

of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

"(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

"(4) In any such proceeding, the industry rate shall be presumed to have been reasonable at the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

"(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society by paying an interim license rate or fee into an interest bearing escrow account with the clerk of the court, subject to retroactive adjustment when a final rate or fee has been determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license rate or fee agreed to by the parties.

"(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the judge of the court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

"(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

"(8) An individual proprietor may not bring more than one proceeding provided for in this section for the determination of a reasonable license rate or fee under any license agreement with respect to any one performing rights society.

"(9) For purposes of this section, the term 'industry rate' means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs."

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by adding after the item relating to section 511 the following:

"512. Determination of reasonable license fees for individual proprietors."

SEC. 204. PENALTIES.

Section 504 of title 17, United States Code, is amended by adding at the end the following:

(d) ADDITIONAL DAMAGES IN CERTAIN CASES.—In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of

two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years."

SEC. 205. DEFINITIONS.

Section 101 of title 17, United States Code, is amended—

(1) by inserting after the definition of "display" the following:

"An 'establishment' is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

"A 'food service or drinking establishment' is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly."

(2) by inserting after the definition of "fixed" the following:

"The 'gross square feet of space' of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise."

(3) by inserting after the definition of "perform" the following:

"A 'performing rights society' is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.;" and

(4) by inserting after the definition of "pictorial, graphic and sculptural works" the following:

"A 'proprietor' is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor."

SEC. 206. CONSTRUCTION OF TITLE.

Except as otherwise provided in this title, nothing in this title shall be construed to relieve any performing rights society of any obligation under any State or local statute, ordinance, or law, or consent decree or other court order governing its operation, as such statute, ordinance, law, decree, or order is in effect on the date of the enactment of this Act, as it may be amended after such date, or as it may be issued or agreed to after such date.

SEC. 207. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act.

Mr. LOTT. Again, Madam President, I thank the Senator from Vermont for his cooperation and his allowing us to go ahead and proceed quickly on this very important matter.

I yield the floor.

Mr. LEAHY. Madam President, I thank the Senator from Mississippi. I think we are clearing a lot of things.

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. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

INTERNET TAX FREEDOM ACT

The Senate continued with consideration of the bill.

AMENDMENT NO. 3719, AS MODIFIED

AMENDMENT NO. 3779, AS MODIFIED TO

AMENDMENT NO. 3719

Mr. MCCAIN. I ask unanimous consent that amendment No. 3719, as modified, be the pending business; that Senator DORGAN be recognized to offer a second-degree amendment, as modified, that will be adopted; and it be in order for me to offer a nonfiled second-degree amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, let me comment on what is going on here for the benefit of my colleagues. We have agreed on the language concerning the grandfathering of this legislation, which was important.

Now we have resolved all matters with the exception of whether the moratorium should last for 3 or 4 years. My amendment, after we accept the grandfather language from the Senator from North Dakota, will be to have the moratorium expire at the end of 4 years, for which there will probably be a recorded vote, after which it is most likely—although we have to check with both sides about further debate—we will have completed the amending process of the germane amendments that were on the bill and we will be very close to final passage of the legislation.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3719, as modified.

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 3779, as modified, to amendment No. 3719.

The amendments (No. 3719, as modified, and No. 3779, as modified) are as follows:

AMENDMENT NO. 3719, AS MODIFIED

(Purpose: To make minor and technical changes in the moratorium provision)

On page 16, beginning with line 23, strike through line 15 on page 17, and insert the following:

(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of the enactment of this Act:

(1) Taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and

(2) Multiple or discriminatory taxes on electronic commerce.

(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.

(c) LIABILITIES AND PENDING CASES.—Nothing in this Act affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this Act affect ongoing litigation relating to such taxes.

AMENDMENT NO. 3779, AS MODIFIED

On page 2, after line 14, add the following:

(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

Mr. MCCAIN. Madam President, I don't know if there is any debate on the Dorgan second-degree amendment.

Mr. DORGAN. Madam President, the second-degree amendment to the first-degree amendment that was offered by the Senator from Arizona is an amendment that has been worked out over a period of several days dealing with the grandfather clause. It is something that I think represents a workable solution which improves the legislation. It would be my hope that the Senate would approve it.

I do want to point out that the amendment that was referred to by Senator MCCAIN would be an amendment dealing with the length of the moratorium. My understanding is that the passage of the first-degree and second-degree amendments would leave in place a 3-year moratorium with respect to this legislation. The Senator from Arizona would then offer an amendment, and I believe there would be a recorded vote after some debate on that amendment, that would propose that the 3-year moratorium be extended to 4 years, and the Senate then would make a judgment on that question.

I offer that by way of explanation of what is happening here. I hope the Senate will approve by voice vote the first- and second-degree amendments.

The PRESIDING OFFICER. The question is on agreeing to the amendments.

The amendments (No. 3779, as modified, and No. 3719, as modified, as amended) were agreed to.

Mr. MCCAIN. I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3783 TO AMENDMENT NO. 3719, AS MODIFIED, AS AMENDED

Mr. MCCAIN. Madam President, I have a second-degree amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 3783 to amendment No. 3719, as modified and amended.

Mr. MCCAIN. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On line 5, strike "3" and insert "4".

Mr. MCCAIN. As I explained earlier, this will be a simple vote on whether the moratorium should last for 3 years or 4 years. I am sorry we have to have a recorded vote on it since we were able to reach agreement on far more contentious issues surrounding this legislation. There will be some debate and discussion on this amendment.

In the meantime, 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. MCCAIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3678, AS MODIFIED

Mr. MCCAIN. Madam President, the other day the Senate adopted amendment No. 3678, which had technical and drafting errors. I ask unanimous consent that the modification of the amendment be adopted.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment (No. 3678), as modified, is as follows:

At the end of the bill add the following new title:

SEC. ___01. SHORT TITLE.

This title may be cited as the "Government Paperwork Elimination Act".

SEC. ___02. AUTHORITY OF OMB TO PROVIDE FOR ACQUISITION AND USE OF ALTERNATIVE INFORMATION TECHNOLOGIES BY EXECUTIVE AGENCIES.

Section 3504(a)(1)(B)(vi) of title 44, United States Code, is amended to read as follows:

"(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures."

SEC. ___03. PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES BY EXECUTIVE AGENCIES.

(a) IN GENERAL.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-

Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act, develop procedures for the use and acceptance of electronic signatures by Executive agencies.

(b) REQUIREMENTS FOR PROCEDURES.—(1) The procedures developed under subsection (a)—

(A) shall be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by State governments;

(B) may not inappropriately favor one industry or technology;

(C) shall ensure that electronic signatures are as reliable as is appropriate for the purpose in question and keep intact the information submitted;

(D) shall provide for the electronic acknowledgment of electronic forms that are successfully submitted; and

(E) shall, to the extent feasible and appropriate, require an Executive agency that anticipates receipt by electronic means of 50,000 or more submittals of a particular form to take all steps necessary to ensure that multiple methods of electronic signatures are available for the submittal of such form.

(2) The Director shall ensure the compatibility of the procedures under paragraph (1)(A) in consultation with appropriate private bodies and State government entities that set standards for the use and acceptance of electronic signatures.

SEC. ___04. DEADLINE FOR IMPLEMENTATION BY EXECUTIVE AGENCIES OF PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall ensure that, commencing not later than five years after the date of enactment of this Act, Executive agencies provide—

(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and

(2) for the use and acceptance of electronic signatures, when practicable.

SEC. ___05. ELECTRONIC STORAGE AND FILING OF EMPLOYMENT FORMS.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act, develop procedures to permit private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

SEC. ___06. STUDY ON USE OF ELECTRONIC SIGNATURES.

(a) ONGOING STUDY REQUIRED.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall conduct an ongoing study of the use of electronic signatures under this title on—

(1) paperwork reduction and electronic commerce;

(2) individual privacy; and

(3) the security and authenticity of transactions.

(b) REPORTS.—The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).

SEC. 07. ENFORCEABILITY AND LEGAL EFFECT OF ELECTRONIC RECORDS.

Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

SEC. 08. DISCLOSURE OF INFORMATION.

Except as provided by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this title, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications, or with the prior affirmative consent of the person about whom the information pertains.

SEC. 09. APPLICATION WITH INTERNAL REVENUE LAWS.

No provision of this title shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision—

(1) involves the administration of the internal revenue laws; or

(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986.

SEC. 10. DEFINITIONS.

For purposes of this title:

(1) ELECTRONIC SIGNATURE.—The term “electronic signature” means a method of signing an electronic message that—

(A) identifies and authenticates a particular person as the source of the electronic message; and

(B) indicates such person’s approval of the information contained in the electronic message.

(2) EXECUTIVE AGENCY.—The term “Executive agency” has the meaning given that term in section 105 of title 5, United States Code.

AMENDMENT NO. 3721, AS MODIFIED

Mr. MCCAIN. There was a technical error in amendment No. 3721. Therefore, I send a modification to the desk and ask it be accepted on the proviso we will try to hire more efficient staff so these kinds of things are not required in the future.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment (No. 3721), as modified, is as follows:

On page 17, beginning with line 18, strike through line 21 on page 19 and insert the following:

(a) ESTABLISHMENT OF COMMISSION.—There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the “Commission”). The Commission shall—

(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

(2) conduct its business in accordance with the provisions of this title.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax).

(C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of—

(i) 5 individuals appointed by the Majority Leader of the Senate;

(ii) 3 individuals appointed by the Minority Leader of the Senate;

(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

Mr. MCCAIN. 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. WYDEN. 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. 3783

Mr. WYDEN. Madam President, let me try to describe briefly for the Senate where we are with respect to the important issue coming up now on the length of the moratorium. As Chairman MCCAIN and my colleague, Senator DORGAN, noted, the two issues we have been trying to deal with, the question of grandfathering in existing States and localities and the length of the moratorium are linked, and we think we have a fair process in place now for resolving the two important issues.

I would like to tell my colleagues why I think it is important that we go with the McCain amendment on the length of the moratorium. The legislation, when I introduced it in March of 1997, did not specify how long the moratorium should last. When we considered it in the Senate Commerce Committee, after a very lengthy debate and, in effect, taking a break for 5 or 6 months after the hearings were held to try to work with Senators on both sides of the aisle, the Senate Commerce Committee voted out legislation that set in place a 6-year moratorium.

As Senators know, the Finance Committee then went forward with its legislation and imposed a 2-year moratorium. In a sense, this moratorium isn’t even the most accurate way to describe it because even during this period Internet transactions were treated exactly like any other transaction. We have heard discussion of how, in some way, the legislation would create some sort of special tax haven for the Internet, and that is simply not the case. Internet transactions would be treated just like any other.

The reason the McCain amendment with respect to the length of the moratorium is important is not just because it is a compromise—4 years—between the Commerce Committee bill and the Finance Committee bill, but I think it is going to take that long in order to deal with these issues in a thoughtful way. They are complicated questions. It is very clear that if, for example, someone orders fruit from Harry and David’s in Medford, OR, uses America Online in Virginia to make the order, pays for it with a bank card in California, and ships it to a cousin in Boston, this transaction could affect scores and scores of local jurisdictions, as well as a number of States. So we do want sufficient time to sort out these issues.

Under the amendment that will be first offered by Senator MCCAIN and myself, there would be a two-step process. First, the commission studies the issues and makes its recommendations to the Congress. Second, the recommendation must be implemented. Our concern is that a number of State legislatures do not meet every year; mine is one. You are going to need the McCain-Wyden amendment with respect to the moratorium in order to make sure that you have sufficient time for both the study of these issues and recommendations to the Congress, as well as an adequate amount of time for legislative bodies to consider them.

So we felt that the amendment we were offering not only was a fair compromise between what was passed in the Senate Commerce Committee overwhelmingly and what was passed in the Senate Finance Committee, but in terms of the actual logistics of State legislative sessions, we believe the amendment that we will be offering with respect to the length of the moratorium is a critical one.

The fact of the matter is, when you have in the vicinity of 30,000 taxing jurisdictions—and that is the number in our country—you have the prospect of different taxing jurisdictions in States and localities that all see the Internet as the golden goose; you have the real prospect that policies could be adopted that would cause great damage to the Internet’s development and cause that golden goose to lay far fewer eggs.

What we are trying to do in this legislation is to restore a balance with respect to the moratorium. We think it is a fair compromise between what the two committees dealt with here in the U.S. Senate, and at the same time we think it is an approach that will give adequate time for the States and localities to deal with the recommendations that are made while making sure that businesses aren’t confused and, in a number of instances, paralyzed by discriminatory and multiple taxation about which they are already expressing concerns.

I think we have made a considerable amount of headway. As I have said in a couple of instances when I came to the floor, if you look at the legislation that the Presiding Officer heard discussed in the Commerce Committee

early in 1997 and the legislation that is before the Senate now, it is clear that there have been many, many changes, over 30. Those are changes that were made specifically to try to deal with the legitimate concerns of States and localities that are concerned about their revenue prospects with respect to the digital economy.

We have tried to be fair. We had a number of votes on the floor of the Senate. There were several which I thought would have done great damage to the philosophy of what we are trying to do in this legislation. There were others raised with respect to ensuring the fair analysis of a variety of issues and participation on the commission where, clearly, Senators have tried very hard to work together.

The issue that is coming up now with respect to the length of the moratorium is critical. When I introduced this legislation last year, there was no end date on the moratorium. The reason there was not is that it was our view that if ever there was something that ought to be treated as interstate commerce, it was the Internet. The Internet is global; it knows no boundaries. It is not something that ought to be balkanized in the 21st century into kind of a toll-riddled freeway where it will be very hard to tap the potential of the Internet.

We should make no mistake about it. The great potential for the Internet is for those individuals, such as those in rural America and inner cities, senior citizens, handicapped individuals, many of them operating home-based businesses, who with sensible governmental policies will be able to, in my view, make a very decent living in the global economy. But the prerequisite of having those kinds of opportunities will be policies that allow the Internet to flourish. Those policies should neither be discriminatory against the Internet nor should they be preferential.

I have heard various Senators say over the last few days that in some way this legislation would ensure preferential treatment for the Internet. It would do nothing of the sort. It would say very specifically that Internet sales ought to be treated just like everything else. If you pay a specific tax by buying the goods in a jurisdiction in the traditional way, by walking into a retail store, under this legislation, even with the moratorium, you pay exactly the same tax if you order those goods over the Internet—exactly the same tax. There is nothing preferential, nothing discriminatory.

In a little bit we will have that first vote on the amendment that Chairman MCCAIN and I offered together with respect to the length of the moratorium. It will ensure that we have enough time to study the various issues with respect to electronic commerce and make recommendations, and it will give adequate time to have those rec-

ommendations implemented by the localities and the States. There are a number of States that do not meet every year, for example, with their legislatures. They would not have adequate time under the shorter version of the moratorium.

Madam President, and colleagues, we will have those votes before too long. I thank the various Senators who have weighed in with myself and Chairman MCCAIN, both today and over the last few days. This has been a good debate. And it is only the beginning of our discussions on the ground rules for the digital economy.

This presents a whole new set of questions for the U.S. Senate. When we look at traditional commerce, even with the Senate Commerce Committee of 40 or 50 years ago, we were talking about moving goods from point A to point B. There was a role for traditional business. There was a role for labor unions and various other key economic sectors such as the transportation sector. That has changed now in many respects, because information—in effect, goods and services—can move on the Internet in a flash of light. So we need sensible policies.

I urge my colleagues to support that first amendment that Chairman MCCAIN and I are offering with respect to the length of the moratorium. It will ensure that States and localities have an adequate amount of time to act after the recommendations of the commission to go forward. It is a true compromise. The Senate Commerce Committee passed legislation that called for a moratorium of 6 years after my original bill with Chairman MCCAIN, which had no end date at all. The Senate Finance Committee bill was 2 years. We are going forward with 4. That would give the States an opportunity to act in a thoughtful way.

I hope on that first vote the Senate will support the McCain-Wyden amendment with respect to the length of the moratorium.

Madam President, I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I urge the advocates of the 3-year moratorium to come to the floor and help us explore this very complex issue as to whether we are going to have a 3-year or a 4-year moratorium. I know it is a subject that is complex in detail. However, we would like to complete the debate on this very complicated issue that we were unable to resolve with our friends on the other side of this issue.

Again, I find it remarkable that we were able to work out grandfather language, and about 15 other amendments. But somehow this one is worthy of a vote as to whether a moratorium is 3 or 4 years.

I can't add a lot to what the distinguished Senator from Oregon just said,

except to say that I hope we can minimize the debate. But I say to those who are the 3-year advocates to come over and make their case, because as soon as Senator DORGAN comes back we would like to move on that amendment, because I believe that, following Senator MURKOWSKI's motion on the underlying amendment, we can move to final passage on this bill.

I know the Senator from Oregon would like to dispense of this legislation but not nearly so much as I would.

Mr. WYDEN. Will the chairman yield?

Mr. MCCAIN. I am glad to yield to my friend from Oregon.

Mr. WYDEN. I thank the chairman for all of his patience.

I think it would be helpful, and perhaps the chairman would lay it out, to know that through this discussion there has been an effort to link the grandfather provision effort to make sure that States and localities that already have laws on the books are protected and to link that to the moratorium so that there would be an effort to be fair to both sides. I think the Senator has been very fair, and perhaps the Senator could elaborate a little bit on some of the challenges with respect to that grandfather debate.

Mr. MCCAIN. Will the Senator repeat his question?

Mr. WYDEN. I am sorry. The fact is the grandfathering provision and the moratorium really are linked, and I think that the Senator has been very fair to both sides with respect to this discussion, and to the extent that there are greater protections for grandfathering and more jurisdiction protected that obviously affects the discussion about the length of the moratorium. I think the Senator struck a fair balance, and I think it would be helpful if the Senator could take the Senate through those discussions a bit.

I thank the Senator for yielding me some time.

Mr. MCCAIN. I thank the Senator from Oregon.

The reality is that the original legislation as proposed by the Senator from Oregon had no grandfathering. It had no time limit. This legislation received overwhelming support both in the committee and, very frankly, throughout the country, and gradually, interestingly enough, many Governors who would experience, in the view of some, a loss of revenue came on board this legislation—the Governor of California, the Governor of Texas, the Governor of New York, and many other Governors, but practically every Governor of every major State.

Along those lines, Mr. President, I ask unanimous consent that a letter from the distinguished Governor of Virginia, Mr. Gilmore, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMONWEALTH OF VIRGINIA
Richmond, VA, September 25, 1998.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science,
and Transportation, U.S. Senate, Washing-
ton, DC.

DEAR SENATOR MCCAIN: I am very pleased the Senate will soon vote on the Internet Tax Freedom Act (S. 442).

Since its introduction last year, I have been—and continue to be—in strong support of the Internet Tax Freedom Act. Your work on this important legislation goes hand in hand with the compromise agreement reached by the Commerce and Judiciary Committees in the House of Representatives. Both Committees as well as the full House passed the bill unanimously after well reasoned compromise from all those concerned.

As you know, the Internet is one of our most valuable and fastest-growing resources, presenting enormous potential to revolutionize both global and domestic commerce. But this incredible tool currently faces some significant obstacles with respect to state and local taxation. With more than 30,000 state and local taxing jurisdictions in the United States, Internet development is in danger of being stifled by a maze of inconsistent, unfair, and burdensome taxing regimes.

There are currently thousands of Internet companies, which can be found in every state in the nation. They are small but important vehicles of economic development and are unfairly assessed taxes based on interpretations of existing tax law written well before the establishment of the Internet. Because of the importance of these businesses, the substance of the act should do what its title suggests.

The Internet Tax Freedom Act is important to our state economies, to online consumers, and to the future success of electronic commerce. This legislation places a temporary moratorium on certain taxes so that an appropriate, non-discriminatory Internet tax policy can be developed and implemented by policymakers at all levels.

For these reasons, I urge the enactment of the Internet Tax Freedom Act this year and look forward to working with you and the Congress to ensure our nation remains the undisputed leader in cutting edge technology industries.

Very truly yours,

JAMES S. GILMORE III,
Governor of Virginia.

Mr. MCCAIN. Mr. Gilmore says:

I am very pleased the Senate will soon vote on the Internet Tax Reform Act, S. 442.

Not as pleased as I am. He says in his concluding paragraph:

For these reasons, I urge the enactment of the Internet Tax Freedom Act this year and look forward to working with you and the Congress to ensure our Nation remains the undisputed leader in cutting edge technology industries.

So another Governor and a very important one, the Governor of Virginia, has weighed in in favor of this legislation.

I believe the fact that we were willing to agree to certain grandfathering provisions was very helpful in moving this process forward, but I also think that it made an argument for a 4-year moratorium. Again, when it came out of the committee, it was 6 years originally and now the Finance Committee reduced it to 2. We think that 4 years is obviously a reasonable compromise.

So again I urge the 3-year moratorium advocates to come to the floor so

we could have vigorous debate on that issue and a vote sometime around 4:45, with the agreement of the majority leader.

AMENDMENT NO. 3727

(Purpose: To include legislative recommendations in the commission's report.)

Mr. MCCAIN. Mr. President, I know of no opposition to the amendment 3727 by Senator ENZI, and I therefore call up the amendment and ask that it be adopted.

The PRESIDING OFFICER. Is the Senator asking that the pending amendment be laid aside?

Mr. MCCAIN. I ask unanimous consent that the pending amendment be laid aside for the Enzi amendment 3727.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the Enzi amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. ENZI, proposes an amendment numbered 3727.

Mr. MCCAIN. 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 25, beginning on line 10, strike "a report reflecting the results" and insert the following: "for its consideration a report reflecting the results, including such legislative recommendations as required to address the findings".

Mr. MCCAIN. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3727) was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mr. ENZI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCAIN. I congratulate the Senator from Wyoming for his amendment.

AMENDMENT NO. 3718, AS MODIFIED

(Purpose: To revise the definitions of the terms "tax," "telecommunications service," and "tax on internet access," as used in the bill)

Mr. MCCAIN. Mr. President, on behalf of myself, I send an amendment to the desk, No. 3718, as modified, and ask for its immediate consideration.

The PRESIDING OFFICER. The pending amendment is set aside and the clerk will report the amendment of the Senator from Arizona.

The legislative clerk read as follows:

The Senator from Arizona, [Mr. MCCAIN], for himself and Mr. WYDEN proposes an amendment numbered 3718, as modified.

Mr. MCCAIN. 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 29, beginning with line 20, strike through line 19 on page 30 and insert the following:

(8) TAX.—

(A) IN GENERAL.—The term "tax" means—
(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(56)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).

(10) TAX ON INTERNET ACCESS.—The term "tax on Internet access" means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services.

Mr. MCCAIN. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator has sent up a different version. Did the Senator want to modify it?

Mr. MCCAIN. As modified, 3718 as modified. I sent up a modified version.

The PRESIDING OFFICER. Without objection, the amendment is modified.

Is there further debate on the amendment? If not, the amendment is agreed to.

The amendment (No. 3718), as modified, was agreed to.

Mr. MCCAIN. Mr. President, while he is on the floor, I thank the Senator from Wyoming for his involvement in this issue. He won a significant victory. I believe that his knowledge of this issue and this technology is very helpful not only on this issue, but we will be addressing numerous other issues regarding these emerging technologies in the future and I appreciate his participation. We look forward to working with him.

Mr. President, I yield the floor.

Mr. ENZI. Mr. President, I also thank the Senator from Arizona and the Senator from Oregon for their cooperation and the careful work they have done on the bill with the acceptance of the amendments that I and a number of other people worked on. I appreciate that. I yield the floor.

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. BIDEN. 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. BIDEN. Mr. President, I ask unanimous consent that I be able to

proceed for 7 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NEED FOR IMF FUNDING

Mr. BIDEN. Mr. President, I want to talk very briefly about the International Monetary Fund and the meeting that took place in Washington yesterday and today and will be taking place this week.

The eyes of the world are on Washington this week where the major international financial institutions search for answers to the most serious international economic crisis in years. As the world's most successful economy at the moment, the United States bears, in my view, an unavoidable responsibility, and that responsibility is to lead—lead in a search for answers to this crisis.

But as last year's Asian financial turmoil has evolved into a global financial crisis, to my great disappointment, the House of Representatives persists in what I must say—and I realize it is a strong word—in its irresponsible refusal to approve funding for the International Monetary Fund.

Twice this year the U.S. Senate has overwhelmingly supported the so-called U.S. quota, our share of a larger capital reserve for the IMF to pull threatened countries back from the brink of economic collapse. And twice this year, the House of Representatives has refused to provide the resources—at no cost to the American taxpayer—that the IMF needs to contain this widening crisis.

As President Clinton, Secretary Rubin, and our representatives to the international financial institutions in Washington this week urge their counterparts from the rest of the world to join us in controlling the crisis, the response that we are hearing is: "Show us the money."

There was a movie out that won an Academy Award, and in that movie, they said, "Show me the money." We have our Secretary of the Treasury and our President constituting an American plea for the rest of the world to act responsibly, and they are being told, "Show us the money." I want to point out that even if these other countries ante up their share, the IMF cannot take any action, absent us putting in our share, because you need an 85-percent vote.

Try as they might, how can we expect our leadership to lead the rest of the world with the albatross of the House's irresponsibility hung squarely around their necks? By failing to provide full funding of our participation in the IMF, we undercut our credibility and our authority, the credibility and the authority of the world's indispensable economic leader, in the most serious international economic crisis, at least of my generation and the Presiding Officer's.

Go down to these meetings, Mr. President—and I suggest this to all my

colleagues—and the first thing you will hear from both our representatives and their counterparts from around the world is the complaint that the U.S. Congress is holding up one of the key elements they need to construct a response to the current crisis: the funds to protect vulnerable economies from financial collapse.

Every State in the Union—from States as far away as Washington and Delaware—every State in the Union has been hit by the decline in our agricultural and manufacturing exports because of the collapse of major markets for American goods around the world.

In my own State of Delaware, exports to Asia are down 20 percent compared to last year. That translates into jobs—Delaware jobs. The crisis that began last year in Asia has spiraled around the planet to Russia, a nuclear power facing economic and political collapse, and on to our closest trading partners in Latin America.

Mr. President, I do not believe it is an exaggeration to say that without the resources to support Brazil and other countries threatened by the wild swings of international capital flows, countries as important to us as Mexico, our third largest trading partner, could be the next to fall. And yet, in my view—and I realize some may disagree, even those who voted with me on funding of IMF in the Senate—in my view, the House continues to play politics with our obligation to the only international institution in the position to attempt to control the spread of economic meltdown.

Once again, I urge my colleagues in the House to come to their senses, to match the Senate in action and provide the U.S. share for the IMF quota increase. Time is running out, Mr. President. I hope what I read in the papers—what we all read in the papers—that the leadership in the House is about to release this money, about to vote for it, is true, because time is running out and there will be a price to pay for inaction.

I thank my colleagues. I yield the floor and suggest the absence of a quorum.

Mr. BUMPERS. Will the Senator withhold?

Mr. BIDEN. I withhold the request suggesting the absence of a quorum.

Mr. BUMPERS. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

OZONE LAYER

Mr. BUMPERS. Mr. President, my time left in the Senate is very brief. I have—I don't know—3, 4, at the most 5 days left of active duty on the Senate floor. I read a story in the paper this morning that gives me some satisfaction at least about some of the things I have done since I came here.

As I have said on the floor many times, there isn't anything as gratify-

ing to a Senator as being able to stand on the floor and say, "I told you so."

When I first came here, I had read a story in some science magazine about two young physicists at the University of California at Irvine who had developed a theory that chlorofluorocarbons—a gas, normally found in aerosols and freon, which we use in our air conditioners and refrigerators—that these chlorofluorocarbons that we sprayed on our hair in the morning were wafting up into the stratosphere over a period of 12 to 15 years and destroying the ozone layer.

Before I came to the Senate, I thought "ozone" was a town in Johnson County, AR, which indeed it is. As a matter of fact I spoke at the high school graduation at Ozone last year. Nevertheless, this theory about something we were doing rather mindlessly that had almost cataclysmic consequences for the future intrigued me.

I had been put on the Space Committee when I came here. I did not ask for the Space Committee—it was a spacey committee. We abolished it a couple years after I came here, but I asked the chairman, Senator Moss of Utah, if I could hold some hearings on this theory and invite some atmospheric scientists to come in and testify. And he said, "I have no objection to that." Just ad hoc hearings. I certainly was not chairman of the subcommittee or anything else. I had just gotten here. He said, "I don't mind you doing that, but you need to get a Republican to sit with you in these hearings." So I recruited my good friend, Senator DOMENICI, from New Mexico.

Senator DOMENICI and I held nine hearings over a period of about 6 months. We had the best atmospheric scientists in the United States coming in and testifying—Dr. Rowland and Dr. Molina.

In those hearings, we probably had an average of 15 people in the audience. We had a television camera show up only once. When we finished, Senator DOMENICI did not feel quite as strongly as I did about abolishing the manufacturing of CFCs immediately, and so Senator Packwood and I took it on and brought it to the floor of the Senate to abolish the manufacturing of CFCs.

The chemical lobbyists in that lobby, through that door, were so thick I could hardly get to the floor to vote. And as I recall, we got a whopping 33 votes. I was arguing that if we were to cut off all manufacturing of CFCs right now, we still had 12 to 15 years of damage coming because that is how long it took from the time you sprayed your hair the morning we voted for it to get there and start destroying ozone.

You know all the arguments: This is untested; unproved; and we need to "study" it. That is the way you kill things around here—study it. And so that is the end of the story in 1975.

In 1985, the National Academy of Sciences, who we had assigned to do the study—10 years later—discovered that there was a developing hole in the