Mr. FRIST. Again, people were here very late last night. I encourage the managers to do everything humanly possible to finish the Internet tax bill. If, after aggressive work, we cannot do that, then we can make a decision. By the end of today, I would like to lay down the Commerce-Justice-State appropriations bill. If that is the case, I would plan on going to that on Monday. We can talk about the appropriate time. For us to finish our work, we have to keep moving, and it is important to lay down that bill today.

Mr. REID. Mr. President, I say to the majority leader we want to cooperate. We have tried to do that on these appropriations bills, and we will cooperate on Commerce-State-Justice. But until there is some determination made when we are going to go off the Internet tax, I am going to object.

The PRESIDENT pro tempore. Objection is heard.

Mr. MCCAIN. Will the majority leader yield?

Mr. FRIST. I am happy to yield.

Mr. MCCAIN. Mr. President, I point out that we went on to the Internet tax moratorium bill last night with the anticipation of amendments being proposed and votes starting this morning—stacked votes. That is what we usually do on a Thursday evening. Whether that is a good idea or a bad one, it is a very common practice. We had anticipated at least three amendments and then stacked votes this morning and moving forward with the bill.

Then, I was told later in the evening there would be one amendment that would be proposed and we would stack it for this morning; and not too late last night, the sponsors of the amendment said they were going to file the amendment and debate it this morning.

With all due respect, that is not the way we usually do business here. We tell people what we are going to do and go with their word and move forward. I think we need to get this done because the Internet tax moratorium has expired. If we don't want the Internet tax moratorium to prevail, that is a decision to be made by the body. We should make the decision. I hope the majority leader will stick with his comments. There are not that many items of dispute on the Internet tax moratorium. It has been debated on several occasions in past years. So I hope relevant amendments—and I don't think there are more than two or three, to be honest—are offered and we can move forward with those with a reasonable debate time and dispose of this today, understanding that all Members have the problem of scheduling and want to leave.

So I urge the cooperation of all Members so we can dispose of important amendments and move forward. I see my colleague from North Dakota who is ready to speak. I wish he had been here last night to speak. We could have done an amendment and debated it. Instead, we put it off for this morning, which I hope will make comments more abbreviated so we can move to the substance of the amendment and passage of the bill.

I thank the leader and I appreciate his commitment to try to get this done today.

Mr. FRIST. Mr. President, let me close this out and then we can turn to the bill. I ask all of our colleagues to spend the appropriate time and do our best to cooperate to finish this important bill, which I tried very hard to finish last week with the understanding that we would bring it up this week and we would finish it this week. We cannot point fingers on either side of the aisle because there are challenges on both sides of the aisle. I ask this in order for us to finish the Nation's business.

Last night on the floor—I know we have the Syria accountability bill and Military Construction, which we are going to get. The problem is that we have to finish the business we have on the floor. We have to continue the appropriations process as we go forward, and we cannot do it unless people come together and understand there is an urgency that requires cooperation.

I go back to my original comments. I understand there is objection to going to Commerce-Justice-State. I will continue to discuss that as the day goes forward. I would like to lay that down today at some point.

UNANIMOUS CONSENT REQUEST—H.J. RES. 76

Mr. FRIST. Mr. President, I ask unanimous consent that H.J. Res. 76, which is at the desk, be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, in response to the distinguished chairman of the Commerce Committee, people worked here late last night. No one should criticize anyone for not being here later. I left around 10 o'clock. There may have been a quorum call, but very few. There were good, strong, substantive speeches given on this issue. No one can be criticized, especially my friend from North Dakota, for not being here last night. He was here all during the day yesterday and offered a number of amendments to the Agriculture appropriations bill. My friend from North Dakota might be criticized for some things, but one of them is certainly not that he doesn't work hard. He works as hard as anyone in the Senate.

I also say to the distinguished majority leader, I did last night spend a few minutes indicating and asking why we are not doing the Syria accountability bill and Military Construction. It is obvious—and we should stop feigning—we have a problem here. The problem is there has been a decision made to spend 30 hours next week on a circus talking about judges—168 to 4.

I am not going to object to this, other than to say let's be realistic here. There are games being played, and we don't want to be part of those games. We want to cooperate. Military Construction should pass now, rather than getting into next week when there is some effort to stop it. That can be passed by a unanimous consent agreement right now.

The PRESIDENT pro tempore. Is there objection?

Mr. DORGAN. Will the Senator from Nevada yield?

Mr. REID. I don't have the floor.

The PRESIDENT pro tempore. Is there objection to the request?

Mr. DORGAN. Reserving the right to object.

The PRESIDENT pro tempore. The Senator from North Dakota reserves the right to object.

Mr. DORGAN. I object.

The PRESIDENT pro tempore. Objection is heard.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2004

Mr. REID. Mr. President, I ask unanimous consent that H.J. Res. 76, which is at the desk, be read a third time and passed and the motion to reconsider be laid upon the table.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The joint resolution (H.J. Res. 76) was read the third time and passed.

INTERNET TAX NONDISCRIMINATION ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 150, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 150) to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Pending:

McCain Amendment No. 2136, in the nature of a substitute.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I hope we can get things done here. There is so much to be done. I said last night, and I spoke from the heart, people in Nevada at our military bases, Fallon and Ellis, need this Military Construction bill passed. I don't know why we are not going to do it today. If it is brought up next Monday or Tuesday,

nothing is going to happen on it, so let's get that done.

The Syria Accountability bill—I understand what is going on here. There is an effort made so there will be a vote Monday night on Syria Accountability because there is a time limit on it. If that is the case, fine. Remember, this is an important piece of legislation that requires our immediate attention. I don't think we should be doing things that take away for 1 minute our going into Syria's accountability, supporting the Hezbollah, and all the other activities they do that simply are not appropriate.

We are in a situation where we have bills that need to be passed and conference reports that need to be approved. It is not going to happen for reasons I don't understand.

Mr. DORGAN. Will the Senator yield for a question?

Mr. REID. I will be happy to yield.

Mr. DORGAN. Mr. President, my colleague from Arizona, I know, did not intend to think that if I were here last night, I would have advanced the cause of his legislation. I have no amendment to offer to the legislation. I had an opportunity yesterday to speak on several amendments. I think he probably inartfully described his angst about last evening. I didn't cause this legislation to be delayed. I am sure he knows that.

Aside from that, I wonder if the Senator from Nevada will tell me about the urgency of legislation on the floor. The majority leader expresses an interest in moving this Senate along on legislation we need to get done. I am pretty unimpressed with the plea to do that when we understand that next week we are going to find nearly 2 days taken in a carnival situation with judgeships, when we have approved 98 percent of the judges who have been sent to us by the White House.

Now, in the middle of next week, as we try to finish this session, we are told we are going to have 30 hours, or take the better part of 2 days, to sit here around the clock to talk about the several judges we have not confirmed. I ask the Senator from Nevada if that seems to him like we have an urgent situation when somebody is going to take 30 hours out of the middle of next week and move off to have a 30-hour discussion on judgeships.

I am pretty unimpressed with the plea for cooperation and expedited procedures on these issues as long as somebody is going to take nearly 2 days out of the middle of next week to do something that has nothing to do with moving appropriations bills.

As I ask the question, I wish to make an additional comment. I am an appropriator as well. I am not very impressed with what has happened. We were supposed to have done the appropriations bills and finished by October 1. We have been off and on appropriations bills. Look, if this is a priority, let's get on appropriations bills and stay on appropriations bills. That is what we ought to do. Isn't that the case, I ask my friend from Nevada?

Mr. REID. I will be happy to respond to my friend's question. As I indicated earlier, to my knowledge, no one works harder in the Senate than the Senator from North Dakota. He is an appropriator and authorizer, understanding from his long years in Congress, both in the House and the Senate, that the last few weeks and days of a legislative session can become very intense. That is why I am at a total, absolute loss to understand how we could do this. We have been told; we heard it on the news—I went home last night and my wife said it was on the news at 6 o'clock Wednesday night until 12 o'clock Thursday night, we are going to be on the Senate floor listening to a discussion of what bad legislators we are because we haven't approved 100 percent of the judges the President has requested—168 to 4—and we have been told they are going to bring up another failed nominee, Priscilla Owen, next week.

I understand they are also going to bring up a woman by the name of Kuhl from California and a woman by the name of Brown from California. I don't know if this is an effort to try to somehow embarrass the two Democratic—

Mr. MCCAIN. Parliamentary inquiry, Mr. President.

Mr. REID.—Senators from California or what the reason might be.

The PRESIDENT pro tempore. Does the Senator yield for a parliamentary inquiry?

Mr. REID. For a parliamentary inquiry? I will be happy to do that, without losing my right to the floor. Yes.

The PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I have a parliamentary inquiry: Wouldn't rule XVIIII 1(b) begin to apply concerning proceedings while legislation is before the Senate?

The PRESIDENT pro tempore. That is correct. Under the procedures of the Senate, there would be a warning issued to Senators speaking on matters other than the business before the Senate in the first 3 hours.

Mr. REID. Mr. President, I appreciate that very much. I appreciate my friend from Arizona bringing that to my attention. What I am going to talk about for a while is the Internet tax problem. Internet tax is a difficult situation, of course. It is something with which we need to deal. We understand there is some confusion as to what we are really dealing with. Some believe it has something to do with sales tax. This legislation does not. It deals with access.

It is a very important issue, but it seems to me this matter could be resolved in a matter of minutes. I am told the Presiding Officer's amendment, in effect, would extend the present law for a couple years. It is my understanding the distinguished Senator from Alaska has suggested this be extended for 2 years and, if I am not mistaken, there are others who believe it should be extended for 2 years.

I believe that should happen. I hope we will extend this for a couple years and then during that period of time make a determination as to whether the legislation that is now before the Senate should be implemented. I understand that.

Also, one of the real problems we have is this schedule, which makes it very difficult to deal with this legislation. My friend from Arizona suggested we deal with relevant amendments. This is not going to happen in this present atmosphere. There will certainly be efforts made to offer not only relevant amendments, but, I would assume, maybe some nongermane amendments. I don't know that to be the case, but I assume so because we have so few opportunities to amend different pieces of legislation as they come through.

On appropriations bills, we have been cooperating the best we can. As I indicated last night, we have done everything we can to make sure we did not have amendments that were offered to appropriations bills that would slow down the process. We have worked very hard in doing that.

I am not going to talk for a long time this morning.

I have no intention of interfering this morning with people's schedules. I know there are a lot of schedules that we have to move along. I want to do that. People have airplane schedules to meet on Friday. We were told yesterday that there would not be anything after 12 today. At least people on our side made arrangements that that would, in fact, be the case. If there is some change, we need to know about that.

I am happy that we got the CR passed. I look forward at a later time today to cooperate and agree to bringing forth Commerce-State-Justice. We want to do that at the appropriate time. Until there is some decision made on how long we are going to be involved on the Internet tax situation, we are not going to be able to give that consent.

Finally, responding to my friend from North Dakota in a very brief way, what is taking place here is something that I have never seen in the many years—more than two decades—I have served in the Congress, that we would have in the late days of a legislative session this carnival, as the Senator from North Dakota referred to it—this circus, as I referred to it—and that is what the American people will think of it.

The PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I believe the Senators from Tennessee and Delaware have an amendment filed. We are ready to consider that amendment or other amendments, if Senators have amendments that they would bring them to the floor so we can move forward with legislation.

I mention to my friend from North Dakota, who is an articulate and passionate defender of his point of view on the Internet tax issue, the reason why I mentioned his absence last night was I meant he would have contributed a good deal to the debate and discussion given his many years of involvement in this issue, which I have always enjoyed, not only on that issue but on numerous others.

So I would ask if our colleagues would file their amendments, bring them forward, as well as amendments that may be applicable.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, let me weigh in here by acknowledging the mistake we made in the Commerce Committee. In light of that statement, let me first commend our colleague from Oregon, Senator WYDEN. His intent is good. We followed it. We supported it in the Commerce Committee. We made certain that the Internet was allowed to expand and progress without any tax burden. In that light, we passed the temporary moratorium. The intent of the Commerce Committee, when we reported this measure that is now before us, was to make permanent that moratorium with respect to individual taxes.

What occurred in reporting was that we realized there was a certain language difficulty there. The fact is that the CBO today cannot schedule or account for that language on the budgetary impact. We knew that shortly after the reporting. It was all reported out on a verbal vote. We said this is going to the Finance Committee. They have tax experts and they will clean up our act for us and get the intent of the full committee and the Congress to continue and make permanent this moratorium.

The fact is, under the present language, the moratorium extends not just to the individual consumer, but it goes the entire way down the pipeline as a tax exemption, thereby invading the power of the States to tax or not tax; thereby becoming, as the Senator from Tennessee, Mr. ALEXANDER, says, an unfunded mandate. So now we have before us not the intent of the Congress at all.

I recently was in China, and I can tell you we do not have to worry about trying to control the Internet. It is not with taxes that the Chinese are trying to control the Internet and its usage, expansion, and its progress. On the contrary, they are trying by law to control it, and they cannot. That cat is out of the bag and it is going to grow.

The fundamental problem is just what the Senator from Tennessee has spotted. We have now invaded States and the locals and their taxing power, and that is not right. Right is right and wrong is wrong, and we made a mistake. Over the horizon, some of these corporate America giants are piggybacked. They said, oh, now look at what we have. If we can get in on this kind of extension, we will do away with some $4 billion to $8 billion in taxes. Of course, they are not passing it on to the consumer. It has nothing whatsoever to do with the expansion or the progress and success of the Internet. That is what we have confronting us.

In that light, the Senator from Delaware, Mr. CARPER, and the Senator from Tennessee, Mr. ALEXANDER, have gotten together an amendment that the distinguished Chair has joined in, and this Senator from South Carolina has joined in, so that we can pass this bill and extend it. That is what we all want to do. We like the present law and that is what we in the Commerce Committee thought we were doing, we were protecting consumers by extending the present law to make it permanent. We could then send that over to the House side, and if we can send that to the House, we can dispose of this knotty problem and move on to more important legislation.

I thank the distinguished Senator from North Dakota for handling this bill. Once again, I wish to acknowledge the leadership of Senator WYDEN from Oregon. He has led us on this Internet effort for a long period of time. He has made absolutely certain that the Internet continues to progress and succeed. We cannot come in now and tell the States how to tax and what to tax and not to tax.

We are not trying to give a tax cut to corporate America. We want to make sure there is not a tax increase to consumers on the Internet. That is what the present law did until it expired a few days ago, and that is what ought to be extended and made permanent.

I thank the Senator from North Dakota for handling this measure and again commend my colleague on the committee, Senator WYDEN, for his leadership.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I am going to be brief. I have appreciated the distinguished Senator from South Carolina working with me on this over the years.

The distinguished Senator from South Carolina is absolutely right. The committee bill did the job right. The committee bill kept in place the technological neutrality that we have established over the years—the Senator from South Carolina, Senator STEVENS, who has now left the floor, Chairman MCCAIN, and others. The reason we did that years ago is that we did not have technological neutrality. The Internet was subject to taxes that were not subject to other areas, such as the snail mail delivery of papers.

What has happened, however, is under the substitute that is being offered by the distinguished Senator from Tennessee, Mr. ALEXANDER, we get away from the competitive neutrality that the distinguished Senator from South Carolina has been advocating.

I want to be very specific about how that is being done, because I think a lot of Members believe that if they vote for the proposal by the Senator from Tennessee that it is somehow a safe vote, that all they are doing is continuing the status quo and it is really kind of an innocuous approach. It is not a safe vote. It is a vote to increase taxes.

I want to be very specific in explaining how that is the case. What has happened as a result of changes in technology over the last few years is you now have, in a number of jurisdictions, DSL—Internet access through DSL being taxed but Internet access through cable modems not being taxed. That is what has happened as a result of the changes in technology and the various changes in government policy. So you already have been moving away from the competitive neutrality we have sought with respect to this issue.

Let me repeat that. Today, Internet access through DSL is being taxed in a number of jurisdictions and Internet access through cable modem can't be taxed anywhere.

Unfortunately, what would happen under the proposal of the Senator from Tennessee is that you would make it easier to continue that competitive disadvantage and, particularly under the proposal of the Senator from Tennessee, it would be easier to tax wireless Blackberry services.

I am of the view that with 391 separate taxes on telecommunications administered in 10,000 different jurisdictions, people across America who have these Blackberrys, which have wireless Internet access, would be subject to scores of new taxes.

So I say to colleagues who are looking at this issue and thinking that somehow the idea of a 2-year proposal is kind of an innocuous safe haven and really not a tax increase—I ask them to think about what it is going to mean for Blackberry users across the country.

These are wireless devices. In a number of jurisdictions where Internet access is obtained through DSL, those services are already being taxed. That would be expanded under the 2-year alternative.

What I would like us to do is what I believe we sought to do 5 years ago when Senator HOLLINGS, Senator MCCAIN, and others got together, and that is to ensure strict neutrality with respect to technology. The Internet wouldn't get a preference; the Internet wouldn't be hurt. The problem now that wireless users are facing with respect to DSL will be compounded if this 2-year alternative goes forward. I hope my colleagues will reject it for the reasons I outlined this morning.

The PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, shortly the sponsors will be proposing an

amendment. In the meantime, I ask to speak as in morning business for 4 minutes.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

(The remarks of Mr. MCCAIN are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator Nevada.

Mr. REID. Let me say about this bill, no matter the merit of it, I know people feel very strongly about it. The Senator from Tennessee, who was here in the Chamber a few minutes ago, the Senator from Ohio, Mr. VOINOVICH, the Senator from Virginia, Mr. ALLEN, the distinguished Senator from Oregon, Mr. WYDEN—they have strong feelings about this. Their views do not coincide. I know how strong their feelings are.

But this legislation, with all due respect to the distinguished chairman of the Commerce Committee, isn't going to go anywhere today or Monday or Tuesday. I think there should be some effort made to resolve the issue. I am a member of the Commerce Committee. I don't understand all the issues, but I understand the issues on this floor and nothing is going to happen.

I would say to the majority that if they are looking for votes today, they would be better off looking for votes to pass the most important piece of legislation that I see that we could vote on quickly, and that would be the vote on the conference report dealing with Military Construction. We could vote on that. We could have a vote with debate equally divided with 5 minutes each. We could pass it. We could go to the Syria Accountability Act. We agreed last night to reduce our time. There are 90 minutes. We have agreed to take one hour half each and divide it up, as we indicated last night, several different ways. It seems to me we could do that, and we could be out of here by 12 o'clock after 2 very important votes.

Let me tell you what the problem is. There is an effort made so we have something to do on Monday and Tuesday. I say to everyone that as a result of the carnival which is going to be started at 6 o'clock on Wednesday, nothing is going to happen Monday and Tuesday of any significance. There may be a vote on the Syria Accountability Act because it would be an easy vote to get up. They may bring up Military Construction, and they may say, Isn't it too bad that the minority, the Democrats, aren't allowing us to pass Military Construction. But remember: I have offered numerous times over several days to take this up by unanimous consent. So all the pleas of sorrow and concern next week about our not taking care of our military officers around the country certainly will speak volumes because it simply is without any foundation because we can do that right here.

We are on the Internet tax bill. One of the things we need to talk about on this Internet tax bill is the importance of judges. Judges enforce these laws. We have been involved in passing out of this Senate 168 judges. We have turned down four. If the Internet tax measure is worth talking about, why don't we just move a little bit to the 30 hours which is going to begin next Wednesday and start talking about judges today? That is fine. I don't see any reason why we should not do that.

We can talk about the record that was set and that we have the lowest vacancy rate in the judiciary in some 15 years. Is it necessary because we have the lowest rate in some 15 years to spend 30 hours—2 days of the Senate's time—talking about judges in the circus atmosphere that will be there? It is all planned. It is going to be quite a show. It has all been laid out in the press. They are going to have all 51 Republicans here, and that way it will be very easy to discern whether or not there is a quorum present.

I am gathering my thoughts.

We will have a lot of time to spend on Internet tax.

Mr. MCCAIN. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mr. REID. Thank you very much. I appreciate very much bringing the Senate to order.

Mr. MCCAIN. I am sorry to say the Senate is still not in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. REID. Mr. President, the point is if there needs to be a discussion on judges, we don't have to wait until Wednesday at 6 o'clock. We can start talking right now on this legislation because judges have to enforce the law. It is a law we are talking about. They have to do it on a trial level and they have to do it on an appellate level.

We have given this President 98 percent of the judges he wants—98 percent of the judges he wants. People talk about the Constitution. We can talk about the Constitution also. The majority makes these statements that a filibuster is a brand new thing; it has never happened with judges; isn't it a terrible thing this is happening in the Senate. Of course, it is without foundation. There is no truth to it. Filibusters have taken place on previous occasions, and it will take place again long after we are gone.

To think we have to wait until Wednesday to talk about judges—we don't have to wait until Wednesday. We can talk now. This is a complicated piece of legislation. Don't you think we are going to need judges to interpret the law? Of course we are. The record we have is pretty good. Do you think the advise-and-consent clause of the Constitution meant every judge the President suggested to us we just approve them? Would the President be happy if we had 100 percent of his judges? How about 99 percent or 99.5 percent? Ninety-eight percent isn't good enough. It is not good enough, so now we are going to spend 30 hours talking about why it shouldn't be 98 percent, it should be 100 percent. I don't know what the proper ratio is the President wants.

I am just giving everyone a little idea that we don't have to wait until Wednesday at 6 o'clock to talk about judges. We will talk about them now. I am proud of what we have done here in the Senate dealing with judges.

I am glad Miguel Estrada was not confirmed. He wouldn't answer the questions. He wouldn't allow us to look at his memoranda when he was at the Solicitor's Office.

I am glad we did not approve Priscilla Owen who the President's own attorney, Mr. Gonzales, said was not a good judge when he served with her in the Texas Supreme Court.

I am glad that twice we did not approve William Pryor from Alabama who is an embarrassment to the State of Nevada and this country and shouldn't be a judge.

We have approved 168 judges. That is how many we have approved.

Mr. DORGAN. Mr. President, will the Senator from Nevada yield for a question?

Mr. REID. I would be happy to yield for a question.

Mr. DORGAN. I wonder if perhaps next week when the other side wishes to take 30 hours in the middle of the week to talk about the handful of judges—I believe the four who have not been confirmed by the Senate—I wonder if perhaps we should not take the time next week to talk individually about the 168 we have confirmed. Perhaps we ought to go through each one and talk about all 168.

If time is not the issue—if the majority leader says time is urgent to talk about all of these other bills but in the middle of next week they will use 30 hours to come to the floor and talk about the 4 who have not been confirmed—perhaps we ought to take 60 hours to talk about the 168 we have confirmed.

Let us move on the things that matter now and scuttle the 30 hours next week and this 30-hour discussion of the handful of judges who have not been approved. That doesn't make any sense to me.

Mr. MCCAIN. Will my friend from Nevada yield for another parliamentary inquiry?

Mr. REID. In just a minute.

The Internet bill which we are talking about here on the Senate floor is an important piece of legislation. I was present last night and listened to the statements of the Senator from Oregon. The Senator from Oregon understands legislation. He understands the importance of this Internet tax bill. He understands the definition of access. He understands what unfunded mandates mean, which was talked about by the Senator from Tennessee at such great length. I think it is important we understand this Internet tax bill. It deals with some very important issues. It is a bill that seeks to protect the

Internet access from taxation. As the lines between the Internet and the media continue to blur, there is some concern the law could lead to States losing some of their existing tax base over time. For example, some long distance telephone traffic is now carried on the Internet. Movies, videos, and music programming can be downloaded onto the Internet as well as being viewed over cable and broadcast media.

I say to everyone within the sound of my voice someone needs to interpret this law. If we pass something here, we will need someone to interpret this law.

I know this is Friday morning and there is a lot to do. But I simply wanted everyone to know this sham, this scam, this circus, this carnival that is going to begin on Wednesday at 6 o'clock is just as I have described it. What we are going to do, as the Senator from North Dakota indicated, if you want to talk about 4 judges, or maybe add 2 more or 6, is we will talk about 168. We are happy to do that.

I know I could talk a lot longer. I understand the Pastore rule. I have a lot of stuff which I could talk about—the Internet tax, and weave in the judges, but as kind of a relief to everybody, I am going to sit down for the time being.

Mr. MCCAIN. Mr. President, I thank the Senator from Nevada, who understands parliamentary procedures as well as anyone.

There are some discussions going on about some agreement that might be reached on this issue with some of my colleagues. I hope we can make progress on that.

I yield the floor.

Mr. DORGAN. Mr. President, I have not spoken on this issue this morning. This is a very important issue. I have been a supporter of the moratorium. I have supported the initial moratorium and the extension of the moratorium and will support again a moratorium. As far as I am concerned, it could be permanent if the proposition is, let us not tax the connection to the Internet. That was the presumption from the start. Let us not retard the growth of this industry. Let us not allow States to create some special tax that could be discriminatory or punitive with respect to the Internet itself.

Having said that, it is very important we create a definition that is appropriate. We have a current law. That current law could just be extended. Some of my colleagues say, if you just extend that and do not do anything about the circumstance with DSL, then you have an unfairness. That is something I understand and I am certainly willing to deal with that. But if we do not deal with the issue of how you interpret or how you describe what it is you are exempting, you can have serious financial problems. We are talking about billions of dollars' worth of problems for State and local governments.

When we passed this moratorium out of the Commerce Committee, my colleague, Senator HOLLINGS, was absolutely correct. We passed it out, I believe, 31 to 0. But we did it by saying we understand the definition of what is going to be exempted is not yet right. There is great controversy about it. So we will move this bill to the Senate but will work on solving the problem of the definition and what it means and its consequences before we get to the Senate. We tried very hard to do that but regrettably that has not been done. I want people to understand the framework in which this comes to the floor. Yes, the Commerce Committee passed it 31 to 0, but with the caveat that the definition of what is exempt is not yet solved or at least not yet agreed. So between then and now we have tried hard to see if we could fix that. At this point, it is not yet fixed.

Mr. BURNS. If the Senator will yield on that point, 9 times out of 10, whenever we get in trouble in this body it is in dealing with definitions up front. That is our problem now.

I know they are trying to work out some way over there to define certain parts of this, but there has to be something between the amendment pending and where we want to go. We are all in agreement that in this industry, when the moratorium was first put on—to allow this industry, this industry that was a baby industry, to build out—what we did was right. The second time we extended it was the right thing to do. We have seen an explosion in an industry.

There are, however, some sections that are discriminatory. There were some loopholes found by the States. So we have an inequitable situation due to definition.

I hope the parties can work this out to the satisfaction of the intent of the Commerce Committee when we passed it the first time, when we extended it the second time, and now when we want to extend it another time.

Maybe status quo is not exactly right. But nonetheless, it is something we have to work on. The Senator from North Dakota and the Senator from South Carolina have a point that we have not worked on the definition and how it will be determined or defined in the taxing entities of the States, or even, for that matter, counties and cities.

I appreciate the Senator from North Dakota allowing me this time.

Mr. DORGAN. Mr. President, I agree with that view expressed by Senator BURNS.

Let me continue by saying definitions are everything. The reason the States are very concerned is if the definition is not correct—that is, if it is not specific in exactly what Congress proposes—we could see billions and billions of dollars lost to the State and local governments in revenue they otherwise would have expected.

We have a situation where we have a moratorium that expired. The moratorium ought to be extended. I was prepared to extend it permanently if we could find a definition that would be acceptable. That has not yet proven to be the case. Some are now discussing, and I was in some discussions a few moments ago, about a shorter term extension, perhaps 4 years, and use the definition that exists in current law in the moratorium that expired November 1 and try to fix the position with respect to DSL, which is a problem. I don't know how this will come out, but we have a responsibility to try to get this right. We would not want to do something permanently that has a problem attached to it, that will be a growing problem for State and local governments.

Let me describe something that was in the newspaper recently because it tells the dilemma we face if we get this wrong. We have been moving in information technology from the old circuit switch telephone network to an Internet-based network. Whether we communicate by voice, e-mail, wireless, instant message, the data is being transmitted over the Internet in digital packets.

If anyone wonders what I mean, look at a story in the Minneapolis Star and Tribune. It is Quest Corporation announcing this past week that it will roll out an Internet-based telephone service in Minnesota. It describes that. That is the Internet-based service called VoIP, Voice Over Internet Protocol. They say the approach to moving this out over the Internet—that is, telephone service over the Internet—will save on regulatory expenses and other costs and break the regulatory logjam that exists. The article goes on to say:

> The Quest Internet phone service would also be exempt from salestax if Congress, as expected, extended and expands a tax ban on Internet access to include Internet telephone service.

You can see the consequences. If you do not understand exactly what you are doing and you have a definition that is not articulate and not focused exactly on what you intend to accomplish, we can have very significant consequences for State and local governments.

Let me end where I started by saying I happen to have supported both of the previous moratoriums, and I will support a moratorium now because I don't believe we want tax policy that retards the development of the Internet. I don't believe we want tax policy that in any way injures or interrupts the substantial expansion in technology and information technology that we have seen in a very short period of time.

However, even as we do this, let's make sure that we do not injure or provide significant problems for State and local governments because while we want to exempt the connection to the Internet, we did not want to, with an unfunded mandate as my colleague from Tennessee calls it, or some other approach, we begin preempting a retinue of State and local taxes that have

been legitimately allied to various kinds of services. It is not unusual to pay a tax on certain kinds of telephone services. It is not unusual. That is one of the methods by which State and local governments have developed a revenue base.

We described a very specific area that is off limits. Let's make sure that description is appropriate, fair, and specific relating to how the Congress intends this to work.

I know my colleague from California wishes to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from North Dakota.

Mr. President, I very much hope we do not pass the underlying bill today. I believe it is premature. In my 10 years in the Senate, I have never heard from more California cities, specifically 104 of them, indicating their concerns about what the underlying bill would do to the budgets of their cities.

Here in my hand are some of the letters. This issue has energized cities in my State like no other. City mayors are incensed that we would pass a law without knowing with certainty how it would impact local revenues.

I have received letters from the League of California Cities, which represents all of California's 478 cities, from county administrators, police officer associations, firefighter associations, all of whom are concerned about this bill—and I cannot answer their questions about it.

But, they understand the larger issue. They are telling us the bill contains language that threatens their ability to collect existing taxes on certain telecommunications services. And, again, I cannot answer these questions, and these questions cannot be answered on the floor of the Senate today. They are too complex.

This is precisely why the Carper-Alexander amendment is the most appropriate approach: extend the moratorium for another 2 years and do a study. Bring the cities together with the professionals, and see exactly what taxes are impacted by the underlying bill.

I want to take a moment to commend Senators ALLEN and WYDEN for their work and also to thank Senators MCCAIN and HOLLINGS for guiding the issue through the Commerce Committee.

I also know the minority and majority staff on the Commerce and Finance Committees have been working to provide the Senate with the information it needs to weigh the competing views, and I thank them. But the competing views are still there, and there are no answers for the cities.

Since we originally passed the Internet Tax Freedom Act, we knew this day would come, the day when we would need either to extend the tax moratorium or allow the temporary moratorium to expire.

California has a passionate interest in maintaining unfettered access to the Internet. We have a globally recognized concentration of high-tech and telecommunications firms. We provide much of the infrastructure required to gain access to the Internet and many of the services that make the Internet so useful. However, we have to make sure that maintaining tax-free access to the Internet does not inadvertently destroy the budgets of cities and counties throughout my State and the Nation. Many of them have come to rely on a variety of telecommunications services fees and taxes as an important part of their revenue base.

Now, I support the permanent extension of the Internet Tax Freedom Act, but if I had to vote today on it, I would have to vote no. I am a cosponsor of Senator WYDEN's original legislation that would make permanent the current moratorium. But if I had to vote today on the Allen-Wyden bill, I would vote no because a number of uncertainties have arisen and nobody can answer those uncertainties.

Additionally, as a letter circulating through the Senate today indicates, we have been told that we violate the Unfunded Mandates Act. I was here when that Act was passed in 1995. I voted for that Act. Now we hear from the Congressional Budget Office that the underlying bill would, in fact, create an unfunded mandate on States and local jurisdictions. I think we need to find out how and what can be done to prevent that from happening.

If this bill's definition of telecommunications services is interpreted in an overly broad way, as many of us think it may be, it will negatively impact local budgets. It will lead to the possibility of reduced preparedness in our firehouses and our police stations and less money for our schools, and it will do so at a time when States and cities face large budget deficits.

Right now, in San Diego, CA, a huge debate is going on as to whether the San Diego County firefighting forces are adequate; whether they have the vehicles, whether they have the training, whether they have the ability to really respond to fire conflagration. If we move ahead precipitously today, this bill will make that situation worse.

I must tell you, as a former mayor, these are my concerns. For San Francisco, the city in which I served, the bill's current definition of telecommunications services could lead to a loss of $30 million annually. San Francisco, as their experts compute, will lose $30 million of existing taxes if we pass this bill in its present form. That translates into 300 police and firefighters.

In the city of Pasadena, the mayor, Bill Bogaard, says this would cost his city $11.4 million. That is the legislation before this body today. Let me quote from his letter:

> By using vague language to include broadband Internet access under the moratorium, we fear that the bill will allow telephone and cable companies to use that protection to avoid paying local franchise or utility fees.

He goes on to state:

> It is our understanding that it was not the intent of the bill's sponsors to endanger local franchising authority, but the legislation has yet to be changed to correct these unintended consequences.

Mr. President, this is not the first time in this debate we have heard someone mention unintended consequences. The distinguished Senator from New Jersey, Mr. LAUTENBERG, mentioned last night that since this debate has started we have been hearing it from all of our mayors and State officials all across this great land.

I wish to quote from one more of the letters I have received from our mayors. This is from Judith Valles, the mayor of the City of San Bernardino, which was the focus of one of California's main wildfires. She wrote to me to point out, and I quote:

> Currently, 150 cities in California levy a utility users tax, or what is called a UUT, which in many cases includes telephone and cable television services. Utility users taxes provide a critical contribution to local discretionary revenue, on average 15 percent of general purpose revenues, making the utility users tax vital in helping fund critical city services, particularly public safety.

This comes from a mayor who is still dealing with the threat that her city faced due to the recent California wildfires. And why? Because we are afraid to step back and give the telecommunications industry and cities more time to work out a solution to this issue with which they can both live?

I appreciate Senator WYDEN's frustration that if we let the debate rage on too long, it will never end. I appreciate that sometimes you have to make a decision, and that if it is not perfect, you fix it along the way. But this is not one of those times.

If you run the risk of repealing taxes that are already in place, you unavoidably affect local budgets, and I am not willing to do that at this time. I believe people want their tax dollars used on the local level. They want better police. They want better fire protection. They want the emergency services for adequate protection, particularly at this point when America stands a risk from terror. And it makes no sense to rush to pass a bill when you have cities all across this country saying: Don't do it. It is going to inevitably impact what we now levy.

This will not affect the telecommunications companies because the Carper-Alexander amendment extends the current law with minor changes. Just extend the moratorium for 2 years, do the study, permit the parties to come together and work this out.

I do not think it is one Member's goal to undermine the existing tax base of local cities and counties across this great Nation in passing a permanent moratorium. We have never wanted to do that. We are told today that the underlying bill does, in fact, do that. So why—why—rush to pass it? My goodness.

I love my high-tech companies, but the cities and counties are where the people are, and they need police and fire and emergency services. In a day of cutbacks, it makes no sense, because we don't know what we are doing today—and to simply willy-nilly pass a bill that may well do that makes no sense. We then will have to shuffle around and find a way to correct it at some point in the future. In the meantime, budgets are upset all across the Nation. That is not good government, it is not good public policy, and it is not good legislation.

I am here to add my support and the support of 104 cities in California to the Carper-Alexander amendment. I would be most happy to offer my services in any way I can to work with the committee chair, the ranking member, and Senators WYDEN and ALLEN, to try to find a solution. It makes no sense to pass something without an adequate study and the reconciliation of the industries.

I remember when we were working out a solution to the taxation of cellular phone calls. At that time, we told the parties that we needed them to develop a mutually agreeable solution to the problem of how to tax mobile phone calls and then present it to Congress. The cellular industry and local governments did exactly that. We now have a cellular phone tax standard in place that most people can live with. It is my understanding that the cities and States would be comfortable with this same approach to Internet access taxes. That is the kind of approach I believe will make this debate much more productive.

The debate on this issue should not be centered on who is right and who is wrong. Unfortunately, that is where we are today. On one side we have the telecommunications industry saying the cities are overreacting to the impact this bill will have on their budgets. On the other side, we have the cities saying the telecommunications industry is seeking special, nearly unprecedented, tax treatment.

Why is it we would not want to give these two stakeholders time to put their heads together and bring Congress an agreement they can both live with?

Let me be clear: I want a permanent extension but not at the cost of laying off firefighters, police officers, and teachers.

Should the Carper-Alexander amendment not be adopted, I will offer my own amendment that simply strips out this confused language in the context of a permanent moratorium. While not a perfect solution to the complex problem we face, it is far better than forcing our cities and States to send out pink slips to public safety personnel. I am hoping it will not come to that. Cities and their technical experts have my attention. This is true throughout the rest of the United States.

I hope the Carper-Alexander amendment will be passed and that the moratorium will continue for 2 years so a study can be conducted and a reconciliation of conflicts within this legislation settled so that we can move ahead knowing we have not inadvertently decimated up to 15 percent of the tax base of local communities.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the letters which I have from cities around the State of California be printed in the RECORD.

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

CITY OF BURBANK,
OFFICE OF THE CITY COUNCIL,
Burbank, CA, September 12, 2003.

Re HR49 (Cox); SB52 (Wyden) and SB 150 (Allen)—Oppose.

Hon. DIANNE FEINSTEIN,
Hart Senate Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing on behalf of the City of Burbank to urge your opposition to provisions included in the ''Internet Tax Non-Discrimination Act of 2003'' that would modify the definition of ''Internet Access'' to include telecommunications services ''to the extent such services are used to provide Internet Access''. This expansion of the definition would result in a loss of badly needed revenues for California's cities and significantly affect our city's ability to provide essential services. This is particularly important during these tough economic times.

Currently 150 cities in California levy a utility users tax (UUT), which in many cases, including our city, includes telephone and cable television services. The UUT provides a critical contribution to local revenues (nearly 15% of general fund revenues); in fact, it is our third largest revenue source (behind sales tax and property tax), making the UUT vital in helping fund critical city services, particularly public safety. The City of Burbank, along with other cities, are already experiencing flat growth in the UUT due mostly to the intense competition between phone service providers, particularly cellular. Therefore, any additional reduction to our UUT (or any other revenue source for that matter) will have dire fiscal consequences.

The City of Burbank's UUT projection for Fiscal Year 2003–04 is $16.5MM which is needed to pay for essential safety and human services programs. Although it is difficult to segregate the impact of excluding the internet access portion of our UUT revenues, here are some examples as to what total UUT figure of $16.5MM can fund for one full year: Salaries plus benefits for 36 fire fighters; salaries plus benefits for 40 police officers; run our library program (salaries/benefits plus operating costs); run both the Daycamp/Summer Parks/Teen Program and the Organized Sports program (salaries/benefits plus operating costs); and run the Senior Nutrition Program, the Human Services Program, the Transportation Program, the Senior Recreation Program (salaries/benefits plus operating costs).

As you contemplate this limitation on local governments' ability to raise local revenue, it is essential to put this restriction in the context with other limitations California local governments currently face as we try to meet critical local service needs. Remember that over the past several decades, cities' control of discretionary revenue sources has been severely eroded by state actions.

With the passage of Proposition 13, the state was given control over the allocation of local property taxes. In the early 1990s, the state exercised this control diverting billions in dollars of local property taxes to meet the state obligation to fund schools. In the 2003–04 fiscal year alone, this shift is estimated to be a loss of $5.4 billion from cities, counties and special districts.

In addition, cities and counties are faced with a shortfall of Vehicle License Fee revenues in the current fiscal year due to the ''deferral'' of payment of $825 million in backfill owed until 2006. This will have a critical impact on the ability to provide local services during the current fiscal year. The utility users tax represents one of the few local revenue discretionary revenue sources with rates, exemptions and terms determined at the local level to conform to community interests and needs.

Although Burbank fully supports and recognizes the importance of fostering the development of the Internet and other new technologies, Congress must also recognize as it considers this legislation that cities in California face serious fiscal constraints at both the state and local level already.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' We look forward to working closely with you on this urgent matter.

Sincerely,

STACEY MURPHY,
Mayor.

CITY OF CONCORD,
OFFICE OF THE MAYOR,
Concord, CA, October 1, 2003.

Re S. 150—Internet Tax Non-Discrimination Act—Oppose/Amend.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: The House has passed and the Senate is poised to pass legislation (H.R. 49/S. 150) that, according to the MultiState Tax Commission, will result in a loss of revenue to state and local governments of up to $8.75 billion annually by 2006, and could be even greater as right-of-way rents from non-tax franchise and access line fees are also lost.

In a report released September 24, the MultiState Tax Commission estimated that for every $1 billion these bills cost state and local governments, our local communities will lose: Almost 20,000 police officers; almost 20,000 firefighters; more than 27,000 hospital workers; almost 25,000 teachers; and more than 17,000 college instructors.

The legislation began as a simple extension of the Internet Sales Tax moratorium, which was scheduled to expire November 1, 2003. H.R. 49/S. 150 has been amended to make the tax moratorium permanent and to expand the types of services that cannot be taxed.

Services for accessing the Internet that are taxable or subject to franchise fees today—such as dial-up telephone service, DSL and cable Internet services—would be exempt from taxes and potentially free from franchise obligations.

Under current law, Internet access, ''does not include telecommunication services''. This bill would expand the definition of Internet access and thereby impose not only a permanent moratorium on Internet access fees but also on traditional telecommunications taxes.

I urge you to amend the bill to clarify that the moratorium does not apply to traditional telecommunication services.

Very truly yours,

MARK A. PETERSON,
Mayor.

CITY OF COVINA,
Covina, CA, October 21, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: The City of Covina is writing to express our concerns with S. 150, the ''Internet Tax Non-Discrimination Act.'' We fear that the language of S. 150 will deprive municipalities nationwide of billions of dollars in tax and fee revenues in the years ahead and, in the meantime, will result in litigation and confusion. It has been our experience that some industry participants will use the language of S. 150 to avoid paying local telecommunications and utility taxes, as well as franchise fees and rights-of-way fees owed on infrastructure deployed in the public rights-of-way.

As currently worded, S. 150 poses a direct threat to two traditional, yet separate and distinct, municipal powers. These powers must be preserved. Municipal budgets are already strapped by the recession, reduced federal and state budgets, and the demands of homeland security. Local governments can not afford to be hamstrung still further to the point where vital municipal services are curtailed or eliminated altogether.

The first traditional municipal power that S. 150 threatens is the ability of local governments to impose telecommunications taxes or to apply local utility taxes to the provision of telecommunications services. Municipalities in many states are authorized to impose such taxes, and many municipalities currently rely on such taxes as a critical part of their budget. Now, by expanding the scope of the Internet tax moratorium to include telecommunications services to the extent they are used to access the Internet, S. 150 could immunize the bulk of all future telecommunications services from local telecommunications and utility taxes. That would not only starve local budgets; it also would be highly regressive and unfair: Poorer residents who lack a computer or can afford only plain/traditional telephone service would continue to be subject to local taxes, while businesses and wealthier residents with computers, who can substitute e-mail and future technologies like voice-over-Internet-protocol for dial tone service, would be immune from local taxes.

The second traditional municipal power that S. 150 threatens is the ability of local governments to impose franchise fees as ''rent'' for use of public rights-of-way on companies, such as telecommunications and cable service providers that use public property for private profit. Over one hundred years of court-supported municipal rights are at stake here. In 1893, the Supreme Court clarified that right-of-way fees are not taxes but payments in the form of rent. City of St. Louis v. Western Union Tel. Co., 148 US 92, 99, 13 S.CT. 485, 488 (1893). Ironically, the Supreme Court was then considering whether the federal government could require local governments to allow telegraph companies access to the public right-of-way without compensation. More recently, the 5th Circuit in City of Dallas v. FCC, 118 F. 3d 393 (5th Cir. 1997) cited the holding of St. Louis when it found that a franchise fee is not a tax, but an expense of doing business that is essentially a form of rent. Covina receives a five (5) percent franchise fee on incumbent local telecommunication cable service providers as compensation for use of local rights-of-way.

Federal legislation requiring local governments to allow private use of public property such as the right-of-way, free from local fees and charges, could be viewed as constitutionally suspect. Such legislation might constitute a federal taking of local government property without compensation, or federal commandeering of local government property to implement a federal regulatory program. Please consider these concerns in developing a program that achieves federal goals without harming local governments.

The City is prepared to work with you to:

Clarify that in adopting S. 150 and its House counterpart (H.R. 49), the Congress does not intend to interfere with or in any way limit the imposition or collection of any municipal telecommunications taxes or utility taxes applicable to telecommunications, nor with any municipal rights-of-way fees nor gross percentage fees collected in lieu of right-of-way fees.

Clarify that S. 150 does not preempt the imposition or collection of excise taxes of general applicability (including telecommunications and utility taxes) on services that employ telecommunications, cellular or cable television facilities, even if those services offer access to the Internet.

Without these clarifications, the adverse financial impact of S. 150 on local governments will be immense: the loss of billions of dollars in telecommunications fees and taxes in the years ahead for cities across the nation—fees and taxes that have been consistently upheld in court. If the legislation is passed with the currently proposed language, Covina can calculate the loss to its already-strained municipal budget, with direct effects on the General Fund. Municipalities in California and elsewhere have long imposed gross receipt-based fees on telecommunications, cable television and other providers' use of local rights-of-way for private profit, and many municipalities across the nation have imposed gross receipts-based taxes on the provision of telecommunications service or utility services, including telecommunications and cable television services. Federal preemption of these rights, whether intended or not, will result in immediate financial loss to Covina, and the size of that loss will only grow in the future as more communications shift to broadband, Internet-based technologies. We are confident this is not the legacy you intend or desire. We are offering to work with you in any way we can to avoid such an unfortunate result.

Sincerely,

WALTER ALLEN III,
Mayor.

CITY OF PASADENA,
OFFICE OF THE MAYOR,
Pasadena, CA, September 26, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: The City of Pasadena has some concerns with legislation that has been approved by the House and is pending in the Senate (HR 49, S 150) that would extend on a permanent basis the current moratorium on state and local taxation of Internet access fees.

While the City has not actively opposed the extension of the 1998 Internet Tax Freedom Act moratorium (even though it does represent a federal intrusion into an issue traditionally handled on the local level), we do believe there is room for interpretation regarding the manner in which the legislation treats broadband Internet access. By using vague language to include broadband Internet access under the moratorium, we fear that the bill will allow telephone and cable television companies to use that protection to avoid paying local franchise or utility fees. These fees are fair and equitable payments for a company's use of the public right-of-way, and to lose that revenue would be damaging to our local budgets that are already strained.

It is our understanding that it was not the intent of the bill sponsors to endanger local franchising authority but the legislation has yet to be changed to correct these unintended consequences. I hope that you will urge your colleagues to amend the legislation to extend the Internet tax moratorium to ensure local franchising, utility fees, and right-of-way authority are protected. Thank you for your assistance with this important matter.

Sincerely,

BILL BOGAARD,
Mayor.

CITY OF LAKEPORT,
Lakeport, CA, October 14, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: The City of Lakeport seeks your assistance in opposing language added to the Internet Tax Non-Discrimination Act (S. 150) that would expand the coverage of the moratorium by adding ''telecommunications services'' to the definition of Internet access. It would prohibit a local tax on any ''telecommunication service'' that is used for Internet access. Nearly all telephone services, including local dial up, wireless, satellite, and broadband (DSL and cable modem), provide Internet access.

This language would have a major adverse impact on our City and the financing of its essential services, such as police, fire, streets, and parks.

Soon, major telephone and Internet service providers will offer ''packages'' that bundle together Internet access and unlimited telephone services. Unfortunately, under the proposed language, such bundled services will likely be considered ''tax-free'', which we find regressive and unfair. Even if the average consumer would continue to be subject to the local tax (UUT) on traditional telecommunication services, those persons who could afford computers and high-speed Internet access (i.e., DSL and cable modem) would slip through this loophole and permanently escape taxation on similar services. No matter how much we wish to support the continued growth of the Internet, discriminatory taxation, or favoring the ''haves'' over the ''have-nots,'' is not the answer.

Finally, we want to assure you that we are in no way asking for your opposition to this language as a way of helping us achieve new tax revenues. We are only asking for help with protecting our city's badly needed existing tax revenues on telecommuncation services.

Thank you for your attention to this urgent matter. If you have any questions or need additional information, please feel free to call the League of California Cities Executive Director, Chris McKenzie, or your staff can contact the League's Washington representative, Eve M. O'Toole.

Sincerely,

R.E. LAMKIN,
Mayor.

CITY OF MONTEREY,
Monterey, CA, September 15, 2003.

Subject: Opposition to Internet Tax Non-Discrimination Act of 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senator, Hart Building, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the City of Monterey, I am writing to urge your opposition to provisions included in the ''Internet Tax Non-Discrimination Act of 2003'' that would modify the definition of ''Internet Access'' to include telecommunications services ''to the extent such services are used to provide Internet Access''. This expansion of the definition would result in a

loss of badly needed revenues for California's cities and significantly affect out City's ability to provide essential services.

Utility users taxes provide a critical contribution to local discretionary revenues making the UUT vital in helping fund critical city services, particularly public safety. For the City of Monterey this amounts to $2.4 million annually or about 6% of the General Fund budget. This revenue source directly supports police, fire, parks, streets and library services. The significance of the UUT has only increased as our City's other discretionary revenues have come under siege.

As you contemplate this limitation on local governments' ability to raise discretionary revenue, it is essential to put this restriction in the context with other limitations California local governments currently face as we try to meet critical local service needs. Remember that over the past several decades, cities' control of discretionary revenue sources has been severely eroded by state actions.

With the passage of Proposition 13, the state was given control over the allocation of local property taxes. In the early 1990's, the state exercised this control diverting billions in dollars of local property taxes to meet the state obligation to fund schools. In the 2003–04 fiscal year alone, this shift is estimated to be a loss of $5.4 billion from cities, counties and special districts.

In addition, cities and counties are faced with a shortfall of Vehicle License Fee revenues in the current fiscal year due to the ''deferral'' of payment of $825 million in backfill owed until 2006. This will have a critical impact on the ability to provide local services during the current fiscal year. The utility users tax represents one of the few local revenue discretionary revenue sources with rates, exemptions and terms determined at the local level to conform to community interests and needs.

Although the City of Monterey fully supports and recognizes the importance of fostering the developing of the Internet and other new technologies, Congress must also recognize as it considers this legislation that cities in California face serious fiscal constraints at both the state and local levels already.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' We look forward to working closely with you on this urgent matter.

Sincerely,

DAN ALBERT,
Mayor.

CITY OF MORENO VALLEY,
OFFICE OF THE MAYOR,
Moreno Valley, CA, September 16, 2003.

Subject: Internet Tax Non-Discrimination Act of 2003—Oppose.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the City of Moreno Valley, I respectfully request that you oppose provisions included in the Internet Tax Non-Discrimination Act of 2003 (H.R. 49 and S. 52) that would change the definition of ''Internet access'' to include telecommunications services ''to the extent that such services are used to provide Internet access.'' This expansion of the definition would result in the loss of badly needed revenues for California's cities, and negatively affect our city's ability to provide essential services.

Moreno Valley is one of 150 cities in California that levy a utility users tax (UUT), which in our case includes telephone and cable television services. Utility users' taxes contribute significantly to the health of these cities' discretionary budgets. On average, the UUT comprises fifteen percent (15%) of general-purpose revenues in cities where it is collected. In Moreno Valley, the $9.4 million UUT comprises twenty one percent (21%) of the city's general fund revenue for fiscal year 2003/2004. Our largest general fund expense, by far, is public safety; sixty one percent (61%) of the city's general fund will be spent this year for police and fire services. Exemption of telecommunications services from taxation based solely on their relation to consumer Internet use will greatly hinder our efforts to finance these fundamental services.

Please consider this particular limitation on local governments' ability to raise discretionary revenues in context with state legislative actions, which have historically eroded local control of general-purpose funds. With the passage of Proposition 13, the state assumed control over the allocation of local property taxes. The state abused this authority in the early 1990's by ''temporarily'' shifting property tax dollars earmarked for local government, to meet the state's obligation to fund schools. A decade later, this shift results in a loss of $5.4 billion from cities for fiscal year 2003/2004 alone.

In the state budget for the current year, first-quarter revenue payments from the Vehicle License Fee, another constitutionally-protected revenue source for cities, have been ''deferred'' until 2006. The result: an immediate loss of $825 million for cities statewide, and $1.8 million for Moreno Valley. Additionally, $135 million in property tax revenue was shifted from local redevelopment agencies this year, augmenting Moreno Valley's revenue losses by $300,000.

Moreno Valley and other California cities have managed to retain adequate service levels despite the poor fiscal management practices of the state, primarily through the development of new revenue sources. While the City fully supports and recognizes the importance of fostering the development of the Internet and other new technologies, we hope the Senate recognizes that local governments cannot maintain vital services if the state and Federal governments continue to impair their ability to generate revenue.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' If there is any additional information we can offer you regarding this urgent matter, please contact us.

Sincerely,

WILLIAM H. BATEY II,
Mayor.

CITY OF NOVATO,
Novato, CA, October 13, 2003.

Senator DIANNE FEINSTEIN,
Hart Building, U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the City of Novato, I am writing to urge your opposition to provisions included in the ''Internet Tax Non-Discrimination Act of 2003'' that would modify the definition of ''Internet Access'' to include telecommunications services ''to the extent such services are used to provide Internet Access''. This expansion of the definition would result in a loss of badly needed revenues for California's cities and significantly affect our city's ability to provide essential services.

Currently 150 cities in California levy a utility users tax (UUT), which in many cases includes telephone and cable television services. Utility users taxes provide a critical contribution to local discretionary revenues, on the average 15 percent of general-purpose revenues, making the UUT vital in helping fund critical city services, particularly public safety. Include how much revenue your City estimates is collected from your UUT? And what services in your City do these tax revenues support? Please be as specific as possible and translate into terms of potential cuts to specific programs or personnel. The significance of the UUT has only increased as our City's other discretionary revenues have come under siege.

As you contemplate this limitation on local governments' ability to raise discretionary revenue, it is essential to put this restriction in the context with other limitations California local governments currently face as we try to meet critical local service needs. Remember that over the past several decades, cities' control of discretionary revenue sources has been severely eroded by state actions.

With the passage of Proposition 13, the state was given control over the allocation of local property taxes. In the early 1990s, the state exercised this control diverting billions in dollars of local property taxes to meet the state obligation to fund schools. In the 2003–04 fiscal year alone, this shift is estimated to be a loss of $5.4 billion from cities, counties and special districts.

In addition, cities and counties are faced with a shortfall of Vehicle License Fee revenues in the current fiscal year due to the ''deferral'' of payment of $825 million in backfill owed until 2006. This will have a critical impact on the ability to provide local services during the current fiscal year. The utility users tax represents one of the few local revenues discretionary revenue sources with rates, exemptions and terms determined at the local level to conform to community interests and needs.

Although the City of Novato fully supports and recognizes the importance of fostering the development of the Internet and other new technologies, Congress must also recognize as it considers this legislation that cities in California face serious fiscal constraints at both the state and local level already.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' We look forward to working closely with you on this urgent matter.

Sincerely,

RODERICK J. WOOD,
City Manager.

CITY OF PLACENTIA,
Placentia, CA, October 1, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building,
Washington, DC

DEAR SENATOR FEINSTEIN: On behalf of the Citizens of Placentia, I am writing to express my Concerns about S. 150, the Internet Tax Non-Discrimination Act. I am very concerned about language in the bill that expands the definition of ''Internet access'' and thereby imposes a permanent moratorium not only on state and local taxes on Internet access fees but also on traditional telecommunications taxes. I strongly urge that you amend the language to clarify that the moratorium only applies to Internet access and to to other taxable telecommunications services or products, or to franchise or rights-of-way fees.

Under current law, Internet access ''does not include telecommunication services.'' The bill would change this to ''does not include telecommunication services except to the extent that such service is used for Internet access.'' While this proposal may have been well intended in that it proposes to ensure that the moratorium does not favor one form of technology over another, the language is so broad it can be interpreted to

mean we will be prohibited from collecting taxes on traditional telecommunications services.

As you know, states and cities across America are suffering from the most severe fiscal crisis since World War II. The loss of our telecommunications revenue would be a significant blow to Placentia. The city could lose an estimated $500,000 if this bill is enacted as currently drafted. We can not afford such a loss.

As reported by the Senate Commerce Committee, S. 150 is unacceptable. Again, I urge you to amend the bill to clarify that the moratorium does not apply to traditional telecommunications services. If you have any questions, feel free to contact me at 714/993–8117.

Sincerely,

ROBERT D'AMATO,
City Administrator.

CITY OF SAN BERNARDINO,
OFFICE OF THE MAYOR,
San Bernardino, CA, September 12, 2003.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the City of San Bernardino I am writing to urge your opposition to provisions included in the ''Internet Tax Non-Discrimination Act of 2003'' that would modify the definition of ''Internet Access'' to include telecommunications services ''to the extent such services are used to provide Internet Access''. This expansion of the definition would result in a loss of badly needed revenues for California's cities and significantly affect our city's ability to provide essential services.

Currently 150 cities in California levy a utility users tax (UUT), which in many cases includes telephone and cable television services. Utility users taxes provide a critical contribution to local discretionary revenues, on the average 15% of general-purpose revenues, making the UUT vital in helping fund critical city services, particularly public safety. The significance of the UUT has only increased as our City's other discretionary revenues have come under siege.

As you contemplate this limitation on local governments' ability to raise discretionary revenue, it is essential to put this restriction in the context with other limitations California local governments currently face as we try to meet critical local service needs. Remember that over the past several decades, cities' control of discretionary revenue sources has been severely eroded by state actions.

With the passage of Proposition 13, the state was given control over the allocation of local property taxes. In the early 1990s, the state exercised this control diverting billions in dollars of local property taxes to meet the state obligation to fund schools. In the 2003–04 fiscal year alone, this shift is estimated to be a loss of $5.4 billion from cities, counties and special districts.

In addition, cities and counties are faced with a shortfall of Vehicle License Fee revenues in the current fiscal year due to the ''deferral'' of payment of $825 million in backfill owed until 2006. This will have a critical impact on the ability to provide local services during the current fiscal year. The utility users tax represents one of the few local discretionary revenue sources with rates, exemptions and terms determined at the local level to conform to community interests and needs.

Although the City of San Bernardino fully supports and recognizes the importance of fostering the development of the Internet and other new technologies, Congress must also recognize as it considers this legislation that cities in California face serious fiscal constraints at both the state and local level already.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' We look forward to working closely with you on this urgent matter.

Sincerely,

JUDITH VALLES,
Mayor.

CITY OF SAN LUIS OBISPO,
OFFICE OF THE CITY COUNCIL,
San Luis Obispo, CA, October 10, 2003.

Re: S. 150 Internet Tax Non-Discrimination Act Notice of Opposition

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: The City of San Luis Obispo seeks your assistance in opposing language added to the Internet Tax Non-Discrimination Act (S. 150) that would expand the coverage of the moratorium by adding ''telecommunications services'' to the definition of Internet access. It would prohibit a local tax on any ''telecommunication service'' that is used for Internet access. Nearly all telephone services, including local dial up, wireless, satellite, and broadband (DSL and cable modem), provide Internet access.

This language would have a major adverse impact on our City in funding essential services such as police, fire, streets and parks. In our city, utility user taxes (UUT) are one of our ''Top Five'' General Fund revenues, representing 12% of general-purpose revenues. ''Telecommunication services'' account for a significant portion of UUT revenues, bringing in $1.3 million in 2002–03. This is the equivalent of 15 police officers. In these fiscally tough times, where we have already made significant reductions in day-to-day public safety services to balance the budget, any further revenue cuts will result in crippling service reduction in our community.

And the impact will only get worse in the future. Soon, major telephone and Internet service providers will offer ''packages'' that bundle together Internet access and unlimited telephone services. Unfortunately, under the proposed language, such bundled services will likely be considered ''tax-free,'' which we find regressive and unfair. Even if the average consumer would continue to be subject to the local tax (UUT) on traditional telecommunication services, those persons who could afford computers and high-speed Internet access (such as DSL and cable modem) would slip through this loophole and permanently escape taxation on similar services. No matter how much we wish to support the continued growth of the Internet, discriminatory taxation is not the answer.

Finally, we want to assure you that we are not asking for your opposition to this language as a way of helping us achieve new tax revenues: we are only asking for help in protecting our City's badly needed existing tax revenues.

Sincerely,

DAVID F. ROMERO,
Mayor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, this is a very important issue we have in front of us. I wish to pause for a moment and address an issue I saw in the Washington Post this morning that affects what we are doing here this morning and what we do every single day; that is, our ability to work together to ask questions on behalf of American taxpayers, on behalf of all of the people we represent, to be able to get answers from each other and from the administration, and to have the best information we can so we can make the right decisions.

I was quite shocked this morning to see in the Washington Post a headline that says: ''White House Puts Limits On Queries from Democrats.'' Reading this more closely, it says:

> The Bush White House, irritated by pesky questions from congressional Democrats about how the administration is using taxpayers' money, has developed an efficient solution.

It will not entertain any more questions from opposition lawmakers.

I thought for sure I was not awake. So I rubbed my eyes again and looked at it again and read the same thing. It went on to say:

> The decision, one that Democrats and scholars say is highly unusual, was announced in an e-mail on Wednesday to House and Senate appropriations committees.

Further down there is a comment from Norm Ornstein, a congressional specialist at the American Enterprise Institute. He said:

> I've not heard of anything like this happening before. This is obviously an excuse to avoid providing information about some of the things the Democrats are asking for.

I appreciate that in these days of debate and the important issues we have in front of us, we have been asking some pesky questions of this administration. Pesky questions such as: How specifically will we spend $87 billion going to Iraq, and what specifically will be done to rebuild? What is the plan for our soldiers? What is the plan in terms of making sure we complete the mission and bring them home safely?

We have asked pesky questions such as: Why is it that subsidiaries of Halliburton get billions of dollars in no-bid contracts when our own businesses and our own States are unable to find out about bidding processes and unable to participate in what should be an open, transparent process, given the fact these are American tax dollars, public tax dollars? And we have asked pesky questions about Bechtel.

Mr. REID. Will the Senator yield for a question?

Ms. STABENOW. I am honored to yield to my friend and leader from Nevada.

Mr. REID. Is it true that you served in the House of Representatives before serving in the Senate?

Ms. STABENOW. Yes.

Mr. REID. During your tenure there, I am sure you had many occasions to send inquiries to the administration. Whether it was Veterans Affairs, the Social Security Administration, White House council, you have done that over the years; is that not true?

Ms. STABENOW. Absolutely.

Mr. REID. Over the years, it is true that you have received responses?

Ms. STABENOW. Yes.

Mr. REID. And there was never a question raised as to whether it was a

Democratic Congressman or Senator or Republican House Member or Senator asking the question; isn't that right?

Ms. STABENOW. Absolutely.

Mr. REID. Didn't you always feel that no matter what political party the Member of Congress was who asked the question, it had no bearing on the answer? Isn't that true?

Ms. STABENOW. Yes.

Mr. REID. I read that article to which you refer. It seems there is now new criteria established at the White House, that only if you are a Republican will they answer questions of a Member of Congress. Is that what that article said?

Ms. STABENOW. That is exactly what it says.

Mr. REID. How many people live in the State of Michigan?

Ms. STABENOW. We have over 9 million people in the State of Michigan.

Mr. REID. And Michigan is represented by two Democratic Senators.

Ms. STABENOW. That is correct.

Mr. REID. The distinguished senior Senator, CARL LEVIN, who everyone acknowledges is one of the finest Senators ever to serve in this body.

Ms. STABENOW. Absolutely.

Mr. REID. He is an expert on issues relating to defense. I am sure on a weekly basis, if not more often, he makes inquiries at the Pentagon and other offices of the executive branch of Government as to questions he has in his role as the lead Democrat on the defense committee; is that right?

Ms. STABENOW. In fact, I add that over the years, under Democratic and Republican Presidents, the senior Senator from Michigan asked very important questions about contracting. He was the first, I believe, to come forward with the acknowledgement and questions about the $600 wrenches and other questions of excesses at the time in the past from the Pentagon. To Democratic or Republican Presidents, he has asked some pretty ''pesky'' questions.

Mr. REID. What that article says is a State of 9 million people, which has democratically elected Democratic Senators, these two Senators would not be able to ask questions of that administration; is that what it does?

Ms. STABENOW. That is how it appears. We have a lot of very serious questions our constituents want us to ask of the administration.

Mr. REID. I direct this to the Senator in a way that I can only say is as sincere as I can be. I very much appreciate the Senator bringing this to the attention of the American people through the Senate. It is our ability to bring matters to the floor that make this country better—there are other ways of showing how great this country is, but certainly one is being able to bring matters to the Senate floor without getting permission of the administration.

I applaud the Senator from Michigan for jumping on this issue very quickly, as the Senator has done on many other issues.

Ms. STABENOW. In the State of Michigan, we have many questions being asked—a lot that we asked of the administration on homeland security, how we are funding our borders and keeping them secure. Why is it we are not providing more for our first responders? We have given some dollars but certainly a very small amount of what they need. Why are we not funding more for communications equipment that allows one city's police department to talk to another city's police department, or the police department to talk to the fire department, or the EMS workers to be able to do their job in a community? Why is it we are not providing more dollars directly for those kinds of responsibilities? They are right on the front lines. When you have a problem, when there is a serious crisis, whether it is homeland security or some other crisis in the community, you pick up and call 911, and we want to know people are prepared.

Those are questions about appropriations. Those are questions we asked of the administration. How are you moving forward and designing and implementing a Department of Homeland Security? What are we doing at the borders?

In my State, we have other questions we are asking that we are assuming the administration will endeavor to answer. It relates to the issues of Canadian trash trucks now coming across our borders into Michigan—about 200 a day—that are not being thoroughly inspected at the border because there is not a way to do it without putting an inspector in the back of every truck.

We have serious concerns about what is happening in terms of homeland security. Those are questions. How can we work together? How can we make sure we are addressing those issues that will allow our citizens to be safe, as it relates to these trash trucks coming across the border. They need to be stopped.

Over 165,000 people in my State signed an online petition to support my request to the EPA that they get involved in stopping these trucks and using the authority they have. Now, we go through the appropriations process on this matter. I have been very appreciative of the fact that we have worked together on a bipartisan basis in the Senate to address these issues and put more equipment at the border. I have been pleased to have the support of leaders on the other side of the aisle to support efforts to do that, to work together on behalf of the people we represent and make sure they are safe.

But when I see things such as this kind of a story, that e-mails are going out saying the White House doesn't like our ''pesky'' questions about how dollars are spent and suggestions that maybe they could be spent differently and better and more wisely in our States—they don't like those questions, so they sent out an e-mail saying they are not going to answer them anymore. They are only going to answer the questions coming from the Republican committee chairs. They are not going to answer questions coming from us. This is deeply disturbing and it should be disturbing to every single one of the people we represent. It should be, frankly, disturbing to people on both sides of the aisle.

I was in the House of Representatives for 4 years under a different administration. I asked a lot of tough questions of a lot of Departments and I expected answers. I expected that when my Republican colleagues asked questions of that Democratic administration, they would be given answers as well.

We are a separate branch of Government. We are the appropriators, all of us. The Constitution didn't say, by the way, only the majority party can have access to information and only the majority party is responsible for appropriations and guaranteeing the wise use of American tax dollars. They said the Congress of the United States is responsible, and that is all of us.

I think it is very important that we send a message very quickly from the Senate that we object to this, object to it together. We work hard on appropriations. We ask a lot of questions. We have a lot of give and take. Amendments are proposed; they rise, they fall. That is the process. We all respect each other and we all respect that process. At the end of the day, we assume that if we are asking, as they say, ''pesky'' questions, we will get answers regardless of who we are. We may not agree with the answers.

That is why we live in a democracy. That is the democratic process. We respect the fact there are differences in views, priorities, and values, but we do not accept—I do not accept—that we will be blocked from receiving information. It would be astounding if every time, as a Member of this body, I had to ask for a freedom of information request from the administration in order to get questions answered on items of importance to the people I represent—whether it be agriculture, manufacturing, homeland security, health care, education, the environment, or transportation. I could go on and on. We have critical issues we are responsible for addressing and responsible for doing it in the most efficient and effective way we can.

There is only a limited amount of resources and we have to make sure we make wise decisions with those resources. That is our job.

AMENDMENT NO. 2141 TO AMENDMENT NO. 2136

Ms. STABENOW. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Ms. STABENOW] proposes an amendment numbered 2141.

Ms. STABENOW. I ask unanimous consent that further reading of the amendment be dispensed with.

The amendment is as follows:

At the appropriate place insert the following:

Since, Article I of the U.S. Constitution grants Congress the power of the purse; and

Since, Congressional oversight of Executive Branch expenditures of public funds is essential in order to prevent waste, fraud, and abuse of taxpayers dollars; and

Since, Congress can only exercise its oversight responsibilities if the White House and Executive Branch agencies are responsive to requests for information about public expenditures;

Therefore it is the Sense of the Senate that,

The White House and all Executive Branch agencies should respond promptly and completely to all requests by Members of Congress of both parties for information about public expenditures.

Ms. STABENOW. Mr. President, I simply say this is a very short amendment. In part, it indicates:

Since, Congressional oversight of the Executive Branch expenditures of public funds is essential in order to prevent waste, fraud, and abuse of taxpayer dollars; and

Since, Congress can only exercise its oversight responsibilities if the White House and Executive Branch agencies are responsive to requests for information about public expenditures;

Therefore, it is the Sense of the Senate that,

The White House and all Executive Branch agencies should respond promptly and completely to all requests by Members of Congress of both parties for information about public expenditures.

I hope we will have unanimous support for this amendment and that we can quickly send a message to the White House and ask that they reverse the policy laid out this morning in this article.

Mr. DURBIN. Mr. President, I wish to join the comments of the Senator from Michigan. It is, I am sure, painful and distracting for the administration to receive inquiries from Congress. It sure would be a lot easier if Congress wasn't around to mess up their work. I mean, we ask all these hard questions about what they are doing with the taxpayers' dollars. What are you doing to make America a safer place? I am sure if they did not have to answer those questions and be held accountable, they would have a lot more time to do other things.

I think the reason for the questions gets down to a basic document called the Constitution. If I remember correctly from early lessons, we do have three coequal branches of Government and a system of checks and balances. This administration has decided that particular part of the Constitution is going to be ignored.

Frankly, I don't think that serves our Nation very well. Whether it is a Democratic administration or a Republican administration, the fact is they have to be held accountable. The way they are held accountable is not only through an election, but through the operations of Congress which appropriates moneys, passes laws, and asks hard questions.

Now we see the official policy of this administration is to say we are only going to answer Republican-approved questions. That, to me, is a sad commentary on this administration which has, frankly, written a record of concealment in the years they have been here.

You recall the lawsuit that was involved when we drew up the Energy bill. We asked the Vice President of the United States, who was one of the designers of the administration's Energy bill, which special interest groups were sitting in the room when they wrote the bill. He said to Congress: It is none of your business. We don't have to tell you. We brought a suit against the administration asking for that information and we were unsuccessful.

Today we know there were special interest groups present. We just don't know who they were. If you look at the bill, you can see who they likely were. They are the ones that were rewarded—oil companies and major energy companies. They are the ones who did very well with this Energy bill.

When the Senator from Michigan raises this question as to what this new administration policy means, I think she really hits the nail on the head. Congress has an important constitutional role of oversight on this administration and any administration, and for this administration to decide that certain Senators and Congressmen cannot ask questions that will be answered, I think is going to set us back.

I had the same experience with the Department of Justice. Attorney General John Ashcroft, who served in this Senate for years and asked many questions of previous administrations, really loathes to answer any questions that come particularly from Democratic Senators. That has caused a lot of, I guess, concern because some of us believe there are important questions that need to be asked and answered.

The PATRIOT Act, for example, was a new delegation of authority 2 years ago to the Government. It gave the Government more power than they had before, power that comes close to, if it doesn't, infringing on our rights and liberties. We asked some questions: How is this Department of Justice using the PATRIOT Act? Unfortunately, the Attorney General has not been responsive. One might say: Well, he comes to Congress, doesn't he? He submits himself to questions? If we look at the record, we will see this Attorney General's record of coming to Congress and being held accountable is a record that shows he doesn't care to do that either.

They don't answer written inquiries, and the Attorney General does not appear personally. Frankly, that leads to mistrust, and it doesn't speak well of a democracy where that is the hallmark of their policy.

It strikes me Congress has some important responsibilities here, and one of them is reflected in the issue raised by the Senator from Michigan. Another one is reflected in this so-called 30-hour debate, this one-sided debate which is to take place next week. It appears the Republican majority in the Senate, 51, believe they have been treated unfairly because the President has only had 168 of his judicial nominees approved while 4 have been held up. That is right, the score is 168 to 4, and they are arguing that is unfair, so unfair we need to tie up the Senate, we need to stop consideration of appropriations bills, we need to stop any consideration of bills that might help the men and women in uniform who are fighting for us in Iraq and Afghanistan. We don't have time for that, but we have to spend 30 straight hours in a one-sided debate on the Republican side arguing that holding up 4 judges out of 172—4 out of 172—is somehow unconstitutional or unfair or unjust.

It goes to the heart of this same document, our Constitution, which says the Senate is not a rubberstamp. The Senate has the power to not just consent to judges, but to advise and consent, and that advise-and-consent role includes asking hard questions of judicial nominees.

The four who have been held up so far from the Bush White House, I think, represent the most extreme of his nominees. But there are many others who have been approved who have philosophies entirely consistent with the President and his administration.

Make no mistake, out of the 168 nominees who have gone through this Senate, a record number for any President, 168 have been approved. Of those, we will find many conservative Republicans with views much different than my own. We accept that. But for these 4, we think they have crossed a line, a line which really calls on us in our capacity as Senators with responsibility of the advise-and-consent clause to say at some point we have to say no for 4 judges out of 172.

I might add on this bill that is before us, at a later moment I will be offering an amendment. It is an amendment which really doesn't appear to have much to do with the Internet tax question, but it is an amendment I am going to continue to offer on every available bill until the Senate goes on record and passes it again and enacts it into law. It is an amendment which passed this Senate about 2 weeks ago by a vote of 96 to 3. It is an amendment which says Federal employees who are members of our National Guard and Reserve units who are activated will have their Federal salaries protected while they are serving our country.

This is exactly what happens to State employees in dozens of States and city and county employees across America where their units of government have said: If you go off to serve our Nation in the Guard and Reserve, we will stand behind you. We will make up the difference in your salary. We will protect your families' income while you are serving our Nation and risking your lives.

Sadly, the same standard is not applied to Federal employees. Here we

are with 10 percent of the Guard and Reserve in Federal employment—120,000 of those who are in the Guard and Reserve are in Federal employment; 23,000 have been activated, and we do not make up the difference in their salaries while overseas.

For some, there is no difference, but for some there is a big disparity. I offered this amendment on the floor, and it was adopted 96 to 3.

Mr. MCCAIN. Will the Senator yield so I can make an announcement?

Mr. DURBIN. Yes, without losing my right to the floor.

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

Mr. MCCAIN. Madam President, for the benefit of my colleagues, we have been in some intense negotiations on the Internet tax issue. We have made significant progress. We still have one significant hurdle remaining where we can perhaps get all sides together. There is about a 50–50 chance. But we should know in about 20 minutes as to whether we will reach this very important agreement which would basically eliminate any major issues associated with the Internet tax issue.

I thank my colleague from Illinois for yielding. I yield the floor.

Mr. WYDEN. Will the Senator yield?

Mr. DURBIN. I will be happy to yield.

Mr. WYDEN. Madam President, with the chairman of the Commerce Committee, and my friend from North Dakota, Senator DORGAN, who has worked with me on this now for 7 years, we have made some significant headway in the last half hour, 45 minutes. To get this done, there are some difficult choices that have to be made. One that would be very painful for me, given my involvement in the original law, would be to accept some sort of time limit rather than make it permanent.

I say to the Senate, I am willing to look at that in the name of trying to find common ground. What we can't have as we go through this is to have DSLs, this tremendously exciting service which in so many instances is going to be the key for folks getting Internet access in a wireless fashion, hammered again and again in the future. We are going to see if we can find common ground.

The point of this law more than 5 years ago was to ensure technological neutrality so the Internet and the various ways it is delivered would not, in some way, advance some at the expense of others. We still have to find a way for that technological neutrality.

We may be able, given the fact that the staffs are working now to have a breakthrough on this in the next half an hour, but as the author of the original law in the Senate, I want to make it clear that I am open to trying to find some common ground and make some significant concessions to do it. That is what we are considering now.

I thank the Senator from Illinois for yielding.

Mr. DURBIN. I, of course, thank the Senator from Oregon. I appreciate the hard work of the Senator from North Dakota, the Senator from Arizona, and the Senator from Oregon on this important legislation.

I mentioned earlier the reservist pay amendment which I will be offering at some point on this legislation, but there is another amendment which I will be offering which I would like to alert the sponsors of so it comes as no surprise. It is our understanding that if there is a tax moratorium on Internet operations, which I would support with carefully defined circumstances, it will result in a substantial savings to telecommunications companies across the United States. I am going to be offering an amendment during the course of consideration of this bill which says that the savings to these companies shall be passed on to the consumers in America.

It strikes me that at a point in time when we are in a recession, when families are struggling, some facing unemployment, others trying to make ends meet, that if we are going to relieve this industry of substantial taxation, millions if not billions of dollars over time, the savings ought to go to families, the customers. I think that would be a good move on our part.

So if we want to talk about invigorating the economy, then why not reduce the telephone bill or the tax bill that a family faces on a monthly basis?

Mr. REID. Madam President, will the Senator yield for a question?

Mr. DURBIN. I yield to the Senator for Nevada, without yielding the floor.

Mr. REID. Madam President, I say to my friend from Illinois, in relation to the amendment that is pending, I asked the White House by letter to give me the breakdown of the cost of all of these trips they take around the country campaigning for people. Who pays for that? Is it paid for by the taxpayers of this country? Is it paid for by the Republican National Committee? The President is a rich man. Does he pay for it personally?

It has been months and I have had no response. I think I am entitled to an answer to that most important question. People are concerned about that. The President goes to his ranch, he goes off on day trips campaigning only.

Would the Senator agree with me that that is the direction of this amendment, and that I am entitled, as a Member of the Senate, to an answer to the question as to who is paying for these junkets around the country?

Mr. DURBIN. Reclaiming my time, I say to the Senator from Nevada that is a perfect illustration as to why the Stabenow amendment should be enacted, because what Senator STABENOW is trying to achieve is the right of the Senator from Nevada and any Senator, Democrat or Republican, to ask legitimate questions about the expenditure of public funds. If we decide that is going too far and perhaps inconveniencing the administration by forcing them to be held accountable, then we might as well pack up and go home.

As they say, if we are here in order to total up years for retirement, it is a pretty easy job; but if we want to come here and go to work to try to achieve good for this country and make certain that people who are misusing public resources are, in fact, held accountable for it, then it is hard work.

Mr. REID. Will the Senator yield for another question?

Mr. DURBIN. I would be happy to yield to the Senator from Nevada.

Mr. REID. How many people live in the State of Illinois?

Mr. DURBIN. About 12½ million.

Mr. REID. I say to the Senator from Illinois, I spoke through the Chair to the distinguished junior Senator from Michigan about the State of Michigan. There are 9 million people in Michigan, two Democratic Senators. Under the rule that we have just learned about that the White House is not going to answer questions of Democrats, 9 million people who live in the State of Michigan in effect cannot have their Senators asking questions of the White House.

The Senator from Illinois, who represents 12½ million people, there is a Democratic Senator and a Republican Senator who has announced his retirement, who is not going to run for reelection—the Senator who has announced his retirement and in effect is a lame duck, fine man that he is, can have his questions answered, but the Senator who was just reelected representing 12½ million people cannot have his questions answered. Does that seem fair?

Mr. DURBIN. I say to the Senator from Nevada, it not only does not seem fair, it raises another question in my mind. Why would we on the Democratic side of the aisle approve any executive appointment of someone who is going in the executive branch and from that point forward will never speak to us again? Now, if we are being asked by this administration to approve people to hold offices within this administration who have not answered all the questions in committee and having been approved on the Senate floor will from that point forward never communicate with us again, then, frankly, I think we are derelict in our responsibility.

So I say to the administration, think this through. If they are saying that the people we appoint in the Senate are not going to answer the questions propounded by Democratic Senators, then, frankly, I think it is untoward of them to suggest that we should just approve all of these appointments.

I think it is fair game for the President to fill vacancies, and I have supported the overwhelming majority of the President's requests. But if the policy is once approved by the Senate, these executive appointments, these people working in these agencies, will refuse to take telephone calls or answer letters of inquiry from Members of the Senate, refuse to be held accountable for their actions as public officials, then I think we are derelict in

our responsibility to the people we represent.

Mr. LEAHY. Will the Senator from Illinois yield for a question without losing his right to the floor?

Mr. DURBIN. I would be happy to yield to the Senator from Vermont.

Mr. LEAHY. Madam President, I ask my friend from Illinois, who serves with me on the Appropriations Committee—who served on a number of committees in the other body before he was in the Senate—who has as much knowledge of procedure as anyone having served in the other body and served in this body, it has been my experience in over a quarter of a century on the Appropriations Committee, through six administrations—President Ford, President Carter, President Reagan, former President Bush, President Clinton—that both Republicans and Democrats were able to ask questions and expect answers from the executive branch.

Further, it was my experience that throughout all of these administrations, Republican and Democratic alike, there was not a restriction made because we were required to ask these questions. Is that the experience of the distinguished Senator from Illinois? Has the Senator had the same experience in both bodies—I am speaking now of appropriations but, of course, a lot of other committees are involved—if we asked questions about where the money went, we received the answers irrespective of whether one was a Republican or Democratic?

Mr. DURBIN. In reply, I say the Senator from Vermont is absolutely correct. Allow me to use another illustration. Just last weekend, there was the downing of the Chinook helicopter in Iraq with 15 of our soldiers killed initially and another soldier who has died just last night, I understand, so 16 soldiers died and 20 more were seriously injured. The pilot of that helicopter was from my home State. It was a National Guard helicopter.

After that occurred, unsolicited I received communications from reliable military sources that suggested that the Guard helicopters in activated units were not adequately equipped and prepared to deal with shoulder-fired missiles. This is as serious a question as can be given to any Member of the Senate. Naturally, the families—the servicemen first and their families—wanted to know the answer. So what I did was to write a letter directly to the Secretary of Defense, Donald Rumsfeld, saying please look into this immediately; see if the National Guard units that have been activated are sufficiently protected with equipment.

During the course of asking this question, more communications came my way. Now we have received a lot of communications suggesting that families all around Illinois, and even around the country, are telling us about deficiencies in the equipment available to our servicemen in Iraq and Afghanistan, and particularly to activated guardsmen and reserves.

Consider that just yesterday, the President signed an $87 billion appropriation for the effort in Iraq and Afghanistan which, as I understand it, about $67 billion was for our men and women in uniform, which I supported. As much as I disagree with the President's foreign policy, I am not going to shortchange our men and women in uniform for the resources they need to be successful in their mission and come home safely.

Having done that, having given the appropriation to the administration, now we have families and servicemen coming to me, as the Senator from Illinois, saying they do not think the money is being spent properly. I have a responsibility to their families and to my State to ask the hard questions of the administration. Are you doing all that you can to protect our servicemen? Frankly, I think that is why I was elected. If I am not given a chance to even ask that question or to have my inquiry answered, what, then, can I say to these families or to these servicemen who believe that I am their elected representative and have that responsibility?

Senator STABENOW, in her amendment, says this new policy of the administration, of refusing to answer letters from Democratic Senators and Democratic Congressmen, takes away from the voice of those families and those servicemen and people across the United States who rely on us to stand up and hold any administration accountable, whether it is Democratic or Republican.

I think, honestly, her amendment goes to the heart of why we are here doing business in the Chamber of the Senate. I support her very strongly. I urge my Republican colleagues who have been very loyal to their President, and that is understandable and admirable, to think long and hard about this policy. Things change in this town. The tide of politics can hit the shore and go back out to sea and come back again. You never know, a year, 2 years, 3 years from now, whether or not policies taken by this administration establish a precedent which is not healthy for our constitutional democracy. Certainly this decision by the administration to turn down inquiries and letters of request on matters as basic as the protection of our men and women in uniform and whether or not our helicopters are adequately protected—their decision as a policy basis, which I understand has been included in an e-mail and sent across the administration—raises some important questions.

I see the ranking member of the Senate Budget Committee, Senator CONRAD, has taken the floor. Again, he is a perfect illustration of why this new policy of the administration, refusing to answer inquiries from Democratic Senators about their spending policies and taxing policies, make it impossible for him to do his job on the Budget Committee to make certain that every administration is held accountable.

I am going to yield the floor and say to my friend and colleague from Michigan, thank you for bringing this issue up. This is not just a morning newspaper article. This is a serious constitutional question. I hope some of my colleagues on the Republican side of the aisle, after first reacting they want to stand by their administration, will think long and hard if this is a policy we in America should be asked to live with, when future Congresses and future Presidents are elected and we are all told we are trying to share a responsibility of accountability across our Government.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, I ask to speak as if in morning business for no longer than 10 minutes.

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

(The remarks of Mr. LAUTENBERG are printed in today's RECORD under ''Morning Business.'')

Mr. LAUTENBERG. 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. CONRAD. 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. CONRAD. Mr. President, less than 6 months ago, we enacted the Jobs and Growth Tax Relief Reconciliation Act which contained $20 billion in temporary State fiscal relief. Yet before us is legislation that may effectively take back a significant portion of that much-needed relief for States. In my earlier career, I was tax commissioner in the State of North Dakota. My successor, a Republican, a man who currently holds the office, was in my office just a couple of weeks ago explaining the impact of the committee bill on our State. He estimated this bill would cost our State $20 million. That may not be a lot of money in Washington. I can tell you that is a lot of money in North Dakota. That is $20 million we would be taking away from the State of North Dakota they have every right to collect.

Let me make absolutely clear that I am not for taxing access to the Internet. I am not for that. I have supported the moratorium. I will continue to support the moratorium. But as Senator DORGAN made clear on the floor this morning, definitions do matter. Unfortunately, the bill out of the committee has left a lot of open questions. Lawyers looking at it are telling us it would restrict the States far beyond a simple extension of the moratorium. I do not believe that is the intention of the Congress. I certainly hope it is not the intention of the committee to go

beyond the definition of access we agreed to in 1998 and reaffirmed in 2001 in a way that would preempt States' abilities to levy taxes as its elected representatives see fit.

On the floor of the Senate, we have seen a bipartisan effort to make certain what we do here is what we really mean. I have been very interested to see four distinguished former Governors—Senator ALEXANDER, Senator VOINOVICH, Senator CARPER, and Senator GRAHAM, who are among our most respected colleagues on issues such as these, and all of them served successfully as Governors—warning Members of Congress the legislation before us has unintended consequences. I hope we listen carefully to our colleagues, Senator ALEXANDER, Senator VOINOVICH, Senator CARPER, and Senator GRAHAM, and that we pause and get this right.

We should not tax access to the Internet. That would inhibit its economic potential. It would reduce opportunity in our society. But at the same time we shouldn't be going beyond that principle and that concept in restricting the States' rights to levy taxes that are reasonable and appropriate. That is not the appropriate role of the Federal Government.

I hope very much we will take a few moments and get this right so that this is not a rush to judgment and we not impose on hard-pressed States. We already know there is some $90 billion of shortfall by the States all across the country. The last thing they need is the Federal Government to come in here and take away legitimate sources of revenue from them. That makes no sense.

I hope my colleagues are going to be sufficiently patient and that we get this right. As Senator DORGAN said—again, I want to emphasize—earlier on the floor, definitions matter. I heard Senator MCCAIN say the same thing last night; that it is important to get these concepts right, to get them carefully defined so we are not doing something other than what we really intend to do, which is to provide a continuing moratorium on the taxation for Internet access.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Madam President, I ask unanimous consent to speak in morning business for 10 minutes. I understand we have a lull on the Internet tax bill.

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

(The remarks of Mr. ALLARD are printed in today's RECORD under ''Morning Business.'')

Mr. ALLARD. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. 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. MCCAIN. Madam President, I ask my friend from North Dakota—this is on the Stabenow amendment—we would like to have a couple-word change. If he would look at the amendment where it says, in the last paragraph, ''The White House and all Executive Branch agencies should respond promptly and completely to all requests by Members of Congress,'' that between ''all'' and ''requests,'' if we could add the two words ''constitutionally appropriate.'' Would that be agreeable to him, so it would read: ''completely to all constitutionally appropriate requests by Members of Congress''?

I assume that most Members of Congress would not make unconstitutionally appropriate requests, but that seems to be perfecting language that some of my friends would like to have added.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I say to the Senator from Arizona, this is not my amendment, so I would have to consult with the author of the amendment.

As you know, the amendment is prompted by a news story today from the White House suggesting they will not be answering inquiries except by certain Members of Congress. So that prompted her to offer this amendment.

I will certainly consult with—she is on the Senate floor, so perhaps we can ask her directly.

Mr. MCCAIN. Madam President, do I still have the floor?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I ask unanimous consent to ask a question of the Senator from Michigan.

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

Mr. MCCAIN. Madam President, I ask the Senator from Michigan if she would be agreeable to a two-word addition in the last paragraph, that between the words ''all'' and ''requests'' the words ''constitutionally appropriate'' be added. I wonder if that would be agreeable to her. If it is not agreeable to her, I will not propose the amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, the only question I have is the word ''appropriate.'' We certainly want this to be within constitutional parameters. I would say, at this point, the question I would have would be about ''appropriate.'' Who decides what is ''appropriate,'' given the judgments the administration is making? Possibly we can work together to find something else other than that word. But at this point that would be my concern.

Mr. MCCAIN. I thank the Senator and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, will the Senator from Michigan allow me to ask a question?

Ms. STABENOW. Certainly.

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

Mr. REID. This amendment is offered by the Senator from Michigan, and it never took into consideration doing anything that was unconstitutional?

Ms. STABENOW. That is correct.

Mr. REID. Everything the Senator does is within the framework of the Constitution. So I would hope that the matter could be disposed of as written because it goes without saying that we want this to be constitutional. We would never try to do anything that would be outside the parameters of the Constitution.

So I hope this amendment could be accepted. It appears to me it should be done by voice. If that is not the case, I know that a number of other people have more to talk about on this amendment. So I would hope the majority would make a decision quite soon as to what is to be done with this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. REID. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I mentioned that the event that has prompted this amendment, I understand, was in the newspaper this morning. It was apparently a report that the White House would limit their responses to questions from Members of Congress.

I, at one point, chaired the appropriations subcommittee here in the Senate that actually funds the operations of the White House. We always work very closely with the White House. When they request the necessary funding, we provide it. We never have any difficulty. The same is true with respect to the agencies. We fund all of the agencies of the executive branch. We spend a great deal of money in doing that. We work together to find the appropriate number and the appropriate amount of resources that are needed.

The White House is a little different. When they make the request, we fund the request. That is the way we deal with the White House.

But with the executive agencies, of course, we have disagreements and differences from time to time, but we end up sending billions and billions—hundreds of billions—of dollars for expenditures through these agencies. If ever—if ever—the Members of the Congress are prevented from asking questions about how the money is used, how the money is spent, then there is something fundamentally broken.

So I was as surprised as my colleague from Michigan to read the story in the newspaper this morning. I know it is nettlesome, I know it is a pain, it is a bur under the saddle to get questions from Members of Congress if you are a member of the executive branch.

At one point, I was a member of the executive branch in State government,

and all the State legislators were always peppering us with questions. Sure, that is a nuisance. Nobody likes that. But the fact is, the congressional actions here determine how much money is made available. The same is true in the State legislatures. They have every right—in fact, they have a responsibility—to the taxpayer to try to determine how that money is spent. If they have questions about it, they ask those questions. If they ask those questions, they darn well expect an answer, even if it is considered a nuisance by those who are receiving the questions.

So my hope is they will just accept this amendment at some point today. I understand what has prompted the amendment.

Let me just, for a moment, talk about the underlying proposition before the Senate; that is, the bill that is brought to the floor today, the moratorium on Internet taxation. I want to see us pass a piece of legislation. I do not think it is satisfactory to have the moratorium expire on November 1, and then to just let that be the word. That is not where I would like to see this end up.

So we have a bill on the floor that came from the Commerce Committee. That legislation passed the Commerce Committee unanimously, but it was not quite the way it seemed when you take a look at that vote because we also agreed that the definition of that Internet tax moratorium was faulty or at least not agreed to, and we would work on it coming to the floor of the Senate.

We have not yet reached a compromise. That definition is the key. It is the linchpin to this legislation. So we have to find a way to resolve that. We thought this morning perhaps there was a way to do that. That appears not to be the case. I think we still have some distance between the various thoughts about how one would craft this in a way that is helpful to not retard and not injure the buildout of the infrastructure for the Internet and, at the same time, be fair to State and local governments with respect to their revenue base and not be preempting the opportunity they need and they would have, as they have always had, to tax certain services. So we continue to try to talk and see if we can find a way to reach some kind of agreement on this definition.

Now, I want to make an additional point because I think it is important to continue to make this point even as we work on these issues. We have this issue on the Senate floor today. I understand why that is the case, because this issue had a November 1 deadline by which the moratorium on Internet taxation expired.

We have a responsibility to try to see if we can pass this legislation. So there was a deadline with respect to this legislation.

But there was a deadline on appropriations bills as well. That deadline was October 1. It is now November. We still have appropriations bills that have not been considered in the Senate. Yesterday there was great urgency about an appropriations bill. Everybody cooperated to try to get that done. We are told today there is great urgency about legislation. We are told that the majority leader wants the Congress to work on Veterans Day and so on.

Then we are told, despite the fact that there is this urgency to get appropriations bills done and they request cooperation, that beginning next Wednesday we will spend 30 hours so that the majority can talk about the four judges they have not been able to get confirmed.

It seems to me perhaps we should talk about the 168 judges we have confirmed. If we are going to take time in the middle of next week, after having worked on Veterans Day, because we believe there is such an urgency—and I believe there is an urgency with appropriations bills; we should get them done—if we are going to take 30 hours in the middle of the week in order to try to convince the American people that the Congress is not moving forward on judgeship nominations, and they are going to take 30 hours to talk about four judges who didn't get confirmed by the Senate, I think perhaps then we need to take much more time to talk about the 168 judges we did confirm.

I am a little miffed at having these talk shows and others get all their talking points about how the Senate is stalling on judgeships. We are not stalling on judgeships. Most all of the Federal judges who have been nominated by this President have been confirmed by this Senate.

We have an advise and consent responsibility. The Constitution does not say the President has a right to pick somebody and say to that person: For the rest of your life you will be a Federal judge.

That is not the way the Framers of the Constitution described it. This described a dual role. The President shall nominate; the U.S. Senate shall confirm—advise and consent. Even George Washington ran into some tough sledding. Even George Washington lost a Federal judge in the Senate because they wouldn't confirm one of George Washington's judgeship appointments or nominations. So it started with George Washington.

But when you talk about cooperation, this Senate has provided extraordinary cooperation with this President. We have confirmed 168 judges. We have tried in every way possible to be cooperative. We have the lowest vacancy rate in 15 years on the Federal bench. Why? Because this Senate has worked with the President to confirm 168 judges.

I understand my colleague wishes me to yield. I do so without losing my right to the floor.

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

Mr. MCCAIN. Mr. President, if my colleague would allow me to speak for 5 minutes in morning business about an important issue to me.

Mr. DORGAN. Providing that I am recognized at the conclusion of the remarks of the Senator from Arizona.

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

(The remarks of Mr. MCCAIN are located in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. BROWNBACK. Mr. President, will the Senator from North Dakota yield for a question?

Mr. DORGAN. Mr. President, I yield to the Senator from Kansas for a question.

Mr. BROWNBACK. Mr. President, if I can ask for permission to speak up to 3 minutes on a personal tribute in morning business and that the floor not be lost to the Senator from North Dakota.

Mr. DORGAN. I will agree, provided I am recognized following the presentation.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

(The remarks of Mr. BROWNBACK are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I know my colleague from West Virginia is preparing to speak. I will not be long. I will make a couple of comments to finish what I was discussing about next week's schedule.

It is true the minority party in the Senate does not schedule the Senate; the majority party does and the majority leader does. This Senate is 51 to 49. Some pretend it is 100 to zero. In the circumstances, for example, with the energy conference, I am a Democratic conferee, and we have been disinvited and not allowed to attend any of the conferences with respect to the Energy bill. That is the wrong way, in my judgment, to do business in the Senate. It pretends as if one-half of the Senate doesn't exist when you do that.

Having said all that, I understand we don't schedule the Senate; the majority leader does. We find ourselves now in the first week in November, with a number of very important appropriations bills not yet completed, with stories earlier in this week that the majority may well want to put unfinished appropriations bills in another appropriations conference and create an omnibus bill, and bring it to the Senate as a conference report so Members of the Senate would be prevented from offering any amendments to the legislation.

Well, that is not acceptable; it is not the way to do business. I don't know whether that is what is being planned. I can only tell you that is what I read early this week, as described by some majority party aides, I guess they are called.

In addition to the urgency of getting appropriations bills completed, we are

now told next week's schedule will include 30 hours of debate on judges. Actually, there won't be any business before the Senate to debate; it will just be an opportunity for the majority party to ruminate for 30 hours about how unfair it has been that 4 nominees have not been approved by the Senate—4. Mr. President, 168 judicial nominees sent to us by the President have been confirmed by the Senate, and 4 have not been. Yet you would be led to believe by all of the information spewed out of this Chamber, from all of the political vents that exist here, that somehow the Senate has just been unwilling to approve judgeships.

We have the lowest vacancy rate on the Federal bench in 15 years. Why? Because this Senate has been cooperative with this President with respect to judgeships. He has nominated and we have confirmed 168. If next week they want to spend time, in a moment when it is urgent to finish our work on appropriations bills, instead to talk about the 4 judges who were not confirmed by the Senate, I want to come to spend some time talking about the 168 judges, including 2 from my State, both Republicans, both of whom I supported and was pleased to do so—I want to talk about the 168 judges we did confirm. I want the American people to understand what our record is with judges.

My colleague from West Virginia knows about the Constitution, perhaps more than anyone in this Chamber. He has studied it, he has lived it, and he carries it in his pocket every day. His copy of the Constitution is one I enjoy seeing when he pulls it out of his pocket during debate on the floor of the Senate, because he describes it in vivid detail and gives life to this fabric of American Government. The Constitution does not say the President has a right to put a man or woman on the Federal bench for the rest of their lives. That is not what the Constitution says. The Constitution says we will provide lifetime appointments to the judiciary in the following manner: The President shall nominate, and the Senate shall give its advice and consent. So there are two steps: The President shall nominate and the Senate shall decide yes or no.

There are circumstances where a President might say: I want to put someone on a very important Federal bench who is way outside the norm in terms of behavior, thought, or experience, or whatever; and the Senate has a right to say in that circumstance we are sorry, that is a person we are simply not going to confirm, Mr. President.

That is not terribly unusual. George Washington failed to get one of his nominees confirmed—America's first President. So it is not unusual for the Senate to say, no, this is not a candidate we agree should be put on the Federal bench for a lifetime.

In most cases, the President has sent us nominees we are satisfied with, and 168 of them have been approved; 4 have not been. In the middle of this time, when time is so critical and the appropriations bills are so urgently needed to be completed, the majority wants to ruminate and vent for 30 hours in the middle of next week about the 4 who have not been approved.

I say, as my colleague from Nevada has, I make no excuses for deciding not to support the nomination of Mr. Estrada. I make no excuses for that. Mr. Estrada wouldn't answer the questions when asked by the Senate Judiciary Committee. How do I know that? Because the same day that he was a witness before that committee, the same day his nomination was considered by that committee, a nominee for a judgeship in North Dakota was there before the committee. That candidate from North Dakota, whom I supported—and, incidentally, is a Republican—is a fine judge. I was pleased to support him. He answered the very questions put to him by that committee that Mr. Estrada refused to answer.

Mr. Estrada refused to answer questions. He and the administration refused to release information that was requested. I have no reason to make any excuses for deciding to vote against Mr. Estrada. I wouldn't have voted for him and didn't vote for him. I am not apologetic about that.

If next week in the middle of all of this urgency we are going to take 30 hours and decide just to have the majority party ventilate about the four who did not get approved by the Senate, then I say—my colleague from Nevada is here—I would like to be part of a process that talks about the 168 Federal judges we did approve, all Republican incidentally—168 of them we did approve. We will get some pictures and get their story. I will talk about a few of them. I hope my colleagues will as well because the American people need to understand the story, and the story is not of the four who didn't get approved by the Senate.

The story is the lowest vacancy rate in 15 years on the Federal bench because the Senate has moved forward on judgeships and because we have confirmed judges sent to us by this President and because we have succeeded in that effort. That is the story next week. If we are going to have 30 hours for the other side to ventilate about the 4 who didn't make it, I want 60 hours to talk about the 168 we did confirm.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I wish to take a couple of moments to do a few items cleared on both sides.

UNANIMOUS CONSENT AGREEMENT—H.R. 2799

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at 1 p.m., Monday, November 10, the Senate proceed to the consideration of the Commerce-Justice-State appropriations bill.

Mr. REID. Mr. President, reserving the right to object, it is my understanding that the distinguished majority whip is going to announce there will be no more rollcall votes.

Mr. MCCONNELL. I say to my friend, just as soon as he clears this.

Mr. REID. No objection.

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

Mr. MCCONNELL. I, therefore, mention there will be no more rollcall votes today.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, there are a couple of items on the Executive Calendar cleared. I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's calendar: Calendar No. 61 and 362. I further ask unanimous consent that the nominations be confirmed; that the motion to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

FEDERAL ENERGY REGULATORY COMMISSION

Joseph Timothy Kelliher, of the District of Columbia, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2007.

Suedeen G. Kelly, of New Mexico, to be a Member of Federal Energy Regulatory Commission for the remainder of the term expiring June 30, 2004.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. MCCONNELL. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the Pastore rule run its course for the day?

The PRESIDING OFFICER. It has not.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order for such time as I may require.

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

AN INFINITE MIRAGE AND A BOUNDLESS FACADE

Mr. BYRD. Mr. President, through its shortsighted actions, this administration perpetuates an infinite mirage and a boundless facade. This administration hopes to fool the American people into swallowing its wrongheaded policies with no questions asked. These