$300 and $700 a month—for a new HMO enrollee until that HMO actually meets with the enrollee, shows them how to use the system, and establishes a basic health profile on the individual. Today, an HMO can receive thousands of dollars in payments before it ever sees a patient or tries to maintain their health.

How can an HMO truly be a health maintenance organization, if it doesn't know what the health of the person is, whether the person is overweight, smokes, needs innoculations, has high blood pressure or diabetes, et cetera, et cetera?

Last August, the Public Policy Institute, part of the Division of Legislation and Public Policy of the American Association of Retired Persons, issued an excellent paper entitled, ''Managed Care and Medicare.'' The paper—which does not necessarily represent formal policies of the association—recommended:

Health plans should be required to conduct a comprehensive health assessment of new patients upon enrollment, followed by specific provisions for improved access to primary and specialty care on a routine basis.

This is precisely the idea in my legislation, and I hope other senior and patient advocacy groups will consider this proposal and how it would help eliminate many of the abuses in the current enrollment of Medicare and Medicaid beneficiaries.

TRANSPORTATION COMMITTEE PROCEDURES FOR ISTEA REAUTHORIZATION

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 9, 1997

Mr. PETRI. Mr. Speaker, on behalf of NICK RAHALL, the ranking democratic member of the Subcommittee on Surface Transportation, BUD SHUSTER, the chairman of the Transportation and Infrastructure Committee, and JAMES OBERSTAR, the committee's ranking democratic member, I would like to outline the subcommittee's procedure for identifying items of concern to members as it takes up the reauthorization of the Intermodal Surface Transportation Efficiency Act of 1991 [ISTEA]. This legislation authorizes over $150 billion for our nation's highway, transit, motor carrier, safety, and research programs for 6 years and is due to expire on September 30, 1997.

The importance of the surface transportation system cannot be overstated. There is ample evidence documenting the link between careful infrastructure investment and increases in this nation's productivity and economic prosperity. For instance, between 1980 and 1989, highway capital investments contributed almost 8 percent of annual productivity growth. A recent study demonstrated that the costs of highway investments are recouped through production cost savings to the economy after only 4 years. Another study concluded that transit saves at least $15 billion per year in congestion costs.

Despite the critical importance of our transportation systems to our Nation's economic health, investment has fallen short of what is needed. The Department of Transportation estimates that simply maintaining the current conditions on our highway, bridge, and transit systems will require investment of $57 billion per year from Federal, State, and local governments, an increase of 41 percent over current levels. To improve conditions to optimal levels would require doubling our current investment to $80 billion per year. Meeting these needs will require a variety of strategies, including better use of existing systems, application of advanced technology, innovative financing, and public-private partnerships. It is our goal to develop a bill that will meet these needs and maintain this world class system.

Reauthorization is the top priority of the Subcommittee on Surface Transportation. In the second session of the 104th Congress, the subcommittee held a series of 12 ISTEA oversight hearings and received testimony from 174 witnesses. The hearings gave many interested Members, the administration and affected groups the opportunity to testify and present their views. There was strong interest in these hearings and they covered the programs which need to be reauthorized in this coming bill. We would be happy to make copies of these hearing transcripts available to any interested Members.

We anticipate that the bipartisan legislation we develop this year will be based largely on the information obtained at last year's extensive programmatic hearings. As we begin this process, we would like to offer Members the opportunity to inform the subcommittee about any policy initiatives or issues that Members want the subcommittee to consider including or addressing in the reauthorization of ISTEA. Members having such specific policy requests should inform the subcommittee in writing no later than February 25, 1997.

Many Members have already contacted the subcommittee to inquire about, or to request, specific funding for critical transportation needs in their districts. With the convening of the new Congress, we anticipate that these requests will continue. Therefore, if you are intending to request funding for these projects, we will require that the request include the information set forth below. Although the subcommittee has not yet decided how such requests will be handled, the information provided will allow the subcommittee to thoroughly evaluate each request as we determine the appropriate action to take in this regard. Any requests should be submitted no later than February 25, 1997. Such submissions should be in writing and must include responses to each of the 14 evaluation criteria listed at the end of this statement.

We will also be holding a series of subcommittee hearings in late February and early March at which time Members and local officials will have an opportunity to testify on behalf of those requests. While these hearings are intended to give Members an opportunity to present information about specific project needs, it is not necessary for Members to testify.

We look forward to working with all Members of the House as we prepare this important legislation which will set the course for our Nation's surface transportation programs.

TRANSPORTATION PROJECT EVALUATION CRITERIA, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON SURFACE TRANSPORTATION

1. Name and Congressional District of the primary Member of Congress sponsoring the project, as well as any other Members supporting the project (each project must have a single primary sponsoring Member).

2. Identify the State or other qualified recipient responsible for carrying out the project.

3. Is the project eligible for the use of Federal-aid funds (if a road or bridge project, please note whether it is on the National Highway System)?

4. Describe the design, scope and objectives of the project and whether it is part of a larger system of projects. In doing so, identify the specific segment for which project funding is being sought including terminus points.

5. What is the total project cost and proposed source of funds (please identify the federal, state or local shares and the extent, if any, of private sector financing or the use of innovative financing) and of this amount, how much is being requested for the specific project segment described in item #4?

6. Of the amount requested, how much is expected to be obligated over each of the next 5 years?

7. What is the proposed schedule and status of work on the project?

8. Is the project included in the metropolitan and/or State transportation improvement plan(s), or the State long-range plan, and if so, is it scheduled for funding?

9. Is the project considered by State an/or regional transportation officials as critical to their needs? Please provide a letter of support from these officials, and if you cannot, explain why not.

10. Does the project have national or regional significance?

11. Has the proposed project encountered, or is it likely to encounter, any significant opposition or other obstacles based on environmental or other types of concerns?

12. Describe the economic, energy efficiency, environmental, congestion mitigation and safety benefits associated with completion of the project.

13. Has the project received funding through the State's federal aid highway apportionment, or in the case of a transit project, through Federal Transit Administration funding? If not, why not?

14. Is the authorization requested for the project an increase to an amount previously authorized or appropriated for it in federal statute (if so, please identify the statute, the amount provided, and the amount obligated to date), or would this be the first authorization for the project in federal statute? If the authorization requested is for a transit project, has it previously received appropriations and/or received a Letter of Intent or has FTA entered into a Full Funding Grant Agreement for the project?

INTRODUCTION OF THE INTELLECTUAL PROPERTY ANTITRUST PROTECTION ACT OF 1997

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 9, 1997

Mr. HYDE. Mr. Speaker, today I am introducing the Intellectual Property Antitrust Protection Act of 1997. I am pleased to be joined by my colleagues on the Judiciary Committee, Mr. SENSENBRENNER, Mr. GEKAS, Mr. SMITH, Mr. GALLEGLY, Mr. CANADY, Mr. BONO, and Mr. FRANK who are original cosponsors of this legislation.

Because of increasing competition and a burgeoning trade deficit, our policies and laws must enhance the position of American businesses in the global marketplace. This concern should be a top priority for this Congress.

A logical place to start is to change rules that discourage the use and dissemination of existing technology and prevent the pursuit of promising avenues of research and development. Some of these rules arise from judicial decisions that erroneously create a tension between the antitrust laws and the intellectual property laws.

Our bill would eliminate a court-created presumption that market power is always present in a technical antitrust sense when a product protected by an intellectual property right is sold, licensed, or otherwise transferred. The market power presumption is wrong because it is based on false assumptions. Because there are often substitutes for products covered by intellectual property rights or there is no demand for the protected product, an intellectual property right does not automatically confer the power to determine the overall market price of a product or the power to exclude competitors from the marketplace.

On May 14, 1996, the Judiciary Committee held a thorough hearing on H.R. 2674, an identical bill that was introduced in the last Congress. At the hearing, the bill received support from the Intellectual Property Owners, the American Bar Association, and the Licensing Executives' Society. The administration agreed that the bill reflected the proper antitrust policy, but hesitated to endorse a legislative remedy.

Despite the administration's reluctance to endorse the bill fully in last year's hearing, the recent antitrust guidelines on the licensing of intellectual property—issued jointly by the antitrust enforcement agencies, the Department of Justice and the Federal Trade commission—acknowledge that the court-created presumption is wrong. The guidelines state that the enforcement agencies ''will not presume that a patent, copyright, or trade secret necessarily confers market power upon its owner. Although the intellectual property right confers the power to exclude with respect to the specific product, process, or work in question, there will often be sufficient actual or potential close substitutes for such product, process, or work to prevent the exercise of market power.'' Antitrust guidelines for the Licensing of Intellectual Property, April 6, 1995, p. 4 (emphasis in original).

For too long, Mr. Speaker, court decisions have applied the erroneous presumption of market power thereby creating an unintended conflict between the antitrust laws and the intellectual property laws. Economists and legal scholars have criticized these decisions, and more importantly, these decisions have discouraged innovation to the detriment of the American economy.

The basic problem stems from a lower Federal court decision that construed patents and copyrights as automatically giving the intellectual property owner market power. *Digidyne Corp.* v. *Data General Corp.,* 734 F.2d 1336, 1341–42 (9th Cir. 1984), *cert. denied,* 473 U.S. 908 (1984). The sheer size of the Ninth Circuit and its location make this holding a serious problem, even though some other courts have not applied the presumption. *Abbott Laboratories* v. *Brennan,* 952 F.2d 1346, 1354–55 (Fed. Cir. 1991), *cert. denied,* 505 U.S. 1205 (1992); *A.I. Root Co.* v. *Computer/Dynamics, Inc.,* 806 F.2d 673, 676 (6th Cir. 1986). The Ninth Circuit covers nine States and two territories, and it has a population of more than 45 million people. In addition, it contains a significant portion of the computer industry, including Silicon Valley in California and Microsoft in Washington.

So, in this very important area, the law says one thing in the Ninth Circuit, a different thing in other circuits, and in still other circuits, the courts have not spoken. See Antitrust Guidelines for the Licensing of Intellectual Property, p. 4 n. 10. This lack of clarity causes uncertainty about the law which, in turn, stifles innovation and discourages the dissemination of technology.

For example, under Supreme Court precedent, tying is subject to per se treatment under the antitrust laws only if the defendant has market power in the tying product. However, the presumption automatically confers market power on any patented or copyrighted product. Thus, when a patented or copyrighted product is sold with any other product, it is automatically reviewed under a harsh per se standard even though the patented or copyrighted product may not have any market power. As a result, innovative computer manufacturers may be unwilling to sell copyrighted software with unprotected hardware—a package that many consumers desire—because of the fear that this bundling will be judged as a per se violation of the prohibition against tying. The disagreement among the courts only heightens the problem for corporate counsel advising their clients as to how to proceed. Moreover, it encourages forum shopping as competitors seek a court that will apply the presumption. Clearly, intellectual property owners need a uniform national rule enacted by Congress.

Very similar legislation passed the Senate during past Congresses with broad, bipartisan support. S. 438 passed the Senate once as separate legislation and twice as an amendment to House-passed legislation during the 100th Congress. S. 270, a similar bill, passed the Senate again during the 101st Congress.

During the debate over that legislation, opponents of this procompetitive measure made various erroneous claims about this legislation—let me dispel these false notions at the outset. First, this bill does not create an antitrust exemption. To the contrary, it eliminates an antitrust plaintiff's ability to rely on a demonstrably false presumption without providing proof of market power. Second, this bill does not in any way affect the remedies, including treble damages, that are available to an antitrust plaintiff when it does prove its case. Third, this bill does not change the law that tying arrangements are deemed to be per se illegal when the defendant has market power in the tying product. Rather, it simply requires the plaintiff to prove that the claimed market power does, in fact, exist before subjecting the defendant to the per se standard. Fourth, this bill does not legalize any conduct that is currently illegal.

Instead, this bill ensures that intellectual property owners are treated the same as all other companies under the antitrust laws, including those relating to tying violations. The bill does not give them any special treatment, but restores to them the same treatment that all others receive.

In short, the time has come to reverse the misdirected judicial presumption. We must remove the threat of unwarranted liability from those who seek to market new technologies more efficiently. The intellectual property and antitrust laws should be structured so as to be complementary, not conflicting. This legislation will encourage the creation, development, and commercial application of new products and processes. It can mean technological advances which create new industries, increase productivity, and improve America's ability to compete in foreign markets.

I urge my colleagues in the House to join us in cosponsoring this important legislation. If you would like to join as a cosponsor, please call Joseph Gibson of the Judiciary Committee staff at extension 5–3951.

INTRODUCTION OF THE MARINE RESOURCES REVITALIZATION ACT OF 1997

HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 9, 1997

Mr. SAXTON. Mr. Speaker, today I am pleased to introduce the Marine Resources Revitalization Act of 1997, a bill to reauthorize the National Sea Grant College Program.

By way of background, the National Sea Grant College Program was established by Congress in 1966 in an effort to improve our Nation's marine resource conservation efforts, to better manage those resources, and to enhance their proper utilization. Housed within the National Oceanic and Atmospheric Administration, Sea Grant is modeled after the highly successful Land Grant College Program created in 1862.

Over the past 30 years, Sea Grant has dramatically defined our capabilities to make decisions about marine, coastal, and Great Lakes resources—vast, publicly owned resources which are of vital economic, social, and cultural importance to our rapidly growing coastal populations. In doing so, Sea Grant promotes high quality, peer-reviewed scientific research. Furthermore, Sea Grant distributes scientific results regionally and locally through educational and advisory programs at over 300 universities and affiliated institutions nationwide. Twenty-nine of these are specifically designated as Sea Grant colleges or institutional programs, and they serve to coordinate Sea Grant activities on a State-by-State basis.

The Marine Resources Revitalization Act of 1997 authorizes funding for Sea Grant through fiscal year 2000; simplifies the definition of issues under Sea Grant's authority; clarifies the responsibilities of State and national programs; consolidates and clarifies the requirements for the designation of Sea Grant colleges and regional consortia; repeals the postdoctoral fellowship and international programs, both of which have never been funded; and makes several minor clerical or conforming amendments.

I would like to acknowledge three of my distinguished colleagues—DON YOUNG of Alaska, NEIL ABERCROMBIE of Hawaii, and SAM FARR of California—for their leadership in this reauthorization effort. We firmly believe that this legislation represents a realistic approach to reauthorizing the Sea Grant Program—the bill is inherently noncontroversial and has been fully endorsed by the administration. By enacting this legislation, we send a clear message supporting the protection and wise use of our marine and coastal resources.