SENATE—*Friday, January 31, 1992*

(Legislative day of Thursday, January 30, 1992)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by the Reverend Hampton Joel Rector, staff assistant in the office of Senator ROBERT C. BYRD of West Virginia.

PRAYER

The Reverend Hampton Joel Rector, staff assistant, office of Senator ROBERT C. BYRD, offered the following prayer:

Let us pray:

Almighty God, this Senate is a venerable institution, founded by our forebears in an era of change and upheaval to forge out of chaos and formlessness a unique destiny for this extraordinary Nation.

Our faith is that, throughout the career of this Nation, Thy hand has rested on this Senate, in love and rebuke, that its wisdom might be Thy wisdom and its voice Thy voice.

Today, we stand on the cutting edge of a new era, both in this Nation and around the world.

In this moment of opportunity, grant to these chosen men and women the courage, the sagacity, the tenderness, the fortitude, and the maturity to author laws rooted in Thy law.

In these days of anxiety and pause, grant to these Senators the practical vision to guide our Nation to greater material prosperity and security, and the spiritual vision to strengthen the character and fidelity of our people.

And in every season, in Thy providence, teach us all to seek Thy will, to hope for Thy justice, and to serve Thee in mercy, compassion, and steadfastness.

For all of these things we pray in Christ's name. Amen.

RESERVATION OF LEADER TIME

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

CABLE TELEVISION CONSUMER PROTECTION ACT

The PRESIDENT pro tempore. The Senate will resume consideration of S. 12, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Packwood amendment No. 1522, in the nature of a substitute.

AMENDMENT NO. 1522

The PRESIDENT pro tempore. The pending question is on the amendment by Mr. PACKWOOD, numbered 1522, on which there is an agreement for 3 hours of controlled debate.

Mr. INOUYE addressed the Chair.

The PRESIDENT pro tempore. The Senator from Hawaii is recognized.

Mr. STEVENS. Will the Senator yield for just a moment?

Mr. INOUYE. I am happy to yield.

Mr. STEVENS. Mr. President, Senator PACKWOOD is still under doctor's care. He will be here later, I believe.

I ask unanimous consent that I be allowed to control the time allotted to him and to act in his stead.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that I be permitted to speak for a few minutes as though in morning business.

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

TRIBUTE TO NORTON W. SIMON

Mr. STEVENS. Mr. President, today I offer a special tribute to an American whose accomplishments have touched many of our lives, although he has preferred to stay in the background and not seek recognition for all that he's done.

He is Norton W. Simon.

On February 5, Norton Simon marks his 85th birthday.

A westerner, originally from Portland, OR, Norton has been a Californian since his teenage years.

And I'm proud to say, he has an Alaska connection. In my first year in the Senate, almost a quarter century ago, we first crossed paths when he acquired Alaska's Wakefield Seafoods. He helped show the world the great value of the Alaska king crab.

Norton Simon's influence is global. Those who know him will agree that he deserves public recognition, although he would deny that.

In working hard and achieving corporate success, he has provided benefits—particularly in the realms of science and the humanities—for all of us.

Norton Simon's generosity has helped open new avenues of research and technology in medicine. Through Norton Simon's support, high-technology diagnostic instruments have been developed and research projects have been funded, resulting in saving and changing countless lives. In particular, his contributions to the study of hereditary diseases and the development of brain imaging equipment have been a boon to medical science.

Through his understanding and love of art, he has provided, through his museum, the opportunity for tens of thousands to enjoy treasures created by the great artists of the Old World as well as the New.

As a graduate of UCLA, I note that Norton was appointed to the board of regents of the University of California in 1960, by Gov. Pat Brown, and served until 1976, during a time of great unrest and change in the University of California. Norton provided critical leadership and wisdom to the regents, President Clark Kerr, and the Governor during those troubling times. He also took the lead in establishing a new campus at Irvine, and helped to grant greater independence to the individual campuses of the University of California.

In 1971, Norton served on the Carnegie Commission that proposed a new plan for higher education. This proposal was entitled "Less Time, More Options—Education Beyond High School." The other members of the commission were Nathan Pusey, president of Harvard; the Honorable William Scranton; David Riesman, professor at Harvard; Kenneth Tollet, professor at Texas Southern University; and Clark Kerr, president of the University of California.

With his marriage to Jennifer Jones in 1970, Norton began to focus attention on medical research. Of course, he was also continuing his passion and drive in building the Norton Simon Art Collection and Museum with support from his foundations, The Norton Simon Art Foundation, Norton Simon Foundation, and his own personal wealth. He combined his unique talents of inspiration, exploration and intuition with a genuine desire to provide benefits to the health and well-being of the human race.

In the mid-1970's, Norton contributed support and guidance to the founding of the Hereditary Disease Foundation, headed by Dr. Milton Wexler. His personal financial support to the Hereditary Disease Foundation in Santa Monica, CA, continues today.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

In 1979, he established the Jennifer Jones Simon Foundation for Medical Research. In 1981, he began to support a new medical imaging technology, positron emission tomography [PET] that could examine the biology of disease in the living human. As part of that effort, he developed a lifelong relationship with another good friend of mine, a PET pioneer, Dr. Michael E. Phelps.

Much of Norton and Jennifer's support to medical research has focused on UCLA, where he established the Jennifer Jones Simon professorship, and a research endowment of more than $6 million for PET. Norton and Jennifer have contributed a great deal to research on mental health disorders and cancer at UCLA. Norton's generous support has extended beyond UCLA to Hopkins, Cornell, and the University of Wisconsin.

As he has in all of his other endeavors, Norton has provided much more than financial support. He became part of the scientific enterprises he supported, part of the mission of the scientists involved in those enterprises. He became a personal friend of those scientists and an ambassador to the outside world for the crucial medical research they were conducting. He taught me and many others to see the vision beyond the every day events of the moment.

Although he's experienced much in his 85 years, Norton Simon continues to search for new challenges. He welcomes the really tough ones and hasn't let health problems stand in the way of his enthusiasm for new projects and new ideas.

Mr. President, in the early 1970's, Norton Simon visited me to outline a plan he had developed to rejuvenate the railroad system of the United States—passengers and freight. Typically, Norton was years ahead of others, for the basis of his approach as I recall it was that we had to eliminate the fiefdoms created under Federal regulation—we had to deregulate the railroad industry or it would perish unless heavily subsidized. How right he was—but Congress, in the midst of the Vietnam war was not willing to take the time to deal with such complex issues.

It's events like that, Mr. President, that define Norton Simon for me. His energy, vision, generosity, and public spirit have enriched the lives of all Americans. Catherine and I are proud to count as close friends Norton and his lovely wife, Jennifer, the legendary actress, who has contributed her considerable talents to Norton's endeavors. Norton is a great American, and I am happy to have this opportunity to honor him on the occasion of his 85th birthday.

Thank you, Mr. President.

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

Mr. INOUYE. Mr. President, I yield myself 5 minutes.

The PRESIDENT pro tempore. The Senator is recognized for 5 minutes.

Mr. INOUYE. Mr. President, I rise today in opposition to the Packwood amendment to S. 12.

I have set out many of the reasons for my opposition in my floor statement that I made yesterday. I would just like to make one comment on the substance of the amendment. The retransmission consent provisions of the amendment are identical to those in S. 12. Thus, supporters of the Packwood amendment, the cable industry and the administration, have conceded that retransmission consent is the proper policy.

Now that I have had an opportunity to review the Packwood amendment, my view remains unchanged. This amendment will do nothing to address the problems facing consumers or to promote competition to existing cable operators. It is nothing more than an effort to pull a fast one on consumers.

It is a sham. This sham was uncovered for all the world to see in the National Cable Television Association memorandum that stated that neither the cable industry nor the administration would support the substitute even if it prevailed. This memo was confirmed by an administration policy statement, which stated that if the substitute was adopted, the administration would still have problems with the bill.

Mr. President, I ask unanimous consent to have that statement printed in the RECORD.

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

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, January 27, 1992.

STATEMENT OF ADMINISTRATION POLICY

(S. 12—Cable Television Consumer Protection Act of 1991—Danforth From Missouri and 9 Others)

The Administration strongly opposes S. 12 because it would impose unnecessary regulation on the cable television industry. If S. 12, as reported by the Senate Committee on Commerce, Science, and Transportation, were presented to the President, his senior advisers would recommend a veto.

The Administration opposes S. 12 because it does not sufficiently emphasize competitive principles in addressing perceived problems in the cable television industry. It has been the Administration's consistent position that competition, rather than regulation, creates the most substantial benefits for consumers and the greatest opportunities for American industry. Television viewers are best served by removing barriers to entry by new firms into the video services marketplace. The Administration, therefore, would support legislation which removes the current statutory prohibitions against telephone company provision of video programming, with appropriate safeguards.

S. 12 would greatly expand regulation of cable rates. It would require regulation of cable systems by either the Federal Communications Commission (FCC) or the local government. The number of cable systems and variety of cable programs have grown dramatically in the absence of rate regulation. Reimposing rate regulation would both hamper the development of new products and services for cable subscribers and slow the expansion of cable service to areas not now served. If it finds that additional rate regulation is needed, the FCC can provide such regulation under current law. The FCC issued new rules in June, which are expected to increase substantially regulation of basic cable rates. The Administration believes that the rules should be implemented and reviewed before new and inflexible legislation is considered.

S. 12 would restrict the discretion of cable programmers in distributing their product. Exclusive distribution arrangements are common in the entertainment industry and encourage the risk-taking needed to develop new programming. Requiring programming networks that are commonly owned with cable systems to make their product available to competing distributor could undermine the incentives of cable operators to invest in developing new programming. This would be to the long-term detriment of the American public. If competitive problems emerge in this area, they can and should be addressed under the existing antitrust laws.

S. 12 would also require limits on the number of subscribers that a cable operator may serve nationwide. This provision is objectionable because current antitrust laws are adequate to protect competition. Moreover, the FCC currently has authority to adopt ownership rules if it determines they are necessary.

Finally, S. 12 would require cable operators to carry the signals of certain television stations, regardless of whether the cable operator believes the stations are appropriate for inclusion in its package of services, and regardless of whether such inclusion reflects the desires and tastes of cable subscribers. The Administration believes that such "must carry" requirements would raise serious First Amendment questions by infringing upon the editorial discretion exercised by cable operators in their selection of programming. S. 12 was amended in committee to give television stations the option to choose "must carry" or to require that a cable operator obtain the station's consent to retransmit its signal. This amendment, however, does not address the serious First Amendment concerns noted here. While the Administrator supports retransmission consent (without must carry), this should be coupled with repeal of the cable compulsory license.

The Administration supports Senate passage of the Packwood-Stevens-Kerry amendment as an alternative to the reported version of S. 12, because it would eliminate or significantly modify many of the highly regulatory provisions of S. 12. Moreover, it would also remove one impediment to competition in the cable industry—the exclusive local franchise. At the same time, the Administration wishes to work with the Congress to modify or eliminate some troublesome provisions that remain in the underlying bill. Such provisions include, for example, the lack of generalized telephone company entry provisions, reimposition of "must carry" rules, the mandatory nature of rate regulation, the very narrow definition of "effective competition," and the administrative burden on the FCC.

Mr. INOUYE. As one of the authors of the 1984 Cable Act which deregulated the cable industry, I still want the industry to make money. In 1984, I wanted to help a fledgling industry take its successful and profitable place in the corporate world.

I believe that it has done so. The cable industry is no longer made up of fledglings, it contains corporate giants. But, Mr. President, sadly, I believe it has also lost sight of the people it was created to serve. There are limits to the number of times we can expect consumers to reach into their pockets to pay for corporate profits. It is time for Congress to act, time to promote competition to the cable industry and most importantly, to protect consumers.

It has been argued that S. 12 will irreparably harm the cable industry. It will not. S. 12 will simply stop excessive rate gouging by cable operators. This bill will not put the heavy hand of Government on the cable industry. It will just remind the industry that it must be more sensitive to the plight of the people—America's consumers. S. 12 is a bipartisan effort to protect consumers against abuses by the cable industry and has a wide degree of support. A vote for the substitute would be a vote against the leadership of the Commerce Committee, which has labored over 4 years to craft a balanced bill.

A vote for the substitute would also be a vote against a wide range of supporters including: The Consumer Federation of America; the Consumers Union; National Consumers League; the National Association of Broadcasters; Association of Independent Television Stations; Network Affiliated Stations Alliance; America's Public Television Stations; the National Religious Broadcasters; the American Association of Retired Persons; National Council of Senior Citizens; Communications Workers of America; AFL-CIO; International Brotherhood of Electrical Workers; International Ladies Garment Workers Union; United Steel Workers; National Association of Telecommunications Officers and Advisers; and many, many other local organizations.

I cannot believe that all of these organizations are wrong about S. 12.

Mr. President, I yield myself 3 minutes more.

The PRESIDENT pro tempore. The Senator is recognized for 3 additional minutes.

Mr. INOUYE. In addition, yesterday, I received a letter from the National Association of Black Owned Broadcasters opposing the elimination of the broadcast multiple ownership rules.

Elimination of that provision will also eliminate a provision designed to give incentive to nonminority station owners to invest in minority controlled stations. This is just further evidence that that provision will not promote competition.

So I ask unanimous consent, Mr. President, that this letter be printed in the RECORD.

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

NATIONAL ASSOCIATION OF
BLACK OWNED BROADCASTERS,
Washington, DC, January 30, 1992.

Re proposed amendment to S. 12.

Hon. DANIEL K. INOUYE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR INOUYE: The National Association of Black Owned Broadcasters, Inc. ("NABOB"), wishes to express its strong opposition to a portion of the amendment to S. 12 recently offered by Senators Packwood, Kerry and Stevens.

The amendment to S. 12 proposes to include Section 201. "Elimination of the Restriction on Multiple Ownership of Broadcast Stations." That provision repeals Federal Communication Commission Rule 47 C.F.R. 73.3555(d), which currently limits ownership of broadcast facilities to 12 AM radio stations, 12 FM radio stations and 12 television stations. (If a company is minority controlled, it may own 14 stations in each of these broadcast services).

By repealing 47 C.F.R. 73.3555(d), the amendment to S. 12 would allow unlimited concentration of ownership of broadcast facilities. For many years, NABOB has been in the forefront of those voices speaking out against increased concentration of ownership in the broadcast industry. As we explained at length in our letter to you dated May 1, 1991 (attached), increased concentration of ownership in the broadcast industry already has escalated the selling prices of the most desirable stations resulting in their purchase only by those companies with the greatest financial resources.

This concentration of ownership of the largest stations with the best signals into fewer hands has two strong negative impacts on minority ownership. First, existing minority owners owning one or two stations in a single market find themselves unable to compete with the market power and economies of scale which a large group owner can bring to the competitive situation in a market. Second, new minority entrants seeking to get into the industry are finding that price escalation of existing stations and the reluctance of lenders to finance single station purchases are insurmountable barriers to entry. This situation is, of course, exacerbated by the current national recession, in which most lenders are refusing to make any broadcast loans.

The proposed repeal of all ownership restrictions reflects a reckless disregard on the part of the bill's sponsors for the impact that such an action would have upon the interests of minority and small broadcasters. We can only hope that you and the other members of the Senate will prevent this ill-advised and hasty action.

We therefore, request that you oppose the proposed repeal of 47 C.F.R. 73.3555(d) and continue your long standing support of increased opportunities for minority ownership of broadcast facilities.

Sincerely,

JAMES L. WINSTON,
Executive Director and General Counsel.
PIERRE M. SUTTON,
Acting Chairman of the Board.

Mr. INOUYE. In closing, Mr. President, ensuring competition and protecting consumers is the issue, and I most respectfully suggest that S. 12 will promote competition and impose regulation until that competition develops. So I urge all my colleagues to look beyond the rhetoric being employed by the cable industry to the solid foundation that supports S. 12.

Mr. President, I would like to thank Senators DANFORTH, HOLLINGS, GORE, GORTON, FORD, METZENBAUM, and LIEBERMAN for their support throughout this process. I would also like to thank the Commerce Committee staff for their work as well: Toni Cook, John Windhausen, Kevin Joseph, Jim Drewry, Kevin Curtin, Linda Morgan, and Yvonne Portee. Also, from Senator DANFORTH'S staff: Gina Keeney and Mary McManus.

The PRESIDENT pro tempore. Who yields time?

Mr. STEVENS. Mr. President, I yield 30 minutes to the Senator from Colorado [Mr. WIRTH].

The PRESIDENT pro tempore. The Senator from Colorado [Mr. WIRTH] is recognized for 30 minutes.

Mr. WIRTH. Mr. President, I shall not use the total 30 minutes at this point. I wanted to make an opening statement and then retain the remainder of the time for purposes of rebuttal.

First of all, Mr. President, I want to start out by congratulating the broadcasters of the United States. For the first time in the many, many years I have been working on telecommunications issues, the broadcasters have launched a very, very effective program of convincing people here about the issue of retransmission consent and must-carry.

I want to congratulate them. They have brought their people in from all over the country and raised this issue of retransmission consent to the point that the issue of retransmission is included exactly in the substitute as it is in S. 12. I bring that issue up to start with for two reasons: one, to congratulate the broadcasters and, second, to make sure my colleagues understand that this is not an issue of retransmission consent and must-carry versus no retransmission consent. They are both in the legislation and in the substitute.

Second, I want to confirm, I am sure there are a broad list of supporters of S. 12. Everybody would like to have as much as possible for as little as possible. There is no question about that. In the short term that is an immediate thing that most people would like to see, that sort of short-term return, which we have had a great deal of over the last 10 or 12 years. There is no thought of investment in the future. Let us just get as much as we can today for as little as possible. It is that precise short-term attitude that is the most destructive element in S. 12.

If, as has been argued, cable television is such an enormous ripoff of the

American consumer, the question is begged, why have the number of subscribers of cable television doubled in the last 6 years? If this is such an onerous service, why do, now, 60 million American households subscribe to cable television as opposed to the 30 million prior to the 1984 to 1986 period, when the Cable Television Act was passed and then went into effect?

It seems to me that is a good question to ask. If it is such a terrible thing, why have so many American households subscribed?

There appear to be a couple of problems but let me, first of all, point out one of the myths. One of the myths relates to rates. The discussion has been made, somehow there is this enormous ripoff of the American consumer related to rates. The point has been made quite accurately that cable television rates have gone up about 60 percent since the time of deregulation. Forgetting, of course, that prior to deregulation, the cable television rates in the 12 years prior to 1984 lagged behind by more than 70 percent, kept artificially low by a whole patchwork fabric of regulation and, more important, by efforts by other industries to keep the cable television industry from reaching its potential.

The simple fact of the matter is that the cost per individual basic service channel—has not increased between 1986 and 1991. In addition, it is not simply a package of retransmitting, ABC, NBC, and CBS. It has come to include a whole variety of new services as well. If you take the per-channel rate, that in fact has gone up very, very slightly over a period of time. The cost per basic service channel has gone up to 53 cents in 1991 from 44 cents in 1986.

More important than that, how does this compare with the general rate of inflation? The price per channel at the rate of inflation would be 54 cents. In fact it is 53 cents.

If the per-channel rate for basic cable television had gone up just the rate of inflation since 1986, they would be up to 54 cents a channel. In fact they are only up to 53 cents a channel. Obviously, one looks at various issues and analyzes these issues in different ways. But what is important is the basic package; the basic package made available to the American consumer in fact has run behind the rate of inflation on a per-channel basis.

A lot of people are saying cable rates have gone up 60 percent. The other facts that have to be remembered in that are, one, because of this enormous amount of regulation and interference by other industries, the cable television industry had not been able to grow and reach its potential until 1986. That is why legislation was passed in 1984.

Since 1986, cable television has added to the basic package a great number of other services and channels and that total package has to be looked at in terms of the overall cost. And, in fact, as this chart coming out of numbers done by the General Accounting Office, this study shows it has run behind the general rate of inflation.

Now I think it is important to talk about what is and what is not in this legislation. First of all, it is important to note what is similar about the two issues before us. The substitute and S. 12 each do three things: regulate basic cable rates; set standards for customer service; standards for signal quality and reliability.

Let us go back to what is driving this regulation to begin with. What is driving this legislation to begin with were complaints from individuals that somehow the package of basic cable rates or basic cable rates have increased drastically in some communities in some cases. There is no question about that. The rates have gone up. The distinguished Senator from Missouri cited some of those, and the distinguished Senator from Hawaii has cited some. In their back yards there have been examples of basic cable rates going up too rapidly.

We recognize that there have been some abuses in the area. To address these abuses, we provide in the substitute, as does S. 12, basic regulation of cable service.

Second, customer service. The cable television industry has grown very rapidly in recent years. It has doubled in size in the last 6 years. Any industry that goes from about 30 million households to 60 million households in a relatively short period of time is going to have growing pains and related problems. I compared that earlier to the boy at age 14 who suddenly begins to grow. We have seen that individual outgrow his shoes, outgrow his pants. Cable has grown and they have outgrown in some ways their ability to keep up with the service structure. They have a major customer service under way now to make sure that those service elements are addressed. And we require in our substitute, as does S. 12, that the FCC set standards for customer service.

Third, signal quality and reliability. One of the reasons that cable television exists to begin with is to provide signal quality and reliability. You cannot received a good television signal in Manhattan. In areas of the Rocky Mountains you cannot receive a good television signal You need retransmission through cable television to have that signal reliably sent out in a quality fashion.

No one disagrees with the importance of these three basis consumer issues. So what we ought to be doing, Mr. President, is passing legislation that addresses these three basis issues. That is what is driving the debate for legislation. That is why we should legislate.

What we should not be doing, Mr. President, is launching a fundamental and punitive attack on the cable television industry. As I pointed out in my remarks on Monday and again yesterday, the telecommunications industry has been all about people trying to keep the new technology down, keep the new technology out. Keep the new idea and the new technology out.

If we pass S. 12, we are going to significantly smother the capacity of the cable television industry to embark upon new initiatives and new programming just at a time when the American public is coming to depend upon the cable television industry alone for children's programming, for educational programming, for news programming.

If the cable television industry had not been able to make investments in CNN, we would not see CNN, nor would we, Mr. President, see the way in which the commercial television networks have changed their delivery of news services to be more timely, to have more on-the-spot reporting. CNN has forced a major change in the way in which the networks do their news. That is a good thing. That is innovation. We are going to stifle that sort of innovation.

In children's programming, it used to be that the networks provide programming for kids and that was a requirement that the networks serve the educational requirements of children. With the deregulation mania of the 1980's, that requirement was totally wiped out by the FCC. We restored some of the children's requirement after a very difficult legislative battle.

It is not the networks that are carrying educational programming for children. There is very little of that coming from commercial broadcasting. The cable television industry, through a variety of channels and a variety of the very items we were talking about earlier, have now provided that to the American consumer, to American children, to the American educational system through cable television.

What we are going to do in S. 12, if S. 12 passes, is smother the capacity to do that as well. Why would anybody make an investment in programming if you cannot recover that cost? That is what is going to happen under S. 12.

Basic educational programming, running all the way from programs about the environment to programs about history, all kinds of those offerings available to individuals cost money to produce and put on the air. But what we are going to do with the program access provisions in S. 12 is set it up in such a way that an entrepreneur or creative artist will have no incentive to create, the Government with dictate who controls a product and at what price it is sold.

Under this, the program access provisions are like saying to Garry Trudeau, you can be very clever and draw up "Doonesbury" but we are going to tell you who to sell it to and at what price.

How absurd is that? We do not do it with syndicated columnists. If George Will writes a column, we do not tell George Will how much to charge for that column, or to whom to sell that column. It is ridiculous but that is what is proposed in S. 12 that cable television do and cable television producers do: Tell them to whom they can sell their programming and at what price they can sell that programming.

That is not only wrong in terms of what we want this telecommunications industry to do, it is wrong in terms of copyright and a basic sense of fundamental property rights in this country. It is not the right thing to do.

I am going to stop with that at this time, Mr. President.

There are things that a basic bill ought to do. The substitute does allow the regulation of rates, allow the regulation of service, allow the regulation of signal quality. Those are the basic ingredients of what ought to be in a bill and those same elements are in the substitute as are in S. 12.

But we should not go beyond these issues and launch a frontal attack on this industry that has provided so much to the United States of America. It is the other elements in S. 12 that are so destructive to this industry. These are really what it is all about.

I urge my colleagues to look carefully at this substitute. If they are concerned about the broadcasters' interests, those are included in the substitute. If they are concerned about rates, rate regulation is in the substitute. If they are concerned about service, customer service standards are in the substitute. If they are concerned about signal quality, that is in the substitute. The issues driving this debate to begin with are in the substitute. But we should not turn that into a flat car which flat car then loads up with all kinds of attacks on this industry. That is not what we ought to be doing.

Mr. President, we will, I am sure, over the next couple of hours, hear the rationale for why this industry is under such attack. I look forward to hearing those an taking the time also to answer those charges.

OVERVIEW

S. 12 is a well-intentioned response to examples of excessive rate increases and customer service problems in the cable television industry. There have been abuses in this area and Congress should pass legislation that addresses these concerns. I hope we will do so.

However, we also have to recognize that viewers enjoy the programming available on cable and have benefited from the increase in the number of channels and the many new programs that we have seen introduced in recent years. These new channels and programs would not be possible without investments made by the cable industry. Continued investment is needed to help bring new programs and technologies such as fiber optics and digital compression to cable viewers. Fundamentally, we need to make sure our communications policy continues to encourage a diversity of choices for consumers.

That is why we need balanced legislation that addresses the rate and service problems but does not stifle investment by the industry. We do not want to create a regulated, stagnant industry that continues to offer consumers what they get today but has little ability to change with the times, offer new services, and compete with other segments of the telecommunications industry.

S. 12 does not strike a balance. It includes a number of punitive provisions that simply go too far. Rather than working to protect consumers, much of S. 12 seeks to resolve interindustry differences and conflicts in favor of cable's competitors. These and other provisions would create strong disincentives that would discourage industry investment in programs and technology. It is these provisions that I am concerned about. I support the provisions that seek to regulate basic rates and improve customer service.

SPECIFIC PROBLEMS WITH S. 12

RATE REGULATION

S. 12 would potentially expose virtually every service offered by a cable company to regulation. This approach goes too far. We have a responsibility to ensure that Americans have access to affordable information sources and there are services for which regulation may be appropriate. But there are also services that have never been regulated and, by any standard, are discretionary and hardly need regulatory oversight.

The more areas we open up to potential local regulation, the more likely we are to return to the unworkable system we saw before 1984 when local authorities kept rates artificially low and both consumers and the industry suffered as a result. If regulation of discretionary services proves unwieldy—as I fear it might—programmers will have little incentive to take the risk of developing new services. I do not need to remind my colleagues that consumers will be unable to obtain programming that does not exist at any price.

If we want to ensure that consumers will continue to have access to new programming, we should not take away the incentive to develop new programs. Let us limit rate regulation to the core programming that we want to ensure that all Americans have access to at affordable rates. Other services are discretionary and we should let the market set the rates just as the market sets prices for other forms of entertainment.

ACCESS TO PROGRAMMING

S. 12 would require cable networks to sell their programming to most anyone at the same price. Under this scheme, owners of intellectual property would no longer be able to control the distribution of their product. Think about what this means for the companies that have created programming. A company comes up with a program idea. It puts very substantial money up—often hundreds of millions—in a risky market to support the program service. As soon as a program becomes a success, competitors are at the door demanding access at Government set rates. It is easy to see how such a system would kill the incentive to invest in new programs. The result will be less choices for consumers in the future.

The access provisions are unprecedented in American business practice or copyright law. Journalists control what newspapers carry syndicated columns; broadcast networks control what stations can carry their programming; movie studios control who can distribute their product to the public. But S. 12 would take that right away from a cable programmer.

Rather than developing their own programs and offering viewers new choices, cable's competitors want Congress to require the cable industry to give them access to their programming. Moreover, cable's competitors want to legislate the price at which cable programmers must sell their programming. S. 12 would do just that, force cable operators to sell their programming at a fixed price to competitors, ignoring the rationale behind our intellectual property laws.

Program Access is also a solution looking for a problem. Alternative distributors already have access to virtually all cable programs and can provide them to consumers at prices competitive with cable. Consumers will not benefit from the program access provisions. Nor will the creators of television programming. But some middlemen, who made no creative contribution and took no financial risks to bring programming to viewers, will be enriched.

We should encourage the development of new programming to compete with cable, not legislate that all video services offer identical products.

OWNERSHIP RESTRICTIONS

S. 12 requires the FCC to limit the number of subscribers that any one cable operator can serve and the number of channels on which an operator can carry programming in which it has a financial interest.

If such limits are appropriate, the FCC already has the authority to impose them. But S. 12 requires the FCC to adopt them whether they are needed or not and ignores past FCC, Department of Justice, and National Telecommunications and Information Administration inquiries into this matter. These agencies have all determined that limits are not necessary at this time.

Yes, anticompetitive practices can result from horizontal and vertical in-

tegration. That is why we have antitrust laws and if cable companies are engaging in improper activities, those laws should be enforced. In addition, as the industry changes, we could find ourselves at a point where ownership restrictions are necessary. Before we decide to impose them now, we need to ask ourselves if we really have a problem today.

There are a variety of anecdotal reports about coercion and shakedowns. We have heard them from the sponsors of S. 12. These anecdotes certainly provide good theater and political ammunition. But should anecdotes drive policy or should we look to see whether a problem exists before we try and fix it?

In fact, the largest cable operator only serves about one-fifth of cable viewers, hardly an unusually large market share for an industry's leading company. And as far as vertical integration is concerned, more than 40 percent of cable programmers have no operator ownership interest and many of the ones that do simply would not exist if operators had not provided capital necessary for the service to begin or survive.

It is the very companies that would be hamstrung by these rules that have brought consumers the cable program services they so highly value. How does it make sense to say that Time-Warner, who invented services like HBO and MTV, can no longer invent new program services? It makes no sense. S. 12 would sharply reduce the incentive and ability of many cable programmers to invest in systems and programming.

RETRANSMISSION CONSENT/MUST-CARRY

The retransmission consent/must-carry provisions in S. 12 give broadcasters all the leverage in negotiating a relationship with a cable system. S. 12 provides broadcasters with a choice between the must-carry rules that require cable systems to carry local broadcast signals and a new retransmission consent right that requires cable operators to obtain the permission of a broadcast station in order to carry its signal.

Giving broadcasters their choice between retransmission consent and must-carry provides them with a tremendous advantage over cable. A popular broadcaster can use retransmission consent to obtain compensation from a cable system that carries it. When we look at the other side of the coin, an unpopular broadcaster that a cable system would rather replace with more appealing and profitable programming can use must-carry to remain on the system at no charge.

Standing alone, independent of each other, must-carry or retransmission consent may make sense. However, the combination of the two in S. 12 raises serious concerns. The retransmission consent and must-carry provisions could lead to higher basic cable rates and limit the ability of cable to finance new programming. Moreover, the provisions have a profound affect on copyright law that has not been fully evaluated.

CONCLUSION

Many elements of S. 12 are appropriate. We need to increase regulation of cable. The sponsors of S. 12 would like the debate on the alternative to focus on that question: Should we regulate cable? Framing the debate in this way allows them to avoid serious debate over the matters that are really at issue.

I am sure there are those in this body who want to see no legislation enacted. There certainly are some in the industry who feel that way. But I disagree. Let us pass a bill. But let us pass a balanced one that will not end the flow of new programming and technologies to America's television viewers. Many provisions of S. 12 would do just that and we should have a debate over those provisions.

At this point, I retain the remainder of my time.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Colorado has 16 minutes remaining under his control, and it is reserved.

Mr. BURNS addressed the Chair.

Mr. STEVENS. Mr. President, I yield the Senator from Montana 5 minutes on this issue.

The PRESIDENT pro tempore. The Senator from Montana is recognized for 5 minutes.

Mr. BURNS. I thank the manager of the bill.

Mr. President, I do not think there has been anybody in this body who has sat through more hearings, taken more testimony on any one issue than the chairman of this subcommittee. I think that the chairman would have to agree with me that most times it was just him and me. I do not know of another Senator who sat through more and asked more probing questions about this issue.

Wherever we go, we talk about the American economy and how flat it is and, yes, we are in a very stagnant economy. There would be those of us who would have some type of an idea on how we reached this point and what it is going to take to get us out of it.

I bring to the attention of the U.S. Senate a book that I received in the mail that came from the Office of Management and Budget. It is a very thick book, as one can see. It says "Regulatory Program of the United States Government from April 1, 1991 to March 31, 1992." It is 1 year of rules and regulations, 514 of them spelled out, that has an impact on our economy of $100 million or more per rule or regulation.

Then one would ask where has our economy gone? I suggest it makes very interesting reading on what we have done to the American economy through this body, and most of it has been done through rules and regulations.

Right now the citizens of this country are hurting. I just want to show my colleagues something of an industry that is still providing jobs, opportunity, and the impact that it has had since 1978. I direct my colleagues' attention to the growth in employment from 1978 to 1990. In 1978 there were 23,584 employees and in 1979, it grew. It still grew under the old regulation. But in 1984, whenever we deregulated, growth really took off. Now it employs some 102,656 employees.

Of that, the growth in opportunities and employment opportunities for the women of this country has increased some 41 percent—from 31 percent of its total employment in 1978, now 41 percent. In minority groups, it has doubled from 12 percent to 24 percent.

Those are startling figures in an industry that is moving ahead and still providing services to the consumer. And, yes, there would be those who want to receive it all for nothing. Something has to fuel the engine. Something has to drive it. What drives it is the ability to take advantage of opportunities for a host of people involved in programming, production, building physical plants, and providing the services to our customers.

Mr. President, what the Senator from Colorado has said all along is true. If it had been so bad, why has it grown so fast? And that is not a captive audience. I would imagine in most households, if it boiled down to having cable television or milk, I think milk would win. But the allowance of competition, or the threat of competition, does more psychologically in the marketplace to govern rates than we can do as a regulator or Federal Government.

The substitute is bipartisan. I have been told urgency sometimes is the greatest enemy to the important. This substitute was not ill-crafted. It still has the rebroadcast consent, must carry, for those broadcasters because I, for one, am a strong believer in free, over-the-air broadcast. It provided a great service for our communities across this country and basically, here we go down a road that will allow us not to compete.

I know if I was one of those regulated industries I would say OK, I will take regulation if you will keep competition out. Basically, that is what we are doing here. I am not going to worry about the kind of service I deliver if I do not have any competition. I am regulated. I can take my money, present my books to the local government entity, and be secure for the rest of my life and not progress like these folks have done, bringing services and a thousand services to our little communities in Alaska, in Montana, in Colorado, where before we did not have anything at all.

We have gone from, what, six channels in Billings, MT, when I first was a cable subscriber, that cost $7 or $8. Now we get 40 for $17 and a wide variety of programming that we would never have received unless the organization could progress.

Mr. President, I ask unanimous consent that statistics for Montana and national cable be printed in the RECORD.

There being no objection, the statistics were ordered to be printed in the RECORD, as follows:

STATS FOR MONTANA CABLE

TCI Cablevision of Montana, Inc. provides cable services to 130,000 customers in the State of Montana. We serve 34 communities in the state and employ a total of 217 people. Breakdown of 1991 statistics for the economic impact TCI has had in Montana:

Paid $1,211,971 in Franchise Fees to City Governments.

Paid $499,653 in Property taxes and vehicle licenses.

Salaries paid out: $6,373,745.

Employee Benefits: $329,604.

Payroll taxes: $637,845.

Approximately $400,000 paid out in advertising in various media throughout the state.

Breakdown of 1991 donations, public service participation and local involvement:

Total of $300,000 donated to State's METNET educational network for use in Distant Learning Project.

All schools in cable areas wired free of charge and given cable free of charge. Total of 108 schools.

Over $28,000 donated to State-wide Intermountain Children's Home for abused children.

$31,000 donated to local CrimeStoppers program in 17 cities, annual fundraiser for Muscular Dystrophy association was over $47,699.

Cable-in-the-Classroom materials provided to educators free of charge. Total to TCI $12,468.

Montana TCI Summary:

Covered live and cablecast across the State on TCI Cablevision, the State of the State address of Governor Stan Stephens.

Various State-wide statistics:

11 people hired to handle 24-hour State answering center located in Helena. Customers calls are now forwarded after local business hours to the regional center to talk to a trained TCI representative.

Calls answered in an average of three rings. If customer put on hold, average hold time in December 1991 was 12 seconds.

Rate analysis:

Following is a rate analysis for TCI Cablevision of Montana, Inc.

	Average number of basic channels/expanded basic	Average basic/expanded basic rate	Cost per channel
December:			
1986	16	$14.23	$.89
1988	23	15.75	.68
1991	17	18.65	.69

The Basic rate changed 31% between 1986 and 1991 or about 6.2% each year. Channels provided to our customers during the same period of time increased 69%, or 11 channels. Not only did programming increase over the years but the quality and types of programming provided to our customers increased dramatically.

NATIONAL CABLE STATS

Entering the 1990s, cable television has become part of the American mainstream. The majority of American households now subscribe to cable service. Viewing of cable originated programming is at an all time high and continues to grow rapidly. Industry revenues continue to increase at a pace exceeding 10 percent per year. As a result, the cable industry has established itself as a major force in the communications and media industries, while exerting a growing impact in the United States economy as a whole.

TOTAL IMPACTS

Cable television will contribute approximately $42 billion to the Gross National Product in 1990; directly and indirectly, the industry will provide 561,000 jobs, generating income of $18.2 billion.

Cable operator revenues in 1990 approximate $17.3 billion, providing direct employment to 101,400 people. Cable employee income totals $2.8 billion.

Cable industry suppliers employ an additional 69,000 persons in cable related jobs, with personal income of $2.4 billion.

Cable operator expenditures on personnel, and goods and services indirectly generate an additional 390,000 jobs as these dollars work their way through the national economy.

Direct cable operator employment has increased by nearly 14,000 jobs since Bortz & Company's 1988 cable impact study and by 24,000 jobs since 1986; total cable related employment expanded by 27 percent, or 120,000 jobs, over the 1986 to 1990 period. Cable related job growth is estimated to account for more than one percent of domestic employment increases since 1986.

Both direct and indirect cable employment is concentrated overwhelmingly at the local level, generating positive economic impacts through the 9,000 individual systems serving communities across the nation.

Cable's impacts are spread throughout all major sectors of the United States economy. The largest impacts overall are in the services, and transportation, communications and public utilities sectors, followed by trade and manufacturing.

OTHER CABLE INDUSTRY IMPACTS

In addition to the purely economic impacts described above, the cable television industry has fundamentally altered the manner in which most American households view television. Cable has established a level of programming quality and diversity that consumers are willing to purchase in a competitive environment:

Almost nine-tenths of cable subscribers now have access to 30 or more program channels; over one-fifth can receive 54 or more. By comparison, as recently as 1985, fewer than two-thirds of subscribers received 30 or more channels and less than 10 percent received 54 channels.

Basic (including superstations) and pay cable programming accounts for over 40 percent of viewing in the average cable home and nearly half of all viewing in homes with one or more premium cable services.

On a national basis, viewing of basic and pay cable programming has increased by more than 70 percent since 1983; viewing to network affiliated broadcast stations declined 15 percent over the same period.

Cable offers a wide variety of differentiated program networks, many targeted to specific interest or demographic groups. Examples include Cable News Network and Headline News, C-Span (coverage of the U.S. Congress and the political process), Nickelodeon (award winning children's programming), The Discovery Channel (documentaries), The Learning Channel (adult education and information), Black Entertainment Television and The Silent Network (programming for the hearing impaired).

In comparison with "regular TV", respondents in the 1989 Roper Report on Television described cable as having better quality programs, greater program variety, better entertainment and sports programs, and more educational, cultural and sports programs.

Mr. BURNS. Mr. President, I rise today as a original cosponsor and supporter of the bipartisan substitute and as an opponent of S. 12, the cable reregulation bill.

I have been hearing a lot of long-winded speeches over the past couple of days on why the Senate should pass S. 12, but I can sum up in three words why we should reject this anticompetitive bill, and those words are jobs, programming, and technology.

Because of the unintended adverse effect it will likely have on jobs, technology, and programming innovation by imposing yet another layer of stifling Government regulation without removing those artificial obstacles which preclude competition from developing, I oppose S. 12.

This adverse effect will have a long-term negative impact on our national welfare because it will substantially delay the development of an advanced telecommunications infrastructure essential to our long-term national prosperity and quality of life.

There are several fundamental flaws with S. 12.

First, in the stifling regulatory environment envisioned in S. 12, cable companies will be discouraged from investing in new, innovative programming and transmission technologies like fiber optics. The mere threat of such a regulatory regime had a negative impact on cable industry investment in 1990.

Cable industry capital expenditures fell by $268 million, or 13 percent from the previous year's level. This decline followed a trend of double digit increases following deregulation in 1984. This massive investment by cable has produced jobs.

Second, S. 12 fails to modify the existing disincentives in the Cable Act on telephone company investment in broadband technologies like fiber optics and cable companies will not be encouraged to launch a competitive effort into the telephone business. S. 12 does not even attempt to address the prohibition on telephone company provision of video programming.

Moreover, S. 12 does not sufficiently modify the existing treatment of the local franchise requirement which, in effect, results in an exclusive, monopoly license to provide video programming. Finally, S. 12 does not encourage the cable industry to advance technology innovations in competition with the local telephone loop through deployment of personal communications services. Let me briefly elaborate.

HISTORICAL PERSPECTIVE

Copyright legislation in 1976 and a Pole attachment statute in 1978 gave some impetus to the growth of cable. But it was not until 1984 that Congress found it necessary to enact comprehensive legislation to establish a national policy concerning cable communications to ensure that competing State and local regulation did not frustrate the availability of this service to the American people. The 1984 Cable Act has been a great success in achieving one of its major objectives the growth of cable television.

During the past decade, spurred by the 1984 Cable Act, the cable television industry has performed a tremendous service for our Nation. As the cable industry grew, Americans were given access to an unprecedented wealth of information, news, and entertainment. The cable industry has increased channel capacity and developed a host of unique services not previously available.

Moreover, in important areas such as education, TCI and other industry leaders have been instrumental in developing innovative distance learning programs, bringing together students and teachers when geographic location, jobs, or home responsibilities would otherwise make learning impossible. In short, cable television has been an American success story.

This success was achieved, in part, because Government policies encouraged investment and growth. Legislation now before the Senate, however, seeks to reregulate the cable industry and reverse the advances that have been made. I have been, and will continue to be, an outspoken opponent of the reregulation provisions contained in S. 12. The stifling regime envisioned by this legislation will discourage investment in increased channel capacity, in innovative programming, and in new transmission technologies such as fiber optics.

The technology of the Information Age will be developed, controlled, and exported by countries that encourage a steady stream of ideas and innovations in communications, not in countries that construct an array of regulatory obstacles and barriers.

Cable operators and programmers are preparing for the 21st century by continuing to expand viewer choices and to develop new technologies. S. 12 would not further these efforts; in fact, it would have a contrary impact. In the end, consumer choice could be drastically reduced. That is why I will continue to work to defeat this bill.

Rather than regulation, I actively encourage my colleagues to build on the great success of the Cable Act by enhancing competition, by removing artificial barriers to competition, and avoiding unnecessary regulation.

JOBS AND ECONOMIC IMPACT OF CABLE

S. 12 as drafted will, plain and simple, cost America jobs. And in light of the economic downturn we are experiencing today, that loss of jobs is a price too high to pay.

As a policymaking body, we have a responsibility to look at the cable industry and determine how we might resolve some of the problems with cable but strangling it with unnecessary, burdensome regulations is certainly not the answer.

Our Government is good at imposing regulations, and frankly, I am convinced that a major contributor to this recession we are experiencing today is unnecessary regulation that has strangled American business. Granted, some regulation is necessary in a free market economy. But last year the Federal Government implemented 514 "significant" regulatory actions, "significant" meaning those regulations likely to have an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effect on competition.

One recent comprehensive study conducted by Robert Hahn and John Hird from Yale found that the yearly societal cost of regulation is $300 to $500 billion. Regulation, down and dirty, raises costs, raises operating expenses, and raises the need for a business to make ends meet, often by laying off employees.

Right now, the citizens of this country are hurting. We have seen jobs lost in cities throughout America, jobs with law firms, retail stores, banks, real estate enterprises, car manufacturers, and the list goes on. One industry, however, continues strong employment during these trying economic times and that is the cable industry. Throughout the last decade cable employment tripled from 33,654 in 1980 to 102,656 in 1990.

And now we are thinking about committing "regulation strangulation" on this viable industry in an attempt to address what I believe are very legitimate concerns about cable rates, customer service, and the future of the telecommunications industry.

It is clear to me that we have got to fine tune the cable industry. The 1984 Cable Act is not perfect, but it has been successful in building more systems, developing more original programming, and creating more jobs. But there has also been increases in cable rates and decreases in responsive customer service, and it seems to me that lack of competition has fiercely aggravated this situation. By injecting real and meaningful competition into the cable business, we can force better programming, lower rates, improved services, and enhanced responsiveness.

The bipartisan alternative to S. 12 is designed to address the problems that exist in the cable industry through competitive, market-oriented policy without creating unnecessary and intrusive Government regulation. Frankly, this alternative is not a perfect bill either, but it is a more palatable approach to this Senator than the regulatory quagmire offered by S. 12.

EFFECTS OF REGULATION ON CABLE PROGRAMMING

When Congress passed the Cable Communications Policy Act of 1984, a primary purpose of the act was to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public." In meeting that goal, the Cable Act has been a clear success.

The number of cable program services has more than doubled since the Cable Act. Cable systems' expenditures for basic cable programming have risen from $234 million in 1983 to $1.4 billion in 1991. Statistics aide, any cable viewer in America can tell you that more cable networks exist and they are a lot better than they used to be.

The results of cable deregulation can be seen every day on the screens of Black Entertainment Television, the Discovery Channel, Arts and Entertainment, Turner Network Television, Cable News Network, the Family Channel, Nickelodeon, and a host of other basic cable networks. Viewers clearly have noticed the improvement. That is why basic cable's share of the total U.S. television audience has risen from an 11 percent of viewing in 1983 to a 29-percent share of viewing today. That this dramatic improvement of cable programming occurred alongside deregulation is no coincidence.

Turner Broadcasting is a clear example of the success of the Cable Act in programming diversity and improvement. Since deregulation, TBS has launched a new cable network, TNT, promoting diversity. And TBS programming on all of its networks has been allowed to improve. TBS' estimated expenditures on entertainment programming, including sports, grew from $45 million in 1984 to over $534 million in 1990. Made-for-TNT movies now typically cost $3 to $4 million to produce, as much if not more than the cost of broadcast movies.

In a recent Roper Poll, television viewers cite cable by 47 percent to 28 percent for regular broadcast television as having "lots of variety." Cable networks' growth is not just a result of greater cable penetration. From 1984 to 1989, viewing of basic cable networks more than doubled the rate of cable home growth. In the past 3 years, basic cable viewership growth outstripped cable home growth by four times. This growth must be attributed to both the increase in basic cable networks and the increase in original programming provided by basic cable programmers: Over a quarter of the highest rated basic cable programs, excluding sports, during 1990 were original cable productions. For example, premieres of TNT-original movies and miniseries garnered audience averaging

64 percent higher than nonoriginal programming aired in the same time periods in 1990 and 93 percent higher in 1991.

Despite the higher programming costs which go along with better programming, cost-conscious consumers have benefited. Improved basic cable allows subscribers to decrease their expenditures for pay services and to lower their overall cable bill, and many are. Pay cable penetration has declined for the past 3 years. And, while basic cable's share of viewing has doubled in the last 4 years, pay networks' share of viewing has declined slightly.

Yet, basic cable, including cable networks like CNN, Arts & Entertainment, and BET, is precisely the target for rate regulation under S. 12. The bill provides for rate regulation of the basic broadcast tier and, if less than 30 percent of subscribers take the basic broadcast tier, alone, for regulation of the next most popular tier. In other words, a cable network must choose between regulation or being placed on tier taken by less than 70% of subscribers. Since no basic cable network can afford to lose 30 percent of its customers base, no basic cable network, as currently configured, would be able to develop without regulatory restraints, responsive instead to the desires of the viewing public.

Unlike rate-of-return regulation under which a cable operator could mark up and pass through programming cost increases, the price-cap regulation in S. 12 would make programming improvements of existing cable networks and the creation of new cable networks extremely difficult. Yet, few would argue that the consumer's interest really is served by freezing the status quo of programming in place.

The tension between a programmer's desire to improve his product and a cable operator's desire to hold down expenses are present already in the marketplace and create extreme difficulties between operators and program suppliers. The cable operator's reluctance to spend additional money for programming is reinforced by the priority which local regulators assign to improvements in cable plant, service and other factors unrelated to programming.

Introduction of regulation in the equation is likely to tip the balance of cable operator incentives in a way harmful to programming development and, ultimately, consumer value.

At an average price of under $20 per month basic cable is still a good entertainment value, especially when compared to the price of taking a family of four to the movies, $18.99, or a baseball game, $32.36.

The exact result of the imposition of S. 12's rate regulation, which is far broader than what existed before the Cable Act, is impossible to quantify, but the history of cable rate regulation strongly suggest that programming quality improvement will be stunted or reversed.

I urge my colleagues to vote for the substitute and against S. 12.

CABLE INVESTMENT IN TECHNOLOGY

Finally, let me talk briefly about the impact S. 12 would have on cable industry investment in communications technology.

The cable industry has been at the forefront of advances in communications technology. Starting as a retransmitter of over-the-air broadcast signals, the cable industry pioneered the use of communications satellites as a distribution technology for entertainment and informational programming with the launch in 1975 of HBO's nationwide network via satellite.

The cable industry continues its advancement of technology by continually upgrading technical quality and capacity of the more than 11,000 cable systems in the United States serving over 60 percent of television households. Moreover, cable is exploring the latest innovative services that can be provided through the cable medium. In 1989, for example, the cable industry spent close to $1 billion rebuilding and upgrading plant and equipment, which was almost 73 percent more than the amount the industry spent improving its plant just 4 years earlier while still under rate regulatory constraints. This spending includes rapid growth in the application of cutting-edge technologies such as fiber optic technology and high definition television. Cable systems have also been expanding their service to more rural customers. While cable initially was only able to economically serve areas with an average population density of 60 homes per mile, due to industry research and development efforts since deregulation, cable systems can now serve areas with an average of 10 homes per mile, and in some cases areas with as few as 5 homes per mile.

Each of these technological advances would be seriously threatened if S. 12 were enacted in its present form. As I indicated earlier, the mere threat of deregulation had a dramatically negative impact on cable industry investment in communications technology in 1990.

CONCLUSION

Because of the negative impact it will have on jobs, programming and communications technological development, I urge my colleagues to vote for the substitute and against S. 12.

Mr. President, when I picked up my copy of the Wall Street Journal on Monday, I was surprised to read a lengthy and decidedly one-sided story about TCI, a company that operates a considerable number of cable systems in Montana. I was surprised because the Wall Street Journal's portrait of TCI as a villain does not comport with my experience with TCI in Montana.

I was even more surprised when I listened to opening statements in the debate on S. 12 and heard the Wall Street Journal article quoted as if it were Gospel.

Now, Mr. President, it is an unfortunate fact that every Member of the Senate has at one time or another been the victim of biased, uneven reporting. It is usually an unpleasant experience; but it goes with the territory. Sometimes, no matter how diligently you work with members of the press, they get things wrong.

As every Member of the Senate knows, there are two sides to every story and good reporters usually try to present both sides. But in reading the Wall Street Journal article about TCI, I searched in vain to find their side of the story.

In Montana, TCI has been an outstanding corporate citizen, as I have mentioned here on other occasions. Thanks to TCI, which years ago invested millions in cable systems and microwave relays around Montana, people all across my State were enjoying cable programming, educational broadcasting, and commercial broadcasting from distant placed long before people in Chicago, New York, or Washington had access to it. TCI is a significant employer in Montana, one that is flourishing in difficult economic times. The franchise fees paid by TCI cable systems—which last year amounted to $1,211,971—eased pressure on local communities to find new sources of revenue.

TCI is making major contributions to educational opportunities in Montana. They have wired 108 schools in my State for free and, through Cable in the Classroom, provided free programming for use as supplemental instructional material in these schools. Last year, TCI presented the State with a grant of $300,000 to further promote education.

I could go on, but in short, Mr. President, TCI has enriched the lives of the people in Montana and enriched the economy as well. It was for that reason that I was so surprised to hear Members of the Senate referring to this company in terms usually reserved for criminals, drug lords, or organized crime—citing as their reference this one-sided newspaper article.

Bob Thomson, Senior Vice President for Communications and Policy Planning at TCI, wrote me in response to the Wall Street Journal article with a series of facts I believe provide a more even view of TCI. I do not contend that TCI is flawless. They would be the first to admit they have made some mistakes. That is bound to happen when you are a leader in innovation and trying to stay that way. I think most of my colleagues would agree with me that, on balance, TCI makes positive contributions to the communities they serve in our States. Balance, however, is not something you will fine in this article of the Wall Street Journal.

I ask unanimous consent that this letter and explanation be included in the RECORD, and I urge Members to review it carefully before passing judgment on this company or the cable industry.

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

TELE-COMMUNICATIONS, INC.,
Denver, CO, January 27, 1992.

Hon. CONRAD BURNS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BURNS: The article in today's Wall Street Journal about TCI contains numerous errors of fact, mischaracterizations and distortions. We are providing you corrections of the inaccuracies in this article, as well as relevant material that Johnnie Roberts, its author, did not include or downplayed in his story.

The Journal has been working on this story for 8 months, during which TCI has provided extensive opportunity for Mr. Roberts to review relevant materials and meet with senior executives. Only during the last 2 weeks did he inquire about the 12-year-old Utah transactions. TCI provided substantial information on those transactions, but relevant portions were ignored.

TCI is an industry leader that has brought dramatic and largely favorable change in the important institution of television. Articles such as this, which highlight the few areas of controversy in a company's business while mostly ignoring the majority of its business that is conducted in peace, come with the territory. It is far preferable to live with such articles than to operate in a society where news organizations are broadly restricted in what they may publish. At the same time, however, we have an obligation to you and to ourselves to not let such inaccurate material stand unchallenged.

Very truly yours,

ROBERT N. THOMSON,
Senior Vice President, Communications and Policy Planning.

EXPLANATION

Home Shopping Network

Far from discriminating against Home Shopping Network, TCI remains HSN's largest television distributor. About 4,850,000 TCI subscribers get full or partial coverage of HSN programming over cable, and TCI considers its current business relationship with HSN to be cordial.

CNBC

Mr. Lawrence Grossman, once president of NBC news, is quoted as saying the NBC news channel "couldn't happen without TCI". In fact, the FCC concluded in a 1991 Report and Order that no single cable company, including TCI, had the power to make or break any new cable channel.

TCI helped jumpstart CNBC by selling it TEMPO, a 15-million subscriber programming service TCI then owned, and committing substantial carriage on its own systems.

As the article indicated, business relations remain cordial between NBC and TCI, and TCI is CNBC's largest, and one of its most supportive, television distributors.

1. PROGRAMMING

The WSJ article repeats several myths regarding programming investments made by TCI or its affiliated companies. Generally, TCI makes such investments to help ensure the strength of TCI's principal product. The total amount of such investments is small compared to our investments in cable plant and equipment, and, with the exception of ENCORE, which Liberty Media controls, TCI or Liberty do not have majority control or majority ownership of any nationally distributed programming service.

In some instances, TCI has funded programming services which were designed to appeal to niches in our customer base which were otherwise underserved. Black Entertainment Television is an example of this.

In still other instances, TCI acquired equity interests in programmers which represented extremely risky, extremely high-cost services which needed TCI's financial backing to cover extraordinary programming costs. The regional sports networks now owned by Liberty Media and TNT's acquisition of National Football League games fall into this category.

In addition, TCI's programming investments have, in several instances, resulted from the request by a financially-troubled programmer to lend extraordinary financial aid. The Discovery Channel and the Turner Broadcasting Services channels (CNN, Headline News, TNT and WTBS) are examples of this.

The following information bears upon the specific instances mentioned in the WSJ article:

The Learning Channel

As stated above, TCI does not have majority ownership or control of The Discovery Channel, one of the bidders for FNN—The Learning Channel.

Contrary to the WSJ's assertions, TCI did not decide The Learning Channel's programming was "just fine" after the Discovery Channel acquired it. In fact, TLC has been dropped on 33 TCI cable systems since Discovery acquired it.

On the other hand, Mind Extension University, a competitor education channel in which neither TCI nor any affiliated company has an interest, has been added in 123 TCI systems since the Discovery acquisition of The Learning Channel.

2. MORGANTON, NC

In 1986, the City of Morganton, NC declared its intention to own and operate a municipal cable system and denied TCI Cablevision of North Carolina's franchise renewal application. The city also refused to approve sale of TCI's cable operations in Morganton to other qualified companies.

Under these circumstances, TCI would have no alternative except to sell its business, including millions in fixed assets, to the City government at firesale prices.

Although the company's relationship with city governments are generally good, TCI intends to oppose this type of extreme municipal regulation wherever it occurs.

Many portions of the WSJ article dealing with Morganton were inaccurate:

1. Independent polls show that 79 percent of TCI's customers in Morganton are very satisfied or somewhat satisfied with TCI's cable service, and that an overwhelming majority of Morganton voters oppose city-owned cable. 40 percent said they were very satisfied compared to the U.S. average of 23 percent for all cable customers. TCI would have provided these facts to Mr. Roberts, had he told us of the incorrect allegations about TCI's customer service made by city officials.

2. TCI did support the successful circulation of a referendum petition in Morganton which would prohibit the City of Morganton from owning a cable TV system. However, the referendum, if approved, would not guarantee a franchise for TCI or any other cable company. Under the referendum, any qualifying company would receive a 15-year franchise, not just TCI.

3. TCI was not involved significantly in recent Morganton municipal elections, it did not spend $144,000 in connection with that election, it did not run three ads per day in the weeks preceding the municipal election, and no TCI official ever told Mr. Roberts that these allegations were correct or even had the opportunity to comment on them.

3. UTAH TRANSACTION

The WSJ has presented an inaccurate description of a 12-year old transaction involving John Malone, our president and Bob Magness, our chairman. The details of that transaction were approved by TCI's independent directors, fully disclosed in the company's SEC filing, validated by an outside appraisal and in the best interest of TCI and its lenders and investors.

4. LIBERTY MEDIA

The WSJ made numerous factual errors when describing the Liberty Media Corporation. Liberty has 2 TCI directors, not 5, as reported. Only one, not all, of Liberty's officers are TCI employees and that one (John Malone) serves on an unpaid basis. Descriptions of various stock options and put-call provisions fail to explain why those are necessary to protect the Liberty Media Corporation itself. Finally, it is not mentioned that TCI has retained only a 5-percent interest in Liberty after selling Liberty most of its programming interests.

Mr. BROWN. Mr. President, I thank the Senator from Montana for bringing this additional information to our attention. If true, the charges made by the Wall Street Journal are serious. Serious matters deserve a full consideration of all the facts, and both sides should be heard. As we all know, there are usually two sides to a story. The telecommunications policy of this Nation is very important, and should be based on all of the facts.

Mr. STEVENS. Mr. President, I yield myself just 1 minute.

The PRESIDENT pro tempore. The Senator is recognized.

Mr. STEVENS. I am sure the Senate realizes the distinguished Senator from Montana has been a great contributor to this debate. In particular, he has raised in committee the future entry of the telephone industry into the cable field. And, certainly with that potential out there on the horizon, we should not now extend to the cable industry the full regulatory powers that the Congress might be able to grant to the FCC. It makes no sense to reregulate the cable television field in light of the possibility of substantial competition from telephone companies. The issue of telephone entry I might add, will not be resolved either by the alternative or S. 12. I expect that it will occupy much of the Commerce Committee's time in this Congress and the next.

The PRESIDENT pro tempore. Who yields time? Time runs equally against both sides.

Time is running equally against both sides.

Mr. STEVENS. Mr. President, how is the time being charged now?

The PRESIDENT pro tempore. The time is being charged equally against both sides.

Mr. STEVENS. I thank the Chair.

Mr. INOUYE. Mr. President, it was not my intention to speak any further than the short statement I made this morning, but since we do have some time, if I may, I would like to take 3 minutes.

The PRESIDENT pro tempore. The Senator will be recoginzed for 3 minutes.

Mr. INOUYE. Mr. President, much has been said by my colleague from Colorado that if cable is so bad, why do subscribers pay for such service. Mr. President, in many cases they have no choice. It is either pay for cable or no television. And when a family gets accustomed to receiving news, entertainment, and other programs on television night after night, you cannot quite take it away from them suddenly. And in each case the rates have just crept up over 4 years.

I have a list of cities and States throughout the United States where rates have gone up over 150 percent in the last 4 years: Anaheim, CA, 171 percent, $9 to $24.42; Marin County, CA, 164 percent; Oroville, CA, 186 percent; Branford, FL, 214 percent; Jacksonville, FL, 179 percent; Orlando, FL, 163 percent; Chicago Heights, IL, 308 percent; Oak Park, IL, 366 percent.

And in all of these cases, Mr. President, it was not because of added costs or added channels. In fact, in most of these examples, the number of channels were reduced.

But if I may continue, West Chicago, IL, 207 percent; Bloomington, IN, 163 percent.

And as I go along, Mr. President, I think we should be reminded that in the same time period, the cost of consumer goods had gone up 16.9 percent—16.9 percent—as against Council Bluffs, IA, 189 percent; Shreveport, LA, 289 percent; Portland, ME, home of our leader, 169 percent; Boston, MA, 796 percent; Dearborn, MI, 157 percent; St. Paul, MN, 276 percent; Jackson, MS, 180 percent; Bergenfield, NJ, 372 percent; Syracuse, NY, 189 percent; Grand Forks, ND, 163 percent; Cleveland Heights, OH, 153 percent; Portland, OR, home of our author of the substitute, 150 percent; Haysi, VA, 180 percent.

And, Mr. President, as I indicated yesterday, our backyard, the congressional backyard, Montgomery County, MD, 1,394 percent; Charleston, WV, from the State of our distinguished President pro tempore, 259 percent; Eau Claire, WI, 206 percent.

Then, in Seaford, DE, 178 percent; Glendive, MT, 334 percent; Battle Mountain, NV, 158 percent.

These are just examples of how rates have gone up, and in each case, subscribers have no other choice. They could not have gone to some other cable operator, especially in rural areas when they raised it 5 percent per month or 2 percent per month. After a while, it becomes addictive.

I think it is incumbent upon us, Mr. President, to take a note of these outrageous rate hikes and do something about this.

I yield the floor.

Mr. KERRY. Will the chairman yield for a question for a moment?

Mr. INOUYE. Certainly.

Mr. KERRY. I ask the Senator what years those increases represented; from what year to what year?

Mr. INOUYE. 1986 to 1991.

Mr. KERRY. That was in the 1986 to 1991 period.

Mr. President, I yield myself 3 minutes.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized for 3 minutes.

Mr. KERRY. Mr. President, the Senator from Hawaii is absolutely correct. I want to take note of the fact that perhaps the largest increase that he talked about was in the capital of my home State of Massachusetts where the increase was almost 800 percent. Why? Because there was a significant increase in programming, a significant increase in channel capacity, and because the cable operator there started at an unrealistically low price of about $2 per month.

What you really have to look at, Mr. President, is not the increases over a 5-year period, but it is the total value. As the Senator from Colorado pointed out, on a per-channel basis, the cost increase is below the rate of inflation.

Indeed, let me discuss Hawaii's rate increases. Perhaps I can clarify what has really happened there. In January of 1989, Oceanic raised its basic rate $1.65, from $14.60 to $16.25. Then in March of 1989, an additional $1.70; it went up from $16.25 to $17.95. What was this for? The Senator from Colorado pointed out how, sure, it would be wonderful if everybody could get everything for nothing. It seems to be the new notion in America. But the fact is that for cable television, consumers are seeing increases below the rate of inflation.

Let me point out where the increases in Hawaii went: $1.25 of the increase was an access fee that cable was charged by the community, this equaled 3 percent of their gross revenues. This means that the cable system paid $39.5 million to the community over a 5-year period.

In total, they turn $600,000 a year over to the community. They did not pass through an additional $12.6 million in costs for access equipment, network, and so forth, costs that were imposed on them by the community as the price of the renewal of their license.

In addition, I might point out that I can give you the total breakdown of a $125.2 million increase in investment. Here is the breakdown. There will be a system upgrade from 36 channels to 46 channels by the end of 1992 at the cost of $27 million. There will be second system upgrade to 60 channels by 1998; at the cost of $40 million. Right there, you have a $67 million investment in equipment. It means jobs in Hawaii.

There is also, as I mentioned, an access fee of 3 percent. That comes to $39 million, out of pocket, which goes to the community. There is a franchise fee out of pocket, of $6.6 million, which also goes to the community. There is an access equipment expense, $10.8 million. This is not money in anybody's pocket, except the people who are selling the equipment.

Mr. President, I yield myself an additional 30 seconds.

The point that has to be made here again and again is that we are looking for effective regulation, not strangulation. You cannot just run around saying there has been a 200-percent increase; there has been a 400-percent increase. You have to measure what consumers are getting for their money and what the costs of competition are.

I respectfully submit that the most telling chart is a GAO study that shows that the price per channel has actually gone up slower than inflation.

I reserve the remainder of my time.

Mr. INOUYE. Mr. President, I yield myself 1 minute.

Mr. President, I reluctantly stand, since my State was mentioned, the State of Hawaii, and I realize that numbers can be used in any fashion.

In the case of Honolulu, in 1986, my constituents paid $12 for 30 channels—$12 for 30 channels. Today, they pay $12.95, not for 30 channels, but for 14 channels. Yes, they had their access fee, but they took away 16 channels. They not only made up for it. They made a few bucks on their side. Take the Island of Maui, a very important island. Consumers paid $11.56 for 34 channels in 1986—$11.56 for 34 channels. Today they pay $14.95 for nine channels.

The PRESIDENT pro tempore. Time is being charged equally against both sides.

Mr. INOUYE. Mr. President, I yield 5 minutes to the Senator from Illinois.

The PRESIDENT pro tempore. The Senator from Illinois [Mr. SIMON], is recognized for 5 minutes.

Mr. SIMON. Mr. President, I have not indicated to anyone, including my staff, until last night, how I was going to vote on this. I listened to both sides. Yesterday, I read through Monday's debate. Last night, I listened to Senator DANFORTH and Senator KERRY on that television set that we have a chance to view, in no small part thanks to cable.

I have come down on voting against the substitute. And I have come to that point with some reluctance, frankly, because to the credit of my colleague from Colorado, Senator TIM WIRTH, de-

regulation that we had for all of the abuses—and there have been abuses—has been massively successful. It has expanded cable in this country. How much, I do not know.

One of the interesting things, as I was reading over the various documents and statements yesterday, I came across statements of everything from 60 to 90 percent of the Nation being covered. I do not know who is right. There is no question that cable is doing a real job. And deregulation worked for this period of time. What has worked in the past, despite some abuses, is not necessarily what we ought to be doing in the future.

Second, let me pay tribute to cable for providing C-SPAN. I do not think there is any question that that has been a tremendous public service that has not cost the Government of the United States one penny, and it has educated people and permitted people to see what is going on in this country.

Third, on the positive side, a person who heads the cable industry in terms of a kind of umbrella organization, Jim Mooney, is, in my opinion, one of the real class people on the Washington scene. I have great respect for him. If I were to do this on the basis of personal friendship, I would be voting for the substitute rather than this bill.

If this bill were going to go back to the old days of local regulation completely, I would be voting against it, because, frankly, in too many communities it became a shakedown operation. I think it was a corrupting influence.

What finally determined for me how to come down—incidentally, as I listened to speeches—and I see my good friend from Missouri on the floor. As I listened to his speech and that of my colleague from Massachusetts last night, it sounded like there was a huge chasm between the substitute and the regular bill. I do not see that chasm as critically as my colleagues do as I analyze the substitute and the bill. One factor that I think is significant is the debt factor. One company, for example, Tele-Communications Inc., now is $9.8 billion in debt. The debt factor grew by a factor of eight in 1991 over 1990, if the material I have here is correct.

That seems to me not to be a healthy thing. And so some additional regulation is desirable to hold down making that apple quite as attractive to be picked off the tree and to increase debt, because ultimately, just using Tele-Communications Inc. as an example, who is going to pay the $9.8 billion? It is going to have to be the consumers who pay that.

There are still problems, no question, and problems that I do not see either bill addressing. I am not sure they can be addressed through legislation. One is in rural areas. I see the distinguished President pro tempore, and he comes from a State with a lot of rural territory, a State where I am confident there are a lot of people who do not have cable TV. We do not have it down in rural southern Illinois, where I live. I would like to see cable TV in some way—and maybe new technologies that are coming along with provide this—in these rural areas.

The second thing that is not happening, judging only by the city of Chicago, is that depressed areas within the city, the impoverished areas, are not being served as they should be. I understand the problems from an economic point of view and, frankly, even from a safety point of view for personnel. But that is a problem. I think there are pluses that may be in both bills, and that is to force the broadcasters and cable to get together. I can understand when the manager of channel 2 in Chicago says, "Cable has put me on channel 53," which is way out there, and he would like to negotiate something better. If this results in broadcasters hitting cable for excessive fees and then cable having to pass it along to the consumer, then, frankly, we are going to have to revisit this thing.

But, on balance, I think the debt factor that has to be passed along to the consumer suggests that restraint is in order. Kim Tilley, of my staff, who has been extremely helpful to me, has passed this article on. I think it is from the Washington Post. It says:

> Paul Kagan Associates Inc., a research firm, estimates that the total value of all systems sold in 1991 will top $8 billion, compared with $1 billion for all of 1990.

That indicates to me a trend that is not healthy. Who is going to pay for all of this debt? Only one person can pay for that debt—the consumer. Some greater restraint in this area is necessary. Both the substitute and the bill provide for some greater restraint. I think the bill, on balance, has a little more merit in this regard, and I am going to support it rather than the substitute.

I yield the floor.

Mr. STEVENS. Will the RECORD please show that Senator KERRY of Massachusetts controls 12 minutes more, and I yield 5 minutes to the Senator from Idaho [Mr. SYMMS].

The PRESIDENT pro tempore. The Senator from Idaho [Mr. SYMMS] is recognized for 5 minutes.

Mr. SYMMS. Mr. President, I thank the Senator from Alaska for the time. I will try to condense my remarks into 5 minutes and just say that I have reviewed the committee report and both the majority and the minority views on S. 12. I have read the analysis by the interested parties on both sides of this issue. And I have read the administration's very strongly worded position paper.

I rise to announce that I intend to vote against his bill, not out of lack of respect for Senators INOUYE, DANFORTH, and others who believe otherwise, but I just believe that we should allow technology to continue to work toward the competition that will ultimately be the solution to some of the complaints that people have about the current systems of cable today.

I can see that we are heading very rapidly into a day where we will have fiber options in every home in America, and when that happens you may have two or three cable companies you can bid from to get these services. So we are getting ready to legislate ahead of the technology and reregulate.

First, let me say I was proud to have been among the overwhelming majority of Senators who just, in 1984, supported Senator Goldwater's bill to approve the Cable Communications Policy Act. The Goldwater committee brought the bill to the floor with the stated goal of encouraging the growth and development of the cable industry and assuring that cable systems provided the widest possible diversity of information sources and service to the public.

Time has proven the clarity of Senator Goldwater's vision with respect to that important industry. We have seen it go from 37 million subscribers in 1984 to 55 million subscribers today. We have seen that growth. Multichannel video service is available to 90 percent of American households, compared to 70 percent in 1984. In addition, the cable industry has substantially increased spending to expand the channel capacity and has tripled annual spending on programming. In a very real sense the 1984 act has served its purpose.

Senate bill 12 is the direct result of hundreds, in some cases thousands, of constituents' complaints. That is the way the system in this country works. But the bill is comprehensive in that it addresses each of the major issues, including cable rates, customer service, vertical integration in the cable industry, some return for the use of broadcast signals, and the award of additional franchises. Unfortunately, with all but a few exceptions, I believe the committee has taken precisely the wrong approach to resolving these important issues.

The solution to monopolistic trade practices—unwarranted rate hikes, poor customer service, and the like—is more competition, not more regulation. Government cannot create competition simply by mandating that property owners sell to all comers. S. 12 would require most programmers, whose property is the program, to sell their programming to any qualified distributor. That will not create more competition and choice for consumers; it will only reduce the return to programmers and limit the incentive to invest in new programming and production technology.

In addition, S. 12 would require cable operators to set aside a percentage of

their channel capacity—their private property—for local broadcast signals. Not only do these must-carry requirements raise serious first and fifth amendment issues, but they will only preserve the status quo and do nothing to ensure that new technologies are developed to distribute those local broadcast signals and other video programming to viewers.

I think our effort here should be to enhance rather than detract from the incentives to invest in new programming and the means to deliver it to television viewers. Had the kind of regulatory regime prescribed in Senate bill 12 been enacted 8 years ago, we would not have had Cable News Network providing the great service they provide to the American people and to the world today. They have brought us live pictures of the attack on downtown Baghdad during the gulf war.

Would the Discovery Channel have brought science from the far reaches of space to the molecular vision of a microscope into our homes in a format that invites the attention of both children and adults? It would not.

The 1984 deregulation made it possible to bring all of this to us. C-SPAN II, Discovery Channel, A&E, and CNN all the result of an act of 1984, where we had been able to be successful in getting the financing and make those services available.

Let us not forget the wealth of knowledge and information made available to the Nation since passage of, and in no small measure because of, the 1984 Cable Communications Policy Act.

I might note that the CEO of CNN was Time's "Man of the Year" this year and I think it was well deserved, well deserved, that Mr. Turner had that award. It was much better than some of the other choices they have made in the past.

We ought to be building on that success by opening the market to telephone companies and others who can bring the benefits of fiber optics into our homes. We ought to make every effort to speed the development of high definition television and other technological advances that will allow for unfettered competition in the delivery of home video services, and make available more capital for investment in programming.

Mr. President, the administration strongly opposes this legislation. I find their views on this issue almost wholly in accord with my own, so I ask unanimous consent that the administration's policy statement be printed in the RECORD following my remarks.

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

(See exhibit 1.)

The PRESIDENT pro tempore. I commend the administration for taking a principled, if not entirely popular, position on this legislation. However, given the strong concern about vertical integration in the cable industry and the broad anticompetitive ramifications it may have, I urge the White House and the Department of Justice to look into the antitrust allegations raised in this debate and report to Congress on their findings. It is the only way those of us who believe in the long-term benefits of a free market will be able to answer those who claim that market dominance in the cable industry leaves us with no alternative but to intervene with the long and stifling reach of the Federal bureaucracy.

I urge my colleagues to vote against S. 12, and I pray technology will be given a chance to create true competition and new wealth before Congress intervenes to preserve what we have, and leave progress in telecommunications to our competitors around the world.

And I urge Senators to support the Stevens' substitute. At that point, I guess, Senators can make up their minds how they vote. I intend to vote against the entire package.

EXHIBIT 1

STATEMENT OF ADMINISTRATION POLICY

S. 12—CABLE TELEVISION CONSUMER PROTECTION ACT OF 1991

The Administration strongly opposes S. 12 because it would impose unnecessary regulation on the cable television industry. If S. 12, as reported by the Senate Committee on Commerce, Science, and Transportation, were presented to the President, his senior advisors would recommend a veto.

The Administration opposes S. 12 because it does not sufficiently emphasize competitive principles in addressing perceived problems in the cable television industry. It has been the Administration's consistent position that competition, rather than regulation, creates the most substantial benefits for consumers and the greatest opportunities for American industry. Television viewers are best served by removing barriers to entry by new firms into the video services marketplace. The Administration, therefore, would support legislation which removes the current statutory prohibitions against telephone company provision of video programming, with appropriate safeguards.

S. 12 would greatly expand regulation of cable rates. It would require regulation of cable systems by either the Federal Communications Commission (FCC) or the local government. The number of cable systems and variety of cable programs have grown dramatically in the absence of rate regulation. Reimposing rate regulation would both hamper the development of new products and services for cable subscribers and slow the expansion of cable services to areas not now served. If it finds that additional rate regulation is needed, the FCC can provide such regulation under current law. The FCC issued new rules in June, which are expected to increase substantially regulation of basic cable rates. The Administration believes that the rules should be implemented and reviewed before new and inflexible legislation is considered.

S. 12 would restrict the discretion of cable programmers in distributing their product. Exclusive distribution arrangements are common in the entertainment industry and encourage the risk-taking needed to develop new programming. Requiring programming networks that are commonly owned with cable systems to make their product available to competing distributors could undermine the incentives of cable operators to invest in developing new programming. This would be to the long-term detriment of the American public. If competitive problems emerge in this area, they can and should be addressed under existing antitrust laws.

S. 12 would also require limits on the number of subscribers that a cable operator may serve nationwide. This provision is objectionable because current antitrust laws are adequate to protect competition. Moreover, the FCC currently has authority to adopt ownership rules if it determines they are necessary.

Finally, S. 12 would require cable operators to carry the signals of certain television stations, regardless of whether the cable operator believes the stations are appropriate for inclusion in its package of services, and whether such inclusion reflects the desires and tastes of cable subscribers. The Administration believes that such "must carry" requirements would raise serious First Amendment questions by infringing upon the editorial discretion exercised by cable operators in their selection of programming. S. 12 was amended in committee to give television stations the option to choose "must carry" or to require that a cable operator obtain the station's consent to retransmit its signal. This amendment, however, does not address the serious First Amendment concerns noted here. While the Administration supports retransmission consent (without must carry), this should be coupled with repeal of the cable compulsory license.

The Administration supports Senate passage of the Packwood-Stevens-Kerry amendment as an alternative to the reported version of S. 12, because it woud eliminate or significantly modify many of the highly regulatory provisions of S. 12. Moreover, it would also remove one impediment to competition in the cable industry the exclusive local franchise. At the same time, the Administration wishes to work with the Congress to modify or eliminate some troublesome provisions that remain in the underlying bill. Such provisions include, for example, the lack of generalized telephone company entry provisions, reimpositions of "must carry" rules, the mandatory nature of rate regulation, the very narrow definition of "effective competition," and the administrative burden on the FCC.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. I am pleased to yield 10 minutes to my colleague from Washington.

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized for 10 minutes.

Mr. GORTON. Mr. President, earlier this morning I listened with great interest to the distinguished opening statement by the senior Senator from Colorado outlining the reasons for this substitute. I was stricken not only by his thoughtfulness and persuasiveness, but by a striking reaction on my own part to what this debate this morning is not about.

The Senator from Colorado made it very clear that it is not about whether or not there should be a degree of reregulation of the prices charged by

cable television companies because, of course, the substitute includes an authority to regulate the prices of cable television services. I may say, incidentally, that it allows that regulation only on service that for all practical purposes no one wants. But we are no longer debating whether or not there should be reregulation of cable television practices, only the degree of that reregulation.

I was also stricken by the proposition that what this debate is not about is about whether or not we should encourage more competition, whether or not we worry about monopoly. The substitute bill did include a couple of minor provisions encouraging competition, particularly in rural areas by telephone companies. As a matter of fact, we, on our side, thought those provisions so meritorious that we have now included them in S. 12 as the committee substitute is before this body, just as the proponents of this amendment have included many elements, including the one which started out by being controversial, retransmission rights, in their substitute. So, at least there is some approach from both directions toward a middle ground.

No, Mr. President.

Both sides in this debate expressed concerns about the monopoly position of cable television providers. The difference is that one side, the draft persons, draftsmen of S. 12, do something real about that monopoly, about consumer complaints. And the other side, the side of this substitute amendment, provides lip serve to that antimonopoly position.

Where the substitute allows regulation of the prices charged by these companies only essentially to over-the-air broadcasts, those broadcasts which an individual can receive for free by the use of an antenna, S. 12 allows regulation under guidelines set out by the Federal Communications Commission for the true basic service provided by cable television companies, that service which encompasses at least 30 percent of the purchasers of the service itself who are at the low end of both the cost and the service, that is to say number of channels provided spectrum. So that we have something which is real to control prices to those who either wish or can only afford what is truly basic service.

S. 12 really does encourage competition and it does so in two ways: The first way is that it removes the right to regulate as soon as real competition is in place in any market. It, therefore, gives some incentive to the cable television companies to stop obstructing competition and to start permitting the competition because then they will be unregulated.

Secondly, it does so by making programming available to those competing services on relatively reasonable grounds. It does not require the provision of all of the programming which cable now provides, but it provides for the reasonable terms and conditions from much of this programming.

So, Mr. President, the summary is that the bill as it is before us in the version from the committee will provide for real competition in the field which is now a monopoly, will provide for real and important regulation for our least-well-off citizens where there is no competition. The substitute, which is being proposed here this morning, gives lip service to both of those concepts but reality for neither. In my view, Mr. President, the substitute should be soundly rejected and the bill itself passed so that we can do something that our citizens want that will provide for competition in a free market system in a manner to which we all give lip service.

Mr. STEVENS. Mr. President, I yield myself 5 minutes.

The PRESIDENT pro tempore. The Senator from Alaska is recognized for 5 minutes.

Mr. STEVENS. Mr. President, it is with great regret that I find myself disagreeing with my friends on S. 12. To me, passing S. 12 would be like using B-52's over Baghdad instead of using the high-technology surgical strike aircraft that we did.

There is an opportunity now to vote for a balanced approach to the cable controversy. On the one hand, our alternative would free the cable industry's competitors of unnecessary regulatory burdens that impede their ability to compete.

For example, elimination of the 12-12-12 rule would permit the development of regional broadcast television operating networks that could take advantage of expanded advertising revenues and economies of scale that are necessary for over-the-air broadcasting to compete with cable.

Two aspects of S. 12 are of particular concern to me. Comprehensive rate regulation and program access.

I expressed my concerns at a prior time concerning program access and I would ask unanimous consent that we place those remarks in the RECORD after this statement.

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

(See exhibit 1.)

Mr. STEVENS. I have yet to hear an adequate justification for the all pervasive ratemaking regime suggested by S. 12. Despite protestations to the contrary, cable systems do not, particularly in urban areas, have anywhere near a monopoly on the provision of video programming. Cable movie channels, even those included in service tiers, face stiff competition from video tape rental stores and movies available on broadcast television.

Why then should the Senate embark on an all-out crusade to regulate rates charged for each tier of cable service—regardless of the size of the tier, the mix of services provided in the tier, and the level of competition faced by those services from other video programming sources?

Mr. President, we are not talking about telephone use minutes, gallons of water, or watts of electricity, the traditional subjects of rate regulation, but nonfungible video programming. S. 12 offers little guidance on how the FCC will implement what may amount to a brandnew form of rate regulation. The Commerce Committee report itself recognizes that—

> There is no history of established rates for cable services that is analogous, for example, to the process used for the telephone industry.

I ask unanimous consent that the portion of the report appearing on page 73 entitled "Section 5—Regulation of Rates" be printed in the RECORD at this point.

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

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

SECTION 5—REGULATION OF RATES

This section amends section 623 of the 1934 Act as follows:

Section 623(a) provides that no governmental authority can regulate the rates for the provision of cable service except to the extent provided in section 623. In addition, franchising authorities may regulate the rates for the provision of cable service, or any other communications services provided over a cable system, but only to the extent provided in section 623.

In the analysis of this section, when the Committee discusses the regulation of rates, it is referring to the retail rates charged subscribers. It does not refer to the wholesale rates paid to programmers by cable operators.

Section 623(b)(1) provides that the FCC shall regulate the rates, terms, and conditions for basic cable service on cable systems not subject to effective competition to ensure these rates are reasonable. The FCC's authority shall also extend to the rates, terms, and conditions for installation or rental of equipment, such as converters and remote controls, used for the receipt of basic cable service. If fewer than 30 percent of all subscribers to the cable system subscribe only to basic cable service, then the FCC may regulate the rates of the next priced service tier subscribed to by at least 30 percent of the system's customers.

The Committee recognizes that there is no history of establishing rates for cable service that is analogous, for example, to the process used in the telephone industry. This provision, therefore, gives the FCC broad discretion to ensure rates are reasonable. The FCC can establish rates by broad category and only deal with individual systems when special circumstances exist. In overseeing rates, the FCC shall ensure they reflect the number of over-the-air signals and other programming carried on the tier as well as other local circumstances.

In establishing these rates, the Committee intends for the FCC to take into consideration any impact on cable rates of the exercise of retransmission rights by broadcast stations pursuant to section 325 of the 1934

Act. While the Committee recognizes that the exercise of retransmission rights may impose additional costs of operation on cable operators, the Committee intends for the FCC to ensure that these costs do not result in excessive basic cable rates.

Section 623(b)(2) provides that the franchising authority may obtain this jurisdiction to regulate cable rates from the FCC, upon written request, if it adopts laws and regulations conforming to FCC procedures, standards, requirements, and guidelines. The FCC shall promptly review the franchising authority's written request to ensure that these State or local laws and regulations do in fact comply with its procedures, standards, requirements, and guidelines and that they provide a level of protection to consumers required by the FCC and that carry out the policy of title VI of the 1934 Act. Upon petition by a cable operator or other interested party, the FCC shall review the regulation of rates by a franchising authority. If the FCC finds that the franchising authority has acted consistently with its requirements, it can grant appropriate relief. If the FCC determines that State or local laws and regulations no longer conform to the FCC requirements, it shall revoke the authorization. The Committee does not intend that the FCC revoke the authority of franchising authorities for any minor variance with the FCC standards, but for inconsistencies that will adversely affect the integrity of the rate regulation process. The FCC shall restore a franchising authority's rate regulatory power revoked under section 623(b)(2) once the requirements of that section are satisfied.

Section 623(b)(3), a cable operator has no obligation to put programming other than retransmitted local broadcast signals on its basic service tier. Any obligation imposed by operation of law inconsistent with section 623(b) is preempted and may not be enforced.

Section 623(b)(4) requires the FCC to adopt regulations to implement this section within 120 days of the date of enactment.

Section 623(b)(5) states that a cable operator may file for a basic service rate increase, and such increase shall be granted if it is not acted upon within 180 days of the date of filing. Should the FCC or the franchising authority question the reasonableness of a requested rate increase in a timely fashion and request the cable operator to submit additional information, the cable operator may not delay in the submission of the information in order to have the rate increase automatically go into effect despite the concerns of the FCC or the franchising authority. Section 623(b)(5) does not prevent the cable operator from agreeing to extend the period for a decision on its request.

Section 623(c)(1) provides that, for systems not subject to effective competition, the FCC shall establish reasonable rates for cable programming services (other than basic service and except for that offered on a per channel or per program basis) if it finds the current rates are unreasonable. The FCC may act only upon a complaint that is filed within a reasonable time after a rate increase—no matter how minimal the increase may be—and that properly establishes that rates are unreasonable. Nothing in this legislation shall be interpreted as restricting subscribers, franchising authorities, or State officials from the submission of a complaint. The rates may be unreasonable prior to the passage of the legislation, and the Committee intends that these rates be subject to this provision. However, the FCC shall not review such rates until it receives a properly filed complaint. Prior to establishing reasonable rates, the FCC shall inquire of the cable operator as to the reason for such rates and then determine whether the existing rates can be justified by reasonable business practices. Nothing in this legislation shall be interpreted as restricting the FCC from ordering refunds to subscribers pursuant to its authority under 1934 Act, where the FCC finds that a rate is unreasonable.

"Unreasonable" rates are those that are above those that would occur under effective competition. The Committee derived this standard because it recognized that: (1) for cable systems not subject to effective competition, the degree of market power varies from system to system; (2) there is not a history of regulating cable's rates based on some systematic consideration of costs, rates, and returns; (3) even systematic regulation is not a precise science and imposes costs on consumers; and (4) national guidelines are required. The Committee therefore decided that it was best to include a standard that brought under government oversight those rates that are, with some certainty, unreasonable and above the rates for similarly situated systems.

In determining what constitutes a reasonable rate the FCC may take into consideration a range of factors including those listed in the discussion of section 623(c)(3) below.

Since the legislation permits cable operators to separate basic service from other cable programming services, during a transition time, there may be confusion as to what constitutes "a rate increase for cable programming services." For example, since cable programming service is defined to exclude both basic and per program and per channel offerings, a cable operator could argue that the price of programming previously bundled in an expanded basic tier, which is now separately priced under a regulated basic service tier, or at an unregulated per program or per channel rate, should not be considered in determining whether cable programming service rates have increased. Such an interpretation of the term "increase" would clearly thwart the intent of the legislation. That interpretation would permit cable operators to use monopolistic conditions triggering regulation to retier programming to avoid regulatory scrutiny.

To prevent this result, the legislation provides that a rate increase can be deemed to result from a change in the service tiers or a change in the per channel price paid by subscribers. For example, if a cable system charges $20 a month for a package or tier of 20 program services and the system then deletes 10 program services but the price remains $20, that would constitute a rate increase and a change in the per channel cost of the services offered in that package. This language is not intended to cover that situation where a cable operator increases the price of a service offered individually, not as a package containing other program services, such as HBO. The FCC should ensure that rates for similar programming are compared over time to determine whether cable programming service rates have increased.

Section 623(c)(2) provides that, within 180 days after the date of enactment, the FCC shall establish criteria for determining when rates are unreasonable and whether complaints filed within a reasonable time after a rate increase properly establish that rates are unreasonable.

Section 623(c)(3) states that, in establishing criteria for determining whether rates are unreasonable, the FCC shall consider any factor relevant to its public interest determination, including—

(A) the extent to which service offerings are offered on an unbundled basis;

(B) rates for similarly situated cable systems offerings comparable services;

(C) the history of rates for such services offerings of the system;

(D) the rates for all cable programming service offerings taken as a whole; and

(E) the rates charged for services with similar service offerings by cable systems subject to effective competition.

The listing of factors contained in this bill shall not prevent the FCC from considering: the number of signals included in a program package; the costs to the cable operator to provide those signals; compensation received for carriage of signals; local conditions that may affect the reasonableness of rates; and the costs of operation.

Section 623(d) provides that a cable system in a community in which fewer than 30 percent of the households subscribe to the cable system is deemed to be subject to effective competition. A cable system with penetration greater than 30 percent is subject to effective competition if there are: (1) a sufficient number of local television signals, and (2) the presence of an unaffiliated multichannel video competitor offering comparable service at comparable rates that is available to a majority of the homes in the market and is subscribed to by individuals in at least 15 percent of the homes. In determining whether a "sufficient number" of broadcast signals exists, the FCC should consider the number and technical quality of broadcast signals received in the community. The FCC shall periodically review and update the rules it establishes pursuant to this section to reflect changes in the communications marketplace.

Under section 623(e), cable operators must offer uniform rates throughout the geographic area in which they provide cable service. This provision is intended to prevent cable operators from having different rate structures in different parts of one cable franchise. This provision is also intended to prevent cable operators from dropping the rates in one portion of a franchise area to undercut a competitor temporarily.

Section 623(f) is identical to section 623(f) of the existing statute. See, the House Energy and Commerce Committee Report on the Cable Franchise Policy and Communications Act of 1984 (98-934), p. 68.

Section 623(g) defines the term "cable programming service" as all video programming services, including installation or rental of equipment used in the receipt of those services and rental equipment, other than those offered on the basic service tier and those offered on a per channel or per program basis.

This provision and section 623(c) demonstrate the Committee's belief that greater unbundling of offerings leads to more subscriber choice and greater competition among program services. Through unbundling, subscribers have greater assurance that they are choosing only those program services they wish to see and are not paying for programs they do not desire. With bundling, programmers have an incentive to spend more (for example, for certain types of sports programming) knowing that the cost will be spread across those who do not watch such programming. Contracts that contain provisions that restrict the offering of services on an unbundled basis can impede competition among video services and are inconsistent with the Committee's desire to promote competition.

The Committee also recognizes that there can be legitimate reasons, albeit limited, for

bundling. For example, there may also be a need to nurture certain offerings or help market them by exposing them to more subscribers. For example, the television networks carry this out by placing a new program between already highly rated shows. Many of these objectives could be carried out through means other than bundling large amounts of programs together, few of which any single subscriber wants.

Finally, it is important to note that only about one quarter of all cable systems are addressable, having the technology to isolate all channels. While this number will increase as new cable plants are built, there will still be, even in five years, a substantial number of cable systems that are not addressable. This will unfortunately inhibit the Committee's objective, and the Committee urges the creation of this capability.

In sum, one of the prime goals of the legislation is to enhance subscriber choice. Unbundling is a major step in this direction. Cable operators and programmers are urged to work toward this objective, while also seeking to accomplish other legitimate goals.

Section 623(h) provides that, within 120 days of enactment, the FCC shall establish standards, procedures, and guidelines to prevent cable operators from evading the rate regulation provisions of this section. This provision is intended to give the FCC the authority to address changes in the cable industry or the industry's business practices that would thwart the intent of this section.

Mr. STEVENS. Mr. President, I want to be sure that the courts know the vagueness of the standards set by the Commerce Committee in its own report. By the time the FCC and the courts get done cutting this reregulatory monster down to some more workable size, the impact on rates charged to subscribers could well be minimal.

On the other hand, the enormous uncertainty and disruption created by S. 12 is very likely to discourage the development of new cable programming services and interfere in cable operators' efforts to meet the demands of their subscribers.

In the opinion of the respected scholars Laurence Tribe and Robert Bork, S. 12's rate regulation provisions are also of doubtful constitutionality. A cable operator is a publisher and is entitled to the full protection of the first amendment just like a newspaper.

S. 12's rate regulation provisions, which are specifically directed at the programming aspects, or, more precisely, the speech aspects, of a cable system's operations would ultimately have to face stiff legal tests: Do they permit an impermissible discretionary review of a cable operator's editorial decisions? Are they a precisely drawn means of serving a compelling governmental interest? I believe S. 12's provisions fail to meet both tests.

Mr. President, the power to regulate is still the power to destroy. If Congress is to give the FCC the power to regulate this vibrant industry it should do so in a moderate fashion and delegate the full spectrum of its regulatory authority to an administrative agency only if it is demonstrated that moderate restraint cannot protect the basic interests of consumers.

Mr. President, the distinguished sponsors of S. 12 are genuinely concerned about the direction taken by the cable industry since the passage of the 1984 Cable Act, and they have put a great deal of effort into fashioning their bill. As much as I value my friendship with the sponsors of S. 12 however, I cannot support such a massively reregulatory piece of legislation.

S. 12 does not build on the success of the 1984 Cable Act, which led to a vast expansion in the availability of cable service and encouraged important new cable programming efforts. To the contrary, if is likely to impede the development of better cable service for Americans in the future.

The Packwood-Kerry-Stevens alternative to S. 12 offers a balanced approach to the cable controversy. On the one hand, it would free the cable industry's competitors of unnecessary regulatory burdens that impede their ability to compete.

For example, elimination of the 12–12–12 rule would permit the development of regional broadcast television networks that could take advantage of expanded advertising reach and economies of scale to compete more effectively with cable.

On the other hand, the alternative would address, in a straightforward and measured fashion, concerns expressed by cable subscribers in the areas of basic service rates, customer service, and technical quality.

Two aspects of S. 12 are of particular concern to me—comprehensive rate regulation and program access. I have described my concerns over program access before in this Chamber. Today, I will concentrate on comprehensive rate regulation.

S. 12 includes extraordinary broad lower tier and upper tier rate regulation provisions that would require the Federal Communications Commission to regulate the rates charged for nearly every video service offered on a cable system. The only services left unregulated would be those offered on a completely unbundled, a la carte perchannel or per-view basis.

I have yet to hear an adequate justification for this all-pervasive ratemaking regime. Despite protestations to the contrary, cable systems do not, particularly in urban areas, have anywhere near a monopoly on the provision of video programming. For example, cable movie channels—even those included in service tiers—face stiff competition from videotape rental stores and movies available on broadcast television. Why then should the Senate embark on all-out crusade to regulate the rates charged for each tier of cable service, regardless of the size of the tier, the mix of service provided on the tier, and the level of competition faced by those services from other video programming sources?

Just as importantly, how is the FCC supposed to implement legislation that would require it to review each and every rate increase in the upper and lower tiers of cable service?

We are not talking about telephone use minutes here or gallons of water or watts of electricity—the traditional subjects of rate regulation—but nonfungible video programming. S. 12 offers little guidance on how the FCC is to implement what may amount to a brandnew form of rate regulation. The committee report itself recognizes that "there is no history of establishing rates for cable service that is analogous, for example, to the process used in the telephone industry."

Under S. 12, the FCC is not bound to follow traditional rate regulation models in regulating cable. It has the discretion either to pick a reasonable rate based on a cursory examination of general pricing trends in the cable industry or to evaluate the specific circumstances of a particular cable system.

By the time the FCC and the courts get done cutting this reregulatory monster down to some more workable size, the impact on rates charged to subscribers may well be minimal. On the other hand, the enormous uncertainty and disruption created by S. 12 is very likely to discourage the development of new cable programming services and interfere in cable operators' efforts to meet the demands of their subscribers.

Finally, Mr. President, in the opinion of respected legal scholars like Laurence Tribe and Robert Bork, S. 12's rate regulation provisions are also of doubtful constitutionality. A cable operator is a publisher entitled to the full protection of the first amendment just like a newspaper publisher.

S. 12's rate regulation provisions, which are specifically directed at the programming aspects—the speech aspects—of a cable system's operations, would ultimately have to pass stiff legal tests. Do they permit an impermissable discretionary review of a cable operator's editorial decisions? Are they a precisely drawn means of serving a compelling governmental interest? I believe S. 12's provisions fail both tests.

S. 12 requires the FCC to decide whether a cable operator's decision to charge a particular rate for a particular bundle of programming services is reasonable in some broad sense. Since S. 12 does not require the FCC to take the price paid by the operator for a particular service as a given, the FCC or a franchising authority apparently could decide that the operator is paying an unreasonable price for ESPN or Home Team Sports and adjust the rate charged for the tier accordingly.

The FCC or a franchising authority apparently could also decide that the

rate charged for a particular bundling of services on a tier was unreasonable because in its judgment, the majority of subscribers to the tier were being forced to pay for services like ESPN or Home Team Sports that they rarely watched and again adjust the tier rate accordingly.

Clearly, this sort of review involves second guessing the editorial judgment of a cable operator. The operator's determination of what services are important enough to its subscribers to pay a high price for and its determination of what packages of services should be presented to its subscribers are editorial decisions, which are not open to casual, discretionary review by Government authorities.

As far as the second test is concerned, putting aside the question of whether the courts would accept the various market power justifications offered by S. 12 for comprehensive rate regulation as compelling governmental interests, the fact is that S. 12's provisions are not precisely drawn.

The committee report on S. 12 is clear on this point. In both lower tier and upper tier rate regulation, the FCC is not bound to follow the traditional rate regulation model, which involves a "systematic consideration of costs, rates, and returns." Rather the FCC is encouraged to "establish rates by broad category and only deal with individual systems when special circumstances exist" and to deal with broad public interest considerations. Careful, disciplined analysis of the specific circumstances faced by a specific cable system in the provision of cable service is permitted, but not required.

Mr. President, I cannot imagine an approach more likely to raise concern in a court's mind. S. 12 mandates the FCC and franchising authorities to produce reasonable—or to be more accurate, lower—rates without any real consideration of the potential impacts of their regulatory efforts on protected speech.

This constitutional problem is exacerbated by the fact that the Federal Government itself is impeding the development of competitive forces that would address lingering concerns over market power in the cable industry without impinging on the first amendment. Broadcasters are subject to a series of obsolete regulatory burdens such as 12–12–12. In most of the country, local telephone companies are precluded by an act of Congress from entering the cable business in their service areas.

I believe Mr. President, that S. 12's comprehensive rate regulation provisions are subject to serious attack on constitutional grounds. Our alternative's more moderate approach, which would limit rate regulation to the basic tier and embrace more traditional rate regulation models, is far more likely to pass muster.

Mr. President, for the reasons stated so succinctly by Senator PACKWOOD during the debate over this bill and my prepared statement, I take the position that S. 12 is unconstitutional. As far as program access is concerned, the Commerce Committee report makes clear that new section 640(b), which S. 12 would add to the Communications Act, would require an integrated cable operator/programmer to make its programming available on similar terms to all cable systems. This is an unprecedented affirmative obligation to deal. It forces a speaker protected by the first amendment to speak and, therefore, raises profound constitutional concerns.

Furthermore, Mr. President, it is my belief that S. 12's rate regulation provisions are not precisely drawn enough in order to avoid a court decision that it is unconstitutional.

The Commerce Committee report is clear that in both lower tier and upper tier rate regulation, the FCC is not bound to follow the traditional rate regulation model, which involves a systematic consideration of costs, rates, and returns. Under this bill, the FCC is encouraged—I am quoting the report now, "to establish rates by broad category and only deal with individual systems when special circumstances exist" and to deal with the broad public interest considerations. Careful, disciplined analysis of the specific circumstances faced by a specific cable system in the provision of cable services is permitted, but not required.

I cannot imagine an approach more likely to raise concern in any court's mind. S. 12 mandates the FCC and franchising authorities to produce reasonable—or, really, to be more accurate, lower—rates without any real consideration of the potential impacts of the regulatory effort on protected speech.

Mr. President, the constitutional problem is exacerbated by the fact that the Federal Government itself is impeding the development of competitive forces that would address lingering concerns over market power in the cable industry without impinging upon the first amendment. We have said broadcasters are subject to a series of obsolete regulatory burdens such as 12–12–12. In most of the country, local telephone companies are precluded by an act of Congress from entering the cable systems.

I believe, Mr. President, that S. 12's comprehensive rate regulation provisions are subject to serious attack on constitutional grounds. Our alternative's more moderate approach, which would limit rate regulation to the basic tier, as explained by Senator PACKWOOD, and embrace more traditional rate regulation models, I think would pass muster in the courts in terms of the constitutional process of judicial review.

EXHIBIT 1

CABLE REREGULATION

Mr. STEVENS. Mr. President, over the weekend I had the occasion to see our great friend, the former Senator from Arizona, Senator Barry Goldwater. In discussing many things with him, I found that he does sit late at night once in awhile and watch the Senate when it is in session. I hope my friend is watching back there in Arizona now again because after the conversation with him we started thinking about some of the things we worked on, and in particular I started thinking about the cable deregulation bill that Senator Goldwater managed here on the floor 6 years ago.

Mr. President, 6 years ago, Congress initiated a dramatic change in national telecommunications by enacting legislation to substantially deregulate the cable television industry.

At the time of the passage of the Cable Communications Policy Act, many experts felt that the cable industry was in decline—its effort to wire America's big cities was in disarray and cable programming services were failing because of low ratings and revenues, some went so far as to suggest that cable faced an impossible catch 22—it couldn't attract more subscribers without better programming, and it couldn't afford to develop better programming without more subscribers.

Many doubted that the cable act would resolve these problems. They were wrong.

Over the past 6 years, cable has grown enormously. The number of basic cable subscribers has grown from 37 million in 1984 to 49 million in 1989. Those subscribers enjoy a far wider variety of programming services than they did in the early 1980's. Unlike over-the-air broadcasting, cable has been able to provide specialized services so a subscriber can get more of the specific kind of programming he or she wants—whether it be coverage of the proceedings of the Senate and the House, home shopping, 24-hour news, documentaries, music videos, or classic movies.

These major advances haven't come without a cost. According to the General Accounting Office, the average subscriber's monthly bill rose 14 percent—8 percent in constant dollars—during the period of 1986 through 1988, with an increase of 26 percent in basic rates.

All of us are concerned about the rates our constituents pay for important services, particularly this Senator. My State has very high basic cable rates.

Before we conclude, however, that the cable industry has been systematically gouging the consumer, let's look at a few additional facts. First, in 1972 the average monthly basic cable rates was $5.85. If basic cable rates had kept exact pace with inflation since that time, the average monthly price in 1988 would have been $16.54. The actual average price was $14.77—12 percent less. This strongly suggests that much of the post-cable act rate increase was related to cable's effort to catch up with inflation after years of local regulation that kept both cable prices and cable services artificially low.

Second, the average basic cable subscriber in 1972 received five to six channels. The average basic cable subscriber in 1988 received more than 30 channels—a 500-to-600 percent increase in service without a corresponding increase in price.

Third, the latest price information indicates that cable rates are stabilizing. In 1989, average cable prices went up only 3.8 percent

while the overall Consumer Price Index rose 4.6 percent.

Mr. President, the cable industry isn't perfect—some cable operators have gouged their subscribers, the industry as a whole has had major customer service problems over the past 6 years, and there is continuing concern over the fairness of its relations with current and potential competitors. In dealing with an industry that has begun to mature in a real sense only in the past 6 years, however, Congress should move with caution.

We need to distinguish between transitory problems and long-term problems. We need to make sure that in reacting to today's complaints, we don't sacrifice the benefit that a strong cable industry can offer to tomorrow's consumer.

I want to express my appreciation to Senator Hollings, the chairman of the Commerce Committee, Senator Danforth, the ranking Republican on Commerce, and Senator Inouye, the chairman of the committee's Communications Subcommittee for their efforts over the past several months to examine complaints about the cable industry and evaluate possible changes to the 1984 cable act. I believe that it is important for the committee to move forward with a moderate cable bill this year. Continued uncertainty over the fate of cable legislation does not serve the interest of the general public, which wants and needs additional mass media services.

With regard to a potential cable bill, there are some issues that deserve special mention.

First, after deregulation, most cable systems eliminated the so-called purchase option that had allowed subscribers to receive—at a fairly low price—local over-the-air broadcast television signals and public, educational, and governmental access channels. This forced subscribers to purchase either a larger and more expensive basic service package or terminate cable service altogether.

This inexpensive option—perhaps with the addition of C-SPAN I and II—should be restored, and the Federal Communications Commission should be authorized to set up a system to regulate the rate charged for this service. Not everyone wants all the programming offered by the cable industry, and they shouldn't be forced to pay for what they don't want.

Restoration of the purchase option—I sometimes call it basic-basic service—would give all residents of a given cable franchise area access to the cable system at a reasonable rate. It would also help discipline the pricing of the other services offered by the cable operator. If those services are too expensive, subscribers could opt for basic-basic service without having to terminate cable access altogether.

Representatives Dingell, Lent, and Rinaldo have proposed one version of a basic-basic service package in a staff draft that has been circulated over the past couple of weeks. I recommend that Members of the Senate review their proposal.

Second, as a long-time supporter of must carry—the mandatory carriage of local commercial and public broadcast stations by cable systems—I believe that any cable bill should include codification of the must carry concept. The courts have struck down the FCC's efforts to require must carry by regulation. Congress should act to help preserve the essential services that free over-the-air broadcasting provides in rural and urban America. There is no reason to delay action on this important issue.

Third, there has been a lot of discussion of the question of programming access. In its strongest form, programming access would require all video programmers, whether or not affiliated with cable system operators, to make their programming available to any and all multichannel video distributors. Price differentials would be almost wholly prohibited.

The underlying premise for this concept appears to be that there is a limited, static block of programming available in America and that it is the task of Congress to dole out this limited resource to various delivery services. This premise doesn't sustain analysis.

Over the past decade, programming choices have mushroomed. The cable industry has more than doubled the number of specialized cable networks, and neighborhood stores offer for sale or rental videocassettes of everything from movies to exercise programs to financial planning seminars. Unless Congress throws a monkey wrench into the market, programming choices will continue to expand.

The recent versions of programming access are just such a monkey wrench. It would overturn decades of public policy. Prohibiting exclusive programming contracts will radically reduce the upside for the developers of programming. It means that when they have a success, they'll have to share the benefits in a way that will drastically reduce the return on their investment of time, talent, and capital. When they have a failure, and programming is a notoriously risky business, they'll continue to bear the burden alone.

It doesn't take an economic wizard to figure out that given this change in incentives, programmers and the people who finance them will spend less on programming development and will be more conservative about what projects they pursue. I don't see the benefit to consumers from reduced and less diverse programming, and I certainly don't see the Federal government's stepping in to replace the capital that the private sector pulls out of programming.

I'm as concerned about making programming available to rural Americans and encouraging the development of new technologies as anyone in the Senate. A large part of my career has been spent working to ensure that rural Alaska is not left behind as our Nation's telecommunications system moves into the 21st century. But, the programming access proposal is much more likely to retard the development of new programming and reduce incentives to meet rural America's needs. I think Congress should think very carefully before it grants what amounts to a major public subsidy to selected programming distributors and technologies.

Mr. President, in this debate, the cable industry's interest isn't paramount. Neither are the interests of the broadcasting industry or any other specific party. We have an obligation to fashion communications policy that furthers the general public's interest in more programming choices at reasonable rates. I believe that we have an opportunity this year to make progress toward this goal, but only if we forego the temptation to make radical policy changes without understanding their consequences. The cable industry needs guidance, and the broadcasting industry needs fair access to the consumer. We can provide both without sacrificing the progress made over the past 6 years.

But I am one who believes that Congress should take some time to act upon a bill to eliminate some of the uncertainties that exist in the cable field today. There are changes that we need to make if we are going to continue to make progress in that area.

I welcome any comments that my colleagues have to make concerning the suggestions I have made, Mr. President.

Mr. STEVENS. Mr. President, I want to reaffirm my support of the must-carry/retransmission consent option found in S. 12 and the Packwood-Kerry-Stevens alternative. This proposal is a positive and minimally intrusive method of balancing the competing interests of the broadcast and cable industries.

Must-carry serves a compelling Government interest in ensuring that local viewers retain access to local broadcast television stations—access that is essential to preserving the economic viability of local television broadcasters and the local programming they provide.

Our system of broadcasting is predicated on the service local broadcasters provide to towns and communities across this country. It is the most basic requirement of their license. Without must-carry, many local stations will lose their ability to reach cable subscribers, a loss that erodes their ability to attract advertising dollars—the mainstay of free, over-the-air television. I want to congratulate Senator INOUYE for developing a must-carry proposal which respects and protects the first amendment rights of cable operators while still meeting the broadcaster's need for access to the viewing public.

Retransmission consent is a newer proposal that has sparked a great deal of concern on the part of the cable industry—concern that in my opinion is exaggerated. Retransmission consent establishes, for the first time, the opportunity for two established industries, on a market-by-market basis, to negotiate a mutually beneficial arrangement concerning carriage, channel position, and other, cooperative ventures. It does not require an agreement; it imposes no tax, fee, or surcharge on cable operators or cable customers. It forces nothing on the cable operator. Retransmission consent recognizes the value to the broadcaster of the programming it has packaged in a complete programming day and broadcast. By allowing the broadcaster to control who may make use of this broadcasted programming, retransmission consent reduces Government intrusion in the video programming marketplace.

We all recognize that cable television and broadcasters are competitors in the video marketplace. We also know that over two-thirds of all viewing by cable subscribers is of local, over-the-air television. This has set up a situation where a popular broadcaster may wind up subsidizing its cable competitor in its programming and marketing efforts.

I am convinced that retransmission consent is a procompetitive proposal that will help to provide a measure of balance that is currently lacking.

Mr. INOUYE addressed the Chair.

The PRESIDENT pro tempore. The Senator from Hawaii.

Mr. INOUYE. I yield 10 minutes to my friend from Connecticut.

The PRESIDENT pro tempore. The Senator from Connecticut [Mr. LIEBERMAN] is recognized for 10 minutes.

Mr. LIEBERMAN. I thank the Chair, and I thank my distinguished colleague from Hawaii.

Mr. President, I rise today in support of S. 12 as reported by the Commerce Committee, and in opposition to the substitute offered by Senator PACKWOOD and my other colleagues.

Mr. President, we are facing a terrible recession here in the United States today in which many ordinary Americans are having a tough time making ends meet. Just a couple days ago, in his State of the Union Address, President Bush challenged all of us here in Congress to put aside partisan differences and work together for the good of the country.

Well, Mr. President, now is the time to start, and this bill is the place, because S. 12 will save money for ordinary consumers. It will rein in what the U.S. News and World Report just this week calls a hidden monopoly that gives American consumers a monthly zapping. Only S. 12—and not any weaker alternative—offers real protection for those who have had their pockets picked by annual cable rate increases that are two or three times the rate of inflation. This bill also takes steps to bring needed competition to the cable industry.

We all should agree that if local cable was not a monpoly, if there really was competition between two or more cable-like services in most areas of the country, we who advocate S. 12 would not be here today. Competition—not Government regulation and not monopoly control as it exists today—is the best regulator of the marketplace. Real competition will lower prices and promote a high level of customer service, and ensure that consumers have a wide range of video alternatives available to them.

But unfortunately, today the vast majority of Americans have no choice at all between cable providers. Almost everywhere, the local cable company is the only provider of cable-type services. There is no competition: no competition to check the behavior of cable monopolists; no competition to keep prices down, and to keep services up.

Mr. President, under our system of Government, State and local governments usually can step in to place limits on a monopolist even if the Federal Government will not act. I say that from experience have been privileged to serve as attorney general of my State before coming to the Senate. But that is not the case with cable. Starting in 1984, Congress and the FCC decided to deregulate virtually all cable systems and services in the United States. Prior to that, we had a system in which States and localities had granted de facto monopoly franchises to the cable companies and then understandably set up a system to regulate their price and quality.

Then Congress came along with a usurpation of the State and local authority and banned the States and local governments from regulating any cable service except those that the customer could get with an antenna—which Congress called basic cable service—and it allowed basic cable to be regulated, even that lower tier, only in the absence of effective competition.

The FCC then halted even that modest amount of regulation by declaring that effective competition existed wherever the consumer could receive three over-the-air television stations. Mr. President, honestly, that was like saying the Pony Express was an effective competitor to the iron horse. Cable was free to charge as much as it wanted, without threat of regulation or the competition of a marketplace.

It is no surprise what happened to rates as a result. According to the GAO, since deregulation became effective at the start of 1987, the price of the most minimal cable package available jumped 56 percent. Subtracting out inflation, that is a real price increase of 32 percent. The price of the most popular package of services, what consumers really know as cable, jumped a whopping 61 percent. In fact it led the Department of Justice to conclude in one study that at least 40 to 50 percent of these rate increases were attributable to cable's monopoly power. That is our Department of Justice.

A key component of cable's monopoly power is the fact that it is the only place in town to get the nonbroadcast programming that has proliferated in the last decade. After all, if all you want to watch on your television is the networks and PBS and a few UHF independents, in most areas all you have to do is attach your antenna because you get those free off the air. There is no need to pay a cable company $20 a month just to get these.

But if you want to watch sports on ESPN, music videos on MTV, children's programming on Nickelodeon, news on CNN, or Congress on C-SPAN, you have to buy cable—and you have only one place to get it. The fact that cable is the sole source for this programming in most communities is a key to its ability to continue to extract higher and higher prices from consumers.

Current law does not recognize this reality. Under the 1984 Cable Act, even in the absence of effective competition, only the tier containing the local broadcast signals can be regulated, and that is an important point. As the Department of Justice itself has observed in comments filed with the FCC, "cable services offered outside of the basic tier may not be subjected to rate regulation even if those services are found to be the sole source of significant market power possessed by local cable systems." No nonbroadcast services can be regulated unless they are packaged with broadcast channels.

This gives cable monopolists a giant loophole. They can avoid regulation of the prices charged for their most popular programming, such as CNN, MTV, and ESPN, simply by putting these services in a separate tier where they still face no effective competition. Then, as the FTC staff observed in comments to the FCC, "their market power will be largely unchecked."

Cable is already busy exploiting this loophole. GAO reported that in 1990, the number of cable systems offering two or more tiers jumped from 16.6 to 41.4 percent. And, as the Wall Street Journal reported 2 weeks ago, upper tier subscribers continue to face significant rate increases which cannot now be controlled under any legal circumstances by the FCC or by franchising authorities. The result was summed up by an FCC official: "It's annoying to the consumer because what they want isn't regulated. * * *"

The substitute to S. 12 would only perpetuate this error in current law and give no real protection to consumers. Under the substitute, only the tier that contains local broadcast channels—that is the local broadcasts and networks that the consumer can get with an antenna free of charge—C-SPAN, and local public access, could be regulated.

If current experience is a guide, this is a tier that, by itself, is substantially less than 10 percent of what cable consumers want. That is what the marketplace shows. And cable companies, if the substitute were adopted, would be free to charge whatever they want for all other services including the upper tiers, which are really what most people think of as cable, with services such as CNN, ESPN, MTV, and the like.

It does not take a rocket scientist or a high level economist to see what is going to happen if this proposed substitute becomes law. While regulators are going to hold down the rate for the basic tier, the rate for the services people really want on cable—services like CNN, ESPN, MTV—are going to continue to rise and there will be nobody to stop that rise.

GAO is going to come back to us, year after year, to tell us that the price of enhanced basic continues to rise many times beyond inflation. Consumers' wallets will continue to be grabbed—and we in Congress—unfortunately, if we adopt this substitute—will again have sanctioned this financial mugging.

S. 12, on the other hand, promises real reform. Under S. 12—and not the substitute—the FCC will have the authority to protect consumers against unreasonable, monopoly cable rates for both broadcast channels and the nonbroadcast, enhanced basic packages—such as tiers of CNN, MTV, and ESPN—that consumers want to buy. S. 12 will close the retiering loophole. Cable operators will not be able to use a tier of the most popular cable offerings simply as a device to avoid rate regulation and continue to gouge consumers.

I know some have argued that we should forgo rate regulation now and wait for competition to develop, perhaps helping competition along by allowing the telephone companies to develop cable-type services or by pushing franchising authorities to authorize more cable overbuilders. But competition and the interim rate regulation of S. 12 are not mutually exclusive options. By sunsetting rate regulation when effective competition emerges, S. 12 demonstrates our preference for competition.

I do not oppose taking steps to increase competition and lower the barriers to entry by cable's competitors. Indeed, I support the provisions of the bill that seek to do this, such as the programming access provisions. Lowering barriers to entry is the key to allowing real competition to develop in this industry.

But let us face it. Full fledged competition is not going to be here next month, or even next year. It will be years, if not decades before the telephone companies have rewired their service areas for video services. Direct broadcast satellite [DBS] services are still at least several years away, and are subject to launch delays and other technical difficulties that accompany satellite deployment. Wireless cable continues to face regulatory and channel capacity problems, as well as difficulty securing programming. As for second cable systems within existing franchise areas, the Department of Justice itself has concluded that cable has natural monopoly characteristics and has questioned whether forcing franchising authorities to grant more franchises will promote significant head-to-head competition in a large number of local markets. The reality is that we are a long way from competition.

In the meantime, who is going to protect consumers during the years that it will take for competition to develop? While we who will support S. 12 prefer and promote competition, we must still act to ensure that the Government has the power to protect consumers fully until competition develops.

Mr. President, I am not against cable. I am for it. I do not want to be unfair to cable. I just do not want cable to be unfair to the American consumer. And only S. 12, and not the substitute, puts significant checks on cable's monopoly power while still promoting competition. That is why I support it and oppose the substitute and why I congratulate the Senator from Hawaii, the Senator from Missouri, and the others who brought forth this outstanding piece of consumer protection legislation.

The PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. Mr. President, Senator PACKWOOD wishes to have 8 or 9 minutes. I yield him that amount of time—as much time as he wishes to use; 5 minutes to the Senator from Texas [Mr. GRAMM].

The PRESIDENT pro tempore. The Chair did not understand the Senator. Would the Senator repeat, please?

Mr. STEVENS. I am sorry, the request was for 9 minutes for the Senator from Oregon [Mr. PACKWOOD] and I yield 5 minutes to the Senator from Texas [Mr. GRAMM].

The PRESIDENT pro tempore. The Chair thanks the Senator.

The Senator from Oregon [Mr. PACKWOOD] is recognized for 9 minutes.

Mr. PACKWOOD. Mr. President, I am pleased to be joined by Senators STEVENS, KERRY, WIRTH, DOLE, BURNS, SHELBY, RUDMAN, SIMPSON, BREAUX, and FOWLER in offering this amendment. The amendment is narrowly crafted to address genuine problems that have arisen in the cable industry and is intended to offer an alternative to the more regulatory approach of S. 12. Recognizing that our ultimate goal should be to enhance, not reduce consumer choice, the amendment we are proposing strives to build on the Cable Act by enhancing competition and avoiding unnecessary regulation.

More specifically, our amendment seeks to achieve the following goals:

First, to build on the substantial success of the Cable Act while addressing current concerns about the cable industry's conduct, and trends in the video marketplace as a whole;

Second, to continue to encourage the widest possible diversity of information sources and services to the public in an efficient and effective manner;

Third, to further the interests of consumers by enhancing competition in the video market by reducing the regulatory burden on the cable industry's competitors, particularly the broadcast television industry;

Fourth, to utilize, to the fullest extent possible, the expertise of the Federal Communications Commission in monitoring ongoing changes in the video marketplace and determining whether administrative or legislative action is needed to respond to such changes; and

Fifth, to avoid imposing additional regulation on the cable industry or any other video programmer or video programming distributor unless such regulation is clearly necessary to protect the public interest.

The provisions of our amendment have been carefully drawn to try to ensure people's concerns are addressed while avoiding stifling the cable industry with unnecessary regulation. The amendment also tries to infuse competition into the video marketplace. For example, in order to enhance competition, we propose:

First, to eliminate certain FCC broadcast multiple ownership rules that restrict the ability of broadcasters to take advantatge of economies of scope and scale;

Second, to expand the rural exception to the cable-telephone crossownership prohibition to permit telephone companies to provide cable service in communities with up to 10,000 residents;

Third, to prohibit unreasonable denials of second franchises and guarantee that second franchises be given at least as much time to construct their systems as was given the initial franchise recipient;

Fourth, to confirm the right of franchising authorities to own and operate cable systems in competition with privately owned systems;

Fifth, to mandate a uniform rate structure throughout a system's franchise area, thereby preventing anticompetitive price discrimination;

Sixth, to require the FCC to prepare a biennial report regarding the level of competition in the video marketplace.

While the principal goal of our amendment is to promote the long-term public good through enhanced competition, we have also recognized the need for Federal and local officials to address the short-term issues of rates and services. Therefore, our amendment also includes several provisions designed to allow for the responsible exercise of Federal and local authority over cable television. Specifically, the amendment:

First, allows local officials to regulate basic cable rates and the rates for the installation or rental of equipment, subject to FCC oversight, in the absence of effective competition;

Second, defines effective competition as another multichannel video provider;

Third, repeals the guaranteed 5-percent annual rate increase to which cable operators are now entitled;

Fourth, allows the FCC, in determining whether basic cable rates are reasonable, to roll back existing rates;

Fifth, prohibits a cable operator from charging subscribers who choose basic-only cable service discriminatory installation fees or rates for pay services;

Sixth, requires the FCC to adopt customer service standards to be implemented and enforced by local authorities and allows States to establish customer service standards that exceed the FCC's standards;

Seventh, requires the FCC to establish new technical standards designed to enhance signal quality.

Mr. President, these provisions represent an honest attempt to address the real problems with cable—the problems that consumers complain about—without throwing the baby out with the bath water. For example, the rate section imposes a stiff basic rate regulatory scheme on the cable industry. By defining effective competition as a multichannel video provider, it will have the effect of bringing rate regulation to virtually all communities.

However, it stops short of regulating upper tiers of cable service. In my view, this is the correct approach. We have seen a great proliferation of cable programming in recent years. When we deregulated cable rates, the industry was able to invest in additional programming. I am convinced that the best way to ensure continued investment and avoid a stagnation in new and innovative programming and services is to avoid placing far-reaching regulatory burdens on the cable industry.

The approach we have taken in this amendment is to try to ensure that everyone has access to a reasonably priced basic tier of cable service. This protects the senior citizen on a fixed income, the less well off who cannot afford higher priced tiers of service, or the consumer who simply does not want 40 channels of cable.

This amendment also addresses the other areas where there have been the most consumer complaints—customer service and signal quality. In both of these areas, we direct the FCC to establish standards which ensure that all customers are fairly served and have adequate signal quality.

This amendment focuses on those areas that deserve attention—areas where problems have arisen since passage of the Cable Act. It eliminates the remaining portions of S. 12 that, in our view, simply place unnecessary and burdensome regulation on the cable industry and, in the end, would not benefit the consumer.

Mr. President, there is one issue that has received a great deal of attention over the past several months that I should take a minute to discuss. That is the issue of retransmission consent. We have all been inundated with calls, letters, and visits from our broadcasters, from the Motion Picture Association, and from cable operators about the impact of this provision. Consumers have been told that it will result in a 20-percent increase in their cable rates.

Simply put, retransmission consent means giving broadcasters control over their signal. Currently, cable operators have the right to pick up and retransmit local broadcast stations. Giving broadcasters retransmission rights would require a negotiation between the broadcaster and the cable operator before the broadcast signal could be carried on the cable system. Personally, I think this is a good idea, at least in concept. Perhaps there is a better way to draft the proposal. I do not know. What I do know is that this is a complex matter.

The amendment we are offering today does not seek to resolve the conflict surrounding this issue. It includes the same retransmission consent and must carry provisions that are contained in S. 12.

Mr. President, a great deal has been made of the article in Monday's Washington Post and about the administration's position on this amendment. Let me take a minute to set the record straight.

First, the administration supports this amendment.

Second, if this amendment were presented to the President, he would sign it.

It is that simple. The statements being made that the President would veto this amendment are false.

Let me make one more point about the Washington Post article. It said that the strategy of the cable industry and of the administration is to kill any cable bill this year, and that this amendment is part of that strategy. Let me assure my colleagues about my motivations and the motivations of the other sponsors of this amendment.

I believe S. 12 goes too far. I oppose the bill. But I am not opposed to all legislation. I am offering this amendment to try to improve S. 12, not to try to kill it.

Mr. President, in conclusion, it is critical that Congress not hamstring an industry that has contributed so much to the Nation's entry into the information age. As the FCC concluded in its 1990 cable report:

> In light of the developing field of existing and potential multichannel competitors to cable, and evidence that even direct competition between cable operators may increasingly occur, we do not recommend any drastic or long-term regulation of cable rates and services.

S. 12 ignores this recommendation by proposing massive reregulation of the cable industry. In contrast, my amendment follows this recommendation and offers an alternative approach to the underlying bill. It focuses on competition and regulates only to the extent necessary to address genuine problems that have arisen since deregulation. I urge my colleagues to support this amendment.

Mr. President, this amendment is designed to bring an element of fairness to what I think is unfair regulation in the bill as it came out of committee.

Let us back up, and see how we got to where we are today and remember where we were with cable 20 years ago when the Federal Communications Commission first started its regulation of the industry.

Basically, cable was mostly rural, starting to be seen a little bit in the urban areas. What it brought you, by and large, was a clearer picture of the over-the-air signals. There was not the Discovery Channel or Black Entertainment Television, or ESPN, or any of the other things we have come to assume now are a right on cable. It was a retransmission of broadcast signals. Interestingly, the broadcasters liked that because it expanded their signal base. More people could see the show and you could charge more for advertising.

Today, correctly, the Senator from Hawaii has inserted in this bill a provision that broadcasters should be allowed to negotiate for the retransmission of their property. And with that, I agree. That is not an issue of debate here. The real issues of disagreement between S. 12 and the substitute is rate regulation and what should be regulated.

A basic tier of cable service—and what is in a basic tier may vary from area to area—but in most areas, a basic tier would include all of your over-the-air channels. I suppose it is easiest to use Washington as an example everyone would understand. As you look at the paper in the morning, you will see a list of over-the-air channels; and as I recall, in Washington, counting the Baltimore stations, we have 10 or 12. All of those would be included in the basic tier under our substitute, as would C-SPAN, as would any public or educational or governmental channel—the channels upon which you watch the Arlington City Council or the Washington Library Board. Those would all be part of a basic tier. And the rate for that basic tier would be regulated and it would be regulated until there was effective competition.

And in our bill we define effective competition as the presence of another multichannel provider. And by multichannel provider, we mean some kind of a provider that can provide you with more than one channel. It could be a direct broadcast satellite that beams programs directly to the home. It could be a competing cable system. It could be what we would call wireless cable, which is a line-of-sight broadcast where a transmitter picks up a microwave signal and then sends it directly to your antenna.

Using this definition, at the moment I cannot think of anyplace in the country that would not be subject to regulation. There may be someplace where that level of competition exists. I am not sure. But, by and large, basic rates would be subject to regulation.

That is not really the debate here. The real debate is whether or not the rates for tiers above what we call the basic tier should be regulated. I want to emphasize—and broadcasters have said this—that about 60 to 70 percent of what people watch on cable are the network and independent over-the-air broadcast signals. Those channels,

under our substitute, will be in anybody's basic tier and will be regulated until there is effective competition. But should there be regulation of ESPN, of the Discovery Channel, of Black Entertainment Television? That is really what those who are supporting S. 12 want. In talking with them, it is very clear they want to regulate what they call the popular channels that are in tiers above the over-the-air signals.

ESPN is owned by ABC. It is a sports network. It is a popular network, although Lord knows there is ample sports on the network. I do not think we are lacking for sports broadcasting in this country. But ESPN is owned by ABC, sold to most of the cable companies, and carried in a tier usually—not always—but usually above the basic tier.

That would be regulated under S. 12. Why? Because it has become popular. It is kind of a bootstrap argument. If you go out and put a lot of money into programming, and your programming is successful, you will then be regulated. If you go out and put a lot of money into programming and you develop a program and it bombs, you do not need to worry about regulation. You are in a lose-lose situation. Do well, and the Government regulates you; do badly, and they will leave you alone.

I would contend, Mr. President, that for those programs in tiers above what we would call the basic tier, there is by and large competition and there is no justification for regulating those upper tiers. I want to emphasize again that under both S. 12 and the substitute you are going to get the local CBS affiliate, the local ABC affiliate, the local NBC affiliate, the public broadcasting stations, the local independent station or more—in Los Angeles you have many more over-the-air stations than we have in Washington—in a regulated tier until there is effective competition.

But I can see no justification for regulating upper tiers of service. Maybe Black Entertainment Television is as good an example as I can think of. Years ago, Mr. Johnson, the founder, could not get any financing for his program. So TCI, a cable company, agreed to put up money and help him found it, help him get it going. At the time, nobody wanted to carry him. Who would want to watch Black Entertainment Television? Ten years later, it is quite popular. And, because of its success, it might be regulated.

The argument is made about excessive rate increases. Today cable television actually charges less than when regulation started in 1972, adjusted for inflation. It is about 6 percent less than it was 20 years ago adjusted for inflation, and 20 years ago you got basically the over-the-air channels, and that was all.

Let me move to a second issue. It is the issue of programming access. Here I find an equal unfairness. S. 12 says that if there is a vertically integrated cable operator, a cable company that has interests in cable programs—the Discovery Channel is an example, and TCI owns that—the programmer will be required, will be required to sell his product to all cable companies at a similar price and to its competitors.

I know of no precedent in the law for compelling somebody who has a copyright or a trademark, to sell that product to his competitors. It would be the same as if you were to say to NBC, "You put a lot of money into producing the Cosby show. You have developed a successful show. You have to sell it to CBS and ABC."

The argument is made that we need to do this to protect diversity. I would say this is going to guarantee sameness. If you are a competitor of cable—such as DBS or MMDS—and Congress requires current cable programmers to sell you its very good shows that have become popular, why should you waste your money on producing some competing program? Why bother to be a Fox Television? Why not go out and say you have to sell it to me at the same price, you sell it to me at the same price you sell it to anybody else. Why should I produce anything new? That is not going to guarantee diversity.

More important, Mr. President, we do not require anybody else to do this. If you write a book, you copyright it. If you want to sell it to Paramount, you can. You do not have to sell it to anybody else.

Those are the two main differences between the substitute and the underlying bill. I thank Senator STEVENS, who is handling time on this side.

The PRESIDENT pro tempore. The Senator from Texas [Mr. GRAMM] is recognized for 5 minutes.

Mr. GRAMM. Mr. President, I am always amazed at the logic and reasoning of our dear colleague from Oregon, and I want to take this opportunity to say that listening to him make good sense of a very complicated subject reminds me of why I believe that he is one of the great Members of this body, and I everyday rejoice in the fact that he is here.

Mr. President, I do not claim to be an expert on all these issues, but as I look at this legislation, I see a deep fundamental issue involved here that is going to affect the future of an important industry and technology and in the process is going to affect the future of America, our competitiveness, the quality of our productive capacity, and our educational capacity. We are going down the wrong road today as we face that issue.

We are really at a crossroads and we have a decision to make. One road leads back to regulation. Proponents for taking this road say with all the technological changes that have occurred, with all the new products that have been produced by the availability of price competition, we must now bring this technology and these programs under Government price regulation. The idea is that someday in the future when competition evolves, if and when it does, we can reverse this regulation.

Mr. President, that will not happen. First of all, as much as the cable companies are against the underlying bill we debate today, they would prefer regulation to competition. And so, if we begin the process of regulation and that process becomes established, those that are regulated will always use their political power to try to prevent competition. If we begin down the wrong fork in the road today, we are committing ourselves to regulation which will stifle innovation, which will stifle the development of new technology, and which will deny us the ability to reap the rewards of the great technological changes that are occurring in America.

This bill goes down the wrong road. And what is the right road? The right road is to open up the cable industry to competition. Let anybody into the cable business. Let anybody who wants to make the investment, whether it's the telephone company or anybody else, have the ability to run whatever technological system of transmission they want to run to any American home that will contract with them. That is what we should be doing.

That is the only way we are going to get the billions of dollars of investment that will wire every American home with fiber optics and in the process produce a tremendous technological revolution in our country.

I support the substitute, not because it is perfect but because it is a lot better than the underlying bill.

Let me say a few words about broadcasters.

Mr. President, I am committed to the principle that broadcasters own their signals. If they want to negotiate and sell it or not sell it, I think they should have the right, and I think the Congress is committed to that. I think that is going to become the law of the land no matter what happens to this bill.

I think the case made for mandatory carriage is a much tougher case. As a matter of philosophy, I do not think cable companies should be required to carry the signals of commercial broadcast stations. But I think there is a practical problem here. In places like Sherman, Denison, and Victoria, TX, where you have a small, precarious television station, I am concerned that if the cable system did not carry that station's signal, the television station would be driven out of business.

In an ideal world, I would like a precise definition of this type of station, and I would like it to be carried as part of public service. We do not live in an

ideal world. In the democratic process, making decisions and compromises often is not ideal. But I think the provision which is in both bills is a provision that I support, allowing the broadcast station to opt for mandatory carriage, which the small station will do, or allowing the broadcast station to negotiate with the cable company for retransmission of its signal, if it chooses to do so, but giving up its right to mandatory carriage in the process.

Mr. President, to those of us who are concerned about broadcasters, that is not the real issue. The issue is regulation. The issue is: Do we go down the road to regulation or the road to competition? I prefer the road to competition.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. INOUYE. Mr. President, I am pleased to yield to the author of the bill, S. 12, the Senator from Missouri, 10 minutes.

The PRESIDENT pro tempore. The Senator from Missouri [Mr. DANFORTH] is recognized, for how many minutes?

Mr. INOUYE. 10 minutes.

The PRESIDENT pro tempore. 10 minutes.

Mr. DANFORTH. Mr. President, I thank the chairman of the subcommittee.

Mr. President, let us understand what the substitute is. The substitute is an effort to kill the bill. It is an effort to garner 34 votes; an effort to provide sufficient cover for people to vote for it, and then to vote to sustain the veto. That is what it is.

This is not Senator DANFORTH making an assertion. This is reported in the Wall Street Journal—hardly an oracle for a regulated economy—on January 28, 1992. The article is entitled "Cable TV Industry Backs Senate Bill in an Effort To Derail Regulatory Plan."

The article says:

> The industry's purpose is to gather enough votes for an amended bill to ensure that Congress can't override a Presidential veto of a tougher bill. Mr. Mooney—

Who is the President of the National Cable Television Association—

> wrote that if the amendment attracts "34 or more votes" in the Senate—or enough votes to sustain a veto—"the politics of the controversy will have been substantially altered."

That is what we are dealing with. This is an effort to garner 34 votes. I do not know whether it will succeed in doing that or not.

Mr. President, I ask unanimous consent that the article from the Wall Street Journal that I referred to be printed in the RECORD.

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

[From the Wall Street Journal, Jan. 28, 1992]

CABLE-TV INDUSTRY BACKS SENATE BILL IN AN EFFORT TO DERAIL REGULATORY PLAN

(By Mary Lu Carnevale)

WASHINGTON.—The cable-television industry, facing defeat in the Senate, says it supports a little regulation, in a gambit to avoid any at all.

After failing to pass cable legislation in the last Congress, the Senate poised to pass a tough cable re-regulation bill this week. Although prospects in the House are less certain, a strong signal from the Senate could propel similar legislation. Cable companies are trying to build support for an amendment that would change the existing bill so that it contains little in the way of rate regulation and scraps a provision aimed at allowing cable's rivals to carry cable programming.

The industry's idea apparently is to derail any bill. In a memo late last week, National Cable Television Association President Jim Mooney outlined the industry's strategy to NCTA board members. He said the Bush administration and the NCTA will support amending the bill for now but "will not support the bill even if the amendment is adopted." However, the administration said yesterday it supports the industry-backed alternative but would like to work with Congress "to modify or eliminate some troublesome provisions."

The industry's purpose is to gather enough votes for an amended bill to ensure that Congress can't override a presidential veto of a tougher bill. Mr. Mooney wrote that if the amendment attracts "34 or more votes" in the Senate—or enough votes to sustain a veto—"the politics of the controversy will have been substantially altered."

Cable's strategy may backfire. Already, the memo, which kept Capitol Hill facsimile machines buzzing through the weekend, has undercut the appearance of sincerity. "It's clear the substitute [bill] is only an effort to derail the whole bill," says Gene Kimmelman, legislative director of the Consumer Federation of America.

Consumer groups have been pushing for strong re-regulation in light of continued increases in cable rates and "re-tiering," or eliminating staple programming such as Cable News Network from cable companies' "basic" service. The practice is aimed at avoiding regulation of what has been considered a basic tier of service.

For the Bush administration, reining in the cable industry poses some tough problems. The president doesn't want to be viewed as supporting new regulations; but neither would he savor vetoing popular consumer legislation in an election year.

If the measure passes overwhelmingly, Rep. Edward Markey (D., Mass.), chairman of the House telecommunications subcommittee, will be expected to take it up quickly. Lobbying is expected to intensify as broadcasters, wireless cable operators, phone companies, Hollywood and cable interests battle for turf.

Broadcasters are concerned about the erosion of their audience and profits by cable, which has grown to a $20 billion industry in recent years. To address that, the Senate bill—and the industry—backed amended bill—contain provisions that would allow broadcasters to negotiate fees from cable systems that carry their signal or forgo payments and compel cable companies to carry their signal. The cable industry would like to kill that provision when the House takes up a cable bill.

Phone companies, meanwhile, want to make sure that any bill fosters competition and are considering a push in the House to allow them to enter the cable business. The phone companies hold out the possibility of upgrading their networks with fiber optic technology, to try to ensure that the U.S. will keep its lead in world-wide communications.

That's the step cable companies fear most. "We're not going to encourage anybody to let the telephone companies in," says Stephen Effros, president of the Community Antenna Cable Association. "There is no level playing field with the phone companies and their massive capital base. There can be no equal competition."

Mr. DANFORTH. Mr. President, I totally agree with the comments of Senator GRAMM, at least up to a point. Competition is clearly superior to regulation, no doubt about it. But the point that is being raised with this legislation has to do with how we feel about unregulated monopolies.

The cable television industry in specific communities is not a competitive industry; it is a monopoly. Cable television is the sole multichannel provider in the communities served by cable television. It is in a class by itself. There is no competition.

Some people argue that there are other things that people can do with their time. It has been suggested, for example, that people can go to the symphony instead of watching television. That is true. It was argued that people can go to New York and go to a play instead of watching television. That is true, except that it is not very convenient and it could be totally out of reach for, say, the people of Jefferson City, MO, to go to the symphony or to go to the theater.

Television really is in a class by itself. Playing Monopoly, playing cards, that is not a competitor with watching television. Television is the relevant market. And in communities that are served by a cable system, the only multichannel provider is the cable company doing business there.

It is interesting that this concept really has been adopted by the advocates of the substitute, because the advocates of the substitute say, well, they recognize that in the absence of another multichannel provider, there can be regulation. They have really abandoned their philosophical point. They have agreed that the standard is whether there is another multichannel provider, and they have agreed that under certain circumstances there can be regulation. So the issue is not so much philosophical anymore. The issue is whether the regulation that has been proposed is effective regulation.

Now, what happened since the legislation was first introduced a couple of years ago, which provided that municipalities can regulate the basic tier cable programming, was that the cable companies, in anticipation of congressional action, redefined the meaning of basic tier. They shifted into a higher tier much of their programming to escape the possibility of regulation. They left in their basic tier a tier of services which is subscribed to alone by only about 10 percent—or less than 10 percent—of the cable subscribers in the

country. So they have anticipated congressional action and they have avoided congressional action by retiering.

So what we have been trying to do in the Commerce Committee is to say, well, we are not going to let them circumvent the purpose of what we are trying to do. So what we have provided in the legislation is that it is not enough to say what we provide in 10 percent of the homes is basic service. We create a 30-percent standard. We say that if a service reaches 30 percent or less of the homes, that is what we mean by basic tier, and that would be subjected to regulation potentially—potentially—depending on the action of municipalities.

Something that regulates what is being utilized by only 10 percent of the cable subscribers in the country is hardly effective regulation.

Now, to repeat, we agree with the proponents of the substitute so far as they say competition is better than regulation, and we provide in the legislation that the ability to regulate expires, sunsets, when effective competition occurs. We define effective competition, as do the advocates of the substitute, as the availability of another multichannel provider.

But the problem is that while our legislation, S. 12, is designed to enhance competition in the cable industry, the substitute is not designed to enhance competition in the cable industry.

Rather, I would argue that the substitute moves in the opposite direction of a competitive industry. We say in S. 12 that the FCC should be able to place parameters on the extent of coverage of the country by a single cable operator. In broadcast television there are such parameters.

The so-called 12-12-12 rule adopted by the Federal Communications Commission says that a single entity can only own 12 AM radio stations, 12 FM radio stations, and 12 broadcast television stations nationally. Why? Because of the concern by the FCC that a single entity could have too much power in controlling the information available to the American people by controlling too much horizontal integration. We say that, with respect to the cable industry, the FCC should promulgate a rule governing the extent to which horizontal integration becomes unhealthy. The proponents of the substitute disagree with that. They say that that should be deleted and that cable companies should be able to own 100 percent, theoretically, of the cable services throughout the United States. They go further, and they say that the 12-12-12 rule should be abolished, repealed by statute. That is part of the substitute.

So the substitute says that the 12-12-12 rule should be abolished. That means that a single entity, according to their view of a competitive marketplace, a single entity could own an unlimited number of AM radio stations, an unlimited number of FM radio stations, an unlimited number of broadcast television stations, and an unlimited number of cable systems throughout the United States. That is their view of what competition is.

I do not think that is competition. I think that is simply expanding what is now a monopoly in individual communities to be monopolistic nationwide.

We say in the legislation that where there is a vertically integrated operation and the cable programmer and the cable company are related entities and another competitor tries to get into the marketplace, tries to break into the marketplace, the programmer must not unreasonably refuse to deal with the competitor. We say that furthers competition. That provision is deleted from the substitute.

So for those who say that competition is preferable to regulation, we say we agree. But if you prefer competition, then do not support the substitute. S. 12 furthers competition. The substitute, in abolishing the 12-12-12 rule, does not.

I might say that, if we repeal the 12-12-12 rule, that has a very negative effect on minority-owned stations. That is why the black broadcasters, the Association of Black Broadcasters, opposes the substitute because built into the 12-12-12 rule now is an incentive which encourages minority ownership of radio and television stations which would be wiped out if we adopted this substitute.

For all these reasons, Mr. President, it is my hope that we will defeat the substitute, that we will defeat it by a substantial margin, and that we will pass S. 12.

Mr. WIRTH. I yield 2 minutes of my time to the Senator from Alabama.

Mr. SHELBY. Mr. President, I rise today to express my concerns regarding S. 12, the Cable Television Consumer Protection Act.

First of all, I would like to point out, as many others have, that this is a broadcasters bill. This is not a consumer bill. The Packwood substitute, I believe, Mr. President, is far more preferable to the original bill, and I am going to support the Packwood substitute. I think it is a step in the right direction.

Prior to 1984 cable companies operated according to the whims of local governments. The sometimes excessive demands of local governments and the willingness of some cable companies to agree to them, became a cause of concern to Congress. Concerns regarding the differing interests of city regulators, cable operators and cable customers gave rise to the Cable Communications Policy Act of 1984. Congress was clear in its intent to minimize the burdensome regulation that would constrain cable's development. The 1984 Cable Act fostered the growth and development of the cable system. Today, cable companies offer a wide variety of programming and services to customers.

Cable television has become one of the most important industries in the United States: 58.6 percent of all television homes in this country now receive cable television; about 80 percent of all homes have access to cable; cable continues to expand its offerings to include a wide variety of programming services to both urban and suburban areas; over 9,600 cable systems generate $17.9 billion of revenues each year.

Fueled by viewer demand, deregulation in 1984, and the cable system's increasing capacity to carry more programming, the last decade has seen an increased diversity in cable's service offerings.

Cable programming reflects a wide range of interests of a diverse viewing audience—uncut movies, comedy specials, sports, children's programming, 24-hour news, congressional coverage, music videos, and a variety of special broadcasts on varied issues. In all, there are now 110 national and regional cable networks—a long way from the 3 broadcast networks that represented the choice most television households had 15 years ago.

Yes, there have been some problems with the cable industry, and representatives from the cable industry will be the first to admit to rate abuse by some cable systems. However, these instances of rate abuse are not characteristic of the industry as a whole. There have also been complaints about customer service that reflect the dramatic growth in the number of cable subscribers.

I believe that we must address these issues. But let us not simply ignore the fact that the U.S. General Accounting Office [GAO] has released three surveys of cable television rates and services that consistently show that the number and variety of basic service channels have increased along with the nominal basic service price increases, resulting in an increase in the price per basic channel of 9 cents total over the last 5 years. From November 1986 to April 1991 the price per basic cable channel went from 44 cents to only 53 cents, an increase of approximately 20 percent. During that same period, the overall Consumer Price Index [CPI] increased 22.5 percent. As such, the cost per channel of basic service has stayed behind inflation.

We cannot ignore the fact that the industry has made great strides in addressing customer service problems and has implemented customer service standards, with which over 85 percent of all cable systems are in compliance.

Conflicting reports regarding the frequency and magnitude of cable rate increases and poor customer service have prompted unfair criticism of the cable

industry, culminating in the production of S. 12. However, Mr. President, upon close examination, I am convinced that S. 12 in its current form, goes well beyond what is needed to address problems within the cable industry.

To begin with, only 9 out of 63 pages constituting S. 12 deal with such consumer issues as rates and customer service. The balance of the bill—including retransmission consent and must carry—is little more than special interest legislation for cable's competitors, the broadcasters. Rather than help consumers, S. 12 in its current form threatens to raise cable rates by inflating the cost of broadcast programming over transmitted cable systems.

S. 12's retransmission consent must-carry language presents broadcasters with win/win choice. The retransmission consent language amounts to a free TV surcharge which would divert revenues from cable operators and programmers to broadcast networks. This is nothing less than a Federal subsidy for broadcasters.

Broadcasters currently have free use of the spectrum. In return, they provide free broadcast signals. But by seeking retransmission consent and forcing cable operators to pay broadcasters for carriage of their signals, broadcasters are asking Congress to give them ownership of the airwaves.

By carrying broadcast signals, cable companies are already providing a valuable service to broadcasters by improving their reach and reception quality. Consequently broadcasters can count on a larger audience and increased advertising revenues.

The rates cable subscribers actually pay have increased more slowly than inflation, despite increased capital costs and programming expenses. However, if cable companies are forced to pay broadcasters to carry their signals, the costs would ultimately be passed on to consumers in additional rate increases.

S. 12 and retransmission consent has been sold by broadcasters on the grounds that we must save free TV. What they ignore is that for 30 years, they argued for must carry. They also ignore the fact that cable provides them, as pointed out earlier, with a valuable antenna service—distributing clean broadcast signals throughout their licensed community and increasing the advertising revenues. In all their efforts to secure must-carry over the years, broadcasters never raised the issue of payment for local television signals—good things, too, since they receive free spectrum valued at $11.5 billion to serve their local communities. It was not until the late 1980's when CBS began agitating for must-carry/must-pay, that broadcasters began to seek a second revenue stream at the expense of cable operators and consumers.

I have heard from a number of my constituents regarding this issue and they share our concerns about subsidies for broadcasters. It is clear that the National Association of Broadcasters is presently the engine behind S. 12. Ralph Nader opposes retransmission consent, as does the Motion Picture Association of America, the Satellite Broadcasting and Communications Association, the Community Antenna Television Association, and the National Cable Television Association. Yet, here we are today being asked to accept a cable bill that does not do what it claims and which will raise cable rates not lower them.

The question of rates and customer service should be the focal point of a true cable consumer bill—not the special interests of broadcasters. Even representatives from the cable industry will be the first to admit rate abuse by some cable systems. Problems with customer service reflect the dramatic growth in the number of homes that subscribe to cable—from 14 million at the beginning of 1980's to more than 55 million today. These issues need to be addressed. However, I believe that we can make great strides toward unravelling existing kinks in the cable industry without turning the clock back on 5 years of progress to a time when the chambers of city councils stifled the development and implementation of new cable programs by keeping rates artificially low.

Consequently, Mr. President, I have looked at the legislation proposed by Mr. PACKWOOD. While I am not completely satisfied with this substitute amendment, I believe that it is a step in the right direction.

This substitute goes directly to the heart of this debate—basic rates. In any area where there is no effective competition—competition defined as the presence of another multichannel provider—rates for broadcast signals, PEG Access, C-SPAN, and any other service on the basic tier will be regulated. Rates for remote controls and any other installation costs will also be regulated where there is no effective competition.

Consumers will benefit further from better customer service through the amendment's Government set cable service and technical standards. By preserving incentives for cable operators to invest in new programming and infrastructure, consumers will also continue to enjoy an ever-increasing variety of programming.

Rural communities, which are largely ignored by cable companies, will be able to receive cable service from telephone companies.

The franchise renewal process would be accelerated, so that municipalities will be better able to express their concerns and influence cable operators' performance. Also, existing law on franchise renewal would be clarified to give local governments better bargaining power when dealing with cable operators.

The FCC is required to report biennially to Congress on the state of competition in the video marketplace. The report will specifically address the issue of horizontal and vertical integration. With these recommendations, Congress will be able to legislate in this area.

Mr. President, I support the Packwood substitute and am a cosponsor. However, I have done so with reservations. This substitute still leaves unresolved the issue of retransmission consent. Nevertheless, I will support the substitute because it does address some vital consumer issues and allows the industry to remain strong and competitive.

Mr. KERRY addressed the Chair.

The PRESIDENT pro tempore. The Senator from Massachusetts [Mr. KERRY] is recognized.

Mr. KERRY. I yield myself 8 minutes.

Mr. President, I would like to respond to the distinguished Senator from Missouri, who regrettably is not here at this moment, but perhaps is listening. The Senator from Missouri, who is a friend and a person that all of us respect enormously, has made the statement that the substitute is nothing more than an effort to kill the regulatory effort. That may be the Senator's view, but I want the Senator from Missouri to understand that this Senator wants regulation, that I intend to vote for some regulation, but that I am looking for a balanced way of regulating.

It may be that the cable industry wants to kill this legislation. I do not doubt it. I am sure the cable industry would love to kill this bill. The memo that was quoted in the Wall Street Journal accurately reflects their hopes. But I, this Senator has not met with Mr. Mooney regarding this issue in the last 2 years. The last time I saw him was a couple of years go at a meeting with Senator INOUYE about a previous version of this legislation.

I support the substitute because I believe it regulates and protects consumers; it can pass without a veto and, therefore, represents the best chance to really have some consumer protection; and, because I think it represents a balanced approach to regulation of the cable industry. I think we have a legitimate Government interest in this matter. What is it? Our Government interest is to protect the consumer, to guarantee competition, and to guarantee the flow of information through our electronic media.

The question is: Do we have a Government interest in reaching beyond the flow of critical information to regulate all programming. I am referring to the kind of programming that Senator PACKWOOD mentioned, the kind of

programming that only exists today because cable television invested in it when nobody else was willing to do so? Do we have a compelling Government interest in regulating the Playboy Channel, or MTV, or a host of other entertainment channels? Are we going to begin regulating prices people pay at the movies or at video stores?

When there is a monopoly that prevents them from getting a service people need, whether it is electricity or water, I will always vote to protect consumers. As I always have. Why are we now reaching the regulatory arm beyond the critical flow of information that ought to be guaranteed and regulated, to step in and say, here is big-brother Government telling you we think you are paying too much for entertainment and we are going to regulate it?

That is essentially what S. 12 suggests. It suggests that since Americans cannot be trusted to decide whether they want to buy a particular entertainment product, so Uncle Sam is going to decide for them and, in the process, is going to restrain investment.

But, even S. 12, which purports to regulate all of the services that consumers want is actually faking it. This is because while it suggests that it will provide broad protection, in effect, cable operators can retier because S. 12 only requires that you have a viewing package that reaches 30 percent of the viewing audience. Therefore, cable is going to be able to take its premium television shows and offer them on an ala carte basis—outside the regulated tier.

So any American citizen who thinks S. 12 is going to regulate all programming is wrong. It will not do that. It will, however, have a negative impact on that investment.

I am really having trouble understanding why it is that the Government has a compelling interest in regulating the rate for a pure entertainment package that any American can refuse. What happened to the market? We are the Nation that is telling Eastern Europe, the former Soviet Union, and the rest of the world that the free market is the most effective way to ensure that consumers get the best products. Here we are stepping in once again to constrain the market forces right here at home.

People may say, wait a minute, Senator KERRY, are we going to have adequate protection for consumers in this substitute? After all, we keep hearing that the substitute is not a strong substitute. Well, Mr. President, the substitute takes 70 percent of what Americans watch via cable television today and regulates it. Seventy percent of what cable subscribers look at on TV will be regulated under the substitute, because 70 percent of what they watch are over-the-air broadcast signals.

Furthermore, we apply this rate regulation to virtually every cable system in America because we make the definition of effective competition tougher. We do not say six over-the-air broadcast signals are adequate. We say you have to have a multichannel alternative in your region, or your cable system is regulated. Therefore, 99 percent of America will be rate regulated.

Let me turn to customer service. We mandate the same service standards as S. 12. Additionally, our substitute does the same thing that S. 12 does on technical standards, exactly the same. It does the same thing that S. 12 does on home wiring. Finally, it does the same thing that S. 12 does on retransmission consent. We strengthen broadcasting.

I heard the Senator from Missouri say the alternative does not do anything for competition. Well, with retransmission consent and must-carry, you clearly are doing something for competition, because you are strengthening the ability of broadcasters to offer quality product to consumers.

I also heard the Senator from Missouri say that S. 12, by eliminating the 12-12-12 rule, is going to hurt competition. I disagree with that. If you eliminate the 12-12-12 rule, you are strengthening broadcasters' ability to compete because you are allowing them to reduce costs and increase advertising sales. And, this all can be done while preserving local diversity.

Our amendment also does the same thing as S. 12 does on multiple franchises. Local franchising authority cannot prevent second operators from offering an alternative service. In addition to that, we have a rural telephone exemption which allows the telephone companies to provide video programming in rural areas.

So there are only two real differences between the substitute and S. 12, and these two differences are on mandated access to programming and upper-tier rate regulation. These differences leave us with two choices. Choice No. 1: Do you want to require people to sell their programming to their own competitors? Choice No. 2: Do you want to have all video entertainment regulated in the United States or only the flow of information sufficient to guarantee competition? I think the choice is very clear. I reserve the remainder of my time.

Mr. INOUYE. Mr. President, I yield 20 minutes to the Senator from Tennessee.

The PRESIDENT pro tempore. The Senator from Tennessee [Mr. GORE] is recognized for 20 minutes.

Mr. GORE. Mr. President, I wish to thank the distinguished chairman of the subcommittee and the manager of the bill for yielding me this time. I say to my colleagues that my voice is a little strained this morning, so I will just express the hope that I can make myself clear on this. I feel so strongly about it that I hope that will be possible.

I rise to oppose the Packwood-Wirth-Kerry substitute in the strongest possible terms.

My colleague from Massachusetts asked a moment ago what happened to the market. Well, what happened to the market is the market has been strangled by this monopoly. There is no market. There is a monopoly. There is no market because there is no competition. There is no competition because the Congress decreed that there shall be no competition for cable.

That is why we are here. It was a mistake. Some aspects of it were helpful. It is a reference to the 1984 Cable Act. But overall it went so far that the participants in the cable industry were tempted so many of them to take advantage of the monopoly by raising taxes, just time and time again, and turning a deaf ear toward service, and strangling any potential competition by using their leverage in the marketplace.

Yesterday my good friend, the Senator from Colorado, stated that the program access provisions of this bill have nothing to do with rates and service. Mr. President, as the committee has so thorougly determined over the past 6 years, and as the behavior of this industry has so dramatically demonstrated, the bill's program access provisions—and the competition it stimulates—has everything to do with cable rates. Competition holds rates down. When the competition is eliminated the rates go up. That is elementary and that is the reason why people are paying such high rates today.

We have heard references by the proponents of the substitute to the fact that there is no problem with cable rates. What is the big problem? What are we trying to remedy here? Come to some of the town hall meetings I have in Tennessee, or accompany the vast majority of Senators in this Chamber when they go back to their home States, and you will hear there is a problem. The rates have been skyrocketing.

Mayors have been besieged by their constituents asking what in the world can be done. Some out-of-State conglomerate comes in and uses junk bonds to buy up a local cable system and incurs an enormous amount of debt, and the only way they can finance it is by raising rates until the people just cannot stand it anymore.

S. 12 has a remedy for that situation and the preferred remedy is competition. That is the American way.

I was particularly struck, may I say, by the eloquent historical examples the Senator from Colorado chose to illustrate the problems within the communications industry when the incumbent, dominant player does everything in its might to shut out the new, up-

start entrant. He used the example of AM radio shutting out FM, of VHF television shutting out UHF, of AT&T shutting out new long distance competitors such as MCI, of broadcasters shutting out cable, and of the steps the Congress and FCC took to ensure that the new entrant might have a chance to survive.

The Senator was exactly correct. But what he did not do was finish the portrait of anticompetitive behavior. That story has another chapter. What we now are facing is cable doing everything possible to shut out its competitors: satellite dishes, wireless, new direct broadcast satellite services.

The Senator's analogy was perfect. I could not have said it better. The Congress must protect these new entrants against unfair monopolistic exploitation of its dominance in this marketplace.

Let our colleagues make no mistake about what is being debated here. Do not have any misunderstanding about the substitute. By completely killing off the program access provisions of S. 12, the Packwood-Wirth substitute entirely eliminates the potential for any competition whatsoever in the cable marketplace.

The cable industry is much more concerned about competition than about regulation. Given a choice they will say every time: Well, if we have to have something, give us some little regulation.

That is what the substitute does. Some little regulation. But they do not want competition. So that is why the substitute zeros in on the provisions of S. 12 which are designed to ensure competition, and they try to eliminate it altogether.

The substitute is a vote against competition and a vote to expand the monopoly stranglehold of companies like TCI which now hold consumers in its grip throughout the country.

As the chairman of the subcommittee and the ranking Republican on the full committee have so eloquently noted today and yesterday, the substitute waters down the ratepayer protections of S. 12, further exposing consumers to the rate-gouging practices of cable operators, practices which have so thoroughly been exposed not only by the Senate, but by the GAO, by the Federal Communications Commission, by the Justice Department, by the State attorneys general, and by many, many others.

But most importantly, and most troubling, the substitute completely eliminates the recognition provisions of S. 12 which will ensure that some modest measure of competition might arise.

I would like to briefly review how the program access provisions of S. 12 promote competition. These provisions are eliminated in the substitute.

First of all, the bill establishes the principle that program services like ESPN, CNN, USA, and others, must be made available to the 3.6 million families—mostly in rural areas—who have paid an average of about $3,000 each in hard-earned money to buy a home satellite dish and receiver. Most of these families live along roads cable has chosen not to serve, roads in West Virginia, roads in Tennessee, roads all over this country that do not have the population density to attract the cable investors and the new conglomerates using junk bonds who want to milk the profits out of those communities where there is enough of a population to get in there and really go to town.

What about these rural consumers? What would happen to them under the substitute? It is very simple: the substitute tells these 3.6 million families that they do not deserve the right to participate in the communications revolution, that they do not deserve the right to enjoy access to the kind of programming that is available in the big cities, that they do not deserve the benefits of new communications technologies, some of which were made possible, I might add, by taxpayer investments in the space program. That is where these communications satellites come from. And we cannot stand by and see this cable monopoly just lay claim to this new technology which has the ability to compete with them and strangle it to prevent any kind of competition and any kind of service to the rural areas of my State and the other States with rural areas.

A vote for this substitute is a vote against these 3.5 million backyard satellite dish owners. We have heard from these folks before, when legislation has been before this body. They feel even stronger about it now than they did last year and the year before because they continue to face price discrimination by the cable-dominated programming services.

I would like to place in the RECORD, and I will ask for consent at the conclusion of my statement, a breakdown of where these families live: 113,000 in Tennessee alone, 85,000 in Missouri, 266,000 in Texas, 163,000 in Florida, 325,000 in California, and so on.

And mark my words, Mr. President, every single one of these satellite dish families is going to pay very close attention to this debate here today. A lot of them are watching it right now. A lot of them are following it very closely. They waited for years for some justice here and they know the only place they can find justice is on this Senate floor and with the Congress of the United States representing the American people. They have had it up to here because they have been victimized by this industry that has tried to completely cut them out.

And believe me they will know who stood up for them and who stood against them here today. They will know about this vote because it is the key vote for satellite dish owners and for others who want access to competitive services challenging the cable monopoly. It is the key vote for the Consumer Federation of America for similar reasons.

Let me continue by saying that the program access provisions state that if a satellite-delivered programming service is owned by a cable company, then it must not unreasonably refuse to offer that service to satellite dish distributors at fair terms.

We have had some references to the fact that we never make anybody sell to somebody they do not want to sell to. That is utter nonsense, Mr. President. If you have a supermarket chain and you have a food processor, and next door to the supermarket is a little mom and pop grocery store, if that supermarket chain attempts to use its market dominance to tell its wholesaler supplier: do not you serve my competition, the Government says you have to serve his competition, because if you cut them off and use your market power to force your competition out of business, it is a violation of the antitrust laws. We do that every day in this country in dozens and hundreds of industries. Here the antitrust laws have not been enforced. Here it requires action by the Congress to protect these rural consumers, to protect those in the cities who are denied access to competitive programming services.

S. 12 still allows a cable programmer to involve reasonable business requirements when deciding who should distribute its services. And it allows a programmer to charge rates that reflect true costs.

What S. 12 would not allow—and what the substitute would encourage and foster—is the tactic some cable-controlled programmers now use on satellite dish, and wireless cable distributors: that is, the practice of charging wholesale rates much greater than are charged to cable companies.

What this, in effect, does, Mr. President, is drive up rates for consumers who would choose competiting technologies such as satellite dishes, wireless, or potentially the new direct broadcast satellites [DBS]. Thus, any form of competition is stifled.

Let us look at exactly how this works:

Cable programming services—CNN, ESPN, HBO, and so on—place their channels on a satellite and make these signals available to cable operators. The cable company then pays the programmer a fee per subscriber.

If you live outside an area cable has chosen to serve, or if you simply do not like the service and rates of the local cable operator, you can spend several thousand dollars for a satellite dish, or in some communities subscribe to a wireless cable system. In a few years you may even be able to subscribe to a

new high-powered DBS service which employs a very small dish you could put on your windowsill.

But even though you may be able to choose one of these alternatives, you are going to pay through the nose for that choice, because the prices distributors must pay to make those channels available to cables' competitors are much, much greater than the local cable operator pays.

Look at these specific examples, covering almost all the major programming channels, those which make up what most of us think of as cable:

Here is AMC/Bravo. Here is the price for a cable subscriber, 25 to 30 cents. Here is the price to satellite dish owners, $1.20 to $1.60.

Here is ESPN—54 cents to the cable subscriber, 28 cents to the satellite dish operator.

Look, you can go right down the list of these examples. In every case, the cost of distributing this in no way explains what is happening. In fact, the Justice Department studied that very question, the Bush Justice Department, and has issued a formal opinion saying that it does not justify the difference whatsoever.

In fact, the actual cost is lower to distribute the programming to satellite dish operators. That is just common sense, Mr. President. The capital cost of building a cable distribution system is borne by the distributor. The capital cost of a satellite dish distribution system is borne by the consumer.

So why should the cost of delivering the program to a satellite dish operator be greater than the cost of delivering it to a cable customer?

It is no mystery. It is monopoly power. The cable industry so completely controls the programming services—first of all, by owning most of them, and, second, by providing 80, 90, 95 percent of the revenue for the rest—that they keep them under their thumb, and they tell them, "If you charge competitive rates to the satellite dish operators and the other competitors of cable, you may just have problems getting continued access to our cable networks." Since that is where most of their revenue comes from, they are scared, and so they do not provide the service at competitive rates.

Let us look at some other examples of this phenomenon.

Here in Netlink, $1.03 to the cable consumer, $3.40 to the satellite dish operator; Superstation, $5.90 to the cable operator, $2.50 to $3.10 to the satellite dish operator. MTV, 15 cents to 29 cents to the cable customer, $1.70 to $2.50 to the satellite dish operator.

Here are the programs distribution prices for vertically integrated channels.

The blue line shows the fantastic increase that is charged to the competitors of cable.

And here is a typical package, 61 percent higher for the competitor. And when you factor in the capital cost, with the consumers making the investment in satellite dish operation, in the satellite dish distribution system, their costs which they pay are 368 percent higher than the prices paid by the cable customer.

Mr. President, the real question here is not what is happening. We know what is happening, they are taking advantage of their monopoly power to charge as much money as they possible can. That is no mystery. The pattern is crystal clear. They charge one rate to cable and then a rate many times that to anybody who uses one of the competitors to cables.

The supporters of the substitute stated earlier this week that this wholesale price gouging has nothing to do with consumer prices; that consumers do not care about these practices. Believe me, Mr. President, they know. They knew when the scrambling started. They knew when the rates were set at a level many times higher than what the cable customers have to pay. All they have to do is look at their bills. And anybody who suffers the illusion that these folks do not know what is happening to them better take another look. They know exactly what is happening to them. And they know exactly what is being debated on the floor of this Senate Chamber right here today. And they are going to know who stood up for them and who stood up for the cable monopoly against them. It is just that simple, Mr. President.

I suppose the cable companies might say, "Well, those folks choose to live in the country * * * let them pay it."

Well, they are paying for it all right—through the nose they are paying for it, and they are fed up with it.

It is no secret why this pattern exists. For many years the cable operator feared competition from satellite dishes and forced the programming service to deny access to dish owners. That was an easy sell, frankly, since many of these programmers were owned by cable operators and still are.

Now, the more insidious discrimination against dish owners is in pricing, as we see in these dramatic price comparisons.

Mr. President, before I lose my voice completely, I point out that, while this rate picture reflects the information we were able to obtain about the cable and satellite dish marketplace, the same thing holds for wireless cable. And the same grim marketplace faces the new DBS services if we do not reject the Packwood-Wirth substitute and adopt the committee bill.

There is yet another dark cloud hanging over the future of competition in this industry. I mentioned DBS. Most of us are familiar with the traditional backyard dishes.

The new dishes are about this large. They are very small and very efficient.

But without legislation, this new technology will be smothered in the crib. It will be completely killed off. Because, in order to survive, the small dishes have to have fair and competitive access to programming and the cable industry wants to shut it down. They have organized themselves under the leadership of the powerful TCI to develop this PrimeStar Co., which is going to be their entity of DBS, and they are going to use that according to their plans to try to shut down competition also.

New DBS satellites will employ a small—as small as an 18-inch dish, making this technological breakthrough available to many millions of families who for whatever reason—zoning restrictions, cost, terrain—cannot purchase a large dish or subscribe to wireless cable.

But without this legislation, not only can DBS services expect discriminatory program access and pricing by cable-owned programs, they face a new kind of cartel by cable and their programming subsidiaries.

Mr. President, I would like to place in the RECORD a January 13, 1992, article from MultiChannel News, a trade publication. Entitled "Attorneys General Threaten PrimeStar Suit," this article chronicles a 29-State investigation of a cable MSO-controlled direct-broadcast satellite service called PrimeStar.

What has been alleged is that PrimeStar "may have violated antitrust laws by denying access to cable-owned programming to potential competitors, or providing access but only on prohibitive terms. The NAAG is concerned about this behavior because of its effects on other potential DBS entrants, as well as wireless cable and other cable competitors."

And who owns PrimeStar? No surprise: The 10 largest cable companies, led by the biggest and most powerful, TCI.

So the problem goes even deeper than the arbitrary pricing of cable programming for cable and satellite dish owners. It goes to the heart of the issue—cable's determination to go to any end to thwart competition.

I repeat, Mr. President: The program access provisions of this bill have everything to do with price and service.

The program access provisions of S. 12 are considered essential to sound policy governing this industry by the broadest possible spectrum of interests: the National Rural Electric Association, the Consumer Federation of America, the Wireless Cable Association, the Consumer Satellite Coalition, the National Farmers Union, the National Rural Telecommunications Cooperative, and many others.

Indeed, the Satellite Broadcasting and Communications Association, which includes not only satellite dish dealers and distributors but program-

mers such as HBO and Showtime, strongly supports the program access provisions of S. 12.

I quote from a letter from Mr. Charles Hewitt, president of SBCA, who states: The precept of program access "is very basic: Let competing technologies get to the 'starting line' with as few impediments as possible. After that, television viewing households can decide which means of video distribution will best serve their needs, and the marketplace will take care of the rest."

It could not be better said: Let competition exist and consumers will choose. That is the American way, the way embodied in this legislation.

The consumer abuses and anticompetitive behavior so prevalent within this industry will not go away. S. 12 addresses the problems in a direct, firm manner. The Packwood-Wirth substitute simply makes the problem worse, simply gives the cable industry an even heavier club to beat the competition into the ground.

I strongly urge our colleagues to reject the substitute.

I ask unanimous consent that the estimated number of satellite systems in every State be printed in the RECORD at this point, and that additional materials to which I have referred also be printed in the RECORD.

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

ESTIMATED NUMBER OF SATELLITE SYSTEMS, JANUARY 1, 1991

Alabama	76,700
Alaska	5,000
Arizona	47,000
Arkansas	52,500
California	325,000
Colorado	47,250
Connecticut	11,000
Delaware	6,500
District of Columbia	1,600
Florida	162,500
Georgia	82,250
Hawaii	1,100
Idaho	27,200
Illinois	88,400
Indiana	82,900
Iowa	51,800
Kansas	47,600
Kentucky	59,250
Louisiana	61,000
Maine	17,800
Maryland	31,400
Massachusetts	13,000
Michigan	120,000
Minnesota	47,000
Mississippi	49,900
Missouri	84,500
Montana	38,850
Nebraska	40,800
Nevada	29,800
New Jersey	20,000
New Hampshire	15,500
New Mexico	21,700
New York	119,500
North Dakota	14,900
North Carolina	139,500
Ohio	110,000
Oklahoma	56,700
Oregon	68,000
Pennsylvania	90,700
Rhode Island	3,600
South Carolina	54,400
South Dakota	16,500
Tennessee	113,600
Texas	265,800
U.S. Territories	10,400
Utah	20,400
Vermont	19,500
Virginia	75,000
Washington	68,600
West Virginia	42,000
Wisconsin	58,300
Wyoming	14,500

Source: Satellite Broadcasting and Communications Association.

[From Multichannel News, Jan. 13, 1992]

ATTYS. GEN. THREATEN PRIMESTAR SUIT

(By Rachel W. Thompson)

A nearly two-year-old antitrust investigation of PrimeStar Partners, the cable MSO-controlled direct-broadcast satellite service, has reached an extremely sensitive stage and could erupt into a lawsuit at any time.

Two high-level individuals working on opposite sides of one probe, by the National Association of Attorneys General, said serious settlement talks among NAAG officials and PrimeStar backers began in early December.

Those talks could collapse at any time, they said, and legal action would almost certainly result. The NAAG as an organization has no prosecutorial authority; rather, a lawsuit would be brought by a group of states.

The companies directly involved in the probe include nine top cable MSOs and a General Electric Co. satellite subsidiary GE Americom. The cable TV task force conducting the investigation consists of attorneys general from California, Massachusetts, Texas, New York, Ohio, Maryland and Pennsylvania.

The NAAG task force has concluded that the 10 companies may have violated antitrust laws by denying access to cable-owned programming to potential competitors, or providing access but only on prohibitive terms, sources said. The NAAG is concerned about this behavior because of its effects on other potential DBS entrants, as well as wireless cable and other cable competitors.

While a draft complaint has reportedly been drawn up, no details of its contents could be learned, nor is it clear what corrective steps NAAG members are seeking.

Several attorneys, and PrimeStar officials, declined comment on the situation.

"Every week that goes by makes it less likely there will be a lawsuit," commented one individual involved in the talks, who emphasized that it was impossible to predict an outcome.

"It really is an enormously sensitive situation," said another.

While the NAAG inquiry has focused on companies involved in PrimeStar, its scope is not limited to that entity's activities, sources said.

According to high-level sources, the National Cable Television Association was informed as recently as two months ago that it too was a target of the probe. The NCTA could be pulled in by virtue of having undertaken certain actions at the behest of its members.

It could not be determined whether the NCTA, which had no comment, was participating directly in the settlement talks.

The Department of Justice, which has been conducting a parallel inquiry, is monitoring the negotiations, but has not determined a course of action, sources said. However, they indicated that they believed the DOJ was less inclined to pursue action and would probably have dropped its inquiry if not for the states' actions.

A total of 29 states were represented, including the seven conducting the probe, at a one-day briefing by the cable task force in Chicago last Thursday that was designed to brief states that might want to join a lawsuit.

Another round of settlement talks is expected to take place mid-week in New York.

The NAAG and DOJ commenced parallel inquiries of PrimeStar in April 1990 after four U.S. senators sounded alarms about the venture's possible antitrust implications. Among the senators' concerns was the cable industry's extensive control over programming and the potential for PrimeStar MSOs to use unfair pricing against DBS competitors and others.

At the time, the Ku-band satellite service had positioned itself primarily as a delivery system for those homes that could not be reached economically by traditional cable systems and for whom larger C-band satellite dishes were not an option. Also, a consortium of Cablevision Systems Corp., NBC, News Corp. and Hughes Communications had formed the Sky Cable high-power DBS service.

PrimeStar Partners is controlled by Time Warner Inc.'s American Television & Communications Corp. and Warner Cable Communications Inc., Cox Cable Communications, Comcast Corp., Telecommunications Inc., Viacom Cable Inc., Continental Cablevision, NewChannel Corp., and GE Americom.

Separately, Viacom International CEO Frank Biondi disclosed during a Paine Webber meeting in December that Viacom has written off its investment in PrimeStar and intends to leave the partnership.

"We are still currently a partner in PrimeStar, but we are working out our exit," a Viacom spokeswoman confirmed last week."

Mr. GORE. Mr. President, one of the items I am including is an article from Multichannel News which refers to a lawsuit by State attorneys general threatened against this Prime Star Co. that is planned to be used by the cable industry to shut down direct broadcast satellites.

Let me just conclude briefly, Mr. President, by saying let us let competition exist and let us allow the consumers to choose. That is the American way. That is the way embodied in this legislation. The consumer abuses and anticompetitive behavior so prevalent in this industry will not go away unless S. 12 passes. I strongly urge our colleagues to reject this anticompetitive substitute, stand up for competition and the consumers by voting "no" on the substitute and voting "yes" on S. 12.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Massachusetts.

Mr. KERRY. Mr. President, I yield myself a minute and a half. We have heard constant references to the Bush administration report, the Justice Department report. I want to read from the Justice Department report because nobody else has. It is not a Justice De-

partment report: "The views expressed herein are not purported to represent those of the U.S. Department of Justice."

Moreover, in a very critical footnote on page 28:

* * * although the best estimate of the market power effect is that it explains about half of the total price increase, the 95 percent confidence interval indicates the effect may be anywhere from close to zero to almost 100 percent.

That is one hell of a range—from close to zero to 100 percent. And the individual is not speaking for the Justice Department.

Mr. President, I ask unanimous consent this be printed in the RECORD.

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

MARKET POWER AND PRICE INCREASES FOR BASIC CABLE SERVICE SINCE DEREGULATION, AUGUST 6, 1991

(By Robert Rubinovitz)[1]

ABSTRACT

Since the deregulation of rates for basic cable television service, increases in prices have outpaced the rate of inflation. This paper examines whether or not market power by cable systems explains the price increases since deregulation. A "quasi-supply" function for cable systems before and after deregulation is estimated and this provides an estimate of a parameter that indexes the degree to which market power changed after deregulation. By making assumptions about the level of market power before deregulation, this estimate can be used to determine the extent to which the price increases since deregulation are, on average, due to the exercise of market power. Using this technique, at least 45–50% of the price increase since deregulation is due to market power. This result is robust to different assumptions about the form of the quasi-supply function, but the percentage can be higher depending on the degree of market power exercised by cable systems before deregulation and on the size of the demand elasticity for basic cable service.

A remaining question about these results, which is alluded to above, is the effect of restricting the sample to only those systems that did not have an expanded basic tier. The decision by the cable system to use an expanded basic tier would seem to be driven primarily by the preference of consumers in the franchise area for basic and expanded basic programming. At the same time, however, it could be that the market power cable systems have in expanded basic programming could also play a role in this decision. Thus, it is not clear if leaving systems out of the sample that have expanded basic tiers is imparting a downward or upward bias to the results.

Thus, although the best estimate of the market power effect is that it explains about half of the total price increase, the 95% confidence interval indicates the effect may be anywhere from close to zero to almost 100%.

[1]Economist, Antitrust Division, U.S. Department of Justice. The views expressed herein are not purported to represent those of the U.S. Department of Justice. The author wishes to thank Jonathan Baker for many helpful discussions and comments, and Margaret Guerin-Calvert, Tim Brennan and Gregory Werden for comments on an earlier draft. Holly Burleson and Michael Duffy provided excellent research assistance in the preparation of this paper. All remaining errors are the responsibility of the author.

Mr. GORE. Will the Senator yield?

Mr. KERRY. I do not have enough time to yield. I will yield on their time. But let me address one other point. This is supposed to be a consumer bill. What the Senator from Tennessee talked about are wholesale prices. The fact remains that cable consumers pay more than satellite dish consumers for basic programming. A typical satellite dish price is $16.83. The average cable price for a comparable package is $18.84.

What the Senator from Tennessee wants us to do is make sure the cable companies give a bigger margin of profit to the wholesalers. There is no guarantee, however, that the consumer is going to see of it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GORE. Will the chairman yield for 30 seconds?

Mr. INOUYE. I am pleased to yield.

Mr. GORE. Mr. President, just to make the point again, my colleague from Massachusetts may have misunderstood. If I can refer to this chart again, these are retail prices. These are not wholesale prices. These are retail prices.

It is not a big mystery. I am surprised there is any debate about that. These are retail prices, 61 percent higher. In conclusion here, the Justice Department indicated, as I heard the footnote, that anticompetitive market power may be responsible for 100 percent of the extra charges to these customers. But their best estimate is it is only 50 percent directly due to monopoly power. I thought it was a very interesting footnote.

Mr. KERRY. Will the Senator yield?

Mr. GORE. I think my time is up.

Mr. KERRY. Do we have any more time? I will let the point go.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Mr. President, I yield myself 8 minutes.

I was struck by the earlier comment that the distinguished Senator's voice was strained. I recognize that. I also recognize the fact that his logic is strained.

Let me go through some of the points that are being made. First of all, we were told of the CNBC example—that CNBC had been "held up" somehow by the cable operators.

The president of NBC, according to the Wall Street Journal, "scoffed" at that. The president of NBC, who presumably was held up, scoffed at that allegation.

We were told one of the cable operators dropped "The Learning Channel" so the value of the channel would decline. But the chairman of that company said that was untrue and a reckless accusation.

Allegations were made that the cable operators pressured Christian Broadcasting Network to scramble the signal. But CBN, Christian Broadcasting Network, wrote those who are alleging this, saying that this was simply not true.

The rate issue was cited. We just heard a great deal of data about rates going up for satellite dish consumers. Wrong. Again, Mr. President, I have two examples of that. First, and maybe most important, the Commerce Committee's own committee report found that was not the case. Second, I have to point out a satellite orbit marketing document in which they are advertising for only $16.90 a month the following, CNN, Headline News, ESPN, TBCS, USA, Discovery Channel, TNT; Family Channel and a premium channel such as Showtime, HBO or the Disney Channel—all for $16.90 a month. This is lower than the average rate for basic cable.

It is simply inaccurate to say that dish consumers pay more for cable programming. The cable operator has to include a variety of regulating costs running all the way from public access to EEO requirements.

The Department of Justice study was cited. The Department of Justice itself, as the distinguished Senator from Massachusetts pointed out, had a range of error of 100 percent. That is pretty significant to have plus or minus 100 percent. I would not cite that. The arguments for access are filled with inaccuracies and strained logic.

Let me respond by pointing out what a friend of mine just told me. He said, "I do not understand this whole debate." He said, "I subscribe to cable. I pay $31 a month. For that, ESPN, by itself, is worth it. And, on top of that, my kids get all of this other programming, Disney, Discovery, and so on." He then went on to say that cable is a wonderful value for our household and I thank the cable industry for providing the service.

Let me again point out what this debate is and is not about. It is not about regulation of basic cable rates. There have been some abuses of basic cable rates. The FCC ought to regulate basic rates.

Customer service. We know there have been problems in service as cable has grown so dramatically. Let the FCC set customer service standards. That is in the substitute and in S. 12 as well.

Signal quality. We realize that there are, in some places, problems with this, as the systems have expanded very, very rapidly to reach the public demand. We call for that as well.

This is what the debate ought to be about and this is what the substitute does. We should not get into the radical idea of this access provision. Let me tell you why the access provisions in S. 12 are fundamentally flawed. I think the Senator from Alaska was right. The provisions raise basic con-

stitutional issues. What effectively it says is somebody who creates something, the Federal Government can then come in and tell that individual who they should sell it to and at what price they should sell it. Do we do that in any other commodity? Of course we do not.

If you write a book, does the Federal Government come in and tell you who is going to market that book and how much you are going to sell the book for? If you write a column for a newspaper, does the Federal Government come in and tell you which newspaper you are going to sell it to and how much you are going to sell it for?

If you develop programming, for example the "Cosby Show", does the Federal Government come in and tell you who you are going to sell it to and at what price you are going to sell it? Of course not. This is a fundamental and very radical change in copyright law.

That might be an abstract argument for those who may be watching this debate, that this radical concept is being discussed. But it is also a fundamentally anticonsumer argument.

One of the reasons that the number of cable subscribers in the country has almost doubled in the last 6–7 years is that a vast investment has been made in programming by the cable industry and by those who want to program for the cable industry. Billions of dollars have been invested in new programming and offerings. That is why cable has succeeded and that is why these other industries resent cable so much. Because they have succeeded.

If we say we are going to regulate all of cable's offerings, and then tell programmers you must sell to all comers at a regulated price, what incentive is there going to be to the 21 new programming efforts that are out there right now attempting to get up and off the ground?

If we tell them, we are going to limit your ability to sell your product after you take this risk, what programmer in his right mind is going to put the investment up to create a new program? No one is going to do that. You are going to put an end to the new offerings and the potential of cable television and telecommunications to the country.

In addition to that, Mr. President, this assumes that the cable operator controls all of his programming costs. He does not. What does the cable operator have to do with what goes on with ESPN, for example? The cable operator cannot control the price of ESPN because he does not have control over the cost. ESPN is owned by one of the networks, and ESPN's rates are driven by baseball salaries, they are driven by football salaries, they are driven by negotiations with the National Football League and major league baseball and the NBA.

Does the cable operator have a chance of somehow saying to the NBA: Limit your salaries to Larry Bird. Of course they cannot do that. It is a preposterous notion to suggest that the cable operators have control over something like ESPN, and yet S. 12 tells us we will go in and regulate the price of ESPN.

Does S. 12 propose going in and regulating salaries to baseball players? I don't think we want to get into regulating everything in our American society's economy.

Mr. President, the logic behind S. 12 is wrong, Mr. President, flat wrong. S. 12 will dramatically inhibit the cable industry and, most importantly, dramatically inhibit the potential the cable television industry has started with CNN, children's programming, and a whole variety of other offerings. S. 12 is the wrong thing to do.

Stick with the substitute, which addresses basic issues of rate regulation, customer service, and signal quality. Do not get into this enormously radical and fundamentally wrong construction that constitutes the rest of S.12.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who seeks time? The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, may I inquire as to the time situation?

The PRESIDING OFFICER. The Senator from Hawaii has 11 minutes.

Mr. INOUYE. And the opposition?

The PRESIDING OFFICER. The Senator from Colorado has 4 minutes 40 seconds, and the Senator from Alaska has 6 minutes.

Mr. HOLLINGS. Mr. President, we are here this morning to consider the Packwood substitute to S. 12, the Cable Television Consumer Protection Act of 1991. There is no question that this substitute amendment is a sham; it contains no protections for the consumer, and it does nothing to promote competition. The question is, why would anyone vote for this amendment?

The cable industry does not support this substitute. The cable industry only wants to gut the bill. Jim Mooney, head of the National Cable Television Association, said in a memo to his board that he will not support any cable bill even if this substitute is adopted. This is not a compromise; this is a killer amendment.

The administration does not support this substitute. The administration's policy statement makes clear that, even if the substitute is adopted, the administration still wants several changes made before it could accept it.

Consumers do not support this substitute. The proposed consumer safeguards in this substitute amendment are no protection at all.

First, the substitute would regulate only the basic tier of cable service, which would include only the broadcast signals, public access channels and C-SPAN. As we all know, this gives cable operators every incentive to retier, and they are already doing just that. A recent Wall Street Journal article found that, when a cable company retiers, about 10 percent of consumers subscribe only to the basic tier. Thus, the substitute would regulate the services that few people want.

Second, the substitute would do nothing to promote competition. The substitute has four provisions that are said to promote competition, but two of those are already in S. 12, the expansion of the rural telephone exemption and the multiple franchise provisions. The remaining two provisions, the elimination of the multiple ownership rules and a report to Congress, will do nothing to promote competition in the multichannel video market.

In fact, the repeal of the FCC's multiple ownership rules would simply allow greater and greater media concentration. The substitute would eliminate the restrictions which prevent anyone from owning more than 12 TV, 12 FM and 12 AM radio stations. Eliminating these restrictions could allow a few large corporations to rule the airwaves and control all the information broadcast into our homes.

We don't need another report to Congress. How many reports is Congress supposed to receive before it takes action? We already have reports from the FCC, from GAO, from the Department of Justice, and the record of 13 days of hearings in the Commerce Committee. What more information do we need?

Finally, the substitute includes nothing on access to programming, nothing to protect against discrimination, nothing to protect satellite dish owners against abuses they have suffered at the hands of cable monopolies.

In short, there is no reason to support this substitute; it does not protect consumers, it does not promote competition, and it is not supported by the cable industry or the White House.

S. 12 is a bipartisan bill that passed the Commerce Committee overwhelmingly, 16 to 3. It has been shaped after 4 years of work, including 13 hearings on cable issues, where the committee listened to 113 witnesses and almost 50 hours of testimony. S. 12 is a clear response to the concerns of the people of this country.

I urge my colleagues to vote against the substitute.

Mr. METZENBAUM. Mr. President, I rise in strong opposition to the amendment.

This amendment will not protect consumers, since it permanently shields from regulation all the program channels which give cable its monopoly power.

The fatal defect of this amendment is that it shields from regulation the very program channels which impel people to buy cable in the first place. If this amendment becomes law, the source of cable's monopoly power will remain completely free from regulatory oversight. Let me explain:

Until recently, cable operators offered their customers a broad array of programming on basic cable. Program channels like ESPN, CNN, MTV, TNT, and USA were staples of basic cable. People would subscribe to basic because they could not get these channels through conventional over-the-air TV reception.

Do not take my word for it, Mr. President. Listen to what the National Cable Television Association said in a brief filed with the FCC:

> When a viewer subscribes to cable, he's generally not paying for access to the local broadcast stations, because he can get those free without cable. He's paying for the distant signals and nonbroadcast programming that are not available over-the-air.

The cable industry attracted new subscribers by offering a broad array of program channels on the lowest-price tier of service. When cable prices began to shoot up, consumers did not drop the service for one simple reason: There were no other substitutes for the 30–40 channels offered on basic cable by most operators. Consumers paid, according to some estimates, billions of dollars in overcharges because basic cable offered them a product which they could not get anywhere else. It was a classic case of a monopoly provider luring customers with an attractive package, and then quickly jacking up the price in order to earn monopoly profits.

Once Congress and the FCC began to get pressured to do something about basic cable price-gouging, the industry took a new tack. In anticipation of reregulation, it began to move popular program channels off the lowest-price basic tier, in order to shield them from regulation. Last week's article in the Wall Street Journal summarizes the situation:

> Keenly aware of reregulation threats and new Federal rules that let more cities cap basic cable rates, cable systems have simply redefined what basic supposedly means. They have carved out a layer of popular channels to form a new tier that costs extra, and thus they effectively dodge the rules aimed at curbing price increases for basic cable.

The Wall Street Journal article goes on to note that last March, Time-Warner's Brooklyn System moved basic cable program channels such as MTV and CNN onto a higher tier of service; 9 months later the system hiked the charge for this tier by 34 percent.

Mr. President, under S. 12, that rate hike could be reviewed by the FCC to make sure that it was reasonable. Under this amendment, that rate hike would be completely exempt from any review.

In other words, the amendment before us encourages and rewards the cable industry for a business practice that is designed to evade Government oversight and force consumers to continue to pay monopoly prices.

The bottom line is this: S. 12 ensures that the cable industry can be held accountable whenever they charge excessive and outrageous prices for the channels which consumers identify as the core of cable service. But the amendment before us would perpetuate cables' monopoly power by completely shielding those channels from regulation. On that basis alone, this amendment must be rejected.

But there is another—equally important—reason to defeat this amendment. The amendment fails to address the competitive problems caused by vertical integration in the cable industry.

Mr. President, nearly every consumer in this country knows that cable faces no competition. Since deregulation, the big cable companies used their monopoly profits to buy up many of the program channels carried on cable systems. This vertical integration has harmed the viability of cable's potential competitors and strengthened cable's monopoly power. Alternative multichannel technologies like wireless cable and the satellite dish industry are poised to compete with cable. But they cannot be effective competitors unless they can deliver popular program channels to their customers. Unfortunately, the cable industry has refused to make their program channels available to potential competitors on fair terms and at nondiscriminatory prices.

I have already cited a number of instances in which cable has leveraged its control over programming to blunt competition from alternative technologies. Senators GORE and DANFORTH also have spoken to this issue. But let me give you one more example.

Just last week, an executive in the direct broadcast satellite business—which many believe could provide cable with real competition—told the Washington Post that "program suppliers * * * owned by cable companies want to charge his company as much as 10 times more for programming than a cable operator now pays." The Post reported that this DBS executive believes that these discriminatory prices are "a deliberate attempt to raise his overhead so high that his service won't be price-competitive with cable."

The program access provisions of S. 12 set a technology-neutral policy that will help consumers and promote competition. Consumers are interested in getting cable programming, Mr. President. They are less interested in the technology which is used to deliver that programming to their home. They want good, reliable reception of multichannel programming at a fair price.

The best thing Congress can do for consumers is to ensure that all multichannel technologies have fair access to cable program channels, so that they can compete with one another on the basis of price and service. But the cable monopolies don't want to compete on that basis, and that is why the program access provisions of S. 12 are stripped from this substitute.

There are other problems with the substitute, but its key flaws are the failure to adequately protect consumers or promote competition.

Mr. President, we have a chance to rectify a horrible mistake made in the 1984 Cable Act which hurt consumers. But if we pass this substitute, we will compound that mistake. The right vote for consumers is to reject this amendment.

Mr. RUDMAN. Mr. President, I rise to express my opposition to S. 12 in its current form. While I can understand the frustrations felt by many people about rising cable rates and erratic service, I believe S. 12 goes far beyond what is needed to deal with these issues. In addition, a number of provisions are completely unrelated to problems that exist in the cable industry.

It is especially ironic that legislation originally intended to address rising cable rates will itself result in higher charges due to the retransmission consent provision. This provision will allow broadcasters to set conditions—including the payment of fees—on the transmission of their over-the-air television signals on cable systems. It could result in as much as a 20-percent increase in the price consumers pay for cable service—and this increase will not result in any additional channel capacity or service improvements.

In addition, retransmission consent raises serious questions about the viability of the compulsory license provisions of current law. Copyright owners of cable programming will be subject to the terms of negotiations between television broadcasters and the owners of cable systems, thereby threatening the compulsory aspect of compulsory license.

I should note that I have been, and continue to be, a supporter of must-carry, which would essentially require cable operators to carry all local television stations on their systems. It is important that communities have access to local information and news coverage, and that the Congress continue an emphasis on localism in the broadcast industry.

If the pending legislation only included the regulation of basic cable service, reimposition of must-carry, and minimum service standards I would probably be a supporter. However, the retransmission consent provision alone will be a full employment act for lawyers, and the detailed rate regulation provisions will lead to a heavy-handed Federal presence.

I am cosponsoring the bipartisan substitute as the most viable alternative to S. 12, although it is not a perfect solution either. Frankly, it includes a provision on retransmission consent which I oppose.

Excesses have occurred in the cable industry, and I am willing to support legislation that attempts to curb them in a responsible manner. The pending

legislation simply goes too far, and will lead to burdensome regulations and increased costs for consumers.

Mr. President, again I express my opposition to S. 12 and I yield the floor.

Mr. STEVENS. Mr. President, I yield myself 3 minutes of my remaining time.

I wish to clarify some points with regard to the repeal of the 12–12–12 rule contained in the Packwood substitute. The National Association of Broadcasters and broadcasters nationwide strongly support that repeal. Diversity of programming is a local issue. Our alternative does not repeal the FCC's local ownership rules, which currently prevent anyone from monopolizing all the electronic media in a given market. I agree that encouraging minority ownership is a great idea. We all support that, I believe. But, we should not do that by continuing the 12–12–12 rule. We must unshackle broadcasters nationwide if they are to compete with cable and other video programming distributors.

Again, as far as I am concerned, S. 12 is the same as saturation bombing of a major city. There is no necessity for it. What we need is a surgical strike to protect those people who need access through cable to over-the-air broadcasting services, public, educational, and governmental services, and C-SPAN I and II at the lowest possible reasonable rate.

S. 12's rate regulation provisions are constitutionally deficient. I believe S. 12 is therefore unconstitutional. It should and would be vetoed, I believe. The substitute to S. 12, the Packwood substitute, will be signed. I have been assured of that. It would be signed.

S. 12 will erode cable's ability to provide better programming and better services. This industry has tumbling technology—one technology replaced so rapidly that it literally tumbles over the next. It needs a cash-flow to keep going. We have worldwide leadership in this area, and we are going to stifle our leadership by providing across-the-board nationwide regulation at a time when we should assure continuation of a reasonable cash-flow for further investment in this job-producing industry. I want to emphasize that. This industry produces more new jobs than anyone you can think of.

Our basic service concept, which is tied to must-carry and retransmission consent, reinforces the broadcast industry and preserves essential consumer access to cable service.

I reserve the remainder of my time.

Mr. KERRY. Will the Senator just yield 30 seconds?

Mr. STEVENS. Yes; 30 seconds.

Mr. KERRY. Mr. President, I point out, following up on the comments of the Senator about cash-flow and investment, that the fact is that since deregulation in 1986—and this is an independent communications industry report by Veronis, Suhler & Associates. It shows from 1986 right through 1991, each year, the pretax operating income margins for cable have declined.

So this is not a situation where they are raising money and it is going into profits. It is not. It is going into the massive investment to lay the infrastructure which is creating the jobs. Each year, it has declined.

I ask unanimous consent that this report be printed in the RECORD.

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

REVENUE, PRETAX OPERATING INCOME, OPERATING CASH FLOW, AND ASSETS OF PUBLICLY REPORTING CABLE SYSTEM OPERATORS

[In millions of dollars]

	Revenue	Pretax operating income	Operating cash flow	Assets
Year:				
1986	4,472.6	878.5	1,814.5	14,673.7
1987	5,978.9	1,125.7	2,500.7	18,866.1
1988	7,716.3	1,184.6	3,228.6	30,515.9
1989	9,551.9	1,481.7	4,149.1	38,988.5
1990	11,597.8	1,973.5	5,077.3	40,516.0

GROWTH OF REVENUE, PRETAX OPERATING INCOME, OPERATING CASH FLOW, AND ASSETS OF PUBLICLY REPORTING CABLE SYSTEM OPERATORS

[In percent]

	Revenue	Pretax operating income	Operating cash flow	Assets
Year:				
1987	33.7	28.1	37.8	28.6
1988	29.1	5.2	29.1	61.7
1989	23.8	25.1	28.5	27.8
1990	21.4	33.2	22.4	3.9
Compound annual growth	26.9	22.4	29.3	28.9

RETURNS ON ASSETS AND ASSET TURNOVER OF PUBLICLY REPORTING CABLE SYSTEM OPERATORS

	Pretax operating income ROA (percent)	Operating cash flow ROA (percent)	Asset turnover times/year
Year:			
1987	6.7	14.9	0.4
1988	4.8	13.1	0.3
1989	4.3	11.9	0.3
1990	5.0	12.8	0.3
1987 vs. 1990 change (points)	−1.7	−2.1	−0.1

GROWTH OF PUBLICLY REPORTING CABLE SYSTEM OPERATOR REVENUE VS. CONSUMER AND ADVERTISER SPENDING ON CABLE SYSTEMS

[In percent]

	Public companies[1]	Cable system industry[2]
Year:		
1987	33.7	13.5
1988	29.1	16.2
1989	23.8	15.2
1990	21.4	11.7
Compound annual growth	26.9	14.1

[1] Revenue growth of the public companies represented in this subsegment.

[2] Growth of total U.S. cable system expenditures.

Source: Veronis, Suhler & Associates, McCann-Erickson, Paul Kagan Associates, Wilkofsky Gruen Associates.

PRETAX OPERATING INCOME AND OPERATING CASH FLOW MARGINS OF PUBLICLY REPORTING CABLE SYSTEM OPERATORS

[In percent]

	Pretax operating income margins	Operating cash flow margins
Year:		
1986	19.6	40.6
1987	18.8	41.8
1988	15.4	41.8
1989	15.5	43.4
1990	17.0	43.8
1986 vs. 1990 margin change (points)	−2.6	3.2

Mr. INOUYE. Mr. President, I am pleased to yield 2 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 2 minutes.

Mr. GORE. Mr. President, I said my piece earlier, but I want to underscore just a couple of points just briefly before the final vote.

These cable rates are going to continue to go up unless S. 12 passes. I just want to say to my colleagues on both sides of the aisle, if you have had the experience of going into a town in your home State and having people who have just received their cable television bills raise the question, "What can be done about this," if you have had that experience, think about this vote, because if the substitute is adopted, you are going to have that experience from now on. And anybody who votes for the substitute is going to have to be able to somehow explain it, because a vote for the substitute is a vote to preserve the cable monopoly, a vote in favor of continued, regular increases, just like clockwork.

If you have ever had people come to a townhall meeting and say, "Why can't there be some competition for cable," vote against the substitute and you will be able to tell them, "I voted for the consumers."

If you have a multisystem cable business in your hometown, if the industry is headquartered there, that is a different situation. But if you have satellite dish owners, if you have consumers who are paying ever-increasing rates, think about this vote. The vote on this substitute is the key consumer vote of this Congress.

I just want to say, in conclusion, that it is going to be an extremely high-profile vote. It is going to be one that is remembered for a long time. If you are in favor of competition, if you are in favor of doing something to hold these monopoly rate increases down, then vote against the substitute and then vote in favor of S. 12.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GORE. May I say in closing something I did not say at the beginning of the debate, and that is that the chairman of this subcommittee, Senator INOUYE, has done a fantastic job for so many years on this with the chairman of the full committee, Sen-

ator HOLLINGS, and our distinguished ranking Republican member, Senator DANFORTH, who is the principal sponsor of this bill. It has been a bipartisan effort lasting more than 3 years that is culminating in a few minutes. I hope Senators will support the consumers.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, this debate began 4 years ago. We have had 13 hearings, 50 hours, 113 witnesses, and for the last 5 days the people of the United States have been bombarded and saturated with hours of rhetoric and words. I would like to, if I may, most respectfully, condense what we have said so far.

First, I think it should be noted that the administration has indicated it will not sign the substitute if adopted.

Second, the cable industry, in writing, has indicated that if this substitute, which they supposedly support, becomes the bill that is passed by this Congress, it will oppose its signing.

Third, I believe the facts are very clear that if S. 12 is not passed, the consumers will once again suffer. The substitute, Mr. President, obviously is an instrument to destroy S. 12. It is not a legitimate instrument, supposedly, to become the law of the land. So I hope that all of us will look into this very carefully. I hate to suggest that the substitute is a sham. Unfortunately, the facts of this case would indicate that the substitute is a sham.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. I yield myself the remainder of my time.

Mr. President, in 1984, Senator Goldwater and Senator PACKWOOD led the effort to establish these new rules that are going to be tampered with by S. 12. Senator PACKWOOD, as the principal sponsor of the substitute, and I met with the Chairman of the President's Council of Economic Advisers, Michael Boskin. We have jointly been assured that this substitute of ours is acceptable to the administration. It would like to see some additional changes made, without question, but it did not author the memo that has been referred to. This substitute is acceptable to the administration.

S. 12 is unacceptable. If we want a bill, we have a good alternative before us now in the Packwood substitute. It is a bill that, in my judgment and I think in the judgment of those who have worked with Senator PACKWOOD, is constitutional. S. 12 is unconstitutional.

There is no precedent for this Congress to establish a policy which says that someone who produces an idea, a program, must sell that idea to his competitors, and, furthermore, the Government will regulate the rate that the competitors will pay for it. Nor do we have any precedent for saying that because there is some inequity in terms of a geographical ability to receive a signal, such as Senator GORE has been speaking about in terms of the satellite dish receivers, that that inequity leads to a justification under the Constitution for assuming regulatory authority over the industry nationwide.

Last, as I have tried to point out today, if you examine the Commerce Committee's own report, this is regulation in a totally new area. There is no precedent for the type of regulatory authority that the FCC would be given. It has no basis in history.

Under S. 12 the FCC is just told somehow or other to lower the rates for cable service and maintain control over them in the future without regard to cost. Ultimately, we will be regulating the rate that people will receive as baseball players or football players because the cable industry would not be able to pay the fee required by sports teams in order to carry these events on cable.

I have, as I said at the beginning of this debate, great respect for those with whom I have served on the Commerce Committee now for almost 20 years, but I cannot believe they would urge the Congress to pass an unconstitutional act that is destined for failure because the President of the United States will veto it.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. FORD. Mr. President, will the manager give me 30 seconds?

Mr. INOUYE. Mr. President, I will be happy to yield 30 seconds.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I compliment Senator INOUYE and Senator DANFORTH and others for the bill that they have brought forth to the Senate. It is a very simple question, I think, to hear. It is one that the substitute will allow rates to increase; the bill introduced by Senator INOUYE and others will hold rates down. I think it is a consumer question, and I am pleased to support the package.

Mr. INOUYE. Mr. President, I am pleased to yield 2 minutes to the chairman of the committee, Senator HOLLINGS.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, right to the point, the distinguished Senator from Alaska knows better. We regulate. We regulate rates in telephones, communications, and do they make money? Billions and billions are being invested overseas, and that is why this Congress, buy an overwhelming three-fourths majority, passed the bail bill, as they call it, to allow them to invest in this country. So he knows differently, and he supported that.

We are trying to get back to a modicum of regulation and bring about access. When our distinguished colleague from Colorado says the new guy on the block is going to be controlled, that is what we are trying to do—get him to be a new guy on the block because he is already being controlled by Denver and TCI, and we want the people's entity, namely, the Federal Communications Commission, to give us access here.

So we have a good bill. It has been bipartisan. I, too, also congratulate Senator INOUYE and Senator DANFORTH. This is a last-ditch effort to gut the bill. That is what they are trying to do. And they have been successful so far for about 4 years and 117 witnesses and 14 public hearings. I hope this will stop and the Senate will speak.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator has 2 minutes and 30 seconds. The Senator from Colorado has 4 minutes 40 seconds.

Mr. INOUYE. Mr. President, I am pleased to yield the remainder of my time to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, first I would like to respond to the constitutional argument of the Senator from Alaska, a truly remarkable constitutional proposition. The constitutional proposition, as I understand it, is that when there is a vertically integrated business relationship, there is a constitutional right to unreasonably discriminate against potential competitors. This is the constitutional issue that is being asserted. If that constitutional issue is correct, I suggest that much of our antitrust law would thereby be unconstitutional.

I concur with the statement made by my chairman, Senator HOLLINGS; the substitute would gut the bill. The effect of the substitute would provide for ineffectual regulation touching only a tiny fraction of what is provided and affecting only about 10 percent of those who subscribe to cable television. And with respect to competition, if we want true competition in the cable industry, it seems to me we do not repeal the 12–12–12 rule.

If we want true competition we do allow for the FCC to provide some ruling against horizontal integration and we do provide that those who were new entrants into the cable service have at least the ability to protect themselves against unreasonable discrimination by cable programmers.

Mr. President, this is indeed a big issue. It is not just a big issue because big companies are paying big dollars to big lobbyists. It is a big issue because throughout this country the American people are outraged about the abuses of cable television. If you go to the small-

er communities especially, and of America, if you go to cities such as Hannibal or Cape Girardeau, or Jefferson City, MO, and listen to the people for 2 or 3 minutes you understand the outrage. And the reason is that we now have an unregulated monopoly in cable television, and the principle of unregulated monopoly is contrary to the basic economic foundation of this country.

The PRESIDING OFFICER. The Senator from Colorado has 4 minutes 30 seconds.

Mr. WIRTH. Thank you, Mr. President. I thank my colleagues for their courtesy and patience during this long and extremely important debate.

First, Mr. President, I want to again congratulate the broadcasters who have done a very effective job lobbying this case on retransmission consent must-carry, and again remind my colleagues that those provisions are the same in the substitute as they are in S. 12. Those issues are exactly the same.

Mr. President, a year and a half ago, I circulated a proposal to address the concerns of American consumers regarding the cable industry. It was imperative that we move on some rate reregulation and some service reregulation. Reregulation of rates and services is now in the substitute in front of us.

I have long believed, as do most of my colleagues, that there have been some abuses in the area of rates, as pointed out by the distinguished Senator from Missouri and others. There have been some abuses on rates; some maverick operators have spoiled the barrel for everybody else. Now we are going to go back and regulate rates further in both the substitute and the basic bill S. 12. Both the substitute and the basic bill would also regulate customer service. Those are the two issues driving this legislation. Both the substitute and S. 12 address rate regulation and service regulation.

That is not what this debate is all about. We all agree that has to be done. The difference between the substitute and the underlying bill goes to some very fundamental tenets as to how we in the Congress can, under the Constitution, treat a single industry and, more importantly, treat private property.

S. 12 requires the owners of programming to sell that programming to their competitors at regulated prices. That is something that we do not do for any other property in this country. We do not do it for any intellectual property. This is truly a radical concept.

Not only is that theoretically important, it is enormously important to the creative powers in the country who simply are not going to spend their time and effort working on new programming and new offerings for the American consumer, if in fact what they can get back from that effort is as dramatically regulated as it is going to be here.

It is a bad idea theoretically and it is a bad idea practically. It certainly will not help us to reach the promise that cable television has brought to us through all of the wonderful offerings—children's programming, CNN, and so on—that have really become staples of cable television.

In addition, there is in S. 12 a set of requirements related to concentration in the cable television industry, requiring the FCC to go in and regulate this, even though the National Telecommunications Information Agency, even though the Department of Justice, even though the FCC have, in fact, said that is not something that is necessary at this time.

To repeat, the case for the substitute is very simple. If you want to cast a good consumer vote, vote for the substitute, rate regulation, service regulation, and the same provisions as exist for the broadcasters. That is a very good consumer vote.

If you want to cast a reasonable vote on how we are going to treat programming, how we are going to treat private property, vote for the substitute, not for S. 12. Vote for a continuation of our respect for private property, a continuation of our fundamental understanding of copyright law, and treatment of intellectual property in this country.

Mr. President, the substitute is a basic and fundamental consumer bill reflecting the concerns I raised nearly a year and a half ago. These issues are real. They are met in the substitute. The substitute deserves your support and attention.

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, as I indicated in my comments yesterday, I am a strong supporter of S. 12. I think it moves us in the right direction by providing regulation while cable remains a monopoly, and by encouraging the development of bona fide competition. I commend the distinguished floor managers, Senators DANFORTH and INOUYE, who have shepherded this bill toward passage, as well as Senators HOLLINGS, GORE, METZENBAUM, LIEBERMAN, and others who have played an important role.

There is one section of the bill, however, which the distinguished floor manager, Senator INOUYE, mentioned in his remarks yesterday and which I would like to touch on briefly today. That is the section on retransmission consent. Although I understand that retransmission consent is not intended to have any effect on the compulsory license, it seems to me that there is, at the least, an inevitable overlap.

According to the compulsory license, cable has an automatic right to retransmit broadcast programming in exchange for the payment of a statutory fee, distributed to the copyright owners of the programming. Retransmission consent would change that. First, cable would lose its automatic retransmission right and instead be forced to negotiate for broadcast programs. Second, cable's negotiating partner would be local TV stations rather than program producers.

The view of the Copyright Office on this matter, I might say, is rather blunt. In the words of its General Counsel, last July:

> The power to withhold consent makes retransmission consent the equivalent of copyright exclusivity and creates a conflict with the cable compulsory license of * * * the Copyright Act.

Upon further reflection, it may appear that retransmission consent makes perfectly good sense. But there is no doubt in my mind that retransmission consent has an impact on the compulsory license and that further reflection is in order.

The truth is that this may be a good time to review issues surrounding the copyright compulsory license generally. Technology has come far since the compulsory license was created in 1976 and it would be useful to review where we stand now and what changes, if any, would be appropriate.

I am, therefore, pleased that Senator DECONCINI is planning to hold hearings to conduct such a review and I look forward to participating in those hearings. Senators DECONCINI and HATCH actually initiated the review process several months ago, in a letter they wrote to the Copyright Office on October 22, asking for a survey of developments affecting the cable and satellite compulsory licenses.

Once again, let me make it clear that I am not at this time taking any position against retransmission consent. I am only endorsing Senator DECONCINI'S plan to air all issues relating to the compulsory license thoroughly.

Mr. THURMOND. Mr. President, I rise in support of S. 12, the Cable Television Consumer Protection Act. This bill will impose necessary restraint on rates charged by cable operators until meaningful competition exists. We must act now to protect the American consumer who is required to pay high cable rates that have resulted from the lack of competition.

In 1984, Congress deregulated the cable industry. I supported this law because I believed it would foster healthy development and growth in the cable industry. Since that time, cable has experienced tremendous growth and is currently in most American households. However, in most communities consumers have only one cable provider from which to choose. This subsequent growth, without the element of competition, has come at great expense to cable subscribers. According to a recent GAO report, basic cable rates have increased 56 percent since cable was deregulated. This is two times faster than the rate of inflation.

As a general rule, I believe that business works best when it is allowed to

operate with the least amount of government intervention and regulation. However, I believe that regulation is sometimes necessary in order to balance the interests of affected parties. This legislation helps to achieve the proper balance between the need for cable to continue to grow and the interest of the consumer in having affordable rates. Further, this regulation is not necessarily permanent. Under this bill, once meaningful competition exists in a particular area, cable systems would no longer be subject to rate regulation.

Mr. President, the difficult economic times which our citizens face today makes passage of the bill, which will provide affordable cable rates, even more important. I hope we will be able to pass it in an expeditious manner.

Mr. DOLE. Mr. President, there is no question that consumers are justifiably angry at the rates and service shortcomings frequently imposed on them by cable monopolies. I have not been to a town meeting or chamber of commerce breakfast back home in Kansas in the last 2 years that I can recall where I did not hear at least one complaint about these monopolies.

So the urge to do something about it is understandable. But that something should not be a measure that will cut off the development of the programming and information that consumers really want, should not be a reregulatory scheme which will entrench and perpetuate the existing cable monopolies, and above all should not be something that in the end will leave consumers ultimately paying more for less, still captive to a regulated monopoly provider.

In my view, that is what S. 12 would do—impose a "cure" that will only compound and perpetuate the disease.

The Packwood substitute represents another approach. It provides consumers protection on basic cable service rates, but also seeks to promote the only real antidote to monopoly behavior: competition. It deregulates broadcasting; it allows local telephone companies in a greater number of our rural communities to provide competing cable service, giving those consumers a chance at choice; and it permits fed-up cities to establish their own cable systems to compete with monopoly providers, as several cities in Kansas want to do.

It also prohibits a city from excluding would-be competitors by mandating the allowance of second franchises—thus frustrating the sweetheart monopoly deals that have sometimes developed, to the detriment of subscribers.

Finally, the substitute is a bill we can get. The President has said he can't sign S. 12. He has said he will sign the Packwood substitute. While there is no guarantee of what will come out of the other body, this Senator would prefer to pass legislation that will address the problems—the real problems—as soon as possible, that we can get the President to sign into law, then spend the year posturing while consumers pay. I urge my colleagues to vote for the Packwood substitute.

Mr. CHAFEE. Mr. President, I would like to share with my colleagues some of my thoughts on the issue before the Senate: Cable television, and in a larger sense, the topic of modern communications. I find this to be a fascinating matter, and, if we play our cards right, one that portends great things ahead for both American technology and American consumers.

First let me say that I do not believe, as some have said during this debate, that the 1984 Cable Act that deregulated the cable industry—then in its infancy—was a disaster. Indeed, I think just the opposite. Yes, there are some problems now, problems that require swift action on the part of Congress. But deregulation helped give wings to an industry that, once on its feet, has provided phenomenal benefits to American consumers and American businesses. And on the way, it has revolutionized how Americans view the role of video communications in their lives.

The rate of change is staggering. Stop and think for a moment: Back in 1980, did anyone know what "cable" was? The term "cable TV" was most often met with blank expressions. It frequently was not recognized. It was not a household word. Instead, the networks were the No. 1 source of home video entertainment, and the big three were riding high.

Over the past 10 years, homeowners' access to cable has jumped from 45 percent to over 90 percent. The number of cable television subscribers has exploded from about 18 million to 54 million, a figure that translates roughly to 6 out of every 10 homes. Today, people don't just want their MTV—they want their CNN, and their ESPN, and their American Movie Classics, and their Univision, and dozens more.

I truly cannot think of one other industry that in such a short time has turned topsy-turvy our understanding of television—in short, has changed the face of video communications. With our benign acquiescence, it has changed how and where we as a Nation obtain our information and entertainment.

And as I have said, this dramatic technological revolution is just getting started. The technologies of the near future that I have glimpsed in reports and heard about in the media seem to me to come straight out of a science fiction movie. I don't think we quite comprehend what the next decade holds for us in terms of advanced communications. Fiber optics, video phones, telecommuting: I daresay someone 10 or 15 years hence will read my words and wonder at my ignorance of such terms! We really are poised at the edge of a very exciting time in communications.

And cable has contributed. The growth and expansion cable has experienced has been a good thing—a very good thing, in fact, that has opened new worlds for us. What is not as good is the fact that the cable industry has outgrown the rules of the game we set up in 1984, at a time when cable was a mere infant.

New rules for the cable game are a good idea. But here is where the debate becomes difficult, and where we need to be careful.

Cable service is a popular product, and one that Americans have adopted very happily. Yes, some changes in the rules should be made, and they can be crafted in such a way as to both protect consumers and enhance competition for the common good. But I am leery of jumping back into the oft times smothering embrace of full regulation. It may sound good to say that certain regulations will stop the abuses that are out there. But those selfsame regulations may also stop the creativity, and the investment in quality programming, and the advancement of technology that is out there as well. And they might cause the loss of jobs in an industry that, unlike many others at this time, has tens of thousands of employees nationwide and, in many areas, is still hiring.

My point is this: Americans may get angry—and rightly so—at their cable companies for rate hikes, or poor customer service, or technical problems. But our constituents just want us to fix it—not kill it.

So I say to my colleagues that we must pick and choose carefully, winding our way delicately through the maze of regulation. Let us use a scalpel, not a hammer. Let us feel our way carefully, and do it right.

When we in Congress approved the 1984 Cable Communications Act, many of us envisioned the ensuing expansion in cable offerings. We also envisioned, however, a healthy competitive market in which cable systems competed not just with broadcasters, but with each other and video programmers to bring the best service to consumers.

That has not happened. Instead, across the Nation and in my State, we find that it is rare to find more than one cable operator or video programming distributor serving a particular area. In the situation where local service consists of one provider alone, abuses can and do occur.

Let me say that in general, my home State of Rhode Island has not experienced the horror stories that have occurred in other States. Since the cable companies across my State are deemed to regulation. Regardless, however, I understand from the Rhode Island Public Utilities Commission that they generally conduct themselves well; and

that today, the most common complaint is new homeowners inquiring about when they, too, can be hooked up to cable. Only one community—Foster, where the population density per mile is low—is not yet wired for cable, and that soon may be remedied as a result of negotiations now underway between the State and cable operators.

So while nobody is perfect, it is my understanding that on the whole, the Rhode Island operators are not bad actors.

Industrywide, however, serious rate abuses have occurred, as have breaches in customer service pledges. And the cable industry structure has developed in a highly concentrated manner that if altered, might better serve the public. To my view, the best thing we can do to get cable companies and operators to shapeup is to promote competition—real competition.

Both the bills before the Senate—S. 12 and the substitute thereto—propose to do just that. I will say frankly that neither bill is exactly what the doctor ordered. However, the Packwood substitute takes an approach that I believe is more appropriate, and thus preferable to S. 12.

To my view, it would be a mistake to impose an abundance of regulations all at once on the cable industry. As I said before, we need to feel our way carefully on this: Let's change the rules, but let us not go willy-nilly to the other side of the regulation pendulum.

So my recommendation is to go step by step. The new FCC definition of effective competitive was issued only last July. It not only increases the number of broadcast signals required for effective competition, but it also includes a provision about the presence of competing multichannel delivery services. By all accounts, this new definition will up the number of cable companies subject to regulation.

I am concerned that only 6 months after the FCC redefinition, we are enacting legislation before we really know what the impact of the new FCC regulation will be.

Let us proceed cautiously evaluating later the effect of what we have done. For that reason, I intend to support the Packwood-Stevens-Kerry substitute, an approach that seems to me to be more balanced. There are elements of S. 12 that make sense, and perhaps the final answer lies somewhere between the two proposals. For now, however, I will be voting in favor of the substitute. If that substitute fails, I will vote for S. 12.

We all recognize that this bill has a way to go—the House must act, and then both Houses must approve a reconciled version of a bill. I look forward to seeing just how the House approaches this issue, and what the final legislative product will be. I hope it will be a bill that not only ensures consumer protection and enhances competition, but one that also will not curb the creative innovation that has been so wonderful for the American public—the goal that we all share.

Mr. GRASSLEY. Mr. President, I would also like to share a couple of concerns that I have with the proposed substitute. This more moderate approach to the cable industry problems is appealing.

I am concerned, however, about the provision which eliminates the 12-12-12 broadcast ownership rule. Since there have been no hearings on this, we really do not know what the implications are.

Second, one of the biggest problems my constituents have had over the years, particularly those in rural areas and from small towns, is that the cable industry has shown a lack of interest in serving these areas. And although they did not want to serve them, they also did not want to help satellite interests and other third parties to deliver cable programming.

We did see, however, cooperation during the past 3 years from the cable industry in beginning to offer some programming to these third parties so that they can serve these rural areas.

Unfortunately, the cable industry has continued to discriminate. They have discriminated still in terms of some programming, but also in terms of prices. There seems to be no legitimate reason to be charging these third-party providers as much as five times as much as they charge cable companies for the same programming.

Unfortunately, the substitute fails to address this serious problem as does S. 12.

Mr. ADAMS. Mr. President, the other day I stated the reasons why I strongly support the Cable Television Consumer Protection Act. The cable TV industry has become an extremely powerful monopoly, it is out of control and many local cable companies have been rate gouging consumers and offering poor customer services.

One of the reasons I oppose the substitute amendment is because it only regulates basic rates, a small portion of the cable market. As chairman of the Appropriations Subcommittee on the District of Columbia, I am outraged by the expanded service rate increases in Washington, DC. For example, the District Cablevision maximum value package was $36.40 per month in March, 1990, $40.40 per month in February 1991, and $44.44 today. When does it stop? Gouging exists at all cable rate tiers and only S. 12 allows the FCC to regulate rate increases at all tiers.

I am also concerned about the lack of a program-access provision in the substitute amendment.

For both these reasons the substitute bill is inadequate. I again strongly urge the passage of S. 12.

I ask unanimous consent to insert in the RECORD copies of District Cablevision rates showing these increases.

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

Residential rates and charges effective 3/7/90:

General Viewing Package—GVP, $18.95 a Mo.; 1st Set Top Converter, 1.00 a Mo.; 1st Remote Control, $2.00 a Mo.; Senior Citizen Discount,[1] $1.25 a Mo. & 1 Free Remote Control; Remote Control/Additional Selector $4.00 a Mo. per unit.

Premium Services: HBO, $10.50 a Mo.; Showtime, $10.00 a Mo.; Disney, $7.95 a Mo.; Cinemax, $10.00 a Mo.; The Movie Channel, $10.00 a Mo.

Standard Value Package—SVP: GVP, HBO and Showtime, $32.95 a Mo.

Maximum Value Package—MVP, GVP, HBO, Showtime, Disney, and Disney Magazine, $36.40 a Mo.

Service Installation: Regular Installation Charge, $30.00; Reconnection of Service, $25.00; Additional Outlet Installation, $20.00 Each; (For 2 additional outlets, time and materials for 3 or more additional outlets) Senior Citizen Installation,[1] $5.00 (1st Set); $10.00 (2nd Set); Additional Cabletime Guides, $1.50 Each a Mo.; VCR Hookup After Initial Install, $15.00; Change of Service Fee, $15.00; Trip (Charged for Customer, $15.00; Caused Damage: Collection of Past; Due Balances: Repair Calls; Unrelated to Normal Service; Use, Wear and Tear or System; Service Interruption).

Residential rates and Charges effective 2/1/91:

Service and monthly cost: Basic Cable Service—BCS, $19.95; *Senior Citizen Discount[1] 1.50 + Remote; Expanded Basic Tier-EBT, 1.00.

Premium Services; HBO, $11.00; Showtime, $10.50; Disney, $8.45; Cinemax, $10.50; The movie channel, $10.50; Cable Guide $50; Additional cable guide(s) $1.50; General viewing package—GVP BCS & EBT, $20.95.

Standard value package—SVP ($15.00+GVP), $36.95; HBO & Showtime (save $6.50); Maximum value package; MVP ($19.45+GVP) $40.40; HBO & Showtime & Disney & Disney Magazine (save $10.50).

Equipment fees: Initial converter, $1.00; initial remote control, $2.00; remote control/additional converter, $4.00;

Service fees on time charges, standard installation (up to 3 sets), $60.00; reconnection of service, $60.00; VCR hook-up after the initial installation, $25.00; change of service fee, $25.00; standard value package (SVP); late fee $5.00 returned check charge $25.00; trip charge $25.00, (charge for customer caused damage, charge for collection of past due balances, repair charges unrelated to normal service, use, wear and tear, or system interruption).

Mr. SEYMOUR. Mr. President, as we near the end of consideration of S. 12, the Cable Television Consumer Protection Act, I rise today to put into perspective a year's work of debate, discussion, and deliberation on what is certainly a very contentious and complex piece of legislation.

In 1980, California's television marketplace virtually consisted of that which was provided over-the-air: The three networks, public televsion, and many independent stations. Cable TV was mainly designed to bring over-the-air to regions with poor reception.

[1] Senior citizen discounts apply to citizens 60 years of age or older.

There was maybe one or two cable movie channels, but they were not tailored to the everyday consumer. Cable was heavily regulated and was faced with tough and expensive franchise standards.

But 1980 was the year California's cable deregulation law took effect. In 1982, the California Public Broadcasting Commission, in what was certainly a sign of things to come across the Nation, found that deregulation aided the availability of growth and investment in the cable industry. By 1984, 90 percent of California's subscribers were served by systems of 20 or more channels, compared with a national average of 78 percent.

In short, deregulation allowed California's cable operators to improve their systems and provide additional programming. It was a model that inspired a nation to follow suit in 1984.

With national deregulation, investment in technology upgrades, and channel expansion skyrocketed. In response, the producers of programming filled the void of new, empty channels with entertaining and innovative shows. And for every new technological achievement, programming source, or cable service that is launched in California, scores of new jobs came with it.

Cable TV has enjoyed big success in California and across the Nation. Some have argued that this success has brought the worst kinds of excess: Excessively high rates, excessively poor customer service, and excessively unfair treatment of local broadcasters.

A fair reading of the Cobb salad of statistics on cable rates demonstrates that, overall, cable TV is a sound entertainment value. Of course, we can't ignore a GAO report, which found that cable rates have risen faster than the inflation rate since dergulation took effect in 1986. However, keep in mind that prior to 1986, cable rates were kept artificially low and lagged behind the inflation rate. Deregulation allowed for normal market adjustment and growth that was stalled by burdensome regulation.

Interestingly, if we compare cable rate increases with other comparable forms of entertainment in certain regions of California, we find that cable is a good entertainment value. For example, in San Francisco, the monthly basic cable rate per channel increased by 7.5 percent from 1986 to 1991. Compare that to the price of a ticket to the movies, which rose by more than 27 percent during the same period; or a ticket to a San Francisco Giants game, which increased by more than 42.6 percent; or a ticket to a San Francisco 49'ers game, which rose by more than 105 percent.

In San Diego, the monthly basic cable rate increased by more than 27 percent from 1986 to 1991. But the following alternatives had higher price increases: a movie threater ticket (29.7 percent), a San Diego Padres ticket in the bleachers (42.9 percent), and adult admission to Sea World (64.5 percent).

Now I'm not saying that the cable industry has a halo over its head. Given the tremendous growth and consolidation seen in this industry, there are probably a good number of operators who have engaged in arbitrary rate regulation.

My point, Mr. President, is that I am concerned that in response to excessive behavior within some elements of the industry, Congress is going to engage in some excessive regulatory behavior of its own. And if that occurs, all will lose: The industry will lose in terms of a future investment and job growth in the video communications and production industry; small cable companies will find it harder to operate under excessive regulations, which will force future consolidation by bigger operators who have the capital to enable them to roll with the regulatory punches; and consumers will lose from a stagnant communications industry.

That's not to say reform in this industry is unnecessary. I believe it is. What Congress must enact is responsible reform. The real questions we must ask are: How best can Congress reregulate the cable industry without putting an end to the investment in capital and technology that the cable industry is committed to? How best can Congress encourage competition in the multichannel video marketplace as a more healthy alternative to rate regulation? How best can Congress prevent arbitrary price discrimination in the sale of programming to cable or its other competitors? How best can Congress protect local broadcast affiliates and other independent stations who combined still provide the most widely viewed programming in the television industry?

These are the fundamental questions that we must answer if we are to respond effectively to the problem at hand—which all of us agree is rates and service—without undermining the future benefits of growth in the industry.

We in the Senate are faced with two options: S. 12 or an alternative offered by my colleagues from Oregon and Alaska. Some believe S. 12 is the only option, labeling the alternative a sham—a baseless attempt to prevent any cable reform bill from passing this year.

What truly is a sham is the attempt by some who would rather misrepresent a piece of legislation rather than debate it on its merits. That's what's occurred here this past week.

How can the alternative be a sham when it adopts the exact same must-carry and retransmission consent rules found in S. 12—even though there are proponents and opponents of S. 12 who agree that the jury still is out on retransmission consent.

How can the alternative be a sham when it calls for the same level of customer service standards as S. 12?

How can the alternative be a sham when, like S. 12, it calls for the FCC to set regulations for the installation and regulation of cable equipment?

How can the alternative be a sham when the FCC is set to require rules on the disposition of equipment, also the same as S. 12?

How can the alternative be a sham when S. 12's sponsors took two provisions from the alternative that are designed to encourage competition and included them as part of S. 12? I must admit it's nice to know that what was once deemed nothing can 1 minutes later be something.

How can the alternative be a sham when it doesn't force consumers to buy tiers above the basic service just to get some of the programming offered in that tier?

How can the alternative be a sham when it offers a definition of effective competition that will allow most franchise authorities in California to regulate basic cable rates?

How can the alternative be a sham when it provides the franchise authorities more power and more flexibility in the renewal process?

Now, Mr. President, I know this issue at times can be very complicated. Indeed, several of my concerns with S. 12 are based on technical legal questions. Yet, this alternative is not the victim of complexity, but of intentional distortions and misrepresentations. Equally, those who support the alternative for sound policy reasons are accused of ulterior motives. Indeed, there are so many spins being placed on S. 12 and the alternative that one can't help but feel dizzy.

It's time to cut through the spin and get to the heart of the matter.

There are essentially two major differences between S. 12 and the alternative. The first is the degree of regulatory control S. 12 regulates a basic tier and the next tier level of entertainment channels. The alternative only regulates the basic tier, but encourages a cable operator from forcing a subscriber to buy up to a new tier to get the channels he or she wants.

In other words, Mr. President, S. 12's rate regulations are an excessive response to excessive cable rates. By contrast, the alternative ensures a regulated basic tier, and promotes a la carte selection of additional channels, where the popularity of the channels offered will dictate the price subscribers will pay.

Second, S. 12 contains provisions designed to ensure access to cable programming by its competitors, while the alternative does not include those provisions. I certainly understand the arguments advanced by cable's competitors that programming is the key to effective competition. However, I

must admit that the scope of S. 12's program access turns the legal basis of exclusive program arrangements on its head.

Exclusivity and competitive advantage—not effective competition—are at the heart of virtually every entertainment medium. After all, the networks make exclusive deals with broadcasters to ensure that there is only one affiliate market. CBS, for example, has an exclusive arrangement to broadcast the NCAA Final Four. That's called a competitive advantage. I doubt that CBS would ever dream of making this major sports event available to other networks.

Similarly, the Syndex rules—which protect a local broadcaster's rights to air programming in its market—is rooted in the concept of exclusivity.

More important, the right of an owner of intellectual property to make exclusive arrangements is designed to promote program diversity that enhances, not impedes, competition. Certainly, we have heard much here that this Federal policy has had the opposite results in cable television, especially when it involves a vertically integrated cable operator. If that's the case, what is needed is not program access provisions, but challenges under the Federal antitrust laws.

The alternative opts for the current Federal policy of exclusivity, but calls on the FCC to examine the impact of vertical consolidation on competition in the video marketplace. This is preferable to the sweeping provisions in S. 12, which dramatically alters an individual's rights to make exclusive arrangements with an operator.

Given the current major differences, as well as other procompetition provisions that S. 12 adopted at the 11th hour, I concluded that the alternative offered by my good friends from Oregon and Alaska is preferable to S. 12. It responds to the ill effects of deregulation, and in a manner that stresses competition and responsible, less onerous regulation. Furthermore, the substitute responds to the concerns of local broadcasters by including must-carry.

Of course, it appears that a majority of my colleagues will find that the alternative is not the route to pursue.

However, I have not given up hope that a responsible cable reform bill can be achieved. Indeed, let me make this clear: My support of the alternative does not mean I'm against cable reform. A close and fair reading will show that this alternative represented an honest and reasonable attempt to outline areas where S. 12 can be improved and I am hopeful that the House of Representatives will closely consider the merits of the alternative as well as other concerns during their deliberations.

The sponsors of S. 12 state that theirs is not a perfect bill. I agree. The sponsors of the alternative argued that their bill has its share of problems. I agree also, but I supported passage of the alternative because it—more than S. 12—emphasized competition, rather than regulation, as a means to keep rates down and improve service.

I do not want to stand in the way of a good-faith attempt to achieve a reasonable bill, and there are elements to S. 12 that provide an adequate starting point to achieve this goal—local control of rate regulation, strong customer service standards, and must-carry of local broadcasters, just to name a few.

A responsible cable reform bill is needed. It is attainable if good faith discussions are made. With that in mind, I have decided to cast my vote in favor of S. 12, though I do so with great reservation.

Once again, this is not a perfect bill. I believe it can be improved with less onerous rate regulation and more incentives for other multichannel systems to compete.

Furthermore, as I stated earlier before this body, certain questions pertaining to retransmission consent and its impact on consumers and the producers of programming deserve attention and discussion. And I am pleased that following my remarks, the distinguished chairman of the Copyrights Subcommittee stated that he intends to work with the Copyright Office and hold hearings to determine what impact retransmission consent has on the compulsory license.

I am pleased that several Senators—proponents and opponents of S. 12—reiterated my view that the jury is still out on retransmission consent. Unfortunately, some groups with a stake in this bill misrepresented my remarks to mean that I'm opposed to retransmission consent. That is not remotely close. Let me repeat that the point of my remarks yesterday were to underscore my current concerns with a provision that requires much more investigation before I can make a firm commitment in support or opposition.

So, Mr. President, though we complete action today, our work on this legislation is not done. And it won't be until we work together to find a common ground on this issue. Cable reform has taken all of the 101st Congress and more than half of the 102d Congress. The American people deserve cable reform, but one that protects consumers from excessive rates and poor service, preserves the rights of local broadcasters to be carried by cable operators, and the ability of cable operators to continue their innovative leadership in paving the way for an ever-expanding video communications infrastructure.

Mr. SPECTER. Mr. President, I have considered the issue of cable regulation at great length over the past several years and have met extensively with representatives of consumer groups, broadcast and cable groups. After much consideration of this matter, I believe that some compromise regulation is in order.

I understand the interest in the cable industry in not wanting to be regulated at all, but I believe that consumer protection is required for the basic tier of programming.

On the current state of the record, I believe this is the best course because there is considerable competition from over-the-air free television and from home videos and for that matter, even from movie theaters. I do not, however, foreclose further regulation. If it becomes necessary to regulate further, we certainly can do that at a later time.

I am very much concerned about the health of over-the-air broadcasting networks. The Packwood substitute does give them consideration in that they will have the right to negotiate with the cable operators to carry them on cable systems, and failing that, the broadcaster can require that they be carried under the must carry provision. There is some merit to the argument that the arrangements between over-the-air broadcasters and cable should be totally determined by the market so that the cable system should be carry or not as subject to negotiation and an agreement being worked out with the television station. Notwithstanding that consideration, I support the must carry provision in order to give the consumer access to the local television stations on his cable. The provision of the legislation further gives the television station the opportunity to negotiate for some compensation to protect its property interest if the market factors will support that.

I am very much influenced by the general proposition that the less regulation the better, the more market control, the better. I am concerned in particular about S. 12 putting extensive power in the hands of city councils because giving regulatory power to city councils ought to be the very last step. If at some point it becomes necessary to give city councils such regulatory authority, I would be willing to consider that.

I further believe that there is merit to the argument that S. 12 would restrict innovative proposals by the telecommunication industry. I am further concerned by many reports from constituents in Pennsylvania who advise that jobs will be lost because of the restrictions on competition imposed by the extensive regulatory process under S. 12.

All factors considered, I believe that the moderate approach is preferable to provide some regulation as envisaged in the Packwood substitute. If that proves insufficient, we can revisit the issue at a later date and provide whatever additional regulation is warranted.

The PRESIDING OFFICER. All time has expired.

Mr. INOUYE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment, No. 1522, offered by the Senator from Oregon [Mr. PACKWOOD]. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MACK (when his name was called). Present.

Mr. SYMMS (after having voted in the affirmative). Mr. President, on this vote I have a pair with the Senator from Missouri [Mr BOND]. If he were present and voting, he would vote "nay." I have voted "yea." Therefore, I withdraw my vote.

Mr. BREAUX (after having voted in the affirmative). Mr. President, I have a pair with the Senator from Michigan [Mr. RIEGLE]. If he were present and voting, he would vote "nay." I have voted "yea." I withdraw my vote.

Mr FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], the Senator from California [Mr. CRANSTON], the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

I also announce that the Senator from Michigan [Mr. RIEGLE] is absent because of family illness.

On this vote, the Senator from Michigan [Mr. RIEGLE] is paired with the Senator from Louisiana [Mr. BREAUX].

If present and voting, the Senator from Michigan would vote "no" and the Senator from Louisiana would vote "aye."

I further announce that, if present and voting, the Senator from California [Mr. CRANSTON] would vote "aye."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND] is necessarily absent.

The PRESIDING OFFICER (Mr. ROBB). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 35, nays 54, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—35

Brown	Hatfield	Reid
Bryan	Helms	Rudman
Burns	Jeffords	Seymour
Chafee	Johnston	Shelby
Cochran	Kassebaum	Simpson
Craig	Kasten	Smith
D'Amato	Kerry	Specter
Dole	Lott	Stevens
Fowler	Lugar	Wallop
Garn	Murkowski	Warner
Gramm	Nickles	Wirth
Hatch	Packwood	

NAYS—54

Adams	Durenberger	McConnell
Akaka	Exon	Metzenbaum
Baucus	Ford	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bingaman	Gorton	Nunn
Bumpers	Graham	Pell
Burdick	Grassley	Pressler
Byrd	Heflin	Pryor
Coats	Hollings	Robb
Cohen	Inouye	Rockefeller
Conrad	Kennedy	Roth
Danforth	Kohl	Sanford
Daschle	Lautenberg	Sarbanes
DeConcini	Leahy	Sasser
Dixon	Levin	Simon
Dodd	Lieberman	Thurmond
Domenici	McCain	Wellstone

ANSWERED "PRESENT"—1

Mack

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Symms, for
Breaux, for

NOT VOTING—8

Bond	Cranston	Riegle
Boren	Harkin	Wofford
Bradley	Kerrey	

So the amendment (No. 1522) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, the committee amendment, as amended, is agreed to.

Mr. DURENBERGER. Mr. President, I rise to express my support for S. 12 and to urge my colleagues to support this legislation.

Like many of my colleagues, this has not been an easy decision for me to make. I have never been a proponent of widespread regulation. In fact, I voted for the repeal of cable regulation in 1984.

In analyzing the nature of the cable television market, I have tried to determine if there is not a viable solution to the problems in the industry that could be addressed through market forces. My determination is that there are sufficient impediments to an effective marketplace to warrant the adoption of S. 12.

The truth is that cable operators benefited from the boost which came with deregulation back in 1986. This is just as the Congress intended. Accessibility to cable improved, programming increased 50 percent, and market share increased.

But, Mr. President, rates increased well beyond the rates of inflation, the providers of cable service consolidated their operations through leveraged buyouts and accessibility to programming for competitors was greatly reduced. The long-term effects of deregulation appear to have stifled the market, rather than make it more dynamic.

In a free market, cable rates do not increase more than 275 percent in 5 years, as they did in St. Paul, MN. In an open market, entry of competitors should not be blocked by regulation and vertical integration as it was for a broadcaster in the Twin Cities. In a vibrant market, businesses do not ignore consumer preferences with impunity.

In the city of Algona, in northern Iowa, this is exactly what happened. Without announcement or public comment, the local cable system dropped three Minnesota broadcast stations, in spite of the preferences of their subscribers and local government. It is particularly ironic that this situation was called to my attention by the mayor and the council of that city, who are the franchising authority for the cable system. This is not a free market.

Because of these circumstances, Mr. President, I believe that business as usual will not achieve the goals of fair rates for consumers and a strong and competitive market for cable operators and programmers. Without S. 12, rates will continue to go up while service declines; the power of the largest cable operators will continue to increase, and the barriers to entry of competitors will only grow higher and stronger.

When cable was in its infancy, it was granted the authority to retransmit local broadcasts without permission or compensation from the broadcasters. That was as it should have been when cable essentially provided an antenna service for those who were not able to receive broadcast signals by conventional means. The situation has changed, however.

After regulation ended, cable operators became active players in all aspects of broadcasting, and are now direct competitors with broadcasters. They compete for advertising revenues, present alternative programming, and are a potent force in negotiating for sports broadcasts.

Under the current system, a cable operator is allowed to carry programming that was purchased and produced at the expense of an over-the-air broadcaster and which contributes to the value of the cable service. While there is a stream of revenue for the cable operator, there is equivalent benefit for the broadcaster.

But, Mr. President, when cable owns broadcast rights, this programming is available only to cable subscribers, with all of the benefit going to the cable operator. This results in situations such as when the Minnesota North Stars competed for the Stanley Cup last year and pay per view was the only television coverage available in the Twin Cities. It is not a two-way street in the television industry.

The retransmission consent portion of S. 12 will, in my judgment, ensure that FCC licensed broadcasters, will not be hampered by the obligation to provide programming for their com-

petitors in the advertising market. Under the 1934 Communications Act, broadcasters are not allowed to pick up other signals without consent. Retransmission consent would guarantee that cable operators should abide by the same rules.

Similarly, the must-carry regulation will benefit both local broadcasters and the communities which they serve by assuring that local signals are available through the local cable system. The combination of these two provisions will guarantee that broadcasters can effectively fulfill the purpose for which they were granted a license. Neither one of these provisions would necessarily require cable subscribers to pay for local broadcast television. It does assure, however, that broadcasters have a measure of control and certainty in how their programming is used.

Although my inclination is to look at regulation with a skeptical eye, the provisions of S. 12 represent a restrained approach. First, it prevents a patchwork of wild regulation by directing the FCC to establish a uniform standard under which local authorities can request to have regulatory authority. Second, regulation is only applicable to limited tiers of service and does not cover premium channels or relationships with programmers. Third, cable operators are afforded rights of appeal to the FCC. Finally, regulation is automatically lifted when effective competition is reached.

Because of my inclinations against regulation, throughout the consideration of this bill I have been hopeful that a middle ground could be found for all interested parties. I reserved judgment on S. 12 until I had an opportunity to see what alternatives may become available to enhance competition in the marketplace.

To my dismay, the substitute proposal watered down the effectiveness of the regulation and hindered the potential for vigorous competition. It left consumers in the cold and reinforced the roadblocks for potential competition by striking the access to programming provisions for emerging technologies.

After long deliberation, Mr. President, I have determined that S. 12 is the best way to ensure entry of new competitors into the television marketplace, to enhance development of emerging technologies, and to assure that cable rate increases are linked to a discernible improvement in service, programming, and technology.

• Mr. BOND. Mr. President, I support the cable reregulation legislation, S. 12, offered by my senior colleague from Missouri, Senator DANFORTH. I believe we should have this legislation to protect cable television consumers from the excessive price increases and poor service experienced by some consumers. Where monopolies exist in the provision of public services, the Government must regulate to protect consumers. Reregulation of basic cable rates, however, seems to me to be the less desirable solution to the problem except as a temporary bridge until competitive forces can be brought into play.

I urge that we explore curing the problems of high cable rates and poor quality of service in the future by encouraging more competition in the industry, including the eventual entry of telephone service providers into the competition.

I hope, Mr. President, that we will have an opportunity this year to debate the merits of expanding competition in this industry as a means of restoring reasonable rates, providing high-quality service, and delivering a diversity of programming and services—including both educational and medical—that ought to be available to all our citizens at the earliest possible date.•

Mr. KOHL. Mr. President, despite the enormous benefits cable television has brought to society, it has been the enormous increase in the rates consumers pay for those benefits that has been driving this debate. Those rate increases are neither necessary nor justified; they are a function of the fact that cable has become an unregulated monopoly. I plan to vote in favor of this legislation because I believe regulation can give cable customers the relief they deserve while giving the cable industry the profits they need to continue to thrive.

Many of my constituents have experienced the frustration of a consistent rise in the price they must pay for cable. They are frustrated because they have nowhere to turn. Some would say that they can simply choose to no longer receive cable. But cable television has moved beyond the realm of being just a luxury item. Many people, especially in rural areas, consider it a crucial information link to the world, and the thought that someone can simply continue to raise the price they charge for this service strikes them—and me—as improper.

This legislation has been reasonably crafted, and all those affected have had ample opportunity to let their views be known. I have studied it carefully, and I realize it will not make everyone happy. While it is a complex measure, I believe it will simply benefit American consumers: This bill will encourage the creation of competition for the local cable company; and, more importantly, where competition remains absent, it will protect cable consumers from unwarranted rate increases.

Mr. President, Congress helped the cable industry get off the ground. Cable has greatly enhanced the availability of information and viewing options for Americans. Services like C-SPAN have made a tremendous contribution to the ability of Americans to be informed and take part in government. Cable has been good for America, but skyrocketing cable rates can no longer be allowed to go unchecked. The sad fact is that congressional action is once again necessary.

I do, however, have some concerns about the legislation. There has been a lot of publicity—and a lot of confusion—regarding the retransmission consent provisions in this bill. I do think there is good reason to give broadcast stations some control over the reuse of their signal. However, I am troubled that the cost of this provision may be passed through to the consumer in the form of higher rates, thus minimizing the rate relief that is one of the most appealing aspects of the bill. This does not have to happen and I hope it will not happen. Moreover, I am not sure that retransmission consent can comfortably coexist with the compulsory license: At the very least, I think this bill would have benefited from having the Judiciary Committee consider this question beforehand.

Finally, I am not entirely comfortable with the provisions governing the access to programming. But I do think they will have a positive impact in two ways: New sources of programming will develop and thrive free of undue influence from cable conglomerates; and new alternative technologies delivering multichannel video services will become widely available. This would help create an even more dynamic communications environment.

Mr. President, despite these reservations, I will vote in favor of this cable bill. I believe the people have been heard, and I believe the people will benefit. I think we can all look forward to the new age of communications policy this bill will help initiate.

Mr. GRASSLEY. Mr. President, no one in this body could be fairly criticized for admitting to serious concerns, reservations, and apprehensions about the passage of S. 12, which imposes serious regulations upon our Nation's cable companies and programmers. That holds true particularly for those 60 or so of us who were serving in the Senate back in 1983 when we approved the Cable Telecommunications Act of 1983 by a vote of 87 to 9.

We passed that legislation with the hopes of fostering the development of cable television so that it could be made available and enjoyed by most Americans. I have heard no one deny that this legislation, what became the 1984 Cable Communications Policy Act, has had a large part in the success and popularity of cable television. Almost 90 percent of American homes have access to cable television if it is wanted, and indeed 60 percent of these do subscribe to cable programming. Programming options have grown by 50 percent.

But cable subscriber rates have gone up as well, and in some areas, they

have gone up dramatically. Service has declined in some areas as well.

So while over 50 million Americans enjoy cable and all the various news and entertainment this service entails, many are upset with the rising rates and inadequate service.

Indeed, thousands of my constituents are upset as well. In fact, during the last 4 days alone, I have received over 5,000 letters expressing support for S. 12 because they are mad about rate increases.

This is a tremendous response to a television broadcast appeal which includes an 800 number to call if you are upset about rates going up.

I take very seriously communications from my constituents. And I realize that such a letter writing campaign could not have succeeded had anger from cable subscribers not been building over a long period of time.

There is no question that much of the support for S. 12 can be traced directly to a number of stunts pulled by cable interests, such as the negative option billing attempted last year.

So I have received 5,000 letters in 4 days. On the other hand, I have not heard from the remaining 500,000 Iowa cable subscribers, and although I do not realistically expect to hear from them, I have to wonder how they feel about their cable television.

Do these 500,000 Iowans feel like they are being helplessly ripped off? On the other hand, do they feel they are getting a reasonable service or product for their money, and if they thought otherwise, they would drop their cable subscription?

This reminds me of the definition of "fair market value" used by the IRS. In short, its definition of fair market value is the price at which property would be exchanged between a willing buyer and a willing seller when neither party is compelled to buy or to sell.

Some might argue, therefore, that since no one is compelled to buy cable, then a fair rate is whatever a consumer is willing to pay.

Maybe my age is starting to show, but I grew up in rural America, and I know it was not too long ago that people did not have electricity, telephones, let alone cable television.

Apparently, we have somehow come to the point where cable television is viewed as a basic necessity and of such national interest that we need to toughen regulation because it is delivered through local franchised systems.

Monopoly market power is a serious matter in any arena of our economy, and so we are engaged in much discussion about terms such as monopoly and competition.

What do these terms really mean for purposes of our debate of S. 12?

The more narrowly we define the market and product, the easier it is for us to declare that monopoly market power exists for lack of competition.

For instance, the committee report offers as evidence the monopoly status of cable systems by citing the admission of cable officials that since a cable company has a city franchise, a customer has no choice regarding the provider of cable service.

So you have a local monopoly because you have only one provider of cable service, just as you have a local monopoly because you have only one provider of electricity.

But what is cable service? Is it not simply entertainment, information, and news?

It is extremely difficult to obtain electricity from sources other than your local electric company, but in most cases, it is quite easy to find sources other than your local cable service for entertainment, information, and news.

Most of us have available newspapers, radio, television broadcasts, magazines, theater, movie houses, videotapes, records, telephones, computer user bulletins, et cetera for our sources of entertainment, information, and news.

Cable service is only one source out of many, and no one is compelled—the term used for fair market value—to buy it.

So if you recognize the real world market arena for entertainment, information, and news, you have to admit there exists real competition, vigorous competition for our limited consumer dollars.

I see no reason to belabor this point, because most choose a far narrower view of competition. First, the FCC declares competition exists if cable subscribers can access three over-the-air broadcast signals. Then that standard was tightened last year to require at least six unduplicated over-the-air broadcast signals or a competing multichannel video provider.

But for the proponents of S. 12, this standard is still too loose, and therefore they want an even tighter definition of competition.

The committee admits on one hand that "the telecommunications marketplace is global," yet on the other hand declares no competition exists unless another multichannel provider is serving the same local franchised area as the cable system.

So which is it, a global monopoly or local monopoly?

I am being only half facetious when I point out to my colleagues that competition is alive and well in the entertainment, information, and news industry. If it is not self-evident in the marketplace, it certainly is obvious in the Halls of Congress.

You cannot even whisper about a communications issue without everyone coming out of the woodwork to get their oar in the water. Broadcasters want retransmission provisions which cause the motion picture industry to raise its concerns. Telephone companies want to provide cable, which obviously the cable industry is not keen on, and telephone companies want to provide information services which causes heartburn for the newspaper industry.

The competition for the attention of Congress is nothing less than fierce.

And frankly, S. 12 does raise additional unanswered questions. I am a member of the Judiciary Subcommittee on Patents, Copyrights, and Trademarks, and I assure my colleagues that the retransmission section of this bill raises questions about the impact on the Copyright Act's compulsory license provision. And as our subcommittee chairman, Senator DECONCINI, stated earlier, the Copyright Office is conducting a study of this impact, and we will likely be conducting hearings to explore this question once the study is completed.

I have received a lot of enthusiastic support from Iowa's telephone company officials for legislation that would allow them to compete with cable companies, and so this, too, is an area that Congress should address this year.

Mr. President, I echo the sentiment expressed by many of my colleagues that competition is far preferable than government regulation. But I also realize that there are times when regulation is needed temporarily to correct problems or to foster competition.

I am deeply concerned about the fact that rural telecommunication cooperatives are being charged nearly 5 times the price charged to a cable operator for the same programming. If it were not for the efforts by some of our rural cooperatives, many rural Americans would never have been served. The cable industry ignored rural areas for years.

I am deeply concerned about the reasonable availability of programming to third-party providers.

I am deeply concerned about those Americans who cannot afford, nor perhaps have available, the various alternatives and choices for news, information, and entertainment I described earlier.

And, in fact, I think rates in many areas of the country have gone too high. It may be wishful thinking, but I guess I just wish consumers would have exercised their market power, instead of Congress. After all, the local cable company that has invested millions of dollars in plant, equipment, and cable within a local franchise, is to a large degree a captive supplier.

One of my constituents called asking for support of S. 12. She was a working woman and member of a local union. She said that she was so mad at rate increases that many of them were thinking of organizing a boycott of several months of the cable system.

That, Mr. President, was an excellent idea, and I believe had they done so,

the cable company would have been quick to meet the demands of their customers.

Mr. President, another big reason I have reservations about S. 12 is that most of my experience with the many cable company representatives in my State of Iowa has been very positive.

When I think of cable company officials, I think of the small family operation that set up years ago in a small Iowa town, small businesses which brought clear reception and new programs for the first time to remote areas of our State.

When I think of cable companies, I don't picture in my mind the bully, multimillionaires that have been portrayed in major newspapers recently.

I have to wonder if this legislation is not overly broad to unfairly strap these conscientious, community-minded business people.

And again, I have to wonder what those other 500,000 Iowa cable subscribers think about the prospects that program quality and advances could be stifled if S. 12 becomes law. Frankly, what we ought to be doing here is leaving this question up to cable subscribers, if not through the marketplace, then by making the implementation of S. 12 contingent upon the approval of a nationwide subscriber referendum.

Mr. President, although I believe S. 12 may go too far, I am reluctantly voting in favor of it. During the last year, the incidents of abuses have grown, and need to be addressed.

If enacted, however, it is incumbent upon Congress to diligently oversee its impact and be quick to make necessary adjustments so that all the gains that have been made in fostering this growing source of news, information, and entertainment are not lost.

Mr. WALLOP. Mr. President, I rise in opposition to S. 12, the cable reregulation bill reported by the Senate Commerce Committee on May 14 of last year. My reason for doing so is simple: the bill is bad public policy and would harm, rather than help, consumers and the television viewing public, particularly those in rural States like Wyoming.

I applaud the efforts of those who have labored long and hard to address what they perceive to be problems in the cable television industry. However, what started in 1989 as an effort to address anecdotal evidence of bad service and excessive rates in certain areas has become a burdensome and overly broad regulatory bill. S. 12 punishes many for the misdeeds of the few and lays to waste an industry which has revolutionized American television and helped offset our enormous trade deficit.

But there are other more obvious and equally important reasons for opposing S. 12. In the name of competition we are promoting special interests over consumer interests.

The alternative presented by Senators PACKWOOD, STEVENS, KERRY, and others is a reasonable compromise. This is not a dilatory attempt to derail cable legislation. Granted, the alternative goes further than I had hoped, but I do support it.

Absent competition—that is the presence of a multichannel video provider—the alternative regulates rates of basic service and establishes customer service, home wiring, technical standards and fair but meaningful refranchising procedures.

My hat goes off to Senators PACKWOOD and STEVENS and the other cosponsors for having the foresight and the tenacity to bring their substitute to the floor.

Obviously, some of us would have preferred to see cable reregulation legislation go away. But we knew that would not happen; it is not in the cards. Public sentiment demanded that we respond to certain problems in the cable industry brought on by the lack of competition in the video marketplace. Too many complaints about poor service, excessive rate increases and yes, admittedly, a few bad actors in the cable industry, convinced us that it was not realistic to believe we could stem the tide of reregulation.

But in simply regulating the rates of basic cable service—defined as local television broadcast signals; public, educational, or governmental access facilities or C-SPAN I and II—it is my judgment that the alternative will do less to hinder the tremendous strides we have made in the world of infotainment than its stringent counterpart, S. 12.

For example, under the alternative, cities may regulate basic rates in 98 percent of the country's cable systems, as well as rental fees, remote control and installation costs.

The alternative does not override existing franchise agreements or contracts to allow open-ended retiering, the source of numerous consumer complaints.

In Monday's Wall Street Journal, Tele-Communications, Inc. was criticized for their ability to buy a large number of cable systems around the country. The company's critics say TCI's vertical integration is one of the best arguments for greater regulation of the industry. Mr. President, some might call TCI's growth a poignant example of free enterprise. In the entertainment industry it might be perceived as competition. But some of us here in this body believe that the free market system's shortcomings are more easily addressed by Government fiat.

To those naysayers I offer this caution: the far-reaching regulatory provisions of S. 12 will only serve to protect well-established companies like TCI and new entrants will be kept out of the market due to masses of bureaucratic redtape.

Mr. President, the television market is extremely fluid; it has changed dramatically in recent years. Two decades ago, television in most communities meant ABC, NBC, and CBS and perhaps a public broadcast station.

Today, TV is marked by vibrant competition between the broadcast and cable industries. Independent television stations have come into their own and other multichannel video providers are expected to follow suit over the next few years.

In addition, the FCC and the courts are moving quickly to allow telephone companies into information services, including video gateways, and one can only imagine what television in this country will look like in the year 2000.

Albeit slowly, competition is coming to the cable industry and I am quite certain that the Packwood, Stevens, Kerry alternative, which raises the rural exemption for telco entry, will further that goal. Under the alternative, telephone cooperatives and companies such as U.S. West will be allowed to provide cable service to cities with fewer than 10,000 people. With the advent of wireless cable and the increase in satellite systems in Wyoming, I expect competition will bring more stable prices and added programming choices to my State.

In the name of competition, the proponents of S. 12 would make it easier for franchising authorities to unfairly deny franchise renewal, thus reducing a cable operator's incentive to make long-term investments in new plants and technology. Rural areas like Wyoming would suffer the most as a result of this provision. Cities could also deny a company permission to build a competing cable system. The alternative, on the other hand, prohibits exclusive cable franchises, while promoting competitive franchises, including those owned by cities, in order to bring a competing multichannel video programming distribution system to municipalities.

The FCC would be required to submit a report on the level of competition in the cable industry and make recommendations on steps that could be taken to enhance competition in the video marketplace.

Mr. President, I believe cable is a good value. For a little more than 50 cents a day, cable provides an average of 35 channels, 24 hours a day. It costs much more to take a family of four to the movies or the theater than it does to buy 1 month of cable service.

But the proponents of S. 12 who want to inject competition in order to bring down the costs believe that the Government's role in competition is intrusion based solely on conjecture rather than on consumer evidence of demand for a particular product. This approach is wrong-headed and I urge my colleagues to join me in supporting the more reasonable approach put forth by

Senators PACKWOOD, STEVENS, KERRY, et al.

Mr. GORE. Mr. President, several of our colleagues have made reference to a recent Wall Street Journal article involving the dealings of TCI, cable's most dominant corporation and the target of so much criticism during the debate on S. 12.

Yesterday I received a letter from John S. Hendricks, chairman of Discovery Communications, who has taken strong exception to the reporting in this article. He enclosed a letter he has sent to the editor of the Wall Street Journal, giving his side of an account the reporter made of TCI's activities with the Learning Channel.

Mr. Hendricks has asked that his rebuttal be printed in the RECORD and, since the article was also printed in the RECORD, in all fairness I ask that his letter also be printed in the RECORD.

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

DISCOVERY COMMUNICATIONS, INC.,
January 29, 1992.

Mr. NORMAN PEARLSTINE,
Executive Editor, Wall Street Journal, World Financial Center, New York, NY.

DEAR MR. PEARLSTINE: I was appalled at the reckless accusations concerning my company's purchase of The Learning Channel contained in Johnnie L. Roberts' article on Tele-Communications, Inc., in your January 27, 1992 edition. The false accusations contained in Mr. Roberts' article are all the more troubling in light of the fact that he made no attempt to call me to verify the facts relating to the TLC acquisition, even after I had spoken with him at the cable industry's Walter Kaitz dinner on the evening of September 25, 1991 and told him that I would be willing to speak with him about his article profiling TCI.

The facts relating to The Learning Channel acquisition are very straight forward. When we became aware that The Learning Channel might be for sale, I believed that it would provide us with a natural extension of our position as a leading provider of quality, non-fiction programming. Prior to conducting our due diligence, our initial estimate of the price we might have been prepared to pay for such a business was based on standard cable industry evaluation of such companies. For your information and Mr. Roberts' edification, the factors we considered were the number of full-time, fee-paying subscribers which the channel allegedly had as well as our assessment of the programming on the channel. Both of these factors are critical in determining the future financial viability of any channel.

Learning Channel marketing materials indicated that the service had approximately 20,000,000 full-time, fee-paying subscribers. Had this figure been accurate the price we would have been willing to pay would have been in excess of $50 million, a fact which we conveyed to the sellers' representatives in April 1990 prior to conducting our due diligence.

Having expressed a formal interest in acquiring The Learning Channel, we then commenced our due diligence. Immediately, we learned that far from 20,000,000 subscribers, the channel in fact had only approximately 14,000,000 subscribers. Many of these subscribers were not paying fees and a significant number were carrying the service on a partial carriage basis. We also determined that, as the result of the limited funds available to the original owners, the programming being carried on the channel, which included a significant amount of time devoted to infomercials, was of such poor quality that it was of virtually no use to us. Nevertheless, I believed that there was an intrinsic value to us in the programming niche represented by The Learning Channel and I decided to pursue the acquisition albeit at a greatly reduced price.

Throughout the summer and fall of 1990, Discovery management continued to devise and develop a formula for acquiring The Learning Channel. In October I presented our Board of Directors with a recommendation with respect to the price management felt was fair. This price was determined after a thorough evaluation by Discovery Channel management of the relevant market factors. Ironically, in contrast to the insinuations in Mr. Roberts' article, the TCI representative on our Board indicated that TCI might be prepared to support a higher bid (in fact, a bid which would have exceeded the lifetime bid) but management and the other shareholders (Cox Communications, Newhouse Broadcasting and I) felt that the lower number was appropriate.

In his article, Mr. Roberts also misleadingly implies that ownership by a cable operator in a programming service guarantees carriage of that service on the operator's system. Indeed, I wish that were the case. The facts again are straight forward. We exist in a highly competitive environment where there is intense competition for a limited number of channel positions. The Learning Channel itself faces enormous direct competition in the educational programming arena from Mind Extension University (MEU), a cable network. It is worth noting that MEU, a service in which TCI has no ownership interests, has been more successful than The Learning Channel in the competition for carriage on TCI systems since the time of our acquisition. This is a situation I hope to reverse by a massive investment in Learning Channel programming. In 1992, we will make a 6-fold increase in the programming budget for The Learning Channel over that spent by the previous owners. You see, I have received the same feedback from John Malone that Lifetime reportedly received according to Mr. Roberts article. TCI, and I must say almost all cable operators, want high programming value available for modest license fees in order to keep costs passed along to the consumer as low as possible.

Our shareholders have made it very clear to us that the decision to carry The Learning Channel on their systems will be made on the basis of the quality of the programming contained on the service. In fact, today, almost a year after the acquisition, The Learning Channel is currently received by only 25% of TCI's subscribers.

Mr. Roberts in referring to my company as "TCI's Discovery" appears to be under the illusion that this company is operated by and on behalf of TCI. Had he bothered to call me I would have corrected this inaccuracy. Cox, Newhouse and I collectively own 51% of the company. It is true that in fulfilling our fiduciary obligations to our shareholders, TCI, Cox and Newhouse are advised on an ongoing basis of the major decisions involving this company. However, I can assure you that it is the management of Discovery Communications that is responsible for developing and implementing the strategies that have made us so successful.

I am frankly shocked that an institution such as the Wall Street Journal with its reputation for fair and unbiased reporting would have condoned such careless reporting. As you are no doubt aware, Mr. Roberts' article was repeatedly cited in yesterday's debate in the United States Senate thereby compounding the damage which I believe has been done to me and the company I founded. I would hope that in the future you will ensure that your reporters take all necessary and reasonable steps to guarantee the accuracy of the information they are reporting.

In conclusion, I would like to say that the Bob Magness, John Malone and TCI that I have come to know are not as portrayed by Mr. Roberts. In 1986, when no one else would dare take the risk of investing in The Discovery Channel, these gentlemen and their company bet on the intelligence of the American television viewer. TCI kept Discovery going by a multi-million dollar investment that was matched by Cox and Newhouse. Because John Malone, Bob Magness and TCI took this gamble on behalf of their subscribers, The Discovery Channel exists today and serves 56 million cable households across America. My conversations with John Malone concern issues like financing a major new documentary series on the "Great Books" which have changed the world and not on devious plots to undermine competitive businesses which Mr. Roberts would have your readers believe. TCI is a very positive force in a cable industry responsible for bringing new viewing alternatives to the American public.

I offer all of this factual information and criticism in the most constructive way as I am an avid daily reader of the Wall Street Journal, one who has delighted in your fair and accurate past reports on our network's business progress and programming. This last grossly unfair report just caught me off guard. I very much appreciate your time in reading my concerns and making an attempt to correct the very wrong impressions of the way we do business.

Sincerely yours,

JOHN S. HENDRICKS,
Chairman and Chief Executive Officer.

Mr. LIEBERMAN. Mr. President, today the Senate will take a historic step forward in consumer protection. We are about to pass S. 12, the Cable Television Consumer Protection Act. In doing so, this body reverses a mistake made when it passed the Cable Communications Policy Act of 1984, which I strongly opposed as attorney general of Connecticut. The 1984 Cable Act was a mistake because it unshackled a monopolist without sufficient attention to the prospect for adequate competition, and without a careful analysis of the marketplace. The result was that an unregulated monopolist was unleashed upon the public.

It is no surprise what happened to rates as a result. According to the General Accounting Office, since deregulation became fully effective at the start of 1987, the price of the most minimal available cable package jumped 56 percent. Subtracting out inflation, that is a real price increase of 32 percent. The price of the most popular package of services—what consumers know as "enhanced basic"—jumped a whopping 61 percent—that's a 36.5-percent jump even after adjusting for inflation. One

Department of Justice study concluded that at least 40 to 50 percent of these rate increases was attributable to cable's monopoly power.

The American people should never have been subjected to the full power of this hidden monopolist, but we especially cannot afford it now. We are facing a terrible recession: ordinary Americans are scrambling just to make ends meet. The American people deserve protection from this predatory monopolist—and they deserve it now. In his State of the Union Address, the President challenged us in Congress to put aside partisan differences and to work together for the good of the country. Now is the time to start.

S. 12 will save consumers money. S. 12 offers real protection to consumers who have had their pockets picked by annual cable rate increases that are two or three times the rate of inflation. S. 12 also takes steps needed to bring competition to the cable industry. After all, competition—not Government regulation and not monopoly control—is the best regulator of the marketplace.

Passage of this bill particularly pleases me because it is the culmination of my long efforts to combat consumer abuses by cable monopolists. While attorney general of Connecticut, I opposed the Cable Communications Policy Act of 1984, and I fought the FCC's patently ridiculous ruling that three over-the-air broadcast signals constituted effective competition to multichannel cable systems. Upon arriving in the Senate in 1989, I introduced, together with my friend Congressman CHRIS SHAYS, a bill to repeal the 1984 Cable Act. And when Senator DANFORTH decided to introduce S. 1880 in November 1989, I was pleased to join him as an original cosponsor of that measure.

Last year, when Senate consideration of S. 1880 was blocked by the cable lobby, I shared the disappointment that we had yet again been thwarted in our drive for cable reform. I was pleased, however, that, during those final weeks and again at the start of this year, I and others were able to persuade Senators DANFORTH, HOLLINGS and INOUYE to strengthen the committee version of S. 1880. I am grateful to these three Senators for their willingness to accommodate my concerns by agreeing to changes and clarifications such as:

Lowering the regulatory standard for rates for cable programming services such as CNN, MTV, and ESPN to ban unreasonable rates, not just rates that were "significantly excessive";

Adopting customer service provisions that require the FCC to set nationwide minimum standards, but still allow the States and franchising authorities to set higher standards, and outlining a list of issues the FCC is expected to address in these standards;

Clarifying that the FCC has authority to regulate not just the rates for cable programming services such as CNN, MTV, and ESPN, but also the rates charged for installation and for rental of equipment used to receive those services;

Clarifying that State officials, such as State attorneys general and consumer protection officials, may bring rate complaints to the FCC on behalf of the citizens of their State;

Clarifying that the FCC, in addition to prospective rate rollbacks, may also order refunds of unreasonable charges levied by cable operators.

These changes, and others, make S. 12 the strongest proconsumer cable reform bill to emerge from any House of Congress.

It is no surprise that the cable industry has fought this bill tooth-and-nail. No industry wants to give up a legally sanctioned and protected monopoly, and no industry wants to be forced to take down anticompetitive barriers designed to buttress that monopoly. But the Senate has wisely rejected these efforts, and has refused to adopt the monopoly preservation legislation urged on it by the cable monopolists.

I believe we can hold are heads high, look our constituents straight in the eye, and tell them that we passed a bill that really benefits them. We have closed cable's biggest loophole by regulating the basic and enhanced basic tiers of service that are the most significant sources of their monopoly power, and by ending their ability to avoid meaningful regulation simply by retiering. Under the consumer rate protection provisions of this bill, the FCC has the tools, for the first time, to check cable's monopoly power.

I know some have argued that we should forego rate regulation now and wait for competition to develop, perhaps helping competition along by allowing the telephone companies to develop cable-type services or by pushing franchising authorities to authorize more cable overbuilders.

I do not oppose taking steps to increase competition and lower the barriers to entry to cable's competitors. Indeed, I support the provisions of S. 12 that seek to do this, such as the programming access provisions. Lowering barriers to entry is the key to allowing real competition to develop in this industry.

But let us face it. Full fledged competition is not going to be here next month, or even next year. It will be years before cable faces real competition. Until then, consumers deserve protection. That is the beauty of S. 12: its rate protection provisions complement its provisions to foster competition.

Of course, S. 12 could be stronger. It could even more strictly attempt to control cable's market power and to try to shutdown all other means for the cable monopolists to exploit consumers. But the best can be the enemy of the good. The bill we are passing today is a reasonable compromise between competing interests. I thank my friends, Senators HOLLINGS, DANFORTH, and INOUYE and their staffs—particularly Toni Cook, John Windhausen, Gina Keeney, and Mary McManus—for all their hard work driving this bill forward. I know that the people of Connecticut also thank you. I also commend John Nakahata of my staff for his hard work on this issue over the last 2 years.

Consumers have waited too long for Congress to act on this. I urge the Senate to approve this measure overwhelmingly, and I urge the members of the other body to do likewise. It is time to send a real cable consumer protection bill to the President for his signature.

Mr. BIDEN. Mr. President, the people of Delaware, like consumers across the country, have seen monthly cable television bills grow steadily larger and larger. They feel that they are paying too much—and for good reason. In less than 3 years' time, subscribers to cable television in Delaware have seen their monthly charge for one popular service jump $7. They have seen their cable programming guides, which used to be free, replaced by an optional guide with a price tag of $1 a month. And they have been faced with a choice. They can try to hold down this household expense by choosing a shrinking lower tier of cable service, with fewer program choices. Or they can pay more.

What accounts for these jumps in the cost of cable television? In Delaware, like most of the rest of the Nation, the cable franchises serving the State do not face any competition. They are unregulated monopolies. Nowhere in Delaware are there two sets of cable television lines serving the same home. If that were the case, Delaware's cable customers could choose between two competing cable companies, selecting the one with the best programming, service, and price. But that type of competition does not exist, and, in its absence, the cable franchising authority must have the power to control unreasonable rate increases.

I support the Cable Consumer Protection Act, passed by the Senate today, because it restores the authority of Delaware's Public Service Commission or another local authority to control cable rates, so long as the State's regulations comply with standards established by the Federal Communications Commission. Once enacted, this legislation will give the local franchising authority in Delaware the power to stop unreasonable increases in monthly cable bills.

Earlier this month, for portions of Delaware, the tier of cable service that includes the ESPN sports channel and other programming wanted by most

cable subscribers rose again from a monthly charge of $17.95 to $19.90—an increase of more than 10 percent. Consumers of this cable service will not receive any additional program choices in exchange for this new charge. And no explanation of justification was provided for the amount of the increase.

Adding this most recent increase to previous ones shows that monthly cable bills in Delaware has grown by 54 percent in less than 3 years' time, a figure that far outstrips the rate of inflation.

Just two nights ago, in Dover, DE, the State capital, more than 100 cable subscribers met at a public hearing to discuss their dissatisfaction with cable television. Many were outraged. Complaints were heard about rate increases and overpriced programming. Consumers noted their frustration at being unable to choose between competing cable companies. This public meeting is only the most recent indication that Delaware's consumers are concerned about the cable monopoly. They want cost controls and sensible regulation.

This experience is by no means unique to Delaware. The Delaware rate increases mirror those in other States. In the 4 years following deregulation, the average price paid nationally for the most popular basic cable service increased 61 percent. And this figure may significantly understate the problem: according to the study of the General Accounting Office that reported the 61 percent increase, more than one-quarter of those cable franchises that were surveyed chose not to respond. It is likely that these cable companies that declined to respond increased rates even higher than the average 61 percent increase that was reported. The need for Congress to act is clear.

This increase in rates can be traced to 1984, when a law was enacted that deregulated the cable industry, freeing 97 percent of all cable franchises from regulation. Congress expected that, through deregulation, investment in cable television would increase, the amount of programming would multiply, and access to cable would expand. Each of these desirable effects has, in fact, occurred.

But something else that was anticipated in 1984 has not come to pass—competition. An efficient, competitive market normally is preferable to Government regulation. Where there is no competition, however, regulation is necessary to prevent price gouging. And in the cable television industry competition has failed to materialize.

The Cable Television Consumer Protection Act will regulate the rates charged for basic cable service only where an existing cable franchise does not experience competition. The bill ensures that, even where the positive effects of a competitive market are absent, the rates charged to cable consumers will be reasonable.

In this way, we can put an end to the steady and excessive rate increases of the past few years. And consumers will stop feeling that they are paying too much each time they receive a monthly cable bill.

Mr. PELL. Mr. President, I support passage of S. 12, the Cable television bill.

Cable television, in most cases, is a monopoly created by Government which gives one selected company in each area the right to develop and operate a cable system. Just as with local telephone service companies, there are real public benefits that come from granting these monopolies. But, having created these monopolies, Government has a responsibility to assure that the monopoly powers are not abused.

In the absence of competition, Government must act through regulations to assure that the rates charged consumer subscribers are reasonable and that a high quality of service is maintained.

In 1984, the Congress deregulated the cable television industry, largely to eliminate some forms of regulation which were preventing the full development of cable systems to serve the American public.

It is now clear that the 1984 deregulation went too far. It has permitted rapid growth in cable television services, but it has also permitted excessive increases in rate charges to subscribers, and has given the consumer almost no recourse when service is poor.

In my view, the legislation before us, S. 12, is a balanced effort to restore reasonable regulation needed to protect cable television subscribers. I am opposed to excessive and unnecessary Government regulation, but the regulation that would be provided by this legislation is moderate and needed. It should impose no hardships on those cable television systems that operate responsibly and with due regard for the rights of their customers, and I would emphasize that there are many such companies across the Nation and in my own State of Rhode Island.

Action is needed to protect American subscribers from those companies that are inclined to abuse the monopoly power they have been granted. For that reason, I support this legislation.

Mr. SANFORD. Mr. President, today I rise to speak in support of S. 12, the Cable Television Consumer Protection Act, a bill whose purpose is to promote competition in the video marketplace and to protect cable customers from burdensome and onerous cable rate increases. In 1984, when Congress deregulated the cable industry, the intent was to provide much needed competition in this area. We failed, and we now are faced with an unregulated monopoly. While S. 12 is not a perfect bill, it is one that must be passed. We must not stand by and allow monopolistic tendencies to continue in this industry.

We must continue to pursue policies that promote and enhance competition, for it has been clearly documented that costs contain themselves when more than one multichannel video provider is available to consumers.

The specific provisions of S. 12 have been outlined during this debate, and I do not need to go over them again. However, I would like to touch on a few specific points important to North Carolina. S. 12 does provide protection for rural consumers in my State, specifically through sections 640 and 641, which require video programmers and satellite carriers to provide access to programming at nondiscriminatory prices to all multichannel video programming distributors. These include cable companies, home satellite dish distributors and others. Without objection, I will enter into the RECORD at the end of my remarks a letter I received from the National Rural Telecommunications Cooperative and others.

There are other areas in this debate that the Congress must continue to monitor, and I would like to take an opportunity to address these.

First, the issue we debated yesterday while considering the Breaux amendment: The assurance that the public interest is served in the issuance of broadcast licenses by the Federal Communications Commission. I supported the Breaux amendment yesterday in order to send a message to the FCC that the Congress remains committed to the ideals embodied in the 1934 Communications Act, namely the idea that localism, programming diversity, and serving the public interest must be a necessary aspect of a local broadcast station. Twenty-one to 22 hours of infomercials will not do. The Congress must be aggressive in its oversight function, and we must ensure that our broadcast spectrum is being protected. I am pleased that the FCC has been directed to study this issue.

The other issue that I find particularly troublesome is related to horizontal concentration and vertical integration in the video marketplace.

I am also pleased that S. 12 directs the FCC to undertake a study of this issue and to develop rules that will deal with abuses it finds without depriving the public of the many benefits derived from today's cornucopia of video programming. Thousands of pages of hearings from the last few years conclusively demonstrate that the cable industry has become vertically integrated; cable operators and cable programs often have common ownership. In fact, 10 of the 15 most popular basic cable networks are owned or controlled by multisystem cable operators. This has led some operators to discriminate in favor of programming in which they have an ownership interest. This has directly harmed the ability of any potential competitors to

enter the market, provide an alternative to consumers, and create pressure to lower prices.

Mr. President, I had entertained the idea of offering an amendment to the antitrust laws during this debate. Instead, I will closely monitor the actions and progress of the Federal Communications Commission related to this important issue of vertical integration. And I encourage my colleagues to do likewise.

I am convinced that S. 12 is a good bill, and that it is a procompetition and proconsumer bill. It offers a reasonable, balanced approach to the problem of an unregulated monopoly. I support S. 12 and urge my colleagues to do as well.

Thank you, and I yield the floor.

Mr. McCAIN. Mr. President, the Senate has been wrestling with the problems facing consumers as a result of the controversial practices of the cable industry since the first cable reregulation bill was introduced in the fall of 1989. We are now in the winter of 1992, and the issues, and the problems, relating to this industry remain much the same.

The cable industry was deregulated in 1984. I supported that action in the belief that deregulation would result in a free marketplace where a variety of new technologies, such as direct broadcast satellite [DBS] and multipoint multichannel distribution service [MMDS], would emerge. These technologies would then compete in the areas concerning customer service and competitive rates. Unfortunately, the monopolistic practices of the industry stunted the growth of emerging technologies, and the effects on consumers have been far-reaching.

In 1984, we in Congress envisioned a marketplace where every consumer's needs and interests would be met. This idea is of particular importance to those living in rural areas where over-the-air broadcast signals are not easily received. To these consumers, access to such services is extremely limited. While entertainment programming is considered a nonessential service, other kinds of informational programming are crucial to Americans living in outlying areas.

S. 12, the Cable Television Consumer Protection Act of 1991, should not be construed as a bill which would solely affect the cable industry. To do so would be to take an microscopic view of the video distribution industry as a whole. Rather, this legislation should be viewed as an effort to unleash a variety of new service options to the home by giving consumers greater, cost-effective choices.

The opportunity for new technologies to provide video service has been seriously undercut by their inability to obtain programming from cable affiliated sources. Discrimination in program access has proven to be one of the most effective means of stopping potential competitors from entering the marketplace.

It has been argued that no entity should be forced to distribute its own product indiscriminately. I would agree with that premise wholeheartedly were it not for the fact that, in the current situation, the practices of the cable industry have rendered that industry a virtual monopoly. These circumstances dictate intervention by the Federal Government on behalf of consumers to ensure a level playing field for would-be competitors.

My decision to support this legislation did not come easily. I recognize that the cable industry has made an effort to improve its performance in the area of public service. The contributions they have made in programming have been ground-breaking, and they have set the standard for quality in that arena.

Nevertheless, the American public is dissatisfied and disillusioned with the increasing rates for cable service that could potentially place such services out of the reach of many consumers. This would not happen if the cable industry were participating in a free marketplace. Without the passage of this legislation, new technologies will never have a chance to provide the choices in the marketplace that consumers demand.

I strongly believe that this legislation will not cripple the cable industry, nor cause it to lose its ability in any way to compete fairly with other technologies. That is not the intent of S. 12, nor is it my intent in supporting it.

Consumers have registered their support for this legislation through such organizations as the Consumer Federation of America, the National Consumers League, the Consumers Union, and the National Council of Retired Persons, to name a few. The importance of this legislation to consumers in Arizona, and the Nation, is great, and cannot be ignored. I look forward to a time when consumers will have access to many technologies, including cable, where they can choose and enjoy the quality options this new marketplace will bring.

Mr. HEFLIN. Mr. President, it seems to me there are two standards up to which we should be holding each of these proposals on reregulating the cable industry. The fact that there needs to be some regulation is not in dispute. The committee bill and the substitute both contemplate regulation of nearly 100 percent of homes with cable. They both recognize that effective competition does not yet exist for most cable operators and that such competition can only be guaranteed by the presence of another multichannel video distributor.

How then should we choose between these two proposals? I would argue that we should look at each of them first in terms of the amount of protection they provide to the consumer, and second, in terms of their ability to ensure competition in the marketplace.

With regard to the consumer interest, one area about which I have received numerous complaints from my own constituents is customer service. For some years now, I have been receiving mail and talking to people who complain about the amount of time it takes for their service to be installed and/or repaired and for them to reach someone at their cable company to discuss their bill or service. I am therefore pleased that both proposals would codify these service standards and give cable customers the assurance that their requests and problems will be taken seriously and addressed effectively by their cable operator.

The second problem from which I want to protect my constituents is rate abuse by cable operators. Throughout Alabama from 1986 to 1991, rate increases varied from 36 to 130 percent. While I am sympathetic to the arguments that rates may well have been kept at artificially low levels prior to 1986, that the rate of inflation inches those rates up and that new programming has been expensive, some of the increases which we have seen in various parts of our country have clearly been excessive despite these legitimate costs and increases. Moreover, with very few cities across the country having competing cable systems or multichannel video distributors, rates must be regulated in the absence of effective competition to prevent abuse. This fact of life is recognized by both proposals, each of which requires regulation of the basic tier of service.

Largely in anticipation of basic tier rate regulation, cable operators throughout the country have been busy retiering, a euphemism for moving their most popular channels from the basic tier to higher level, higher priced tiers. In fact, the GAO has found that almost 60 percent of cable subscribers have seen their services retiered, oftentimes with subsequent rate increases in those higher tiers. Here we see a difference between the two proposals. The Commerce committee-reported bill, S. 12, would permit regulation of tiers other than basic. In fact, if fewer than 30 percent of a cable operator's customers subscribe to the basic tier only, S. 12 would permit the rates for the next tier to which 30 percent of the operator's customers subscribe to be regulated as if it were basic. The substitute, on the other hand, permits no regulation beyond the basic tier, leaving subscribers vulnerable. Clearly then, in terms of the consumer's interest in rates and service, S. 12 is the better bill.

The second standard by which we must judge these two proposals is that of promoting competition in the mar-

ketplace. Proponents of the substitute argue simply that less regulation promotes competition. While I agree with this philosophy in general, its blind application in this instance would constitute a gross miscalculation of the true inhibitor to competition in the case of the cable industry.

Mr. President, we cannot ignore the impact of vertical integration, cross ownership, program access, and exclusivity to competing cable systems trying to break into a local market or to competing technologies trying to break into the business of delivering this programming to households across our Nation.

S. 12's requirement that the FCC develop regulations limiting the number of channels that can be occupied on a cable system by programmers affiliated with that cable operator, its prohibition on programmers in which cable operators have significant ownership from unreasonably refusing to deal with other distributors and its provision precluding a cable operator from owning a competing technology such as MMDS or SMATV in the same area in which the operator holds a cable franchise seem eminently reasonable to me. Moreover, I do not see how we can expect meaningful competition to develop without such regulations.

Ultimately, Mr. President, I believe that S. 12, not the proposed substitute, better protects the consumer and better ensures healthy competition in the video marketplace. On this basis, I have made my decision to support S. 12 and hope that we will see this bill signed into law so that cable companies, broadcast networks and competing technologies alike can enjoy some stability in their regulatory environment and get about the business of this exciting and valuable industry.

Mr. DODD. Mr. President, I rise today to express my strong support for S. 12, the Cable Television Consumer Protection Act. Mr. President, this legislation has been long in coming to the floor and I commend the committee, and particularly the managers of this bill, for their preserverance.

Mr. President, S. 12 is comprehensive legislation which addresses the changes in the cable industry since we last dealt with this matter over 7 years ago. In 1984, cable television was a fledgling industry with great promise, and we enacted legislation to assist the industry in developing this potential. The cable industry has certainly benefited, and one only need pick up Monday's Wall Street Journal or last week's Washington Post to see the extent to which they have profited from the 1984 act. We are here today in no small measure to rectify some of the unforeseen results of our past work.

Mr. President, as I am sure you know, the lobbying on this bill has been intensive; in the past year, I have heard from many representing powerful but competing interests. But there has been one group that has substantially be overlooked and has not enjoyed the representation of the Washington powerful.

And those are the people I represent, the people in Hartford who paid nearly 80 percent more in November 1991 for cable service than they did 5 years ago, in Danbury where they paid 65 percent more and in Litchfield where they paid 179 percent more; the children and families I have heard from who, already suffering from the ravages of the recession, find cable rates putting Nickelodeon out of their reach. Mr. President, families around the Nation are suffering from declining incomes, unemployment, and rising costs and the last thing families need are bigger cable bills, but that is what they have gotten for the last 5 years.

Cable has enjoyed a unique position across the country, in 99 percent of our communities, cable is basically an unregulated monopoly. It has no direct competitors, consumers have no choices open to them and localities have no authority to exercise real oversight over the systems operating in their communities. And it should come as no surprise that consumers have suffered. Nationwide, cable rates have risen three times faster than inflation; in my home State of Connecticut rates have increased 56 percent. Customer service has lagged behind other industries. And with the rising market power of the cable industry, competitors have been stifled in their growth.

This is not to say that there have not been benefits from the growth in the cable industry. Cable television has revolutionized the way our society looks at the world. Cable has brought us CNN, ESPN, Lifetime, HBO, the Discovery Channel and a slew of other new networks; it has also brought the U.S. Congress into homes around the country through the C-SPAN networks. Additionally, cable operators have been generous corporate citizens in communities around the country providing educational programming as well as support to local charities.

But unfortunately, the problems for consumers and competitors persist. In this regard, S. 12 is a well-balanced approach to a comprehensive problem. This legislation provides consumers with immediate relief and looks to enhance competition in the cable industry so that a viable market develops.

Local authorities, with guidance from the Federal Communications Commission, are given authority to regulate rates for basic cable service and to set customer service standards. Basic service is defined not by content but by demand; franchising authorities can regulate the lowest level of service to which 30 percent of consumers subscribe.

Additionally, this measure includes provisions to help increase competition in the cable television market. It encourages local authorities to award second cable franchises to competing cable operators so that families have real choices. S. 12 provides equal access to programming among cable operators and their competitors. The bill also ensures local broadcasters' place on cable system. Local broadcasters have a special role in our communications system: For the privilege of using public airways they have a special responsibility to meet local community needs, and S. 12 safeguards these interests.

The managers of S. 12 have accepted some important modifications to this measure during the Senate's consideration this week. I am especially pleased by the manager's amendment on the retransmission consent provision. I shared the concerns of many of my constituents regarding the possible adverse effects of this provision on rates. But I am reassured by Senator INOUYE's amendment which provides for the Federal Communications Commission to administer the retransmission consent provision in such a way to assure that consumer rates are not adversely affected.

Mr. President, this is a good bill; it will help consumers now and it will provide us with a working marketplace in the future. I urge my colleagues to join me in supporting this measure.

Mr. HATFIELD. Mr. President, I rise with some degree of unease to discuss the business now pending before the Senate: S. 12, the Cable Consumer Protection Act. Let me first express my thanks to those who have been involved and who have spoken so eloquently on this extremely complex issue. I have found it very difficult to reach any level of comfort in resolving the myriad of consumer, constitutional, and business concerns involved.

I know all would agree that over the past decade, the cable industry has revolutionized television in this country. Our viewing choices have increased dramatically. And, the more than 11,000 cable providers nationwide have threaded a cable wire to over 90 percent of American homes, with nearly two-thirds of us now subscribing monthly. This has been of particular benefit to our rural areas that for many years had no access to an over-the-air signal.

While I understand very well that the impressive development of this communications infrastructure and the equally impressive developments in cable programming and variety have not come about for free, I am concerned about reports of apparently unreasonable rate increases. Many of my constituents have complained of spiraling monthly cable rates and inferior service. A recent General Accounting Office study found that basic cable rates have increased by over 40 percent since 1986. There is much argument about the reason for or meaning of

these rate increases. Some call them the unfair practices of an unrestrained monopoly; others call them the necessary and desirable result of capital investments in infrastructure, programming, and fees.

I resist those who paint this issue as simply a vote for or against consumers, for or against competition. We are here dealing with an area of great complexity, but ironically with only a very small portion of a vast and rapidly changing communications industry. With the possible entry of the phone companies into this industry or other information services areas; with the advent of fiber optic cable, which promises to further revolutionize the information available to every home in the country; with the advent of DBS, wireless cable, microwave or different satellite information systems on the way; with the advent of compressed video and high definition television; with the advent of all these things, it is very difficult to do as the Senate does today, to deal with one small piece of a very large, complex, and changing puzzle.

Television information and entertainment is for the benefit of consumers. Ensuring that a maximum number of consumers continue to have access to a maximum amount of programming, with special emphasis on local programming, should continue to be a primary goal of Federal communications policy. Our democracy operates best with an informed citizenry. Both local broadcasting stations, cable companies, or other information providers, in my opinion, play an indispensable role in keeping Americans abreast of the important local and national issues confronting them. All industries, therefore, must be accommodated in any legislation passed by Congress.

I support the idea of increased regulation of cable television, as is done by both S. 12 and the Packwood substitute. I believe that the lesser regulation of the Packwood substitute is preferable at this time to the more stringent regulation found in S. 12. I fear that if the Federal Government acts too firmly, consumers will ultimately suffer.

It is my firm belief that the true answer to the problems in this area lies somewhere in between the two proposals we have before us today. I will, therefore, support the Packwood substitute. Because of my belief that some legislation is needed to address the admitted excesses of the current cable industry, if the substitute fails, I intend to support S. 12 on final passage.

Mr. KERRY. Mr. President, following the defeat of the substitute amendment moments ago, of which I was a principal sponsor along with several of my colleagues, a vote now occurs on the underlying provisions of S. 12 as approved by the Commerce Committee.

It goes without saying, Mr. President, that I am uncomfortable with the original bill language as approved by the Commerce Committee. Were that not the case, of course, I would not have participated in developing and offering a substitute. I do not believe, for the reasons I outlined in debate this morning and more extensively in my remarks on the floor last night, that the provisions of S. 12 realize anywhere near the correct balance between the effort to regulatorily assure that cable consumers are not victimized with unreasonable high prices and the necessity for market force incentives to assure that the quality and selection of cable programming will continue to increase.

I do not come recently or lightly to this judgment. I set forth my concerns in additional views when the Commerce Committee filed its report on this legislation in early 1991.

But the opportunity to modify the provisions of the committee's bill now are exhausted, and the Senate is faced with a yes or no vote.

As I have stated repeatedly, I believe that the behavior of some portions of the cable industry brings us unfortunately to a point where the people of this Nation—telecommunications consumers—have a right to expect that the Congress will impose regulation to prevent further victimization. Those of us who sought to persuade the Senate to adopt our substitute amendment and other Senators, must keep our eye on the ball. And the ball, in this case, is the well-being of American video consumers, the viewers all across this Nation.

Making the judgment on that basis, I believe just walking away from the situation that exists today with respect to cable would be irresponsible, and would mark a tremendous failure of our Government to address the people's concerns. Some regulation is warranted. Some other interventions in the industry are necessary. And so, albeit with some considerable reluctance and concern, I will vote "yes" on final passage of the committee version of S. 12.

But I tend to be an optimist until no hope is left, Mr. President. In a few moments the Senate will act finally on this legislation, and either kill it or send it to the House for consideration and action there. If, in fact, we pass it and send it to the House, the final form of the legislation will not yet be determined. As any observer of the legislative process knows, a bill can be dramatically altered as it moves through the second of the two houses of Congress. Further, we of the Senate are not yet finished with this bill; we will not have finally spoken today concerning it. Because unless the House passes what the Senate passes in identical form, which is inconceivable in the case of this bill, the bill must return for further Senate action or to a conference committee to resolve the differences. So, indeed, there will be other opportunities to try to fashion the bill more closely to the form that I believe will operate in the best interests of America's video consumers.

I wish to commend the distinguished and fair chairman of the Telecommunications Subcommittee, the senior Senator from Hawaii, the chairman of the full committee, the senior Senator from South Carolina, and the ranking member of the full committee, the senior Senator from Missouri, each of whom has demonstrated his vast knowledge with regard to the cable industry and its impact on our nation, in particular, and the tremendously exciting and burgeoning field of telecommunications, more broadly. Their tenacity and strength are surely admirable, and are primarily responsible for what I fully expect to be final Senate passage of S. 12 in a few moments.

While I am offering commendations, I also wish to mention those of my colleagues who were involved in the effort to devise and promote the substitute amendment, and whom, because of the stiff restraint on debate time prior to the vote on the substitute, I was unable to acknowledge at that time. I commend the senior Senator from Oregon and the senior Senator from Alaska, who led the effort on the other side of the aisle to devise and promote the substitute presented earlier, and with whom I enjoyed laboring in this effort, and the senior Senator from Colorado with whom I teamed on this side of the aisle. His knowledge of the cable and telecommunications industries is impressive, dating back to the days when he chaired the House Subcommittee on Telecommunications and Finance, and it is always a pleasure to be teamed with a recognized expert. The assistance and contributions of those other Senators who cosponsored the amendment—and the support of those others who voted for it—are also very much appreciated.

Mr. President, I anticipate that considerable hard work remains on this bill before it will be sent in any form to the President for his action. I expect to be involved in that work, and will continue to seek those objectives—paramount among them being the benefit of American consumers—that we sought with our substitute amendment. I look forward to working with Chairman INOUYE, ranking member DANFORTH, and Chairman HOLLINGS, with the other proponents of the substitute, and with the very capable staff supporting each of us in these efforts, as this process continues to unfold.

C-SPAN STATEMENT

Mr. D'AMATO. Mr. President, I have been asked by C-SPAN to submit to the RECORD a statement to clarify their position on S. 12 legislation and I am happy to do so at their request. I ask unanimous consent that the full text of the statement be printed in its

entirety at the conclusion of my remarks.

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

C-SPAN STATEMENT REGARDING LEGISLATIVE PROPOSALS AFFECTING C-SPAN AND C-SPAN II

C-SPAN is opposed to the proposal made during the debate on S. 12 that it be singled out among national cable programmers for carriage by systems on a regulated tier of cable service.

The proposal is probably a well-intentioned effort made on C-SPAN's behalf, but it confuses C-SPAN's business status with that of public broadcasters. It is in conflict with C-SPAN's founding business philosophy; and it is at odds with the legislation's own stated goal.

Unlike over-the-air commercial broadcasters and public television stations (whose signals cable operators receive pursuant to a compulsory license), C-SPAN sells its signal to cable operators. Nearly the entirety of C-SPAN's revenues come from affiliation fees, which are supported by freely negotiated contracts spelling out the relationship between C-SPAN and each affiliate. The "regulated tier" proposal places an inappropriate burden on C-SPAN as it seeks new affiliates, and as it maintains relationships with existing affiliates. The broadcasters affected would suffer no such burden with their customers. C-SPAN should not be so burdened.

C-SPAN is a creature of a de-regulated telecommunications marketplace. In 1979 it successfully applied free market, private sector values to public affairs television. Indeed, the network would not exist today were it not for the private cable operators who believed in those principles and who now deliver C-SPAN to over 56 million households. Given those roots, and despite the proposal's good intentions toward C-SPAN, we do not support it. It is unnecessary government involvement in our business.

Finally, this proposal appears to be directly at odds with S. 12's statement of policy which says at Section 3:

"It is the policy of the Congress in this Act to . . . promote the availability to the public of a diversity of views and information . . . [and to] *rely on the marketplace, to the maximum extent feasible, to achieve that availability* . . ." [emphasis supplied].

C-SPAN's success has proved that the marketplace is already working to achieve the legislation's goals. Why change it?

Mr. SPECTER. Mr. President, for reasons expressed in my statement in support of the Packwood substitute, I believe the preferable course would have been to have taken the first step in the regulatory process without the broader provisions of S. 12.

With the defeat of the Packwood substitute, it is my judgment that S. 12 is preferable to no bill at all, so I am voting in favor of final passage.

Given President Bush's announced position on this subject, it is my hope that compromise legislation can be worked out in conference which will provide limited regulation without the broader sweep of regulation provided in S. 12.

The Chair recognizes the Senator from Hawaii [Mr. INOUYE].

Mr. INOUYE. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Without objection, the bill is deemed read the third time.

The question is, Shall the bill pass?

On this question the yeas and nays were ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MACK (when his name was called). Present.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], the Senator from California [Mr. CRANSTON], the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

I also announce that the Senator from Michigan [Mr. RIEGLE] is absent because of family illness.

I further announce that, if present and voting, the Senator from Oklahoma [Mr. BOREN] and the Senator from Michigan [Mr. RIEGLE] would have voted "aye."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND] is necessary absent.

I further announce that, if present and voting, the Senator from Missouri [Mr. BOND] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 18, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—73

Adams	Fowler	Metzenbaum
Akaka	Glenn	Mikulski
Baucus	Gore	Mitchell
Bentsen	Gorton	Moynihan
Biden	Graham	Murkowski
Bingaman	Grassley	Nickles
Breaux	Hatch	Nunn
Bryan	Hatfield	Pell
Bumpers	Heflin	Pressler
Burdick	Hollings	Pryor
Byrd	Inouye	Robb
Chafee	Jeffords	Rockefeller
Coats	Johnston	Roth
Cochran	Kassebaum	Sanford
Cohen	Kasten	Sarbanes
Conrad	Kennedy	Sasser
D'Amato	Kerry	Seymour
Danforth	Kohl	Simon
Daschle	Lautenberg	Simpson
Dixon	Leahy	Specter
Dodd	Levin	Thurmond
Domenici	Lieberman	Warner
Durenberger	Lott	Wellstone
Exon	McCain	
Ford	McConnell	

NAYS—18

Brown	Gramm	Shelby
Burns	Helms	Smith
Craig	Lugar	Stevens
DeConcini	Packwood	Symms
Dole	Reid	Wallop
Garn	Rudman	Wirth

ANSWERED "PRESENT"—1

Mack

NOT VOTING—8

Bond	Cranston	Riegle
Boren	Harkin	Wofford
Bradley	Kerrey	

So the bill (S. 12), as amended, was passed, as follows:

S. 12

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Cable Television Consumer Protection Act of 1992".

FINDINGS

SEC. 2. The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost three times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without a sufficient number of local television broadcast signals and without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(4) There has been a substantial increase in the penetration of cable television systems over the past decade, with cable television services now available to 71.3 million of the 92.1 million households with televisions. Nearly 54 million households, over 58 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(5) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

(6) Cable television rates for video programming provided on other than the basic service tier should not be governmentally regulated except in extraordinary circumstances, which may include the need to control undue market power.

(7) The cable television industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for non-cable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their

affiliated cable operators over non-affiliated cable operators and programming distributors using other technologies.

(8) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934 (47 U.S.C. 396(a)(5)). The distribution of unique noncommercial, educational programming services, including those transmitted by noncommercial educational television stations serving local communities or markets, advances that interest in providing for the further education of our citizens and encouraging "public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation".

(9) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of $10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than $3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(10) A primary objective and benefit of our Nation's system of regulation of television and radio broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would be not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also, cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the two industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Given the lack of clear guidelines in applying the First Amendment to cable franchise decisions, cities are unreasonably exposed to liability for monetary damages under the Civil Rights Acts.

(22) Cable systems should be encouraged to carry low power television stations licensed to the communities served by those systems where the low power station creates and broadcasts, as a substantial part of its programming day, local programming.

STATEMENT OF POLICY

SEC. 3. It is the policy of the Congress in this Act to—

(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

DEFINITIONS

SEC. 4. (a) Section 602 of the Communications Act of 1934 (47 U.S.C. 522) is amended by redesignating paragraph (1) as paragraph (2), by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, by redesignating paragraphs (4) through (10) as paragraphs (7) through (13), respectively, by redesignating paragraphs (11) and (12) as paragraphs (16) and (17), respectively, by redesignating paragraph (13) as paragraph (19), by redesignating paragraphs (14) and (15) as paragraphs (23) and (24), respectively, and by redesignating paragraph (16) as paragraph (28).

(b) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately before paragraph (2), as so redesignated, the following new paragraph:

"(1) the term 'activated channels' means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;".

(c) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (2), as so redesignated, the following new paragraph:

"(3) the term 'available to a household' or 'available to a home' when used in reference to a multichannel video programming distributor means a particular household which is a subscriber or customer of the distributor or a particular household which is actively and currently sought as a subscriber or customer by a multichannel video programming distributor;".

(d) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (5), as so redesignated, the following new paragraph:

"(6) the term 'cable community' means the households in the geographic area in which a cable system provides cable service;".

(e) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting imme-

diately after paragraph (13), as so redesignated, the following new paragraphs:

"(14) the term 'headend' means the location of any equipment of a cable system used to process the signals of television broadcast stations for redistribution to subscribers;

"(15) the term 'multichannel video programming distributor' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;".

(f) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (17), as so redesignated, the following new paragraph:

"(18) the term 'principal headend' means—

"(A) the headend, in the case of a cable system with a single headend, or

"(B) in the case of a cable system with more than one headend, the headend designated by the cable operator to the Commission as the principal headend, except that such designation shall not undermine or evade the requirements of section 614;".

(g) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (19), as so redesignated, the following new paragraphs:

"(20)(A) the term 'local commercial television station' means any full power television broadcast station, determined by the Commission to be a commercial station, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system (for purposes of this subparagraph, a television broadcasting station's television market shall be defined as specified in section 73.3555(d) of title 47, Code of Federal Regulations, as in effect on May 1, 1991, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include or exclude communities from such station's television market to better effectuate the purposes of this Act);

"(B) where such a television broadcast station would, with respect to a particular cable system, be considered a distant signal under section 111 of title 17, United States Code, it shall be deemed to be a local commercial television station upon agreement to reimburse the cable operator for the incremental copyright costs assessed against such operator as a result of being carried on the cable system;

"(C) the term 'local commercial television station' shall not include television translator stations and other passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

"(21) the term 'qualified noncommercial educational television station' means any television broadcast station which—

"(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; or

"(ii) is owned or operated by a municipality and transmits only noncommercial programs for educational purposes; or

"(B) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) (47 U.S.C. 396(k)(6)(B));

such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the cable community, (II) a full service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations;

"(22) the term 'qualified low power station' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

(A) such station broadcasts during at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations, and a significant part of their programming, in an amount to be determined by the Commission, is locally originated and produced;

"(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity;

"(C) such station complies with interference regulations consistent with their secondary status pursuant to part 74 of title 47, Code of Federal Regulations; and

"(D) such station is located no more than 35 miles from the cable system's headend, or no more than 20 miles if the low power station is located within one of the 50 largest Standard Metropolitan Statistical Areas, and delivers to the input terminals of the signal processing equipment at the cable system headend a signal level of −45 dBm for UHF stations and −49 dBm for VHF stations;

nothing in this paragraph shall be construed to grant any low power station primary status for spectrum occupancy;"

(h) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended—

(1) by striking "and" at the end of paragraph (24), as so redesignated; and

(2) by inserting immediately after such paragraph (24) the following new paragraphs:

"(25) the term 'usable activated channels' means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission;

"(26) the term 'video programmer' means a person engaged in the production, creation, or wholesale distribution of a video programming service for sale;

"(27) the term 'Line 21 closed caption' means a data signal which, when decoded, provides a visual depiction of information simultaneously being presented on the aural channel of a television signal; and".

REGULATION OF CABLE RATES

SEC. 5. Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

"REGULATION OF RATES

"SEC. 623. (a) Any Federal agency, State, or franchising authority may not regulate the rates for the provision of cable service, or for the installation or rental of equipment used for the receipt of cable service, except to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, by only to the extent provided under this section.

"(b)(1) If the Commission finds that a cable system is not subject to effective competition, the Commission shall ensure that the rates for the provision of basic cable service, including for the installation or rental of equipment used for the receipt of basic cable service, or charges for changes in service tiers, are reasonable; except that if fewer than 30 percent of all customers to that cable system subscribe only to basic cable service, the Commission also shall ensure that rates are reasonable for the lowest-priced tier of service subscribed to by at least 30 percent of the cable system's customers.

"(2)(A) Upon written request by a franchising authority, the Commission shall review the State and local laws and regulations governing the regulation of rates of cable systems under the jurisdiction of such franchising authority. The Commission shall authorize such franchising authority to carry out such regulation pursuant to paragraph (1) in lieu of the Commission if the Commission finds that—

"(i) such State and local laws and regulations conform to the procedures, standards, requirements, and guidelines prescribed under paragraph (4) and any interpretative rulings, decisions, and orders of the Commission that relate to rate regulation under this subsection; and

"(ii) such franchising authority will provide the level of protection to consumers required by the Commission and that carries out the national policy established in this title.

"(B) Upon petition by a cable operator or other interested party, the Commission shall review such regulation of cable system rates by a franchising authority authorized under this paragraph. If the Commission finds that the franchising authority has acted inconsistently with the requirements in subparagraph (A), the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with subparagraph (A)(i) or (ii), the Commission shall revoke such authorization.

"(3) A cable operator may add to or delete from a basic cable service tier any video programming other than retransmitted local television broadcast signals. Any obligation imposed by operation of law inconsistent with this subsection is preempted and may not be enforced.

"(4) Within 120 days after the date of enactment of the Cable Television Consumer Protection Act of 1992, the Commission shall prescribe by rule procedures, standards, requirements, and guidelines for the establishment of reasonable rates charged for basic cable service by a cable operator not subject to effective competition.

"(5) A cable operator may file with the Commission, or with a franchising authority authorized by the Commission under paragraph (2) to regulate rates, a request for a

rate increase in the price of a basic cable service tier. Any such request upon which final action is not taken within 180 days after such request shall be deemed granted.

"(c)(1) When a franchising authority or a subscriber of any cable system found by the Commission not to be subject to effective competition files, within a reasonable time after a rate increase for cable programming service of that system, including an increase which results from a change in that system's service tiers or from a change in the per channel rate paid by subscribers for a particular video programming service, a complaint which establishes a prima facie case that rates for such cable programming service are unreasonable based on the criteria established by the Commission, the Commission shall determine whether such rates for cable programming service are unreasonable. In making its determination, the Commission shall inquire of the cable operator of such system as to the reasons for such rates. If the Commission finds that such rates cannot be justified under reasonable business practices, the Commission shall establish reasonable rates.

"(2) Within 180 days after the date of enactment of the Cable Television Consumer Protection Act of 1992, the Commission shall prescribe by rule—

"(A) the criteria for determining whether rates for cable programming service are unreasonable, and

"(B) criteria for determining that (i) a complaint described under paragraph (1) is filed within a reasonable period after a rate increase and (ii) the complaint establishes a prima facie case that rates for cable programming service are unreasonable.

"(3) In establishing the criteria for determining whether rates for cable programming service are unreasonable pursuant to paragraph (2)(A), the Commission shall consider, among other factors—

"(A) the extent to which service offerings are offered on an unbundled basis;

"(B) rates for similarly situated cable systems offering comparable services, taking into account, among other factors, similarities in facilities, regulatory and governmental costs, and number of subscribers;

"(C) the history of rates for such service offerings of the system;

"(D) the rates for all cable programming service offerings taken as a whole; and

"(E) the rates for such service offerings charged by cable systems subject to effective competition, as defined in subsection (d).

"(d) Under this section, a cable system shall be presumed to be subject to effective competition if—

"(1) fewer than 30 percent of the households in the cable community subscribe to the cable service of such cable system; or

"(2) the cable community is served by a sufficient number of local television broadcast signals and by more than one multichannel video programming distributor.

For purposes of paragraph (2), a cable community shall be considered as served by more than one multichannel video programming distributor if (A) comparable video programming is available at comparable rates to at least a majority of the households in the cable community from a competing cable operator, multichannel multipoint distribution service, direct broadcast satellite program distributor, television receive-only satellite program distributor, or other competing multichannel video programming distributor, and (B) the number of households subscribing to programming services offered by such competing multichannel video programming distributor, or by a combination of such distributors, is in the aggregate at least 15 percent of the households in the cable community. No competing multichannel video programming distributor serving households in a cable community which, directly or indirectly, is owned or controlled by, or affiliated through substantial common ownership with, the cable system in that cable community, shall be included in any determination regarding effective competition under this subsection.

"(e) A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.

"(f) Nothing in this title shall be construed as forbidding any Federal agency, State, or franchising authority from—

"(1) prohibiting discrimination among customers of cable service; or

"(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing-impaired individuals.

"(g) For purposes of this section, the term 'cable programming service' means all video programming services, including installation or rental of equipment not used for the receipt of basic cable service, regardless of service tier, offered over a cable system except basic cable service and those services offered on a per channel or per program basis.

"(h) Within 120 days of enactment of this subsection, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions of the rates, services, and other requirements of this section.".

NONDISCRIMINATION WITH RESPECT TO VIDEO PROGRAMMING

SEC. 6. Part IV of title VI of the Communications Act of 1934 (47 U.S.C. 551 et seq.) is amended by adding at the end the following new sections:

"NONDISCRIMINATION WITH RESPECT TO VIDEO PROGRAMMING

"SEC. 640. (a) A video programmer in which a cable operator has an attributable interest and who licenses video programming for national or regional distribution—

"(1) shall not unreasonably refuse to deal with any multichannel video programming distributor; and

"(2) shall not discriminate in the price, terms, and conditions in the sale of the video programmer's programming among cable systems, cable operators, or other multichannel video programming distributors if such action would have the effect of impeding retail competition.

"(b) A video programmer in which a cable operator has an attributable interest and who licenses video programming for national or regional distribution shall make programming available on similar price, terms, and conditions to all cable systems, cable operators, or their agents or buying groups; except that such video programmer may—

"(1) impose reasonable requirements for creditworthiness, offering of service, and financial stability;

"(2) establish different price, terms, and conditions to take into account differences in cost in the creation, sale, delivery, or transmission of video programming;

"(3) establish price, terms, and conditions which take into account economies of scale or other cost savings reasonably attributable to the number of subscribers served by the distributor; and

"(4) permit price differentials which are made in good faith to meet the equally low price of a competitor.

"(c) The Commission shall prescribe rules and regulations to implement this section. The Commission's rules shall—

"(1) provide for an expedited review of any complaints made pursuant to this section; and

"(2) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

"(d) Any person who encrypts any satellite cable programming for private viewing shall make such programming available for private viewing by C-band receive-only home satellite antenna users, without any obligation on the direct broadcast satellite distributor or the programmer to pay the costs necessary for C-band distribution.

"(e) This section shall not apply to the signal of an affiliate of a national television broadcast network or other television broadcast signal that is retransmitted by satellite and shall not apply to any internal satellite communication of any broadcaster, broadcast network, or cable network.

"(f) For purposes of this section, any video programmer who licenses video programming for distribution to more than one cable community shall be considered a regional distributor of video programming. Nothing contained in this section shall require any person who licenses video programming for national or regional distribution to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

"NONDISCRIMINATION WITH RESPECT TO SATELLITE CARRIERS

"SEC. 641. A fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code—

"(1) shall not unreasonably refuse to deal with any distributor of video programming in the provision of such service to home satellite earth stations qualified to receive such service under section 119 of title 17, United States Code; and

"(2) shall not discriminate in the price, terms, and conditions of the sale of such service among distributors to home satellite earth stations qualified to receive such signals under section 119 of title 17, United States Code, or between such distributors and other multichannel video programming distributors.

"AGREEMENTS BETWEEN CABLE OPERATORS AND VIDEO PROGRAMMERS

"SEC. 642. Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators and video programmers. Such regulations shall—

"(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

"(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programmer to provide exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

"(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability

of an unaffiliated video programmer to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation in the selection, terms, or conditions for carriage of video programmers;

"(4) provide for expedited review of any complaints made by a video programmer pursuant to this section;

"(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

"(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.".

LEASED COMMERCIAL ACCESS

SEC. 7. (a) Section 612(a) of the Communications Act of 1934 (47 U.S.C. 532(a)) is amended by inserting "to promote competition in the delivery of diverse sources of video programming and" immediately after "purpose of this section is".

(b) Section 612(c) of the Communications Act of 1934 (47 U.S.C. 532(c)) is amended—

(1) in paragraph (1) by inserting "and with rules prescribed by the Commission under paragraph (4)" immediately after "purpose of this section"; and

(2) by adding at the end the following new paragraph:

"(4)(A) The Commission shall have the authority to—

"(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use; and

"(ii) establish reasonable terms and conditions for such use, including those for billing and collection.

"(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining the maximum reasonable rate under subparagraph (A)(i) and for establishing terms and conditions under subparagraph (A)(ii).".

(c) Paragraph (5) of section 612(b) of the Communications Act of 1934 (47 U.S.C. 532(b)) is amended to read as follows:

"(5) For the purposes of this section, the term 'commercial use' means the provision of video programming, whether or not for profit.".

(d) Section 612 of the Communications Act of 1934 (47 U.S.C. 532) is amended by adding at the end the following new subsection:

"(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source (if such source is not affiliated with the cable operator), if such programming is not already carried on the cable system. The channel capacity used to provide programming from a qualified minority programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming on that cable system under this subsection.

"(2) For purposes of this subsection—

"(A) the term 'qualified minority programming source' means a programming source which devotes significantly all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned; and

"(B) the term 'minority' includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.".

LIMITATIONS ON CONTROL AND UTILIZATION

SEC. 8. Subsection (f) of section 613 of the Communications Act of 1934 (47 U.S.C. 533) is amended to read as follows:

"(f)(1) In order to enhance effective competition, the Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection Act of 1992, conduct a rulemaking proceeding to prescribe rules and regulations establishing—

"(A) reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest; and

"(B) reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest.

"(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives—

"(A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer;

"(B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of such programming to other video distributors;

"(C) take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

"(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

"(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

"(F) not impose limitations which would bar cable operators from serving previously unserved rural areas; and

"(G) not impose limitations which would impair the development of diverse and high quality video programming.".

CROSS-OWNERSHIP

SEC. 9. (a) Section 613(a) of the Communications Act of 1934 (47 U.S.C. 533(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the cable community served by that cable operator's cable system. The Commission—

"(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

"(B) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of the affected cable community are able to obtain video programming.".

(b) Section 613(c) of the Communications Act of 1934 (47 U.S.C. 533(c)) is amended—

(1) by inserting "(1)" immediately after "(c)"; and

(2) by adding at the end the following new paragraph:

"(2) If ten percent of the households in the United States with television sets subscribe to any one service provided by multichannel video programming distributors directly via satellite to home satellite antennae, the Commission shall promulgate appropriate regulations (A) limiting ownership of any such distributor by cable operators and (B) requiring access to such satellite service by unaffiliated video programmers.".

CUSTOMER SERVICE

SEC. 10. (a) Section 632(a) of the Communications Act of 1934 (47 U.S.C. 552(a)) is amended—

(1) by inserting "may establish and" immediately after "authority";

(2) by striking ", as part of a franchise (including a franchise renewal, subject to section 626),"; and

(3) in paragraph (1), by inserting immediately after "operator" the following: "that (A) subject to the provisions of subsection (e), exceed the standards set by the Commission under this section, or (B) prior to the issuance by the Commission of rules pursuant to subsection (d)(1), exist on the date of enactment of the Cable Television Consumer Protection Act of 1992".

(b) Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended by adding at the end the following new subsection:

"(d)(1) The Commission, within 180 days after the date of enactment of this subsection, shall, after notice and an opportunity for comment, issue rules that establish customer service standards that ensure that all customers are fairly served. Thereafter the Commission shall regularly review the standards and make such modifications as may be necessary to ensure that customers of the cable industry are fairly served. A franchising authority may enforce the standards established by the Commission.

"(2) Notwithstanding the provisions of subsection (a) and this subsection, nothing in this title shall be construed to prevent the enforcement of—

"(A) any municipal ordinance or agreement, or

"(B) any State law,

concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section.

"(e) In the event that a particular franchising authority, pursuant to its authority under subsection (a), requires provisions for enforcement of customer service requirements of the cable operator that exceed the standards established by the Commission, the cable operator may petition the Commission for a declaration, after notice and hearing and based upon substantial evidence, that the particular franchising authority's requirements are not in the public interest. In determining whether a particular franchising authority's provisions for enforcement of customer service requirements are not in the public interest, the Commission shall consider the needs of the local area served by the particular franchising authority.".

FRANCHISE RENEWAL

SEC. 11. (a) Section 626(a) of the Communications Act of 1934 (47 U.S.C. 546(a)) is

amended by adding at the end the following: "Submission of a timely written renewal notice by the cable operator specifically requesting a franchising authority to initiate the formal renewal process under this section is required for the cable operator to invoke the renewal procedures set forth in subsections (a) through (g); except that nothing in this section requires a franchising authority to commence the renewal proceedings during the 6-month period which begins with the 36th month before the franchise expiration.".

(b) Section 626(c)(1) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)) is amended—

(1) by inserting "pursuant to subsection (b)" immediately after "renewal of a franchise"; and

(2) by striking "completion of any proceedings under subsection (a)" and inserting in lieu thereof the following: "date of the submission of the cable operator's proposal pursuant to subsection (b)".

(c) Section 626(c)(1)(A) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)(A)) is amended by inserting "throughout the franchise term" immediately after "law".

(d) Section 626(c)(1)(B) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)(B)) is amended—

(1) by striking "mix, quality, or level" and inserting in lieu thereof "mix or quality"; and

(2) by inserting "throughout the franchise term" immediately after "needs".

(e) Section 626(d) of the Communications Act of 1934 (47 U.S.C. 546(d)) is amended—

(1) by inserting "which has been submitted in compliance with subsection (b)" immediately after "Any denial of a proposal for renewal"; and

(2) by striking all after "unless" and inserting in lieu thereof the following: "the operator has notice and opportunity to cure, or in any case in which it is documented that the franchising authority has waived in writing its right to object.".

(f) Section 626(e)(2)(A) of the Communications Act of 1934 (47 U.S.C. 546(e)(2)(A)) is amended by inserting immediately after "section" the following: "and such failure to comply actually prejudiced the cable operator".

(g) Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended by adding at the end the following new subsection:

"(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the initiation of renewal proceedings by the cable operator under this section.".

REQUIREMENT FOR CERTAIN EQUIPMENT ON TELEVISION SETS

SEC. 12. Section 303(s) of the Communications Act of 1934 (47 U.S.C. 303(s)) is amended—

(1) by inserting ", and be equipped with an electronic switch permitting users of the apparatus to change readily among all video distribution media," immediately after "television broadcasting"; and

(2) by inserting immediately before the period at the end the following: ", except that such electronic switch shall be required only if the Commission determines that the installation of the switch is technically and economically feasible".

LIMITATION OF FRANCHISING AUTHORITY LIABILITY

SEC. 13. Part III of title IV of the Communications Act of 1934 (47 U.S.C. 621 et seq.) is amended by adding at the end the following new section:

"LIMITATION OF LIABILITY

"SEC. 628. (a) In any court proceeding pending on the date of enactment of this section, or initiated after such date, involving any claim under the Civil Rights Acts asserting a violation of First Amendment constitutional rights by a franchising authority or other governmental entity or by any official, member, employee, or agent of such authority or entity, arising from actions expressly authorized or required by this title, any relief shall be limited to injunctive relief, declaratory relief, and attorney's fees and legal costs, except as provided in subsection (b).

"(b) The limitation required by subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of constitutional rights under the First Amendment or of the Civil Rights Acts.".

MINIMUM TECHNICAL STANDARDS

SEC. 14. Section 624(e) of the Communications Act of 1934 (47 U.S.C. 544(e)) is amended to read as follows:

"(e)(1) The Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection Act of 1992, establish minimum technical standards to ensure adequate signal quality for all classes of video programming signals provided over a cable system, and thereafter shall periodically update such minimum standards to reflect improvements in technology.

"(2) The Commission may establish standards for technical operation and other signals provided over a cable system including but not limited to high-definition television (HDTV).

"(3) The Commission may require compliance with and enforce any standard established under this subsection, adjusted as appropriate for the particular circumstances of the local cable system and cable community.

"(4) The Commission shall establish procedures for complaints or petitions asserting the failure of a cable operator to meet the technical standards and seeking an order compelling compliance; except that nothing in this subsection shall be construed to limit the ability of a complainant or petitioner to seek any other remedy that may be available under the franchise agreement or State or Federal law or regulation.

"(5) After the establishment of technical standards by the Commission pursuant to this section, neither a State or political subdivision thereof, nor a franchising authority or other governmental entity of a State or political subdivision thereof, shall—

"(A) establish any technical standards described in this subsection;

"(B) enforce any such standards that have not been established by the Commission; or

"(C) enforce any such standards that are inconsistent with the standards established by the Commission.".

RETRANSMISSION CONSENT FOR CABLE SYSTEMS

SEC. 15. (a) Section 325 of the Communications Act of 1934 (47 U.S.C. 325) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b)(1) Following the date that is one year after the date of enactment of this subsection, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, without the express authority of the originating station, except as permitted by section 614.

"(2) The provisions of this section shall not apply to—

"(A) retransmission of the signal of a noncommercial broadcasting station;

"(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

"(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms 'satellite carrier', 'superstation', and 'unserved household' have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of this subsection.

"(3)(A) Within 45 days after the date of enactment of this subsection, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in pararaph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for basic cable service and shall ensure that rates for basic cable service are reasonable. Such rulemaking proceeding shall be completed within six months after its commencement.

"(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of this subsection and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

"(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

"(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supercede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section.

"(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.".

REQUIREMENT TO CARRY LOCAL BROADCAST SIGNALS

SEC. 16. Part II of title VI of the Communications Act of 1934 (47 U.S.C. 531 et seq.) is amended by inserting immediately after section 613 the following new sections:

"CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS

"SEC. 614. (a) Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

"(b)(1)(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

"(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to a maximum of one-third of the aggregate number of usable activated channels of such system.

"(2) Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such signals shall be carried on its cable system, except that—

"(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

"(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined under section 76.53 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

"(3)(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and Line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers. Retransmission of other material in the vertical blanking interval or other non-program-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, the operator may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

"(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

"(4)(A) The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

"(B) At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

"(5) Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

"(6) Each signal carried in fulfillment of carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of this station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any disputes regarding the positioning of a local commercial television station shall be resolved by the Commission.

"(7) Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at reasonable rates.

"(8) A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

"(9) A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(10) A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that—

"(A) any such station, if it does not deliver to the principal headend of the cable system either a signal of -45 dBm for UHF signals or -49 dBm for VHF signals at the input terminals of the signal processing equipment, shall be required to bear the costs associated with delivering a good quality signal or a baseband video signal;

"(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as reimbursement for the incremental copyright costs assessed against such cable operator for carriage of such signal; and

"(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

"(c) If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b), the cable operator shall be required to carry qualified low power stations until such channels are filled.

"(d)(1) Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signals of such station or has otherwise failed to comply with the channel positioning or repositioning requirements of this section. The cable operator shall, within 30 days after such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

"(2) The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

"(3) Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

"(e) No cable operator shall be required—

"(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device, or

"(2) to provide information to subscribers about input selector switches or comparable devices.

"(f) Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section.

"(g) Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry to determine whether broadcast television stations whose programming consists predominantly of sales presentations are serving the public interest, convenience, and necessity. The Commission shall take into consideration the viewing of such stations, the level of competing demands for the channels allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy due to their prior programming.".

"CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION SIGNALS

"SEC. 615. (a) In addition to the carriage requirements set forth in section 614, each operator of a cable system (hereafter in this section referred to as an 'operator') shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

"(b)(1) Subject to paragraphs (2) and (3) and subsection (e), each operator shall carry, on the cable system of that operator, each qualified local noncommercial educational television station requesting carriage.

"(2)(A) Notwithstanding paragraph (1), an operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of only one qualified local noncommercial educational television station; except that an operator of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

"(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

"(i) the operator shall carry on that system the signal of one qualified noncommercial educational television station;

"(ii) the selection for carriage of such a signal shall be at the election of the operator; and

"(iii) in order to satisfy the requirements for carriage specified in this subsection, the operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such operator shall use the first channel available to satisfy the requirements of this subparagraph.

"(3)(A) Subject to subsection (c), an operator of a cable system with 13 to 36 usable activated channels—

"(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

"(ii) may, in its discretion, carry additional such stations.

"(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the operator shall import the signal of at least one qualified noncommercial educational station to comply with subparagraph (A)(i).

"(C) The operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television station affiliated with the same network if the programming of such additional station is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

"(D) An operator of a system described in subparagraph (A) which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990 shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

"(c) Notwithstanding any other provision of this section, all operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular operator and a particular such station, upon the written consent of the operator and the station.

"(d) An operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

"(e) An operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

"(f) A qualified local noncommercial educational television station whose signal is carried by an operator shall not assert any network non-duplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that operator.

"(g)(1) An operator shall retransmit in its entirety the primary video, accompanying audio, and Line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the operator.

"(2) An operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section, with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

"(3) The signal of a qualified local noncommercial educational television station shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed on by the station and the cable operator. The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the operator, at least 30 days in advance of such repositioning, has provided written notice to the station and to all subscribers of the cable system. For purposes of this paragraph, repositioning includes deletion of the station from the cable system.

"(4) Notwithstanding the other provisions of this section, an operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality, as may be defined by the Commission.

"(h) Signals carried in fulfillment of the carriage obligations of an operator under this section shall be available to every subscriber as part of the cable system's lowest priced service that includes the retransmission of local television broadcast signals.

"(i)(1) An operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal to the principal headend of the cable system.

"(2) Notwithstanding the provisions of this section, an operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provisions of subsection (c), where such signal would be considered as a distant signal for copyright purposes unless such station reimburses the operator for the incremental copyright costs assessed against such operator as a result of such carriage.

"(j)(1) Whenever a qualified local noncommercial educational television station believes that an operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such operator has failed to comply with such requirements and state the basis for such allegations.

"(2) The Commission shall afford such operator an opportunity to present data, views, and arguments to establish that the operator has complied with the signal carriage requirements of this section.

"(3) Within 120 days after the date a complaint is filed under this subsection, the

Commission shall determine whether the operator has complied with the requirements of this section. If the Commission determines that the operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the operator has fully complied with such requirements, the Commission shall dismiss the complaint.

"(k) An operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

"(l) For purposes of this section, 'qualified local noncommercial educational television station' is defined as a qualified noncommercial educational television station—

"(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

"(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system.".

NOTICE AND OPTIONS TO CONSUMERS REGARDING CABLE EQUIPMENT

SEC. 17. The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding after section 624 the following new section:

"NOTICE AND OPTIONS TO CONSUMERS REGARDING CONSUMER ELECTRONICS EQUIPMENT

"SEC. 624A. (a) This section may be cited as the 'Cable Equipment Act of 1992'.

"(b) The Congress finds that—

"(1) the use of converter boxes to receive cable television may disable certain functions of televisions and VCRs, including, for example, the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program on another channel;

"(B) use a VCR to tape two consecutive programs that appear on different channels; or

"(C) use certain special features of a television such as a 'picture-in-picture' feature; and

"(2) cable operators should, to the extent possible, employ technology that allows cable television subscribers to enjoy the full benefit of the functions available on televisions and VCRs.

"(c) As used in this section:

"(1) The term 'converter box' means a device that—

"(A) allows televisions that do not have adequate channel tuning capability to receive the service offered by cable operators; or

"(B) decodes signals that cable operators deliver to subscribers in scrambled form.

"(2) The term 'VCR' means a videocassette recorder.

"(d)(1) Cable operators shall not scramble or otherwise encrypt any local broadcast signal, except where authorized under paragraph (3) of this subsection to protect against the substantial theft of cable service.

"(2) Notwithstanding paragraph (1) of this subsection, there shall be no limitation on the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' televisions or VCRs.

"(3) Within 180 days after the date of enactment of this section, the Commission shall issue regulations prescribing the circumstances under which a cable operator may, if necessary to protect against the substantial theft of cable service, scramble or otherwise encrypt any local broadcast signal.

"(4) The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this subsection in light of any actions taken in response to regulations issued under subsection (i).

"(e) Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations requiring a cable operator offering any channels the reception of which requires a converter box to—

"(1) notify subscribers that if their cable service is delivered through a converter box, rather than directly to the subscribers' televisions or VCRs, the subscribers may be unable to enjoy certain functions of their televisions or VCRs, including the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program on another channel;

"(B) use a VCR to tape two consecutive programs that appear on different channels; or

"(C) use certain television features such as 'picture-in-picture';

"(2) offer new and current subscribers who do not receive or wish to receive channels the reception of which requires a converter box, the option of having their cable service installed, in the case of new subscribers, or reinstalled, in the case of current subscribers, by direct connection to the subscribers' televisions or VCRs, without passing through a converter box; and

"(3) offer new and current subscribers who receive, or wish to receive, channels the reception of which requires a converter box, the option of having their cable service installed, in the case of new subscribers, or reinstalled, in the case of current subscribers, in such a way that those channels the reception of which does not require a converter box are delivered to the subscribers' televisions or VCRs, without passing through a converter box.

"(f) Any charges for installing or reinstalling cable service pursuant to subsection (e) shall be subject to the provisions of Section 623(b)(1).

"(g) Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations relating to the use of remote control devices that shall—

"(1) require a cable operator who offers subscribers the option of renting a remote control unit—

"(A) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

"(B) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

"(2) prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

"(h) Within 180 days after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to the Congress on means of assuring compatibility between televisions and VCRs and cable systems so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and VCRs.

"(i) Within 1 year after the date of enactment of this section, the Commission shall issue regulations requiring such actions as may be necessary to assure the compatibility interface described in subsection (h).".

JUDICIAL REVIEW

SEC. 18. Section 635 of the Communications Act of 1934 (47 U.S.C. 555) is amended by adding at the end the following new subsection:

"(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 614 or 615 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

"(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 614 or 615 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.".

HOME WIRING

SEC. 19. Section 624 of the Communications Act of 1934 (17 U.S.C. 544) is amended by adding at the end the following new subsection:

"(g) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules and regulations concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.".

AWARD OF FRANCHISES

SEC. 20. (a) Section 621(a)(1) of the Communications Act of 1934 (47 U.S.C. 541(a)(1)) is amended by inserting immediately before the period at the end the following: "; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 635 for failure to comply with this subsection".

(b) Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting "621(a)(1)," immediately after "section".

FRANCHISE REQUIREMENTS

SEC. 21. Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended by adding at the end the following new paragraph:

"(4) In awarding a franchise, the franchising authority shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the geographic area within the jurisdiction of the franchising authority.".

DIRECT BROADCAST SATELLITE SERVICES

SEC. 22. (a) The Federal Communications Commission shall, within one year after the date of enactment of this Act, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report analyzing the need for, and the form, nature, and extent of, the most appropriate public interest obligations to be imposed upon direct broadcast satellite services in addition to what is

required pursuant to subsection (b)(1). The report shall include—

(1) a consideration of the national nature of direct broadcast satellite programming services;

(2) an evaluation of a phase-in of such public interest obligations for direct broadcast satellite services commensurate with the degree to which direct broadcast satellite services have become a source of effective competition to cable systems; and

(3) an analysis of the Commission's authority to impose such public interest obligations recommended in the report without further legislation.

(b)(1) Notwithstanding its report to be provided pursuant to subsection (a), the Federal Communications Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for nonduplicated, noncommercial, educational, and informational programming.

(2) A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial, educational, and informational programming.

(3) A direct broadcast satellite service provider shall meet the requirements of this subsection by leasing, to national educational programming suppliers (including qualified noncommercial educational television stations, other public telecommunications entities, and public or private educational institutions), capacity on its system upon reasonable prices, terms, and conditions, taking into account the nonprofit character of such suppliers. The direct broadcast satellite service provider shall not exercise any editorial control over any video programming provided pursuant to this subsection.

(c) There is established a study panel which shall be comprised of a representative of the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment selected by the head of each such entity. Such study panel shall within two years after the date of enactment of this Act submit a report to the Congress containing recommendations on—

(1) methods and strategies for promoting the development of programming for transmission over the public use channels reserved pursuant to subsection (b)(1);

(2) methods and criteria for selecting programming for such channels that avoids conflict of interest and the exercise of editorial control by the direct broadcast satellite service provider;

(3) identifying existing and potential sources of funding for administrative and production costs for such public use programming; and

(4) what constitute reasonable prices, terms, and conditions for provision of satellite space for public use channels.

(d) As used in this section, the term "direct broadcast satellite service" includes—

(1) any satellite system licensed under part 100 of title 47, Code of Federal Regulations; and

(2) any distributor using a fixed service satellite system to provide video service directly to the home and licensed under part 25 of title 47, Code of Federal Regulations.

SUBSCRIBER BILL ITEMIZATION

SEC. 23. Section 622(c) of the Communications Act of 1934 (47 U.S.C. 542(c)) is amended to read as follows:

"(c) Each cable operator may identify, in accordance with standards prescribed by the Commission, as a separate line item on each regular bill of each subscriber, each of the following:

"(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

"(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

"(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.".

SERVICES AND EQUIPMENT NOT AFFIRMATIVELY REQUESTED

SEC. 24. Section 623 of the Communications Act of 1934 (47 U.S.C. 543), as amended by section 5 of this Act, is further amended by adding at the end the following new subsection:

"(i) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.".

PROTECTION OF SUBSCRIBER PRIVACY

SEC. 25. Section 631(c)(1) of the Communications Act of 1934 (47 U.S.C. 551(c)(1)) is amended by inserting immediately before the period at the end the following: "and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator".

NOTICE TO CABLE SUBSCRIBERS ON UNSOLICITED SEXUALLY EXPLICIT PROGRAMS

SEC. 26. Section 624(d) of the Communications Act of 1934 (47 U.S.C. 544(d)) is amended by adding the following new paragraph:

"(3)(A) If a cable operator provides a 'premium channel' without charge to cable subscribers who do not subscribe to the 'premium channel(s)', the cable operator shall, not later than 60 days before such 'premium channel' is provided without charge—

"(i) notify all cable subscribers that the cable operator plans to provide a 'premium channel(s)' without charge, and

"(ii) notify all cable subscribers when the cable operator plans to provide a 'premium channel(s)' without charge, and

"(iii) notify all cable subscribers that they have a right to request that the channel carrying the 'premium channel(s)' be blocked, and

"(iv) block the channel carrying the 'premium channel' upon the request of a subscriber.

"(B) For the purpose of this section, the term 'premium channel' shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association as X, NR-17 or R.".

CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS

SEC. 27. (a) Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)), is amended by:

(1) inserting after the words "franchising authority", the words "or the cable operator", and

(2) inserting immediately after the period at the end thereof the following: "This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.".

(b) Section 612 of the Communications Act of 1934 (47 U.S.C. 532), is amended by inserting at the end the following new subsection:

"(i)(1) Within 120 days following the date of the enactment of this subsection, the Federal Communications Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Federal Communications Commission regulations and which cable operators have not voluntarily prohibited under subsection (h) of this section, by:

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section, and

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing, and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Federal Communications Commission regulations.

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).".

PROHIBIT SYSTEM USE

SEC. 28. Within 180 days following the date of the enactment of this section, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

OBSCENE MATERIAL

SEC. 29. Section 638 of the Communications Act of 1934 (47 U.S.C. 558) is amended by (a) striking the period and (b) adding at the end the following: "unless the program involves obscene material.".

PROGRAM MONITORING

SEC. 30. (a) The Congress finds that—

(1) the physical attributes of the broadcast medium are such that it is reasonable to assume that minors are likely to be in the broadcast audience during most of the broadcast day;

(2) based on contemporary community standards, there is concern over a growing number of television broadcast programs which at times constitute indecency;

(3) there are instances in network broadcast television programming which involve the depiction of sexual activity directly or by innuendo which is patently offensive under contemporary community standards;

(4) broadcast television programs that depict sexual matters in ways which are obscene, indecent, or profane erode our sense of traditional American values; and

(5) the three major networks have reduced or eliminated their "Standards and Practices" departments which have traditionally reviewed programming for objectionable material: Now, therefore,

(b) It is the sense of the Congress that the television networks and producers should increase their activity to monitor and remove offensive sexual material from their television broadcast programming.

APPLICABILITY OF ANTITRUST LAWS; NO ANTITRUST IMMUNITY

SEC. 31. Nothing in the Cable Television Consumer Protection Act of 1992 shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

EXPANSION OF THE RURAL EXEMPTION TO THE CABLE-TELEPHONE CROSS-OWNERSHIP PROHIBITION

SEC. 32. Section 613(b)(3) of the Communications Act of 1934 (47 U.S.C. 533(b)(3)) is amended by striking "(as defined by the Commission)" and inserting after the period the following: "For the purposes of this paragraph, the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area (as defined by the Bureau of the Census as of the date of the enactment of the Cable Television Consumer Protection Act of 1992).".

NO PROHIBITION AGAINST A LOCAL OR MUNICIPAL AUTHORITY OPERATING AS A MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR

SEC. 33. Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended by inserting "and subsection (f)" before the comma in paragraph (b)(1) and by adding the following new subsection at the end thereof:

"(f) No provision of this Act shall be construed to—

"(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the geographic areas within the jurisdiction of such franchising authority, notwithstanding the granting of one or more franchises by such franchising authority, or

"(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.".

VOLUNTARY GUIDELINES TO KEEP VIOLENT COMMERCIALS OUT OF FAMILY PROGRAMMING HOURS

SEC. 34. (a)(1) Since young children are particularly susceptible to the influence of television;

(2) Since violence depicted on television can have a negative and unusually strong effect on young viewers; and

(3) Since parents who choose to monitor television programs for their children and to avoid their children's viewing acts of violence are limited in their ability to monitor acts of violence depicted in commercials during family programs.

(b) It is the sense of the Senate that cable and television networks and local television stations should establish and follow voluntary guidelines to keep commercials depicting acts or threats of violence out of family programming hours.

SEPARABILITY

SEC. 35. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application as to which it is held invalid, shall not be affected thereby.

REPORT; EFFECTIVE DATE

SEC. 36. (a) Within 90 days following the date of the enactment of this Act, the Federal Communications Commission shall carry out a study for the purpose of conducting an analysis of the impact of the implementation of all rules and regulations required to be issued or promulgated by this Act, and the amendments made by this Act, on employment, economic competitiveness, economic growth, international trade, consumer welfare gained through curtailing monopoly practices of cable companies, and increased opportunities for small businesses and other entrants into the video marketplace to compete with cable.

(b) Such analysis shall also consider the extent to which, if any, the implementation of such rules and regulations would involve the States and political subdivisions thereof, in such implementation and the costs, if any, in requiring such States and subdivisions to assist in carrying out such implementation.

(c) The results of such study shall be reported to Congress within 180 days following the date of the enactment of this Act.

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

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

The motion to lay on the table was agreed to.

Mr. GRAHAM. Mr. President, I would like briefly to discuss one provision of the pending cable bill that I believe needs to be explored and studied further by the Senate.

I am referring to the so-called retransmission consent provision, which is found in section 15 of S. 12. That provision gives a broadcaster the right to negotiate with a cable operator in order to set a price for carriage of the broadcaster's signal.

My concern is about the impact retransmission consent could have on another party—the program producer. Over the last few years, I have learned a great deal about the television production community, because Florida is becoming the home of more and more television shows and movies. I am proud of the burgeoning production community located in central Florida and throughout the State. The arrival of this community in Florida has had a very positive impact on our economy and our citizens.

Many people do not realize it, but television stations do not own the majority of the programming that they broadcast. The fact is that broadcasters rent or license their programming lineup from independent producers who invest great sums to develop entertaining programming.

The retransmission consent provision before us recognizes a role for broadcasters and cable operators, but does not address the concerns of those who hold the programming copyrights.

Currently, the Copyright Act's compulsory license gives cable systems the right to carry broadcast signals. S. 12, on the other hand, allows broadcasters to withhold their signals when cable operators do not offer sufficient compensation.

Then there is the contract between the copyright owner and the broadcaster—known in the trade as the licensing agreement. I understand that the typical television licensing agreement specifically prohibits broadcasters from claiming or exercising retransmission authority with regard to cable or some other media.

My question, then, is whether we are sending a consistent message by enacting retransmission consent and retaining the compulsory license. Will the courts be confounded when they try to resolve conflicts between and among retransmission consent, the compulsory license, and specific licensing agreements? I am afraid that we have not sufficiently addressed this issue in considering S. 12.

Fortunately, my colleagues on the Judiciary Subcommittee on Patents, Copyright and Trademarks, Chairman DECONCINI and Senator HATCH, have announced that they will hold a hearing in March to explore the Copyright Act's compulsory license. I assure my colleagues that I will be closely following these subcommittee hearings, especially as they relate to the relationship between the compulsory license, retransmission consent, and standard licensing agreements.

I thank Senators for their attention to my concerns.

Mr. MCCONNELL. Mr. President, after much deliberation, I voted today in support of S. 12, the Cable Television Consumer Protection Act of 1991, without the Packwood substitute measure. In 1984, the cable industry was deregulated in order to improve programming and broaden the availability of cable television. To meet those consumer needs, deregulation was appropriate. However, deregulation did not promote competition as anticipated by Congress. The result is that the cable industry is now essentially an unregulated monopoly.

Every industry should have either competition or regulation. I believe S. 12 will promote competition, rate decreases, and improvements in customer service. Because I prefer competition over regulation, the most important provision to me is the sunset provision, which states that regulations will cease once competition is established.

Mr. DANFORTH. Mr. President, I would like to take this opportunity to thank several members of my staff on the Commerce Committee without whose assistance this landmark legislation would have been impossible: Regina Keeney, senior minority counsel, and Mary McManus, minority counsel to the Communications Subcommittee; Mary Pat Bierle, minority deputy staff director; and Walter McCormick, minority chief counsel and staff director.

Mr. SPECTER. Mr. President, I am very concerned that S. 12 has been adopted without the amendment offered by my friend and colleague from Louisiana, Senator BREAUX, and which amendment I cosponsored. I believe

that the Breaux amendment was a significant effort in promoting broadcast localism and diversity in television programming; in ensuring the constitutionality of must carry; in protecting the broadcast spectrum for first amendment priorities; and in ensuring fair competition in the home shopping television marketplace.

Fortunately, Mr. President this legislation has a long way to go before it becomes law. The House has yet to act on its version of this legislation. I am heartened that there is language in H.R. 3380 that is identical to the Breaux amendment. And I expect that such language will prevail in that Chamber when it debates such legislation.

Accordingly, I would encourage Senate conferees to recede to House language that is identical or substantially similar to the Breaux amendment.

The PRESIDING OFFICER. The Chair recognizes the majority leader, Senator MITCHELL.

Mr. MITCHELL. Mr. President, I wanted to commend the distinguished Senator from Hawaii, Senator INOUYE; the Senator from Missouri, Senator DANFORTH; the Senator from South Carolina, Senator HOLLINGS, and all of the others who handled this complex, controversial and important legislation. The subject was thoroughly studied. There were numerous hearings in the committee. It was vigorously debated over the course of most of a week. And the Senate has not reached a decision. I think it represents the kind of steady, consistent, reasonable leadership that the Senator from Hawaii is noted for and which has gained him the respect of every one of his colleagues on both sides of the aisle. So I thank the Senator from Hawaii for an outstanding job of legislative leadership, consistent with what the Senate has come to expect of him.

Mr. INOUYE. Mr. President, I thank my leader for his very, very generous remarks.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of a bill extending the unemployment compensation benefits, reported earlier today by the Finance Committee, on Tuesday, February 4, at 2:15 p.m.

Notwithstanding the provisions of rule 22; that no amendments or motions to recommit the bill be in order; that there be 2 hours for debate on the bill, equally divided and controlled in the usual form;

I further ask unanimous consent that if the Senate has not received the House companion bill by the expiration or yielding back of the time on the Finance Committee-reported bill, the bill be read for the third time and the Senate proceed to vote on its bill without intervening action; and that the House bill, if it is substantially identical to that passed earlier by the Senate, be deemed to have been read a third time and, without any intervening action or debate, passed by the Senate upon its receipt from the House; and the motion to reconsider be laid upon the table.

I further ask unanimous consent that should the House bill extending the unemployment compensation benefits be received from the House prior to the Senate's completing action on its own bill, and if the House bill is substantially identical to the Senate's bill, the Senate proceed to the consideration of the bill received from the House, following third reading of the Senate bill; that no amendments, or motion to commit, or further debate be in order; that the bill be read for the third time; and the Senate proceed to vote, without any intervening action or debate, on final passage of the unemployment compensation bill received from the House.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered, That at 2:15 p.m. on February 4, 1992, notwithstanding the provisions of Rule XXII, the Senate proceed to the consideration of S. 2173, a bill extending the unemployment benefits compensation.

Ordered further, That no amendments or motions to recommit the bill be in order and that there be 2 hours for debate on the bill, to be equally divided and controlled in the usual form.

Ordered further, That if the Senate has not received the House companion bill by the expiration or yielding back of the time on S. 2173, the bill be read for the third time and the Senate proceed to vote on its bill without intervening action: *Provided*, That the House bill, if it is substantially identical to S. 2173, be deemed to have been read a third time and, without any intervening action or debate, passed by the Senate upon its receipt from the House, with the motion to reconsider laid upon the table.

Ordered further, That should the House bill extending the unemployment compensation benefits be received from the House prior to the Senate's completing action on S. 2173, and if the House bill is substantially identical to the Senate's bill, the Senate proceed to the consideration of the bill received from the House, following third reading of the Senate bill, and that no amendments, or motion to commit, or further debate be in order, and that the bill be read for the third time, that the Senate proceed to vote, without any intervening action or debate, on final passage of the unemployment compensation bill received from the House.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I thank the distinguished Republican leader for this cooperation in enabling us to obtain this agreement.

Senators should be aware that, pursuant to this agreement, at 2:15 p.m. next Tuesday the Senate will take up the unemployment insurance bill. There will be 2 hours of debate with a vote to occur at 4:15 p.m., or earlier if time is not used and yielded back on that bill.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I now ask there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair recognizes the Senator from North Carolina, Senator SANFORD.

THE NATION NEEDS A COMPREHENSIVE ECONOMIC RECOVERY PLAN

Mr. SANFORD. Mr. President, there are times in the life of a nation when only boldness will serve. That time is now. We can ill afford to rely on hope alone. Jobs are disappearing, and with them family security. We cannot wait to verify rosy predictions of a quick recovery.

We need a comprehensive plan, focused on jobs and prosperity, laying the groundwork for long-term correction of the ills of 12 years of voodoo and neglect. What we need to do are things that we ought to be doing anyhow. Furthermore, these things, done now and done right, will not add unduly to the national debt. Indeed, they will prepare the way for the reduction of the national debt.

It would be foolish to try a quick-fix. That is not only impossible; it would also fail. The wisest approach is to shape a 3-year program. In this time, we can restore the economy and come close to stabilizing prosperity for the Nation. We can in this time increase government revenues, reduce some expenditures, and slow the increase in the national debt.

The President's economic proposals were enticing and attractive, charmingly presented, vaporous like a modern dance, with intriguing nymphs dancing randomly across a shadowy stage. It will be a tough job to dance with each one before March 20.

I propose that we shape a different kind of economic package, more like a powerful steam engine pulling 2 dozen cars loaded with pump and construction equipment. We can get that train across the mountain, if the President will put on his engineers cap and help us shovel the coal.

Our plan must be focused on jobs and prosperity. In the short run, it is designed to break the Nation out of its recession. In the long term, it must assure the competitive position of the United States in finance, science, technology and industrial production, and in addition, must strengthen the human resources of America which are

the fundamental building blocks for the future.

The three major objectives of any comprehensive economic recovery plan ought to be:

First, to power us out of the current recession,

Second, to structure a stronger economy creating good jobs and a higher standard of living for the future, and

Third, to put middle-income Americans back in the game, with improved education for their children, affordable health care for their families, and fairness to them in the tax system.

Mr. President, I would like to propose to my colleagues those items I believe should be part of a sound economic recovery plan.

To shorten the presentation, I ask unanimous consent that my exhibits providing the details be printed in the RECORD following my remarks.

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

EXHIBITS

EMERGENCY MEASURES

1. We must immediately enact further measures to extend unemployment insurance benefits. I am pleased that the Senate will be taking up such measures next week. (Ex. A)

JOBS POLICY

2. We should immediately accelerate all state and local infrastructure projects covered by federal programs, as well as all federal construction now pending. (Ex. B)

3. We should adopt the package of grants to state and local governments put forward by Senators Sarbanes and Sasser. (Ex. C)

4. We must rejuvenate the housing industry. (Ex. D)

5. We should, over a three-year period, supply the National Science Foundation with matching funds to cover construction of the demonstrated shortages in college and university science and research facilities. (Ex. E)

6. We must stabilize the banking industry, strengthen its competitiveness, and prevent bank closings. (Ex. F)

7. (a) We can spur industrial productivity by enacting tax credits for productive capital investment.

(b) We can spur entrepreneurship by enacting a capital gains tax reduction for future investments in productive enterprises while avoiding added stimulation for an inflated stock market by excluding existing investments from capital gain treatment.

(c) For a short-term stimulant, and long-term competitive strength, we must make research and development tax credits permanent.

(d) We must have depreciation policies that reflect the reality of capital consumption and do not penalize domestic industries competing in global markets. (Ex. G)

(e) We must re-adjust the tax regulations which have thwarted sound real estate investments. (Ex. H)

BASIC INVESTMENT

In addition to these measures related to immediate job creation, we must rededicate ourselves to long-term investments that will lead to a more competitive nation. The successes we have enjoyed as a nation were not by virtue of a special birthright, but were the result of a dedication to succeed, hard work, and a commitment to education. After World War II, we invested 2% of our GNP to rebuild Europe's infrastructure. Yet today we invest less than half that on ourselves. It is time to again invest in America and her future.

8. We must fully fund Head Start, Women, Infants & Children (WIC) and comprehensive family support programs in order to assure school readiness. (Ex. I)

9. We should consolidate and more fully fund job and skill training programs. (Ex. J)

10. We must expand the Job Corps. (Ex. K)

11. We must expand access to higher education. (Ex. L)

12. We should establish a Public Service Corps. (Ex. M)

13. We must provide for adequate and affordable health care. (Ex. N)

PROCESS ENHANCEMENTS

In addition to investments in our future, we need to bring greater order to the government, its budget and a number of major government programs.

14. We must enact honest budget requirements. Until we are honest with ourselves and the American people, we will never develop the support or the discipline to address our mounting debt and deficit problems. (Ex. O)

15. We should enact government streamlining legislation. The government has grown, often in haphazard ways and needs to be cut back and better directed. (Ex. P)

16. We should enact legislation to protect and enhance Social Security reserves. (Ex. Q)

17. We must regulate debt requirements for leveraged buy-outs and hostile takeovers. (Ex. R)

18. We must prevent the raiding of pension funds. (Ex. S)

19. The government must strictly enforce international trade laws and combine trade agencies and the Department of Commerce trade functions into a unified world trade agency. (Ex. T)

EMERGENCY SPENDING—CAPITAL BUDGET

Our economic recovery investment will be directed toward capital improvements that will make the future more productive.

20. In paying for economy recovery, we need to rely on the fact that economic recovery will increase public revenues some $40 billion for every one percentage point of reduced unemployment and will save entitlement expenditures of up to one-fourth of that amount. (Ex. U)

21. To ensure that we do not add further to the national debt, we should freeze over-all discretionary spending caps at FY 1992 levels for three years. (Ex. V)

22. We should suspend the budget restrictions to account for the additional necessary emergency recovery appropriations, and establish for their accounting the equivalent of a capital budget. While the federal consolidated budget does not have a "capital budget" component, many think this would be an important addition to any budget reform package. Under the Summit Budgetary Agreement, the Congress was given the emergency authority to suspend the limits to cope with a recession. We invoked those exceptions for Desert Storm and we should do no less for our domestic emergency at this time.

To account for the added investments for economic recovery made over the next three years, it would be useful and helpful to create a section in the budget wherein expenditures for recovery would be treated "as if capital expenditures." By definition, capital expenditures must be repaid or amortized over their useful lives. This capital expenditure quite appropriately could be amortized by the increased personal and corporate tax revenues resulting from the improved economy. One percent of unemployment costs almost $40 billion in lost revenues and another $5–10 billion in increased expenditures. By improving our economic engine, we will recover these funds that can be used to repay any temporary spending measures. It is my view that separating these funds from the ordinary debt would enforce a wholesome discipline, and would provide an example for later establishment of a capital budget in our regular budget process. (Ex. W).

MONETARY POLICY

Although Congress has little control over the direction of monetary policy—the control of interest rates and the growth in the money supply—it seems to be well recognized that monetary policy can have the swiftest and most direct impact on the economy.

We should adopt the recommendations set forth in the economy recovery program put forth by Senators Sasser and Sarbanes, including

(a) encouraging the Federal Reserve to lower appreciably the federal funds rate;

(b) urging the Federal Reserve to increase its holdings of long term securities; and

(c) supporting Federal Reserve efforts to coordinate a worldwide movement toward lower interest rates and encourage the convening an emergency meeting of the G–7 finance ministers to adopt a program for lowering interest rates. (Ex. X)

FAIRNESS IN TAXES

Numerous tax cuts have been recommended by members of Congress and the President.

We should shift the tax schedules to promote a tax cut for middle income families who have suffered a ten-year overall reduction in disposable income and standard of living, and have carried a disproportionate share of the taxes. They are entitled to this equalization. This reduction would have some effect on the economy because most likely it would be spent. It would have an even greater influence on morale and consumer confidence. Once more the middle income families could feel that their government understands and cares about their declining incomes.

CONCLUSION

The citizens of North Carolina have made it very clear to me that their first and urgent priority is the economy. We must act first on a plan to create productive, high-paying jobs and make the needed investments in our people, in education, in technology and in business to ensure America's competitive future.

EXHIBIT A

UNEMPLOYMENT BENEFITS

Last November, President Bush finally became aware of and admitted the severity of the current recession and agreed to extend unemployment insurance benefits after vetoing similar legislation twice. In his recent State of the Union address, he called on Congress to once again extend unemployment insurance benefits to our nation's 2 million long-term unemployed workers. Extending unemployment benefits during recessionary times plays a vitally important role as an economic stabilizer by helping the unemployed buy food, make their house and car payments, and remain a beneficial part of the economy. The long-term unemployed

need and deserve this helping hand, and our economy needs their participation.

In prior recessions, the federal government extended the unemployment umbrella for 52 weeks. Not so, yet, in this recession. The Senate is expected to address this issue in early February, 1992.

The Bush Administration continues to stress that this recession is "shallow" because the unemployment rate has risen to only 7.1% as opposed to the 10%-plus levels of other recessions. This ignores the changing face of employment in America. A closer examination of the country's employment structure shows that the situation is far worse than the numbers indicate. If we count the almost 9 million seeking full time work who are only able to find part-time work as one-half employed, as some economists do, the current unemployment rate would reach almost 11%. And that still ignores more than 1.1 million citizens who have given up looking for work, another 20% of the workforce whose jobs though full time are only temporary, and millions who are having to work at jobs below their skill and pay level. Add all of those components together and more than one-third of our country's workforce does not have secure, full-time employment of their choice and skill level.

The long-term solution for both unemployment and underemployment must be a commitment to enhance savings to provide the capital for increased investment into job creating technologies.

[Exhibits B and C]

INFRASTRUCTURE

The Congress has created many programs presently in place to improve the nation's infrastructure. These programs are not only sorely needed in our states and municipalities, but are also among those programs which can most quickly stimulate the economy. These expenditures are, by their nature, capital investments with long-term benefits to the country's economic well being, growth, and competitiveness. In addition, they will provide short term benefits through job creation, increased tax revenues, and should boost consumer confidence. Therefore, a key component of an economic recovery strategy should be an acceleration of spending on already approved federal projects. It is the one area where most economists agree that any fiscal stimulus should be channeled. For every $1 billion spent on capital investment, approximately 50,000 jobs are created. Because funding for many of these projects has already been authorized, feasibility studies have been completed, permits have been obtained, these projects can be accelerated quickly without adding any bureaucratic requirements.

The anti-recession package announced by Senators Sasser and Sarbanes should be adopted. Their program of proposed grants and/or loans to state and local governments will not only prevent further destructive cuts in education, public safety, and infrastructure programs but it will also save jobs and create new ones.

Attached are two lists addressing these items: Congressman Whitten's Emergency Job Creation Appropriations Act and the US Conference of Mayors 1992 Emergency Jobs and Anti-Recessionary Initiatives Action Items. These issues deserve our immediate attention.

EXHIBIT B

Emergency Job Creation Appropriations Act, Congressman Whitten

[In millions of dollars]

Maintain Federal buildings	250.0
Rebuild highways:	
Highway trust fund for interstate restoration	1,000.0
Construction of NPS roads	50.0
Airport and airway trust fund for capacity improvements	250.0
UMTA mass transit	50.0
Improve rail safety	25.0
Rebuild rail system	75.0
Improve veteran facilities	300.0
Improve ag research facilities	150.0
Public housing modernization	250.0
Community development thru fiscal year 95	1,000.0
Study of competition in world markets	0.25
EDA local development	200.0
SBA	30.0
Planting trees for America	15.0
NPS—Park and recreation facilities	50.0
Restoring historic properties	2.0
Preserving the National Forest System	45.0
Forest Service for to maintain and construct forest	.0
Facilities including trails, roads, etc	.0
Bureau of Indian facilities construction and repair	40.0
Indian Health Service	210.0
Improve Fish and Wildlife facilities	25.0
Bureau of Land Management facilities	15.0
Rural development and resource conservation:	
Rural waster water grants	300.0
Loans by Farmers Home	90.0
Farmers Home operation costs	6.5
Increase Soil Conservation for watershed and flood prevention operations	200.0
Prison modernization	260.0
Enhancement of Water Resource	190.0
Reclamation and irrigation projects	60.0
Training and Employment Services for titles III of JTPA	200.0
Unemployment Services to meet increased costs of administering due to state law changes	100.0
Improve Higher education and research facilities	200.0
Food distribution and emergency shelters for FEMA	150.0
Construction and modernization of military housing	200.0
Low-income energy conservation	200.0
Motor vehicle procurement	100.0
Total (billions)	6.3

EXHIBIT C

U.S. Conference of Mayors 1992 emergency jobs and anti-recessionary initiatives, action items

[In billions of dollars]

Targeted fiscal assistance	15.0
Public works	5.0
Community development block grants	6.0
Transportation	4.0
Job Training Partnership Act	2.8
Low-interest small business loans	2.0

U.S. Conference of Mayors 1992 emergency jobs and anti-recessionary initiatives, action items—Continued

[In billions of dollars]

Extend waiver of HOME State and local funding match	.....
Total	34.8

EXHIBIT D

HOUSING

Every economic recovery since World War II has begun with real estate, yet 1991 witnessed the lowest number of new home starts in 45 years despite falling interest rates. At the same time, the glut of commercial real estate has caused real property values to drop creating huge losses in the S&L industry and eroding property values which serve as the tax base for most local property taxes. These markets must be fixed if the economy is to recover.

Homebuilding and Housing. With almost 750,000 construction workers out of work and new home starts at their lowest point since World War II, it is critical that this industry be revitalized. To encourage Americans to begin buying homes, both a tax credit and access to retirement fund accounts for investments into newly constructed homes should be provided. By providing a 10% tax credit with a $5,000 maximum to newly constructed homes by individuals earning less than $100,000 per year, the industry can be revived. To revive the industry, the credit should not be limited to first time homebuyers. However, by putting a limit on the credit based upon the income level of the buyer and by limiting the credit to new construction, this type of credit will not only provide a larger relative benefit to first time buyers, but it will also encourage home building for a broad range of the home buying public.

Regulation and Capital Requirements. Financial institution regulators must help relieve the credit crunch by adopting reasonable capital standards and by not penalizing lenders who refinance sound investments for existing properties. Regulators should encourage lending institutions to make good loans and not penalize them for making real estate loans simply because real estate has become a symbol of this recession. If credit worthy developers are not granted acquisition and development loans, there will soon be a shortage of new housing in this country which could lead to inflationary housing costs.

The Office of Thrift Supervision should be encouraged to implement newly proposed regulatory amendments to lower the capital requirements for low-risk residential construction lending including circumstances where homes are pre-sold, the builder has a significant equity participation, and the buyer has made a substantial earnest money deposit. Pension funds, investment funds, REITs, and the stock market are beginning and should be encouraged to provide acquisition and development funds. Finally, the sooner the thrift clean-up is completed and the thrift industry returns to its mission of providing loans for home builders and buyers, the sooner the home building industry will revive itself.

Affordable Housing Programs. In nominal terms, the government's support of low- and middle income housing programs has been declining for a decade. This has not only created a shortage of affordable housing, but it has also reduced employment in the construction industry. Existing programs to in-

crease the stock of affordable housing must be brought back to pre-1980 levels.

Extend Low-Income Housing Tax Credit. Extension of the federal low-income housing tax credit is vital both to producing affordable rental housing and to stimulating the economy. This program provides tax incentives to private and nonprofit developers to build, buy or rehabilitate low-income rental housing. In North Carolina alone, the $8.1 million in tax credits awarded in 1989 helped build 3,500 units. Nationally, this credit added 132,000 units to the nation's affordable housing stock and supported tens of thousands of jobs.

Extend the Mortgage Revenue Bond Program. The mortgage revenue bond program should be extended. This program reduces mortgage costs for low- and moderate-income first-time homebuyers of foreclosed homes owned by the Federal Housing Administration, Veterans Administration, Farmers Home Administration and the Resolution Trust Corporation. Data indicates that this program aids in the purchase of approximately 130,000 homes each year, particularly in economically distressed areas. In 1990, these loans financed over 60 percent of all lower-priced RTC home sales.

Increase Funding for Affordable Housing. Under the Reagan Administration, the federal assistance for housing was cut 80% in real terms—a more substantial cut than any other major segment of the budget. In 1990 Congress attempted to reverse this trend with the Cranston-Gonzalez National Affordable Housing Act which created the HOME investment partnership program to provide grants to state and local governments for he construction and rehabilitation of affordable housing. In addition, existing programs, such as the Community Development Block Grant program and other public housing modernization and construction programs, are long-term investments into our country's future. Funding these programs now rather than later will not only serve as an economic stimulant but it will also improve the nation's infrastructure and living conditions for many Americans which in turn will make them more productive citizens. Estimates indicate that increasing appropriations by $500 million to the Farmers Home Administration Sec. 502 direct loan program and $100 million for rural housing rehabilitation, would generate approximately 7,000 homes, 12,500 additional jobs, and $335 million in wages. Similarly, an increase of $250 million for Sec. 515 rural rental housing loans would generate 7,000 new rental units, 6,000 additional jobs, and $170 million in new wages.

Encourage the securitization of multi-family project mortgages. The lack of uniformity in the financing of multi-family low-income housing has restricted the turnover of loan funds for redeployment into new investment. Fannie Mae and Freddie Mac should develop standardized procedures for pricing, loan terms, secondary financing, risk sharing, and documentation so that financial markets can evaluate these instruments, securitize and package them, and create liquid markets to keep those funds flowing into additional investment for the low-income housing market. When the Congress examines the legislation governing these Government Sponsored Enterprises, this issue must be addressed.

EXHIBIT E

SCIENCE AND RESEARCH FACILITIES

Although huge sums have been spent on the Space Station, SDI, and the Superconducting Super Collider, the university science infrastructure has been ignored. The key to that door is, in many ways, the key to our future and economic health. Our scientific community faces critical problems from the systematic and sustained neglect of our university and college research laboratories. Support for basic scientific education and research historically has come and must continue to come from the federal government's initiative. No other source is adequate.

This is not a question of little science vs. big science. It is a matter of preserving the infrastructure that makes both big and little science possible. In the mid-1960's the federal government contributed approximately 30% of the necessary capital for academic research facilities. Today, that share has fallen to under 10%. In 1986, it was estimated that $10 billion was needed to restore our university research infrastructure, and today that amount exceeds $12 billion.

Capital investment in research and development not only enhances our industrial and manufacturing competitiveness worldwide, but it also encourages more students to enter the sciences. The number of American college students intending to major in science has decreased by almost 40% in the last decade and many of those in our science programs are foreign students.

Despite, Administration efforts to eliminate funding altogether, funding to the NSF Academic Research Facilities Modernization Program was restored at $33 million for 1992, far below the need. We should invest no less than $2 billion per year for the next three years into the NSF Facilities Modernization Program. Significant investment replenishment is essential to our future wellbeing.

In addition to that, we must also protect university tax incentives including full deductions for gifts of appreciated property and the issuance of tax exempt bonds for universities.

EXHIBIT F

BANKING

Interstate branching. One of the key items holding back our economic recovery is the lack of available credit in some parts of the country. Because banks are facing increasing premiums for deposit insurance and stricter capital requirements, many banks are being forced to cut back on lending in order to preserve their capital. While our banks must be well-capitalized, there are crucial steps that can and must be taken to ensure that our banks are able to provide the credit the economy needs to grow out of our current recession.

One easy way to create more lending capacity is to permit banks to operate more efficiently, thereby allowing them to save resources that can be turned into new loans. Permitting banks that already have interstate operations to consolidate those multistate operations into branches of one home state bank could save as much as $10 billion annually nationwide. Such a savings could produce up to $200 billion in new lending capacity every year, all without adding any new powers or risks to the banking system.

Direct investments in viable banks. Another step that must be taken to ensure that we have a competitive banking system capable of meeting the credit needs of our economy is to provide an alternative to the costly system of closing all banks that fall below certain capital levels, even if those banks are operating profitably. The cost of closing all these institutions, with the attenuated costs of foreclosures on loans made by the banks, removal of lines of credit to ongoing businesses, and job losses, could be reduced substantially if efforts were made to save, consolidate or merge viable institutions before they failed.

The government can and should join with the private sector in investing in troubled but viable financial institutions, both to protect the Federal Deposit Insurance Corporations and to encourage mergers, consolidations and reforms within banks that will result in stronger and better capitalized institutions that are capable of meeting the credit needs of their communities and the United States economy.

Municipal revenue bonds. As our economy struggles, so do our cities and towns. Many cities are finding it increasingly difficult to raise funds for needed infrastructure investments, including building new schools, bridges and roads. A part of their difficulty stems from outdated laws which permit banks to underwrite a select few municipal revenue bonds, but not all of them or even most of them. This anomaly stems from a 1933 law which was written at a time when municipal revenue bonds did not exist. The Congress should change this law to give our cities and towns the maximum flexibility possible when trying to raise needed funds for important infrastructure investments.

Encourage loan workouts rather than liquidation. The RTC recently established a loan workout program manned with both government and private sector specialists charged with assessing troubled loans and assets. The objective of this task is to avoid the wholesale liquidation of loans and assets when the government takes over the thrift, but instead is to assure viable borrowers that an effort will be made to renegotiate and workout their loans so that the equity in their ventures may be protected and the taxpayer loss may be reduced. The FDIC should be encouraged to adopt similar strategies.

EXHIBIT G

INDUSTRIAL PRODUCTIVITY

Capital gains. Although capital gain preference should not be the centerpiece of a tax package, we must encourage savings and investment. There are many capital gains bills presently in Congress, but the most appropriate ones are those directed to new, long-term (3 year minimum) investments into productive, job-creating ventures.

Research and Development tax credits. Until we develop a national policy regarding research and development and public-private partnerships, it is essential that we not discourage the private sector from abandoning its R&D activities. Therefore, the R&D tax credit should be extended permanently so that industry is not faced with having to guess whether or not Congress is going to provide continuing 6- or 12-month extensions. We need to assure industry that R&D is an important national resource and that it can strategically plan for the future.

Business capital investment. The investment tax credit, originally a Democratic proposal 30 years ago to stimulate investment and job growth, has been a useful tool when applied for a limited time for a limited purpose. The ITC should be reinstituted for a limited period of 12 to 24 months for increases in incremental business investment, above historical averages, into newly productive, job-creating plant and equipment. In addition, depreciation policy should assure that depreciable lives of capital expenditures are reasonable and do not penalize businesses making capital investments.

IRAs. IRAs are a vehicle that not only enhances retirement opportunities for the

workforce, but by encouraging savings, IRAs provide pools of capital which are essential for investment and job creation. Certainly, no taxpayer wanting to invest in a retirement account should be denied that opportunity.

EXHIBIT H

COMMERCIAL REAL ESTATE

Although commercial real estate markets will continue to experience the effects of overbuilding for several years, Congress may have gone too far in the 1986 tax reform effort in its efforts to curb the abuses that occurred in the preceding 5 years. While no industry should rely upon the tax code for its economic health, similarly, no industry as vital as real estate should be penalized by the tax code. The law should be amended to permit passive loss deductions for actual cash flow losses; however, losses caused by fancy bookkeeping or excessive depreciation deductions should not be permitted. In addition, real estate businesses should be permitted to net losses against gains as other businesses can. The real estate industry should play by the same rules as all other businesses and be permitted to make decisions and take risks based upon economic, rather than tax, benefits and costs.

EXHIBIT I

INVESTING IN CHILD DEVELOPMENT

Head Start. Comprehensive and quality preschool programs, such as Head Start, clearly provide one of the most cost-effective strategies for helping at-risk children become more effective learners and more productive citizens. Head Start helps children start school ready to learn. It helps keep children at grade level. It helps prevent costly special education and teen childbearing, and it helps lower the high school dropout rate. In fact, every $1 spent on Head Start saves society up to $6 in the long-term costs of welfare, remedial education, teen pregnancy, and crime.

Despite this impressive record, we provide Head Start funding for only about one-third of all eligible three- and four-year-olds. In 1989, over 20 percent of all American children lived in families with incomes below the poverty line. We know the devastating effects of growing up in poverty: if we do not intervene—as early as possible—to change the life prospects of these children, the future of our nation is dim indeed. We simply cannot afford to lose 1 in 5 U.S. children to inadequate education, health care, and socialization. The best way to ensure that at-risk children start out on the right track is to provide them with a high-quality preschool experience. We can do this by providing full funding for Head Start for every disadvantaged child in the country. We must do this now: the lives of millions of American children hang in the balance.

We are currently only providing assistance to approximately one out of every four youngsters in need of this assistance. This program should be fully funded.

WIC. The Supplemental Food Program for Women, Infants, and Children—commonly known as WIC—provides milk, cheese, infant formula, eggs, cereal, juice, and peanut butter, along with health and nutrition counseling, to low-income mothers, pregnant women, infants, and children under age 5.

WIC is one of the most cost-effective government programs. Each dollar spent on pregnant women in the WIC program saves, according to the USDA, from $1.77 to $3.13 in Medicaid costs for mothers and infants in the first sixty days after birth alone. Pregnant women who receive assistance through WIC are less likely to deliver premature or low birth weight babies. They are more likely to have healthier babies. These benefits result in enormous Medicaid savings and reduced federal and state health care spending.

WIC has also been linked to longer-term health benefits for participating children. Four- and five-year-old children who participated in WIC in early childhood have better vocabularies and score higher on standardized tests than do comparable children who did not participate in WIC. Children in the WIC program have reduced rates of childhood anemia, a disease which can impair the attention span of children and reduce learning capacity. According to medical experts, early childhood is the principal period in which brain cell replication occurs. Malnutrition during this period may reduce brain growth and impair cognitive development and learning, causing irreparable damage. WIC can reduce the incidence of this tragic occurence.

In short, WIC is a wise investment. It generates important short-term reductions in medical costs and long-term improvements in the health and productivity of children.

Yet current funding levels allow only approximately 55 percent of the nation's eligible women and children to participate in the WIC program. I support moving rapidly toward full funding for WIC and believe we should reach this critical mark by fiscal year 1996. In this way we will be one mightly step closer to reaching our first national education goal: "By the year 2000, all children in America will start school ready to learn."

To achieve full funding by 1996, we would need to invest an additional $800 million in the next 4 years. President Bush's FY 1993 budget calls for $2.8 billion for the WIC program, enough to serve only 5.3 million of the 8.7 million eligible individuals.

EXHIBIT J

JOB TRAINING

Both the supply and the demand of the U.S. workforce are undergoing rapid changes, and these trends will become even more accelerated in the future. Demographic studies show that by the year 2000, there will be a decline in the number of youth entering the labor force, a rapid aging of the existing workforce, and a substantial increase in the proportions of women, minorities, and immigrants in the American labor force. These changes in the supply side of the labor market will take place against a backdrop of rapid changes on the demand side as well. A fundamental shift will be the increased importance of basic educational and vocational skills as a qualification for employment. Job market growth will be primarily in the service sector. Many more jobs will be technology-based, and workplaces will become increasingly integrated into multinational economy.

To meet these changing labor market needs, job training programs throughout the country must change on two fronts:

1. Programs designed to help the most disadvantaged in our society must do a better job of reaching more of that population group. Without training in the basic skills that this group often lacks, their job opportunities in the future higher-skills, service-oriented job market will be very dim. Yet the Job Training Partnership Act, the centerpiece of our job training system for the disadvantaged, serves less than 6% of the eligible population. Likewise, the Job Corps reaches a similarly low percentage of eligible youth. Both these programs should be greatly expanded.

2. It is not only the disadvantaged in our society who need improved job training opportunities. Compared to our major economic competitors, the United States has serious systemic shortcomings in our employment training provisions for the large population of noncollege-bound youth. Japan, Germany, Sweden, and the United Kingdom, among other countries, offer much more meaningful vocational training in their public school systems and in on-the-job training provided by employers. In these countries, job-related training and apprenticeships are worked into the school setting, and noncollege-bound youth often finish high school with a certification of achievement in vocationally related skills, so that they can move quickly and easily into the job market. In the United States, we too must begin to forge better connections between schools, employment agencies, and the larger employment communities. An orientation into the world of work should be integrated into the public schools. We should work to develop a system of technical and professional certificates which both students and adult workers could pursue. In addition, employers should be given incentives and assistance to invest in the further education and training of their workers.

EXHIBIT K

JOB CORPS

Jobs Corps is America's only residential education and vocational training program designed exclusively for young, unemployed, and undereducated men and women aged 16 through 21. For every dollar invested in Job Corps, $1.46 is returned to the economy through reductions in income maintenance payments, savings from reduced crime and incarceration rates, and through increased taxes paid by graduates. In addition, according to a Department of Labor study of 1989 Job Corps participants, 84% were successful, with 67% finding unsubsidized employment and 17% graduating to further education and advanced training.

However, Job Corps is currently operating at 102 percent capacity. The demand for Job Corps services has increased so much in some areas of the country that centers are consistently operating at over 100 percent capacity. Therefore, appropriations for this important program should be increased by $160 million. This funding will increase the Job Corps program by approximately ten percent, adding ten new program centers to the already existing 106 Job Corps sites.

EXHIBIT L

COLLEGE AID

The long-term strength of our economy is dependent on a number of factors, but a strong educational system is perhaps the most important of them all. Education has been the vehicle that has allowed millions of Americans throughout the decades to better their lives, their communities, and our country. We need to ensure that this vehicle is available in the future for all who have the talent and desire to make use of it. No one should be deprived of access to higher education because of cost. The cost that is truly too high is the cost of not providing adequate access to education.

During the last decade, the cost of college, after adjusting for inflation, has risen by 40%, while federal assistance for college education has grown by only 5%. A decade ago, a typical college support package was two-thirds grant and one-third loan, but that ratio has now been reversed, so that many

college students finish school burdened with debt. Worse yet, too many decide against college altogether when the price tag is so high.

Federal support for college aid should keep pace with the rising costs of that education. Creative ways for students to repay loans, perhaps tying loan payments to income or allowing for graduated or balloon-type repayments, must be explored. These reforms can be financed, in large measure, simply by doing a better job of collecting student loans.

Education is our nation's best investment in the future: we should invest in it liberally.

EXHIBIT M

PUBLIC SERVICE CORPS

The National and Community Service Act of 1990 established a Commission on National and Community Service to provide leadership in strengthening the spirit of community involvement for America's young people. The Commission's grant program to states will stimulate a wide array of community service initiatives and will encourage community partnerships to address the educational, human service, environmental, and public safety needs of the nation. States will in turn make grants to local organizations that currently conduct or plan to conduct youth service programs. The federal government should fully fund this program.

EXHIBIT N

HEALTH CARE

The country has a daunting challenge to reform the health care system to make certain that every citizen has access to comprehensive health insurance. National health care costs are increased 163% during the past decade and could more than double again before the end of the decade. The impact on business and its ability to compete has been exacerbated by the fact that corporations now spend as much on health care as they earned in profits, whereas 25 years ago health care costs consumed only 14% of profits.

The rapid rise of health care costs has led to the loss or unavailability of insurance coverage to one-fifth of the population. A growing number of people with pre-existing conditions cannot purchase insurance at any cost. Not only are an estimated 37 million Americans uninsured, but an additional 20 million non-elderly are underinsured.

We must also address the failure of any of the current health care proposals to adequately address the problems associated with Medicare and the fact that the percentage of Americans aged 65 and over will rise to 22% of the population by the year 2030, further straining the current system. In 1990, Medicare accounted for 16% of total health expenditures. Medicare expenditures are estimated to have represented 2% of GNP in 1990 and are expected to increase to 6.8% of GNP by 2060.

Therefore, health care reform should be directed toward the following goals:

(a) Be affordable and accessible to all;

(b) Guarantee comprehensive medical services while preserving the right to choose one's own physician;

(c) Simplify administration with clear, uniform, and reasonable regulations because 24% of the health care dollar is now consumed by administration;

(d) Be "portable," without long waiting periods or exclusions for pre-existing conditions for individuals who change jobs;

(e) Be priced equitably for individuals, small businesses, and large corporations and with the same tax treatment since approximately one-quarter of the uninsured are either employed or live in a household in which there is a working adult;

(f) Be coordinated with Medicare, Medicaid, and the public Health Care System;

(g) Contain effective cost-containment measures since approximately one-third of selected medical procedures may be performed unnecessarily; and

(h) Effectively address malpractice costs.

EXHIBIT O

HONEST BUDGET REQUIREMENTS

"Honest budget" legislation is essential to our ability to make good decisions and to measure our performance. The American people should be told the true state of government spending. The annual increase in the national debt should be reported as the deficit rather than some other fictitious amount which ignores "off-budget" items and nets out future obligations. Trust fund surpluses should not be used to cover operating deficits, and capital expenditures which are, in fact, long-term investments in our country's infrastructure and educational system rather than operating expenditures which are fully consumed in the year expended should be identifiable.

"The Honest Budget/Balanced Budget Act," S. 101, keeps the unified budget, but also requires a more business-like presentation that more clearly exposes our fiscal problems. The unified budget is split into three parts. Social Security and all other federal retirement program spending and receipts are listed apart from general operating spending and receipts. That is not our money. We are merely the trustees. All payments to those retirement programs, both employer payments transferred from general operating revenue and earmarked trust fund revenue, are included.

S. 101 also requires that all interest obligations be clearly listed in a debt and interest account, separate from retirement and general operating accounts. Also clearly listed here is annual debt and debt increase. The real deficit and the real debt are there for everybody to see.

All other general revenue receipts and spending are listed in an operating account that must be balanced. With the exception of this balanced budget requirement, S. 101 simply requires us to account for federal spending in a way that exposes honestly and simply the fiscal problem of debt and interest.

EXHIBIT P

GOVERNMENT STREAMLINING

The federal government has many overlapping and obsolete programs and agencies. We must establish a commission to cull through the federal bureaucracy to identify programs and agencies which should be either eliminated or consolidated. To put teeth in this concept and to prevent the entire process from unraveling after the Commission prepares its report if members attempt to protect specific programs or agencies, the legislation should be designed to be an "all-or-nothing" package requiring the Congress to vote for or against the entire package without being able to make any amendments. To assure that the process is one of continually seeking to maximize governmental efficiency, the commission should be renewed every four years.

EXHIBIT Q

SOCIAL SECURITY "INVESTMENT IN TOMORROW"

The Social Security trust fund surplus should become a source for lending to state and local governments for their educational system and capital improvement projects. At present, the Social Security surplus is either invested in Treasury securities or simply used to offset the federal government's deficit spending.

By permitting the Social Security surplus to be invested into interest bearing bonds and loans to state and local governments, many benefits can be achieved. The surplus provides a source of funding for state and local governments which often have difficulty raising funds for long-term expenditures. Since the federal government is able to borrow at the most favorable rates in the market, these governments can benefit from lower costs thereby enabling them to lower their taxes. In addition, it is critical that the federal government help protect the educational systems and infrastructure investment in this country, a large portion of which is made and maintained by the state and local governments. All of this can be accomplished without costing the taxpayer while helping secure the future of governments and citizens alike.

EXHIBIT R

LBO AND CORPORATE TAKEOVER LAWS

Throughout the 1980s, the corporate raiders constantly told the Congress that if any changes were made to the laws governing corporate takeovers and leveraged buyouts, those changes would cause a crash in the stock market. They argued that these deals were only making corporate America "leaner and meaner." But now that we have seen the destruction that these highly leveraged deals have wrought on our economic competitiveness and that no big deals are driving up the stock market, Congress should finally make the long overdue changes to the laws governing corporate takeovers. Those changes should include a host of alterations to the securities laws that give the raiders an upper hand, but should also include provisions prohibiting any transactions unless the raider puts a substantial amount of equity—real money—into the deal and provisions that preclude stealing from the workers' pension fund in order to finance the deal.

At a minimum, we need to:

(1) Close the 13-d window to insure timely disclosure of intention to take over a corporation;

(2) Increase the tender offer time period to ensure that investors and managers have sufficient time to evaluate a tender offer;

(3) Require an independent fairness appraisal of all leveraged buyouts;

(4) Require that at least half of the financing for a transaction be firm financing not obtained by pledging the assets of the target corporation;

(5) Prohibit the termination of any pension plan within five years of a change in control of the corporation; and

(6) Prohibit the use of pension assets to in any way finance a transaction.

In addition, we should cut back on the deduction that corporate raiders can take for interest on the debt issued to finance their highly leveraged deals. There is no reason the American taxpayer should subsidize transactions that leave companies so mired in debt that they cannot possibly survive downturns in the economy such as we are experiencing now.

EXHIBIT S

PENSION RAIDING

Present law permits corporations and their owners to raid pension plans if, at some

point in time, they appear to be funded beyond their immediate actuarial needs. This problem reached epidemic proportions in the case of Cannon Mills in North Carolina. Pension plan contributions belong solely to the beneficiaries of the plan. The benefits accruing from additional investment earnings or cost savings should inure to the benefit of the plan beneficiaries and not to the corporation making the contribution.

There are a number of steps Congress can and should take to protect pensions from terminations or reversions which leave the beneficiaries with anything less than their fully funded plans. We must act to prevent any further erosion of the security American workers should rightfully be able to rely upon for futures.

EXHIBIT T

TRADE POLICY

Competitiveness. The ability of U.S. goods and services to compete in world markets has become a necessary priority on the national agenda. Unless our products are competitively produced and successfully marketed abroad, our trade deficit will worsen. Increasing exports creates jobs and enhances economic productivity. From 1986–1990, fully one-quarter of America's growth resulted from increased exports.

We are piddling away time and competitive edge by looking to our trading partners to artificially stimulate demand for U.S. goods. What we need is bold, structural reform. It is time to take a creative look, with America's self-interest in mind, at the mechanisms that are currently in place to promote U.S. goods and services in Europe, Africa, Latin America and Asia. We must reorient our Department of Commerce and our trade agencies to be pro-active in promoting U.S. economic interests and products. We must encourage public/private partnerships and begin to invest heavily in private sector research and development.

At the crux of competitiveness is identifying products in which the U.S. has the greatest potential for future growth. Technological innovation and the development of our human resource capital are the source of economic growth and require fundamental strategic planning. The government must participate fully in creating the context, support and climate for personal and corporate initiative to flourish.

In connection with this endeavor, we should reexamine our depreciation policy in light of the global economy in which our industries now compete. Depreciation allowances must not penalize American companies competing against foreign competitors who may have more favorable allowances, quicker write-offs, and inflation adjustments.

Fair Trade. Developing our own competitive advantage is half of the battle. The other half is securing compliance with international law by our trading partners. While America's recent decline in international competitiveness has been aggravated by many internal and external factors, constantly blaming other countries for acting in their own interest is self-defeating. There is no excuse for an overly-conciliatory American trade policy. The Administration is charged with the responsibility of going to bat for American workers and firms, not excusing foreign countries for violating trade law when it is convenient. We talk about needing a level playing field, but, unfortunately, we keep waiting for the other team to play by our rules.

Our trading relationships do not occur in a vacuum. In fact, our foreign policy concerns about environmental, labor and human rights standards should apply in our trade agreements as well. Each trade agreement is unique and must be scrutinized for its impact on the American worker and effected industries. The U.S. not only has the right but has an obligation to keep our national interest in mind in these negotiations.

As long as the U.S. expects Japan to adopt our form of market economy and endorse our concept of "free trade," we are procrastinating the development of a much-needed trade policy for Japan. The tightly-knit government and business "keiretsu" system in Japan is not likely to dissolve because the Bush Administration complains that it is unfair while U.S. competitiveness is being undercut. We must take a tough approach in all our trade agreements and recognize the need for a special policy addressing our trade deficit with Japan.

EXHIBIT U

PAYING FOR ECONOMIC RECOVERY

The most important factor in paying for economic recovery is the creation of jobs since each one percent of unemployment costs the federal government approximately $40–45 billion in lost tax revenues and increased costs of governmental operation.

Just as important is the increase in income levels. When we reverse the decline in manufacturing wages, which have dropped almost 15% since 1978, the economic health of the federal government will also turn around with the economic improvement of its workforce. An increase in the wage base would not only improve the quality of life for each citizen, but it will also improve the fiscal position of the country.

The programs outlined here are, for the most part, an acceleration of existing capital expenditures designed to improve the productivity of the country. There will be a peace dividend which will not only provide the resources we need for these programs but also provide the ability to reduce the deficit.

EXHIBIT V

FREEZE DISCRETIONARY SPENDING CAPS

The Budget Enforcement Act provides two opportunities for relaxing the discretionary spending limits and the pay-as-you go requirements. One is in the case of an emergency and the other is in the case of recession or slow economic growth.

During the past year, neither of those exceptions have been utilized except for approximately $10 billion appropriated for Operation Desert Storm. Despite the recession, the low-growth provisions have not been invoked. Given the tremendous size of our deficits and the added interest costs that come with the deficit Congress should not exceed the discretionary caps.

The Budget caps should be frozen for the first three years of this program to match the anticipated start-up period. No economy in the history of the world has ever righted itself by reducing services to its citizens. Every major industrial economy has fueled its way to recovery through increased productivity, increased wages, and a correspondingly broader tax base. We have aided other countries during their times of need and industrial growth and they have succeeded. We must now apply the same formula to our own recovery.

EXHIBIT W

EMERGENCY RECOVERY APPROPRIATIONS

To the extent that these programs require additional outlays, they should be accounted for in an emergency recovery appropriations trust account. Increased revenues from the re-employment increased productivity of the workforce should be applied first toward the retirement of that trust account and then toward deficit reduction.

Our economic recovery investment will be directed toward capital improvements that will make the future more productive. To ensure that we do not add further to the national debt, we should freeze over-all discretionary spending caps at FY 1992 levels for three years. We should suspend the budget restrictions to account for the additional necessary emergency recovery appropriations, and establish for their accounting the equivalent of a capital budget. While the federal consolidated budget does not have a "capital budget" component, many think this would be an important addition to any budget reform package. Under the Summit Budgetary Agreement, the Congress was given the emergency authority to suspend the limits to cope with a recession. We invoked those exceptions for Desert Storm and we should do no less for our domestic emergency at this time.

To account for the added investments for economic recovery made over the next three years, it would be useful and helpful to create a section in the budget wherein expenditures for recovery would be treated "AS IF CAPITAL EXPENDITURES." By definition, capital expenditures must be re-paid or amortized over their useful lives. This capital expenditure quite appropriately could be amortized by the increased personal and corporate tax revenues resulting from the improved economy. One percent of unemployment costs almost $40 billion in lost revenues and another $5–10 billion in increased expenditures. By improving our economic engine, we will recover these funds that can be used to repay any temporary spending measures. It is my view that separating these funds from the ordinary debt would enforce a wholesome discipline, and would provide an example for later establishment of a capital budget in our regular budget process.

EXHIBIT X

MONETARY POLICY

Senators Sasser and Sarbanes have proposed a series of monetary policy initiatives which should be adopted immediately:

1. Although the Federal Reserve lowered the discount rate to 3.5%, it has not lowered the federal funds rate appreciably. The Fed should move immediately to lower the federal funds rate by at least another one-half percentage point.

2. The Treasury should immediately shift toward shorter maturities in future auctions of government securities, and the Fed should increase its holdings of long-term securities. This will reduce the supply of long-term Treasury securities, raise their value, and reduce the long-term interest rates both for the government and for capital markets.

3. The Federal Reserve should provide the leadership necessary to convene an emergency meeting of the G–7 finance ministers and central bank leaders to agree upon a program for worldwide interest rate reduction.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware [Mr. ROTH].

Mr. ROTH. I thank the Chair.

(The remarks of Mr. ROTH pertaining to the introduction of S. 2172 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

NORMAN LOCKMAN

Mr. ROTH. Mr. President, my home State of Delaware is fortunate to have a fine Pulitzer-prize-winning political columnist by the name of Norman Lockman.

Of course, Mr. Lockman and I do not agree on every issue. In fact, sometimes we stridently disagree. But even on those occasions, I am impressed by his insight, by his ability to communicate difficult ideas simply, and by his dedication to fairness.

Yesterday morning, Norm Lockman offered an editorial that explains the very complex political differences that exist between the Republican and Democratic Parties when it comes to economic policy. What I find most intriguing about the column is that it not only captures and explains the abstruse differences concerning economics, but it captures the philosophical and attitudinal differences as well. And it discusses these differences in a simple and straightforward way.

To do this, Mr. Lockman uses as his metaphor a character from a fairytale—the goose that lays the golden egg from Jack and the Beanstalk. That goose, in the editorial, is private money, the producer of jobs. How each party wants to use the goose distinguishes the differences between them, and even creates their inability to work together for the good of those who must eventually receive the golden eggs—the American people.

Mr. President, Norm Lockman offers some tremendous wisdom in his editorial, and in so doing allows us to see ourselves a little more honestly. But perhaps more importantly, by objectively framing the differences that exist between us, he demonstrates that for the well-being of all Americans these differences can, and must, be overcome.

I ask unanimous consent that Mr. Lockman's editorial be printed in its entirety in the RECORD.

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

NO NEED TO BE KICKING GOLDEN GOOSE

(By Norman A. Lockman)

WASHINGTON.—Talk about poor communications. Republicans and Democrats were in the same room for President Bush's State of the Union speech Tuesday night, but I'm not sure they were on the same planet philosophically.

The problem is that the president was talking about private money, and Democrats, as a philosophical group, really don't get the concept of private money as a producer of jobs.

Basically, here is the problem with the State of the Union dialogue on Capitol Hill.

President Bush says to Democrats in Congress, "If you like golden eggs, then stop kicking the golden goose. Feed it."

The Democrats in Congress say back, "The golden goose doesn't deserve to be fed. It hasn't been laying the golden eggs in our backyard."

Bush wants a cut in the capital gains tax; a permanent tax credit for industrial research and development, a 15 percent investment tax allowance; a liberalized passive loss rule for real estate developers; all golden goose food.

House Speaker Thomas S. Foley, a payroller of the old order, won't hear of it.

"We will insist that this time the benefits must go to the working families, not to the privileged," he said in his response to the president. "The president said when you aim at the well off, you usually hit the little guy. The truth is for 12 years they (presumably he means the rich or Republicans) have been promising to help the little guy and then giving all the breaks to the well off. And it is time that that stopped."

What needs to be stopped, Mr. Speaker, is the payroller mentality about money. Most of us who have never dealt with money except as a paycheck don't think of it as anything other than a limited possession, given begrudgingly by people who don't deserve it.

Money does, indeed, trickle down. More accurately, it circulates, and if there is not enough at the top of the cycle, it won't build up enough momentum to make it pass the bottom, and the economy stalls. It's really not that complicated.

Mr. Foley worries about doing "favors" for the richest 1 percent of taxpayers. Where, I wonder, does he think their money goes? To yachts and mansions I suspect. No matter how many yachts and mansions the 1-percenters own, most of their money is invested in things that will make it multiply. When the entrepreneurs are able to produce, they hire people. That's what keeps the economy running. That's why you need to make it more productive for the 1-percenters to invest their money in things that make more money.

Democrats in Congress would prefer to shortcut this process by taking a significant portion of the investment profits from the 1-percenters and giving it directly to we payrollers as some kind of class benefit. It is, however, not a very smart strategy in the real world.

Unfortunately, our Democratic team in Congress doesn't really believe in the dynamics of risk and opportunity. If they did they would go ahead and feed the damn goose and then figure out ways to make it want to lay its golden eggs in the right place. What the Democratic team really believes in is egalitarianism, the doctrine of the right to equal results. They want regular geese to be able to produce golden eggs just like the "privileged" ones.

This may be a naive political concept, but it is the bedrock of the Democratic Party's reason for being.

Republicans want to try remedies from an array of choices that promise to make more money for the money suppliers. Democrats want to deprive the money suppliers supply of money. Workers seldom worry much about where the money for their factories comes from. Many assume they somehow pay for themselves, existing by and for themselves. Therefore it becomes difficult to figure out why a substantial portion of the money that comes from a factory's products should go to individuals who don't sweat on the production line.

The reason is simple. Their money, called working capital, is what keeps the factories running. Until Congress gives working capital the same respect as working people, the economy will continue to languish.

We may not like the golden goose, but it sure is stupid not to feed it.

Mr. ROTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. EXON. Mr. President, just prior to the beginning of the session, I led a Senate Armed Services Committee Delegation, which included Senators THURMOND, LEVIN, and MACK, to the newly created States of Russia, Kazakhstan, and Ukraine, three of the four members of the Commonwealth of Independent States possessing nuclear weapons previously controlled by the Soviet Union. The purpose of this mission was to assess the overall political and economic situation of the Commonwealth and to discuss with officials the status and future plans for the nuclear weapons—both strategic and tactical—located in these republics. The delegation has completed its trip report and I ask unanimous consent that the text of the report be printed in the RECORD following my remarks, along with our letter to the chairman of the Armed Services Committee and additional comments by this Senator and those of Senator LEVIN.

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

(See exhibit 1.)

Mr. EXON. Mr. President, Lincoln Steffins, when asked by American statesman Bernard Baruch about his visit to postrevolutionary Communist Russia, once replied: "I have been over into the future, and it works."

This past year the world watched in astonished disbelief and euphoria as another revolution shook the world, forcing us again to cast our eyes to the future and the fate of a people. The revolutions of 1917 and 1991 are epochal events, milestones by which to judge the beginning and end of this remarkable, and sometimes tumultuous, century.

The Bolshevik Revolution of 1917 was an outgrowth of a world war that had vanquished the Russian state. In an environment of profound deprivation, a civil war was fought and the Communist state was born. The revolution of 1991 was also an outgrowth of need and war. The Soviet Nation, its economy bled lifeless by state policies of brutal collectivization and command markets, has seen better days but now has ended. The Communist ideology that had fueled the cold war against the West had been stripped of its veneer, revealing a legacy of rule that had imprisoned the minds and shackled the bodies of its people. When Alexander Solzhenitsyn writes in the "Gulag Archipelago" of the "History of Our Sewage Disposal System" he is using a

poignant metaphor to describe the persecution, enslavement, and torture endured by millions in order to quench the perverse paranoia of Communist rulers over the decades.

I recount this chapter of history because I believe it provides valuable insight for those who look to a future where democracy has replaced communism, free markets take the place of command economies, and one superpower dissolves into 15 independent States. The people of the former Soviet Union have endured the hardships of two world wars, famine, and 70 years of Communist rule. Their relatives before them overcame autocratic rule and serfdom. Their patience and strength has been proven and has become part of their cultural identity. But how will they fare in their perseverance toward a future of democracy and free enterprise, concepts foreign to them?

Having just returned from the new Commonwealth, I find myself questioning the premise of the statement made in an earlier context: "I have been over to the future, and it works." Though the future of the Commonwealth is indeed promising, it is debatable whether democracy and capitalism will prevail given today's grim economic conditions. Whether the future works in the Commonwealth States is far from certain. The hurdles leading to success and stability are indeed formidable.

After spending a week in the cities of Moscow, Russia; Chelyabinsk, Russia; Alma Ata, Kazakhstan; and Kiev, Ukraine; I offer the following abbreviated assessment.

In the area of political reforms, the Republic of Russia is, at present, filling much of the political vacuum left with the dissolution of the Soviet Union. It has assumed the Soviet seat on the U.N. Security Council and is in the process of consolidating possession and control of all Soviet nuclear weapons within its borders by 1994.

It is unclear whether the Commonwealth itself will survive. It may serve as little more than a transitional body toward complete independence of individual member states while common nuclear weapons and economic concerns are resolved. Nationalism is evident in the new independent republics; while understandable, it is hoped such will not spread to a military threat to neighboring republics or other countries.

The political survival of Russian President Yeltsin is far from certain. Some officials the delegation met with predicted a second coup attempt in the near future. Pockets of support for the former Centralized Soviet Government are still evident. On our journey to the closed, secret military city of Chelyabinsk-65, a portrait of Lenin hung in the airport lounge and the military garrison guarding the city's nuclear facilities flew the Red Soviet flag as a conscious protest to recent democratic reforms. In testimony to this precarious political situation, former Soviet Foreign Minister Eduard Shevardnadze in his meeting with the delegation called the climate gloomy, to use his words, and offered the belief that the threat of authoritarian rule is greater today than before last year's coup.

It is clear, however, that a generation of leaders throughout the Commonwealth have dedicated their lives to seeing that democracy and a free market economy survive. Throughout our meetings with officials in the three republics I heard a consistent call for closer ties and cooperation between the United States and the individual republics.

On the issue of nuclear weapons, progress is being made to remove all tactical nuclear weapons from Ukraine, Byelorus, and Kazakhstan by July 1 of this year and all strategic weapons by the end of 1994, though some potential problems of transportation, storage, and dismantlement remain and there is some potential footdragging with regard to the removal of ICBM's in Kazakhstan.

While these weapons are being disarmed prior to transport, the consolidation and storage of the nuclear warheads is taking place in Russia. Actual warhead dismantlement will also take place in Russia and may, based on existing technical capacity, stretch well into the next century.

Russian officials we met with consistently stated that they have the technical expertise and facilities to dismantle these weapons but lack the infrastructure to safely store the surplus nuclear material.

Due in part to its experience in Chernobyl, Ukraine is following an expeditious path toward being free of nuclear weapons during the transition period through 1994. Assurances were given to the delegation that they are moving toward a safeguard system whereby any one of the four presidents where nuclear weapons are stationed could prevent the use of any Commonwealth nuclear weapons until final consolidation of weapons in Russia is achieved in 1994. As of now, however, this veto system is not technically operational.

Officials of the Russian Ministry of Atomic Power and industry expressed an interest in obtaining United States financial assistance, presumably from the $400-million technical assistance package approved by Congress last fall, to complete construction of a facility in Chelyabinsk-65 for the reprocessing of weapons-grade plutonium and uranium into fuel rods for commercial nuclear reactors. I recommend that my colleagues examine the trip report for a more detailed description of the facility and proposed joint government venture.

I found no definite evidence during our trip of atomic mercenaries or a brain drain of scientists to Third World Nations, though all officials we met with are concerned that the temptation to take lucrative offers is great and requires an innovative solution to prevent the proliferation of nuclear expertise.

On other military matters, I found each Republic committed to civilian control of the military while the old-line military is supporting a unified command of conventional forces. Individual Republics, in particular, Ukraine, are critical of the concept, intent instead, on forming their own conventional forces. No more evident is this struggle over control of military personnel and equipment than in the ongoing dispute between Russia and Ukraine over the Black Sea Fleet.

Conversion of the military-industrial complex in the Commonwealth—which totals 7 million workers and 1,100 factories—will be difficult but necessary, resulting in high unemployment. Both Russia and Ukraine, where most of these facilities are located, are requesting international assistance in this area.

In the area of the economy, the shortage of food is a problem of both distribution and production. The delegation heard reports that the hoarding of food has increased since the lifting of price controls. Food supplies in Moscow were scarce; in Alma Ata, fair; in Kiev, better but prices were high, having, on average, tripled in the days preceding our arrival.

The consensus in Russia is that President Yeltsin needs a couple of years to succeed with an economic plan toward a free market system. In the short term, the Republics are in dire need of medical supplies, herbicides, and animal fodder. Long-term economic restructuring will be difficult with the privatization of land, farms, and businesses being extremely complicated yet crucial to success.

At present, the United States is lagging behind European nations in expanding trade with the Commonwealth. Until the ruble is made convertible currency, barter, joint ventures, and other innovative trading concepts are the most appropriate tools as we look to expand our Nation's business relationship with the new States.

Our efforts and those of other nations in bringing about sound and productive economies in the Commonwealth may be the difference in seeing that democratic rule survives in these new nations as prices outpace wages and military conversion lengthens unemployment lines. Political stability is tied directly to the economic state of the Commonwealth. What hangs in the balance is the future of a remarkable democratic revolution that liberated Eastern Europe and brought down the Berlin Wall.

Mr. President, I recommend the full report, which will be printed following

these remarks, be studied by my colleagues as part of the overall concentration and interest that we in the Congress must take toward this challenge that has presented itself to us and to the world.

Mr. President, I yield the floor.

EXHIBIT 1

U.S. SENATE,
Washington, DC, January 31, 1992.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee, U.S. Senate, Washington, DC.

DEAR SAM: I am pleased to provide you with the trip report on the Senate Armed Services Committee delegation's visit to Russia, Kazakhstan and Ukraine. The mission of the delegation, which I headed, was to assess the overall political and economic situation in the Commonwealth of Independent States and to discuss the status and future plans for the nuclear weapons—both strategic and tactical—located in these three republics.

The enclosed report discusses the itinerary and program of the delegation trip, provides overall findings on the political and economic situation, evaluates the status of nuclear weapons and other military matters, and concludes with a section of general recommendations. An appendix of additional views by individual senators follows the main report.

This trip was timely and informative. The first-hand observations and face-to-face meetings we had during our six day visit to the Commonwealth will prove invaluable as the Committee continues to tailor our national security policy to reflect the remarkable changes taking place in the former Soviet Union.

With best wishes.

Sincerely,

JIM EXON,
U.S. Senator.

TRIP REPORT: SENATE ARMED SERVICES COMMITTEE DELEGATION'S VISIT TO RUSSIA, KAZAKHSTAN AND UKRAINE, JANUARY 15–20, 1992

Purpose, Itinerary and Program. A delegation representing the Senate Armed Services Committee visited Russia, Kazakhstan and Ukraine on a fact-finding mission January 15–20, 1992. The purpose of the visit was to assess the overall military, political and economic situation in three of the four republics possessing nuclear weapons, and to discuss the status and future plans for the nuclear weapons—both strategic and tactical—located in these republics. The delegation was headed by Senator Jim Exon (D–Nebraska) and included Senators Strom Thurmond (R–South Carolina), Carl Levin (D–Michigan) and Connie Mack (R–Florida).

The first stop was Moscow. Following a briefing by Ambassador Robert Strauss, the delegation met with representatives of the Defense and Security Committee and then with representatives of the International Relations Committee of the Russian Supreme Soviet (parliament) in the Russian Republic's "White House." The delegation was received by Vice President of the Russian Academy of Sciences Yevgeniy Velikov, by chief arms control negotiator (and former Soviet Deputy Foreign Minister) Aleksey Obokhov. It met with Acting Minister of Atomic Power and Industry Nikipelov and the senior leadership of that Ministry. The delegation exchanged views with senior Russian officials at a luncheon hosted by Ambassador Strauss, and at an informal dinner which the delegation hosted for Russian guests. The delegation was received by former Soviet Foreign Minister Eduard Shevardnadze.

On January 17th, after receiving special clearances from several Russian ministries, the delegation flew to the city of Chelyabinsk, a military-industrial center located in the Ural-mountain region of the Russian Federation. Accompanied by regional officials as well as by the officials of the Ministry of Atomic Power and Industry, the delegation was taken by bus to a closed, tightly guarded city of 84,000 residents, known only by its post office box address, "Chelyabinsk-65." There, the group (the first Senate delegation to be admitted to this city) was shown facilities that could be used to reprocess weapons-grade plutonium and uranium into fuel for commercial nuclear reactors. It was also shown storage pool for spent nuclear reactor fuel rods and a facility which classifies radioactive waste materials.

The delegation then proceeded to Alma-Ata, the capital of the Central Asian Republic of Kazakhstan. The delegation was received by Kazakh Foreign Minister Suleymenov, the Deputy Defense Minister, and the Deputy Chairman of the Kazakh Supreme Soviet, along with eight senior members of the Supreme Soviet, including a Kazakh scientist specializing in questions of nuclear deterrence.

The delegation's final stop was Kiev, the capital of Ukraine. Following a briefing by American Charge d'affairee John Gunderson, the group was received by Ukrainian President Kravchuk, by Minister of Defense Morozov, by the Chairman of the Supreme Soviet Committee on Defense and Security, and by Foreign Minister Zlenko.

In addition to meetings with senior officials, the delegation surveyed food stores, farmers' markets and other retail outlets in the three capital cities. It visited two privately-owned restaurants and held numerous conversations at each stop, utilizing Russian-speaking Senate staff members accompanying the delegation.

The meetings were cordial, unusually productive, and often marked by an unprecedented degree of openness.

Overall Findings: Political Situation. These three newly-independent republics currently are struggling toward democracy, pluralism and a market economic system. While Russia is recognized as the "continuation" of the former Soviet Union, relative to the Soviet Union's status as a permanent member of the United Nations Security Council and of its possession of strategic nuclear weapons, it was evident that distinctly different countries are now emerging, particularly in the case of Ukraine. The newly-founded "Commonwealth of Independent States" (CIS) exists essentially in name only. Although some officials underscored the important role it could play in such areas, as strategic nuclear weapons and trade among CIS republics, its future is decidedly unclear.

The delegation heard widely differing assessments of the political durability of Russian President Boris Yeltsin. Some felt that he would soon fall because his government's economic reform has failed to produce an improvement in living conditions. Others predicted a second coup attempt within months. Former Soviet Foreign Minister Shevardnadze, for example, warned that the threat of authoritarian rule was greater today than before the August 1991 coup attempt. Still others felt that Yeltsin and his advisors would demonstrate the leadership needed to guide Russia through its current difficult transition period. This will depend largely upon his success in stabilizing the economy and in dealing with the military.

Signs of change were evident throughout our visit. We met with officials who had just assumed their positions, others who were about to be promoted, and still others who were not sure what position they currently held. In Moscow and Kiev, new Republic flags were flying. In Alma-Ata, a new flag was approved during our visit. At the same time, vestiges of the former Russian-dominated Soviet empire were evident throughout the trip. The security garrison at the secret military-industrial city of Chelyabinsk-65 was still flying the old Soviet flag, as if to protest the USSR's break-up. Statues and portraits of Lenin were in evidence at each stop. In Kiev, the Lenin statue had been removed from the main square, but in Alma-Ata officials were inclined to keep his statue as part of their history. However, the group was told in Alma-Ata that the city's Lenin Prospekt and Karl Marx Street would soon be renamed. A large portrait of Lenin disappeared from the wall of Chelyabinsk airport, shortly after the delegation commended on its prominence.

Concerns about the possible emergence of differing national interests among the republics of the CIS were expressed in each capital. Russians were troubled by Ukrainian nationalism; Kazakh and Ukrainian officials clearly were worried about power and assertiveness of Russian nationalism and the apparent restiveness of former Soviet military establishment. The current dispute over the Black Sea Fleet has brought the tensions out in the open. In fact, criticism was leveled at St. Petersburg Mayor Sobchak for his particularly sharp attack against Ukraine. Virtually everyone the delegation encountered, officials and non-officials alike, admire the United States and favored an open, mutually beneficial relationship with our country.

Overall Findings: Economic Situation. Worry about high prices, shortages, and an uncertain economic future were palpable at each stop. The value of the ruble against Western currencies has declined to the point that newspapers cost less than one penny, an excellent seat at the opera costs about seven cents, and a round-trip flight between Kiev and Moscow costs less than one dollar. Spiraling prices for average wage-earners and pensioners have become staggering. For example, the price of bread has increased 10-fold within twelve months.

Despite drastic price reforms in early January, little desirable food was available in the state stores. In Moscow, the delegation saw long lines for margarine and sugar. The selection of meat and fish was extremely poor. Food was plentiful in farmers' markets but at very high prices and somewhat limited selection. For instance, at the central market in Kiev beef cost about 50 rubles per pound; fresh tomatoes were about 100 rubles per pound—while the average household income is around 600 rubles monthly and pensions average around 200 rubles monthly. Chelyabinsk, an industrial city of 1.2 million, suffers from shortages of sugar, meat, dairy products and sometimes bread. Regional officials said that free soup kitchens recently were opened to feed children and the elderly. While the group heard of no instances of serious popular unrest in the cities it visited, no one knew when patience might give way to significant manifestations of frustration and anger.

There was nothing to suggest starvation in the major cities, and many residents had horded food in anticipation of the January

price hikes. Indeed, a senior Russian scientist told the delegation he had accumulated a private stockpile of hundreds of pounds of potatoes. Tensions clearly will intensify if individual food supplies run out before economic reform can bring new supplies of food to the market at affordable prices.

Privatization of land and commercial enterprises is hindered by high taxes, stubborn old-school bureaucrats and a lingering egalitarian mentality. Officials in Moscow, Chelyabinsk and Kiev asked for U.S. help with military conversion. Officials in each of the three republics hoped for close economic ties with the United States across the board and indicated they would welcome trade on a barter basis or otherwise.

Overall Findings: Status of Nuclear Weapons. The delegation was told that encouraging progress has been made in transporting tactical nuclear warheads to Russia for eventual dismantling, in accord with the commonwealth agreement reached in Minsk in December. In particular, officials in Ukraine seemed determined to meet the agreed deadline of July 1, 1992 for shipping all tactical warheads to Russia. Knowledgeable officials of the Ministry of Atomic Power and Industry revealed that tactical weapons were rendered inoperable at their deployment sites before shipment. According to officials of that Ministry and other informed sources, some 8–10 thousand warheads have been disassembled in Russia since 1985. An interagency group was formed on January 14, 1992 to handle problems stemming from the shipment, dismantling and storage of fissionable material from tactical nuclear weapons. Officials indicated they did not need U.S. technical assistance with dismantling but would welcome help with transportation and storage as well as with nonproliferation of weapons technology. Officials of the Ministry of Atomic Power and Industry were anxious to receive U.S. support (they said they needed about $170 million) to complete a facility at Chelyabinsk-65 for conversion of weapons-grade plutonium and uranium for certain types of reactors.

At the same time, several well-informed contacts in Moscow said they felt military data regarding the location and accountability of tactical nuclear weapons was not highly reliable.

The status of strategic nuclear weapons was more complex. For example, the delegation heard contradictory views on the future of these systems in Alma-Ata. Some officials cited a strong anti-nuclear sentiment stemming from hazards created by the Semipalatinsk nuclear test facility in northern Kazakhstan. Others emphasized Kazakhstan's geopolitical location between two large nuclear powers—Russia to the north of China to the southest—and openly said that they would not surrender strategic nuclear weapons located in the republic while Russia and China retained similar weapons.

Senior political and military officials in Ukraine emphasized their determination to remove all strategic nuclear weapons from Ukraine by 1994, no matter what other republics did with such weapons. They said they would disable the warheads on strategic weapons if the systems could not be removed on schedule. These officials also described existing civilian controls over the launch of strategic weapons: a special telephone network now links the four "nuclear" presidents, so that they can confer immediately in a crisis situation. At present, only Russian President Yeltsin can authorize a launch, although this power reportedly was granted to him by the other Commonwealth members with the proviso that they would be given a special device by which each of them could technically prevent a launch. That device was not yet installed. Ukrainian officials said they would not participate in this system once strategic systems had been removed from their soil.

The delegation found no specific evidence of proliferation of nuclear weapons or weapons expertise. Officials agreed on the potential seriousness of the problem and welcomed cooperation with the United States on measures to cope with it.

A knowledgeable Russian official conceded that strategic weapons modernization was underway but insisted it was being conducted within the provisions of the START Treaty. Another well informed source indicated that continuing modernization programs stemmed from conservatives within the military-industrial complex who were still concerned over maintaining parity with the United States. According to this source, modernization would continue even if Boris Yeltsin ordered its cessation.

Overall Findings: Other Military Issues. Many contacts voiced concern over anti-democratic tendencies among traditionalists in the military establishment. One source said that morale was so poor in military units that unit commanders were not responding to orders from above, and only the strategic forces maintained good discipline, at least for the moment. At the same time, this source said that material need to maintain strategic nuclear systems was not being received at the weapons sites and was creating dangerous local situations. Another source said that the military establishment scoffed at the notion of a "commonwealth" of independent republics. Ukrainian officials downplayed the dispute between Ukraine and Russia over the Black Sea fleet, noting that Ukraine only wanted the capability to defend its coastline, maritime borders and territorial waters, and would not conduct operations outside of the Black Sea. These officials felt the issue had been defused by Russia's agreement to divide the fleet. However, they anticipated difficult negotiations with Russia over the specific allocation of naval assets.

Ukrainian officials were critical of Boris Yeltsin's support for a unified military establishment for the entire Commonwealth. They said Ukraine would proceed with its plans to create a modest Ukrainian military establishment, including ground, air and naval forces.

General Recommendations. The delegation found this trip to be timely and informative. The delegation offers the following general recommendations for United States policy toward the republic of the CIS:

(1) A smooth transition from totalitarianism to democracy, pluralism and a market economy is far from assured. The United States has a unique and probably perishable opportunity to foster this transition, although the volatility of the process calls for prudence in the way assistance is rendered.

(2) In the political-military field, the republics we visited are anxious to learn of our oversight procedures and to have our advice. Democratic forces are looking to the United States for support: this is an opportunity we must not miss.

(3) In the economic field, these republics want U.S. economic investment, particularly in the form of joint ventures. They are open to barter arrangements. They emphasize their need for our involvement in military conversion, which they believe can be mutually beneficial. Measured cooperation in all these areas can serve our national security interests.

(4) One example of military conversion was the appeal by the Russian Ministry of Atomic Power and Industry for U.S. investment in the Chelyabinsk-65 plutonium and uranium reprocessing facility. The delegation was not in a position to judge the technical merits of this proposal but believes this and other such options should be promptly and fully investigated by the Administration and Congress.

(5) The delegation found widespread appreciation for the two Congressional initiatives—on transportation of humanitarian aid and assistance in weapons destruction—adopted with broad bipartisan support by the last session of Congress. The delegation's overall findings confirmed the wisdom of providing the Administration with these authorities. However, there are uncertainties about CIS needs and how the assistance would best be utilized. The delegation believes that the historic nature of the changes underway in the former Soviet Union calls for continued bipartisanship and creativity from both the Congress and the Administration as the CIS republics strive to realize the values our country embodies.

(6) The United States is well represented in Moscow and Kiev. But working conditions for American officials are inadequate and require prompt upgrading. Staffing patterns and procedures suited to the Cold War period call for critical review in light of new realities, in particular the need to foster economic development. The United States should promptly establish an official presence in each CIS republic so that we can track the diverse domestic and foreign policies in each of these countries. In so doing, we will be better positioned to advance our national interests.

ADDITIONAL VIEWS OF SENATOR J. JAMES EXON

The foregoing official report of the delegation is a very accurate assessment of the situation in the Commonwealth and our collective recommendations. Understandably, each senator may have come away from the trip with somewhat minor differences in their impressions and views.

It is clear that the nuclear and conventional threat from the former Soviet Union has deteriorated rapidly as compared with even twelve months ago. Nonetheless, the present situation requires a certain caution on the part of the United States. There is a general consensus that stability would be best assured when all of the former Soviet nuclear weaponry is consolidated within the borders of the Russian republic. I agree with this conclusion provided that Russia is capable and committed to maintaining its present course of openness, democracy and free enterprise. The world should, however, consider that the success of these encouraging reforms are far from certain. Though not a pleasant scenario, we must consider the implications of Russia not succeeding in its current efforts and turning back the clock to a totalitarian form of government.

The jury is still out on the future and while reductions in our defense spending can and should be realized in the upcoming years, we would be prudent to proceed with our phased reductions using a "tether" that could reverse these cuts if there appeared to be an erosion of democracy in the Commonwealth and a reemergence of a pro-military government. The possible emergence of a new militant Russia or a Third World country unfriendly toward the United States acquiring some of the former Soviet nuclear

arsenal or scientific expertise raises legitimate concerns. The geopolitical balance in the entire region formerly dominated by Soviet military power may be up for grabs with serious implications for the free world. The future of the new Commonwealth holds promise for success, but hopes and idealism are not the sole pillars of sound American national security policy.

What are the chances that the Commonwealth's economic, political and military reforms will be successful? In my view, no better than 50-50. While prices triple and inflation soars, wages and goods production remain low, the delegation heard stark predictions from some high government and non-government officials that Russian President Yeltsin could not succeed. We heard differing opinions as to whether a Yeltsin failure might result in his replacement by a succeeding democratic reformer or whether his fall would be as a result a traditional coup or popular revolt of the people.

It is in the national security and economic interests of the United States for President Yeltsin and other Commonwealth leaders to succeed. If President Yeltsin was to fail following the demise of Soviet President Gorbachev some might be attracted to a return back to a form of government which provided more stability to the economy, no matter how structurally flawed. My views is that it would be a mistake for us to assume that just because Russia and the rest of the Commonwealth has embraced democracy and the free market system that all is well. My further belief is that since there is little experience with democracy in the Commonwealth the former Soviets have turned to the political system because of the promise of a better life after the ruinous effects of communism. Citizens of the Commonwealth are not steeped in the traditions and values of democracy and the medicine necessary to bring about true reform could foster some thinking that maybe the old system was, in retrospect, better.

We have a "once in a lifetime" opportunity in the Commonwealth. We cannot afford to be shortsighted by adopting a position of economic isolationism. There is a danger that the industrialized nations in their scramble for new economic markets might overemphasize unilateral policies of assistance. Our assistance program to the Commonwealth should be a coordinated effort with the free world. We are currently behind the efforts of many of our allies in this area.

If we await for a convertible ruble or assume that a handsoff approach will guarantee that a free-market system will take root, we run the peril that successful political, economic and military reforms in the Commonwealth may not be successful. There is an attitude in America that we continue to worship at the altar of the almighty dollar in dealing with the Commonwealth though they are strapped for the hard currency to conduct traditional commerce. Throwing American dollars at the problem is not the solution. Barter, joint ventures and other innovative trading concepts are the most appropriate approaches as we expand our nation's business relationship with the Commonwealth.

ADDITIONAL VIEWS OF SENATOR CARL LEVIN

I returned from this visit with a renewed determination to push for active U.S. involvement in eliminating as much Soviet nuclear material as fast as we can and to work to keep Soviet nuclear scientists from being lured to Third World countries like Libya. I want to win what is likely to be a race against time, while doing what we reasonably can to improve the odds for democracy's long term survival in Russia.

We saw what could be great opportunities to reduce the nuclear weapons which have so threatened us. We were the first Americans to visit a facility under construction at one of the ten heretofore secret atomic cities, Chelyabinsk-65. That facility, when finished, might be able to preprocess weapons-grade plutonium and highly enriched uranium from Soviet warheads into fuel for use in commercial nuclear power plants. This would not only help eliminate nuclear weapons and their most dangerous components. It could also reduce the prospects for nuclear weapons proliferation, make storage safer, and place the reprocessed nuclear materials under international safeguards.

We were also encouraged by Ukrainian President Kravchuk's unconditional commitment during our meeting to eliminate all nuclear weapons from Ukrainian soil by 1994, regardless of what other republics do with their nuclear weapons. This is very important as leaders in Kazakhstan suggested that they wish to keep nuclear weapons as long as Russia and China have them. The Kazakh approach is regrettable—we need fewer countries with nuclear weapons, not more. Kravchuk also told us of Yeltsin's commitment to install a mechanical device in this office which would require his physical authorization—not just his verbal authority—before any nuclear weapons could be launched from any republics with nuclear weapons.

But such extraordinary, positive developments for our security could evaporate as quickly as they appeared. We saw and heard much evidence that Yeltsin is fighting an uphill battle in implementing economic reforms. Democratic reforms could go under as Russia's military grows more and more impatient for pay, housing or job security and if the Russian people grow so disheartened by lack of food and medicine, and by steeply rising prices, that they won't protect their new government from the next putsch attempt.

We heard of nuclear scientists looking for work and being enticed by countries such as Libya for their nuclear programs. Economic times are so difficult in Russia that a thousand of those scientists, for instance, might be kept working for just a few million dollars a year.

We should promote and facilitate private joint ventures with those scientists to explore breakthroughs in disposal of nuclear waste, in conversion of Soviet military industries to commercial nonmilitary use, and in converting plutonium and uranium from Soviet nuclear warheads into peaceful commercial energy.

These are extraordinary times. We should be responding in an extraordinary fashion.

Mr. EXON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

FOCUSING ON THE ECONOMIC PROBLEMS

Mr. SPECTER. Mr. President, I have sought recognition before we close the session for today because I believe it is important that the Congress of the United States focus on the economic problems of the Nation pursuant to the President's State of the Union speech on Tuesday. I believe that Congress should stay in session and not take the recess which is scheduled from February 7 to 17 and should not take the recess which is scheduled from March 6 to 16. We must strive to meet the deadline called for by President Bush in his State of the Union speech on Tuesday.

The economic problems of this country require immediate congressional attention. In categorizing the seriousness of our economic situation, I pause over the word "crisis," I pause over the word "emergency." I do not want to articulate a call which is alarmist, but suffice it to say at an irreducible minimum, the economic problems of our country demand immediate congressional action.

The State of the Union speech was made on Tuesday, January 28. Today is January 31. The President has called for congressional action by March 20. That congressional action cannot be completed if we treat this matter like business as usual." We can meet the President's deadline of March 20 only if we put our shoulder to the wheel now, and eschew the February and March recesses.

In categorizing the seriousness of the problem, I am reminded of what President Reagan said, that it is "a recession when your neighbor loses his job. It is a depression when you lose your job."

I have traveled my State continuously since Thanksgiving, the beginning of recess, until we reconvened here 10 days ago, on January 21. I have found the people of my State enormously concerned about the Nation's economy. I have found many people in my State out of work. I know the situation is the same in all 50 States.

I recently read of a poll which shows that 41 percent of the American people are afraid of losing their job in the next year. Additionally, 70 percent of the American people have heard their neighbors talk about fear of losing their job in the next year.

This attitude is probably more destructive for the Nation's economy than the hard figures of unemployment, and the hard figures of unemployment are at unsatisfactory levels.

I took this floor at the same podium, at the same seat, in November and urged that the Congress stay in session during December and January to tackle these problems. When I traveled through my State, I was more sure than ever that that is what we should have been doing. Unfortunately, we did not do that. I note this point only to illustrate that this is not a new call by this Senator.

The President has outlined an economic package which has real sub-

stance. He has called for an investment tax credit to stimulate business expansion. He has called for modification of the passive loss rules on real estate, recognizing that the real estate industry is indispensable to an economic recovery. He has called for a tax credit for first-time home buyers. He has called for the use of IRA's to be expanded to be used for medical expenses and home purchases. These are just parts of his overall policy for economic recovery.

I believe it is a good start, and I have some additions to suggest. Senator DOMENICI and I introduced legislation in November to allow penalty-free use of IRA's, Keogh plans and 401(k)'s to stimulate consumer purchasing power. There are $800 billion in those accounts in addition to the $3 trillion or more in regular retirement accounts.

We are in sort of an economic straitjacket. The budget agreement precludes spending money unless there is an offset. So it is extremely difficult to prime the pump. Similarly, we cannot reduce taxes unless we have an offset. So that notwithstanding the tremendous economic power of the United States we are trapped in a kind of economic straitjacket. Therefore, the $800 billion in these accounts, which is set aside for a rainy day, would be of great use right now.

I would prefer not to use the IRA's, because we do not save enough as a nation and I would rather leave them for retirement accounts. But the kind of a problem we have today and the availability of those IRA's to stimulate consumer purchasing power makes it important to use them now.

I think we made a mistake in the 1986 tax law in altering the law with respect to IRA's. Prior to the 1986 tax law, every taxpayer was entitled to take $2,000 out of his income and put it in a separate IRA account. That $2,000 would be nontaxable, and interest on that $2,000 would be nontaxable.

The super IRA proposal, currently pending with 74 Senate cosponsors, would permit the use of IRA's on so-called capital investments like home purchases, medical expenses, and college tuition.

The idea occurred to Senator DOMENICI and me to use that concept on existing IRA's. Our proposal would allow the purchase of durable goods, such as new cars, a new home, and home furnishings.

Further, we have proposed that there be no penalty on the withdrawal of an IRA. Today, if you take money out of an IRA before you are 59½, you have to pay a penalty. Our proposal would also delay the payment of taxes on the IRA's over the next 4 years.

It seems to me that our problems are as much psychological as economic today. To paraphrase Franklin Delano Roosevelt, what we really have to fear is fear itself. We must instill a new confidence in the American consumer.

Mr. President, it may be that we need to supplement what President Bush has said, as I have suggested.

The economic problems which we face today did not originate last week or last month or last year. They have been building up over a long period of time because we have neglected to plan for the long term. We have neglected savings. We have neglected investment. We have neglected research and development.

I saw an advertisement which said what we have to do for the economy is look to the next quarter. That is, January 1; the year 2025. We have to give that kind of thought and that kind of planning. But, at the same time, there are things we can do now.

I believe it is incumbent on us to tackle these problems right now. On Friday afternoon, January 31, almost 2 p.m., with the last vote having been taken, I know the realities are not too good for action this afternoon on Friday. I know the prospects are not too good for Monday. Therefore, I do not think we ought to be in recess in February. I do not think we ought to be in recess in March. I think this Congress ought to respond to the President's challenge of a March 20 date.

The American people are sick and tired of political nitpicking. They do not care whether it is a Democratic or Republican idea. They want to see some action.

It is a tough political year, and there is a lot of partisanship in this Chamber. There was a lot of partisanship in the House Chamber when the President made the State of the Union speech. There was excessive partisanship.

I think we ought to put that aside, at least until March 20, and go to work. I think, unless we respond, that there are 535 Members of Congress whose jobs are in danger, and ought to be. That is why I have taken the floor for a few minutes this afternoon to urge, as forcefully as I can, that the leadership of the Congress, the membership of the Congress, cancel those recesses, tackle the problems of the economy, look at the proposals set forward by the President, make our amendments and modifications, and go to work in the interest of the American people.

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. WIRTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

JOHN GARDNER

Mr. WIRTH. Mr. President, some years ago, I had the privilege of serving as a White House fellow in the old Department of Health, Education, and Welfare. That was a program established—still going today—under President Lyndon Johnson. Every year, 15 to 20 people in their late twenties, early thirties, that work at the highest levels of Government, come to understand the process and take that expertise home, and to become what its real intellectual founder, John Gardner, calls "inners and outers."

I was assigned to Gardner, who had been, prior to that, the president of Carnegie Corp. of New York. And after being Secretary of HEW, he founded the urban coalition, Common Cause, and is now a distinguished professor at Stanford University. He became coach and mentor to many of us, and his intellectual leadership remains loud and clear.

A speech was given yesterday, by Michael Walsh, the new president of the Tenneco Corp., in Houston, TX. Mike was in the first year of White House fellows in 1965, I believe, and is, like many of us, a devotee and in many ways protege or disciple of Mr. Gardner's.

All of us have worked and talked together about the need for institutional change, the importance of moving rapidly and urgently, particularly in this modern world.

I wanted to take a few minutes this afternoon to share what I thought was just an extraordinarily good speech by Michael Walsh to the House Democratic Caucus yesterday, not in a partisan sense by any means, but simply because it reflects, I think, some of the themes that this country must pursue. Mr. Walsh says:

> Let me start by putting my cards face up on the table. I'm not an economist, a tax expert, or an expert period. I don't know for sure where the economy is going. I'm troubled by the state of America, but I'm leery of quick fixes and weary of excessive political rhetoric.
>
> I do, though, know something about global competition. I've wrestled with all the alligators in the swamp. I've made, or have seen others make, every mistake in the book—not just once, but twice or three times. I've been to Japan 25 or 30 times, beginning in 1963 when I was an exchange student at Keio University. I've had responsibility for joint ventures, manufacturing plants, and distribution activities all over the world.
>
> All this has given me a pretty good sense of perspective of where America is and how we stack up against the competition.
>
> Let's start with the bottom line. Many industrial businesses in this country are falling seriously behind in the global competitive struggle.
>
> I agree with Tom Peters that almost all American companies are trying—trying as never before. But most are not getting better, at least fast enough, given the global competition. This raises the obvious question of why not and what we can do about it.
>
> Look, there's a temptation to think that this is just a business problem. But the fact of the matter is that's not the way it is. It is fundamentally a problem of large-scale institutions. And the issue of dealing with large-scale institutions comes down to two words: leadership and change.

Let me put this into perspective.

A good friend of mine recently spent a couple of days at Cal Tech talking with some of the smartest people in the world focusing on mankind's most serious problems.

Participants were all over the lot regarding the main threats to our civilization. Population. The environment. Competitiveness. The failure of our political institutions. The list is long.

But no one—and I'm emphasizing no one—in the course of the entire 3 days focused on the two fundamental issues—leadership and the challenge of making fundamental change in large, complex institutions. That's the bottom line in terms of effective action on any one of those problems.

All this doesn't make for a good 15 second sound byte. But the fact of the matter is it's the truth.

So, in that sense, the problems you face in your every day life and the problems I face are a lot more similar than you're inclined to believe.

Let me make a point you may find surprising. Business leaders fall short in many respects—but more than any other reason, we fall short because we fail to appreciate the political nature of business leadership.

What am I talking about? Think about it.

Changing any large, complex organization requires reaching out to and mobilizing various constituencies whose interests often conflict. There's somebody out there who wants to put a foot on the brake no matter what you want to do. It may be a regulatory agency; a labor union; a community whose welfare is threatened by a plant closure; a public utility commission; an environmental group; senior citizens; a newspaper—you name it. The kind of thing you think about and deal with every day of your political life. But if you think those realities aren't as ever-present in my life as yours, you're wrong.

In this sense, the political nature of effective business leadership is enormously important. Business leaders could do a lot worse than to take a page out of the book of the most effective of your colleagues.

Having said that, our political institutions are failing because many of our political leaders fail to understand the economic or business aspects of political leadership. The government can go broke just as surely as private business. The bankruptcy is just less evident and takes a lot longer.

Seen in this perspective, politicians can and should take a page out of the book of the most effective corporate change makers.

My point, I hope, is obvious. Business leaders have a lot to learn from politicians. Leadership is essentially a political act, but, equally, politicians have a lot to learn from businessmen. Results and the bottom line do matter.

Let me take a few minutes to talk about what I have learned about making change in huge, change-resistant bureaucracies.

First and foremost, leading the process requires a relentless commitment from those at the top. I cannot say it any more simply than that and I cannot make it any more complicated than that. Those at the top have to decide what the larger issues are, what actions they require, and what actions they foreclose. In large, complex institutions—whether they be business, government, or academic—change does not bubble up from the bottom and it does not happen by accident.

He goes on and describes changes in his experience as president of the Union Pacific Railroad and now as president of Tenneco.

Mr. Walsh goes on to say:

The bottom line of what I am saying about leadership and the way it is both instituted and implemented is that, short of revolution or bankruptcy, that process has to be relentlessly led from the top.

A second essential ingredient in all this, obviously, is the willingness to make tough decisions. Happy talk just does not cut it. In a superficial sense, you had better believe morale declines. People's lives change.

And he goes on to talk about what happens when you make those kinds of tough decisions, that, in fact, you are going to run into a great deal of resistance but you have to be relentless.

In the global world in which we live, making tough choices like these is, unfortunately everyday fare. Large, bloated staffs simply don't work. It is not just that they are expensive. They get in the way. They stymie progress. They keep the organization from responding quickly and effectively to the customer. You cannot talk about changing large-scale organizations you cannot talk with a straight face about becoming globally competitive without facing up to this pervasive issue. Equally, consolidation of facilities isn't far behind staff reductions on the priority list.

Mr. Walsh goes on:

My third, and perhaps least obvious point, is that organizations can only change if they find ways of imposing restraints on themselves and their processes. Matters can't be debated to death. Petty indulgences cannot be tolerated indefinitely. The engine must be put in gear.

I have a feeling that this problem is one of the most difficult you face—

In the Congress—

But whatever the difficulties, my experience is that somehow, some way, the leadership figures out how to orchestrate a focus on what is good for the entity as a whole as opposed to what's good for this or that or the other individual—or to be frank, this or that or the other district. But don't fall into the seductive tendency to think that this is somehow easy to do in business. That the tough guy image is reality as opposed to the media's imagination. We've got prima donas in business just as you do. We've got people with access to the media or with this or that or the other source of power which threatens to constrain us every day. Business people are not without feelings, resources, or recourse. But effective leadership finds a way to deal with these issues.

A sense of urgency enters all this and Mike Walsh speaks and quotes John Gardner. As he put it, "We had to overhaul the ship without the luxury of putting it in drydock."

Let's take a minute to talk about risk. If I've learned anything, it's that the risk of not acting is even higher than the risk of acting.

In my judgment, the risks are probably higher, not lower, in making these kinds of moves in a business context, because we're measured immediately and swiftly by the stock market.

My stock can drop by a third, cutting our market value almost $2 billion, as it recently did, while the uncertainties of the change making process are being resolved.

In conclusion, Mr. Walsh goes on as follows:

My private conversations with those of you whom I know reveal a sense of frustration and impatience with the Governmental process. They reveal a deep sense of unease between your public dialogue and your private thoughts. Many of you realize that the issue is not this program or that, this election or that, this constituency or that, but an issue which is by far more important and profound, and that is whether the institutions of our government work effectively—whether they can be led; whether they can be changed.

In this sense your problems and mine are more similar than you may think.

There is a seductive tendency to somehow assume things are easier to do in another sector—that the grass is greener on the other side of the fence. Many of you tend to think that business people can fire at will and motivate simply by granting or withholding compensation. Equally, there are a lot of business types who tend to think that politicians solve all their problems by raising taxes and giving in to one interest group or another or, worse yet, simply passing more laws, rules, or regulations.

The truth lies somewhere in the middle. But the important point is that what works in effectively changing a business that's facing a crisis holds lessons for what works in effectively changing a government that faces a crisis.

I say "a government that faces a crisis" because I mean just that. The confidence of the American public in most of our governmental institutions is low. We've just not been able to deal with the deficit and other key issues.

Let me move from my more personal experiences to some broader themes.

As I said in the beginning, the problem isn't just business or just government or just any one of our huge institutions. It's each of us and all of us. This is serious business. We're not kids playing house. The stakes are enormous as to how we resolve these issues. If we allow the nation to fall behind, we all fail.

Equally, we don't get very far blaming others. Sure, some blame is in order. I'm not naive. But all of us can and must do better. I can. You can. Tenneco can. The Congress can. It all starts with the leadership of our institutions.

We're all in this together. As Americans, we spend our weekends watching football, basketball, baseball—watching great teams, great teamwork by people of diverse races, creeds and backgrounds. But we can't seem to bring that sort of teamwork to the great institutions and the great undertakings of our society.

We've also got to cut the pessimism and cynicism. Sure, focusing on reality and doing what's necessary is tough. Real people with real lives are affected in ways which are terribly difficult for them to accept. But doing what's necessary to deal with the industrial transformation which is taking place in this world is what America is all about. We've never shirked from this kind of challenge in the past—and I see no reason why we would shirk such a challenge now.

Finally, hard times are a time to strengthen resolve to get back to basics in both government and business.

In conclusion, I have tried to show you this afternoon. That change can happen in unlikely places and unlikely ways. In that sense, my experience gives me both confidence and hope.

I've tried to persuade you that change doesn't happen by accident. That its's led and orchestrated from the top. That it's the job of leadership to make and carry out

tough decisions and to govern itself, its processes and its impulses in order to get the job done.

The bottom line is that all of us with leadership responsibilities need to focus more on the leadership issues of the institutions we're entrusted to run and we need to focus less on those political or policy issues that don't matter—especially if we fail on the larger issues.

Call the leadership or priorities or whatever you wish. It's the name of the game. It's the bottom line for all of us.

Mr. President, I wanted to share that because I thought that was an extraordinarily important discussion of the challenges of leadership that we face in a changing American industry and must face in a changing American Government. Just as industry is facing new worldwide competition, new imperatives and must change, so we in the Congress are facing new worldwide imperatives and must change.

The cold war is over and we have to dramatically shift the way in which we are investing our funds. The budget is out of control. We have to dramatically look at all of our institutions, from our staffing right here to every program, just as a business must do, and make unpleasant decisions now, but they are going to be the right ones in the long-term.

Mr. President, I ask unanimous consent that the full text of Michael Walsh's wonderful speech be printed in the RECORD and I yield the floor.

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

SPEECH BY MICHAEL H. WALSH, ECONOMY PANEL, DEMOCRATIC CAUCUS

I

I'm delighted to be with you today. Thank you, too, Congressman, for that kind introduction. As someone once said, "My father would have enjoyed it and my mother would have believed it." Maybe!

Let me start by putting my cards face up on the table. I'm not an economist, a tax expert, or an expert period. I don't know for sure where the economy is going. I'm troubled by the state of America, but I'm leery of quick fixes and weary of excessive political rhetoric.

I do, though, know something about global competition. I've wrestled with all the alligators in the swamp. I've made, or have seen others make, every mistake in the book—not just once, but twice or three times. I've been to Japan 25 or 30 times, beginning in 1963 when I was an exchange student at Keio University. I've had responsibility for joint ventures, manufacturing plants, and distribution activities all over the world.

All this has given me a pretty good sense of perspective of where America is and how we stack up against the competition.

Let's start with the bottom line. Many industrial businesses in this country are falling seriously behind in the global competitive struggle.

I agree with Tom Peters that almost all American companies are trying—trying as never before. But most are not getting better, at least fast enough, given the global competition. This raises the obvious question of why not and what we can do about it.

II

Look, there's a temptation to think that this is just a business problem. But the fact of the matter is that's not the way it is. It is fundamentally a problem of large-scale institutions. And the issue of dealing with large-scale institutions comes down to two words: leadership and change.

Let me put this into perspective.

A good friend of mine recently spent a couple of days at Cal Tech talking with some of the smartest people in the world focusing on mankind's most serious problems.

Participants were all over the lot regarding the main threats to our civilization. Population. The environment. Competitiveness. The failure of our political institutions. The list is long.

But no one—and I'm emphasizing no one—in the course of the entire three days focused on the two fundamental issues—leadership and the challenge of making fundamental change in large, complex institutions. That's the bottom line in terms of effective action on any one of those problems.

All this doesn't make for a good 15 second byte. But the fact of the matter is it's the truth.

So, in that sense, the problems you face in your every day life and the problems I face are a lot more similar than you're inclined to believe.

III

Let me make a point you may find surprising. Business leaders fall short in many respects—but more than any other reason, we fall short because we fail to appreciate the political nature of business leadership.

What am I talking about? Think about it.

Changing any large, complex organization requires reaching out to and mobilizing various constituencies whose interests often conflict. There's somebody out there who wants to put a foot on the brake no matter what you want to do. It may be a regulatory agency; a labor union; a community whose welfare is threatened by a plant closure; a public utility commission; an environmental group; senior citizens; a newspaper—you name it. The kind of thing you think about and deal with every day of your political life. But if you think those realities aren't as ever-present in my life as yours, you're wrong.

In this sense, the political nature of effective business leadership is enormously important. Business leaders could do a lot worse than to take a page out of the book of the most effective of your colleagues. Believe me, I learned a lot by watching Chairman Dingell and Chairman Swift in the effective way they handled last spring's national rail strike.

Having said that, our political institutions are failing because many of our political leaders fail to understand the economic or business aspects of political leadership. The government can go broke just as surely as private business. The bankruptcy is just less evident and takes a lot longer.

Seen in this perspective, politicians can and should take a page out of the book of the most effective corporate change makers.

My point, I hope, is obvious. Business leaders have a lot to learn from politicians. Leadership is essentially a political act. But, equally, politicians have a lot to learn from businessmen. Results and the bottom line do matter.

IV

Let me take a few minutes to talk about what I've learned about making change in huge, change-resistant bureaucracies.

First and foremost, leading the process requires a relentless commitment from those at the top. I can't say it any more simply than that and I can't make it any more complicated than that. Those at the top have to decide what the larger issues are, what actions they require, and what actions they foreclose. In large, complex institutions—whether they be business, governmental, or academic—change doesn't bubble up from the bottom and it doesn't happen by accident.

Let me illustrate.

A little more than five years ago, I joined the Union Pacific Railroad as Chairman. In the course of 60 months, we doubled productivity per employee, let me repeat that. We increased the work done—the throughput—measured in terms of gross ton miles transported per employee from 6 million tons per year to more than 12 million tons.

Keep in mind we were dealing with more than a dozen different unions, a hierarchical structure that hadn't been changed in a century, a leadership group which felt God himself would come down upon us if we changed too fast, and a work force with an entitlement mentality—a belief that "Uncle Pete" would always be there for them.

On top of all this, we were dealing with an industry which reflected all the ills of years of regulation.

Does this sound suspiciously similar to some of the government bureaucracies you deal with?

Union Pacific wasn't on the brink of bankruptcy. There wasn't an obvious crisis. In fact, the year before I came—1985—the railroad had record earnings. The earnings were only a "record", though, compared to poor past performance.

The company was not earning its cost of capital and the board, realizing that, was reinvesting the railroad's cash elsewhere—into other newer activities which they hoped would be more productive. The railroad was slowly going out of business. We just weren't advertising the fact.

Think about the threat this represented to the work force. That's what I had to deal with.

I held town meetings all over the country to explain all this to engineers, conductors, brakemen, switchmen, firemen and clerks. This wasn't easy. Our people weren't worried about the company's return on assets. They didn't know what the words meant. They were worried about their jobs. But I had to get them to understand the relationship between their job security and the company's profits. They were two sides of the same coin. Why? Because, if we couldn't get our profits up, the board would continue to disinvest. We wouldn't have the capital to grow—and without growth, the combination of reduced business and new technology would surely threaten peoples' jobs more than all the cost cutting ideas I could ever come up with.

A hard sell you say. You better believe it was.

In a nutshell, we had to get our people to face reality. They had to understand that while it had been the policy of government, management and labor to protect rail employment for 40 years, that policy—however well intentioned—had been a dismal failure. The numbers proved it. In 1950, there were a million and a half members of rail labor. By the late 1980's that number had dwindled to 250,000.

As I said to our people, "some protection". All we had done was to create an inefficient structure and a high cost umbrella which was a magnet for competition.

Sure, we could have blamed the trucks. We could have blamed the Congress or the I.C.C.—or, for that matter, the Japanese. But instead I was relentless in telling everybody what they didn't want to hear. We were too big, too bureaucratic, too inefficient, and not competitive. Most importantly, we couldn't get from here to there with everyone on the ship.

Let me tell you something. That was a tough message for a lot of our people—especially for the more than 10,000 people—25 percent of our work force—who lost their jobs in the course of five years.

To be sure, we sought to cushion the economic blow to those whose jobs went away. We spent almost half a billion dollars to finance such things as voluntary buyouts, severance payments, and retaining.

But that doesn't mean that people were happy or that it was easy. They weren't and it wasn't.

But the simple fact is that we faced reality—we had to pay the price. The bottom line or what I'm saying about leadership and the way it is both instituted and implemented is that, short of revolution or bankruptcy, that process has to be relentlessly led from the top.

A second essential ingredient in all this, obviously, is the willingness to make tough decisions. Happy talk just doesn't cut it. In a superficial sense, you'd better believe morale declines. People's lives change.

Let me use another example to make the point as to just how dramatically and swiftly change can be made.

In a 90-day period in 1987, we eliminated six layers of management and took out 800 middle managers at Union Pacific. Shortly after that, we closed the Omaha shops, which was an enormous emotional blow to the community, given the way it had started. It was home, its origin. It also something like $25 million per year out of the local economy.

Last fall at Tenneco's corporate headquarters, in just a few weeks we reduced costs by 25 percent and reduced staff by more than a third.

What's my point?

In the global world in which we live, making tough choices like these is—unfortunately—everyday fare, large, bloated staffs simply don't work. It is not just that they are expensive. They get in the way. They stymie progress. They keep the organization from responding quickly and effectively to the customer. You can't talk about changing large-scale organizations—you can't talk with a straight face about becoming globally competitive—without facing up to this pervasive issue. Equally, consolidation of facilities isn't far behind staff reductions on the priority list.

My third, and perhaps least obvious point, is that organizations can only change if they find ways of imposing restraints on themselves and their processes. Matters can't be debated to death. Petty indulgences can't be tolerated indefinitely. The engine must be put into gear.

I have a feeling that this problem is one of the most difficult you face.

But whatever the difficulties, my experience is that somehow, some way, the leadership figures out how to orchestrate a focus on what is good for the entity as a whole as opposed to what's good for this or that or the other individual—or to be frank, this or that or the other district. But don't fall into the seductive tendency to think that this is somehow easy to do in business. That the tough guy image is reality as opposed to the media's imagination. We've got prima donnas in business just as you do. We've got people with access to the media or with this or that or the other source of power which threatens to constrain us every day. Business people are not without feelings, resources, or recourse. But effective leadership finds a way to deal with these issues.

I'm not talking philosophically, but practically. I could give you endless examples of how—in the name of serving the customer, cutting costs or making other important changes in a difficult environment—shared responsibility or matrix relationships replaced traditional hierarchical or line authority at Union Pacific. Every time I initiated such a change, however, I was dealing with people—usually guys—who thought they were losing their manhood. They were accustomed to command authority—the "do it because I say it" approach. Guys headed for the dictionary when I used words like matrix and collegial.

But, like almost all large organizations, while we were organized vertically, everything we needed to do flowed horizontally. That meant tearing down barriers between departments, replacing tyrants with teams, focusing on cooperation rather than conflict.

But don't think all this happened in a hot tub. It wasn't a social experiment. We had to run trains, cut costs, meet competition, and achieve record results while making these changes at the same time. As John Gardner puts it, we had to "overhaul the ship without the luxury of putting it in dry dock."

I suspect that in seeking to get control of your own house—pun intended—you'll find more than a ring of truth in the challenges I'm describing.

Let's take a minute to talk about risk. If I've learned anything, it's that the risk of not acting is even higher than the risk of acting.

Consider that when we chose to eliminate those six layers of management in a 90-day period, we had no guarantee it would work. In fact, many of the "insiders" counseled me it wouldn't. But the risk that the organization wouldn't work the way it was was greater than the risk of change.

Or consider when we announced at Tenneco that we would complete a $2 billion restructuring in only 90 days, we faced an economy that said, "No way". But the continuing risk to our balance sheet outweighed the risk of acting.

The risk equation also applies to longer run issues. The risk to the Union Pacific work force was much greater when the board was pursuing the disinvestment strategy. Today with costs down and business up, the future is much brighter for those who remain.

In my judgment, the risks are probably higher—not lower—in making these kinds of moves in a business context, because we're measured immediately and swiftly by the stock market.

My stock can drop by a third, cutting our market value by almost $2 billion—as it recently did—while the uncertainties of the change making process are being resolved.

What has all this got to do with you? My answer is a lot.

My private conversations with those of you whom I know reveal a sense of frustration and impatience with the governmental process. They reveal a deep sense of unease between your public dialogue and your private thoughts. Many of you realize that the issue is not this program or that, this election or that, this constituency or that, but an issue which is by far more important and profound, and that is whether the institutions of our government work effectively—whether they can be led; whether they can be changed.

In this sense your problems and mine are more similar than you may think.

There is a seductive tendency to somehow assume things are easier to do in another sector—that the grass is greener on the other side of the fence. Many of you tend to think that business people can fire at will and motivate simply by granting or withholding compensation. Equally, there are a lot of business types who tend to think that politicians solve all their problems by raising taxes and giving in to one interest group or another or, worse yet, simply passing more laws, rules, or regulations.

The truth lies somewhere in the middle. But the important point is that what works in effectively changing a business that's facing a crisis holds lessons for what works in effectively changing a government that faces a crisis.

I say "a government that faces a crisis" because I mean just that. The confidence of the American public in most of our governmental institutions is low. We've just not been able to deal with the deficit and other key issues.

Let me move from my more personal experiences to some broader themes.

As I said in the beginning, the problem isn't just business or just government or just any one of our huge institutions. It's each of us and all of us. This is serious business. We're not kids playing house. The stakes are enormous as to how we resolve these issues. If we allow the nation to fall behind, we all fail.

Equally, we don't get very far blaming others. Sure, some blame is in order. I'm not naive. But all of us can and must do better. I can. You can. Tenneco can. The Congress can. It all starts with the leadership of our institutions.

We're all in this together. As Americans, we spend our weekends watching football, basketball, baseball—watching great teams, great teamwork by people of diverse races, creeds and backgrounds. But we can't seem to bring that sort of teamwork to the great institutions and the great undertakings of our society.

We've also got to cut the pessimism and cynicism. Sure, focusing on reality and doing what's necessary is tough. Real people with real lives are affected in ways which are terribly difficult for them to accept. But doing what's necessary to deal with the industrial transformation which is taking place in this world is what America is all about. We've never shirked from this kind of challenge in the past—and I see no reason why we would shirk such a challenge now.

Finally, hard times are a time to strengthen resolve to get back to basics in both government and business.

In conclusion, I have tried to show you this afternoon, that change can happen in unlikely places and unlikely ways. In that sense, my experience gives me both confidence and hope.

I've tried to persuade you that change doesn't happen by accident. That it's led and orchestrated from the top. That it's the job of leadership to make and carry out tough decisions and to govern itself, its processes, and its impulses in order to get the job done.

The bottom line is that all of us with leadership responsibilities need to focus more on the leadership issues of the institutions we're entrusted to run and we need to focus less on those political or policy issues that don't matter—especially if we fail on the larger issues.

Call that leadership or priorities or whatever you wish. It's the name of the game. It's the bottom line for all of us.

Thank you very much.[S31JA2-P3]{S786}

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER [Mr. DECONCINI]. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, I listened with great interest to the Senator from Colorado discussing Mr. Walsh's speech and I think some very valid points were made and it follows on a bit what I would like to speak to.

I think it is important for us to be cognizant of change that must come in our institutions, whether it be in the business community or Government. That change does not come easily, particularly here, I think, where we get very set in our ways, as I suppose is true in the business world as well. It takes a consistency and an effort that many times is difficult.

I have been one who has felt that it would be of benefit to the U.S. Senate to look to some significant reforms, to some consolidation in our committee work and in our staffing, the way that we work within our committees, and then report to the floor, particularly in combining the work of the appropriations and authorizing committees.

Mr. WIRTH. Will the Senator yield for a minute?

Mrs. KASSEBAUM. I am happy to yield.

Mr. WIRTH. Mr. President, I think the Senator is raising exactly the point: That as the world changes, this institution has to change too. Senator BOREN and Senator DOMENICI started that. I think it was a very welcome effort. We have to look at our committee jurisdictions, we have to look at the relationship between authorization and appropriation, obscure to the outside world but crucial to 100 leaders here, or 100 self-styled leaders. We have to set that tempo and adapt to the 21st century and we have to start now.

I thank the distinguished Senator for yielding and for her observations. That is just precisely the kind of thing that we must do. I thank the Senator.

THE RETIREMENT OF JOHN R. SIMPSON

Mr. DECONCINI. Mr. President, over the past 10 years, I have come to know, admire and respect an individual who has given dedicated and uncompromising service to the Federal Government for 29 years. That individual is John R. Simpson. Many in this body know John Simpson. He has been the Director of the Secret Service for the past 10 years. In that position, he has held the unenviable job of providing safety and security for the President of the United States; the Vice President; their families; and a whole host of foreign dignitaries. Mr. President, before I came to the Senate I was a prosecutor. In that position, I developed an enormous respect for professional law enforcement officers throughout this country. In my mind, John Simpson represents the epitome of professional law enforcement. He is a courageous and dedicated man who possesses the sharp skills and instincts which are well known in law enforcement circles.

Today, as John Simpson retires from Federal service, I want to pay tribute to his many accomplishments and contributions. I came to know the professional side of John Simpson through my chairmanship on the Appropriations Subcommittee on Treasury. That subcommittee funds the operations of the U.S. Secret Service. Through this association I came to appreciate the substance of the man. I always found him to be someone who had a full command of the issues and an individual who would honestly and openly address issues even in the face of adversity. One of the things I admire most about John Simpson is his forthright nature and down-to-earth character.

Mr. President, as many in this body know, John Simpson was appointed Director of the Secret Service in 1981 by former President Ronald Reagan. He was a career agent, so partisan politics never affected his judgment or performance. From 1981 to the present, Director Simpson successfully guided the Secret Service through one of its most significant decades. It was a decade in which the agency experienced unprecedented growth and one in which exceptional demands were placed on the Service. Coming into that position only 9 short months after the attempted assassination of President Reagan, Director Simpson was immediately confronted with the reality that the Service could be vulnerable, that its protectees could be endangered. Under his watchful eye, no harm was brought to bear on any protectee. In the ensuing years, international terrorism became a constant concern for the Secret Service. The increasing violence and unrest throughout the Nation placed a daily strain on the Service's protective functions. It was a period in which keen law enforcement skills were needed to preserve the stability of the Nation by ensuring the safety of its leaders. John Simpson rose to meet those challenges without missing a beat.

In addition to the formidable demands of protecting the President, Director Simpson faced the task of making the Service more innovative and attractive to new recruits. Under his leadership and guidance, the investigative responsibilities of the Secret Service were expanded. Investigations into such crimes as access fraud, computer fraud, false identification of documents, and financial institution fraud became prime responsibilities for the Secret Service. These additional authorities were not conferred upon the Secret Service without significant challenge from other law enforcement agencies. It was Director Simpson that convinced this body that the Service could make strong contributions to the Nation's war on crime.

Throughout his government career, I have known Director Simpson to exhibit the highest degree of personal integrity and professionalism. He was an outspoken advocate on all matters affecting law enforcement, not simply on those issues affecting the Secret Service. His role in helping reform the Federal law enforcement pay system will long be remembered by this Senator, and undoubtedly, by all existing and future law enforcement officers. His reputation as a tireless and experienced law enforcement officer earned him respect on an international level. In 1984 his credentials were recognized by the international law enforcement community and he was asked to serve as the President of the International Criminal Police Organization, Interpol, to combat the growing threat of international crime. John Simpson is the only American law enforcement official to ever hold that distinguished position.

Throughout his career Director Simpson quietly and without fanfare expended his full energies and resources to fulfill the obligations of his office. I am proud to have come to know John Simpson.

This is not the end of John Simpson's service at the Federal level. Fortunately, the President has decided to continue to make use of the talents and skills of John Simpson by nominating him to be a Commissioner on the U.S. Parole Commission. I am confident his nomination will be expeditiously and overwhelmingly approved by this body.

I ask my colleagues to join me in wishing John Simpson the best of luck as he departs the Secret Service. He will be sorely missed by this Senator but the example he has set for other law enforcement officers will be felt for years to come. Best wishes Director Simpson.

LAZY? NO WAY

Mr. FORD. Mr. President, I know that many of my colleagues were and still are very concerned over recent remarks made by a senior Japanese Government official regarding the work habits of American citizens. To put it politely, his remarks were untrue and not supported by the facts. I can think of no more appropriate way to address them than by submitting a letter to the editor of the Courier-Journal newspaper, written by Mr. Fujio Cho, president and chief executive officer of Toyota Manufacturing USA., Inc. The letter speaks for itself.

I ask unanimous consent that the letter be printed in the RECORD in full.

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

LAZY? NO WAY

(By Fujio Cho)

GEORGETOWN, KY.—Several years ago, when I was selected by Toyota to oversee start-up of a new plant in Georgetown, Ky., I had mixed feelings. I had no way of knowing what I would face working in the United States with an American work force and living in a small Kentucky community.

Many questions ran through my mind while my family and I prepared to move to Kentucky. Would people be patient as we learned to speak English? Would Americans want to work for a company from Japan? Would we be able to make friends, or would we be seen as too "different?"

As it turned out, I should not have worried. I have lived and worked in Georgetown for five years now. My son is a student at Georgetown College. My wife is involved in community activities such as God's Pantry. Every Thursday at noon I discuss the area's needs and concerns over lunch with fellow Rotarians.

Kentuckians, including our work force in Georgetown, not only made us feel welcome; they made us feel at home.

That is why I was particularly shocked and disappointed to hear the disparaging remarks about American workers recently attributed to a senior Japanese government official. My best guess is that his lack of experience with American workers caused him to form those misguided impressions.

Although I cannot fix the damage caused by an individual's comments, I can help to set the record straight. Simply put, I have great respect for our team members at Toyota Motor Manufacturing, U.S.A., Inc., and their colleagues at Ford, General Motors and Chrysler.

Perhaps the best way to explain this respect is to relate my personal experiences. If you walked into our facility in Georgetown, you would see 4,000 Americans hard at work. They impress me more every day with their diligence and commitment to making a quality Camry. These Americans deserve praise, not criticism. The success of this American work force is a source of great pride for me and for Toyota's management in Japan.

The biggest challenge we faced early-on was staffing an automobile manufacturing operation that would produce more than 800 vehicles a day. I was surprised and pleased not only with the number of applicants from all over Kentucky, but also with the quality of the people.

While our team members had little previous manufacturing experience, they learned quickly. These American workers didn't just want jobs; they wanted to produce the best car possible. And they have.

The Camry made in Kentucky matches the quality of those made in Japan. An encouraging sign is that dealers say customers are now specifically requesting Kentucky Camrys.

The Toyota Production System is an often-copied manufacturing technique. It is designed to find and solve problems. But it is not perfect.

In fact, we believe that it can be continuously improved. Our team members—96 percent are Kentuckians—are contributing significant improvements to the system, bringing it to a new performance level. Last year, our Kentucky work force submitted more than 20,000 suggestions for making the Camry a better car.

Although I see this outstanding commitment and work ethic every day, one incident in particular stands out in my mind.

The plant experienced its first bad weather day about three years ago. The snow fell throughout the morning and into the afternoon. I was concerned about the safety of our second shift because many team members travel a long distance each day.

I was greatly impressed when many team members on the first shift volunteered to work overtime, covering for the second shift. But that wasn't necessary. Much to my delight, virtually the entire second shift got to work early because they anticipated slower travel time.

I'm certain that no one would call them "lazy."

There are so many more examples of the American work ethic. For instance, we were recently challenged by our first major model change. It worried me, because it is very difficult even for an experienced work force. Yet everything went smoothly. That would not have been possible without motivated employees.

I've witnessed many other examples while visiting U.S. auto supplier plants and Toyota's joint venture with General Motors in California.

The American work force never fails to impress me. I sincerely regret the recent negative comments about American workers.

I guarantee that such sentiments are not representative of all Japanese.

NATIONAL SECURITY BOARD—S. 2168

Mr. PRESSLER. Mr. President, there has been much interest from my colleagues on my legislation creating the National Network Security Board. For their convenience I would ask unanimous consent that S. 2168 be printed in the RECORD.

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

S. 2168

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Network Security Board Act of 1992".

SEC. 2. FINDINGS.

The Congress finds that—

(1) The United States has experienced an increase in failures of the public switched network;

(2) In 1991 eight major network outages affected the safety of millions of consumers;

(3) There is no complete listing of all telephone outages, for there is no established, uniform means for telephone carriers to report such outages;

(4) Self-investigation of network outages is not adequate for ensuring the security of our public switched network;

(5) There is no official mechanism for investigating network crashes and making recommendations for actions to prevent future outages;

(6) Telecommunications network outages present a serious public safety danger;

(7) There is a need for an independent government agency, located within the Federal Communications Commission, to promote telecommunications security and reliability by conducting independent network outage investigations and by formulating security improvement recommendations.

(8) The creation of the National Network Security Board will provide vigorous investigation of network outages involving telecommunication networks regulated by other agencies of the Federal government.

(9) The National Network Security Board shall demand continual review, appraisal, and assessment of the operating practices and regulations of all Federal agencies regulating telecommunications networks.

(10) The National Network Security Board is likely to make conclusions and recommendations that may be critical of or adverse to Federal agencies regulating telecommunications networks; for this reason it is necessary that the Board be separate and independent from any other department, bureau, commission, or agency of the United States.

SEC. 3. CREATION OF THE NATIONAL NETWORK SECURITY BOARD.

(a) ORGANIZATION.—(1) The National Network Security Board (hereafter referred to in this Act as the "Board") shall consist of 5 members, including a Chairman. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. No more than 3 members of the Board shall be of the same political party. At any given time, no less than 3 members of the Board shall be individuals who have been appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of communication network outage reconstruction, communication network engineering, human factors, or communication regulation.

(2) The terms of office of members of the Board shall be 5 years, except as otherwise provided in this paragraph. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of that term. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified. Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) On or before January 1, 1993 (and thereafter as required), the President shall—

(A) designate, by and with the advice and consent of the Senate, an individual to serve as the Chairman of the Board; and

(B) an individual to serve as Vice Chairman.

(4) The Chairman and Vice Chairman of the Board each shall serve for a term of 2 years. The Chairman shall be the chief executive and shall be responsible for the administrative functions of the Board with respect to the appointment and supervision of personnel of the Board; the distribution of business among such personnel and among any administrative units of the Board; and the use and expenditure of funds. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman. The Chairman or acting chairman shall be governed by the general policies established by the Board, including any decisions, findings, determinations, rules, regulations, and formal resolutions.

(5) Three members of the Board shall constitute a quorum for the transaction of any function of the Board.

(6) The Board shall establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report

on network outages involving each of the following networks: (A) long distance, and (B) local exchange.

(b) GENERAL.—(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

(2) The Board shall have a seal which shall be judicially recognized.

(3) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as shall be necessary to carry out its powers and duties under this Act.

SEC. 4. GENERAL PROVISIONS.

(a) DUTIES OF BOARD.—The Board shall—

(1) investigate or cause to be investigated (in such detail as the Board shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any long distance network outage or local exchange network outage. Any investigation of network outage conducted by the Board shall have priority over all other investigations of such network outage conducted by other Federal agencies. The Board shall provide for the appropriate participation by other Federal agencies in any such investigation, except that such agencies may not participate in the Board's determination of the probable cause of the network outage. Nothing in this section shall be construed as impairing the authority of other Federal agencies to conduct investigation of a network outage under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, the network outage. The Board and other Federal agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner. The Board may request the Chairman of the Federal Communications Commission to make investigations with regard to such network outage and to report to the Board the facts, conditions, and circumstances thereof (except in accidents where misfeasance or nonfeasance by the Federal Government is alleged), and the Chairman of the Commission or his delegates are authorized to make such investigations. Thereafter, the Board, utilizing such reports, shall make its determination of cause or probable cause under this paragraph;

(2) report in writing on the facts, conditions, and circumstances of each network outage investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available, upon request, to the public at reasonable cost;

(3) issue periodic reports to the Congress, Federal, State, and local agencies concerned with telecommunications network security, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of recurrence of network outages similar to those investigated by the Board and proposing corrective steps;

(4) initiate and conduct special studies and special investigations on matters pertaining to telecommunications network security and reliability; and

(5) assess and reassess techniques and methods of network outage investigation and prepare and publish from time to time recommended procedures for network outage investigations.

(b) POWERS OF BOARD.—(1) The Board, or upon the authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Chairman of the Board, may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such officer or employee deems advisable. Subpoenas shall be issued under the signature of the Chairman, or his delegate, and may be served by any person designated by the Chairman. Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the United States courts. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing in the United States.

(2) Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, is authorized to enter any property wherein a network outage has occurred and do all things therein necessary for a proper investigation, including examination or testing of any communications equipment or any part of any such item when such examination or testing is determined to be required for purposes of such investigation. Any examination or testing shall be conducted in such manner so as not to interfere with or obstruct unnecessarily the communication services provided by the owner or operator of such equipment, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the network outage, consistent with the needs of the investigation and with the cooperation of such owner or operator. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such network outage. Each inspection, examination, or test shall be commenced and completed with reasonable promptness and the results of such inspection, examination, or test made available as provided by the Board. The Board shall have sole authority to determine the manner in which testing will be carried out under this paragraph, including determining the persons who will conduct the test, the type of test which will be conducted, and the persons who will witness the test. Such determinations are committed to the discretion of the Board and shall be made on the basis of the needs of the investigation being conducted by the Board and, where applicable, the provisions of this paragraph.

(3) In case of contumacy or refusal to obey a subpoena, an order, or an inspection notice of the Board, or of any duly designated employee thereof, by any person who resides, is found or transacts business within the jurisdiction of any United States district court, such district court shall, upon the request of the Board, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(4) The Board is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and the duties of the Board under this Act, with any government entity or any person.

(5) The Board is authorized, with the approval of the appropriate Federal agency, to—

(A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Federal Communications Commission and of any other Federal agencies;

(B) with the approval of the appropriate governmental agency of a State, or political subdivision thereof, confer with employees and use available services, records, and facilities of such governmental agency;

(C) employ experts and consultants in accordance with section 3109 of title 5 of the United States Code;

(D) appoint 1 or more advisory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act;

(E) accept voluntary and uncompensated services notwithstanding any other provision of law;

(F) accept gifts or donations of money or property (real, personal, mixed, tangible, or intangible);

(G) enter into contracts with public or private nonprofit entities for the conduct of studies related to any of its functions; and

(H) require payment or other appropriate consideration from Federal agencies, State, local, and foreign governments for the reasonable cost of goods and services supplied by the Board and to retain and use such funds received in carrying out the functions of the Board.

(6) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(7) The Board is authorized to designate representatives to serve or assist on such committees as the Chairman of the Board determines to be necessary or appropriate to maintain effective liaison with other Federal agencies, and, with their approval, with State and local government agencies, and with independent standard-setting bodies carrying out programs and activities related to telecommunications network security.

(8) The Board, or an employee of the Board duly designated by the Chairman, may conduct an inquiry to secure data with respect to any matter pertinent to telecommunications network security upon publication of notice of such inquiry in the Federal Register; and may require, by special or general orders, Federal agencies and persons engaged in activities related to telecommunications network security, and in the case of an agency of a State or political subdivision thereof, to request such agency, to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to any function of the Board. Such reports and answers shall be submitted to the Board or to such employee within such reasonable period of time and in such form as the Board may determine. Copies thereof shall be made available for inspection by the public.

(9) The Board may at any time utilize on a reimbursable basis the services of the Field Operations Bureau of the Federal Communications Commission or any successor organization. The Chairman of the Federal Communications Commission shall make available the services of such Bureau or successor organization—

(A) to the Board for training of employees of the Board in the performance of all of their authorized functions, and

(B) to such other personnel of Federal, State, local, and foreign governments and nongovernmental organizations as the Board may from time to time designate, in consultation with the Chairman of the Federal Communications Commission. Utilization of such training at the Bureau or successor organization by designated non-Federal telecommunications network security personnel shall be at a reasonable fee to be established periodically by the Board in consultation with the Chairman of the Board. Such fee shall be paid directly to the Chairman for the credit of the proper appropriation, subject to the requirements of any annual appropriation, and shall be an offset against any annual reimbursable agreement entered into between the Board and the Chairman of the Federal Communications Commission to cover all reasonable direct and indirect costs incurred for all such training by the Chairman in the administration and operation of the Bureau or successor organization. The Board shall maintain an annual record of all such offsets. In providing such training to Federal employees, the Board shall be subject to chapter 41 of title 5 of the United States Code (relating to training of employees).

SEC. 5. PUBLIC ACCESS TO INFORMATION.

Copies of any communication, document, investigation, other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon request, and at reasonable cost. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

SEC. 6. RESPONSE TO BOARD RECOMMENDATIONS.

(a) CHAIRMAN'S DUTY TO RESPOND; CONTENTS OF RESPONSE; PUBLICATION; PUBLIC AVAILABILITY OF COPIES.—

(1) Whenever the Board submits a recommendation regarding network outages to the Chairman of the Federal Communications Commission, he shall respond to each such recommendation formally and in writing not later than 90 days after receipt thereof. The response to the Board by the Chairman shall indicate his intention to—

(A) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(B) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation; or

(C) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

(2) The Board shall make copies of each such recommendation and response thereto available, upon request, to the public at reasonable cost.

(b) ANNUAL REPORT TO CONGRESS.—The Chairman shall submit a report to the Congress on January 1 of each year setting forth all the Board's recommendations to the Chairman during the preceding year regarding telecommunications network security and a copy of the Chairman's response to each such recommendation.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

For fiscal year 1993, and each of the next following 3 fiscal years, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, but in no event to exceed $10,000,000 in any 1 fiscal year.

FOREIGN AID REFORM

Mrs. KASSEBAUM. Mr. President, I would also like now to address another reform effort which I think could lend itself to some significantly more effective means of delivering our foreign aid. The President addressed this, as did the Senator from Colorado, when all of us at least looked to the changing circumstances with the end of the cold war. And there is no better place to start than the more effective use of our foreign aid dollars.

The time has come to take a hard look at how we can manage those dollars. Since 1986, when I held a series of hearings in the Foreign Relations Committee on how our foreign aid was being spent in sub-Saharan Africa, I have been interested and involved in finding ways we could improve our foreign aid delivery system and have had legislation introduced in every Congress since 1986.

Many of us here, in the administration and the private sector, have tried to chart a new course for our foreign aid program, but in some ways with little to show for our efforts.

Although I would suggest, Mr. President, that the African Development Fund, which is a regional account that largely stemmed from these efforts, is one that on all accounts is seeming to work well and embodies some of the suggestions that myself and others felt were important.

But we cannot let the failed reform efforts of the past become an excuse for inaction today. Our foreign aid dollars are shrinking, needs are increasing, and the American taxpayer is, rightfully, demanding a better accounting of how his moneys are spent.

The Agency for International Development must stop trying to be all things to all people. It is easier said than done, because constituencies develop which believe that their cause is the most important. For too long AID's objectives have been dictated by the ever-shifting priorities of the administration and the Congress.

AID must undertake a fundamental reexamination of what it does best, and then pursue only those programs. The reorganization now underway at AID has not resulted in this kind of rethinking of the Agency's mission in a significant way and will have, I am afraid, Mr. President, little real impact on enhancing the operation of the Agency for International Development.

I certainly think it is an important first step. But I think, unless we are willing to invest the time and energy and the risk-taking to be of significant and comprehensive nature, then it will only be at the fringes, and will fail.

Experience has taught us that the U.S. development system is most effective when focused in key technical areas—such as agriculture, health, education—where we are able to transfer sustainable technologies to recipient countries.

AID must reorient its programming toward these sectors and hire technically competent individuals to assist with project oversight.

AID's reorganization has also failed, I think, Mr. President, to address the critical issue of improving the coordination of our foreign assistance programs within the U.S. Government with other donor nations and with recipient governments.

It is this lack of coordination, Mr. President, which I find exceptionally frustrating. Again, are we making the most effective use of all of the assistance that is out there—not only our own, in the United States, but working in conjunction with other donors to make it a much more effective program?

We need to maximize the impact of our foreign assistance programs by ensuring that all our foreign aid assets are administered in a coordinated manner. We must work more closely with other donors to reduce program redundancy, and make recipient governments true partners in our development efforts.

It is not just something that the United States wants done, there. It, again, must be something that that country feels is important and can be sustained by its own efforts to be successful.

I would like to see the administration and the Congress form a task force on foreign aid reform to take a fresh look at these issues. I realize we form many task forces, and it ends up with mountains of paperwork which very few people read. If it is going to be successful, it will have to be given the initiative and sustainability from the top.

The task force should examine the possibility of moving a scaled-back AID, with a more precisely defined mission, into the Department of State. It should look at consolidating responsibility for management of all foreign aid funding directly under the Secretary of State, and consider creating an office of foreign aid coordination within the National Security Council.

I hope these efforts might be given significant consideration on the part of the President, on the part of those responsible for the initiatives in the De-

partment of State. I have talked to Secretary Baker about this initiative. I think he regards it as a top priority. And it is my hope that, with all of the other responsibilities that the Secretary has, that this can also be put on his list.

Mr. President, I will ask unanimous consent a full report on AID reforms to be printed in the RECORD. This report was done by Lisa Carty, a Foreign Service officer who has been a Pearson Fellow in my office for the past 6 months. She did a wonderful research job on various initiatives that in the past have been made regarding foreign aid reform, and this full report, I think, will enhance the record for those who are interested in the subject.

I ask unanimous consent the report be printed in the RECORD.

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

A NEW AGENCY FOR INTERNATIONAL DEVELOPMENT FOR A NEW ERA

Contrary to popular belief, the Agency for International Development's (AID) fundamental problem is not rampant fraud among employees or contractors, but rather a case of an organization being pressed to accomplish too many things with too few of the right kinds of people, and too little bureaucratic influence. Much has changed in the world in the last few years, with the end of the Cold War and massive new calls for Western assistance to hasten the transition to free market economies. Now the U.S. foreign aid program needs to change in fundamental ways too. The reorganization currently underway at AID does not go nearly far enough in addressing the basic problems that continue to impair AID's effectiveness.

We need a new AID to confront the challenges of tomorrow. More specifically, we need an AID with a more narrowly defined mission, focused in key technical sectors where the U.S. foreign assistance program has a proven track record. We also must improve overall coordination of all our foreign aid efforts so that all U.S. assets, whether development assistance (DA), economic support funds (ESF), or military aid, are combined to maximize the advancement of U.S. interests. The American taxpayer deserves no less.

PUTTING THE ISSUES IN PERSPECTIVE

In April of 1986, I conducted an extensive set of hearings on AID oversight. At the conclusion of those hearings, I determined that the Congress and the Administration should jointly undertake a foreign aid reform effort. In an effort to advance that process I have, for the past six years, introduced legislation calling for a streamlined foreign aid program, including reduced reporting requirements, increased emphasis on project sustainability and more detailed impact analysis of current AID programs. Subsequent to my hearings and the initial introduction of my legislation a variety of studies have reached similar conclusions. In 1989, the University of Michigan called for the U.S. foreign aid programs to focus on economic growth, poverty reduction, and environmental preservation, and concluded that AID, as presently constituted, was not up to the task. The report called for the creation of a White House-level council to coordinate U.S. policies, as well as the formation of formal coordination council in recipient countries.

Similar conclusions were reached by the Phoenix Group—a collection of development experts—who suggested creating a new AID, staffed by technical experts, which would emphasize technical assistance such as food aid, training, and education. The Phoenix Group also urged enhanced interagency United States government and bilateral donor coordination, and recommended the creation of joint bi-national teams composed of individuals from both the U.S. and recipient country to develop and administer foreign aid projects.

In 1988, Congressmen Hamilton and Gilman convened the House Foreign Aid Task Force and concluded that U.S. foreign assistance should be designed to foster economic growth, ensure environmental sustainability, Force urged that AID be reorganized to provide greater operational flexibility and decentralization; establish credible evaluation systems; and increase emphasis on technical ability. It also recommended the creation of a White House-based coordination mechanism, and proposed modifications to the Congressional notification process and the elimination of functional accounts.

Sadly, none of these analyses have resulted in any reforms. Whether such inaction can be attributed to the Administration or the Congress makes little difference today. The fact remains that reforms must come, and must come now.

THE AID SCORECARD—WHAT DOES THE CURRENT REORGANIZATION REALLY MEAN?

In October of last year, AID embarked on a "reorganization" designed to address some of the concerns raised by the House Task Force and others. There is considerable skepticism that this initiative goes far enough.

AID states that the reorganization will result in streamlined Agency management and greater emphasis on the achievement of results instead of on the obligation of monies. AID's missions overseas will be required to reduce specific mission objectives from, in many cases, several dozen to a more reasonable number of two or three. However, while AID missions are being told to limit their objectives, AID Washington continues to orient its priorities around five new initiatives—in support of the family, the environment, democracy, the private sector, and enhanced management. These five initiatives have been superimposed on top of AID's previously stated multiple goals—many of them Congressionally-imposed—including supporting historically black colleges, promoting micro-enterprise, and encouraging American exports. AID has little experience in democracy building; yet, now it seeks to devote major resources to this area. Support for democracy is an important activity, but is AID—an organization that has had difficulty implementing existing programs—really up to this new responsibility?

The reorganization has also dealt only superficially with the continuing problems surrounding AID's management of contractors. Contractors have become the backbone of AID's operations, a major industry in and of themselves. Between 1985 and 1990 AID doubled the number of U.S. contractors it employed overseas. Yet, there has been little hard analysis of the cost effectiveness of employing contractors versus employing sufficient AID full-time staff to design, implement and evaluate projects. More importantly, AID has failed to employ individuals with the technical expertise, and accounting and procurement abilities, required to monitor current contracting operations. While the reorganization calls for streamlined contracting procedures and better accounting and audit of contractual agreements, it has failed to address the fundamental issue of whether contractors are the best vehicle for the implementation of our foreign aid programs.

Finally, the reorganization has ignored the critical issue of better coordination of our foreign assistance programs both within the United States government and with recipient governments. Today, dozens of U.S. government agencies participate in our foreign assistance efforts, and funding for such endeavors is spread among an equal number of entities. It has become imperative that a White House-level mechanism be created to eliminate redundancy and ensure consistency in the U.S. foreign aid program.

In our bilateral programs, we must more actively engage recipient governments in project planning and, where possible, in sharing the costs of program implementation. In the multilateral arena, the U.S. should be pushing the World Bank to play a more active role in genuine donor coordination.

The reorganization now underway does not address these fundamental issues, and will not achieve the type of reform required to make AID function more effectively. Instead, AID must commit itself to a full-scale, in-depth review of its mission. Important lessons can be learned from AID programs that have worked, such as the Development Fund for Africa (DFA) and the Child Survival Initiative. The DFA has illustrated that the elimination of AID's functional accounts facilitates program implementation. The Child Survival Initiative demonstrates that AID projects are most effective when: focused on a limited number of proven, sustainable technologies; both problems and the appropriate interventions are well-defined from the start; and, initiatives are concentrated in countries where the greatest impact can be made. Sadly, the reorganization now underway does not seem to have incorporated these fundamental lessons.

AID cannot succeed with its present plans to refocus its work and reorganize its personnel until it clarifies and prioritizes its fundamental objectives. AID must seriously analyze what it does best, and from there determine what it wants to accomplish. Drastic and immediate reform—far beyond that outlined in the current reorganization—is required now.

WHAT CAN BE DONE TO REHABILITATE AID

What can be done to make AID fit to confront the challenges of today? At present, there exists considerable cynicism that the foreign aid process is "reformable". However, such cynicism cannot become an excuse for inaction. The Administration and the Congress must jointly commit themselves to genuine and far-reaching foreign aid reform. Immediate consideration should be given to the formation of a Joint Congressional-Executive Task Force. The Task Force should focus its efforts on identifying realistic, feasible reforms that would enhance AID operations and increase interagency coordination. To ensure its success, the Task Force must have the full support of the President and the Secretary of State. The following recommendations, some drawn from the work of the House Task Force and others, merit immediate consideration.

Recommendation One

Refocus the objectives of the U.S. foreign aid program. Within a broad framework of U.S. Government support for political and economic pluralism, AID should concentrate

its programs in a limited number of technical areas where it has a comparative advantage. Possible areas of concentration include:

Economic reform and support for free markets;

Education/Skills training/institution building;

Health;

Agriculture/environment;

Food AID/disaster assistance.

AID programs in technical sectors must be accompanied by parallel efforts to develop and maintain recipient countries' transportation and communication infrastructures.

There exists a general consensus that AID should do less, and do it better. AID has enjoyed its greatest successes when it has devoted sustained attention to achieving limited objectives in key technical sectors. AID's key role in promoting the "Green Revolution" in the 1960s and 70s, and with the Child Survival Initiative more recently, illustrate that U.S. development assistance is most effective when targeted on specific sectors, and oriented towards the transfer of selfsustaining technical assistance. The "new" AID should focus its energies in these sectors, not on activities such as democracy building where the Agency has no experience and logical alternatives, such as the National Endowment for Democracy, exist. The "new' AID must include an in-house capacity to conduct detailed marco-economic analysis, and provide technical assistance in support of the development of free market economies.

Recommendation Two

Redefine the administration of foreign aid funding so that all economic support fund (ESF) and development assistance (DA) monies are administered by the State Department. All project ESF monies should be transferred into the DA account.

ESF and DA, programs that basically serve bilateral political interests, should remain the purview of the Department of State and a rehabilitated AID. Transferring project ESF funds into the DA account will ensure ESF monies solely support recipient governments' macroeconomics policies—while preserving DA monies for more traditional development-related purposes. Placing all foreign aid funding under the Secretary of State, will facilitate a more coordinated approach to foreign assistance administration with an emphasis on assessing how all U.S. government assets can contribute to the advancement of American interests in a given country.

Recommendation Three

Abolish AID functional accounts and replace them with multi-year regional accounts, modeled after the Development Fund for Africa (DFA). Both ESF and DA funding should be authorized within each account. Earmarks should be eliminated. A separate account should be established to support peace-keeping and other activities of a clearly multilateral nature.

The success of the DFA illustrates that regionally-based funding contributes to program flexibility and operational effectiveness. Regional accounts should be established for Latin America and the Caribbean, Europe, Africa, Asia, and the Near East. ESF for programs of extreme political sensitivity could be protected by common agreement of the Congress and Administration. A peacekeeping/multilateral account will provide the Administration with the flexibility it requires to respond to the types of unforeseen multilateral challenges likely to become even more common in the future.

Recommendation Four

Restructure AID so that a scaled-back version of the Agency becomes a part of the Department of State, reporting through a newly-established position of Undersecretary for Development Affairs charged with the administration of all DA monies. Allocation of ESF funds would be formally transferred to the Department of State's Undersecretary for International Security Affairs.

At present, AID does in fact function under the guidance of the Secretary of State. Formalizing this arrangement, making AID clearly a part of State, would provide the "new" AID with the bureaucratic influence required to pursue more effectively its development mission, and would simultaneously enhance overall coordination of foreign assistance. The Secretary of State's leadership of the "new" AID, would ensure that the organization's development mandate remained protected, and that the continuing, successful reform of the foreign aid process remained a priority of the most senior members of the Administration.

Recommendation Five

The "new" AID will in all likelihood function primarily as a contracting agency and should be comprised of individuals with advanced technical expertise who can actively supervise and assist in project design, implementation and evaluation. A cadre of individuals expert in contract administration and audit should also be brought on board.

Despite their problematic history, contractors will in all likelihood remain a continuing feature of the AID landscape. The key to making contractors function successfully is to hire AID supervisory staff with an advanced level of technical skills and sound managerial background, who can participate actively in project design, implementation and evaluation. The "new" AID should be staffed by experts with this kind of expertise, and should be organized by functional bureau (perhaps five bureaus focusing on the five sectors outlined in recommendation one), reporting to the Undersecretary for Development Assistance, A sixth bureau, responsible for administration and audit, would also be required. AID country officers (who now staff the regional bureaus) could be added to existing State country desks to provide liaison with AID missions and coordination of assistance activities. Consideration could be given to creating a new position of deputy assistant secretary for foreign assistance in each regional bureau of oversee coordination. Such an arrangement, supporting AID activities from highly-skilled functional bureaus while integrating State and AID country desks, will ensure that the "new" AID retains a focus on key technical sectors, and that these programs are implemented within a broader economic and regional framework.

Recommendation Six

The establishment and/or continuation of U.S. assistance programs should be predicated on the creation of Bi-National Commissions in each recipient country to join in the planning and execution of development assistance programs.

Assistance projects cannot succeed without the participation and support of the recipient government. While *ad hoc* mechanisms exist for such coordination in some countries, a more formalized requirement for such structures is necessary. The Phoenix Group recommended that such commissions be staffed by technical experts from donor and recipient governments and be organized around specific issues recognized as development priorities. Such commissions would help develop an indigenous institutional capacity to deal with long-range development planning, while increasing the focus on project sustainability.

Recommendation Seven

Establish an office within the National Security Council staff (NSC) charged with coordination of all foreign assistance programs.

There exists near universal agreement that as more and more U.S. players enter the foreign aid picture, high level coordination is a necessity. The diverse skills of the Departments of Commerce, Treasury, the EPA, and others, will be required as the U.S. embarks on ever more complex assistance initiatives in Eastern Europe, the Soviet republics and elsewhere. An NSC office that could serve as a repository of information on, and coordinator of, all U.S. government agencies' foreign assistance activities would help eliminate redundancy and promote the overall effectiveness of our foreign aid programs.

The proceeding recommendations represent only a fraction of the measures required to completely overhaul the foreign aid bureaucracy; however, they would make an important contribution to enhancing AID's effectiveness. A Congressional-Executive Task Force should convene quickly to consider their implementation.

The PRESIDING OFFICER. The Senator from North Dakota.

WEAK MEDICINE

Mr. CONRAD. Mr. President, we had a hearing in the Budget Committee this morning and I think we learned a very important fact in that hearing. We had Mr. Darman, the head of the Office of Management and Budget testifying before the Budget Committee, and he had beside him a placard that had the President's economic growth proposals. As the occupant of the chair knows well, it is a long list. On the President's economic growth proposal list are dozens of suggestions.

We asked Mr. Darman, what would happen if we passed all of the President's economic growth proposals? How much of an increase in economic growth would we achieve, according to the administration's own estimates?

Do you know what the answer was, Mr. President? If we passed every one of the President's economic growth proposals, the President's Director of the Office of Management and Budget says we will increase economic growth one-half of 1 percent. One-half of 1 percent.

The economic engine of this country is off the tracks, and they are talking about going over and tightening up a few lug nuts. That is what is being proposed here. I think the people of this country deserve to know that if we pass the President's economic growth initiatives in total, every single one of them, according to their estimates we will increase economic growth one-half of 1 percent. That is not good enough.

This country is in deep trouble. This country is suffering from a prolonged period of no growth or very low growth,

and right now negative growth. And the President comes with this big proposal, this laundry list of things that need to be done. He terms it a bold departure from the past. And lo and behold, we find out that if we enact the entire thing we are going to only increase economic growth one-half of 1 percent, according to his own administration's estimates.

We have to do more than that. This country deserves more than that. And this situation demands more than that. I hope we would take this opportunity to devise a plan for this country that would really get us back on track. That is what the situation requires.

If there is any doubt by those who are listening that what I have said is the case, I refer them to page 37 of the President's budget document. They lay out what happens with business as usual if we do not make changes. What kind of economic growth will we have? They say 2.4 percent this year. If we pass the President's plan, they say that will increase to 3 percent. Next year if we do nothing, economic growth will be 2.5 percent. If we pass the President's plan, they say we will have economic growth of 3 percent. A half of a percentage difference if we pass the President's whole proposal.

The President ought to come to us with a new proposal, one that really does something substantial. I said on the night the President unveiled his plan for the Nation that he did not ask enough of us in Congress or enough of the country. And now we know that the evidence is there that tells us that is precisely the case. The President has not asked enough of us or of the country. What is required is a bold proposal to really spur economic growth in this country. And, by the President's own estimates, we now know his proposal, if enacted in total, will do virtually nothing to increase the growth rate in this country over the next 5 years.

That is not good enough, Mr. President. And we ought to take this opportunity in Congress, acting with the President, to do better. I just hope as we proceed in the days ahead we will remember what it is that is at stake because it is no less than the economic future of this country. What is at stake is the lives and the quality of the lives of the people we were sent to represent.

I think when the people of my State find out that the President's proposal would only give us an additional growth rate of one-half of 1 percent, if it is enacted in total, according to his own estimates, they are going to say that is pretty weak medicine. That is pretty weak medicine, Mr. President. We can do better.

Mr. President, I ask unanimous consent the page from the President's budget to which I referred be printed in the RECORD.

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

EFFECTS OF THE ADMINISTRATION'S PROPOSALS

The proposals discussed in Chapter 2 are expected to create more jobs, more income and more growth, thereby lowering the budget deficit. They result in a significant improvement in the outlook from a "business-as-usual" projection, which assumes that Congress rejects the President's proposals and adopts a more conventional response to the current economic situation. (See Table 3-2.)

TABLE 3-2. ECONOMIC PROJECTIONS: ADMINISTRATION POLICY VERSUS BUSINESS AS USUAL

[Calendar years]

	1992	1993	1994	1995	1996	1997
Percent increase, fourth quarter over fourth quarter:						
Real GDP:						
Business as usual	1.6	2.4	2.5	2.6	2.5	2.4
Administration policy	2.2	3.0	3.0	3.0	2.9	2.8
GDP deflator:						
Business as usual	3.3	3.4	3.3	3.3	3.2	3.2
Administration policy	3.2	3.4	3.3	3.3	3.2	3.2
Calendar year average in percent:						
Civilian unemployment rate:						
Business as usual	7.1	6.9	6.7	6.3	5.8	5.6
Administration policy	6.9	6.5	6.1	5.8	5.4	5.3
91-day Treasury bill rate:						
Business as usual	4.2	5.1	5.5	5.5	5.4	5.3
Administration policy	4.1	4.9	5.3	5.3	5.2	5.1
10-year Treasury note rate:						
Business as usual	7.2	7.3	7.1	7.0	7.0	6.9
Administration policy	7.0	6.9	6.7	6.6	6.6	6.6

THE SENATE PAGES

Mr. MITCHELL. Mr. President, today will be the last day of service in the Senate for our group of Senate pages. They will leave the Senate and return to their local high schools to complete their education.

I want to take this opportunity to extend the thanks of all Senators to our pages for their hard work and cheerful help. They spend many long hours waiting to be called upon, and their pleasant dispositions, even at late hours of the night, make a real difference to Senators.

Pages are on duty as long as the Senate is in session. They are responsible for making certain a lectern is in place on the right desk; they distribute amendments to the press galleries; they run errands throughout the Senate complex; they are there to bring water and make xerox copies.

This particular group of pages has been the subject of many favorable comments. They have been very quick to catch on to the workings of the Senate.

All of them have shown an avid interest in the legislative process. I would not be surprised to see many of them return to the Senate in other capacities in the future.

This session has given them a great many historic political events to witness. From the debates over civil rights and gun control to the vote on Judge Clarence Thomas, the Senate has seen its share of drama in the past several months.

Many of those dramatic debates have meant long and late hours. For Senators, a late night often means we can count on a weekend off. But for the pages, a late night and a missed school day means makeup classes on Saturdays.

They have worked hard and we thank all of them for their efforts. Their families and hometowns should be proud of the work they have done here. We wish them the very best for the future and look forward to seeing them when they return to the Senate again in future years.

Mr. President, I ask unanimous consent that a list of the pages who served in 1991 and 1992 be printed in the RECORD.

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

1991-92 PAGES

Ernest Leland, Leigh Hildebrandt, Henry Roe, Sara Porter, Terrell McSweeny, Mathew Boyden, Jason Kaplan, Brian Hess, Ann Cox, Angela Kavusak, Genevieve Nowicki, Chad Coneway, Johnathan Gagne, Victoria Gordon, Ted McNulty, Marcia Pope, Katie Schwarze.

Sarah Dumont, Rachele McCarthy, Kara Baird, Colleen Schaffer, Abby Thornell, Justin Brown, Danny Cannon, Darrick McCasland, John Moore, Rebecca Todd, Alan Wilson, Kristy Maughan, Kelly Otremba, James Jarman, Kara Poelman, Sean Lamb, Jimmy Hill, Jill Page.

ORDER OF PROCEDURE

Mr MITCHELL. Mr. President, I previously expressed my intention to proceed to the energy bill. The legislation is S. 2166, the National Energy Security Act of 1992.

I have sought to gain consent under the Senate rules from our Republican colleagues to proceed to that bill. But since I have been unable to gain that approval because of objection by some Republican Senators, it is not possible to proceed to the bill. Therefore, it will be necessary to file a cloture motion to terminate debate and to permit the Senate to take that bill up and consider it.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I now move to proceed to Calendar item No. 393, that is, S. 2166, and I send to the desk a cloture motion.

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate a cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to S. 2166, a bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation and for other purposes:

D.K. Inouye, Quentin Burdick, Howard M. Metzenbaum, George Mitchell, John

Breaux, Jeff Bingaman, Alan Cranston, Tom Daschle, Wendell Ford, Jim Sasser, Kent Conrad, Charles S. Robb, J. Bennett Johnston, Timothy E. Wirth, Max Baucus, J. Lieberman.

UNANIMOUS-CONSENT AGREEMENT—VOTE ON MOTION TO INVOKE CLOTURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the vote on the motion to invoke cloture on the motion to proceed to S. 2166 occur at 10 a.m. on Tuesday, February 4, and that the mandatory live quorum under rule XXIII be waived.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 484, 485, and 486.

I further ask unanimous consent that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

RESOLUTION TRUST CORPORATION

Albert V. Casey, of Texas, to be Chief Executive Officer, Resolution Trust Corporation (new position), to which position he was appointed during the last recess of the Senate.

DEPARTMENT OF THE TREASURY

Shirley D. Peterson, of Maryland, to be Commissioner of Internal Revenue.

Fred T. Goldberg, Jr., of Missouri, to be an Assistant Secretary of the Treasury.

LEGISLATIVE SESSION

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance, without amendment:

S. 2173. An original bill to increase the number of weeks for which benefits are payable under the Emergency Unemployment Compensation Act of 1991, and for other purposes.

• Mr. BENTSEN. Mr. President, yesterday the Committee on Finance voted unanimously to report a bill to further extend unemployment compensation benefits. The bill has the support of the leadership on both sides of the aisle. It reflects the bipartisan compromise agreed to in the House by Chairman ROSTENKOWSKI and Minority Leader MICHEL and reported by the Committee on Ways and Means. It also has the approval of the administration.

It is my hope and expectation that the bill will be approved by both the House and the Senate early next week, and will be sent to the President without delay.

I ask unanimous consent that there be included in the RECORD at this point the text of the bill as approved by the committee, a summary description of the provisions of the bill, and a letter from the President stating that because the compromise package is fully funded in each of the 5 budget years, no sequester would be triggered by its enactment.

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

S. 2173

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN AMOUNT OF EMERGENCY UNEMPLOYMENT BENEFITS.

(a) INCREASE IN BENEFITS.—

(1) Subparagraph (A) of section 102(b)(2) of the Emergency Unemployment Compensation Act of 1991 (Public Law 102-164, as amended) is amended to read as follows:

"(A) IN GENERAL.—Except as otherwise provided in this paragraph—

"(i) IN GENERAL.—

"(I) In the case of weeks beginning during a high unemployment period, the applicable limit is 33.

"(II) In the case of weeks not beginning in a high unemployment period, the applicable limit is 26.

"(ii) REDUCTION FOR WEEKS AFTER JUNE 13, 1992.—In the case of weeks beginning after June 13, 1992—

"(I) clause (i) of this subparagraph shall be applied by substituting '20' for '33', and by substituting '13' for '26', and

"(II) subparagraph (A) of paragraph (1) shall be applied by substituting '100 percent' for '130 percent'.

In the case of an individual who is receiving emergency unemployment compensation for a week which includes June 13, 1992, the preceding sentence shall not apply for purposes of determining the amount of emergency unemployment compensation payable to such individual for any week thereafter beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act."

(2) Subparagraph (A) of section 102(b)(1) of such Act is amended by striking "100 percent" and inserting "130 percent".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 101 of such Act is amended by striking "in a 20-week period or 13-week period, as defined in section 102,".

(2) Subparagraph (B) of section 102(b)(2) of such Act is amended by striking "An individual's" and inserting "Except as provided in subparagraph (A)(ii), an individual's".

(3) Subsection (c) of section 102 of such Act is amended—

(A) by striking "20-week" in paragraph (1) and inserting "high unemployment", and

(B) by striking "20-WEEK" in the subsection heading and inserting "HIGH UNEMPLOYMENT".

(4) Section 102 of such Act is amended by striking subsection (d).

(5) Subsection (e) of section 102 of such Act is amended to read as follows:

"(e) SPECIAL RULES.—

"(1) MINIMUM DURATION.—A high unemployment period shall last for not less than 13 weeks.

"(2) NOTIFICATION BY SECRETARY.—When a determination has been made that a high unemployment period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register."

(6) Paragraph (1) of section 102(g) of such Act is amended by striking "20-week period or 13-week period" and inserting "high unemployment period".

(7) Paragraph (2) of section 102(g) of such Act is amended by striking "20-week period" and inserting "high unemployment period".

(8) Section 106(b) of such Act is amended by striking "paragraph (3), (4), or (5)" and inserting "paragraph (3) or (4)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment beginning after the date of the enactment of this Act.

SEC. 2. EXTENSION OF PROGRAM.

Sections 102(f)(1)(B), 102(f)(2), and 106(a)(2) of the Emergency Unemployment Compensation Act of 1991 (Public Law 102-164, as amended) are each amended by striking "June 13, 1992" and inserting "July 4, 1992".

SEC. 3. TEMPORARY INCREASE IN AMOUNT OF CORPORATE ESTIMATED TAX PAYMENTS.

(a) GENERAL RULE.—Subparagraph (A) of section 6655(d)(3) of the Internal Revenue Code of 1986 (relating to temporary increase in amount of installment based on current year tax) is amended by striking the table contained in such subparagraph and inserting the following:

"In the case of a taxable year beginning in:	*The current percentage is:*
1992	93
1993 through 1996	95."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

SEC. 4. EXTENSION OF TIME FOR PAYMENT OF ADDITIONAL FUTA TAXES.

(a) IN GENERAL.—Notwithstanding any other provision of law, if a qualified taxpayer is required to pay additional taxes for taxable years beginning in 1991 with respect to any employment in any State by reason of such State being declared a credit reduction State, such taxpayer may elect to defer the filing and payment of such additional taxes to a date no later than June 30, 1992.

(b) INTEREST.—Notwithstanding subsection (a), for purposes of section 6601(a) of the Internal Revenue Code of 1986, the last date prescribed for payment of any additional taxes for which an election is made under subsection (a) shall be January 31, 1992.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED TAXPAYER.—The term "qualified taxpayer" means a taxpayer—

(A) in a State which has been declared a credit reduction State for taxable years beginning in 1991, and

(B) who did not receive notice of such credit reduction before December 1, 1991 from either the State unemployment compensation agency or the Internal Revenue Service.

(2) CREDIT REDUCTION STATE.—The term "credit reduction State" means a State with

respect to which the Internal Revenue Service has determined that a reduction in credits is applicable for taxable years beginning in 1991 pursuant to the provisions of section 3302 of the Internal Revenue Code of 1986.

(d) TIME AND MANNER FOR MAKING ELECTION.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury shall prescribe.

SEC. 5. TREATMENT OF RAILROAD WORKERS.

(a) EXTENSION OF PROGRAM.—

(1) GENERAL RULE.—Sections 501(b) (1) and (2) of the Emergency Unemployment Compensation Act of 1991 (Public Law 102-164, as amended) are each amended by striking "June 13, 1992" and inserting "July 4, 1992".

(2) CONFORMING AMENDMENT.—Subsection (a) of section 501 of such Act is amended by striking "June, 1992" and inserting "July 1992".

(b) ENLARGEMENT OF BENEFITS.—Section 501 of such Act is amended by adding at the end the following:

"(d) ENLARGEMENT OF BENEFITS.—

"(1) GENERALLY.—During the period that begins on the date of the enactment of this subsection—

"(A) subsection (c) of this section shall be applied by substituting '130' for '65';

"(B) section 2(c) of the Railroad Unemployment Insurance Act shall be applied—

"(i) by substituting '13 (but not more than 130 days)' for '7 (but not more than 65 days)' in the table; and

"(ii) by substituting 'but not more than 130 days' for 'but by more than sixty-five days' in the second proviso; and

"(C) section 2(h)(1) of the Railroad Unemployment Insurance Act shall be applied by substituting '13' for 'seven'.

"(2) PHASE-OUT.—Effective on and after June 14, 1992, paragraph (1) of this subsection shall not apply. Notwithstanding the preceding sentence, in the case of an individual who is receiving the extended benefits under section 2(c) of the Railroad Unemployment Insurance Act for persons with 10 or more but not less than 15 years of service, or extended benefits under this section, for any day during the week ending June 13, 1992, paragraph (1) shall apply for purposes of determining the amount of extended benefits payable to such individual for any day thereafter in a continuous period for which the individual meets the eligibility requirements of this section and the Railroad Unemployment Insurance Act.".

EMERGENCY UNEMPLOYMENT COMPENSATION EXTENSION SUMMARY DESCRIPTION

I. FEDERAL EMERGENCY UNEMPLOYMENT COMPENSATION

Present Law

A program of Federal emergency unemployment compensation benefits was enacted by P.L. 102-164 on November 15, 1991, and amended by P.L. 102-182 on December 4. Federally funded, emergency unemployment compensation benefits are paid to unemployed workers who have exhausted their 26 weeks of regular benefits. States with a total unemployment rate (TUR) of 9% or higher, or an adjusted insured unemployment rate (AIUR) of 5% or higher, are eligible to provide 20 weeks of emergency benefits; all other States are eligible to provide 13 weeks. The emergency benefit program began on November 17, 1991 and ends on June 13, 1992.

Explanation of Provision

The current emergency benefit program would be altered by increasing the number of weeks of benefits paid to unemployed workers and extending the expiration date of the program. All other provisions of the program would remain unchanged.

Weeks of Benefits. The number of weeks of emergency benefits that could be paid to an unemployed worker would be increased by 13 weeks, effective on enactment and ending on June 13, 1992. These additional weeks of benefits would be available to all unemployed workers found eligible for benefits under the current emergency benefit program.

As a result of this change, a total of 33 weeks of emergency benefits would be paid to workers in States with a total unemployment rate (TUR) of 9% or higher, or an adjusted insured unemployment rate (AIUR) of 5% or higher. Workers in all other States would be entitled to a total of 26 weeks of emergency benefits. Including the 26 weeks of benefits paid in the regular unemployment program, unemployed workers in States with high unemployment rates would receive a maximum of 59 weeks of unemployment benefits, and those in all other States would receive a maximum of 52 weeks. This compares with a possible maximum of 65 weeks available in some States during the recessions of the mid-1970s and early 1980s.

Duration of Program. the current emergency benefit program would be extended from June 13 to July 4, 1992. All other provisions of the program would remain the same as under current law, so that the total number of weeks of emergency benefits payable to unemployed workers who first became eligible for benefits after June 13 would be the same 13 or 20 weeks payable under the present program. Workers who qualified for benefits before the July 4 expiration date would receive the full number of weeks to which they are entitled, even if some of those weeks fell after the expiration date.

II. RAILROAD UNEMPLOYMENT INSURANCE

Present Law

Workers in the railroad industry are eligible for a separate unemployment compensation program similar to the unemployment compensation programs for workers in nonrailroad occupations. P.L. 102-164 provided 13 weeks of extended benefits to railroad workers who were not previously eligible because they had less than 10 years of service in the industry, effective from November 17, 1991 to June 13, 1992.

Explanation of Provision

A total of 26 weeks of extended benefits would be provided for all railroad workers eligible under current law for 13 weeks. This provision would expire June 13, 1992. The temporary program that provides 13 weeks of extended benefits for workers with under 10 years of railroad service would also be extended from June 13 to July 4, 1992. These changes are included at the request of the Committee on Labor and Human Resources.

III. CORPORATE ESTIMATED TAX PAYMENTS

Present Law

A corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning in 1992, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least 93 percent of the tax liability shown on the return for the current taxable year. The applicable percentage will be 94 (rather than 93) percent in 1993, 94 percent in 1994, 95 percent in 1995, and 95 percent in 1996. In addition, for taxable years beginning in 1992, a corporation may annualize its taxable income and make estimated tax payments based on 93 percent of the tax liability attributable to such annualized income. The applicable percentage for annualized estimated tax payments will be 94 (rather than 93) percent in 1993, 94 percent in 1994, 95 percent in 1995, and 95 percent in 1996.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of its tax liability for the preceding taxable year (the "100 percent of last year's liability safe harbor"). A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years. In addition, the first quarter's estimated tax payment for a large corporation may be based on 100 percent of the prior year's tax liability.

Explanation of Provision

The applicable percentage for a corporation that does not use the 100 percent of last year's liability safe harbor for its estimated tax payments is 95 percent for taxable years beginning in 1993 and 1994 (rather than 94 percent). The provision does not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations. The provision also does not affect taxable years beginning in 1992. The provision is effective for estimated tax payments with respect to taxable years beginning after December 31, 1992, and beginning before 1995.

IV. DEFERRAL OF FUTA TAXES

Present Law

A State that borrows from the Federal Government to pay unemployment benefits may, under certain conditions, later take funds from balances in its unemployment trust fund to make the loan repayments. However, if the trust fund balance falls below the amount required to pay three months of benefits, as it did in Michigan last year, Federal law prohibits its use to make repayment and requires that the effective FUTA tax rate on employers in the State be raised to repay the loan. The IRS notified Michigan employers that they must make Michigan's 1991 loan payment, which is due on January 31, 1992.

Explanation of Provision

Michigan employers unable to make the additional FUTA tax payment now required by January 31, 1992, may remit the payment by June 30, 1992 without penalty, but with interest. This change would be budget neutral.

V. COMPLIANCE WITH THE BUDGET ACT

OMB estimates that the proposal would increase outlays for directed spending by $2.7 billion in fiscal year 1992. These costs would be offset by using the $2.2 billion in pay-as-you-go savings that OMB estimates were achieved in fiscal years 1992 and 1993 by legislation enacted last year, and by $0.5 billion in revenues raised by the corporate tax provision described above.

The Administration has stated that OMB finds the proposal consistent with the Budget Enforcement Act in each of the fiscal years 1992 through 1995, and that no sequester would be triggered by its enactment.

THE WHITE HOUSE,
Washington, January 30, 1992.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR LLOYD: On Tuesday the House Ways and Means Committee reported out an amended version of H.R. 4095, a bill to extend Federal unemployment benefits through July 4 of this year. That bill was the result of agreement among the Administration,

Chairman Rostenkowski, and Republican leader Bob Michel. I fully support that agreement.

It is my hope that the Senate Finance Committee will approve the measure without amendments, and that the full House and Senate will quickly follow suit. Given that there are American workers whose benefits are expiring, I hope the bill will be on my desk for signature prior to the Congressional recess scheduled for February 7.

I am informed by the Director of the Office of Management and Budget that, according to our estimates, the compromise is consistent with the Budget Enforcement Act (BEA) in each of the Fiscal Years 1992 through 1995. Because OMB estimates that the compromise is fully funded in each of the five budget years, no sequester would be triggered by enactment of the compromise.

Thank you for your assistance in seeking a bipartisan solution to this problem.

Sincerely,

GEORGE BUSH.●

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

Mr. SYMMS:

S. 2171. A bill for the relief of Amalia Hatzipetrou and Konstantinos Hatzipetrou; to the Committee on the Judiciary.

Mr. ROTH:

S. 2172. A bill to improve the quality of agency regulations, increase agency accountability for regulatory actions, and for other purposes; to the Committee on Governmental Affairs.

Mr. BENTSEN (from the Committee on Finance):

S. 2173. An original bill to increase the number of weeks for which benefits are payable under the Emergency Unemployment Compensation Act of 1991, and for other purposes; placed on the calendar.

Mr. DASCHLE:

S. 2174. A bill to prohibit the provision to members and employees of Congress, at Government expense, of services and other benefits that are not typical benefits of employment or are not otherwise necessary to the performance of their office; to the Committee on Rules and Administration.

Mr. STEVENS (by request):

S. 2175. A bill to distribute a portion of the Outer Continental Shelf natural gas and oil receipts to coastal States and coastal counties as impact assistance, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. KASTEN:

S. 2176. A bill to provide that Federal tax reduction legislation enacted in 1992 be effective January 1, 1992; to the Committee on Finance.

Mr. BREAUX (for himself and Mr. JOHNSTON):

S. 2177. A bill to request from certain countries information concerning American servicemen and civilians missing in Southeast Asia during the Vietnam conflict and to require the heads of Federal departments and agencies to disclose to Congress information concerning such servicemen and civilians; to the Committee on Foreign Relations.

Mr. BURNS:

S.J. Res. 245. Joint resolution to designate the week of February 1-7, 1992, as "Travel Agent Appreciation Week", to the Committee on the Judiciary.

Mr. LIEBERMAN (for himself, Mr. FOWLER, Mr. BIDEN, Mr. JEFFORDS, Mr. KERREY, Mr. CHAFEE, Mr. PELL, Mr. AKAKA, Mr. FORD, Mr. DASCHLE, Mr. SASSER, Mr. COATS, Mrs. KASSEBAUM, Mr. METZENBAUM, Mr. SANFORD, Mr. SIMON, Mr. WARNER, Mr. HEFLIN, Mr. NUNN, Mr. ADAMS, Mr. CONRAD, Mr. D'AMATO, Mr. DURENBERGER, Mr. GORE, Mr. GORTON, Mr. GRASSLEY, Mr. HATCH, Mr. KERRY, Mr. LAUTENBERG, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. SIMPSON, Mr. SPECTER, Mr. BENTSEN, Mr. BOREN, Mr. DIXON, Mr. GRAHAM, Mr. HOLLINGS, Mr. KENNEDY, Mr. LEVIN, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. REID, Mr. CRAIG, Mr. COHEN, Mr. WOFFORD, Mr. INOUYE, Mr. LOTT, Mr. LUGAR, Mr. PRYOR, Mr. SYMMS, Mr. COCHRAN, Mr. WALLOP, Mr. BOND, Mr. SEYMOUR and Mr. PRESSLER):

S.J. Res. 246. Joint resolution to designate April 15, 1992, as "National Reycling Day"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

Mr. SPECTER:

S. Res. 254. A resolution expressing the sense of the Senate that the United States grant immediate recognition to the Republics of Croatia and Slovenia; to the Committee on Foreign Relations.

Mr. KERRY (for himself, Mr. LEVIN, Mr. GORE, Mr. COHEN, Mr. LEAHY, Mr. WELLSTONE, Mr. LIEBERMAN, Mr. BURDICK, Mr. AKAKA, Mr. HARKIN, and Mr. PELL):

S. Con. Res. 89. Concurrent resolution to express the sense of the Congress concerning the United Nations Conference on Environment and Development; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROTH:

S. 2172. A bill to improve the quality of agency regulations, increase agency accountability for regulatory actions, and for other purposes; to the Committee on Governmental Affairs.

REGULATORY IMPROVEMENT AND ACCOUNTABILITY ACT

Mr. ROTH. Mr. President, the essential role of the Chief Executive under our Constitution is "to take care that the laws be faithfully executed." In the course of two centuries Congress has written countless laws for the executive department to implement through regulations. Yet never has the Congress provided any general mechanism by which the Executive might take care that these laws and their regulations be faithfully executed.

Certainly, article II needs no help from Congress in authorizing the President's constitutionally assigned, and constitutionally protected, functions. Yet it appears to me that in recent times Congress has sought to have it both ways. Some complain that a President has the power to place his imprint on the execution of the laws. Others accept that power but seek to undercut its enjoyment by imposing severe burdens.

While this tension between the branches has grown since 1980, the last year that a political party controlled both Houses of Congress and the White House, recent congressional criticism has focused on the President's Council on Competitiveness, which is chaired by Vice President Quayle. The Council has moved into the forefront with the decline of the Office of Information and Regulatory Affairs [OIRA], which is an office within OMB.

OIRA has lost some of its clout because it has no Administrator. The President it appears, will not nominate an Administrator because the Senate Committee on Governmental Affairs, the committee with jurisdiction over the nomination, will not process a nomination for that office unless the President agrees to substantial restrictions on the exercise of his constitutional authority to take care that the laws be faithfully executed through regulatory oversight by OIRA.

Today, while OIRA, headless as it is, continues to perform regulatory reviews through civil servants, the more difficult and sensitive regulatory concerns of the executive branch are referred to the Council. Since the Vice President need not be confirmed by the Senate to carry out executive functions for the President, the shift from OIRA to the Council has left the Senate Committee on Governmental Affairs with reduced leverage.

In response, the Senate Committee on Governmental Affairs has ordered reported S. 1942, over objections from the Department of Justice that the legislation violates the deliberative privilege of the executive branch as laid out by a unanimous Supreme Court in United States versus Nixon. In my opinion, it is one thing to require disclosure of outside lobbyist contacts with Federal officials and another to require disection and publication of the internal deliberative processes of executive decisionmaking at any level. In this respect, S. 1942 may be good for journalism, but it is bad for Government.

Unfortunately, this constitutional confrontation is not merely of academic interest. The burden of ever-increasing regulations is placing American business at a competitive disadvantage in the global marketplace. As the logjam continues, the overall cost of regulatory burden to our economy has been mounting. It is now estimated at the stratospheric sum of $400 billion a year. That costs every household in America some $4,000 a year. If these estimates of Prof. Thomas D. Hoptkins of the Rochester Institute of Technology are anywhere near the mark, there is indeed, a practical problem that must be addressed.

This is not to suggest that every regulation is bad. It may be that every regulation by itself is good but that all the good regulations together produce the unintended consequence of frustrating our economy. But I do not believe the situation is that intractable. I believe that we can reduce the burden and costs of regulations by deleting those which are unnecessary and meeting our Nation's goals with less costly alternatives.

But who in Government is able to undertake the task of monitoring the total impact of regulations, of resolving conflicts between regulations, and of assessing the net benefits of regulations? Not the Congress; while Congress can make policy, it cannot execute it. Rather this is a task for the executive branch. Moreover, the task must be assigned relatively high up in the executive hierarchy because no single department is suited to assess the entire, Governmentwide breadth of all regulations, let alone sit in judgment on itself.

Since the President and Vice President have so many responsibilities and relatively few resources at their personal disposition, the only appropriate office of regulatory review responsibility is OIRA. That office is presently charged with the Paperwork Reduction Act of 1980 with authority to reject burdensome information collection requests by Federal departments and agencies.

Since regulations that impose unnecessary paperwork burdens and regulations that impose unnecessary costs present similar conceptual questions, President Reagan assigned OIRA regulatory review authority under Executive Order 12291.

But such an assignment under a mere Executive order is wanting: it cannot authorize OIRA to reject a burdensome and unnecessary regulation, on the one hand, and, on the other, any suggestions by OIRA to modify a regulation are subject to criticism as interfering with the statutory responsibility of the agency or department proposing the regulation.

The only solution in furtherance of good Government is to authorize OIRA by statute to address the crush of regulations resting on the back of the American public. Today, Mr. President, I am introducing legislation to do just that. This legislation would give meaning to the R in OIRA. By statute, OIRA has authority over information request but not regulations generally. My legislation would correct that.

My legislation would amend the Paperwork Reduction Act of 1980 so that all regulations—not merely those requesting information for the Federal Government—would be subject to statutory OIRA review. OIRA review would be integrated with the agency's regulatory process so that an agency's draft regulation and its justification as well as OIRA's action, if any, would be subject to judicial review. Thus, the substantive justification for any regulation would remain an agency responsibility.

OIRA would review the draft regulations for compliance with cost-benefit requirements, competitiveness provisions, and other principles generally contained in Executive Order 12291.

Independent agency regulations would be subject to OIRA review; however, as under the Paperwork Reduction Act, the action of OIRA could be overridden by subsequent action of the independent agency. My legislation thus borrows the accommodation reached in this sensitive area by Congress in 1980.

Written communications to OIRA either from outside lobbyists or from agencies of Government as well as written communications back would be made available to the public in the same manner as under the Paperwork Reduction Act, as amended in 1986. Moreover, any action taken by OIRA and an explanation for its action would be forwarded to the agency proposing the regulation and be made available to the public.

Today, regulatory review actions of OIRA and the President's Council on Competitiveness are often criticized as occurring in secret. My bill focuses the executive authority for regulatory review on OIRA and extends the same public disclosure requirements of the Paperwork Reduction Act to this new statutory authorization. In view of the balance Congress thought proper for paperwork reduction, certain disclosure provisions S. 1942 would appear excessive.

As I said before, required disclosure of internal executive branch deliberations would appear to violate the doctrine of executive privilege laid down in United States versus Nixon. My bill strikes a constitutionally acceptable balance on the issue of public disclosure, the same balance that a Democratic Congress thought appropriate for a Democratic President in 1980.

The legislation I am introducing today would obviate the need of the present administration to place the routine task of regulatory review in the Council on Competitiveness.

My legislation would assign this role—by statute—to OIRA. And OIRA, once authorized to conduct such review, would be subject to public disclosure requirements, as contained in the Paperwork Reduction Act.

The business community has been concerned by the Supreme Court's decision in Dole versus Steelworkers, which held that the review process of the Paperwork Reduction Act was limited to information requests for use by the Federal Government, in short, only a small percentage of the regulatory burden.

Since my legislation embraces all regulations, the result in this case would be statutorily reversed.

Finally, it must be emphasized that this legislation is not intended to override the national goals and policies of statutory law but rather to promote them through regulations that are effective, efficient, and rational. Trying to accomplish our objectives in a way that is least burdensome to the citizens of this Nation and without adverse effects on our competitiveness is just common sense. Good government is not repugnant to national policy. We must achieve our goals in the health, safety, environment, and civil rights areas in a manner that promotes our Nation's economic growth, productivity, and competitiveness.

Mr. President, the burden of Government regulation has reached a critical mass. The sheer number of regulations, let alone their complexity, severely impairs the conduct of small business and small government alike.

We have given all too little consideration to the fledgling enterprise or to the part-time small-town mayor in their efforts to cope with the escalating demands of the Federal Government. Our ability to perform at these levels is being crushed by an avalanche of regulations. It is time for reform.

The President has declared a moratorium. That is good. It is an excellent first step. It will, one hopes, provide Congress with the opportunity to think through this very practical and very real problem. Our economy is at stake. My legislation is responsive to this crisis of regulatory suffocation. It is the permanent solution.

Mr. President, the administrative state needs someone to run it. But that task will prove impossible if Congress insists on denying this fundamental need and throwing obstacles in the path of any executive branch efforts to address it.

No reform in our Government is more natural or more necessary than granting the Chief Executive statutory authority to take care that regulations be faithfully executed. The legislation I am introducing today is that reform.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at this point.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Improvement and Accountability Act of 1992".

SEC. 2. PURPOSE.

Section 3501 of title 44, United States Code, is amended at the end of paragraph (5), by striking the "and"; at the end of paragraph (6), by changing the period to a semicolon; and by inserting the following:

"(7) to reduce the burdens of existing and future regulations in order to promote the nation's economic growth, productivity, competitiveness, and general welfare;

"(8) generally, to take care that regulations achieve the national goals and policies of statutory law in an effective, efficient, and rational manner;

"(9) to increase agency accountability for regulatory actions;

"(10) to provide for presidential oversight of the regulatory process;

"(11) to minimize duplication and conflict of regulations; and

"(12) to insure well-reasoned regulations."

SEC. 3. DEFINITIONS.

Section 3502 of title 44, United States Code, is amended—

(1) by amending paragraph (3) by inserting after "agency" the words "or in complying with a regulation";

(2) by redesignating paragraphs (15) through (17) as paragraphs (16) through (18), respectively;

(3) by inserting after paragraph (14) the following new paragraph:

"(15) the term "major rule" means any regulation that is likely to result in:

"(A) an annual effect on the economy of $100 million or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets;";

(4) at the end of paragraph (17) (as redesignated by paragraph (1) of this section), by striking the "and";

(5) at the end of paragraph (18) (as redesignated by paragraph (1) of this section), by changing the period to a semicolon; by inserting "and" after the new semicolon; and by inserting the following:

"(19) the term "regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:

"(A) administrative actions governed by the provisions of sections 556 and 557 of title 5, United States Code;

"(B) regulations issued with respect to a military or foreign affairs function of the United States; or

"(C) regulations related to agency organization, management, or personnel.".

SEC. 4. OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

Section 3503 of title 44, United States Code is amended in the last sentence of subsection (b), by inserting after "policy" the words "and regulatory oversight".

SEC. 5. AUTHORITY AND FUNCTIONS OF DIRECTOR.

Section 3504 of title 44, United States Code, is amended as follows:

(a) In the first sentence in subsection (a), delete "The" and insert in its place "Under the Direction of the President, the", insert after "requests" the words "and regulations", and insert after "paperwork" the words "and regulatory"; and

(b) Redesignate subsections (c) through (h) as subsections (e) through (j), respectively, and insert after subsection (b) the following new subsections:

"(c) The general regulatory oversight policy functions of the Director shall include—

"(1) developing and implementing uniform and consistent regulatory policies and overseeing the development of regulatory principles, standards, and guidelines, and promoting their use;

"(2) initiating and reviewing proposals for changes in legislation, regulations, and agency procedures to improve regulatory practices, and informing the President and Congress on the progress made therein;

"(3) coordinating, through the review of budget proposals and as otherwise provided in this section, agency regulatory practices;

"(4) evaluating agency regulatory practices to determine their adequacy and efficiency, to determine the impact of such practices on our nation's economic competitiveness, and to determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director;

"(5) overseeing planning for, and conduct of research with respect to, Federal regulatory practices; and

"(6) reviewing any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this chapter.

"(d) The regulatory clearance and other regulatory control functions of the Director shall include—

"(1) designating any draft or existing rule as a major rule;

"(2) preparing and promulgating uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

"(3) requiring an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

"(4) waiving the requirements of this chapter with respect to any draft or existing major rule;

"(5) identifying duplicative, overlapping and conflicting rules, existing or draft, and existing or draft rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this chapter, and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;

"(6) developing procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget and assessing the impact of such regulations on our nation's economic competitiveness;

"(7) in consultation with interested agencies, preparing for consideration by the President recommendations for changes in the agencies' statutes;

"(8) designating currently effective rules for review in accordance with this chapter, and establishing schedules for reviews and Analyses under this chapter;

"(9) establishing a regulatory planning process by which the Administration will develop and publish a Regulatory Program for each year;

"(10) considering the consistency of the draft regulatory programs submitted by the agencies with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies, and identifying such further regulatory or deregulatory actions as may, in the Director's view, be necessary in order to achieve such consistency; and

"(11) monitoring agency compliance with the requirements of this chapter and advising the President with respect to such compliance.".

SEC. 6. FEDERAL AGENCY RESPONSIBILITIES.

Section 3506 of title 44, United States Code, is amended as follows:

(a) In subsection (a), insert after "management" the words "and regulatory review", and insert after the second use of "information" the words "and regulatory oversight"; and

(b) After subsection (d), insert the following new subsections:

"(e) In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

"(1) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

"(2) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

"(3) Regulatory objectives shall be chosen to maximize the net benefits to society and avoid, to the extent possible, adverse effects upon our Nation's economic competitiveness;

"(4) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

"(5) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations; the condition of the national economy; and other regulatory actions contemplated for the future.

"(f)(1) In order to implement subsection (e) of this section, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such analyses may be combined with any Regulatory Flexibility Analyses performed under section 603 and 604 of title 5, United States Code.

"(2) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, provided that, the Director shall have authority, in accordance with this chapter, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.

"(3) Except as provided in subsection (i) of this section, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:

"(A) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the draft rule, to the Director at least 60 days prior to the publication of the major rule as a final rule;

"(B) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

"(C) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

"(4) To permit each draft major rule to be analyzed in light of the requirements stated in subsection (e) of this section, each preliminary and final Regulatory Impact Analysis shall contain the following information:

"(A) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

"(B) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, including adverse effects upon our Nation's economic competitiveness, and the identification of those likely to bear the costs;

"(C) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

"(D) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

"(E) Unless covered by a description required under subparagraph (D) of this paragraph, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in subsection (e) of this section.

"(5)(A) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this chapter, and shall, subject to subsection (i) of this section, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

"(B) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to subsection (i) of this section, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

"(C) Nothing in this paragraph shall be construed as displacing the agencies' responsibilities delegated by law.

"(6) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

"(A) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

"(B) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

"(7) Agencies shall make their preliminary and final Regulatory Impact Analysis available to the public.

"(8) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this chapter, and perform Regulatory Impact Analyses of currently effective major rules.

"(g) Before approving any final major rule, each agency shall:

"(1) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the Federal Register at the time of promulgation a memorandum of law supporting that determination.

"(2) Make a determination that the factual conclusions upon which the rule is based have a substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

"(h)(1) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this chapter. These agendas may be incorporated with the agendas published under section 602 of title 5, United States Code, and must contain at the minimum:

"(A) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

"(B) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

"(C) A list of existing regulations to be reviewed under the terms of this chapter, and a brief discussion of each such regulation.

"(2) The Director may, to the extent permitted by law,

"(A) Require agencies to provide additional information in an agenda; and

"(B) Require publication of the agenda in any form.

"(i)(1) The procedures prescribed by this chapter applicable to agency preparation of Regulatory Impact Analyses and the regulatory clearance and other regulatory control functions of the Director shall not apply to:

"(A) Any regulation that responds to an emergency situation, provided that, any such regulation shall be reported to the Director as soon as is practicable, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures in this chapter with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and

"(B) Any regulation for which consideration or reconsideration under the terms of this chapter would conflict with deadlines imposed by statute or by judicial order, provided that, any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures of this chapter with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this chapter to the extent permitted by the statutory or judicial deadline.

"(2) The Director may, in accordance with the purposes of this chapter, exempt any class or category of regulations from any or all requirements of this chapter. The Director shall, with regard to regulations or the practice and procedure requirements of an agency relative to the administration of the Export Administration Act, determine whether such regulations or practice and procedure requirements are exempted from review under paragraph (1)(B) of this subsection.".

SEC. 7. PUBLIC INFORMATION COLLECTION ACTIVITIES.

Section 3507 of title 44, United States Code, is amended as follows:

(a) Redesignate subsections (b) through (h) as subsections (c) through (i), respectively, and insert after subsection (a) the following new subsection:

"(b) An agency shall not implement or sponsor the implementation of a regulation unless, in advance of the adoption or revision of the regulation—

"(1) the agency has taken actions, including consultation with the Director, to—

"(A) adhere to the requirements in section 3506(e) of this chapter; and

"(B) comply with procedures prescribed by this chapter applicable to agency preparation of Regulatory Impact Analyses and the regulatory clearance and other regulatory control functions of the Director;

"(2) the agency (A) has submitted to the Director the draft regulation, copies of pertinent statutes and other related materials as the Director may specify, and an explanation of actions taken to carry out paragraph (1) of this subsection, and (B) has prepared a notice to be published in the Federal Register stating that the agency has made such submission (setting forth a title for the regulation, a brief description of the need for the regulation and its proposed use, a description of the likely persons affected, and an estimate of the burden that will result from the regulation); and

"(3) the Director has approved the draft regulation, or the period for review of regulations by the Director provided under subsection (c) has elapsed.";

(b) In the first sentence of section 3507(c) (as redesignated by subsection (a) of this section), after the first and second uses of the word "request", insert the words "or draft regulation"; in the third sentence, after "request", insert the words "or draft regulation", and in the third sentence, after "information", insert the words "or implement or sponsor the implementation of the regulation";

(c) In the first sentence of section 3507(d) (as redesignated by subsection (a) of this section), after the first use of the word "request", insert the words "or draft regulation"; in the second sentence, after "Director,", insert "and"; and in the third sentence, after the first and second uses of the word "request", insert the words "or draft regulation";

(d) In section 3507(e) (as redesignated by subsection (a) of this section), after the word "request", insert the words "or draft regulation";

(e) In section 3507(g) (as redesignated by subsection (a) of this section), after the first use of the word "information", insert the words "or implement a regulation", and after the word "request" insert the words "or regulation, respectively"; and

(f) In section 3507(i) (as redesignated by subsection (a) of this section), in the first sentence, insert before the second use of "written" the word "official", after the "request" insert the words "or draft regulation", and after "proposal" insert the words "or draft regulation"; and immediately after the first sentence, insert the following:

"The written communications pertaining to a draft regulation under review shall be made available upon written request made to the Office after publication of the draft rule. The Administrator shall send the written communications pertaining to a draft regulation under review from any person not employed by the Federal government to the agency. The Administrator shall also advise the agency of all formal oral communications and scheduled meetings that the Office has with persons not employed by the Federal government pertaining to the substance of a draft regulation under review."

SEC. 8. PUBLIC PROTECTION.

Section 3512 of title 44, United States Code, is amended as follows:

(a) After the word "agency", insert the words "or to comply with a regulation adopted or revised by an agency"; and

(b) After the word "1981", insert "or if the regulation was adopted or revised after December 31, 1993,".

SEC. 9. CONSULTATION WITH OTHER AGENCIES AND THE PUBLIC.

Section 3517 of title 44, United States Code, is amended by inserting after "requests" the words "and draft regulations".

SEC. 10. EFFECT ON EXISTING LAWS AND REGULATIONS.

Section 3518 of title 44, United States Code, is amended as follows:

(a) in subsection (a), delete the words "for federal information activities".

(b) subsection (e) is amended read as follows:

"(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce laws regarding the health, safety, environment, and civil rights of the people. This chapter shall be interpreted so as to achieve, through regulations, the national goals and policies of statutory law in an effective, efficient, and rational manner."

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

Section 3520 of title 44, United States Code, is amended as follows:

(a) in subsection (a), by striking out "$5,500,000 for each of the fiscal years 1987, 1988, and 1989." and inserting in lieu thereof "$7,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal years 1994, 1995, 1996, and 1997."; and

(b) in subsection (c), by striking out the second sentence.

SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.

Chapter 35 of title 44, United States Code, is amended—

(1) in section 3504(j)(7) (as redesignated by section 5 of this Act), by striking out "section 3507(c)" and inserting in lieu thereof "section 3507(d)";

(2) in section 3507, by amending the title to that section by inserting after "activities" the words "and review of regulations";

(3) section 3507(h) (as redesignated by section 7 of this Act), by striking out "subsection (b)" and inserting in lieu thereof "subsection (c)";

(4) in section 3509, by striking out "section 3507(c)" and inserting in lieu thereof "section 3507(d)";

(5) in section 3514(a)(6), by striking out "section 3507(g)" and inserting in lieu thereof "section 3507(i)";

(6) in section 3514(a)(10), by striking out "section 3507(d)" and inserting in lieu thereof "section 3504(f))"; and

(7) in the chapter headnote, inserting "AND REGULATORY" after the word "INFORMATION".

By Mr. DASCHLE:

S. 2174. A bill to prohibit the provision to Members and employees of Congress, at Government expense, of services and other benefits that are not typical benefits of employment or are not otherwise necessary to the performance of their office; to the Committee on Rules and Administration.

FAIR MARKET STANDARDS ACT

• Mr. DASCHLE. Mr. President, today I am introducing the Fair Market Standards Act, which is intended to eliminate the provision of unnecessary perks to Members of Congress or congressional employees. Specifically, the bill will prohibit the provision to Members and employees of Congress, at Government expense, or service and other benefits that are not necessary to the performance of their duties.

The Fair Market Standards Act will attack the perks from both sides. First, it will make it illegal for a Senator or Member of the House of Representatives—or their employees—to accept a perk. The bill stipulates that a member or employee—may not receive from any office, officer, employee, or other entity in the Congress or in a department or agency of the United States, a service or other benefit that is not equally available to other persons" unless the service or benefit is necessary to perform his or her duties.

Second, the bill will require the Sergeants at Arms of the House and Senate to survey all the services and benefits available to Members and staff, and report those findings to the respective Rules Committees. The reports will contain explanations of the connection, if any, between the services or benefits and the Members' or staffs' performance of their official duties.

In turn, the Rules Committees will be asked to introduce resolutions outlining: First, which services or benefits are directly related to the performance of official duties and, therefore, properly provided at Government expense; and second, which services are unnecessary and not properly provided at Government expense, but may appropriately be made available in or near the Senate or House buildings, at the expense of Members and employees of the Senate or House, and provided by employees of the Government or by private contractors at fair market value. Any profits realized in conjunction with services provided at fair market value will be paid into the deficit reduction account at the Treasury. Other services or benefits will be considered unnecessary perks and eliminated entirely.

Mr. President, the widespread perception that members of Congress or their staffs are taking advantage of unfair and unnecessary perks and privileges is hurting this institution. Although some of the press reports are inaccurate or unfair, others accurately report uses of public funds that, while currently legal, cannot be justified. We should not ignore or belittle the legitimate concerns that have been raised with respect to this issue, and I offer this legislation today with the hope that it will contribute to a timely solution to this problem. I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 2174

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Market Standards Act".

SEC. 2. PROHIBITION OF UNNECESSARY SERVICES AND OTHER BENEFITS.

(a) PROHIBITION.—A member or employee of Congress may not receive from any office, officer, employee, or other entity in the Congress or in a department or agency of the United States a service or other benefit, at Government expense, that is not equally available to all other persons, except such a service or other benefit as—

(1) is of a kind and in an amount that is provided by employers, not atypically, as part of the compensation of their employees in general; or

(2) is otherwise necessary or appropriate to enable the member or employee to perform the duties of a member or employee of Congress.

(b) SURVEY OF SERVICES AND BENEFITS.—(1) Not later than 60 days after the date of enactment of this Act, the Sergeant at Arms and Doorkeeper of the Senate shall—

(A) ascertain what services and other benefits are available to members and employees of the Senate that are not equally available to all other persons; and

(B) submit to the Committee on Rules and Administration of the Senate a report describing those services and benefits and the manner in which each service or benefit contributes to the performance of the duties of members and employees of the Senate, if at all.

(2) Not later than 60 days after the date of enactment of this Act, the Sergeant at Arms of the House of Representatives shall—

(A) ascertain what services and other benefits are available to members and employees of the House of Representatives that are not equally available to all other persons; and

(B) submit to the Committee on Rules of the House of Representatives a report describing those services and benefits and the manner in which each service or other benefit contributes to the performance of the duties of members and employees of the House of Representatives, if at all.

(c) IDENTIFICATION OF UNNECESSARY SERVICES AND BENEFITS.—(1) Not later than 60 days after receiving the report described in subsection (b)(1), the Committee on Rules and Administration of the Senate shall introduce a resolution that—

(A) describes each service and benefit that may properly be made available to members and employees of the Senate at Government expense because it—

(i) is of a kind and in an amount that is provided by employers, not atypically, as part of the compensation of their employees in general; or

(ii) is otherwise necessary or appropriate to enable the members and employees to perform their duties as members and employees of the Senate;

(B) describes each service and benefit that may not properly be made available to members and employees of the Senate at Government expense, but may appropriately be made available in or near the Senate buildings, at the expense of members and employees of the Senate, and provided by employees of the Government or by private contractors; and

(C) directs the appropriate officers of the Senate to make arrangements for the provision of the services and other benefits described in paragraph (2) at fair market value.

(2) Not later than 60 days after receiving the report described in subsection (b)(2), the Committee on Rules of the House of Representatives shall introduce a resolution that—

(A) describes each service and benefit that may properly be made available to members and employees of the House of Representatives at Government expense because it—

(i) is of a kind and in an amount that is provided by employers, not atypically, as part of the compensation of their employees in general; or

(ii) is otherwise necessary or appropriate to enable the members and employees to perform their duties as members and employees of the House of Representatives;

(B) describes each service and benefit that may not properly be made available to members and employees of the House of Representatives at Government expense, but may appropriately be made available in or near the House of Representatives buildings, at the expense of members and employees of the House of Representatives, and provided by employees of the Government or by private contractors; and

(C) directs the appropriate officers of the House of Representatives to make arrangements for the provision of the services and other benefits described in paragraph (2) at fair market value.

(d) PAYMENTS TO REDUCE THE PUBLIC DEBT.—All payments received from members and employees of Congress for services and other benefits described in subsection (c)(1)(B) and (2)(B) that are provided by Government employees and all rent or other payments received from private contractors that provide such services and other benefits shall be paid into the account described in section 3113(d) of title 31, United States Code, to pay down the public debt.•

By Mr. STEVENS (by request):

S. 2175. A bill to distribute a portion of the Outer Continental Shelf natural gas and oil receipts to coastal States and coastal counties as impact assistance, and for other purposes; to the Committee on Commerce, Science, and Transportation.

COASTAL COMMUNITIES IMPACT ASSISTANCE ACT

• Mr. STEVENS. Mr. President, today I introduce the Coastal Communities Impact Assistance Act of 1992 at the request of the administration. I have been working on the issue of Outer Continental Shelf [OCS] impact assistance for two decades and introduced my own bill that would provide economic assistance to our coastal States and communities which have OCS oil and gas exploration and development. I welcome the administration's contribution and support on this important issue.

The purpose of this bill is to provide funds from revenues derived from OCS natural gas and oil production to coastal States and eligible counties to minimize the economic impacts caused by OCS development. Alaskan boroughs would also be eligible for impact assistance. The money distributed to the coastal States and communities would consist of 12.5 percent of all new oil and natural gas revenues from leased tracts whose geographic centers lie seaward of the 8(g) zone or within such zone and up to 200 miles from the nearest State's coastline.

Under this legislation the impact assistance from a given tract is distributed to all coastal States within 200 miles of such tract, weighted inversely according to each State's minimum distance from the tract. Fifty percent of the total impact assistance is distributed to the State.

The other 50 percent of the State's share is distributed among eligible counties located within the State. Eligible counties are determined by the Governor of each State, but must include all counties and Alaska boroughs with coastline borders and may include counties and boroughs whose closest point is no more than 60 miles from the coastline. The counties and boroughs must have real and significant impacts from OCS activities. Then the assistance is distributed among them using a distance formula similar to the State share.

Impact assistance from OCS activities would allow coastal States and communities the opportunity to participate in the OCS permitting process, to undertake projects to protect the environment, and to provide the increased government services and infrastructure that are necessitated by population increases brought about through OCS development.

Twice in the past the Senate passed legislation to provide OCS impact assistance, but unfortunately we were unable to enact it into law because past administrations opposed it. I am glad to see this administration's support for this concept, and I look forward to working with them to finally provide these States and communities the funds they need and deserve.•

By Mr. KASTEN:

S. 2176. A bill to provide that Federal tax reduction legislation enacted in 1992 become effective January 1, 1992; to the Committee on Finance.

EFFECTIVE DATE OF TAX REDUCTION LEGISLATION

• Mr. KASTEN. Mr. President, the President's budget request contains a wide range of tax relief proposals that will help restore economic growth and create jobs. Congress should act quickly on the President's proposals.

The economy needs the strong growth incentives in the President's package including a reduced capital gains tax, improved depreciation, and enterprise zones. American families need the tax relief that will come from increases in the dependent exemption, the first-time homebuyer credit, expanded IRA's, and tax deductible student loan interest. And I am extremely encouraged by the proposed repeal of the luxury excise tax on boats. This tax raises no money for the government and has been responsible for the loss of 19,000 jobs in the boatbuilding industry.

Today, I am introducing legislation that would give an added boost to the growth package and help ensure that Congress moves swiftly to enact it. This legislation would establish a January 1, 1992, effective date for any tax relief enacted pursuant to the President's tax proposal. An early and definite effective date will speed the recovery and minimize the delayed economic activity that results from the anticipation of tax relief. Uncertainty concerning effective dates can lead to a delay in economic activity and can temporarily worsen the economic downturn that the tax cuts are designed to eliminate.

Let me provide a few examples of how delayed action and delayed effective dates can cause problems for the economy. Businessmen who might be planning to purchase equipment and machinery will delay their purchases until the effective date of the investment tax allowance is clear. Potential buyers of boats will delay their purchases until the date of repeal is certain. This will further depress an important sector of the economy and cause further job loss. Similarly, business growth and job creation in the inner city may be delayed because the tax incentives in the administration's enterprise zone package are not scheduled to be effective until the start of 1993. I am also concerned that families will not adequately benefit from the $500 increase in the dependent exemption which is not scheduled to occur until October 1 of this year.

I believe it is vitally important that Congress make clear to the American people that it intends to act quickly on this tax legislation and that it will implement the specific tax reduction provisions effective to the first of the year. The alternative is a drawn out process that will delay economic activity and lead to further job loss. I ask that the text of the bill be inserted in the RECORD following my remarks and that an article by Victor Canto, Kevin Melich, and Art Laffer outlining the dangers of delay also be inserted in the RECORD.

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

S. 2176

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each provision of, or amendment to, any Act providing Federal tax reduction based on the President's tax proposal submitted to Congress on January 29, 1992, shall be retroactive to January 1, 1992.

[A.B. Laffer, V.A. Canto & Associates]

POLITICAL ECONOMY: VOODOO IN '92

(By Victor A. Canto, Kevin Melich, and Arthur B. Laffer)

The longest peacetime expansion ever came to an end during 1990, bringing down the curtain on eight years of prosperity. Unemployment has already risen to 6.8 percent

so far and during Bush's entire term of three years in office only 174 thousand new jobs have been created. He's only 29.826 million short of his Acceptance Speech promise to create 30 million new jobs. But, he says his juices are now flowing.

With this less-than-stellar economic performance it is not all that shocking that the president's overall approval rating is at an all-time low. In fact, some people have said that his approval rating looks like a chart of a biotech stock, however that may be unfair to the biotech stock.

Nonetheless, 1992 is an election year fraught with danger for an incumbent President riding a dead economy. The politics of continued abysmal economic performance has boxed the President into adopting an economic package in the hopes of reactivating the economy.

The shape, form, and timing of the package remains unknown. However, numerous proposed components include a capital gains tax cut for long term assets, indexation of capital gains for inflation, super IRAs, tax rebates as well as an investment tax credit. Personal and corporate income tax rate cuts don't appear to be in play although rate increases have been discussed as a way to pay for other programs.

Since 1948 there have been a number of tax changes that have altered personal and corporate income taxes, capital gains taxes, investment tax credits, and depreciation schedules. Delving into the historical annals should shed some light on what to expect from the various pieces of legislation currently under consideration. Although we really don't know what the President's program will contain, we surely do have an idea of the potential changes. The U.S. economy's previous experiences with tax changes should provide a basis for likely outcomes.

U.S. PAST EXPERIENCE

A listing of the different events and the timetable for changes in the legislative process are reported in Table 1.[1] Seventeen relevant episodes of tax changes were identified. Eleven of those seventeen episodes resulted either in static revenue losses or were revenue-neutral. Therefore, there were six events where static revenues increased. From our perspective, static revenue losses are generally descriptive of pro-growth policies while static revenue increases are typically anti-growth. Both Keynesian and supply-side analyses have the same overall implications vis-a-vis tax policies. The difference between those two schools of thought is the mechanism as to how the policies affect the economy. To a keynesian the static revenue loss of a tax cut is supposed to stimulate aggregate demand. From a supply-side view, a static revenue loss is tantamount to a tax rate reduction which increases the economy's incentives to save and produce. To a supply-side economist the income effects wash out. Only substitution effects remain. Static revenue losses, therefore, directly or indirectly translate into tax rate reductions.

Table 2 summarizes the behavior of the stock market, consumer prices, and real GNP quarter by quarter starting four quarters prior to the announcement or introduction of the specific tax package and continuing until four quarters after the package has become effective. The data reported suggest a number of empirical regularities.

TABLE 1—LEGISLATIVE HISTORY OF MAJOR FEDERAL TAX BILLS ENACTED, 1948–90

Title of Act	Date of President's message	Date of House passage	Date of Senate passage	Date of enactment	Major provisions[e]
Revenue Act of 1948	[a]	2/2/48	3/22/48	4/2/48b	Decrease individual and corporate tax rates.
Revenue Act of 1950	1/23/50	6/29/50	9/1/50	9/23/50	Increase individual and corporate tax rates.
Revenue Act of 1951	2/2/51	6/22/51	9/28/51	10/20/51	Increase individual and corporate tax rates.
Internal Revenue Code of 1954	[c] 1/21/54	3/18/54	7/2/54	8/16/54	Accelerated depreciation introduced.
Excise Tax Reduction Act of 1954	[a]	3/10/54	3/25/54	3/31/54	
Federal-Aid Highway Act of 1956	2/22/55	4/27/56	5/29/56	6/29/56	
Revenue Act of 1962	[d] 4/20/61	3/29/62	9/6/62	10/16/62	Introduced investment tax credit and increased accelerated depreciation.
Revenue Act of 1964	1/24/63	9/25/63	2/7/64	2/26/64	Decreased individual and corporate tax rates.
Revenue and Expenditure Control Act of 1968	8/3/67	2/29/68	4/2/68	6/28/68	Increased individual and corporate tax rates. Vietnam income surcharge for years 1968–71.
Tax Reform Act of 1969	4/21/69	8/7/69	12/11/69	12/30/69	Raised capital gains rate. Investment tax credit eliminated.
Revenue Act of 1971	8/15/71	10/6/71	11/22/71	12/10/71	Investment tax credit reinstated.
Tax Reduction Act of 1975	1/15/75	2/27/75	3/22/75	3/29/75	Investment tax credit increased.
Tax Reform Act of 1976	[a]	12/4/75	8/6/76	10/4/76	Raised capital gains tax rate.
Revenue Act of 1978	1/30/78	8/10/78	10/10/78	11/6/78	Decreased corporate income tax rate. Decreased capital gains tax rate.
Economic Recovery Tax Act of 1981	[c] 2/18/81	7/29/81	7/31/81	8/13/81	Decreased individual and corporate tax rates. Decreased capital gains tax rate. ACRS enacted.
Tax Reform Act of 1986	5/28/85	12/17/85	6/24/86	10/22/86	Decreased individual and corporate tax rates. Raised capital gains tax rate. Eliminated investment tax credit. MACRS—increased tax relative to depreciation.
Omnibus Budget Reconciliation Act of 1990	.....	10/28/90	10/28/90	.....	Increased individual income tax rate. Reduced effective maximum capital gains tax rate. Increased excise taxes. Increased medicaid and other taxes.

Note: Excludes Excess Profits Tax Act of 1950, Excise Tax Reduction Act of 1965, Tax Adjustment Act of 1966, Tax Reduction and Simplification Act of 1977, Crude Oil Windfall Profit Tax Act of 1980, TEFRA 1982, Highway Revenue Act of 1984, and Deficit Reduction Act of 1984. These were excluded due to overlap with other (dominant) tax acts, or there was no effective tax rate change. Investment tax credits suspended in October 1966 and reinstated in March 1967.

[a] Not recommended by the president.
[b] Passed by Congress over the president's veto.
[c] Recommended by the president in his budget message.
[d] Recommended initially in the budget message transmitted in January of the year indicated.
[e] Investment tax credits associated with nearest act.

TABLE 2—REAL GNP GROWTH, INFLATION, AND PERCENT CHANGE IN THE STOCK MARKET PRIOR TO, DURING, AND AFTER THE ENACTMENT OF TAX CHANGES

[In percent]

Economic indicator	Static tax revenue	4th Q prior	3rd Q prior	2nd Q prior	1st Q prior	Enactment	1st Q after	2nd Q after	3rd Q after	4th Q after
Real GNP growth	Decrease	4.38	4.22	1.45	1.46	1.40	1.13	3.30	4.70	4.08
	Increase	1.13	1.33	0.52	4.95	5.32	5.20	2.94	3.66	4.45
CPIU inflation	Decrease	6.06	4.63	4.97	5.10	2.40	3.49	4.33	3.30	2.41
	Increase	2.58	2.30	4.25	3.76	4.79	4.87	5.16	4.43	3.50
S&P 500	Decrease	−1.28	1.44	−0.79	6.90	11.25	32.50	3.38	11.02	18.20
	Increase	13.13	16.29	19.14	23.72	3.75	8.23	13.20	−4.58	7.99

January 1947 to September 1991 Annual Averages: Real GNP growth*—3.08; CPIU inflation—4.15; S&P 500 percent change—7.25; from 2d quarter 1947.

Real GNP: Tax cut packages are, on average, preceded by declining real GNP growth. A trough in real GNP growth occurs during the first quarter after the tax cut package becomes effective. From the time of enactment of the package forward the economy shows steady improvement. In contrast, during tax increases the level of economic activity appears to peak around the time the tax rate increase becomes effective and then, the following quarters the real GNP growth rate declines. Thus the economy's behavior during a tax increase is virtually the mirror image of the economic behavior during tax cuts.

The data also suggest the presence of transition effects that result from "gradual" implementation of tax changes. People do alter their behavior as a result of temporal changes in tax rates. The pre-announcement of a tax rate increase leads to "false prosperity" as people recognize income and produce in order to avoid "future" taxes. Similarly, pre-announced tax rate cuts introduce an incentive to delay recognizing income that further slows down the economy, further exacerbating the downturn, albeit temporarily, that the tax cut is supposed to solve.

Inflation: Equally as important as are the production effects of tax changes, the inflation rate appears to decline below its long-term average during the "transition" or enactment period for tax cuts and to increase for tax increases.

The economy's inflation rate is lower during the four quarters after tax cut is enacted than it is during the preceding four quarters. Symmetrically, during a tax increase the inflation rate is higher during the four quarters following the tax increase than it is during the quarters prior to the announcement of a tax increase.

Stock Market: In the case of a tax cut the market improvement appears to begin in the quarter prior to the announcement of a tax cut program. The stock market rise appears to accelerate during the time between when

the program is actually announced and the enactment date. The appreciation peak occurs during the first quarter after the enactment date.

For tax increase the market peaks the quarter before the announcement of the tax program and declines subsequently. There is no "transition" phase-in problem as there is with the real economy.

The gradual adjustment in stock prices may be related to the gradual changes in perception in the market regarding the nature of the package and the likelihood of it being enacted. Or, the perception of gradualism in the aggregate numbers may, in fact, be an artifact of the aggregation itself.

THE OUTLOOK

We believe that the administration is locked into adopting an honest-to-goodness pro-growth package. The experience gather from the seventeen events shown in Table 1 suggests that a broad-based package which includes some combination of capital gains tax cuts, IRAs, investment tax credits and accelerated depreciation will be favorable to the economy and the stock market.

Some form of a growth package has already been built into the stock market. There has been ample discussion in the press. The recent market rally, although properly attributed to the decline in interest rates, may also be due, in part, to the anticipation of a tax cut/growth package. Historical experience suggests that the appreciation in asset values accelerates up to the quarter following the time the cut becomes effective. The timing of the recovery also depends on the implementation of the tax package. Three scenarios are considered.

THE OPTIMISTIC SCENARIO: A RETROACTIVE PACKAGE WITH STATIC REVENUE LOSSES

Our view is that even if the President and his advisors do not fully understand the transition effect, people like Jack Kemp, Newt Gingrich, and Vice President Quayle do understand it. If they have their way the package announced in the State of the Union speech will be retroactive to January 1, 1992, in order to avoid the negative impact of the announcement of a tax cut that takes effect at a later date. If these gentlemen have their way no other taxes will be raised. If a deficit-neutral package has to be adhered to then defense budget cuts are far preferable to any other financing vehicle.

If that is the case it follows that we are now at the end of the transition period. Real GNP growth and the inflation rate should be at their low right now and the stock market should be accelerating. The economy could steadily recover, reaching a 4 percent annualized growth rate by the fourth quarter. December over December the real GNP could be 2.3 percent. If the economy responds in a typical fashion the inflation rate would average 3.6 percent. The stock market should post its highest appreciation rate during the first quarter of 1992. Under this scenario President Bush should win the election.

THE MOST LIKELY SCENARIO: NO RETROACTIVE FEATURES BUT STATIC REVENUE LOSSES

In spite of widespread warnings both of the Reagan tax rate cuts were phased in. It is extraordinarily difficult to convince "deficit mongers" that increased static revenue losses resulting from making a tax cut are, in fact, good. There is no reason to expect that the non-supply siders of this administration understand the potential problems of preannounced or phased-in tax rate cuts any better than their predecessors did. A little scenario is one where the growth package becomes "effective" on the date of passage.

The impact on the economy will be to delay or postpone economic activity. If the ITC is enacted it will make a difference as to when to purchase a machine. On the other hand, rate reductions, if enacted during the year, will be pro-rated thereby artificially introducing a phase-in. The net effect will be to delay the timing of the recovery. The delay could significantly delay any recovery and thus be crucial to the election outcome.

A PESSIMISTIC SCENARIO: A REVENUE-NEUTRAL BILL

From a qualitative point of view the composition of the package is irrelevant. All of the above items will result in an improved economy. The debate over one type of stimulus versus another has to do with the efficiency of the stimulus: which policy gives the biggest bang (stimulus to real GNP) for the buck (per dollar of static revenue loss).

For example, we have always stated that the ITC may be characterized as an incentive to buy a new machine without any guarantee that the machine will be used or would displace an old machine. In contrast, we have argued that low tax rates are an incentive to use both old and new machines. While both the ITC and lower tax rates will be "pro-growth," lower tax rates are more efficient. In the limit, however, an infinite non-rebatable ITC is exactly the same as the total elimination of the corporate tax.

The above reasoning suggests that a rate cut will generally be a superior way to stimulate the economy. Viewed this way the ITC, as long as there is no corresponding tax increase, will make some sectors better off without harming the rest of the economy. Therefore it does result in a net gain. The ITC will differentially alter the rates of return across industries and also within industries.

Analysts should know how to incorporate the impact of a cut in corporate tax rates or the ITC on effective corporate tax rates, etc. But knowing the impact or accounting effect isn't enough. You must then determine whether competition will force companies to pass any benefit forward or backward or whether they will keep the benefit. Those who can keep the benefit or get benefits passed to them will experience stock appreciation. Those who pass on their credits will not benefit a great deal but their customers and suppliers will.

One remaining issue of practical politics, however, is whether there will be a trade off of a personal income tax rate increase in order to attain the other provisions. We would like to point out that the 1980 tax act was revenue-neutral and did not become fully effective until January 1, 1988. The market and the economy continued to do well until last year's tax increase.

It is important to note that the 1986 tax act was revenue-neutral and that personal and corporate tax rates were reduced while the ITC was eliminated, capital gains tax rates were increased and depreciation schedules were lengthened. Since the market and the economy continued to expand from quite some time after the 1986 tax act took effect the 1986-88 experience would seem to illustrate that on a revenue-neutral basis the marginal tax cut is the way to go. A tradeoff of higher tax rates for other features is not advisable.

If a revenue-neutral package is adopted where personal income tax rates are increased to pay for the other features of the program the recession will be temporarily halted. A "false prosperity" period will ensure as people attempt to avoid future taxes. However, the economy would soon dip into recession once again. The stock market gains would be quickly reversed and the dollar would weaken substantially. Under this scenario President Bush will undoubtedly lose the election.

JANUARY 6, 1992.

[1] See Joseph A. Pechman, "Federal Tax Policy." Fifth Edition, (Washington, D.C.: The Brookings Institution, 1987) for a listing of tax changes.•

By Mr. BREAUX (for himself and Mr. JOHNSTON):

S. 2177. A bill to require from certain countries information concerning American servicemen and civilians missing in Southeast Asia during the Vietnam conflict and to require the heads of Federal departments and agencies to disclose to Congress information concerning such servicemen and civilians; to the Committee on Foreign Relations.

REQUEST FOR INFORMATION ON SERVICEMEN AND CIVILIANS MISSING IN SOUTHEAST ASIA

• Mr. BREAUX. Mr. President, I introduce this bill today at the request of a group of extremely dedicated and thoughtful Louisiana Veterans. The intent of these veterans is to expedite a final and successful resolution of questions surrounding Americans missing in action during the Vietnam war. The chief target of this effort is access to POW/MIA information possessed by foreign governments.

Our bill requires the Executive to request certain designated foreign governments to release all information in their possession concerning American troops missing from the Vietnam war. Despite 16 years of administrative efforts in other areas, the families and friends of American POW/MIA's have seen little if any attention directed toward this potentially valuable source of information. Credible reports suggest that valuable source of information on at least some of these missing men exists. It resides either on paper or in the memories of those who held our troops before, and as some argue, after the end of the Vietnam conflict.

Recent events have brought critical focus to the probability of foreign governments possessing information regarding American POW/MIA's. The one-time chief of KGB counter-intelligence, Maj. Gen. Oleg Kalugin, testified before a senate committee that agents under his authority questioned at least three United States POW's in Vietnam long after the close of hostilities in that country. General Kalugin's words harshly contrast responses by other past Soviet, Eastern block and Southeast Asian officials. They are however, remarkably consistent with additional recent testimony by two former United States National Security Agency Intelligence Officers regarding Soviet post-war complicity in American POW/MIA interrogation.

Because of the executive branch's apparent reluctance to use whatever means necessary to speedily identify

and obtain this information, our bill puts teeth and timetables into the current process of searching out and securing information on our missing soldiers. The bill requires the President to request the POW/MIA information from enumerated countries within 90 days of this bill's enactment. It then requires the requested countries to respond within 180 days of receipt of the request. Serious sanctions are leveled against countries which do not respond in good faith to the President's request. Country noncompliance would result in bars against: U.S. economic aid or assistance; participation in any program of U.S. credit or guarantee; most favored nation trading status; and commercial agreements between the United States and the noncomplying country.

Finally, this initiative charges Congress with judging the validity and comprehensiveness of Presidential efforts to secure and release POW/MIA data. It guarantees congressional access to all present and future executive branch POW/MIA information. By mandating both international and intergovernmental disclosure of American POW/MIA information, this bill may hold the key to resolution of the last great Vietnam era tragedy. I ask my colleagues to join me in cosponsoring this important and timely legislation.•

By Mr. BURNS:

S.J. Res. 245. Joint resolution to designate the week of February 1–7, 1992, as "Travel Agent Appreciation Week"; to the Committee on the Judiciary.

TRAVEL AGENT APPRECIATION WEEK

Mr. BURNS. Mr. President, I rise today to urge you to officially recognize one part of the vast travel industry that, despite outstanding work by its members of behalf of the traveling public, receives very little attention. I am introducing a joint resolution which will officially designate the first week of February, 1992, as "Travel Agent Appreciation Week," and I hope you will join me in cosponsoring this worthy resolution.

Members of the Senate, as frequent commuters to our States, appreciate the valuable service provided by travel agents. Their work can save both time and money for the consumer planning any business or vacation trip. Their skill and experience ensures that Worldwide meetings are a success, honeymoons are memorable, and family vacations are fun.

Travel agents are an integral part of the travel and tourism industry, one of the fastest growing industries in the United States. In every State, agencies offer career growth potential, from entry level jobs to industry sponsored training programs and management opportunities. Every service supplier in the travel and tourism industry, from airlines and hotels to tour operators, car rental firms, cruise lines and theme parks rely upon travel agents to sell their products, which together generated more than $340 billion in 1991.

Today's travel agencies are the fulfillment of the American entrepreneurial spirit. Throughout our Nation's history, entrepreneur-adventurers led tourists to natural wonders in the Westward frontier, whether it was canoe trips up the Hudson, steamships down the Mississippi, or burros to the bottom of the Grand Canyon. Today's travel agents are their natural descendents.

As a vital part of every American community, travel agents will help their business clients compete in the emerging global economy and vacationers to understand the customs of our global neighbors.

As pioneers and competitors in the service sector, agents will continue to offer their clients more value and more service for their dollars. In striving for excellence and business growth, agencies will utilize the new opportunities created by changes in politics and technology. As clients expand their businesses to Eastern Europe, the Middle East, and Asia, the United States-owned agencies will open offices abroad to service them.

As citizens of newly formed and newly freed countries exercise their freedom to travel, branch offices of U.S. travel agencies will have the knowledge to promote the United States of America, thereby playing an important role in shifting the balance of trade payments to a more favorable one for the United States.

When well preformed, the services provided by travel agents go unnoticed. It may only be when problems arise that we remember our travel agents and the services they perform on our behalf. I think, however, it is appropriate for us to remember them and the good work they do more often than this.

I hope that my colleagues will join me in recognizing and honoring travel agents. I urge you to cosponsor this legislation to designate the first week in February 1992, as "travel agent appreciation week."

By Mr. LIEBERMAN (for himself, Mr. FOWLER, Mr. BIDEN, Mr. JEFFORDS, Mr. KERREY, Mr. CHAFEE, Mr. PELL, Mr. AKAKA, Mr. FORD, Mr. DASCHLE, Mr. SASSER, Mr. COATS, Mrs. KASSEBAUM, Mr. METZENBAUM, Mr. SANFORD, Mr. SIMON, Mr. WARNER, Mr. HEFLIN, Mr. NUNN, Mr. ADAMS, Mr. CONRAD, Mr. D'AMATO, Mr. DURENBERGER, Mr. GORE, Mr. GORTON, Mr. GRASSLEY, Mr. HATCH, Mr. KERRY, Mr. LAUTENBERG, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. SIMPSON, Mr. SPECTER, Mr. BENTSEN, Mr. BOREN, Mr. DIXON, Mr. GRAHAM, Mr. HOLLINGS, Mr. KENNEDY, Mr. LEVIN, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. REID, Mr. CRAIG, Mr. COHEN, Mr. WOFFORD, Mr. INOUYE, Mr. LOTT, Mr. LUGAR, Mr. PRYOR, Mr. SYMMS, Mr. COCHRAN, Mr. WALLOP, Mr. BOND, Mr. SEYMOUR, AND Mr. PRESSLER):

S.J. Res. 246. Joint resolution to designate April 15, 1992, as "National Recycling Day"; to the Committee on the Judiciary.

NATIONAL RECYCLING DAY

• Mr. LIEBERMAN. Mr. President, I am pleased to introduce, along with Senators CHAFEE and FOWLER and 53 of our colleagues, legislation to designate April 15, 1992 as National Recycling Day.

This Nation is currently facing a solid waste disposal crisis, caused by the growing volumes of garbage and the shrinking number of places to put it. Every 5 years, the average American discards an amount of waste equal in volume to the Statue of Liberty. The municipal waste produced in this country in just one day fills about 63,000 garbage trucks, which would stretch the distance from San Francisco to Los Angeles. We are truly a throw-away society.

Towns and cities throughout the country are running out of landfill space. The Environmental Protection Agency estimates that 27 States will run out of landfill capacity for municipal solid waste within 5 years and that a large percentage of currently operating landfills are expected to close by the year 2000.

Recycling must play a critical part in diverting a significant amount of waste from disposal.

Recycling has important energy savings and materials conservation benefits and can avoid pollution created from extracting resources from our natural environment. For example, it takes only 5 percent of the energy used to make aluminum cans from raw bauxite to turn a used aluminum can into a new one, and recycling 1 ton of recycled aluminum saves 4 tons of raw materials.

A report prepared for the Environmental Protection Agency has concluded that overall energy savings resulting from recycling of plastics are 92 to 98 percent; steel, 47 to 74 percent, and glass 4 to 32 percent. The report found that in addition to energy savings, recycling reduces air and water pollution. Put simply, recycling can play a large part in reducing our dependence on oil because it saves energy and in cleaning up pollution.

Recycling programs provide critical economic benefits for communities. First, recycling saves communities money because it costs less to recycle than to dump waste in landfills. A recent report by the Conservation Law Foundation, "Garbage as an Economic

Resource for the Northeast," notes that businesses and municipalities in the Northeast spend nearly $3 billion in annual tipping fees for solid waste disposal; local governments spend $2.3 billion, with solid waste management amounting to more than 3 percent of municipalities' overall budgets. Moreover, disposal costs are escalating dramatically and municipalities are finding it difficult to control them. On the other hand, according to the report, recycling costs are estimated to be in the range of $23 to $35 per ton lower than disposal. This would be an enormous potential savings for businesses and our cash-strapped municipalities.

But recycling has economic benefits that extend beyond reduced disposal costs. According to the Conservation Law Foundation's review of several studies, recycling creates approximately one job in collecting and processing for every 465 tons of material recycled annually. In the Northeast, a 25-percent recycling rate would create 29,500 jobs; a 50 percent recycling rate, 59,000 jobs. The report points to Resource Recovery System of Essex, CT, as an example of the economic growth that is possible. This firm, which sorts waste and provides preliminary processing to remove contaminants, started with 10 employees in 1982. The firm has grown to 200 employees and operates 5 plants, is building a sixth and has two more on the drawing board.

Additional jobs will be created in industries that process and use secondary materials, construct recycling facilities, manufacture processing equipment and provide associated services. Opportunities will also exist in research and development. Manufacturing companies that use secondary materials, such as tissue or paperboard packaging manufacturers, also offer potential future employment opportunities.

The current level of recycling in the United States is low. Approximately 13 percent of municipal wastes is being recycled. The potential for much higher levels clearly exists. I am proud that the State of Connecticut has enacted a recycling law setting a statewide goal of 25 percent recycling each year.

There is an urgent need for public education campaigns to inform consumers that garbage has very real financial and economic consequences. Successful recycling programs need participation from all segments of society. Product manufacturers, consumers, generators of waste and public officials need to follow their garbage and realize the impact. Communities and businesses must develop recycling programs, including curbside and apartment-house pickup programs, publicly and privately operated neighborhood dropoff centers to sort, accumulate, process materials and market them to end-user markets, privately run buyback centers for particularly valuable materials, and private commercial-waste hauling.

Consistently available markets for secondary materials are also an essential part of the success of recycling programs. The public and private sectors must support recycling by purchasing materials recovered from waste. Governments have a critical role to play in promoting the design of products that can be recycled safely and efficiently and in making certain that consumers have full and accurate information about the products they are purchasing and about recycling.

In order to deal with the solid waste crisis, we must face the difficult problem of changing human habits and educating people. The president of the Litchfield, Connecticut League of Women Voters, Marilyn Cann, said it well: "If people aren't educated to recycling, they're not about to do it consistently and effectively. If they're not educated, they're going to throw recyclables away."

Last year, the Senate passed a resolution establishing April 15, 1991, as National Recycling Day, an environmental awareness campaign aimed at increasing recycling consciousness in all generations, but focusing particularly on today's youth. The Take It Back Foundation and the "Yakety-Yak, Take it Back" music video and public service program, successful components of the 1991 National Recycling Day efforts, used well-known personalities to promote a recycling ethic. Schools, public libraries and local radio and television stations across the country put their support behind the educational effort with tremendous results. Recycling programs have been initiated by youths both in private homes and in communities across the Nation.

A second annual national recycling day is needed because the problem requires a continued concerted effort on the part of individuals, elected officials and private industry. It is my hope that on April 15, 1992, schools and communities will again sponsor educational activities and training sessions on how recycling can help us both overcome the crisis we are now facing and help us preserve the Earth's natural resources.

Mr. President, I request that the full text of the resolution be printed in the RECORD.

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

S.J. RES. 246

Whereas the United States generates over 180 million tons of municipal solid waste each year—almost double the amount produced in 1965, and amounting to about 4 pounds per person per day—and the amount is expected to increase to 216 million tons of garbage annually by the year 2000;

Whereas the continued generation of enormous volumes of solid waste each year presents unacceptable threats to human health and the environment;

Whereas the Environmental Protection Agency expects that 27 States will run out of landfill capacity for municipal solid waste within 5 years and that a large percentage of currently operating landfills will close by the year 2000 either because they are filled or because their design and operation do not meet Federal or State standards for protection of human health and the environment, requiring that waste now disposed of in these facilities will have to be disposed through other means;

Whereas a significant amount of waste can be diverted from disposal by the utilization of source separation, mechanical separation and community-based recycling programs;

Whereas recycling can save energy, reduce our dependence on foreign oil, has substantial materials conservation benefits and can prevent the pollution created from extracting resources from their natural environment;

Whereas the revenues recovered by recycling programs offset the costs of solid waste management and some communities have established recycling programs which provide significant economic benefits to members of the community;

Whereas the current level of municipal solid waste recycling in the United States is low, although some communities have set a much higher rate;

Whereas to reach a goal of increased recycling, more materials need to be separated, collected, processed, marketed and manufactured into new products;

Whereas a well-developed system exists for recycling scrap metals, aluminum cans, glass and metal containers, paper and paperboard, and is reducing the quantity of waste entering landfills or incinerators and saving manufacturers energy costs;

Whereas recycling of plastics is in the early stages of development and considerable market potential exists to increase the recycling;

Whereas yard and food waste is an important part of municipal solid waste and a large potential exists for mulching and composting the waste which would save both landfill space and nourish soil, but only small amounts of this material is currently being recycled;

Whereas Federal, State and local governments should enact legislative measures that will increase the amount of solid waste that is recycled;

Whereas Federal, State and local governments should encourage the development of markets for recyclable goods;

Whereas Federal, State and local governments should promote the design of products that can be recycled safely and efficiently;

Whereas the success of recycling programs depends on the ability of informed consumers and businesses to make decisions regarding recycling and recycled products and to participate in recycling programs; and

Whereas the people of the United States should be encouraged to participate in educational, organizational and legislative endeavors that promote waste separation methods, community-based recycling programs and expanded utilization of recovered materials: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That April 15, 1992, is designated as "National Recycling Day". The President of the United States is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.●

• Mr. CHAFEE. Mr. President, today I along with Senators LIEBERMAN, WARNER, JEFFORDS, DURENBERGER, and others are reintroducing legislation to designate April 15, 1992, as National Recycling Day." Raising public awareness about the real benefits to society from recycling is essential if we are to recover valuable materials from our waste, and minimize the garbage which is filling up our landfills.

Recycling, which began as far back as the settling of this country, has evolved over the years. Many of my colleagues will remember the materials conservation efforts during World War II, when aluminum foil was carefully saved, used automobile tires collected, and many other consumer items were recycled and put toward the war effort. Today, in many communities recycling has become a daily part of life in America. Most of us have recycled materials at some point in our lives, typically paper, aluminum, or glass.

However, while many of us may be familiar with recycling there is still an enormous need for public education to inform consumers that garbage does not disappear when the sanitation worker loads it into the truck. With the help of environmental advertisements and media events aimed at increasing awareness about the waste problem, our society has come to realize that there are very real costs, both financial and environmental, associated with the continued proliferation of municipal garbage. Still more needs to be done.

In the United States today we continue to face a crisis in solid waste management. This country generates about 160 million tons of solid waste per year, almost double the amount produced in 1965. If present trends continue, the United States will generate close to 200 million tons per year by the turn of the century. Towns and cities across the United States are realizing that the city dump will be forced to close its gates in a few short years. In the last two decades alone the number of landfills accepting solid waste has been reduced dramatically from about 30,000 to 6,000. It is becoming virtually impossible to establish any new landfill sites because of the "not in my backyard syndrome," and the rising value of land and real estate.

Realizing then, this urgent crisis, this threat to human health and the environment from burgeoning mountains of trash, we have looked to technology to provide us with an easy solution. Such technological fixes, however, have not eliminated the undeniable need for significant changes in the way we conduct our daily lives. Not only must we find more environmentally sound ways of handling municipal trash, but we must also greatly reduce the amount of garbage we generate in the first place. This will require a concerted effort on the part of consumers, manufacturers, and government. That is why we are reintroducing legislation to designate April 15, 1992 as National Recycling Day.

Reducing the amount of household garbage we generate poses the most difficult of public policy problems: changing human habits. The purpose of this legislation is to encourage a public attitude that can allow these needed changes to take place. People must be made aware that their actions do have a critical impact on reducing the amount of garbage entering the waste stream. As recently as January of this year, I cochaired a special hearing at which children from across the Nation gathered to remind government leaders that unless we, as citizens of the Earth, take steps to change our environmentally unsound habits, we will deplete the bountiful planet which provides us with so much.

At the Federal level, there are several legislative proposals to increase the amount of waste we recycle. My home State, Rhode Island, was the first State to pass a mandatory recycling law. Cities and towns separate recyclables such as glass, paper, aluminum, and plastics for curbside collection. Today almost every town and city has some form of recycling program, but still less than 15 percent of the waste we can recycle is actually being recycled. Progress in recycling depends upon the cooperation of all of us who generate waste, and the commitment of industry and the government to expand the market for recycled products. One good example is the currently increased market for rubber from recycled tires used in asphalt for new roads.

The benefits of recycling also includes employment. According to one study, recycling 10,000 tons of material spawned 36 jobs, compared to 6 jobs created for landfilling the same amount. Some communities have formed working partnerships with workshops for the disabled, developed and administered job training partnerships, or otherwise found work for unemployed labor in recycling programs. In my own State, the Rhode Island Department of Environmental Management estimates that 300 jobs have been created by recycling.

What needs to be stressed here today, as we reintroduce legislation aimed at continuing to promote public participation in the battle against solid waste, is that the battle can be won. No drastic solutions are required, nor are big sacrifices sought. With relatively small changes in habits, educational initiatives, and reasonable laws we can overcome the crisis we now face. I urge my colleagues to help us move closer toward this goal, by joining us in redesignating April 15, 1992, as National Recycling Day.•

ADDITIONAL COSPONSORS

S. 316

At the request of Mr. CRAIG, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 316, a bill to provide for treatment of Federal pay in the same manner as non-Federal pay with respect to garnishment and similar legal process.

S. 710

At the request of Mr. GRASSLEY, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 710, a bill to amend the Internal Revenue Code of 1986 to provide a permanent extension for the issuance of first-time farmer bonds.

S. 765

At the request of Mr. BREAUX, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 765, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer social security taxes on cash tips.

S. 1738

At the request of Mr. DASCHLE, the names of the Senator from Arkansas [Mr. PRYOR], and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 1738, a bill to prohibit imports into the United States of meat products from the European Community until certain unfair trade barriers are removed, and for other purposes.

SENATE JOINT RESOLUTION 214

At the request of Mr. RIEGLE, the names of the Senator from Georgia [Mr. NUNN], the Senator from Wisconsin [Mr. KOHL], the Senator from South Dakota [Mr. DASCHLE], the Senator from Maine [Mr. COHEN], the Senator from Alabama [Mr. SHELBY], the Senator from Florida [Mr. MACK], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of Senate Joint Resolution 214, a joint resolution to designate May 16, 1992, as "National Awareness Week for Life-Saving Techniques."

SENATE JOINT RESOLUTION 236

At the request of Mr. D'AMATO, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Joint Resolution 236, a joint resolution designating the third week in September 1992 as "National Fragrance Week."

SENATE JOINT RESOLUTION 238

At the request of Mr. RIEGLE, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Joint Resolution 238, a joint resolution designating the week beginning September 21, 1992, as "National Senior Softball Week."

SENATE JOINT RESOLUTION 240

At the request of Mr. SPECTER, the names of the Senator from California [Mr. CRANSTON], the Senator from Hawaii [Mr. INOUYE], the Senator from

Massachusetts [Mr. KENNEDY], the Senator from Vermont [Mr. LEAHY], the Senator from Arizona [Mr. DECONCINI], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Georgia [Mr. NUNN], the Senator from Texas [Mr. BENTSEN], the Senator from North Dakota [Mr. CONRAD], the Senator from Michigan [Mr. LEVIN], the Senator from Oregon [Mr. PACKWOOD], the Senator from Vermont [Mr. JEFFORDS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. HATCH], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Missouri [Mr. DANFORTH] were added as cosponsors of Senate Joint Resolution 240, a joint resolution designating March 25, 1992 as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

SENATE JOINT RESOLUTION 241

At the request of Mr. SPECTER, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Nevada [Mr. REID], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of Senate Joint Resolution 241, designating October 1992 as "National Domestic Violence Awareness Month."

SENATE JOINT RESOLUTION 242

At the request of Mr. SPECTER, the names of the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from California [Mr. SEYMOUR] were added as cosponsors of Senate Joint Resolution 242, a joint resolution to designate the week of September 13, 1992, through September 19, 1992, as "National Rehabilitation Week."

SENATE RESOLUTION 184

At the request of Mr. WOFFORD, his name was added as a cosponsor of Senate Resolution 184, a resolution to recommend that medical health insurance plans provide coverage for periodic mammography screening services.

SENATE RESOLUTION 249

At the request of Mr. D'AMATO, the names of the Senator from Utah [Mr. HATCH], the Senator from Virginia [Mr. ROBB], and the Senator from Texas [Mr. GRAMM] were added as cosponsors of Senate Resolution 249, a resolution expressing the sense of the Senate that the United States should seek a final and conclusive account of the whereabouts and definitive fate of Raoul Wallenberg.

SENATE CONCURRENT RESOLUTION 89—RELATIVE TO THE U.N. CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

Mr. KERRY (for himself, Mr. LEVIN, Mr. GORE, Mr. COHEN, Mr. LEAHY, Mr. WELLSTONE, Mr. LIEBERMAN, Mr. BURDICK, Mr. AKAKA, Mr. HARKIN, and Mr. PELL) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 89

Whereas the health and stability of the environment of the Earth are threatened by global climatic change, depletion of the ozone layer, deforestation, the loss of biological diversity, increasing population, disposal of hazardous chemicals, marine pollution, the depletion and contamination of fresh water supplies, and other international environmental problems;

Whereas it is in the interest of the citizens of all nations to encourage environmentally sustainable development policies that allow for the preservation and renewal of natural resources;

Whereas the maintenance of global environmental health requires increased cooperation among nations, including new agreements and policies designed for the achievement of such maintenance;

Whereas the United Nations Conference on Environment and Development (hereinafter referred to as U.N.C.E.D.) will convene in June of 1992 in Rio de Janeiro, Brazil;

Whereas U.N.C.E.D. will provide a rare and important opportunity to make progress towards global environmental protection and sustainable development;

Whereas this Nation has sufficient power and influence to play a major role in determining the success or failure of U.N.C.E.D.; and

Whereas the well-being of present and future generations of this Nation depends on the preservation of a healthy and stable world environment: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should:

(1) play a strong and active role in cooperating with other governments to prepare for a successful United Nations Conference on Environment and Development (hereinafter referred to as U.N.C.E.D.);

(2) seek to develop specific and effective international agreements to enhance global environmental protection and encourage the use of sustainable development practices for signature at U.N.C.E.D.;

(3) support an international convention to reduce the threat of global climate change;

(4) support the development of a global strategy and action plan to conserve the biological diversity of plant and animal species;

(5) support principles of forestry that reduce the rate of global deforestation, increase worldwide forest cover, and provide for the international protection, growth, and sustainable use of mature forests;

(6) support policies and agreements aimed at encouraging the development of renewable sources of energy and energy-efficient technology and give priority to developing more efficient transportation systems;

(7) support the implementation of the Montreal Guidelines for Protection of Marine Environment Against Pollution from Land-Based Sources;

(8) support national and international programs to ensure the efficient and equitable use of fresh water resources and give priority to the promotion of water conservation and demand management programs;

(9) support the acceleration of international efforts to reduce the emission of chemicals that deplete the ozone layer and ultimately phase out the use of such chemicals;

(10) support efforts to strengthen the Basel Convention on the Control of Transboundary Shipments of Hazardous Wastes and Their Disposal (as offered for signature on March 23, 1991);

(11) support measures for financing U.N.C.E.D. agenda initiatives that integrate environmental projects and considerations with comprehensive developmental goals and meet the concerns of developing countries;

(12) support new multilateral measures to provide assistance for environmental protection activities (including appropriate grants, loans, technical assistance, training, and scientific research activities) in developing countries;

(13) support a process for consultation, on an international basis, that would bring together appropriate governmental officials and officials of multinational institutions for the purpose of identifying methods of conserving natural resources and reducing the debt burden of developing countries;

(14) support initiatives to strengthen the ability of the United Nations and agencies of such organization to assist the world community in developing and implementing agreements that serve the goals of U.N.C.E.D.;

(15) support the development of a schedule for the adoption by industrialized nations and the United Nations system of a reformed system of national accounting that reflects full environmental costs, as endorsed by the declaration of the Group of Seven of the Economic Summit in London; and

(16) support the international recognition of the right of the general public to be informed of, and participate in, decision making that affects the environment and the use of natural resources.

• Mr. KERRY. Mr. President, I rise today to submit a sense of the Congress resolution concerning the U.N. Conference on Environment and Development—also known as the Earth Summit, which is to be held in Rio de Janeiro this June. This concurrent resolution expresses the sense of Congress that the United States must play a strong leadership role in the preparations for the Earth Summit Conference and that it should go to the negotiations with constructive positions on the most important issues.

The Earth Summit Conference is an extraordinary event in the evolution of world politics and of mankind's concern for the longer term future of the planet. It comes just 20 years after the U.N. Conference on the Human Environment in Stockholm in 1972. The Conference was a turning point in raising awareness about pollution threats. The Conference led to the establishment of the U.N. Environment Programme and the creation of agencies in many countries with mandates similar to that of our Environmental Protection Agency. Twenty years later, nations are coming together again to further the global environmental agenda.

The participation in this Conference by most of the political leaders of the world reflects the high importance that many nations now attribute to achieving a new level of international cooperation to protect the global environment. It is increasingly understood by these political leaders that we cannot expect to bequeath the same quality of life that our generations have enjoyed to our children and grandchildren unless more efforts are made by the entire world community to reverse the trends toward degradation of

the environment and natural resources. We now know that this challenge, which was once seen as peripheral to the national interest of the United States and other major states, must be a high priority of our foreign policy.

It is also widely understood that there is no chance of reversing these trends without a new partnership between highly industrialized countries and the developing world. Whether the problem is climate change, deforestation, biological diversity loss, marine pollution, or ozone depletion, the roles of both the industrialized countries and the developing countries are crucial to any successful global agreement to address it.

The projections of developing country emissions of greenhouse gas emissions and CFC use over the next 25 years make it clear that the industrialized countries themselves cannot solve the problems of climate change and ozone depletion without the help of developing nations. By 2025 it is estimated that developing countries could be responsible for two-thirds of the total greenhouse gas emissions worldwide; as well as 40 percent of the world's fossil fuel consumption. The developing world could also be the source of 44 percent of global CFC use by the year 2008, unless its nations adopt substitutes. And the bulk of the world's biological diversity resides in the developing countries.

Given this environmental interdependence between the industrialized and developing countries, we must find ways to engage the developing countries in new forms of cooperation to save the Earth's vital support systems and natural resources from continued degradation. That is why the Earth Summit is so important to the American people, as it is to all mankind.

If the negotiations are successful, the Earth Summit will produce several types of agreements. First, two major new conventions aimed at reducing the threat of climate change and biological diversity, each of which is being negotiated separately from the U.N. Conference preparatory meeting, are both to be signed in Rio during the Conference. Second, the world's states will produce a charter containing ethical principles for a more sustainable Earth. They will also agree on a set of principles governing the conservation and management of the world's forests. Finally UNCED will produce a massive list of action programs on major environmental and developmental challenges that is being called Agenda 21—a reference to an agenda for global cooperation well into the 21st century. This will address issues such as marine pollution, depletion and contamination of fresh water, the disposal of hazardous chemicals, ozone depletion, and other environmental issues such as the need for population control programs.

Because of the importance of the Earth Summit to America, the United States must be in a clear leadership role in the preparatory negotiations. We still have the world's best scientific and technical capabilities, the world's largest economy, and the most extensive experience in environmental management. It is no accident that the rest of the world looks to the United States for leadership in the United Nations Conference.

But is the United States exercising that leadership? The record of U.S. participation in the conference thus far raises doubts that we have taken full advantage of our position in achieving environmentally sustainable worldwide policies.

I am concerned that the administration has not appeared to see the Conference as an opportunity to make major strides toward global environmental and development objectives. Rather it has appeared to be more concerned with limiting the cost to the United States of the Conference's actions and recommendations. Earlier, the U.S. delegation was directed by the White House to avoid presenting initiatives to the UNCED Preparatory Committee meetings that would incur potential future budgetary costs. Instead, the administration is advocating the reprogramming of budgetary resources from existing development programs. Such an injunction puts the United States in an unnecessarily negative posture toward this vitally important conference.

Furthermore, despite the fact that every other member of the Group of Seven industrialized countries has committed to sending its head of state to the Earth Summit, we still do not have a commitment from the President to attend the Conference. It is anticipated that between 60 and 80 heads of governments worldwide plan to be in Rio. Failure of President Bush to participate actively in this Conference would sadly squander the great opportunity the Conference offers the United States to try and regain some of our standing as an international leader on environmental issues.

Moreover, there have been disturbing reports that the White House views the Earth Summit Conference as a potential embarrassment to the administration, particularly because of the isolated U.S. position on climate change. Those who participated in and observed the most recent preparatory committee meeting of the Earth Summit have reported that the United States' role in the negotiations overall was more negative than positive, because of the restricted negotiating brief given the delegation.

The U.N. Conference offers us an opportunity to address some of the developmental and environmental problems to which the international community has failed to give sufficient attention up to now. Issues such as deforestation, population growth, global climate change, ozone depletion, the loss of biological diversity, marine pollution, contamination of fresh water supplies, disposal of hazardous chemicals, inefficient energy use, and debt burden, are all issues that must be addressed at UNCED.

With respect to forestry for example, the world has become increasingly aware in recent years of the threat to its primary forest, and especially its tropical forests. It is estimated that forests are disappearing at the rate of 1½ acres every second. The rapid loss of forests results in dozens of species becoming extinct every day. Forests cover less than 10 percent of the Earth's surface, and are believed to contain over 50 percent of the world's species and a majority of the endangered species. Among those threatened species are many which are needed to treat diseases.

The best known example is the rosy periwinkle, which is the source of alkaloids used to treat childhood leukemia and Hodgkin's disease with a significant success rate. The National Cancer Institute has awarded over $2.5 million in contracts for research institutions to collect tropical plant species to be tested for anticancer activity. The United States has a vital interest in preserving the untapped wealth of biological resources that is being lost with the forests.

Yet right now there is no global action program or agreement to slow this deforestation. The tropical forestry action plan launched 6 years ago has, by all accounts, done more to speed up deforestation than to slow it down.

The discussions about the world's forests at UNCED will focus on principles that could serve as the basis for an international agreement on those forests. Unfortunately, the negotiating text on forest principles that was produced at the last Preparatory Committee meeting is weak in a number of areas. It is critical the United States fight for a stronger document and support forestry principles that would slow the rate of global deforestation, increase worldwide forest cover, and provide for international protection, growth, and sustainable use of mature forests.

The United States has been reluctant to raise the issue of mature forests at a time when the spotted owl controversy in the Northwest is ongoing. But the United States is doing a great deal to protect mature forests, and should not be afraid to advocate such principles worldwide. This resolution urges that the United States set aside its reluctance on this issue in the interest of helping to save the world's forests. These principles are essential if the world is to save most of its remaining forests in the next century.

With regard to the global climate change convention, although it is being separately negotiated, it is perhaps the

single most important document that is to be signed at the Earth Summit. It is also closely intertwined with negotiations at the U.N. Conference. All reports from the preparatory meetings show that the United States has isolated itself on this issue with regard to international action to reduce the threat of climate change.

Mr. President, last year was the second hottest year in history according to scientific data. The American people are concerned about the increased risk of climate change which could cause our forests to wither, our agriculture production to shift rapidly northward in future decades, and sea levels to rise which would endanger our coastal populations and economies. Meanwhile, the United States remains the only highly industrialized country to refuse to agree to any targets or timetables for reducing greenhouse gas emissions. That posture not only undermines the prospect for a meaningful global agreement on climate but undermines our credibility in seeking to persuade developing countries to use energy more efficiently.

My resolution does not call for any specific negotiating posture on the part of the United States on climate change. It does however, call on the administration to negotiate an agreement that will actually reduce the risk of climate change rather than one that puts off to some unidentified future time, global action on the problem. It is simply not enough to call for more research or monitoring on climate change.

Furthermore, if the United States cannot succeed domestically in achieving the necessary reductions in greenhouse gases, we will ultimately lock ourselves out of the new emerging markets in developing countries for new energy technologies. Japan and Germany are both in the forefront of energy technologies domestically as well as in technology transfers to developing nations.

Our position on the global climate change convention has also undermined our positions on dealing with a host of other environment issues. Because the United States has refused to cooperate with other nations on this issue and, furthermore, adopt responsible domestic policies, the United States has found itself hamstrung in its ability to negotiate on other issues where we are willing to take responsible policy positions—such as coastal zone management and land-use planning and coastal protection. Because the United States has put up this wall on the issue of climate change, it appears as if developing countries are less willing to cooperate with the United States and other industrialized countries on energy, forests, and other global environmental issues.

One of the key components of any future international cooperation for sustainable development will have to be increasing the capacity of developing countries to make more efficient use of their energy resources. Developing countries must provide a higher standard of living for growing populations in future decades. That will virtually assure increased energy use. As I noted earlier it is estimated that, unless major efficiency gains are made, developing countries could be responsible for up to 40 percent of worldwide fossil fuel use by the year 2025. This is in comparison to 25 percent of the total today.

At the last Preparatory Committee meeting the U.S. delegation was reluctant to have global energy efficiency discussed at all, and it opposed a number of suggestions for international cooperation on the issue, including a U.N. Conference on Making Transportation Systems More Sustainable.

The resolution we are introducing today urges the United States to take a leadership role in proposing innovative ways of assisting developing nations to become more energy efficient, thus helping to reduce the threat of climate change while saving billions of dollars in energy costs.

Mr. President by taking a leadership role in energy efficiency the benefits to U.S. Companies in terms of jobs will be huge. The number of jobs that can be created at home, through technology transfers and spinoff technologies as new markets open up in developing nations, will be significant if the United States chooses to be a leader in these negotiations.

Mr. President the issue of ozone depletion is a critical area that must be addressed at the U.N. Conference. A report was issued a few months ago by the United Nations which showed that ozone depletion is proceeding some 200 percent faster than had been previously measured or predicted. Although the most dramatic thinning has been viewed over Antarctica with the Antarctic ozone hole, the report showed that the ozone layer over most of the United States has thinned between 2 and 4.5 percent since 1980.

This devastating news points to the need to accelerate the phaseout of CFC's and other ozone-depleting chemicals worldwide at a more rapid pace than was agreed to in the London Amendments to the Montreal Protocol. The U.S. Government should be a leader at UNCED in achieving this. The U.S. Government has the legal tools to accelerate this phaseout, as Congress passed a law to do so last year.

We have known for some time now that the consequences can be of damage to the ozone layer, which acts as a filter for ultraviolet rays. They include increased incidence of skin cancer, cataracts, harm to marine life, and damage to agricultural crops. In addition, ozone depletion contributes to the greenhouse effect.

What we were not aware of is how much and how quickly the ozone layer is diminishing. This is an area where the United States should lead. Through the continued support of the fund established to assist developing nations in meeting their obligation to limit the use of ozone depleting chemicals and an accelerated phaseout rate, we can lead in the reduction of the depletion of the ozone layer.

Mr. President, a key issue to be discussed at the final Preparatory Committee meeting is the debt burden of developing countries. There is no question that debt burdens have exerted strong pressures on the developing countries to use up their natural resources, including tropical forests, faster than is compatible with sound natural resource and environmental management. One of the ways of providing effective financial support for developing countries participating in a global agreement to protect and preserve forests is to provide debt relief.

Unfortunately an agreement in debt reduction is unlikely at UNCED. Financial ministries which are the key policymakers on debt management are absent from UNCED delegations including our own. However, the U.N. Conference could commit the industrialized nations to enter into consultations with multilateral institutions and heavily indebted developing countries after the Rio Conference to explore new ways to enhance environmental protection through reduction of debt.

This resolution does not impose any commitment on the United States except to examine the problem of debt in a new context. It also seeks to reassure developing nations, whose ability to manage their natural resources sustainably is strained by their debt burdens, that the issue will be addressed in the context of global environmental protection.

Finally, Mr. President, one of the most important issues that will make or break the U.N. Conference is how to finance the additional budgetary costs to developing nations that will result from the many action programs being negotiated at the Conference. The issue that will be sharply debated at the final Preparatory Committee in New York is whether developing countries will receive new and additional funding from the industrialized countries to cover costs. As I stated earlier, the United States has insisted that these costs can be met by reallocating existing development funds to environmental projects. Developing countries fear, however, that this will mean that they will be deprived of financial resources they had counted on to meet their developmental goals.

Mr. President, the recent change in White House Chief of Staff has made many believe that the negative attitude toward the aims of UNCED that

had been so evident there may now be replaced by a more constructive attitude toward the Conference. We are introducing this resolution today to urge the President to take full advantage of the opportunities that UNCED presents.

The timeframe between now and UNCED is limited and the amount of work that needs to be accomplished to make the Conference meaningful is tremendous. The role that the United States plays in the meetings leading up to the Conference and the Conference itself will be critical to its success. To ensure a successful Earth Summit, I urge the President to make UNCED an immediate priority and to exert the necessary leadership at both the preparatory meetings and the Conference that is outlined in this resolution. Such action will move us towards an economically prosperous and environmentally sustainable world.●

SENATE RESOLUTION 254—RELATIVE TO THE RECOGNITION OF CROATIA AND SLOVENIA

Mr. SPECTER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 254

Whereas the democratic Republics of Croatia and Slovenia are under the threat of occupation and violent siege by the oppressive Communist government of Yugoslavia;

Whereas both Croatia and Slovenia have governments that were democratically elected in the spring of 1990 on independence platforms expressing a commitment to democracy and free enterprise;

Whereas the Yugoslav Republics of Croatia and Slovenia declared independence on June 25, 1991, in accordance to the Universal Declaration of Human Rights in the United Nations Charter and the principles of self-determination under international law;

Whereas in declaring independence, the democratic governments of Croatia and Slovenia were exercising their right to secede set forth in the first sentence of the Yugoslav constitution;

Whereas it is in the United States' interest to support the efforts toward freedom, self-determination and political pluralism by the Republics of Croatia and Slovenia;

Whereas the Republics of Croatia and Slovenia are committed to a peaceful transition to full democracy;

Whereas as a condition to recognition, all ethnic minority rights of the Serbians living inside the Republics of Croatia and Slovenia should be fully respected;

Whereas recognition of Croatia and Slovenia will deter further aggression and contribute toward the peaceful resolution of the Yugoslav question relating to the other former Yugoslav Republics including Serbia, Montenegro, Vojvodina, Kosovo, Macedonia, and Bosnia Hercegovina;

Resolved, That it is the sense of the Senate that the United States should immediately recognize the sovereign Republics of Croatia and Slovenia.

● Mr. SPECTER. Mr. President, today I submit a resolution for the immediate recognition of the former Yugoslav Republics of Croatia and Slovenia. On January 15, 1992, the European Community extended formal recognition to these Republics and no fewer than 21 nations have diplomatic relations with them. The United States should do likewise.

The United States can do no good by delaying recognition any longer. De facto, Croatia is already an independent political entity exercising the powers of a sovereign state. The Croatian people overwhelmingly supported independence in a referendum on that question and continue to support it with their blood and their children's blood. Croatia has actively participated in the European Community peace initiative, has met the EC criteria for recognition, and has adopted a constitution that guarantees minority rights. To delay recognition further can only lead observers to wonder.

If the United States continues to withhold recognition, how can we say that we are committed to peace and democracy? We must make it clear that this country continues to stand for the ideals which made us a great nation and a symbol for others. Accordingly, I urge my colleagues to support this resolution.●

AMENDMENTS SUBMITTED

ST. CROIX, VIRGIN ISLANDS HISTORICAL PARK AND ECOLOGICAL PRESERVE ACT

JOHNSTON AMENDMENT NO. 1523

Mr. MITCHELL (for Mr. JOHNSTON) proposed an amendment to the bill (H.R. 2927) to provide for the establishment of the St. Croix, Virgin Islands Historical Park and Ecological Preserve, and for other purposes; as follows:

1. Insert after the enabling clause: "SECTION 1. SHORT TITLE. This Act may be cited as the "Omnibus Insular Areas Act of 1992".".

2. In section 202, strike the existing text and insert in lieu thereof the following:

"There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to—

(1) reconstruct essential public facilities damaged by disasters in the insular areas that occurred prior to the date of the enactment of this Act; and

(2) enhance the survivability of essential public facilities in the event of disasters in the insular areas,

except that with respect to the disaster declared by the President in the case of Hurricane Hugo, September 1989, amounts for any fiscal year shall not exceed 25 percent of the estimated aggregate amount of grants to be made under sections 403 and 406 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172) for such disaster. Such sums shall remain available until expended.".

3. In subsection 203(a), strike the phrase "the President shall assess," and insert in lieu thereof, "the President, acting through the Director of the Federal Emergency Management Agency, shall assess,".

4. In subsection 203(b), strike the phrase, "the Secretary shall submit", and insert in lieu thereof, "the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall submit"

5. In section 204, strike all up to and including the phrase "(42 U.S.C. 4121 et seq.) for" and insert in lieu thereof, "The total of contributions under the last sentence of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) for the".

6. In section 301 strike the word "wastewater" and insert in lieu thereof "wastewater" each place it occurs.

7. In subsection 301(b), paragraphs (2) and (4), strike the phrase "an assessment and recommendations on" and insert in lieu thereof, "an assessment of, and recommendations regarding,"; and in paragraph (3) strike the phrase "an assessment and recommendations for" and insert in lieu thereof, "an assessment of, and recommendations regarding,".

8. In section 305, strike the existing text and insert in lieu thereof the following:

"Section 9(a) of Public Law 99-396 is amended by striking out the period at the end and inserting in lieu thereof the following: "and in subsection (b), by striking out 'and Micronesia' each place it appears and inserting in lieu thereof 'Micronesia, and the Northern Mariana Islands' and by striking out 'and to Micronesia' and inserting in lieu thereof ', Micronesia, and to the Northern Mariana Islands'.".

SERVICE ON THE UNITED STATES SENTENCING COMMISSION

BIDEN (AND THURMOND) AMENDMENT NO. 1524

Mr. MITCHELL (for Mr. BIDEN, for himself and Mr. THURMOND) proposed an amendment to the bill (S. 1963) to amend section 992 of title 28, United States Code, to provide a member of the United States Sentencing Commission whose term has expired may continue to serve until a successor is appointed or until the expiration of the next session of the Congress, as follows:

Strike section 2 of the bill.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Friday, January 31, 1992, at 10 a.m., possibility of an afternoon session, to receive testimony on the amended defense authorization request for fiscal year 1993 and the future year defense plan.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government

Management, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Friday, January 31, 1992, at 9 a.m., to hold a hearing on "Stealth Compensation of Corporate Executives: Federal Treatment of Stock Options."

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

ADDITIONAL STATEMENTS

REFLECTIONS ON THE STATE OF THE UNION

• Mr. WOFFORD. Mr. President, for most of the past year, President Bush refused to take any action to get our economy off dead center, create new jobs, invest in our young people and our communities, or confront the skyrocketing costs of health care in our country.

This week, after more than 2 months of buildup, he put his plans—or at least some of his plans—on the table. For 3 years, his chair's been empty when it comes to the domestic problems pressing down on American families.

We welcome him to the table. We welcome his call for action—because our country cannot move forward without a President ready to lead.

However late he is, this is not the time to look back at the President's lost opportunities. This is not the time for politics as usual. This is the time for the Congress and the President to reach out to each other. This is the time for us to do everything in our power to agree on practical measures that help the American people.

I urge that we in this body consider with open minds the President's specific proposals and support all of them that make sense. And I urge that we ask the President to consider with an open mind the proposals we have been making over these many months to get our economy moving again.

Together, let us put together the best possible combined action plan, and as a first step let us accept the President's date of March 20. Let us move with the same commitment and sense of urgency we demonstrate when we deal with emergencies overseas. Because we have human emergencies to deal with here at home.

Here are some of the President's proposals which I support:

First, extension of unemployment benefits: After repeatedly blocking extensions last summer, the President at last recognizes that millions of our people continue to hurt, to lose jobs, and to face the imminent prospect of a cut off in benefits. Extending unemployment benefits was the first bill I fought for in this Chamber. I am sorry that the sad state of our economy requires us to continue that effort. But it does. So let us act in the next 10 days, before unemployment benefits begin to run out for hundreds of thousands of our fellow citizens.

Second, expansion of housing opportunities: A key part of the American dream is for every family to own a home of its own, and nothing would help bring our economy out of this recession better or faster than action to promote the building and purchase of homes. So let us act to allow first-time home buyers to withdraw from their IRA's without penalty. Let us modify passive loss rules. Let us extend the Mortgage Revenue Bond Program and the low-income housing tax credit.

Third, expansion of Head Start: Let us invest in future generations by increasing the funding for Head Start. I was personally involved in some of the original planning of Head Start in the 1960's, and for many years have urged that Head Start be expanded to make room for all who need it. The time has come to assure access for everyone who is eligible.

Fourth, deductibility for interest on college loans: Let us invest in the education of this generation of college students by reinstating the deductibility of student loan interest. I have been cosponsoring legislation to do just that—and much more to make it possible for all qualified young people to go to college. In the meantime, restoring deductibility is a small, but useful and immediate step we can take to counteract the rising costs of college and help the children of middle-class families get the degree that is so important to their success in life.

Fifth, extension of the research and development tax credit: This is another worthwhile investment in our future competitiveness which I have been urging, along with legislation I have been cosponsoring to provide more far-reaching support of research and development by American industry.

Sixth, acceleration of capital investment in existing programs: Congress and the administration should work together with State and local governments to cut redtape and expedite the application of already appropriated funds, especially the money allocated for highways, bridges, and mass transit. This would create immediate jobs in the construction industry and result in other jobs in related businesses. These public investments not only create jobs now, they lay the essential foundation we need for private investment in the future. We passed the transportation bill last year. Fast action to get those new resources applied to construction and jobs is the least we should expect, but we need the administration's full cooperation.

Seventh, tax relief and economic stimulus: The President's tax proposals show a willingness to inject some money into our economy through lower taxes. I support the basic premise. The change he is suggesting on withholding rules may help a little in the short term. But it does nothing to bring real equity to our tax system.

The President has once again proposed reducing capital gains taxes. But for a capital gains cut to be justified as part of an economic recovery plan, it must be targeted to encourage real, job-creating investment, not the short-term speculation and paper profits we had in the 1980's. We have to make certain that a cut in the capital gains tax helps our whole economy, not simply the wealthy.

I hope that the President will work with the Congress to devise a tax package that will accomplish relief for individuals and middle-income families, as well as the needed stimulus for our economy.

Eighth, savings in military spending, invested in domestic needs: The President recognized the need to reduce military spending in line with revolutionary changes in the world. Pending review by the Armed Services Committees of Congress, I welcome the reductions proposed by the President. But he sounded as if the savings outlined in his address were the end of the process. This would make no sense.

On the contrary, the process of hard reappraisal of our strategic military needs is just beginning. Acting soon to make the reductions proposed by the President is an important first step in that process. Along with this must come action to remove the self-imposed wall that prevents military savings from being invested in our domestic needs. Then we must develop a program to convert our cold war economy to a postcold war world and rearm our victorious defense workers and industries to build economic and not just military strength.

I hope there will be other steps we can agree to take by March 20. Because when we add up all these points and all the other proposals in the President's address, the whole is no greater than the sum of the parts. Taken together, it is not a truly comprehensive strategy to get us out of the recession and assure long-term growth.

Indeed, when it comes to longer term challenges the President basically said "stay the course." He did not establish deadlines for further action. He ignored a decade of failed administration policies that created many of today's problems.

And every day those problems continue to mount. Nothing speaks more loudly about the state of the union than the announcement this week by Bethlehem Steel that it will sell off or close two major facilities in Pennsylvania, in Johnstown, and in Steelton. If those mills do close, it will mean thousands more Pennsylvania jobs—American jobs—lost to foreign competition.

We are going to fight as hard as we can to keep those jobs where they belong, in Pennsylvania. But succeeding

will not be easy without a President and an administration committed to the kind of fair trade laws and investment in American workers we need to maintain good jobs. Not minimum wage, fast food jobs, but good manufacturing jobs that support families.

We did not hear a strategy from the President that will help us avoid what's been happening for the past 10 years and what happened again to Bethlehem Steel in Pennsylvania.

On health care, when the President says that "we must bring costs under control, preserve quality, preserve choice, and reduce the people's daily worry about health insurance," it sounds like he got the message from Pennsylvania this past November 5.

Unfortunately, President Bush was not able to propose his own health care plan Tuesday night. According to the press, his own party in Congress told him his draft proposals just did not do enough to solve the problem. Instead, he fell back on tinkering with the status quo. And without putting his own plan on the table, he misleadingly attacked Democrat proposals which would move us toward real reform, cost control and universal coverage.

The President still does not get it. He is offering Band-Aids when what we really need is major surgery on our Nation's health care system.

He made a bow to the fundamental problem that worries every American—skyrocketing costs that threaten to price each of us out of the health care system. But we do not hear one suggestion on how to corral the stampeding herd that is driving these costs out of control.

Nor did I hear any pledge that this President is willing to guarantee a right that ought to be fundamental for every American—the right to see a doctor if you get sick.

The President's only health care proposal relies on tax credits. But it does not make sense to give complicated and confusing tax credit to help people continue to feed an out-of-control health care system—or to ask people to cash in their IRA savings to pay for these rising costs. Our job is to change the system to control these costs that are undermining our economy and bankrupting our families.

What's more, tinkering with tax credits won't even help many of the people who need it. It is estimated that 29 million Americans will still lack health insurance under the rosiest assumptions about the President's approach.

It also will not keep people from getting cutoff or cutout when they change jobs or if they have a preexisting condition.

And it will not give individual consumers the kind of power they would need to get a fair deal from insurance companies.

Nevertheless, it is a significant step for the President, at long last, to even promise a proposal, however inadequate its sketchy outline appears to be.

We all know the iron is hot now for real action on our health care crisis. The harsh logic of events—the rising costs and the increasing numbers of Americans who are one illness, one accident, one pink slip away from disaster—is going to keep pressing all of us forward.

Our election in Pennsylvania proved that the people are ready for real action. And I don't think they will be satisfied until we hammer at that hot iron and mold a truly comprehensive reform.

In other areas, too, the President unfortunately continues to reflect the same kind of limited vision and stubborn refusal to let go of the failed policies of the last decade.

On taxes, the President must have depended for advice on his friends in Kennebunkport or the multimillion dollar CEO's who went with him to Japan. A broadbased capital gains tax cut may help them resume the speculation that caused so much harm in the 1980's. But there's no benefit for the working people whose incomes have stagnated and whose taxes have grown over the past decade. The time has come to reverse that trend and send a signal that our Government is committed to a tax system and investment policies which help and encourage all Americans, not only those at the top.

Tuesday night, the President said that we are the leader of the world. But, if the Persian Gulf showed just how true that may be of our military might, his trip to Japan made clear that leadership is challenged as never before on the economic front which is now the crucial battleground. Our people are suffering because we can no longer exhibit the same economic leadership which allowed our Nation to offer not only the promise of democracy, but also the opportunity for a better life.

I hope we can work with the President to achieve practical consensus that will let us take action. That is what the people want. The message they sent from Pennsylvania is that they are tired of the finger pointing. They are tired of the gridlock that had kept Washington from facing up to the problems they experienced every day. They want action.

I hope we will take the best of what President Bush had to offer and put it together with our own best efforts, and jointly hammer out an American plan. A plan that responds to a world that has been turned upside down by turning America's priorities right sideup. A plan for our economy and for national health care that will once more turn that dream of opportunity for a better life into a reality for every American. •

USIA SENDS BOB BERG QUARTET ABROAD

• Mr. D'AMATO. Mr. President, I am proud to have this opportunity today to pay tribute to Bob Berg and the Bob Berg Quartet for their many achievements, but most especially for their most recent accomplishment. The Bob Berg Quartet has been selected by the Arts America Program of The U.S. Information Agency to travel abroad and bring American music to areas of the world where few American artists or their works appear commercially. Each year USIA sends a limited number of performing arts presentations and fine arts exhibitions abroad to promote a better understanding of the United States and its culture. It is a great honor to be among these select few. I am proud that a jazz quartet from New York is among the group of artists that have been chosen to represent America abroad.

The Bob Berg Quartet will be on tour overseas from January 16 through February 19, 1992. The group will appear in Kingston, Santo Domingo, St. Lucia, St. John's, Caracas, San Jose, San Salvador, Santa Ana, Tegucigalpa, San Pedro Sula, and Belize City. The tour has been coordinated by USIS staff members at the embassy in each country.

Bob Berg was born and raised in Brooklyn, NY. He studied music at the High School for the Performing Arts and then at Juilliard. He went on to play with organist Jack McDuff, and legendary pianists Horace Silver and Cedar Walton. In 1984 he joined the Miles Davis Band which began his exposure to wider audiences. He left Miles Davis in March 1987 and began working with other jazz artists. Bob Berg has established himself as one of the prominent tenor saxophonists of the day.

Other members of the band include David Kokoski on piano, Dennis Chambers on drums, and James Gerus on bass. David Kokoski learned to play piano from his father and went on to graduate from the Berklee School of Music in Boston. He began his professional performing career in the clubs of Boston, then went on to New York. It was there that he met up with Bob Berg. Dennis Chambers is truly an international performer and has recorded with many diverse artists. His diverse drumming style allows him to be both a hot fusion and tasteful mainstream musician. James Gerus originates from Hampton, VA and received his music degree from Virginia Commonwealth Unversity. At Virginia Commonwealth he studied bass playing and performance. He has performed with many notable jazz musicians.

The music of the Bob Berg Quartet is electric and exciting with great emotional depth. Their brand of jazz fusion is very hot. It is with great pride that I say congratulations and thank you to

the Bob Berg Quartet for all of their contributions and most especially for representing the American arts and culture so well.•

A PARTNERSHIP THAT INVESTS IN THE FUTURE

• Mr. DECONCINI. Mr. President, when the American people are asked to name what issues are of most concern to them, education invariably appears near the top of their list. No one disagrees that education is critically important. It determines our children's future, and it determines the future of this country.

Ben Franklin thought education was just about the best investment there is. "If a man empties his purse into his head," Franklin said, "no man can take it away from him. An investment in knowledge always pays the best interest."

As a nation we have been rocked by a rising tide of reports all reinforcing that our system of education is in crisis. Our students lag behind those of other countries in science and math. One million teenagers cannot read above the third grade level. Three out of four young Americans cannot locate the Persian Gulf on a map.

There is overwhelming consensus in this country that we must address this crisis and treat education as the investment that it is. After all, much of our children's confidence and skills for the future start in school. Much of our ability to build a bridge, to compete with Japan, to reach for the stars begins in the classroom.

The recommendations we are hearing all stress the responsibility of educators and government to tackle the education crisis. There is an emphasis on accountability, on holding teachers, students, and schools to standards of quality in education.

But educators do not have all of the answers, and neither does government. I believe the best answers come when we work together: schools, parents, government, and communities. A project in Paradise Valley, AZ, is proof of my point.

The Desert Cove Business Partnership is a cooperative effort between Desert Cove Elementary School and members of the business community. It began with a few concerned parents, a principal, Dr. Robert McClarin, and a handful of teachers all dedicated to a common goal: to improve the education at Desert Cove.

The school soon enlisted the help of D.L. Withers Construction, Inc., a commercial building contractor in Arizona, and Roberts/Dinsmore Associates, an architectural firm, both of which are engaged in constructing a new middle school in the area. Together they have formed a partnership: Architects and contractors will be coming into classrooms to discuss room design, construction technique, and the tools of the trade. Teachers will enhance their art and math courses to incorporate this building project. Students will go on field trips to the worksite; they will learn how to read blueprints; they will discover how pipes are installed and roofs are laid. They will see, firsthand, the building of a school from the ground up. And some, perhaps, will make a decision on a possible future career.

Desert Cove, D.L. Withers and Roberts/Dinsmore are an outstanding example of what a creative partnership can accomplish. Their example speaks to all generations of what this Nation can do by being excited about quality education and what it can mean to our future.•

THE SESQUICENTENNIAL OF THE OREGON TRAIL

• Mr. PACKWOOD. Mr. President, as we approach the sesquicentennial of the Oregon Trail, I would like to commend those hardy souls who made the trek along the Oregon Trail, who must have encountered incredible obstacles, as well as seen a great number of amazing sights, animals, and other anomalies along the way. This is best summed up by a passage from the diary of Octavius T. Howe, a pioneer who participated in a migration during the 1840's, and it reads as follows:

> Those who crossed the plains, though they lived beyond the age allotted to man, never forgot the ungratified thirst, the intense heat and bitter cold, the craving hunger and utter physical exhaustion of the trail, and the rude crosses which marked the last resting places of loved companions. But there was another side. Neither would they ever forget the level prairie, covered with lush grass and dotted with larkspur, verbena, lupin, and geranium; the glorious sunrise in the mountains; the camp fire of buffalo chips at night, the last pipe before bedtime and the pure, sweet air of the desert. True they had suffered, but the satisfaction of deeds accomplished and difficulties overcome more than compensated and made the overland passage a thing never to be forgotten and a life-long pleasure in remembrance.

Mr. President, in 1843, a move like this would be a phenomenal achievement for those who decided to undertake it. I wonder if these people knew just what they were getting into, and if they did, would still have done it. A move like this would mean first of all uprooting your family, moving away from your relatives and friends and the community that you had known all your life. It would mean trading your home for a prairie schooner, better known as a covered wagon. It would mean giving up many of your favorite possessions, like the dining room table Aunt Martha gave you, or the grandfather clock handed down through generations of your family, for those things that would fit into the covered wagon. And, do not forget to put in an axe and a rifle, for without those tools, a person on the frontier would not be able to feed their family or clear land for a new farm. It would mean being on the road for anywhere from 4 to 6 months, and most of that time you would probably be walking so that you could save the strength of the animals that were pulling your wagon. That is if you had a wagon. Many people made the trip without that luxury, they walked or rode horseback. As you can imagine, walking from Independence, MO, where the wagon trains met for the migration along the Oregon trail, to Baker City, OR, the current-day city near the end of the trail is no mean feat.

These pioneers followed a harsh regimen each day, for they had one rule, "Keep moving." They stopped for a day or two at such places as Fort Laramie or Fort Bridger to repair equipment and buy supplies, but usually the wagons stopped only at noon and at nightfall. By doing this, the wagons could travel 15 to 20 miles a day. Imagine that, when today you can go from Oregon to London in 1 day! One modern day problem that they did encounter was rush hour traffic. It turns out that the Oregon Trail was crowded with wagon trains, army units, missionaries, hunting parties, traders, and even sightseeing tours. Some travelers complained that, just like today, they had to stop early to find a good campsite ahead of the crowd.

The Oregon Trail wound 2,000 miles through prairies and deserts, and across mountains and hills that must have seemed as high as the mountains the travelers had known back East. After gathering at Independence, these early settlers followed the Oregon trail as it ran in a northwesterly course to Fort Kearny, NE, then continued on through Nebraska, Wyoming, Idaho, and ultimately to Oregon. Imagine the joy these travelers felt as their wagons came rolling off Holcomb Hill near present-day Baker City, OR to the end of their journey, for they had made it, and were about to embark on a new life for themselves and their families in beautiful Oregon territory.

Mr. President, I am sure that these pioneers who traveled the Oregon Trail thought that they were just ordinary, hard-working blokes, but let me assure you that they were not. They were the backbone of the movement to settle the Northwest. They are the reason that my home town, the great city of Portland, exists today. They are the ancestors of those same conscientious Oregonians who contribute so much even now to their country, whether they work in the timber industry or serve in our Armed Forces. I would like to applaud them all today for making our country into the great Nation that it now is as we near the sesquicentennial anniversary of the Oregon Trail.•

ST. CROIX, VIRGIN ISLANDS HISTORICAL PARK AND ECOLOGICAL PRESERVE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 374, H.R. 2927, the Omnibus Insular Areas Act of 1992.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 2927) to provide for the establishment of the St. Croix, Virgin Islands Historical Park and Ecological Preserve, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

TITLE I—SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE AT ST. CROIX, VIRGIN ISLANDS

SECTION 101. SHORT TITLE.

This title may be cited as the "Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands, Act of 1991".

SEC. 102 FINDINGS.

The Congress finds that the Salt River Bay area of the north central coast of St. Croix, United States Virgin Islands—

(1) has been inhabited, possibly as far back as 2000 BC, and encompasses all major cultural periods in the United States Virgin Islands;

(2) contains the only ceremonial ball court ever discovered in the Lesser Antilles, village middens, and burial grounds which can provide evidence for the interpretation of Caribbean life prior to Columbus;

(3) is the only known site where members of the Columbus expeditions set foot on what is now United States territory;

(4) was a focal point of various European attempts to colonize the area during the post-Columbian period and contains sites of Spanish, French, Dutch, English, and Danish settlements, including Fort Sale, one of the few remaining earthwork fortifications in the Western Hemisphere;

(5) presents an outstanding opportunity to preserve and interpret Caribbean history and culture, including the impact of European exploration and settlement;

(6) has been a national landmark since February 1980 and has been nominated for acquisition as a nationally significant wildlife habitat;

(7) contains the largest remaining mangrove forest in the United States Virgin Islands and a variety of tropical marine and terrestrial ecosystems which should be preserved and kept unimpaired for the benefit of present and future generations; and

(8) is worthy of a comprehensive preservation effort that should be carried out in partnership between the Federal Government and the Government of the United States Virgin Islands.

SEC. 103. SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE AT ST. CROIX, VIRGIN ISLANDS.

(a) ESTABLISHMENT.—In order to preserve, protect, and interpret for the benefit of present and future generations certain nationally significant historical, cultural, and natural sites and resources in the Virgin Islands, there is established the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands (hereafter in this Act referred to as the "park").

(b) AREA INCLUDED.—The park shall consist of approximately 912 acres of land, waters, submerged lands, and interests therein within the area generally depicted on the map entitled "Salt River Study Area—Alternative 'C' in the "Alternatives Study and Environmental Assessment for the Columbus Landing Site, St. Croix, U.S. Virgin Islands", prepared by the National Park Service and dated June 1990. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior, and the Offices of the Lieutenant Governor of St. Thomas and St. Croix, Virgin Islands.

SEC. 104. ACQUISITION OF LAND.

(a) GENERAL AUTHORITY.—The Secretary of the Interior (hereafter in this title referred to as the "Secretary") may acquire land and interests in land within the boundaries of the park by donation, purchase with donated or appropriated funds, or exchange. Nothing in this section shall be construed to prohibit the Government of the United States Virgin Islands from acquiring land or interest in land within the boundaries of the park.

(b) LIMITATIONS OF AUTHORITY.—Lands, and interests in lands, within the boundaries of the park which are owned by the United States Virgin Islands, or any political subdivision thereof, may be acquired only by donation or exchange. No lands, or interests therein, containing dwellings lying within the park boundary as of July 1, 1991, may be acquired without the consent of the owner, unless the Secretary determines, after consultation with the Government of the United States Virgin Islands, that the land is being developed or proposed to be developed in a manner which is detrimental to the natural, scenic, historic, and other values for which the park was established.

SEC. 105. ADMINISTRATION.

(a) IN GENERAL.—The park shall be administered in accordance with this title and with the provisions of law generally applicable to units of the national park system, including, but not limited to, the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467). In the case of any conflict between the provisions of this Act and such generally applicable provisions of law, the provisions of this Act shall govern.

(b) COOPERATIVE AGREEMENTS.—The Secretary, after consulting with the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands, Commission (hereafter in this Act referred to as the "Commission") established by section 106 of this title, is authorized to enter into cooperative agreements with the United States Virgin Islands, or any political subdivision thereof, for the management of the park and for other purposes.

(c) GENERAL MANAGEMENT PLAN.—(1) Not later than 3 years after the date funds are made available for this subsection, the Secretary, in consultation with the Commission, and with public involvement, shall develop and submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives a general management plan for the park. The general management plan shall describe the appropriate protection, management, uses, and development of the park consistent with the purposes of this title.

(2) The general management plan shall include, but not be limited to, the following:

(A) Plans for implementation of a continuing program of interpretation and visitor education about the resources and values of the park.

(B) Proposals for visitor use facilities to be developed for the park.

(C) Plans for management of the natural and cultural resources of the park, with particular emphasis on the preservation of both the cultural and natural resources and long-term scientific study of terrestrial, marine, and archeological resources, giving high priority to the enforcement of the provisions of the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) and the National Historic Preservation Act (16 U.S.C. 470 et seq.) within the park. The natural and cultural resources management plans shall be prepared in consultation with the Virgin Island Division of Archeology and Historic Preservation.

(D) Proposals for assessing the potential operation and supply of park concessions by qualified Virgin Islands-owned businesses.

(E) Plans for the training of personnel in accordance with subsection (e).

(d) TRAINING ASSISTANCE.—During the 10-year period beginning on the date of enactment of this title, the Secretary shall, subject to appropriations, provide the funds for the employees of the Government of the United States Virgin Islands directly engaged in the joint management of the park and shall implement, in consultation with the Government of the United States Virgin Islands, a program under which Virgin Islands citizens may be trained in all phases of park operations and management: *Provided, however*, That is no event shall the Secretary provide more than 50 percent of the funding for such purposes. A primary objective of the program shall be to train employees in the skills necessary for operating and managing a Virgin Islands Territorial Park System.

SEC. 106. SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE AT ST. CROIX, VIRGIN ISLANDS, COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands, Commission.

(d) DUTIES.—The Commission shall—

(1) make recommendations on how all lands and waters within the boundaries of the park can be jointly managed by the governments of the United States Virgin Islands and the United States in accordance with this title;

(2) consult with the Secretary on the development of the general management plan required by section 105 of this title; and

(3) provide advice and recommendations to the Government of the United States Virgin Islands, upon request of the Government of the United States Virgin Islands.

(c) MEMBERSHIP.—The Commission shall be composed of 10 members, as follows:

(1) The Governor of the United States Virgin Islands, or the designee of the Governor.

(2) The Secretary, or the designee of the Secretary.

(3) Four members appointed by the Secretary.

(4) Four members appointed by the Secretary from a list provided by the Governor of the United States Virgin Islands, at least

one of whom shall be a member of the Legislature of the United States Virgin Islands.

Initial appointments made under this subsection shall be made within 120 days after the date of enactment of this title, except that the appointments made under paragraph (4) shall be made within 120 days after the date on which the Secretary receives such list.

(d) TERMS.—The members appointed under paragraphs (3) and (4) shall be appointed for terms of 4 years. A member of the Commission appointed for a definite term may serve after the expiration of the member's term until a successor is appointed. A vacancy in the Commission shall be filled in the same manner in which the original appointment was made and shall be filled within 60 days after the expiration of the term.

(e) CHAIR.—The Chair of the Commission shall alternate annually between the Secretary and the Governor of the United States Virgin Islands. All other officers of the Commission shall be elected by a majority of the members of the Commission to serve for terms established by the Commission.

(f) MEETINGS.—The Commission shall meet on a regular basis or at the call of the Chair. Notice of meetings and agenda shall be published in the Federal Register and local newspapers having a distribution that generally covers the United States Virgin Islands. Commission meetings shall be held at locations and in such a manner as to ensure adequate public involvement.

(g) EXPENSES.—Members of the Commission shall serve without compensation as such, but the Secretary may pay each member of the Commission travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5, United States Code. Members of the Commission who are full-time officers or employees of the United States or the Virgin Islands Government may not receive additional pay, allowances, or benefits by reason of their service on the Commission. The Secretary shall provide the Commission with a budget for travel expenses and staff, and guidelines by which expenditures shall be accounted for.

(h) FEDERAL ADVISORY COMMITTEE ACT.—Except with respect to the provisions of section 14(b) of the Federal Advisory Committee Act, and except as otherwise provided in this title, the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Commission.

(i) TERMINATION.—The Commission shall terminate 10 years after the date of enactment of this title unless the Secretary determines that it is necessary to continue consulting with the Commission in carrying out the purposes of this title.

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE II—INSULAR AREAS DISASTER SURVIVAL AND RECOVERY

SEC. 201 DEFINITIONS.

As used in this title—

(1) the term "insular area" means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands;

(2) the term "disaster" means a declaration of a major disaster by the President after September 1, 1989, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 202. AUTHORIZATION.

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to construct facilities to protect public health and safety and to enhance the survivability of essential infrastructure in the event of disasters in the insular areas. Such sums shall remain available until expended.

SEC. 203. TECHNICAL ASSISTANCE.

(A) Upon the declaration by the President of a disaster in an insular area, the President shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to assess damage; coordinate activities with Federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks any of these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.

(b) One year following the declaration by the President of a disaster in an insular area, the Secretary shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs a report on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

SEC. 204. HAZARD MITIGATION.

Upon determination by the President, the total of contributions under section 404 of the Disaster Relief and Emergency Assistance Amendments of 1988 (42 U.S.C. 4121 et seq.) for insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 403, 406, 407, 408, and 411 of such Act for any disaster: *Provided*, That the President shall require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 406 of such Act for any disaster.

SEC. 205. TECHNICAL AMENDMENT.

Paragraphs (3) and (4) of section 102 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122) are each amended by inserting after "American Samoa," the following: "The Northern Mariana Islands,".

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. AMERICAN SAMOA WATER AND POWER STUDY.

(a) The Secretary of the Interior shall undertake a comprehensive study, or as appropriate review and update existing studies, to determine the current and long-term water, power, and waste-water needs of American Samoa. Such study shall be conducted in consultation with the American Samoa government, and in consultation with those Federal agencies which have recent experience with the water, power and waste-water needs of American Samoa.

(b) The Secretary of the Interior shall report the results of this study to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, before December 31, 1992. The report shall include:

(1) an assessment of the water, power and waste-water needs of American Samoa both currently, and for the year 2000;

(2) an assessment and recommendations on how these needs can be met;

(3) an assessment and recommendations for any additional legal authority or funding which may be necessary to meet these needs; and

(4) an assessment and recommendations on the respective roles of the Federal and American Samoa governments in meeting these needs.

SEC. 302. INSULAR GOVERNMENT PURCHASES.

The Governments of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are authorized to make purchases through the General Services Administration.

SEC. 303. FREELY ASSOCIATED STATE CARRIER.

(a) In furtherance of the objectives of the Compact of Free Association Act of 1985 (Public Law 99-239) and notwithstanding any other provision of law, a Freely Associated State Air Carrier shall not be precluded from providing transportation, between a place in the United States and a place in a state in free association with the United States or between two places in such a freely associated state, by air or persons (and their personal effects) and property procured, contracted for, or otherwise obtained by any executive department or other agency or instrumentality of the United States for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted, or utilized by or otherwise established for the account of the United States, or shall be furnished to or for the account of any foreign nation, or any international agency, or other organization of whatever nationality, without provisions for reimbursement.

(b) The term "Freely Associated State Air Carrier" shall apply exclusively to a carrier referred to in Article IX(5)(b) of the Federal Programs and Services Agreement concluded pursuant to Article II of Title Two and Section 232 of the Compact of Free Association.

SEC. 304. MARSHALL ISLANDS FOOD ASSISTANCE.

Section 103(h)(2) of the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note) is amended by striking out "five" and inserting in lieu thereof "ten".

SEC. 305. NORTHERN MARIANAS COLLEGE.

Section 9(a) of the Act approved August 27, 1986 (Public Law 99-396), is amended by striking out "subsection (a)." at the end and inserting in lieu thereof the following: "subsection (a), by striking out 'and Micronesia' each place it appears and inserting in lieu thereof 'Micronesia, and the Northern Mariana Islands'; and, in subsection (b), by striking out 'and to Micronesia' and inserting in lieu thereof ', Micronesia, and to the Northern Mariana Islands'.".[S31JA2-T1]{S815}

AMENDMENT NO. 1523

Mr. MITCHELL. Mr. President, in behalf of Senator JOHNSTON, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. Johnston, proposes an amendment numbered 1523.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

1. Insert after the enabling clause: "SECTION 1. SHORT TITLE. This Act may be cited as the Omnibus Insular Areas Act of 1992.".

2. In section 202, strike the existing text and insert in lieu thereof the following:

"There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to—

(1) reconstruct essential public facilities damaged by disasters in the insular areas that occurred prior to the date of the enactment of this Act; and

(2) enhance the survivability of essential public facilities in the event of disasters in the insular areas.

except that with respect to the disaster declared by the President in the case of Hurricane Hugo, September 1989, amounts for any fiscal year shall not exceed 25 percent of the estimated aggregate amount of grants to be made under sections 403 and 406 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172) for such disaster. Such sums shall remain available until expended.".

3. In subsection 203(a), strike the phrase "the President shall assess," and insert in lieu thereof, "the President, acting through the Director of the Federal Emergency Management Agency, shall assess,".

4. In subsection 203(b), strike the phrase, "the Secretary shall submit", and insert in lieu thereof, "the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall submit"

5. In section 204, strike all up to and including the phrase "(42 U.S.C. 4121 et seq.) for" and insert in lieu thereof, "The total of contributions under the last sentence of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) for the".

6. In section 301 strike the word "wastewater" and insert in lieu thereof "wastewater" each place it occurs.

7. In subsection 301(b), paragraphs (2) and (4), strike the phrase "an assessment and recommendations on" and insert in lieu thereof, "an assessment of, and recommendations regarding,"; and in paragraph (3) strike the phrase "an assessment and recommendations for" and insert in lieu thereof "an assessment of, and recommendations regarding,".

8. In Section 305, strike the existing text and insert in lieu thereof the following:

"Section 9(a) of Public Law 99-396 is amended by striking out the period at the end and inserting in lieu thereof the following: "and in subsection (b), by striking out 'and Micronesia' each place it appears and inserting in lieu thereof 'Micronesia, and the Northern Mariana Islands' and by striking out 'and to Micronesia' and inserting in lieu thereof', Micronesia, and to the Northern Mariana Islands'.".

Mr. AKAKA. Mr. President, I rise in support of the Senate amendment to H.R. 2927. The Energy and Natural Resources Committee has proposed a number of changes to the House bill, and most of these changes are technical in nature.

There is one change, however, that deserves special attention. The committee has recommended that the Federal Emergency Management Agency [FEMA] be permitted to enhance the survivability of certain essential public utilities when a natural disaster strikes the U.S. territories.

There are sound reasons for this change. It is an unfortunate fact of life that the territories suffer more than their share of natural disasters. For example, there have been three Presidentially declared disasters in the Republic of the Marshall Islands in the last 2 years. In the aftermath of each storm, FEMA provided assistance to RMI to repair water, electric, sewage treatment, and other essential public utilities as required by law. Unfortunately, much of the work to repair these facilities is often undone as soon as the next disaster strikes.

Unless we harden these facilities, we will never interrupt the unfortunate cycle of storm destruction and repair. I can personally attest to the value of enhancing the ability of these essential public facilities to survive future storms. In last December, I traveled to the Pacific and witnessed the devastation that occurs when a tropical storm strikes.

Two weeks before my arrival at Kwajalein Atoll in the Republic of the Marshall Islands, these islands were hit by Tropical Storm Zelda. When a low-lying island such as this is hit by the high winds and wave surge that accompanies a tropical storm, the devastation is unusually great. There is very little to shelter telephone poles, communication infrastructure and waste treatment facilities from the full force of such a storm. Although the initial outlay to harden these facilities may be higher, the savings in the long term will be significant because they will be able to withstand future disasters with little or no damage.

Our amendment represents sound public policy and a prudent use of Federal resources. As a cosponsor, I urge its adoption.

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

The amendment (No. 1523) was agreed to.

Mr. JOHNSTON. Mr. President, I am pleased to speak today in support of Senate passage of H.R. 2927 with amendments to the committee amendment. The Committee on Energy and Natural Resources reported this bill on November 25, 1991, with an amendment in the nature of a substitute. On the same day, the House of Representatives passed nearly identical legislation, H.R. 1688. Both bills contain three titles which would: First, establish the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, VI; second, provide additional flexibility and resources to Federal agencies and local governments in preparing for and responding to major disasters in the insular areas; and third, enact several miscellaneous provisions regarding the application of Federal policies and programs in the insular areas.

I will not go into a detailed discussion of the provisions of this bill now. I refer those who are interested in the specifics to the committee's report, Senate Report No. 102-243.

On November 22, 1991, and just prior to House passage of H.R. 1688, the administration transmitted a revised statement of policy which identified five issues of concern regarding the bill's provisions on disaster relief: First, that Puerto Rico, Micronesia and the Marshall Islands should be removed from the definition of "insular area"; second, that a 50-percent local match should be required for any increase in Federal hazard mitigation assistance; third, that non-cost-shared hazard mitigation assistance should not be expanded beyond 10 percent; fourth, that responsibility for disaster assistance in the insular areas should be placed with the Federal Emergency Management Agency; and fifth, that the reporting requirement of the Secretary of the Interior should not be duplicative of current FEMA responsibilities. The House modified H.R. 1688 to respond to these concerns of the Administration.

Mr. President, in response to these concerns, I offer a package of amendments to H.R. 2927 which would, with one exception, essentially conform H.R. 2927 to the text of H.R. 1688 as it passed the House of Representatives, and as it was modified to meet the administration concerns.

The disaster provisions of H.R. 1688, as passed by the House, and in response to the administration, would not apply to Puerto Rico, nor to the Freely Associated States—the Marshall Islands, and the Federated States of Micronesia. While I understand the administration's concern regarding the application of these provisions to Puerto Rico, an island with a size and population in excess of that of many States, I do not agree with the objection to the inclusion of the Freely Associated States.

The islands of Micronesia are hit by disastrous storms with a frequency greater than any other area under the jurisdiction of the Federal Emergency Management Agency [FEMA]. In fact, it is possible for certain islands to experience two disaster declarations within a single year. This is currently the case with Kwajalein Atoll in the Marshall Islands. The disaster relief provisions of this legislation were intended to reduce Federal disaster reconstruction costs in such areas by having facilities hardened to resist storm damage, instead of being continually rebuilt.

Currently, FEMA rebuilds facilities to the condition which existed prior to the disaster. In most cases, this is a

reasonable and cost-effective approach. However, in areas which are repeatedly struck by storms, such as Micronesia and the South Pacific, it is cost effective to harden facilities so that they will resist damage in the event of future storms. It has been the experience in Guam that spending more resources during construction or reconstruction to enhance the survivability of facilities will substantially reduce future damage, and therefore, will substantially reduce future reconstruction costs.

The administration has raised several valid concerns regarding H.R. 1688, and H.R. 2927 would be modified substantially, by the committee amendment and by these amendments, to respond to those concerns. However, I urge the administration to reconsider its position regarding the application of the disaster relief provisions of this legislation to the Freely Associated States. Continuing the costly cycle of destruction and reconstruction in areas which are repeatedly damaged in disastrous storms simply makes no sense.

Finally, with respect to section 303 regarding air service in the Freely Associated States, I would like to state for the record that this provision is not intended to provide a competitive advantage of any airline of the Free Associated States. It is, instead, intended to provide an authorization for an agreement to allow such an airline to have the opportunity to compete with other airlines in providing service between the Freely Associated States and the United States.

Mr. President, passage of H.R. 2927, as amended, will complete years of work on a broad range of ideas conceived to respond to particular problems and opportunities in the insular areas. These provisions range from improving air service, to developing parks. There are many people who have been involved in this effort and I would particularly like to recognize the contributions of the chairman and ranking minority member of the House Subcommittee on Insular and International Affairs, Mr. RON DE LUGO and Mr. BOB LAGOMARSINO and their very able staffs. I would also like to acknowledge Ms. Janet Hale and Mr. Bob Grady at OMB for their help in fashioning the disaster relief provisions. I believe that this title will save dollars, and lives.

Finally, I would like to acknowledge the assistance of the Secretary of the Interior, of Brad Northrup and Nat Williams of the Nature Conservancy, and of David Simon and Paul Pritchard of the National Parks and Conservation Association for their help in expediting the development and consideration of the provisions to establish the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, U.S. Virgin Islands. We will all be pleased to have this park established in time for the 500th anniversary of Christopher Columbus' voyage to America. It was here in St. Croix that Columbus' men first are known to have set foot on what is now U.S. territory.

I thank Senator AKAKA and the committee's ranking minority member, MALCOLM WALLOP, for their contributions and assistance and urge the Senate to pass H.R. 2927 with the committee amendment as amended by the Johnston amendments.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment, as amended, and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 2927), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEMBER OF U.S. SENTENCING COMMISSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1963 to provide a member of the U.S. Sentencing Commission whose term has expired may continue to serve until a successor is appointed or until the expiration of the next session of Congress, and I ask that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

A bill (S. 1963) to amend section 992 of title 28, United States Code, to provide a member of the U.S. Sentencing Commission whose term has expired may continue to serve until a successor is appointed or until the expiration of the next session of Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

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

AMENDMENT NO. 1524

(Purpose: To delete section 2 of the bill related to retroactivity)

Mr. MITCHELL. Mr. President, on behalf of Senators BIDEN and THURMOND, I send an amendment to the desk that will strike section 2 of the bill and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. BIDEN (for himself and Mr. THURMOND) proposes an amendment numbered 1524.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike Section 2 of the bill.

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

The amendment (No. 1524) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill, as amended.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as amended as follows:

S. 1963

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENDED SERVICE OF MEMBERS OF THE SENTENCING COMMISSION.

Section 992(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) Subject to paragraph (2)—

"(A) no voting member of the Commission may serve more than two full terms; and

"(B) a voting member appointed to fill a vacancy that occurs before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term.

"(2) A voting member of the Commission whose term has expired may continue to serve until the earlier of—

"(A) the date on which a successor has taken office: or

"(B) the date on which the Congress adjourns sine die to end the session of Congress that commences after the date on which the member's term expired.".

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, the distinguished Republican leader wishes to address the Senate and will return to the Senate shortly for that purpose. No other Senator is seeking recognition.

Therefore, I ask unanimous consent that following the remarks of the distinguished Republican leader, the Senate stand in recess as previously ordered.

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

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THANKS TO THE PAGES

Mr. DOLE. Mr. President, first let me join the majority leader in thanking the pages for their diligent efforts and their help the past several weeks and months. I know they are leaving with mixed feelings. Maybe one or more may be back on the floor here someday as a Member of the Senate. We hope so.

So I want to thank them for their help and their tireless efforts, sometimes difficult with the long hours we keep.

THE PRESIDENT'S BUDGET

Mr. DOLE. Mr. President, ever since President Bush delivered his State of the Union Address Tuesday night and unviled his new budget the following day, we have been treated to the usual partisan rain dance of criticism: It is not enough; it will never work; it is out of touch; it is a total flop.

Actually, that is what most people are saying about Congress these days.

So let us face it. When it comes to action, courage, an vision, Congress has no right to claim any "moral high ground." The American people know that Congress is just as accountable—and just as blamable—as the President of the United States when it comes to the economy, to health care, to education, and to every other critical issue facing the Nation, involving the Nation's well-being.

Despite all the rhetoric, there is one fact the President's critics never mention. The President has a plan, and they do not. If there is a Democrat plan, no one has introduced it. Of course, there is a lot of good reason they have not. It does not exist. Everybody has an idea; everybody says, well, maybe the President's plan is wrong. But there is not any plan, a second plan or another plan, a Democratic plan.

So I think that is the reason. I think that is why it is right for the President to challenge the Congress to do something; do it responsibly; do it quickly. And I think the fact that he set the March 20 deadline was a good idea.

Of course, deadlines are not very popular on Capitol Hill—Congress will not be found in the books when it comes to breaking speed records—but the people are demanding action.

If you need any proof, consider this fact: Congress has yet to terminate the Commission on the Bicentennial of the U.S. Constitution. Now, the Commission did a fine job, but that job should have ended when the bicentennial ended—5 years ago.

Curiously, many of the critics blasting President Bush for not doing enough today are the very same Members of Congress who for years have been blocking legislation the majority of American people want passed—and you can start with the crime bill.

The people are fed up with crime; fed up with being terrorized in their streets and neighborhoods; fed up with the ongoing drug nightmare; fed up with a judicial system that seems tilted more toward criminals than victims; and fed up with a Congress that talks tough but will not back it up.

Year after year, tough anticrime legislation is introduced in the House and Senate. Yet, year after year, it is made practically toothless by the majority party.

Despite the cries of the people, there is still no habeas corpus reform—still no way to prevent criminals from getting off on technicalities, or frustrating justice with endless appeals and loophole gymnastics; and still no reform to the exclusionary rule—still no way to make good faith evidence stick in court so that criminals do time instead of dodging it.

Year after year, tough antispending laws are introduced in the House and Senate. Yet, year after year, the balanced budget amendment and the line-item veto are blocked by the majority party. Without these budget tools, both the President, the House and the Senate are even more powerless to turnoff the congressional spending machine.

Year after year, American business has begged Congress for relief from crippling liability costs. But despite the fact that these unreasonable costs have put thousands of Americans out of work, and shut down production lines, especially in aviation manufacturing, the Democrat majority continues to block every attempt to reform liability law.

And this past February, the administration sent Congress a two-part proposal to strengthen the Nation's commercial banks, and to insure an adequate supply of credit for consumers. Part 1 of the proposal required banks, themselves, to bear the $30 billion cost of replenishing the resources of the Federal Deposit Insurance Corporation. Part 2 of the administration's proposal would have provided the banking industry with the tools to eliminate unnecessary expenses, raise capital and be more competitive.

But Congress responded by saddling the banks with the $30 billion in additional expenses, and did nothing to help the industry strengthen itself. Now the consequences of congressional inaction is becoming painfully clear: Bank credit has dried up, and reports indicate that another massive taxpayer bailout could well be on the horizon.

Unfortunately, all of this inaction—all of these de facto filibusters—has helped put us behind the economic eight ball. If the bottom line is revitalizing the economy, then we ought to act; and as I have just indicated, we could have acted boldly during the past few years to avoid some of the problems we are trying to deal with now.

But it is far easier to criticize. For example, the critics charge that the United States should act more like our trading partners, that we are strapped because we have trouble competing in the international marketplace. Well, many of our trading partners such as Germany, Canada, the Netherlands and, yes, Japan, have low capital gains tax rates, not to help the rich, but to strengthen their economies and create jobs, and to do all of the things we like to do in America.

These countries understand that by reducing the cost of capital, you encourage capital formation, investment, and the creation of new jobs and new opportunities.

Sadly, the determined opposition on the other side of the aisle against this long-overdue economic shot-in-the-arm is not the noble soak the rich crusade they claim it is. In truth, it is a determined filibuster against working America in the name of politics.

President Bush pointed out the other evening that 60 percent of the beneficiaries in any capital gains rate reduction are earning less than $50,000 per year. He might be able to create more jobs and opportunities, and that is what we need now.

Mr. President, the clock is ticking. The American people do not want business as usual. They do not want any more political games. Congress can spend the next few weeks seeing who can score the most cheap shots, and make the cleverest attack on President Bush.

Or, Congress can spend the next few weeks working with the President, in a bipartisan spirit, for the American people. I believe it is an easy choice to make. And we can start today.

ORDERS FOR MONDAY

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 2 p.m. on Monday, February 3; that following the prayer, the Journal of proceedings be approved to date and the time for the two leaders be reduced to 5 minutes each; that there then be a period for morning business not to extend beyond 2:15 p.m., with Senator SIMPSON recognized to speak; and that on Monday beginning at 2:15 p.m., there be debate only relative to the motion to proceed to S. 2166, the energy bill.

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

PROGRAM

Mr. MITCHELL. Mr. President and Members of the Senate, there will be

no rollcall votes on Monday. There will be a rollcall vote on the motion to invoke cloture on the motion to proceed to the energy bill at 10 a.m. on Tuesday morning.

RECESS UNTIL MONDAY, FEBRUARY 3, 1992, AT 2 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until Monday, February 3, at 2 p.m.

There upon, the Senate, at 2:37 p.m., recessed until Monday, February 3, 1992, at 2 p.m.

CONFIRMATIONS

Executive Nominations Confirmed by the Senate January 31, 1992:

DEPARTMENT OF THE TREASURY

SHIRLEY D. PETERSON, OF MARYLAND, TO BE COMMISSIONER OF INTERNAL REVENUE.

FRED T. GOLDBERG, JR., OF MISSOURI, TO BE AN ASSISTANT SECRETARY OF THE TREASURY.

RESOLUTION TRUST CORPORATION

ALBERT V. CASEY, OF TEXAS, TO BE CHIEF EXECUTIVE OFFICER, RESOLUTION TRUST CORPORATION.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.