The contributions made by the work of the Endowment, particularly in the emerging democracies of Central and Eastern Europe and in the former Soviet Union, have gone a long way to consolidating the movement toward democracy in those countries.

NEW YORK, NY,
June 2, 1995.

Mr. LEWIS H. LAPHAM,
Editor, Harper's Magazine,
New York, NY.

DEAR MR. LAPHAM: Your reporter's cynical account of the meeting the National Endowment for Democracy (NED) recently sponsored in Zagreb, Croatia (''At Play in the Fields of Oppression,'' May, 1995) betrays an almost willful ignorance of the meeting, its results—which were considerable—and the larger work of NED.

As Chairman of the Endowment's Board of Directors, I would like to set the record straight.

The purpose of the Zagreb meeting was to bring together democratic activists from Southeastern Europe to meet with one another and with Western groups interested in supporting free government and human rights, but seeking more knowledge of the region and its non-governmental organizations (NGOs). Since fighting began in the former Yugoslavia four years ago, like-minded activists living in different republics have found it nearly impossible to communicate with one another. Their respective societies have virtually no contact; for example, the telephone lines between Zagreb and Belgrade have been cut for over three years.

The Zagreb meeting, attended by representatives of 67 NGOs from the region and 34 Western aid organizations, was not the idle talk portrayed in the article, but a rare opportunity for friends of democracy in the war-torn Balkans to share ideas and establish contacts that will lead to practical assistance.

A few facts will give the lie to the charge that NED's programming is centered around meaningless conferences. The Endowment, which has been active in the former Yugoslavia since 1988, has provided computers, printing equipment, and vital supplies to independent newspapers and radio stations in Bosnia and Serbia-Montenegro. Without this timely aid, these free media outlets would have had to shut down. Acting through the Free Trade Union Institute, NED assists a multiethnic trade-union confederation in Serbia that openly challenges the anti-democratic policies of the Milosevic regime. Endowment funds also help underwrite the cost of the Balkan Media Network, an electronic bulletin board that links the region's media outlets through E-mail. These are but a few of the tangible forms of assistance that characterize NED-supported programs in every former Yugoslav republic.

Among the substantive results of the meeting in Zagreb are the many proposals the Endowment has received from participants inspired by the informal discussions and workshops they attended. Although the article identifies the director of an independent Bosnian radio station as a leading critic of Western donors, this same man felt the meeting of sufficient value to offer afterwards a project for the Endowment's consideration.

From the beginning, the Zagreb meeting was conceived as a way speedily to provide practical help to worthy groups that were poorly known (or completely unknown) to Western organizations, and to urge more Western groups to work in the region. Fortunately, Western groups never before active in the region have decided to get involved. A good example is NED's sister institution in Great Britain, the Westminster Foundation for Democracy, which will be working in Kosovo as a direct result of contacts made in Zagreb.

Your reporter falsely interprets the activists' general (and understandable) complains about the larger Western failure in the Balkans as an attack on NED, and focuses attention on some stray inanities uttered by a handful of the Western participants. He seems to have missed hearing any of the dozens of serious exchanges that took place informally. Yet those exchanges represented the real work of the meeting as participants developed plans for building independent media organs, human rights groups and civic organizations throughout the region.

Nowhere in the article is there acknowledgement that the meeting in Zagreb was an indigenous effort organized by the Erasmus Guild, a well-respected Croatian NGO. The Endowment-supported guild has worked effectively to promote civil society and ethnic harmony in a region that desperately needs both. For example, the Guild has successfully convened roundtable sessions that have brought together Croat, Serb and Muslim democrats to discuss inter-ethnic relations and the building of viable voluntary associations.

As Dr. Vesna Pusic, the Guild's Director has pointed out, ''It is absolutely essential to avoid replicating in the NGO sector a monopoly similar to the one that has been created by the ruling parties in most of the countries on the territory of the former Yugoslavia. That can be secured only by providing multiple sources of financing for different non-government organizations.'' This sentiment has been echoed by the Open Society Fund in Serbia, financed by the philanthropist George Soros, which has appealed for other funders to become involved.

The article is too loaded with inaccuracies and distortions to point them all out. Let me cite only the most blatant ones:

(1) None of the Eastern European participants had to pay their way to the meeting. Conversely, Western groups did.

(2) The reference to criticism of the Endowment by government accountants is based on a 1991 General Accounting Office report. Its recommendations for managerial improvements have long since been implemented.

(3) The description of two grants (neither accurately described) made by NED in 1984, the very first year of operations, continue to be trotted out by Endowment critics as proof that it ''meddles'' in the internal affairs of other countries. Yet the issues raised by these grants were addressed long ago: the Endowment has strict internal prohibitions against involvement in political campaigns (distinguished from electoral processes), and NED has a policy against working in established democracies. To put these two grants into perspective, I note that NED has funded over two thousand projects during its existence.

(4) The allegation that the International Republican Institute (IRI) expended funds to help finance the 1990 Republican National Convention is false. Funds raised privately were used to bring democratic activists from abroad to experience a particular aspect of American democracy and to be briefed by experts on campaigns, polling and elections.

(5) The IRI did use business class travel for its pro bono participants in overseas programs at a time when doing so was well within government regulations. Since 1992 (before the change in government regulations), IRI has permitted its volunteers and staff to travel in coach class only.

Let me close with a personal observation: After 22 years in Congress and 11 as President of New York University, I agreed to serve as Chairman of the National Endowment for Democracy, an obligation I did not assume lightly. To me, democracy is serious business and, in my case, a matter of lifelong commitment. I wish that Harper's would have been more discerning in publishing an article about a critical issue—encouraging free and democratic political institutions in countries that do not enjoy them—rather than accepting such a cynical, indeed arrogant, misrepresentation of fact.

Sincerely,

JOHN BRADEMAS.

APACHE LANGUAGE KEY TO CULTURE'S SURVIVAL

HON. ED PASTOR

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. PASTOR. Mr. Speaker, there are fewer eloquent leaders in Arizona, or the Nation, than Chairman Ronnie Lupe of the White

Mountain Apache Tribe. Time and again Chairman Lupe has seized the attention of a large crowd in a busy meeting with his passion and spirit as he speaks of his Apache people and their heritage.

Mr. Speaker, Chairman Lupe's eloquence is not confined to the English language. He is as eloquent and as forceful in his sacred Apache language as well.

In a recent article published in the newspaper ''Indian Country Today'', Chairman Lupe writes of the threats posed by today's cultural influences on native America languages.

I would call the attention of all my colleagues to this excellent and forceful article:

[From the Indian Country Today]

APACHE LANGUAGE KEY TO CULTURE'S SURVIVAL

(By Ron Lupe)

A recent article in the Arizona Republic rekindled my deep concern about the preservation of our Apache language.

This article, which reported on a meeting of linguists, said that in the opinion of the experts, half of all spoken languages will become extinct in the next century. It further stated that there are currently 6,000 languages spoken in the world, but in the next 100 years half of them will become extinct.

The thought of the possibility that our sacred Apache language could be among those that become extinct was truly upsetting. To me, that is thinking the impossible. Not only would it mean an end to our spoken language, but it would be the demise of the cultural richness we reflect in our Apache language and express in our prayers.

Who would we be without our language?

Yet, as I go around our reservation, I hear fewer and fewer of our younger children speaking Apache. I see less emphasis on the speaking of our language in our homes. And while the recent efforts of the school district to incorporate the teaching of the Apache language in the lower grades is commendable, I'm afraid that alone will not be enough to reverse these trends.

According to the newspaper report, the culprits in the extinction of Native languages are no longer official government policies, as it was back in the boarding school and early reservation days.

Rather, it's the pervasive influence of the electronic media. The ever-present television, the videos, the music tapes and CDs and all of the other media influences that come to us in the dominant English language are having a destructive effect on the survival of Native languages.

The trend is true not only for the White Mountain Apache but for people all around the world. The influence of the modern electronic media is powerful and we see it operating on our own lives, as well as the lives of our children and our grandchildren.

It will take an extraordinary effort to counteract the dominating influences that are undermining the preservation of our Apache language.

It's interesting that the federal government will go to great lengths to protect endangered species like the loach minnow or small plants and insects, and yet it does very little to preserve the Native languages that exist within the United States.

It's a sad commentary on federal policies that plant and insect life have a higher priority with our government than the Native languages, which are capable of capturing and reflecting so much cultural beauty and diversity.

The same newspaper article reported on an 80-year-old Promo woman from California who recently died.

She was the last Native speaker of her tribe's language.

What a tragedy! We must work hard to see that similar tragedies never happen to our people and our Apache language, which reflects so much of the beauty and richness of our culture and traditions.

Another article on the same page reported on recent research findings showing that languages are best learned when an individual is young. Research has shown that as we get older, we lose the ability to learn languages. Experts feel that the best time to learn languages is between the ages of two and 12.

It's clear that we must concentrate on instilling the Apache language in our very young. That means there has to be a concerted effort in the home, at Head Start and the lower grades. And, it is in the home where the greatest influence on the acquiring of the Apache language will take place.

If the ability to speak Apache is important to the parent, it is likely that it will be important to their children. Apache parents need to know that they have a responsibility to pass on our rich cultural heritage to their children, and that the future of the Apache language truly depends on them.

Likewise, it should be the role of our tribal government to try to reinforce and emphasize—to our youngsters and other tribal members—the importance of learning our Apache language.

Such efforts can only supplement what the child is exposed to at home and with his friends. Despite the formidable obstacles, we must continue our efforts to keep our Apache language as a vibrant and vital part of our everyday life. That's why the recently adopted constitution included provisions requiring tribal council members to be fluent in our language. This was done to insure that our special Apache way of looking at the world, as reflected in our Apache language, is maintained in our governmental decision-making processes.

There were times when we were discriminated against by government agencies and schools for speaking our own Apache language. We were considered second-class citizens if we chose to speak our Apache language, rather than English. To a great extent, this cruel psychological attack from the government and others was successful.

Even today, there is legislation in Arizona and other states designed to embarrass other nationalities who speak their own language and to establish English as the only ''official'' language of the United States. Such discrimination will undermine our bi-lingual education efforts.

While we still have a majority of our tribal members speaking our Apache language, we must do all that we can to insure that our language is preserved and transmitted to future generations of the White Mountain Apache.

TRIBUTE TO SAN ANTONIO POLICE OFFICERS

HON. FRANK TEJEDA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. TEJEDA. Mr. Speaker, we do not often enough have the opportunity to say ''thanks'' to the many hardworking men and women in our local police forces who risk their lives day in and day out to protect our towns and cities. I recently received a letter describing the successful efforts of San Antonio police officers to apprehend the perpetrators of a foiled assault and robbery. The crime victim eloquently describes the incident and her gratitude to the assisting officers. I echo her sentiments and offer my thanks to the police officers for their professionalism and teamwork. The letter is set forth below:

APRIL 25, 1995.

Hon. FRANK TEJEDA,
Cannon House Office Bldg., Washington, DC.

DEAR FRANK TEJEDA: On February 21, 1995 at 4:00 p.m. I was at Ed's Car Wash on Military Drive. While washing my car I noticed six teenagers standing on the side of the stall I was occupying. I thought they were waiting for their after school bus.

As I was washing my car a teenager, who later turned out to be the perpetrator, asked me for the time. I replied that it was 4:00 p.m. I felt uneasy because something in the way he was acting did not seem right. At this time I noticed that two of the teens were watching me. At first I was going to just leave but I thought I was in a public place and there were plenty of people around, I felt I was safe.

As I was putting the wash wand up, I heard running behind me. Just as I turned around there were two more teens coming at me. At this time the first teen that asked for the time started attacking me. He grabbed me from behind the neck and started choking me. I could feel myself starting to black out. At this point, he started to hit me in the mouth with his fist, causing an open injury inside my mouth and I could feel myself start choking on my own blood. He placed a gun at the back of my head and then hit me on the side of my face with the gun. He kept ordering me to give him my car keys and telling me to get into the car. I could do neither as he was still choking me until I was nearly passing out and I could not talk at this time. He had my arms and legs pinned against the car. My keys were locked in the car. He finally loosened his grip on my throat and I was able to tell him my keys were locked in the car and I had a car code. Then I screamed ''God help me.'' He look frightened and they all started running. I also started running in the other direction. I yelled for someone to help me and call the police that some teens had tried to kill me and one of them at least had a gun. Everyone got into their cars and left me standing there. But someone did call the police and they were there within minutes. The police had caught all of the teens within minutes.

The following officers from the West Side Sub-station were involved in the arrest of the teens:

1. Officer Sid McDonald—#282.
2. Officer Daniel Zamora—#1198.
3. Officer Kevin Wreser—#1022.

Officers assisting in the arrest were:

1. Officer Joe Esquibel—#129.
2. Officer Mavin Cannon—#966.
3. Officer Steven Martinez—#547.
4. Officer Randy Geary—#1141.
5. Officer Royce Basquez—#1194.
6. Officer Ruben Ramon—#775.
7. Officer Steven Howard—#932.
8. Officer Michael Kubena—#2002.
9. Officer William Biesenbach—#2381.

Investigating Officer—1. Sgt. Greg Young.

These fine officers showed concern for me and professional teamwork in the apprehension of these teenage juveniles. Within minutes the teens were caught. It was later learned that every one of them had prior arrest records.

Please thank these officers.

I have always stated and I will state again we have the finest police department in the United States. Please tell them to keep up the good work and God Bless All of the Police for making me feel safer because they are there.

I will always Back the Blue.

Sincerely Yours,

RUTH MAHL,

Executive Director, Helping Hands Lifeline Foundation.

LEGISLATIVE BRANCH FUNDING BILL

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. PACKARD. Mr. Speaker, last week the Legislative Branch Subcommittee, which I chair, slashed $155 million in an unopposed bill. And that is just the beginning. If every other Government agency cut themselves back like we did, we would be three-quarters down, $133 billion, the road toward a balanced budget in 1 year—never mind the year 2002. We have set the standard and now it's up to the other branches of Government to do their part.

We must make Congress work better and at less cost to the taxpayer. To that end, we have defunded certain items, looking toward privatizing them, eliminated others which were redundant, reduced those which were bloated and recommended innovative ways to move Congress into the 21st century. The bill is structured to allow for privatizing many of the constituent related services including congressionally flown flags, historical calendars, and some mailing operations. We also eliminated redundant agencies and services. Among them, the Office of Technology Assessment [OTA], the Joint Committee on Printing, one House parking lot, funding for the barber and beauty shops and the House restaurants. And remaining agencies have all been held at fiscal year 1995 levels or have been reduced greatly.

This bill does what we said we would do last November. We are downsizing Government, making it work better for less. I ask that my colleagues support this effort.

WHEN INSURANCE TAX BACKFIRED, CONGRESS PASSED THE BUCK

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. FILNER. Mr. Speaker, newspapers across the country last week reported a story that this Congress and the Clinton administration have known for several years—the Federal Government is losing almost $2 billion annually because of a flaw in the tax policy. The analysis, prepared by a team of investigative reporters from the Associated Press [AP], concluded that a powerful political lobby has succeeded in blocking all attempts to close this unintended loophole. I ask unanimous consent to reproduce this report in the CONGRESSIONAL RECORD.

The political lobby cited by the AP story is the mutual life insurance industry. The industry says they have been assured by Ways and Means Chairman Bill Archer, according to AP, that Congress isn't ''looking to advance anything.''

At a time when Congress is supposedly examining every program for possible cutbacks and savings, we should not put any spending item—including unintended tax loopholes—off limits from scrutiny. My colleagues should be aware that Senator BOB DOLE recently stated on ''Meet the Press'' that closing loopholes is not considered a tax increase—but merely a correction.

The unintended loophole in Federal tax policy identified by the AP story in section 809, a provision included in 1984 amendments to the U.S. Tax Code. The Ways and Means Committee acknowledged in 1989 that section 809 had backfired and tried to fix the problem. As reported by AP, ''After months of hearings and debate, lawmakers caved to the insurance lobby, with—the committee—asking the industry to devise its own tax plan.'' No industry recommendations have been forthcoming.

My own investigations suggest the yearly loss of revenues from section 809 is nearly $2 billion, a staggering amount of money. Rather than cut food programs for school children and hungry families, Congress should use these funds to reduce the Federal deficit.

Representative HELEN CHENOWETH and I have introduced legislation, H.R. 1497, to repeal section 809, a bill to restore tax fairness and close an unintended loophole. The Congress is proposing to ask every American to share in the effort to control spending, and to share the pain from downsizing the Federal Government. Everyone should be expected to contribute to this effort, including mutual life insurance companies which now escape their fair share of the tax burden.

Mr. Speaker, the independent voice of the Associated Press has revealed in this article that this $2 billion loophole exists and is being used by a handful of the country's largest mutual insurance companies. I hope the Ways and Means Committee will hold hearings on this situation and approve the legislation Congresswoman CHENOWETH and I have proposed to correct it.

Because no other major media outlet has delved into this national scandal, the AP story is reprinted below:

WHEN INSURANCE TAX BACKFIRED, CONGRESS PASSED BUCK

(By David Morris and John Solomon)

WASHINGTON.—Congressman BOB FILNER wants to put billions of extra dollars in the U.S. Treasury, but he is having trouble finding people to take up his cause.

The California Democrat has introduced legislation designed to close a loophole in federal tax law that allows mutual life insurance companies to avoid paying at least $1 billion in additional taxes each year. The legislation, similar to his bill that stalled in the last session of Congress, appears likely to be blocked again by the politically savvy insurance lobby.

The problem is not new. For six years, top officials in Congress and at the White House have known that an earlier law intended to increase taxes on the mutual companies backfired. Instead of raising additional tax dollars, documents obtained by The Associated Press show the 1984 law unwittingly gave mutual companies a new deduction that wiped out most of the intended increase.

''We compromised away too much,'' said Rep. Pete Stark, D-Calif., a frequent critic of the insurance industry and an architect of the 1984 plan. Accounting studies show the mutual insurance companies which include such insurance giants as Prudential and Metropolitan Life, pay taxes at half the rate of stockholder-owned insurers 10.8 percent versus 22 percent. The disparity was supposed to be corrected through an additional tax on the mutuals, which are owned by their policyholders. The catch came in a provision of the 1984 formula that allowed the mutuals to deduct capital gains.

Congress expected the deduction to be minimal, since mutuals had reported less than $100 million in capital gains between 1979 and 1984. But the mutuals changed their accounting, declaring nearly $15 billion in capital gains over the next five years. With encouragement from the Bush administration, Congress tried to fix the problem in 1989. But after months of hearings and debate, lawmakers caved to the insurance lobby, with then-House Ways and Means Committee Chairman Dan Rostenkowski asking the industry to devise its own tax plan.

That, Stark scolded, ''was like putting them on a steak and ice cream diet and telling them to get their cholesterol and fat down.'' The industry convened a study group, but eventually abandoned the effort.

Filner's bill also appears unlikely to solve the problem. He has only one co-sponsor, while the mutual industry apparently has locked up a powerful commitment to keep the bill back. Carroll Campbell, a former South Carolina governor who now heads the American Council of life Insurance, said he recently received assurances from Republican Ways and Means Chairman Bill Archer that bills to raise taxes were ''non-starters.''

Archer declined an interview. Ted Groom, a spokesman for the mutual side of the industry, said the system is already unfair. He contends that changing the law to collect more taxes would drive mutual companies out of business. ''We are currently overtaxed,' he said in an interview.

Still, study after study by independent agencies has shown that the 1984 law backfired, and that giant mutual companies were benefiting the most. One 1989 Treasury Department study said the law was supposed to generate $5.2 billion from the mutual insurance industry from 1984 to 1986, but had fallen $2.4 billion short. Other estimates put the shortfall as high as $2 billion a year.

Most large mutual companies have entirely offset the amount of new taxes they were supposed to pay. Some even claim the formula left them with a negative tax bill, and one company has sued to get the money back from the government. The government's expert witness in that case estimates that if the company wins, mutual companies could get refunds of up to $5 billion.

For years, the mutual companies have argued that the official figures indicating they were paying a low tax rate were erroneous. But they have failed to offer proof. This year, the industry apparently changed its tack, acknowledging the 809 section worked in its favor in the early years. But mutual companies also point to a 1995 analysis by Moody's Investors Service, which predicts the industry will see a sharp increase in taxes this year because a poor year gave them fewer capital gains to deduct.

Girding for a new fight in Congress, insurers donated an estimated $25 million to the national parties and congressional candidates in the past two elections. They also have hired some of the most powerful lobbyists in Washington, including Thomas J. Downey, a former member of the House Ways and Means Committee.

As the lobbyists lined up in opposition, Filner tried to get help from the Clinton administration, which has declared war on ''corporate welfare.'' But the administration has refused to take a position on the tax measure.

ARCHER-JACOBS FAMILY MEDICAL SAVINGS AND INVESTMENT ACT OF 1995

HON. BILL ARCHER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. ARCHER. Mr. Speaker, I am introducing H.R. 1818, the Family Medical Savings and Investment Act of 1995. The American people want health care reform—but not health care reform that relies on one-size-fits-all big Government solutions. Medical savings accounts will allow Americans to find affordable health care tailored to their personal needs. By allowing businesses and individuals to set up tax-free accounts to use for their health care expenses, this bill accomplishes three things. It makes health care more affordable and more accessible, and it promotes savings.

One of the reasons health care costs have skyrocketed is overuse and abuse of the system. By giving patients incentives to purchase health care more carefully, medical savings accounts will reduce the pressures that cause costs to rise.

Medical savings accounts also increase access to health care. If you have your own account, you won't lose your health care if you change jobs or lose your job.

Finally, MSA's promote personal savings. Nearly all of the economists who have come before the Ways and Means Committee agree on one thing: we badly need more savings. MSA's provide a savings-based answer to the health care dilemma.

Last year, the American people were denied meaningful health care reform because the administration took an all-or-nothing big Government approach that left them with nothing. Our incremental approach looks to be just what the doctor—and the American people—ordered.

Medical savings accounts legislation has long been a goal of mine. And now, this is an idea whose time has come. I hope that my colleagues, on both sides of the aisle, will join me in supporting this legislation which will allow Americans to find better quality, more affordable health care.

FAMILY MEDICAL SAVINGS AND INVESTMENT ACT OF 1995

TECHNICAL DESCRIPTION OF THE BILL

IN GENERAL

The bill would permit individuals who are covered by a catastrophic health plan to maintain a medical savings account (MSA) to assist in saving for expenses not covered by the health plan. Within limits, contributions would be excludable from gross income if made by the employer and deductible if made by the individual. In general, the aggregate amount of individual and employer contributions that could be deducted or excluded for a taxable year would be the lesser of (1) the deductible under the catastrophic health plan, or (2) $2,500 if the MSA covers only the individual or $5,000 if the MSA covers the individual and the spouse or a dependent of the individual. Withdrawals from an MSA would be excludable from income if used for medical expenses for the individual and his or her spouse or dependents.

DEDUCTIBLE CONTRIBUTIONS TO MSAS

A deductible contribution could be made to an MSA for any month in which the individual is an eligible individual. In general, a person would be an eligible individual for a month if, at any time during the month, he or she is covered under a catastrophic health plan and (at the same time) is not covered under a health plan other than a plan that provides certain permitted coverage.[1] No deduction would be allowed for a year if employer contributions (including transfers from flexible spending arrangements) are made to an MSA for the individual. (As discussed below, such employer contributions would be excludable from income.)

A catastrophic health plan would be defined as a health plan that has a deductible amount of at least $1,800 (or $3,600 if the plan provides coverage for more than one individual). These dollar limits would be indexed annually for inflation (rounded to the nearest multiple of $50).

The maximum deductible contribution to an MSA would be determined separately for each month based on the individual's status for each month, including whether the individual is an eligible individual, whether or not the MSA covers more than one eligible individual, and the amount of the deductible under the catastrophic health plan.

In general, the maximum annual deductible contribution would be the sum of the following amounts determined separately for each month. 1/12 of the lesser of $2,500 or the deductible under the catastrophic health plan for each month[2] in which the individual is an eligible individual and the MSA covers only the individual, and 1/12 of the lesser of $5,000 or the deductible under the catastrophic health plan for each month in which the individual is an eligible individual and the MSA covers the individual and another eligible individual who is the spouse or dependent of the individual. The maximum annual deduction limit would be reduced by any employer contribution to an MSA and any amounts transferred to an MSA from a flexible spending arrangement (FSA). After 1995, the dollar limits would be indexed for increases in the medical care component of the consumer price index. Such increases would be rounded to the nearest multiple of $50.

The deduction limit generally would be determined separately for each spouse of a married couple. If both spouses are covered under the same catastrophic health plan, then the deduction limit generally would be divided equally between the spouses unless they agree on a different division in the time and manner prescribed by the Secretary of the Treasury.

Example: Individual A, who has compensation of $50,000 a year, is covered by a catastrophic health plan with a deductible of $2,400 for individual coverage and $4,800 in the case of family coverage (and no other health plan) for all of 1996. Individual A is single at the beginning of 1996, but marries in July 1996. A's spouse is also covered by the same catastrophic health plan as A (and no other health plan). The maximum deduction limit for A is calculated as follows. For each of the months January through June of 1996, the contribution limit is $200 and for each of the months July through December of 1996, the contribution limit is $400. Thus, the maximum limit for the entire year is $3,800.

The deduction for contributions to an MSA would be taken in arriving at adjusted gross income (i.e., ''above the line''). No deduction would be allowed to an individual if any other individual is entitled to a personal exemption for such individual.

Contributions to an MSA for a taxable year could be made until the due date for filing the individual's tax return for the year (determined without regard to extensions).

EMPLOYER CONTRIBUTIONS TO AN MSA

Employe contributions to an MSA on behalf of an eligible individual would be excludable from gross income and wages for employment tax purposes. The amount excludable could not exceed the deduction limit applicable to the individual (determined without regard to the employer contributions).

DEFINITION AND TAX TREATMENT OF MEDICAL SAVINGS ACCOUNTS

In general, an MSA would be a trust created exclusively for the purpose of paying the qualified medical expenses of the MSA holder (or his or her spouse or dependents) that meets requirements similar to those applicable to individual retirement arrangements (IRAs) The trustee of an MSA could be a bank, insurance company, or other person that demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with applicable requirements.

MSAs generally would be taxable under the rules relating to grantor trusts. Any capital loss for a taxable year from an asset held in an MSA would be allowed only to the extent of capital gains from such assets for the taxable year.

An MSA trustee would be required to make such reports as may be required by the Secretary.

TAX TREATMENT OF DISTRIBUTIONS

Distributions used to pay the qualified medical expenses (not reimbursed by insurance or otherwise) of the individual or the individual's spouse or dependents would be excludable from gross income. Qualified medical expenses would be defined as under the rules relating to the itemized deduction for medical expenses (sec. 213), except that for this purpose medical expenses would not include insurance premiums other than premiums for a catastrophic health plan and would include premiums for long-term care insurance.

Distributions from an MSA that are excludable from gross income could not be taken into account for purposes of the itemized deduction for medical expenses.

Amounts not used for qualified medical expenses would be included in gross income to the extent such distributions do not exceed the excess of (1) the aggregate contributions to such account which were deductible or excludable from gross income, over (2) the aggregate prior payments from such account which were includable in gross income. An additional tax of 10 percent of the amount includable in income would also apply unless the distribution is made after the individual dies or becomes disabled.

FLEXIBLE SPENDING ARRANGEMENTS

The bill would provide that amounts in a health FSA could be transferred to an MSA for an eligible individual. A health FSA would not fail to be such merely because it permits such transfers. Such transfers would be excludable from gross income and would reduce the otherwise applicable contribution limit to an MSA.

An FSA generally would be defined as a benefit program which provides employees with coverage under which specified incurred medical expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions) and the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the cost of such coverage. In the case of an insured plan, the maximum amount reasonably available would be determined on the basis of the underlying coverage.

EFFECTIVE DATE

The bill would be effective with respect to taxable years beginning after December 31, 1995.

FOOTNOTES

[1] The following types of coverage would be permitted coverage and therefore would not preclude an individual from being eligible to contribute to an MSA: (1) coverage only for accidents, dental care, vision care, disability income, or long-term care; (2) Medicare supplemental health insurance; (3) coverage issued as a supplement to liability insurance; (4) liability insurance, including general liability insurance and automobile liability insurance; (5) worker's compensation or similar insurance; (6) automobile medical-payment insurance; (7) coverage for a specified disease or illness; and (8) a hospital or fixed indemnity policy. Other types of coverage, e.g., a flexible spending arrangement, would not be permitted coverage.

[2] If the individual is covered under different catastrophic plans at different times during the month, the limit would be the lowest deductible under such plans.

CONGRATULATIONS TO DR. DIXIE MELILLO

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mr. BENTSEN. Mr. Speaker, I want to highlight the accomplishments of Dr. Dixie Melillo, a distinguished physician who has selflessly helped women with breast cancer in southeast Texas. In fact. Dr. Melillo is a wonderful healer for both the families and the patients with breast cancer. Dr. Melillo provides the latest medical treatments as well as emotional support for her patients. Every patient receives her home phone number so they can contact her at any time and discuss their case. Dr. Melillo is a good example of an extraordinary woman and professional who gives her time and effort to her community.

Dr. Melillo founded The Rose, a nonprofit organization for breast cancer screening. The Rose provides mammograms below cost or at no cost to women who otherwise would not receive these screenings. With these screenings, women have a much better chance of survival and receive appropriate medical treatment before their tumors have spread. As of December 1994, The Rose has provided low-cost mammograms to over 45,000 women, including 4,700 sponsored patients. In addition, The Rose is located in three locations so it is convenient for women to schedule their appointments.

Dr. Melillo is a tireless volunteer for The Rose, and serves as its medical director. In her capacity as medical director, Dr. Melillo has organized five different breast cancer support groups, and regularly attends each of these meetings. Her most recent accomplishment was to organize a metastatic support group for patients with a recurrence. Patients, spouses, and families all join in these important gatherings. Last year, Dr. Melillo consulted with more than 300 women.

In many cases, she will treat patients who cannot afford followup care, at no cost. She has never turned down an opportunity to help her fellow woman. Roughly 20 percent of her practice has been dedicated to charity care.

Dr. Melillo is a well recognized and dedicated physician. Dr. Melillo completed her medical studies at the University of Texas Medical Branch in Galveston, TX. A general surgeon in private practice in Pasadena, Dr. Melillo currently serves as the chairperson of the Southeast Harris County Task Force of the American Cancer Society. In 1986 she served as the Chairman of The Department of Surgery at Bayshore Medical Center.

Dr. Melillo works hard for her community. She currently serves on the board of directors at Texas Commerce Bank, Pasadena Branch. Since 1993, Dr. Melillo has served on the board of directors at Bayshore Medical Center, where she still practices. From 1986 to 1990, Dr. Melillo served as the chairman of the Pasadena Chamber of Commerce, Medical Services Committee. In addition, Dr. Melillo has served as the alternative delegate for the Texas Medical Association. In 1988, Dr. Melillo received the Mayor's Volunteer of the Year Award in the health category for her dedicated service to the Houston community.

IN RECOGNITION OF COL. PIERCE ALBERT RUSHTON, JR., DIRECTOR OF ADMISSIONS AT THE U.S. MILITARY ACADEMY IN WEST POINT, NY

HON. SUE W. KELLY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 13, 1995

Mrs. KELLY. Mr. Speaker, Col. Pierce Albert Rushton, Jr., Director of Admissions at the U.S. Military Academy which is located in my District in West Point, New York, is retiring this year. He has a long and distinguished career of service to his country and the continued development of its future leaders.

At this point Mr. Speaker, I would ask that the attached statement be inserted into the RECORD for my colleagues review:

Colonel Rushton will retire from active military service in September 1995. Colonel Rushton's long and distinguished career as a soldier began in 1959 with his graduation from West Point and has spanned over 36 years. Colonel Rushton has made immeasurable contributions to the U.S. Army and to the U.S. Military Academy. Throughout his career he has distinguished himself as an exceptional leader, who fostered and upheld the timeless and honorable traditions of the U.S. Army.

As a soldier, Colonel Rushton served the nation in Germany, Vietnam, Korea, and the United States. He commanded a battalion and four different companies. Among these were command of the Command Operations Company of the 1st Infantry Division during the height of the Vietnam conflict, and command of the 142d Signal Battalion, 2d Armored Division, Fort Hood, TX, during the era of vital division testing. He served as battalion executive officer of the largest signal battalion in the Army in Korea, on the Department of the Army Staff in Washington, DC, and with TRADOC Combined Arms Test Agency at Fort Hood. He is a graduate of the Air War College, Montgomery, AL and the U.S. Army Command and General Staff College, Fort Leavenworth, KS.

Colonel Rushton holds a master of science degree in management from the University of Alabama and was elected to Beta Gamma Sigma academic fraternity. His first assignment to the West Point staff and faculty was from 1972–1975 as Associate Director of Admissions. In 1979, Colonel Rushton returned to West Point as the Deputy Director of Admissions. In 1985 he was appointed by President Reagan as the U.S. Military Academy Director of Admissions. During his tenure in admissions, Colonel Rushton developed and implemented a number of impressive initiatives. Some of the more important and far-reaching actions for West Point have been the development of comprehensive admissions tracking and trend analysis; the first use of student search programs for the Military Academy; the development of a state-of-the-art training and assessment program for newly assigned admissions officers; the opening of field offices in California and Texas, and the establishment of the West Point Spotlight School Program and Annual USMA Admissions Distinguished Service Award. During Colonel Rushton's admissions service, the U.S. Military Academy has enrolled 87 percent of the women and 77 percent of the African-American graduates in its history.

Colonel Rushton serves as a member and secretary of the U.S.M.A. Academic Board and as a member of the superintendent's policy board. He has been directly involved in enrolling 20 West Point classes or approximately 34 percent of the total graduates of West Point. As a result of Colonel Rushton's dedicated leadership in attracting and admitting the best young people our Nation has to offer, West Point has retained its position as one of the country's finest institutions of higher learning and the premier leader development institution in the world.

Colonel Rushton and his wife, Charlene have two children, Stephanie Patelli of Fort Irwin, CA and Cheryl Neuburger of Katonah, NY.

Colonel Rushton's many friends, fellow soldiers, and the Corps of Cadets join together on this day, to wish him the best of health and happiness and continued success.

RETAIN OUR SERVICE ACADEMIES

HON. BILL BAKER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 14, 1995

Mr. BAKER of California. Mr. Speaker, as is well known, I believe in a limited, efficient Federal Government that spends taxpayers' money wisely and frugally. Yet there is no wisdom in discarding the crown jewels of America's military: the academies in West Point, Annapolis, and Colorado Springs.

Critics charge that the cost of a service academy education is simply too high. This charge rests on a faulty evaluation of the numbers. Comparing the costs to taxpayers for ROTC graduates and military academy graduates is like comparing apples and oranges. Statistics used to show greater cost efficiency in the ROTC Program fail to note that ROTC costs are in addition to the normal cost of an education. For example, when college tuition and ROTC training are combined, the cost for an ROTC graduate is $214,000 over 4 years of study, while for a graduate of the Naval Academy, it is $203,000. The cost at West Point is higher—$268,000—but consider the following: A 4-year education at Stanford is $290,000, at MIT it is $254,000, and at Cal Tech, in my home State of California, it is $426,000. Much of this money is taxpayer-subsidized, and in the context of these expenses, the cost of service academy educations seem a bargain.

And let's not forget that consistently, the Naval, Army, and Air Force Academies rank among the top universities in the United States.

Further, the service retention rate of academy-trained officers is much higher than those trained in ROTC courses. Twenty year retention rates for Naval Academy graduates are

16 percent higher than those trained in ROTC Programs. For the Air Force Academy, retention over 20 years is almost 40 percent, as compared to 27.5 percent for other commissioning sources. Taxpayers are getting a solid return on their academy investments.

None of the above slights those outstanding men and women whose dedication took them through ROTC or OCS Programs. Yet a 4-year immersion in military training is unique. In honoring nonacademy officers, we should not diminish the need for leaders like Eisenhower, Grant, Schwarzkopf, Bradley, Patton, Burke, and my Senate colleague and American hero JOHN MCCAIN.

Yes, let's cut waste from the Federal budget, but not at the expense of a generation of future leaders.

SUPPORTING IMPACT AID

HON. PATRICK J. KENNEDY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 14, 1995

Mr. KENNEDY of Rhode Island. Mr. Speaker, I rise today to praise the National Security Committee for adopting the Edwards-Bateman amendment to preserve partial funding for the Impact Aid program.

Impact Aid provides essential funding for school districts which lack revenue because a portion of their student body lives on Federal land and does not pay local school taxes.

The work of the committee has reaffirmed the Federal Government's pledge to provide over 5,000 children in Rhode Island with a sound elementary and secondary education. Without Impact Aid the Federal Government would abandon this essential commitment to all the children in these districts.

These children are of course very special to our Nation. They are the sons and daughters of the people who protect our country by serving in the military.

Impact Aid is clearly about our military readiness not just for today but for our future.

Funding Impact Aid today ensures that our military personnel are prepared to serve because they do not carry with them the worry that their children are not receiving a proper education

Moreover, Impact Aid today means supporting America's leaders tomorrow. Education and training will develop skills, and skills mean high quality jobs for Americans. Without the program over 17 million children nationwide would be left unprepared and undefended in the harsh climate of the new global economy. This is a cost America simply cannot bear.

Again, I thank my colleagues from both sides of the aisle for funding Impact Aid and supporting the men, women, and children of the U.S. armed services.

TRIBUTE TO PRESIDENT REAGAN PROMOTING ALZHEIMER'S DISEASE AWARENESS

HON. ANDREA H. SEASTRAND

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 14, 1995

Mrs. SEASTRAND. Mr. Speaker, I rise today to pay special tribute to President Ronald Reagan for his strength and courage as he and Mrs. Reagan strive to bring national attention to the American people regarding Alzheimer's disease.

Throughout his long and successful political career, President Reagan chose, without hesitation, to tackle the most controversial issues of the day. Today, he and Mrs. Reagan are leaders in the effort to educate the public about Alzheimer's disease. Indeed, the Reagans are lending their support to efforts in Santa Barbara County which will help generate the dollars needed to provide services to those who have been stricken with this debilitating disease. The Alzheimer's Association of Santa Barbara is the beneficiary of this charitable effort.

Santa Barbara knows of the Reagan's love for and interest in Santa Barbara County, and we are honored to have been able to call Santa Barbara the Western White House. Local residents and business owners remember their visits to Rancho del Cielo with great fondness, and we welcome them back whenever possible as heroes fighting for a new cause. The 22d Congressional District of California applauds President and Mrs. Reagan for their perseverance and we want them to know that our prayers are with them.

HONORING LAPEER COUNTY WORLD WAR II EFFORT

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 14, 1995

Mr. KILDEE. Mr. Speaker, I rise today to urge my colleagues in the House of Representatives to join me in paying tribute to the men and women of the great County of Lapeer, who bravely served this Nation during World War II. Lapeer County has been recognized as an official Commemorative Community by the Department of Defense, and has worked for many months on a host of events that will honor all of its citizens that served during World War II.

The sacrifices and accomplishments of the men and women that served are many, and serve as inspiration to the generations that have benefited the most from their efforts. The men and women of Lapeer County held true to the notion that evil and tyranny will not prevail.

The lessons taught by World War II must never be forgotten. We are bound by honor to keep the legacy of the great patriots of our Nation forever fresh in the memories of future generations. The courage, valor, and singleness of purpose that was shown by the entire country, serves as an example of the unity and strength of the American people. It was a time of patriotism. It was a time when America was proud. It was a time when America served as a bright shining light to a world thrown into darkness by evil forces.

The men and women of Lapeer County paid a heavy price to defeat the Axis Powers. Some were wounded. Some were never to return home, destined to rest forever beneath the soil of a far off land they helped to free. Families were changed forever by the loss of loved one. Let us never forget what our freedom cost. Let their spirit and faith in democracy endure.

Mr. Speaker, it is an honor and a privilege for me to rise before my colleagues in the House of Representatives to honor the great people of Lapeer County who contributed so much to victory during World War II. I am honored to represent them in Congress.

220TH BIRTHDAY OF THE UNITED STATES ARMY

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 14, 1995

Mr. MONTGOMERY. Mr. Speaker, I rise today to pay tribute to the soldiers and civilians of the United States Army as we recognize June 14th as the Army Birthday. I take great pride in honoring the brave men and women who have served in the United States Army since 1775. The heart of America's Army is its people, the young men and women of our nation who volunteer to serve. We must never forget that even in this time of precision munitions and brilliant weapons, the individual combat soldier is the ultimate smart weapon. America's Army is peopled by soldiers of high quality—soldiers with character, commitment and courage. These qualities are—and always will be—hallmarks of the Army.

June 14th is Flag Day as well as the Army's birthday; therefore, it is appropriate to point out that the design of our flag, Old Glory, has evolved over the years since 1777. The liberty it stands for, however, remains constant. So does the Army's vigil to protect liberty.

Since 1775, more than 42 million Americans, in times of turmoil and tension as well as periods of peace, have raised their right hands to take an oath, making America's Army what it is today: the premier fighting force in the world. They have taken that oath, not to a king, not to a President or political party, and not to a flag alone, but to the Constitution of the United States and the ideals it represents.

Yesterday they were ready, from Lexington and Concord to Gettysburg, and from Normandy to the Persian Gulf. Today they are ready to keep the peace or provide humanitarian relief around the globe. Tomorrow, too, they will be ready. Whenever the time, wherever the mission, whatever the challenge, we can count on America's Army.

The United States Army has always done more than fight our nations wars. The Army develops leaders who contribute to the strength of the very fabric of American Society. America's Army has always provided leaders for government and industry. From Presidents, to many of my colleagues here today, all owe much of their strength as leaders to what they learned in the Army. In the House of Representatives you will find 87 members who served in the Army, either on active duty, in the Army Reserves, or in the Army National Guard; and in the Senate you will find another 27 who served their nation as soldiers. I ask that a list of my House colleagues with Army service be appended to my remarks for the record.

In closing, let us remember and reflect on the selfless sacrifice of America's soldiers throughout our history, their accomplishments made in the face of terrible hardship, and their dedication to our nation. The United States

Army, America's Army, should be proud as it celebrates its 220th birthday, and the nation should be proud as it celebrates Flag Day that these brave men and women stand ready to support and defend our American way of life. June 14th will be celebrated in every camp, post and station of the Army, and here in the Nation's capital. I encourage all Americans to find a way to help celebrate this event, and to find a way to thank the men and women, soldiers and civilians of the Army for their dedication, sacrifice, and selfless service.

HOUSE MEMBERS WITH ARMY SERVICE

Scotty Baesler, Doug Bereuter, Tom Bevill, Brian P. Bilbray, Sherwood Boehlert, Bill Brewster, George E. Brown, Jr., Ed Bryant, Dan Burton, Steve Buyer, William L. Clay, Bob Clement, Ronald D. Coleman, Mac Collins, John Conyers, Jr., Wes Cooley, William J. Coyne, Robert E. Cramer, Philip M. Crane, Thomas M. Davis III, E. ''Kika'' de la Garza, Nathan Deal, John D. Dingell, Julian C. Dixon, John J. Duncan, Jr., Thomas W. Ewing, Eni F. H. Faleomavaega, Michael Patrick Flanagan, Rodney Frelinghuysen, Martin Frost, Greg Ganske, George W. Gekas, Sam M. Gibbons, Benjamin A. Gilman, Bill Goodling, Porter J. Goss, Richard (Doc) Hastings, Steve Horn, Duncan Hunter, William J. Jefferson, Harry A. Johnston, Paul E. Kanjorski, Peter R. King, Joe Knollenberg, John J. LaFalce, Greg Laughlin, Jim Ross Lightfoot, William O. Lipinski, Edward J. Markey, Frank R. Mascara, Jack Metcalf, John McHugh, Norman Y. Mineta, Alan B. Mollohan, G.V. (Sonny) Montgomery, Carlos J. Moorhead, John T. Myers, Charlie Norwood, Solomon P. Ortiz, Larry F. Payne, Jr., Collin Peterson, John Edward Porter, Glenn Poshard, Jim Ramstad, Charles B. Rangel, Jack Reed, Mel Reynolds, Frank Riggs, Harold Rogers, Toby Roth, Bobby L. Rush, Robert C. Scott, Jose E. Serrano, Bud Shuster, John Spratt, Jr., Louis Stokes, Esteban E. Torres, Edolphus Towns, Harold L. Volkmer, Robert S. Walker, Dave Weldon, Edward Whitfield, Pat Williams, Frank R. Wolf, C.W. (Bill) Young, Don Young, Bill Zeliff.

HONORING DAN RATTINER, DISTINGUISHED NEWSPAPER PUBLISHER AND EDITOR

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 14, 1995

Mr. ACKERMAN. Mr. Speaker, I rise today to join with my constituents in the Fifth Congressional District of New York and the citizens of Eastern Long Island in recognizing Dan Rattiner.

For 35 years, Dan Rattiner has distinguished himself as a leading force in the Long Island newspaper industry as publisher and editor of Dan's Papers on the East End of Long Island.

When Dan Rattiner founded Dan's Papers in 1960, he boldly accepted his own challenge to inform and educate Eastern Long Island residents of the important issues affecting their community.

Throughout the years, Dan Rattiner has also served the East End with exceptional public service. Every year since 1979, Dan Rattiner has raised tens of thousands of dollars for charity through the annual Dan's Papers Potatohampton Minithon, a 10K race that occurs in Bridgehampton every Memorial Day weekend. From 1985 to 1993. Dan sponsored a summertime radio show in Manhattan entitled ''The Hampton Report,'' informing citizens throughout the New York Metropolitan area about the unique attributes and attractions of the East End. Presently, Dan hosts a New York City radio program, ''The Weekend Report,'' which also enlightens New Yorkers about the East End.

In addition, Dan Rattiner has authored numerous books on the East End, including ''Dan's Book,'' ''Albert Einstein's Summer Vacation,'' and ''Who's Here: The Heart of the Hamptons.''

Mr. Speaker, Dan Rattiner's achievements and contributions to the East End merit the special appreciation of the community, his friends, and his family.

I ask all of my colleagues in the House of Representatives to join me this day in recognizing Dan Rattiner for his generous contributions and dedicated service to the Long Island community.

EXPLANATION OF H.R. 1729 TAX EXCLUSION REGARDING PRE-NEED FUNERAL TRUSTS

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 14, 1995

Mrs. MINK of Hawaii. Mr. Speaker, I introduced H.R. 1729 to reverse a bureaucratic inequity created by a January 29, 1988, Internal Revenue ruling (87–127) which created two classes of taxpayers with disproportionate tax treatment which my legislation seeks to remedy.

Because funeral expenses often saddle a family abruptly with an unexpected financial burden, many families find it in their best interest to establish a pre-need funeral plan (trust) where moneys are set aside for future funeral costs.

Under this IRS ruling, families purchasing pre-need funeral plans are required to pay taxes on the interest income earned by these trusts, despite the fact that trust moneys and earned interest remains in the possession of the seller of the trust—usually a funeral home. Trusts purchased before the effective date of the ruling were subject to a grandfather clause, establishing a significant inequity between trusts purchased before and after the effective date.

Furthermore, the IRS ruling forced sellers of pre-need trusts to assume the responsibility for informing purchasers of the tax amounts owed on their trusts. This has created difficulty for sellers due to confusion on the part of the purchasers who believe it inequitable that they be assessed this tax on interest that they never receive nor benefit from.

H.R. 1729 would reverse Revenue ruling 87–127 by requiring the providers of pre-need funeral trusts once again to pay taxes on earned interest on the trusts, unless the interest is returned to the purchaser.

I urge my colleagues to support H.R. 1729 to relieve families from unwarranted taxes.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, June 15, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JUNE 16

9:30 a.m.
Commerce, Science, and Transportation
Surface Transportation and Merchant Marine Subcommittee
To hold hearings on the future of Amtrak and local rail assistance.
SR–253

JUNE 19

2:00 p.m.
Governmental Affairs
Post Office and Civil Service Subcommittee
To resume hearings on proposals to reform the Federal pension system.
SD–342

JUNE 20

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on counternarcotic programs.
SD–192

Energy and Natural Resources
To hold oversight hearings to review existing oil production at Prudhoe Bay, Alaska and opportunities for new production on the coastal plain of Arctic Alaska.
SD–366

10:00 a.m.
Finance
Social Security and Family Policy Subcommittee
To resume hearings to examine the financial and business practices of the American Association of Retired Persons (AARP).
SD–215

11:00 a.m.
Foreign Relations
Business meeting, to consider S. Res. 97, expressing the sense of the Senate with respect to peace and stability in the South China Sea, and pending nominations.
SD–419

2:00 p.m.
Foreign Relations
To hold hearings on the nominations of David C. Litts, of Florida, to be Ambassador to the United Arab Emirates, Patrick N. Theros, of the District of Columbia, to be Ambassador to the State of Qatar, and A. Peter Burleigh, of California, to be Ambassador to the Democratic Socialist Republic of Sri Lanka and to serve concurrently and without additional compensation as Ambassador to the Republic of Maldives.
SD–419

JUNE 21

9:00 a.m.
Labor and Human Resources
Business meeting, to consider pending calendar business.
SD–430

9:30 a.m.
Energy and Natural Resources
To hold hearings on the Secretary of Energy's strategic alignment and downsizing proposal and other alternatives to the existing structure of the Department of Energy.
SD–366

Labor and Human Resources
To hold oversight hearings on the Occupational Safety and Health Administration (OSHA).
SD–430

2:00 p.m.
Select on Intelligence
To hold hearings to review the progress of the activities of the Director of Central Intelligence.
SD–106

JUNE 22

9:30 a.m.
Energy and Natural Resources
Forests and Public Land Management Subcommittee
To hold hearings on S. 852, to provide for uniform management of livestock grazing on Federal land.
SD–366

Labor and Human Resources
To continue oversight hearings on the Occupational Safety and Health Administration (OSHA).
SD–430

Indian Affairs
To hold joint hearings with the House Committee on Resources Subcommittee on Native American and Insular Affairs on S. 487, to amend the Indian Gaming Regulatory Act.
SD–G50

10:00 a.m.
Environment and Public Works
Drinking Water, Fisheries, and Wildlife Subcommittee
To hold oversight hearings on the National Marine Fisheries Service policy on spills at Columbia River hydropower dams, gas bubble trauma in endangered salmon, and the scientific method used under the Endangered Species Act which gave rise to that policy.
SD–406

Judiciary
Business meeting, to consider pending calendar business.
SD–226

JUNE 23

9:30 a.m.
Labor and Human Resources
To hold hearings to examine issues relating to the Legal Services Corporation.
SD–430

JUNE 27

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on ballistic missiles.
SD–192

JUNE 28

9:30 a.m.
Labor and Human Resources
Business meeting, to consider pending calendar business.
SD–430

Indian Affairs
To hold hearings on S. 814, to provide for the reorganization of the Bureau of Indian Affairs.
SR–485

10:00 a.m.
Veterans' Affairs
To hold hearings to examine options for compliance with congressional budget resolution (H.Con.Res. 67) instructions relating to veterans' programs.
SR–418

JUNE 29

9:30 a.m.
Small Business
To hold hearings to examine the future of the Small Business Investment Company program.
SD–538

10:00 a.m.
Energy and Natural Resources
To hold oversight hearings with the Committee on Environment and Public Works on energy and environmental implications of the Komi oil spills in the former Soviet Union.
SD–366

Environment and Public Works
To hold oversight hearings with the Committee on Energy and Natural Resources on energy and environmental implications of the Komi oil spills in the former Soviet Union.
SD–366

2:00 p.m.
Energy and Natural Resources
Parks, Historic Preservation and Recreation Subcommittee
To hold hearings on S. 594, to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer.
SD–366

JULY 13

9:30 a.m.
Indian Affairs
To hold hearings on S. 479, to provide for administrative procedures to extend Federal recognition to certain Indian groups.
SR–485

POSTPONEMENTS

JUNE 15

9:30 a.m.
Energy and Natural Resources
To hold hearings on S. 871, to provide for the management and disposition of the Hanford Reservation, and to provide for environmental management activities at the Reservation.
SD–366

Wednesday, June 14, 1995

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S8293–S8415

Measures Introduced: Four bills and one resolution were introduced, as follows: S. 920–923, and S. Res. 133. **Page S8380**

Measures Reported: Reports were made as follows:

S. 922, to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government and the Central Intelligence Agency Retirement and Disability System, and for other purposes. (S. Rept. No. 104–97) **Page S8380**

Telecommunications Competition/Deregulation Act: Senate continued consideration of S. 652, to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, taking action on amendments proposed thereto, as follows:

Pages S8305–76, S8379 S8413–15

Adopted:

(1) Gorton Amendment No. 1277 (to Amendment No. 1270), to limit, rather than strike, the preemption language. **Pages S8305–08**

(2) Pressler (for Moseley-Braun) Modified Amendment No. 1282, to recognize the National Education Technology Funding Corporation as a nonprofit corporation operating under the laws of the District of Columbia, and to provide authority for Federal departments and agencies to provide assistance to such corporation. **Pages S8308–10, S8351–52**

Subsequently, the amendment was further modified. **Page S8308**

(3) Pressler (for Simon) Modified Amendment No. 1284, to require audits to ensure that the Bell operating companies meet the separate affiliate subsidiary requirements and safeguards. **Pages S8308–10**

(4) Kerrey Modified Amendment No. 1306, to protect ratepayers from having to pay civil penalties for violations by local exchange carriers of interconnection and other duties. **Pages S8311–12**

(5) Kerrey Amendment No. 1313, to clarify State ratemaking authority. **Pages S8314–17**

(6) Kerrey Modified Amendment No. 1310, to clarify that pricing flexibility should not have the effect of shifting revenues from competitive services to non-competitive services. (Previously, the amendment was offered and withdrawn.) **Pages S8317–19, S8327**

(7) Leahy Modified Amendment No. 1288, to revise title IV of the bill and provide for a study of the legal and technical means of restricting access to obscenity on interactive telecommunications systems. **Pages S8327–47**

(8) By 84 yeas to 16 nays (Vote No. 263), Exon/Coats Amendment No. 1362 (to Amendment No. 1288), in the nature of a substitute. **Pages S8328–47**

(9) Breaux/Leahy Amendment No. 1421, to establish that a State may not require a Bell operating company to implement toll dialing parity in an intraLATA area before a Bell operating company has been granted authority to provide interLATA services in that area or before three years after the enactment of this Act. **Pages S8348–50**

(10) Brown Amendment No. 1317, of a technical nature. **Page S8350**

(11) Brown Modified Amendment No. 1318, of a technical nature. **Pages S8350, S8352, S8354**

(12) Dorgan Amendment No. 1272, to require broadcasters to receive viewer input on the violent content of programming upon license renewal. **Pages S8350–51**

(13) Specter Modified Amendment No. 1294, to promote the use of telecommuting by the American work force. **Pages S8352–53**

(14) Harkin Modified Amendment No. 1323, to postpone the effective date of the authority to provide alarm monitoring services. **Pages S8355–56**

(15) Harkin Amendment No. 1322, to prevent unfair billing practices for information or services provided over calls to 800 numbers. **Pages S8356–58**

(16) Harkin Amendment No. 1324, to combat telemarketing fraud through reasonable disclosure of certain records for telemarketing investigations. **Pages S8358–59**

(17) Kerry Modified Amendment 1342, to prohibit redlining of any high-cost area or any area on

the basis of rural location or the income of the resident of such area. **Pages S8359–60**

(18) Stevens Modified Amendment No. 1300, to promote competition in the provision of telecommunications services and to reduce the need for universal service support mechanisms.

Pages S8367–68, S8370–71

(19) Stevens Amendment No. 1301, to modify the definition of LATA as it applies to commercial mobile services. **Pages S8368–70**

Subsequently, the amendment was modified.

Pages S8368–70 S8378

(20) Stevens Amendment No. 1302, to provide interconnection rules for commercial mobile services providers. **Pages S8368–70**

(21) Stevens Amendment No. 1304, to make a technical correction. **Pages S8368–70**

(22) Inouye (for Robb) Amendment No. 1280, to establish restrictions on access by children to obscene and indecent material on electronic information networks open to the public. **Pages S8368–69, S8371**

Rejected:

(1) By 44 yeas to 56 nays (Vote No. 258), Feinstein/Kempthorne Amendment No. 1270, to strike the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services. **Pages S8305–08**

(2) Kerrey Amendment No. 1344, to provide for the representation of consumers on the Federal-State Board on Universal Service. (By 55 yeas to 45 nays (Vote No. 260), Senate tabled the amendment.)

Pages S8314–15

(3) Kerrey Amendment No. 1307, to require more than ''an'' interconnection agreement prior to long distance entry by a Bell Operating Company. (By 79 yeas to 21 nays (Vote No. 261), Senate tabled the amendment.) **Pages S8319–22, S8326**

(4) Boxer/Levin Modified Amendment No. 1340, to preserve the basic tier of cable services. (By 60 yeas to 38 nays (Vote No. 262), Senate tabled the amendment.) **Pages S8322–26**

Subsequently, Boxer/Levin Amendment No. 1354 (to Amendment No. 1340), in the nature of a substitute, fell when its provisions were incorporated into Amendment No. 1340, listed above.

Pages S8322–26

Withdrawn:

Dorgan Amendment No. 1343, to provide for Commission notification of the Attorney General of any approval of Bell Company entry into long distance. **Pages S8353–54**

Pending:

(1) Hollings (for Breaux) Amendment No. 1299, to require that at least 80% of vessels required to implement the Global Maritime Distress and Safety System have the equipment installed and operating in good working condition. **Pages S8354–55**

(2) Pressler (for McCain) Amendment No. 1285, to means test the eligibility of the community users.

Page S8355

(3) Simon Modified Amendment No. 1283, to revise the authority relating to Federal Communications Commission rules on radio ownership.

Page S8360

(4) Heflin Amendment No. 1367, to provide for a local exchange carrier to acquire cable systems.

Page S8360

(5) Pressler (for Dole) Amendment No. 1341, to strike the volume discounts provisions.

Pages S8360–61

(6) Warner Modified Amendment No. 1325, to require additional rules as a precondition to the authority for the Bell operating companies to engage in research and design activities relating to manufacturing. **Pages S8361–63**

(7) Lieberman Amendment No. 1298, to establish a determination of reasonableness of cable rates.

Pages S8364–66

(8) Rockefeller Amendment No. 1292, to eliminate any possible jurisdictional question arising from universal service references in the health care providers for rural areas provision. **Pages S8366–67**

(9) Stevens/Inouye Amendment No. 1303, to ensure that resale of local services and functions is offered at an appropriate price for providing such services. **Page S8369**

During consideration of this measure today, Senate also took the following action:

By 89 yeas to 11 nays (Vote No. 259), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to close further debate on the bill. **Pages S8310–11**

A unanimous-consent time agreement was reached providing for further consideration of the bill and pending amendments with votes to occur thereon, on Thursday, June 15, 1995. **Pages S8378–79**

Nominations Received: Senate received the following nominations: Beth Susan Slavet, of Massachusetts, to be a Member of the Merit Systems Protection Board for the term of seven years expiring March 1, 2002. **Page S8415**

Messages From the House: **Page S8380**

Measures Referred: **Page S8380**

Communications: **Page S8380**

Executive Reports of Committees: **Page S8380**

Statements on Introduced Bills: **Pages S8380–86**

Additional Cosponsors: **Page S8386**

Amendments Submitted: **Pages S8386–S8401**

Notices of Hearings: Page S8401

Authority for Committees: Pages S8401–02

Additional Statements: Pages S8402–13

Record Votes: Six record votes were taken today. (Total—263) Pages S8308, S8310–11, S8315, S8326, S8347

Recess: Senate convened at 9 a.m., and recessed at 9:16 p.m., until 9 a.m., on Thursday, June 15, 1995. (For Senate's program, see the remarks of the Acting Majority Leader in today's RECORD on pages S8379 and S8415.)

Committee Meetings

(Committees not listed did not meet)

FOOD STAMP AND CHILD NUTRITION PROGRAMS

Committee on Agriculture, Nutrition, and Forestry: Committee ordered favorably reported an original bill to provide flexibility to States to administer, and control the cost of, the food stamp and child nutrition programs, in lieu of S. 904.

BOSNIA

Committee on Armed Services: Committee resumed hearings to examine United States policy regarding the conflict in Bosnia, receiving testimony from former United States President Jimmy Carter; and Gen. John R. Galvin, USA (Ret.), former Supreme Allied Commander, Europe.

Hearings continue tomorrow.

D'OENCH DUHME REFORM ACT

Committee on Banking, Housing, and Urban Affairs: Committee concluded hearings on S. 648, to clarify treatment of certain claims and defenses against an insured depository institution under receivership by the Federal Deposit Insurance Corporation, after receiving testimony from Senator Cohen; Sharon Powers Sivertsen, Assistant General Counsel, Federal Deposit Insurance Corporation; Mark P. Hileman, Assistant General Counsel, Resolution Trust Corporation; David S. Hess, Great Falls, Virginia, on behalf of the Citizens and Business For D'Oench Duhme Reform; James H. Harvey, Jr., T&J Heating and Air Conditioning, Inc., Bellingham, Massachusetts; Fred Galves, University of the Pacific McGeorge School of Law, Sacramento, California; Peter P. Swire, University of Virginia School of Law, Charlottesville; and Rhetta B. Sweeney, Comfed Savings Bank, Lowell, Massachusetts.

BUSINESS MEETING

Committee on Energy and Natural Resources: Committee ordered favorably reported the following business items:

S. 92, to provide for the reconstitution of the outstanding repayment obligations of the administrator of the Bonneville Power Administration for the appropriated capital investments in the Federal Columbia River Power System;

S. 468, to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Ohio;

S. 543, to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Oregon;

S. 547, to extend the deadlines applicable to certain hydroelectric projects under the Federal Power Act;

S. 552, to allow the refurbishment and continued operation of a small hydroelectric facility in Central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act;

S. 595, to provide for the extension of a hydroelectric project in West Virginia;

S. 611, to authorize an extension of time limitation for a Federal Energy Regulatory Commission-issued hydroelectric license; and

The nomination of James J. Hoecker, of Virginia, to be a Member of the Federal Energy Regulatory Commission, Department of Energy.

CUBAN LIBERTY AND SOLIDARITY ACT

Committee on Foreign Relations: Subcommittee on Western Hemisphere and Peace Corps Affairs concluded hearings on S. 381, to strengthen international sanctions against the Castro government in Cuba, and to develop a plan to support a transition government leading to a democratically elected government in Cuba, after receiving testimony from Senators Specter and Gramm; Representatives Burton, Ros-Lehtinen, Diaz-Balart, and Rangel; Bruce Fein, Great Falls, Virginia, former Associate Deputy Attorney General, Department of Justice; Alberto Diaz-Masvidal, Consolidated Development Corporation, Coral Gables, Florida; Otto Reich, U.S. Cuba Business Council, and Kim R. Holmes, Heritage Foundation, both of Washington, D.C.; and Francisco J. Hernandez, Cuban American National Foundation, Alfredo Duran, Cuban Committee for Democracy, and Ignacio E. Sanchez, Kelley Drye & Warren, all of Miami, Florida

IMMIGRATION CONTROL

Committee on the Judiciary: Subcommittee on Immigration approved for full committee consideration, with an amendment in the nature of a substitute, S. 269, to increase control over immigration to the United States by increasing border patrol and investigator personnel, improving the verification system for employer sanctions, increasing penalties for alien

smuggling and for document fraud, reforming asylum, exclusion, and deportation law and procedures, instituting a land border user fee, and reducing the use of welfare by aliens.

JOB TRAINING CONSOLIDATION ACT

Committee on Labor and Human Resources: Committee began markup of S. 143, to consolidate Federal employment training programs and create a new process and structure for funding the programs, but did not complete action thereon, and will continue on Wednesday, June 21.

NOMINATION

Select Committee on Intelligence: Committee concluded hearings on the nomination of George J. Tenet, of Maryland, to be Deputy Director of Central Intelligence, after the nominee, who was introduced by Senators Sarbanes, Murkowski, and Nunn, and former Senators Rudman and Boren, testified and answered questions in his own behalf.

House of Representatives

Chamber Action

Bills Introduced: Eighteen public bills, H.R. 1833–50; and three resolutions, H.J. Res. 94, H. Con. Res. 75–76, were introduced. **Pages H5982–83**

Reports Filed: One report was filed as follows: H.R. 1655, to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, amended (H. Rept. 104–138, Part 1). **Page H5982**

Committees to Sit: The following committees and their subcommittees received permission to sit today during proceedings of the House under the five-minute rule: Committees on Agriculture, Banking and Financial Services, Commerce, Economic and Educational Opportunities, Government Reform and Oversight, House Oversight, Resources, Science, and Transportation and Infrastructure. **Page H5911**

Department of Defense Authorization: House continued consideration of H.R. 1530, to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, and to prescribe military personnel strengths for fiscal year 1996; but came to no resolution thereon. Consideration of amendments will resume on Thursday, June 15. **Pages H5911–77**

Agreed To:

The Clinger amendment, as amended by the Collins of Illinois amendment (agreed to by a recorded vote of 213 ayes to 207 noes, Roll No. 371), that reforms the acquisition procedures of the Department of Defense and civilian agencies by changing current competition requirements for Government purchases by requiring only the ''maximum practicable competition'' for the purchase, rather than ''free and open'' competition; simplifies acquisition procedures to be used for the purchase of all commercial items, not just those which cost less than $100,000 as under present law, while providing for the approval by the head of the agency of a sole source contract for commercial items; consolidates the current procurement integrity laws which prohibit the unauthorized disclosure of sensitive procurement information and increases the penalties for such disclosure; repeals fees or taxes to be paid to the Federal Government on foreign sales of products and technologies developed under government contracts; provides training for civilian agency procurement officials; and replaces the current tribunals for the resolution of contract disputes and bid protests with one board, to be charged with an increased use of alternative dispute resolution (agreed to by a recorded vote of 420 ayes to 1 no, Roll No. 372); **Pages H5912–37**

The Shays amendment that requires a reduction in the U.S. forces in NATO countries if those countries fail to increase their contributions to help cover the nonpersonnel costs of U.S. troops stationed in those NATO countries; provides for allied nations to cover specified percentages of nonpersonnel costs, beginning with 18.75 percent by September 30, 1996, 37.5 percent by September 30, 1997, 56.25 percent by September 30, 1998, and 75 percent by September 30, 1998; for each percentage point that the allied contribution is less than the percentage goal specified, U.S. forces in NATO countries would be reduced by 1,000 in the next fiscal year; and gives the President the authority to waive these requirements if he declares an emergency (agreed to by a recorded vote of 273 ayes to 156 noes, Roll No. 375); **Pages H5955–62**

The Pombo amendment that prohibits Defense Department contracts or grants to institutions of higher education that ban ROTC programs or that

prevent their students from enrolling in ROTC programs at other institutions (agreed to by a recorded vote of 302 ayes to 125 noes, Roll No. 376); and **Pages H5962–65, H5973–74**

The Molinari amendment that changes the applicability of the existing Stewart B. McKinney Homeless Assistance Act which gives organizations providing shelter for the homeless first preference to acquire surplus Federal property so that it would not apply to property located at closed military bases (agreed to by a recorded vote of 293 ayes to 133 noes, Roll No. 379). **Pages H5970–73, H5975–76**

Rejected:

The Pratt amendment that sought to clarify that the national missile defense (NMD) system will be compliant with the 1972 ABM Treaty; provide that, if any provision authorizes a non-compliant NMD system or breach of the treaty, such provision is based on the assumption that the ABM Treaty would be amended to make the provision treaty compliant (rejected by a recorded vote of 185 ayes to 242 noes, Roll No. 373); **Pages H5946–51**

The DeFazio of Oregon amendment that sought to cut $628 million from the research and development function of the Ballistic Missile Defense Organization (BMDO) to the level requested for the BMDO by the Administration; allocate $150 million of funds saved by this reduction to increase by September 1 the variable housing Allowance for military personnel living off-base in high cost areas of the country; and direct the Department of Defense to allocate the remainder of saved funds for the variable housing allowance and/or the ''Basic Allowance for Quarters'' in order to minimize the need for enlisted personnel to apply for Food Stamps (rejected by a recorded vote of 178 ayes to 250 noes, Roll No. 374); **Pages H5951–55**

The Berman amendment that sought to strike provisions establishing a new Defense Export Loan Guarantee Program (rejected by a recorded vote of 152 ayes to 377 noes, Roll No. 377); and **Pages H5965–68, H5974**

The Kolbe amendment that sought to permit the Defense Department to use inmates provided by State or local corrections facilities to perform certain work on military installations (rejected by a recorded vote of 214 ayes to 214 noes, Roll No. 378). **Pages H5968–70, H5974–75**

Committees To Sit: The following committees and their subcommittees received permission to sit during proceedings of the House under the 5-minute rule on Thursday, June 15: Committees on Agriculture, Banking and Financial Services, Commerce, Economic and Educational Opportunities, Government Reform, Judiciary, Resources, Science, Small Business, Transportation and Infrastructure, Veterans' Affairs, and Intelligence. **Page H5977**

Amendments Ordered Printed: Amendments ordered printed pursuant to the rule appear on page H5983.

Quorum Calls—Votes: Nine recorded votes developed during the proceedings of the House today and appear on pages H5936–37, H5937, H5950–51, H5955, H5961–62, H5973–74, H5974, H5974–75, and H5975–76. There were no quorum calls.

Adjournment: Met at 10 a.m. and adjourned at 7:52 p.m.

Committee Meetings

FARM BILL—AGRICULTURAL TRADE TITLE

Committee on Agriculture: Held a hearing on the 1995 Farm Bill—Agricultural Trade Title. Testimony was heard from Dan Glickman, Secretary of Agriculture; Allen I. Mendelowitz, Managing Director, International Trade, Finance, and Competitiveness, GAO; and public witnesses.

AGRICULTURE, RURAL DEVELOPMENT, FDA, AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Agriculture, Rural Development, FDA, and Related Agencies Appropriations approved for full Committee action the Agriculture, Rural Development, FDA, and Related Agencies Appropriations for fiscal year 1996.

DISTRICT OF COLUMBIA APPROPRIATIONS

Committee on Appropriations: Subcommittee on the District of Columbia held a hearing on D.C. Finances. Testimony was heard from Jeffrey C. Steinhoff, Director, Planning, and Reporting, Accounting and Information Management Division, GAO; and Franklin L. Smith, Superintendent of Schools, Chief State School Officer, District of Columbia.

NATIONAL SECURITY APPROPRIATIONS

Committee on Appropriations: Subcommittee on National Security held a hearing on Contingency Operations. Testimony was heard from the following officials of the Department of Defense: William J. Perry, Secretary; Gen. John Shalikashvili, USA, Chairman, Joint Chiefs of Staff; and John J. Hamre, Under Secretary (Comptroller/Chief Financial Officer).

FINANCIAL INSTITUTIONS REGULATORY RELIEF ACT

Committee on Banking and Financial Services: Subcommittee on Financial Institutions and Consumer Credit began markup of H.R. 1362, Financial Institutions Regulatory Relief Act of 1995.

Will continue tomorrow.

ISSUANCE OF SUBPOENAS

Committee on Banking and Financial Services: Subcommittee on General Oversight and Investigations unanimously approved the issuance of subpoenas for the upcoming hearings concerning the performance of the RTC's Professional Liability Program.

D.C. HOUSING AND COMMUNITY DEVELOPMENT ISSUES

Committee on Banking and Financial Services: Subcommittee on Housing and Community Opportunity held a hearing on D.C. Housing and Community Development Issues. Testimony was heard from Susan Gaffney, Inspector General, Department of Housing and Urban Development; the following officials of the District of Columbia: John Ray, at-large; Frank Smith, Ward 1; Charlene Drew Jarvis, Ward 4, all members of the Council; David Gilmore, Receiver, Department of Public and Assisted Housing; and Merrick Malone, Director, Department of Housing and Community Development; and public witnesses.

FINANCIAL SERVICES COMPETITIVENESS ACT

Committee on Commerce: Subcommittee on Commerce, Trade, and Hazardous Materials forwarded to the full Committee without recommendation H.R. 1062, Financial Services Competitiveness Act of 1995.

RYAN WHITE CARE ACT AMENDMENTS

Committee on Commerce: Subcommittee on Health and Environment approved for full Committee action the introduction of a clean bill the Ryan White CARE Act Amendments of 1995.

STRIKER REPLACEMENT

Committee on Economic and Educational Opportunities: Ordered reported H.R. 1176, to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees.

ACCREDITATION—POST-GRADUATE MEDICAL EDUCATION

Committee on Economic and Educational Opportunities: Subcommittee on Oversight and Investigations held a hearing on Accreditation of Post-graduate Medical Education. Testimony was heard from public witnesses.

OPM OVERSIGHT: FEDERAL INVESTIGATIONS POLICY

Committee on Government Reform and Oversight: Subcommittee on Civil Service held a hearing on OPM Oversight: Federal Investigations Policy. Testimony was heard from Patricia W. Lattimore, Associate Director, Investigations Service, OPM; Timothy P. Bowling, Associate Director, Federal Human Resources Management Issues, GAO; Thomas McFee, Assistant Secretary Personnel Administration, Department of Health and Human Services; and John T. Elliff, Director, Counterintelligence and Security Programs for Assistant Secretary, Command, Control, Communications and Intelligence, Department of Defense.

Hearings continue tomorrow.

OVERSIGHT

Committee on Government Reform and Oversight: Subcommittee on the Postal Service continued oversight hearings on the U.S. Postal Service. Testimony was heard from public witnesses.

Hearings continue June 28.

COMMITTEE BUSINESS

Committee on House Oversight: Approved the following pending Committee business: authorizing employee training and outplacement services; authorizing issuance of RFP (Request for Proposals) for House Postal Operations and authorizing U.S. Postal Service to operate five window facilities within the House; authorizing outsourcing of House Folding Room; terminating contracts with in-house printers; downsizing and reforming operations of House Recording Studio; downsizing and reforming operations of House Photography Studio; approving Office 2000 Initiative; approving staffing, reorganization and renaming of House Information Systems; and approving staffing and reorganization of Operations under the Chief Administrative Officer.

COMPREHENSIVE ANTITERRORISM ACT

Committee on the Judiciary: Began markup of H.R. 1710, Comprehensive Antiterrorism Act of 1995.

Will continue tomorrow.

NATIONAL PARK SYSTEM IMPROVEMENT IN VIRGINIA

Committee on Resources: Ordered reported amended H.R. 1091, to improve the National Park System in the Commonwealth of Virginia.

AUTHORIZATIONS—NSF AND U.S. FIRE ADMINISTRATION

Committee on Science: Subcommittee on Basic Research approved for full Committee action the following: the National Science Foundation Authorization Act; and the United States Fire Administration Authorization Act.

MISCELLANEOUS MEASURES

Committee on Transportation and Infrastructure: Ordered reported the following measures: H.R. 714, amended, Illinois Land Conservation Act of 1995; and H. Con. Res. 38, authorizing the use of the Capitol Grounds for the Greater Washington Soap Box Derby.

The Committee also began markup of H.R. 1788, Amtrak Reform and Privatization Act of 1995.

Committee recessed subject to call.

MISCELLANEOUS MEASURES

Committee on Ways and Means: Subcommittee on Trade approved for full Committee action the following: H.R. 541, amended, Atlantic Tunas Convention Act of 1995; and Trade Technical Corrections.

COMMITTEE MEETINGS FOR THURSDAY, JUNE 15, 1995

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Agriculture, Nutrition, and Forestry, Subcommittee on Production and Price Competitiveness, to hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on commodity policy, 9 a.m., SR–332.

Committee on Armed Services, to continue hearings on the current situation and U.S. policy options in Bosnia, 10 a.m., SD–106.

Committee on Banking, Housing, and Urban Affairs, Housing Opportunity and Community Development, to hold hearings on the Administration's proposal to restore Section 8 rents to market rates on multifamily properties insured by the Federal Housing Administration, 9:30 a.m., SD–538.

Committee on the Judiciary, Subcommittee on Terrorism, Technology, and Government Information, to hold hearings to examine the militia movement in the United States, 9:30 a.m., SH–216.

Committee on Labor and Human Resources, to hold hearings to examine affirmative action in employment, focusing on Federal contractor requirements, 2 p.m., SD–430.

Committee on Rules and Administration, to hold hearings on proposed legislation authorizing funds for programs of the Federal Election Commission, 9:30 a.m., SR–301.

NOTICE

For a listing of Senate Committee Meetings scheduled ahead, see pages E1247 in today's RECORD.

House

Committee on Agriculture, Subcommittee on General Farm Commodities, to continue hearings on the Farm Bill—Rice, Wheat, and Oilseeds Titles, 2 p.m., 1300 Longworth.

Committee on Appropriations, to mark up the following appropriation bills for fiscal year 1996: Legislative; and Foreign Operations, Export Financing and Related Programs, 9:30 a.m., 2360 Rayburn.

Committee on Banking and Financial Services, Subcommittee on Financial Institutions and Consumer Credit, to continue markup of H.R. 1362, Financial Institutions Regulatory Relief Act of 1995, 10 a.m., 2128 Rayburn.

Subcommittee on Interior, to mark up appropriations for fiscal year 1996, 1 p.m., B–308 Rayburn.

Committee on Commerce, Subcommittee on Commerce, Trade, and Hazardous Materials, to continue hearings on the reauthorization of the Superfund program, 9:30 a.m., 2123 Rayburn.

Subcommittee on Health and the Environment, to continue hearings on the Transformation of the Medicaid program, 10:30 a.m., 2322 Rayburn.

Committee on Economic and Educational Opportunities, Subcommittee on Employer-Employee Relations, hearing on H.R. 1594, to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans, 9:30 a.m., 2175 Rayburn.

Committee on Government Reform and Oversight, Subcommittee on Civil Service, to continue hearings on OPM Oversight: Contracting Federal Investigations, 9 a.m., 2154 Rayburn.

Subcommittee on Human Resources and Intergovernmental Relations, oversight hearing on Anti-Fraud and Abuse Enforcement in Medicare/Medicaid programs, 10 a.m., 2247 Rayburn.

Committee on the Judiciary, To continue markup of H.R. 1710, Comprehensive Antiterrorism Act of 1995, 1 p.m., 2141 Rayburn.

Subcommittee on Commercial and Administrative Law, to continue oversight hearings on the reauthorization of Legal Services Corporation, 10 a.m., 2226 Rayburn.

Subcommittee on the Constitution, oversight hearing on partial-birth abortions, 10 a.m., 2237 Rayburn.

Committee on Resources, Subcommittee on Fisheries, Wildlife and Oceans, oversight hearing on the NOAA's Ocean and Coastal Programs, 2 p.m., 1334 Longworth.

Subcommittee on Water and Power Resources, oversight hearing on possible transfer of Reclamation facilities out of Federal Control; followed by a hearing on legislation to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Central Utah

Water Conservancy District dated December 28, 1965 and November 26, 1985, 10 a.m., 1324 Longworth.

Committee on Rules, to mark up H. Res. 161, amending clause 4 of rule XIII of the Rules of the House to abolish the Consent Calendar and to establish in its place a Corrections Calendar, 10 a.m., and to consider H.R. 1817, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 1996, 2 p.m., H–313 Capitol.

Committee on Science, Subcommittee on Technology, to mark up the Technology Administration/National Institute of Standards and Technology Fiscal Year 1996 Authorization, 9:30 a.m., 2318 Rayburn.

Committee on Small Business, Subcommittee on Regulation and Paperwork, hearing on OSHA's Fall Protection Standard, 10 a.m., 2359 Rayburn.

Committee on Standards of Official Conduct, executive, to consider pending business, 2:30 p.m., HT–2M Capitol.

Committee on Transportation and Infrastructure, Subcommittee on Public Buildings and Economic Development, hearing and markup of the following: H.R. 395, to designate the U.S. courthouse and Federal building to be constructed at the southeastern corner of Liberty and South Virginia Streets in Reno, NV, as the ''Bruce R. Thompson United States Courthouse and Federal Building''; H.R. 653, to designate the U.S. courthouse under construction in White Plains, NY, as the ''Thurgood Marshall United States Courthouse''; H.R. 840, to designate the Federal building and U.S. courthouse located at 215 South Evans Street in Greenville, NC, as the ''Walter B. Jones Federal Building and United States Courthouse''; H.R. 869, to designate the Federal building and U.S. courthouse located at 125 Market Street in Youngstown, OH, as the ''Thomas D. Lambros Federal Building and U.S. Courthouse''; H.R. 965, to designate the Federal building located at 600 Martin Luther King, Jr. Place in Louisville, KY, as the ''Romano L. Mazzoli Federal Building''; H.R. 255, to designate the Federal Justice Building in Miami, FL, as the ''James Lawrence King Federal Justice Building''; H.R. 1804, to designate the U.S. Post Office-Courthouse located at South 6th and Rogers Avenue, Fort Smith, AR, as the ''Judge Isaac C. Parker Federal Building''; H.R. 1718, to designate the U.S. courthouse located at 197 South Main Street in Wilkes-Barre, PA, as the ''Max Rosenn United States Courthouse''; H.R. 308, Hopewell Township Investment Act of 1995; and GAS Non-Construction, Repair and Alteration, and Design Program for Fiscal Year 1996, 10 a.m., 2253 Rayburn.

Committee on Veterans' Affairs, to mark up the following bills: H.R. 1384, to amend title 38, United States Code, to exempt certain full-time health-care professionals of the Department of Veterans Affairs from restrictions on remunerated outside professional activities; H.R. 1536, to amend title 38, United States Code, to extend for 2 years an expiring authority of the Secretary of Veterans Affairs with respect to determination of locality salaries for certain nurse anesthetist positions in the Department of Veterans Affairs; and H.R. 1565, to amend title 38, United States Code, to extend through December 31, 1997, the period during which the Secretary of Veterans Affairs is authorized to provide priority health care to certain veterans exposed to Agent Orange, ionizing radiation or environmental hazards, 9:30 a.m., 334 Cannon.

Committee on Ways and Means, Subcommittee on Oversight and the Subcommittee on Human Resources, joint hearing on the Earned Income Tax Credit, 10 a.m., 1100 Longworth.

Permanent Select Committee on Intelligence, Subcommittee on Human Intelligence, Analysis, and Counterintelligence, executive, hearing on Terrorism, 10 a.m., H–405 Capitol.

Next Meeting of the SENATE

9 a.m., Thursday, June 15

Senate Chamber

Program for Thursday: Senate will continue consideration of S. 652, Telecommunications Competition/Deregulation Act.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Thursday, June 15

House Chamber

Program for Thursday: Continue consideration of H.R. 1530, National Defense Authorization Act for fiscal year 1996.

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