

added to the federal criminal code a definition of scanning receivers to mean devices used to intercept illegally wire or electronic communications.

"Clone" telephones are used illegally to allow free riding on the cellular phone system and result in theft of that service. The cellular telephone industry estimates that it loses \$650 million per year due to clone phones. I recall testimony at hearings I chaired jointly with Representative Don Edwards on CALEA about the need to address this problem in CALEA. Tom Wheeler, President of the Cellular Telecommunications Industry Association, testified in 1994 about:

... people being surprised by "humongous" cellular bills because somebody had snatched their electronic code out of the air, cloned that into another phone, and was charging phone calls to Colombia or wherever onto their phone.

S. Hrg. 103-1022, at p. 148 (August 11, 1994).

In short, the theft of cellular telephone services amounts to millions of dollars of losses to wireless service providers and to consumers.

Just as disturbing, clone phones are used by drug dealers and other criminals trying to evade police surveillance of their phone conversations. The fraudulent use of electronic serial numbers, which are critical in identifying the cellular phone subject to wiretap orders, represented a real threat to privacy. Mr. Wheeler explained in 1994, "If you have a situation where there is floating around out there multiple users of the same electronic serial numbers, you don't know who you are tapping." S. Hrg. 103-1022, at p. 148 (August 11, 1994).

Given the financial losses and the threats to privacy posed by clone phones, I urge the cellular telephone industry to consider the technical means available to better protect cellular phone service. In particular, if strong encryption were used to encrypt the radio waves transmitted from cellular phones to the nearest cell tower, stealing those signals for use in a clone phone would be much more difficult, if not impossible.

I have long been a proponent of more widespread use of strong encryption. Clone phones are a perfect example of where the use of strong encryption would be far more effective to prevent this crime from occurring than all the criminal laws we could consider passing.

This bill, as modified by the House, builds upon the work we accomplished in CALEA.

Current law contains an "intent to defraud" requirement that has apparently posed a stumbling block for law enforcement to crack down on the cloning of cellular phones. This bill would remove this intent requirement and make it illegal to use, sell or possess hardware or software knowing it has been configured for the purpose of altering a telephone to steal service.

The House of Representatives made a number of significant improvements to S. 493 to ensure that, upon removal of the "intent to defraud" requirement, the bill did not sweep too broadly. Indeed, I understand that even some cellular companies were concerned that the original bill introduced by Senator KYL might inadvertently have applied to machinery used by legitimate companies to test or reprogram their equipment.

Removal of the "intent to defraud" scienter requirement may still pose problems for those legitimate companies that wish to offer "extension" telephones for cellular telephones. In fact, the Federal Communications Commission has a proceeding underway to determine whether companies may be allowed to alter the electronic serial number of a cellular telephone to allow more than one phone to have the same contact number.

Passage of this law may be interpreted as prejudging the outcome of that proceeding by making illegal the use of clone phones, even by legitimate subscribers who pay their bills. That would be regrettable. This bill should not affect the outcome of the FCC proceeding, since the public interest may be well served by allowing competition into the extension cellular telephone business. Depending on the outcome of the FCC proceeding, we may be revisiting this legislation.

This bill, as modified by the House, is supported by the FBI, Secret Service and the Cellular Telephone Industry Association (CTIA). We made important progress in this area when we passed CALEA, and I am glad to support legislation that will further help law enforcement combat cellular telephone fraud by those who steal cellular service.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate concur in the amendments of the House.

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

LAND CONVEYANCE ACT

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 321, H.R. 1116.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1116) to provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District.

There being no objections, the Senate proceeded to consider the bill.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the bill be considered read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at the appropriate place in the RECORD.

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

The bill (H.R. 1116) was considered read the third time and passed.

MEASURE PLACED ON THE CALENDAR—S. 1889

Mr. DOMENICI. Mr. President, I understand that there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1889) to reduce tobacco use by children and others through an increase in the cost of tobacco products, the imposition of advertising and marketing limitations, assuring appropriate tobacco industry oversight, expanding the availability of tobacco use cessation programs, and implementing a strong public health prevention and education strategy that involves the private sector, schools, States and local communities.

Mr. DOMENICI. Mr. President, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. The bill will be placed on the calendar.

ORDERS FOR THURSDAY, APRIL 2, 1998

Mr. DOMENICI. Mr. President, on behalf of the leader, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 8:30 a.m. on Thursday, April 2; that immediately following the prayer, the routine requests through the morning hour be granted and the Senate resume consideration of S. Con. Res. 86, with the pending business being the Bumpers amendment No. 2228.

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

Mr. DOMENICI. I further ask unanimous consent that immediately following the previously ordered two votes which will occur at 9 a.m., the Senate then proceed to consecutive votes on or in relation to the following amendments in the following order:

Dorgan amendment No. 2218, relating to the Tax Code;

Allard amendment No. 2170, regarding the Federal debt;

Lautenberg amendment No. 2195, environment programs;

Bond amendment No. 2213, income housing;

Bumpers amendment No. 2228, relating to mines.

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

PROGRAM

Mr. DOMENICI. Mr. President, tomorrow the Senate will resume consideration of the budget resolution. At 9 a.m., the Senate will proceed to a series of consecutive rollcall votes, with the first two votes in relation to two judicial nominations and the remaining votes in relation to pending amendments to the budget resolution.

It is hoped that during these votes, all Senators will contact the managers