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.*

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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.

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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.

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## 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.

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## CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

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## 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. 1308

(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 1308.

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 |
| Bancus | 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 $8 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. 406. 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.*

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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.*

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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.*

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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.*

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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 on-line.

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 non-commercial 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) (1988 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.*

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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

[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.*

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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

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[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.

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 dialing 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 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.—

(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:

"(5) 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 plans 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(i)(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 900 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. 408. 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 anti-competitive 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 88 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 procompetitive 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.*

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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

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