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No. 112

House of Representatives

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore (Mr. DAN MILLER of Florida).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
September 9, 2002.

I hereby appoint the Honorable DAN MILLER to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. MONAHAN, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 5010. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5010) "An Act making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes." requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. INOUE, Mr. HOLLINGS, Mr. BYRD, Mr. LEAHY, Mr. HARKIN, Mr. DORGAN, Mr. DURBIN, Mr. REID, Mrs. FEINSTEIN, Mr. KOHL, Mr. STEVENS, Mr. COCHRAN, Mr. SPECTER, Mr. DOMENICI, Mr. BOND, Mr. MCCONNELL, Mr. SHELBY, Mr. GREGG, and Mrs. HUTCHISON to the conferees on the part of the Senate.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 351. An act to amend the Solid Waste Disposal Act to reduce the quantity of mer-

cury in the environment by limiting the use of mercury fever thermometers and improving the collection and proper management of mercury, and for other purposes.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority leader, the minority leader or the minority whip limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from California (Mr. ROHRABACHER) for 5 minutes.

HONORING COMMANDER MASSOUD

Mr. ROHRABACHER. Mr. Speaker, today is the first anniversary of the murder of Commander Massoud, a leader of the anti-Taliban forces in northern Afghanistan. Two days before the attack on the United States, bin Laden's terrorists, posing as journalists, killed Commander Massoud. They blew him up. The Taliban and the al Qaeda were free from their most effective opponent, and the world lost a champion.

Those of us who dedicated ourselves to eliminating communism from this world know what a great debt that we owe to Commander Massoud. It was his courage, his tenacity and skills in battle that played an indispensable role in the outcome of that global fight between good and evil known as the Cold War.

I first began communications with Commander Massoud when he sent his brother to see me when I worked at the White House in the 1980s under Ronald Reagan. At that time Commander

Massoud was already a legend. His courage and wisdom served his own people well. It also inspired freedom-loving people throughout the world, and let me admit to that I was one of those who was inspired by Commander Massoud. It was my honor to have communicated with him over the years as well as to go and meet him in Afghanistan about 5 years ago, meet him in one of his mountain retreats, one of his mountain holdouts, and strategize with him on how to free Afghanistan from the grip of the Taliban.

Commander Massoud, along with the other leaders of the resistance against Soviet occupation, leaders like Abdul Haq, were heroes in the truest sense of the word. Massoud was never defeated by those Soviet troops during the long battle for Afghanistan. It is unfortunate that after the Soviets were defeated that chaos and a lack of support from Afghanistan's Western friends prevented Massoud and others from unifying and democratizing their country. Americans can be proud, however, that we helped Commander Massoud and the Afghan freedom fighters, people like Abdul Haq, as I say, in their fight to thwart Soviet aggression, but we should be ashamed that we walked away after that great victory and left them with no resources to rebuild their country.

It is also sad that the United States, under President Clinton's leadership, never provided Massoud or the other freedom fighters what they needed to prevent the tyranny of the Taliban from dominating Afghanistan. But as we know, Commander Massoud was able to stand like a giant. Like the Soviet troops before them, the Taliban were never able to defeat Commander Massoud.

Today as we try to rebuild a peaceful Afghanistan where people can raise their families and live without fear, Commander Massoud is sorely missed. Although he made mistakes, and all

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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leaders make mistakes and there were some judgments, of course, things that happened that were not absolutely all totally correct, this is the real world, but by and large Commander Massoud, one can say of his life, he fought for the right. He was a major force for good. But as we remember him today on the first anniversary of his death, let us commit ourselves to his vision of a free, prosperous, and more peaceful Afghanistan. And in achieving this we will assure that Commander Massoud will never be defeated.

One year ago, upon hearing of Commander Massoud's death, and as I say, it was an assassination that took place 1 year ago today, 2 days before September 11, I went into a state of shock. It was like taking the breath right out of my lungs. But after regaining my composure, I realized, yes, my friend had been assassinated, but I realized that those who killed Massoud had a purpose. They meant to attack the United States and were eliminating the person that we would turn to to rally the people of Afghanistan and lead a counterattack against the Taliban. That meant that an attack on the United States was imminent.

I called the White House and asked for an emergency meeting with Condoleezza Rice and the top members of the President's National Security Council. I got a call back and was told that the earliest that they could meet me, and they were taking my request very seriously, would be at 2 o'clock the next day.

Well, at 8:45 a.m. that next day, the hijackers' planes began to slam into the World Trade Center. Yes, that could have been averted had we had Commander Massoud fighting against the Taliban much earlier. Unfortunately, we did not provide him the effort and what he needed to defeat the Taliban then.

Commander Massoud would have been making history all this year and would have been doing and helping things for the better, and we will avenge his death and all the victims of 9-11 by rebuilding a peaceful Afghanistan free of tyrants and fanatics.

NEXTWAVE AUCTION BILL

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the gentleman from Florida (Mr. STEARNS) is recognized during morning hour debates for 5 minutes.

Mr. STEARNS. Mr. Speaker, I want to thank my colleague from California (Mr. ROHRBACHER) for his continuing support in recognizing this anniversary. NPR had a great tribute to the general this morning which I listened to. I think it is altogether appropriate that the gentleman do this on the House floor, of course, and I want to thank him.

Mr. Speaker, on another matter, I rise to deal with something that is more close to home, and that is dealing with something I am involved with in

telecommunications. I am urging my colleagues to support a bill that I introduced to eliminate impediments that restrict the ability of certain wireless telecommunication providers to, I think, meet the urgent need of the consumers. The bill has bipartisan support and the support of the Subcommittee on Telecommunications and the Internet on which I serve.

I am pleased, Mr. Speaker, that a recent editorial in the Wall Street Journal supports my actions on this matter, and I will be providing the Wall Street editorial to be made a part of the RECORD and part of my speech.

The affected providers are the successful bidders for wireless spectrum that the Federal Communications Commission auctioned off in Auction No. 35. Some of the spectrum had previously been licensed to companies, including NextWave Personal Communications, whose bankruptcy filings, and subsequent failure to pay amounts due to the FCC for their licenses, led to the cancellation of those licenses. The FCC subsequently reclaimed the licenses and reaucted them off in Auction No. 35 for about \$16 billion.

In June 2001, the D.C. Circuit held that "the Commission violated the provision of the Bankruptcy Code that prohibits governmental entities from revoking debtors' licenses solely for failure to pay debts dischargeable in bankruptcy." In August 2001, after the issuance of that court's mandate, the FCC restored the NextWave licenses to active status. More recently, the Supreme Court granted the FCC's petition for a writ of certiorari to review the D.C. Circuit's judgment. The Supreme Court will not hear argument in the case until the fall of 2002 and is unlikely to announce a decision until the spring of 2003. If the Court reverses the D.C. Circuit's decision, there will be further litigation on remand in D.C. Circuit to resolve issues that court did not reach in its first decision. As a result, there is not likely to be a final resolution of the status of the NextWave licenses any time soon, and the FCC therefore will not be in a position to deliver licenses to the winners of Auction No. 35, until three or more years from the time the auction was concluded.

Now, the status of NextWave's license has been the subject of extended litigation in not only the bankruptcy court, but the United States Court of Appeals for the Second Circuit, the United States Court of Appeals for the District of Columbia Circuit, and soon to be, the Supreme Court of the United States.

Although the FCC recently returned most of the downpayment funds previously deposited by all these successful bidders, it continues to hold, without interest, Mr. Speaker, substantial sums, equal to 3 percent of the total amount of the winning bids. It apparently intends to hold these sums indefinitely.

Despite the lengthy delay in delivering the licenses, moreover, the FCC takes the position that the successful bidders remain obligated, on a mere 10-day notice, to pay the full amount of their successful bids if and when the

FCC, at some unknown future date, establishes its right to deliver those licenses.

Now, I think, as the Wall Street Journal points out, this is grossly unfair to those who bid on these licenses and did so in good faith. Companies calibrate their bids on the understanding of the auction, implicit in any commercial arrangement, that the delivery of the licenses will occur in a reasonable time following these auctions. That expectation is especially crucial in the context of spectrum licenses. Given the recent volatility we have seen in the market prices for spectrum, we can understand that there would be some action by the FCC after the auction.

Moreover, it is particularly burdensome to some companies to have the FCC hold even a small portion of their enormous downpayment without any interest on these amounts. It is not done in the private sector; it should not be done in the government. They are paying no interest on these deposits for extended periods of time.

In addition, winning bidders are obligated, as I mentioned, on very short notice to pay the remaining \$16 billion they bid for the license at issue. Obviously, this adversely affects their capacity to serve the needs of their customers, because they must have this capital always on hand and they cannot use it for long-term benefits for business. This need to keep itself in a position to fulfill that obligation at an indefinite future date impedes its ability to take, as I mentioned, interim steps for building their own businesses.

The FCC's failure to respond appropriately to alleviate these serious burdens, I believe, deserves the public interest. That is why I have dropped bill H.R. 4738. It addresses this problem in two ways, Mr. Speaker.

First, it requires the FCC promptly to refund to the winning bidders the full remaining amount of their deposits and their downpayments. Second, it gives each winning bidder an opportunity to elect, within 15 days after enactment, to relinquish its rights and to be relieved of all further obligations under Auction No. 35. Those who choose to retain their rights and obligations under Auction No. 35 will nonetheless be entitled to a return of their deposits and downpayments in the interim period. If and when the FCC is in a position to deliver the license at issue to those who remain obligated, they will be required to pay the full amount of their bid in accordance with the FCC's existing regulations. Those who elect to terminate their rights and obligations under this auction will be free to pursue their business interests without the burdens under which they must labor.

Mr. Speaker, I urge my colleagues to support this timely and much-needed legislation, and I appreciate the Wall Street Journal bringing to the attention of the Nation this very important problem, and I also hereby submit for