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Senate

The Senate met at 11 a.m., and was called to order by the Honorable WAYNE ALLARD, a Senator from the State of Colorado.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You created us to praise You. Forgive us for the pride that too frequently takes the place of praise in our hearts. So often, we want to be adequate in our own strength, to be loved by You because of our self-generated goodness, and to be admired by people because of our superior performance. Yet pride pollutes everything: It stunts our spiritual growth, creates tensions in our relationships, and makes us people who are difficult for You to bless. Most important of all, our pride separates us from You, dear Father. When pride reigns, life becomes bland, truth becomes relative, and values become confused. We lose that inner confidence of convictions rooted in the Bible and Your revealed truth.

Now in this quiet moment, we praise You for breaking the bubble of illusion that, with our own cleverness and cunning, we can solve life's problems. Help us recover a sense of humor so we can laugh at ourselves for ever thinking we could make it on our own. We humble ourselves before You. Fill us with Your spirit. Now, with our minds planted on the Rock of Ages, we have the power to face the ambiguities of today with the absolutes of Your truth and guidance. Through our Lord and Saviour. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The bill clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 29, 1997.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WAYNE ALLARD, a Senator from the State of Colorado, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. ALLARD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The able acting majority leader, the Senator from Montana, is recognized.

SCHEDULE

Mr. BURNS. This morning the Senate will proceed to executive session to consider the nomination of William Kennard to be a member of the Federal Communications Commission. I now ask unanimous consent there be an additional 10 minutes of debate equally divided between the two leaders and, further, the vote on the nomination will occur at 12 o'clock noon today.

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

Mr. BURNS. Mr. President, Members can expect the first vote at 12 o'clock. Following that vote, it is the two leaders' intention for the Senate to turn to consideration of H.R. 1119, the national defense authorization conference report, or the D.C. appropriations bill. The Senate may also begin consideration of Senator COVERDELL's legislation dealing with education IRA's.

Subsequently, Members can anticipate further rollcall votes throughout today's session of the Senate.

EXECUTIVE SESSION

NOMINATION OF WILLIAM E. KENNARD, OF CALIFORNIA, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the nomination of William E. Kennard of California, which the clerk will report.

The assistant legislative clerk read the nomination of William E. Kennard, of California, to be a member of the Federal Communications Commission.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BURNS. Mr. President, I rise today to oppose the nomination of William Kennard as Chairman of the Federal Communications Commission.

Throughout the confirmation process, I have taken a particular interest in universal service. The ruling earlier this year by the FCC to structure a universal service fund from a 25-percent Federal contribution and a 75-percent State contribution has caused me a lot of concern, along with many of my colleagues from rural States.

I do not believe that this ruling is consistent with the intent of Congress in the Telecommunications Act of 1996. Such a rule could have severe impacts on Montana and other rural States that are asked to make this contribution.

In the process of determining the attitudes of the nominees, I have heard statements about a reliance on the historical split between States and the Federal Government in the structure of this fund. However, in the case of Montana, which has not even had a universal service fund until it was enacted this year by the State legislature, we are on new territory, and history may be different from present circumstances.

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



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In rural States like Montana, the universal service fund is absolutely critical to the provision of basic telephone service. It should further be noted that maintaining the universal availability of telephone service at reasonable and affordable prices is not just a vague goal but an explicit statutory mandate.

I ask how well has the FCC done in fulfilling this mandate? To answer this question, it is helpful to look at the record of the hearings which the Commerce Committee held in September 1993, on the nomination of Reed Hundt to be FCC Chairman.

In response to a question which I posed on universal service, Mr. Hundt said—

Universal service is, and should be, one of the paramount goals of the Government and specifically the FCC.

Mr. Hundt also characterized the appropriate role of the FCC in response to another question. He said the FCC's mandate was,

[T]o implement the will of Congress, as expressed in legislation, [and that] to that end, the Commission's policymaking activities should take into account incentives and disincentives for private investment in the network, and the creation and offering of service.

Mr. President, after reviewing the activities of the FCC during the past 4 years, it is clear that Reed Hundt has been unable to fully carry out the promises which he made to this committee and to the Senate during his confirmation. I should also note that Mr. Kennard served as general counsel to the FCC during this time and bears substantial responsibility for its record.

It should be clear from the record that by focusing on the expansion of the definition of universal service to include broad-ranging social programs, the FCC's progress toward maintaining universal service has been delayed. While such goals as providing internet access to schools and libraries may be laudable, they were never meant to be part of universal service as it has traditionally been known. Indeed, a huge additional burden has been placed on rural States such as mine, in Montana, in meeting these newfound definitions. The FCC has addressed those goals in a fashion which many believe is detrimental to maintaining universal telephone service—which is so important to me and other Members of rural States.

As I have noted before, there are some 55 million Americans who live outside metropolitan areas today—which is about the same as the total population of Great Britain, Italy, or France. The largest single element of the U.S. population today is Americans aged 50 or older—a group that represents almost 40 percent of the total population. Ensuring that these people have access to affordable, quality telephone service is especially important to all of us.

Coming from Montana, I have an appreciation for the unique character and

the difficulties of rural life. In a State with 148,000 square miles and only about 850,000 people, we do not always have the luxury of face-to-face communication that people have in highly populated areas, nor do we have the ability to shoulder the disproportionate burden that would be placed on us by taking on 75 percent of the cost of universal service. It is the people of States like mine for whom universal service is intended, and I do not want to see it dismantled.

In view of all of these facts, I must oppose Mr. Kennard's nomination.

Mr. President, what we are faced with in Montana in this particular area is pointed up by an article that was in the Bozeman Daily Chronicle by Oliver Staley. I ask unanimous consent that article be printed in the RECORD.

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

SOME SMALL SCHOOL DISTRICTS FIND GOOD INTERNET ACCESS TOO EXPENSIVE

(By Oliver Staley)

HARRISON, MT.—The Internet may be the wave of the future, but in the Harrison School District, it's a wave Net surfers can't ride very far.

The tiny, 129-student school district has just one computer linked to the Internet. They have access for only 100 hours a month.

Superintendent John McGee wants to increase the students' access to the Net, and envisions four terminals providing 200 hours of access a month.

But if the school is linked to the Internet through its current Three Rivers Telephone Cooperative's service, it would cost the district \$3,360 a year.

"We couldn't justify spending that," McGee said.

Paying \$3,360 is bad enough. Making Harrison's situation even more frustrating is that 20 miles to the north, Three Forks School District pays \$540 a year to connect its three terminals to the Internet.

The Manhattan School District pays \$229 a year, and the Bozeman School District, which has hundreds of computers hooked up in 11 schools, pays just \$2,500 a year.

Those differences are a result of the intricate world of telecommunications, which makes it harder and more expensive for small communities to connect to the Net.

Ultimately, McGee said, the cost is paid by the students and faculty who are denied access to a technology that is reshaping the world.

"They're completely missing out on the big picture of what's going on out there," he said. "They're missing out on all sorts of levels."

The high cost of supplying Harrison with Internet service stems from basic supply-and-demand economics, aggravated by Montana's vast distances.

For the nonprofit Three Rivers Telephone Cooperative to provide Harrison with Internet service, the cooperative must use US West's telephone lines.

Whenever a subscriber in Harrison or Ennis dials up the Internet, their signal travels along Three Rivers' fiber optic cables to Twin Bridges. From there, it joins the US West system running from Dillon to Butte, and continues to Great Falls. At Great Falls, the signal rejoins the Three Rivers network and travels to the cooperative's headquarters in Fairfield.

Using US West's lines costs Three Rivers about \$1,600 a month, said Three Rivers Gen-

eral Manager Art Isley, with the fee based on the distance the signal travels. That cost simply gets passed on, he said.

"It's costing us an arm and a leg to get that [Internet service] out," he said. "I don't get any breaks."

Communities that are served by US West such as Three Forks, Manhattan and Bozeman don't have to pay the cost of leasing the space on the system, Isley said.

And because Harrison is so small, other Internet providers lack the incentive to compete with Three Rivers.

"If you have competition, the market is going to drive prices down," McGee said.

Larger communities have other telecommunications advantages as well. Bozeman's schools are linked to the Internet through Montana State University, which has its own access to the Net. While the university system's Internet structure is expected to change in the next few years resulting in additional costs for Bozeman's schools the low cost of service has allowed Bozeman's schools to bring the Internet to thousands of students.

"We're getting an incredible deal right now," said Christine Day, the district's technology services coordinator.

Some small schools, however, have found ways to avoid paying huge fees for Internet service.

The Whitehall School District receives its Internet service free of charge from the Helena-based Interconnections. In return, the school district houses Interconnections' equipment, which allows it to provide local Internet service to the rest of Whitehall.

"It's great for both of us," said Whitehall Superintendent Paul Stemick. "Otherwise, they would have to pay to rent space in town."

And after Whitehall's schools are rewired, a project that was to be completed Saturday, every classroom will be linked to the Internet. Stemick hopes to have 60 computers online by Christmas.

The Ennis School District is using a different approach.

The district pays \$2,000 a year for Vision Net, an interactive television system that links Ennis to 48 other Montana schools and universities. The program is designed to expand learning opportunities for both adults and students, and because of Vision Net's broad bandwidth, it can also carry the Internet.

Currently, the Ennis district has 13 computers linked to the Internet for its approximately 415 students, business manager Sandra Lane said. That will be expanded, Lane said, when the district's Vision Net studio is up and running early next year and a higher-capacity link is established.

Many Montana schools also plan on taking advantage of the "E-rate," a \$2.25 billion federal subsidy for rural schools created by the Telecommunications Act of 1996.

Under the E-rate officially known as the Federal Communications Commissions' Universal Service Order schools and libraries can receive a discount on their Internet service, file servers and wiring.

The discount is pegged to the percentage of students in a school eligible for free or reduced price lunches, and it can range from 25 percent to 90 percent off the cost of providing students with the Internet.

The funds come from a tax on all telecommunications providers, from AT&T to local pager companies.

In order to apply, schools must develop a comprehensive technology plan, in order to demonstrate that the funds will be used in a productive manner.

While some schools see the E-rate as a huge benefit Big Timber is planning on a 60 percent discount, while Ennis is looking at

50 percent other schools are left out in the cold.

The Ophir School in Big Sky, for example, doesn't have enough low-income children to qualify, said school Principal Pat Ingraham. On the other hand, Ophir doesn't have the \$20,000 to expand its Internet capabilities beyond the one computer that is currently linked, Ingraham said.

"There seems to be a hitch every time we go for funding," she said. "It seems it's not there for you, Big Sky."

Isley at Three Rivers has no doubt that the E-rate will improve the situation for schools like Harrison, but fears other schools will take advantage of the program.

"My personal opinion is that this is going to be the biggest boondoggle that's ever going to hit this country," he said. "There's a pot of money \$2.25 billion big. There's going to be a lot of shysters coming out of the woodwork."

Whether it's ripe for exploitation or not, the E-rate was created to help erase the discrepancies between a school like Harrison and schools in California's Silicon Valley. Like many Montana educators, its drafters felt that without access to computers, today's students cannot survive in tomorrow's world.

"If we don't give children the skills to learn technology, they're not going to have skills for the work market," Bozeman's Day said. "They're going to be more and more in need of those skills in the next five, 10 years."

Mr. BURNS. I yield the floor.

Mr. DORGAN. Mr. President, the Senator from Montana expresses a good number of concerns about the universal service funding issue. I, too, am concerned about the issue of universal service. The discussion this morning is on the nomination of Mr. Kennard to be Chairman of the FCC. If Mr. Kennard is confirmed, and I expect he will be, by the vote of the Senate today, that means four of the five Federal Communication Commissioners will be new Commissioners. Four of the five will be new, taking office at a time when we face some of the most critical decisions we have ever faced at the FCC.

The Senator from Montana made the point that the universal service fund is critical. It certainly is critical to the area that I come from. I come from a town of 300 people, from a county the size of the State of Rhode Island, that has 3,000 people in the entire county. Now, why is the universal fund issue critical? Because if you don't provide universal fund support for telephone service in the high-cost areas, it will mean many areas of this country will not have good telephone service, because a whole lot of folks won't be able to afford it.

The FCC estimated that in my hometown it would cost \$200 a month to build and maintain a new network to provide telephone service—\$200 a month—but of course in a very large city that might be \$10 a month. So what we have done in this country historically is to have universal service support for the high-cost areas so that they have comparable telephone service at affordable rates. That is what the whole premise of universal service has been about.

Now, the reason I worry so much is the Federal Communications Commission has been heading in the wrong direction, headed toward a goal of having much higher telephone costs in rural areas of the country.

I will support Mr. Kennard's nomination today, but I want everyone to be clear that if this new board, if the new Commission cannot properly define universal service fund support, cannot read the law as we wrote it—and I helped write it—that said comparable service at an affordable price—and that is not unusual English—if they can't understand that and can't read it correctly and can't define universal service support sufficient so we don't have substantial telephone rate increases across this country, then we ought to abolish the FCC. We don't need the FCC and all of its staff. We don't need them if they can't make the right decision.

I will vote for this nomination, but I also want people to understand these critical decisions must be made appropriately to provide proper universal service support that comports with the requirements of the law—comparable service at an affordable price—yes, even in the smallest towns in the most rural counties of this country, because that is what the Congress directed the universal service fund support to be in the years ahead.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I want to thank the Senator from North Dakota for his involvement as a very active member of the Commerce Committee and his participation now in this and a variety of other issues. The Senator from North Dakota and I occasionally disagree, but those disagreements are not disagreeable, and he is one of the most well-informed members of the committee. I note the presence of Senator HOLLINGS, the distinguished ranking member on the floor, who I know has a statement to make, as well.

First, Mr. President, I recommend that the Senate vote to confirm the nomination of William E. Kennard as a member of the Federal Communications Commission where he will serve as the Commission's new Chairman. The fact that the full Senate is debating and casting individual votes on Mr. Kennard's confirmation underscores the importance to the American people of the decisions the Senate is making about the FCC.

For the first time since it was established in 1934, the Senate is filling four vacancies on this five-member Commission. Last night the Senate confirmed the nominations of three of these new members: Michael K. Powell, an antitrust lawyer; Harold Furchgott-Roth, an economist; and Gloria Tristani, a state commissioner. The combination of expertises they bring to the FCC will make an invaluable contribution to the quality of its decisions.

If confirmed, Mr. Kennard, the FCC's current general counsel, would add the expertise of a seasoned communications lawyer. In addition, Mr. Kennard would be the FCC's first African-American Chairman, and for the first time in its history a majority of the Commission's members would be of African-American or Hispanic descent. This reflects both the inclusiveness we aspire to as a society, and the freshness we hope a reconstituted FCC will pursue in its regulatory approach.

But this is not just an historic moment for the FCC; it is also a vitally important moment for consumers. The FCC's five Commissioners control the regulatory destiny of industries that account for fully one-sixth of our gross national product. For the consumer, this means that the Commission's decisions will affect the price of a local or a long-distance telephone call, how much we pay each month for cable service, how many choices we will have in paging and cellphone service, and even what we see on TV and hear on radio.

These would be daunting enough responsibilities for the new Commissioners in and of themselves. But last year the Congress expanded the FCC's duties exponentially by enacting the 1996 Telecommunications Act. The act aims to introduce a heretofore-unattainable level of competition and deregulation into the provision of all kinds of voice, video, and data services.

It would be nice to say that all this is working well. But the truth, Mr. President, is that it isn't. The lower rates, better service, and increased competition called for by the Act have translated, at least in the short run, into higher rates, increased concentration among big industry players, and reams of new regulations. In addition, recent court cases have all but gutted the FCC's plans for making local telephone service competitive.

In my view, the act has been an abject failure in attaining any benefits whatsoever for the average consumer, and it's difficult to see any improvement in the offing. That is absolutely unacceptable. And that, Mr. President, is why we are casting individual votes on Mr. Kennard's nomination this morning. As the FCC's general counsel, he is unavoidably linked with FCC's failed and flawed implementation of the act to date. We are therefore anxious that Mr. Kennard understand the dissatisfaction with what is occurring and that he be responsive and flexible in addressing our concerns. The FCC is, after all, an agency created by the Congress. Its primary responsibility is to implement and enforce the will of Congress, pursuant to authority delegated to it by Congress. Some of our members are very concerned that Mr. Kennard may be so tied to the FCC's current policies that he will be not fully responsive to congressional concerns about them.

These concerns have led to sequential questions by myself, Senator BURNS,

Senator STEVENS, Senator BROWNBACK, Senator HELMS, and others about Mr. Kennard's ability and willingness to re-examine and change policies of the FCC that we believe misinterpret the law and harm consumers. These concerns are only heightened by the very public way in which the administration has sought to involve itself in the deliberations of this supposedly independent regulatory agency.

Obviously, I do not agree with Mr. Kennard on many issues. For example, he believes that the FCC can and should tell broadcasters what kinds of programming they must present. I vehemently disagree. He believes that the FCC's current policies on telephone competition are working. I vehemently disagree. I am also troubled by the fact that, when asked, he was unable to specify any particular issue with which he might have disagreed with the FCC's current chairman—despite the fact that the FCC had disposed of thousands and thousands of issues during his tenure as its general counsel. That did not bode well for the independence of his approach to governing the FCC.

Mr. President, I am going to vote in favor of his confirmation, and I will tell you why. Mr. Kennard has an unblemished reputation for intelligence and integrity, and I find him to be an individual with whom I believe we can work in an atmosphere of mutual candor and respect.

In the final analysis, Mr. President, I believe it is neither reasonable nor necessary that all members of the Senate endorse the current policies of the FCC or Mr. Kennard's personal policy predilections. It is much more important that the Senate understand how difficult the issues are that Mr. Kennard is going to be called upon to decide, and that we undertake to work closely and collaboratively with him in resolving them. I give you my promise, as chairman of the Commerce Committee, to exercise the committee's oversight responsibility exactly and continuously, and I know the members of the committee are as committed to this task as I am.

On this basis, Mr. President, I am pleased to support the confirmation of William E. Kennard as Chairman of the Federal Communications Commission.

Mr. President, I reserve the balance of my time.

Mrs. FEINSTEIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from California is recognized.

Mrs. FEINSTEIN. I thank the Chair. The ACTING PRESIDENT pro tempore. Who yields time to the Senator?

Mr. HOLLINGS. Mr. President, I yield such time as is necessary to the distinguished Senator from California.

The ACTING PRESIDENT pro tempore. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the ranking member of the committee and I also thank the chairman of the committee.

I was very pleased to hear the chairman's statement that it is his belief that Mr. Kennard possesses an "unblemished reputation" for candor and integrity. I appreciate his comments and believe they have been well stated.

As California's Senator, I am particularly pleased to rise in support of the President's nomination.

Bill Kennard has very strong California roots. He was born in Los Angeles. He graduated with honors from my alma mater, Stanford University. He then attended Yale Law School.

Bill Kennard's family also has strong California roots. His father, Robert Kennard, now deceased, was a very well-regarded architect in the Los Angeles area. He formed the largest continuously operating African-American architectural practice in the western United States and also served as the founding member of the National Organization of Minority Architects.

His mother, I want this body to know, is also a distinguished person. She grew up in the great Central Valley of California. She received a master's degree in bilingual education and has worked in the field of bilingual education in Los Angeles.

The President's nomination is, in fact, a historic one. Following his confirmation, he will be the first African-American to serve as FCC Commissioner in the history of the United States. He is well prepared for the challenges ahead of him. He has a broad telecommunications background in both the public and the private sector and an impressive range of experiences that, I believe, will serve him well and serve the Nation well.

Since 1993, as the chairman mentioned, Bill Kennard has served as FCC general counsel. He has represented the Commission before the courts and served as its principal legal advisor. In that capacity, he has defended the commission well.

Bill Kennard was a partner in the Washington law firm of Verner, Liipfert, Bernhard, McPherson & Hand, specializing in communications law. He has served as assistant general counsel of the National Association of Broadcasters.

I also know that he has been involved in the needs of his community here in Washington and has served on the board of a nonprofit homeless shelter.

With this committee's leadership, the Congress was able to pass the most comprehensive communications legislation since passage of the 1934 Communications Act, upgrading our telecommunications law to address modern telecommunications needs.

The 1996 act sought to develop a regulatory framework that provides the benefit of competition for consumers, spurs the development of new products and reduces costs, while it also removes unnecessary regulatory barriers.

Congress has set the stage for a new telecommunications era, and we need to ensure that that law is implemented properly and that it works fairly for

consumers. I think that, as FCC general counsel, Bill Kennard has the experience to help see these reforms through.

I happen to believe he will be an independent and a strong voice, yet responsive to the concerns that the distinguished chairman has pointed out. I am pleased to add a California voice and to support this distinguished nominee.

I thank the Chair and I yield the floor.

Mr. HELMS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized for 5 minutes.

Mr. HELMS. I thank the Chair and I thank the managers of the bill.

Mr. President, we have been working with Senator MCCAIN and Senator HOLLINGS and their staffs and, of course, William Kennard. I met with him for some time in my office. Mr. Kennard is the nominee to be Chairman of the Federal Communications Commission, as you know. Now, all of us—and I think it is fair to include Mr. Kennard—want to rectify an awkward and unjustifiable situation that has developed in the Federal Communications Commission process of awarding broadcast licenses. Specifically, in this case, a well-known and highly respected and popular broadcasting executive in Asheville, NC, was curiously disqualified in his application for an FM frequency in the Asheville area. There was a lot of resentment in the public about that.

What happened, Mr. President, was that this gentleman, Zeb Lee, of Asheville, and 12 other groups, had applied for the FM frequency when it became available in 1987. The Commission's comparative hearing process, in effect at that time, was used to determine which group would be the most qualified for the frequency.

Zeb Lee had run station WSKY-AM in Asheville for 46 years, during which time he did the play-by-play for about 4,000 high school football games, and by sponsoring such public interest things as an Elvis Presley concert in 1955, which I would not have listened to, but most people did want to hear it. But he made so many innovations in broadcasting that he became just a household word, in terms of his name. He is enormously popular to this day.

Well, Mr. President, in 1989, a 20-day hearing was held during which an FCC administrative law judge disqualified most of the other applicants because the judge ruled that they either lacked experience, didn't have transmitter facilities ready to go, or were basing their application purely on provisions favoring minorities—women and others. The judge found for the Lees, ruling in their favor on May 4, 1990. The judge found that the Lees were the most qualified, citing their stewardship of the AM station and Mr. Lee's commitment of involvement in the day-to-day management of the station. The FCC then favored active involvement by owners in the day-to-day operations

of a radio station, as opposed to passive investors who would not be active managers. I think that is the way to go, as a former broadcaster.

In any case, Mr. President, in addition to the first ruling in favor of Zeb Lee and his people, on April 8, 1991, the FCC Review Board affirmed the administrative law judge's ruling. And then on February 28, 1992, the FCC released its first decision favoring the Lees and a second decision also favoring the Zeb Lee application was released, I believe, on November 23, 1992.

So on June 14, 1993, the FCC released a third ruling favoring the Lees.

Well, Mr. President, you might say, "Why is HELMS going to speak today talking about this nominee and this situation in Asheville, NC.?"

The FCC granted a construction permit to the Lees on April 30, 1993, following which they began the construction process. So it went through a series of regulatory twist and turns in which the Lees complied with every order and requirement issued by the FCC and the administrative law judge, who stipulated that Mr. Lee must dispose of his AM station as a condition for acquiring that FM license—which Mr. Lee did. Amazingly, on June 18 of this year, the FCC which had reversed itself on June 2, forced the Lees off the air.

Zeb Lee has asked the U.S. Court of Appeals to examine the manner in which the FCC handled his application, which led to his being taken off the air. The court will shortly issue a decision in the near future.

Mr. President since April 30, 1993, the U.S. Court of Appeals in the Bechtel case of December 17, 1993, struck down the "comparative process" that had been used to determine allocations of radio and television frequencies. The court directed the FCC to come up with new comparative standards. The Lees and about 25 to 30 other people were affected by this decision.

But their cases have been frozen ever since. Additionally, a provision in the Balanced Budget Act of 1997, which went into effect July 1, required that all radio and television frequencies be subject to auction. This provision concerned me because Zeb Lee's case and another 25 to 30 cases were in the pipeline and could be subject to auction which nobody anticipated.

I find no fault with the provision in the balanced budget legislation, but it crept in the back door on Mr. Lee and the others.

So, to get to the meat of the coconut, Mr. President, I submitted questions to Mr. Kennard through Senator BURNS' Commerce Communications Subcommittee about all of this. I ask unanimous consent that the nominee's responses be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HELMS. I thank the Chair.

Senators should note that Mr. Kennard clearly feels the FCC can conduct hearings on this small group and class of applicants using new comparative criteria.

In any event, Mr. President, I then consulted and wrote to the able chairman of the Senate Commerce, Science, and Transportation Committee, Mr. MCCAIN, seeking assurance that Senator MCCAIN now agrees that the provisions in the Balanced Budget Act of 1997 do not prohibit the FCC from using the comparative process in these 25 or 30 cases.

I ask unanimous consent that copies of my letter and Senator MCCAIN's response be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. HELMS. I thank the Chair.

Mr. President, I have been given assurances satisfactory to me by Mr. Kennard that he will, within statute and regulation, work in good faith with me and others to resolve the problems the Bechtel decision caused.

I was very impressed when Mr. Kennard came to my office and met with me about 3 weeks ago. I appreciate his voluntary assurance that he will work with us on the Zeb Lee case. Therefore, Mr. President, I support the nomination, and I am going to ask for the yeas and nays. I hope that he will be confirmed unanimously by the Senate.

EXHIBIT 1

RESPONSES OF WILLIAM E. KENNARD TO POST-HEARING QUESTIONS SUBMITTED BY SENATOR CONRAD BURNS ON BEHALF OF SENATOR JESSE HELMS

1. As you know, the recent budget legislation included a provision that appear[s] to require the FCC to apply auction procedures to pending applications for radio stations. These provisions were reportedly aimed at resolving the applications that have been in limbo since the Bechtel case struck down a part of the FCC's rules governing comparative license application proceedings. Please clearly state your views in response to the following questions:

a. In your opinion, is the FCC now required to apply these auction provisions to all pending application cases, or does the FCC have discretionary authority not to handle pending cases through this auction approach?

In the Balanced Budget Act of 1997, Congress required the FCC to use auctions to resolve all future comparative broadcast proceedings involving commercial stations. For pending applications, the statute states that the Commission "shall have the authority" to use auctions. The Conference Report states that this provision "requires" the Commission to use auctions for pending cases. The Commission will be determining in a rulemaking proceeding implementing the Balanced Budget Act of 1997 how it should proceed with these pending cases. The statutory language suggests that the Commission has discretion to use comparative proceedings for pending cases.

b. While most of the pending comparative cases had not gone through a hearing before an administrative law judge, and had at least an initial decision issued, a relatively small number of these cases had in fact been de-

cidated under the old rules by an ALJ and in some cases decisions made by the full Commission, although these decisions may have been on appeal. In those cases, the parties often had spent many years and hundreds of thousands of dollars to advance their applications under the old rules. Do you believe that it would be more equitable not to apply auction procedures to the cases which were far along in the process, where the applicants had played in good faith under the old rules, and to instead have those cases decided using any existing hearing record pursuant to such special rules as the Commission might adopt for deciding them?

I do believe that the Bechtel decision has caused unfairness to many applicants who have had further processing of their applications delayed and, as a result of that court decision, will necessarily have their applications processed under new procedures. I am quite sympathetic to their predicament. That is why the Commission argued to the court in Bechtel that the court's decision should only apply to new cases. Unfortunately the Commission was not successful and the court rejected this argument. As noted above, the issue of what those procedures will be, that is, whether some or all pending applications should be auctioned or decided pursuant to some new, yet-to-be developed criteria, will be a subject of the Commission's rulemaking proceeding implementing the Balanced Budget Act of 1997. The Commission certainly may consider as part of that rulemaking proceeding any arguments that particular classes of pending applicants should be treated differently.

c. The U.S. Court of Appeals in the Bechtel case ordered the Commission to issue new comparative rules. Although the Commission never formally adopted such new rules, its staff, including your office, prepared draft rules to respond to the Court's order. Please summarize how those draft rules would have dealt with pending cases, and comment on whether those drafts might be suitable and readily adaptable for use in resolving at least those pending cases that had reached the point where an initial decision had been issued based on a hearing record.

The FCC staff presented a draft order to the Commission earlier this year. In that draft, the staff recommended that pending hearing cases be resolved by a lottery pursuant to section 309(i) of the Communications Act. The Balanced Budget Act of 1997 eliminated the Commission's authority to use lotteries for these cases, so the staff proposal is no longer an option.

EXHIBIT 2

U.S. SENATE,

Washington, DC, October 21, 1997.

Hon. JOHN MCCAIN,
Chairman, Senate Committee on Commerce,
Science, and Transportation, Washington,
DC.

DEAR JOHN: My folks have conducted numerous discussions with your good people about the FCC treatment of Zeb Lee, a longtime Asheville broadcaster, in response to Lee's attempt to secure an FM radio station. (Zeb and approximately 25 to 30 other applicants were left stranded in the regulatory process by the Bechtel court decision.)

Additionally, I understand these 25 to 30 applicants are not affected by the provision requiring the auctioning of all radio and television licenses that was included in the Balanced Budget Act of 1997, which went into effect July 1 of this year.

The FCC contends that it interprets this provision as giving the Commission the authority to decide whether these 25 to 30 applicants be judged on the basis of the comparative hearing process. John, I do hope that you agree that this is a proper interpretation.

Furthermore, in the future if the courts question this interpretation for these applicants, I do hope that you will reaffirm this interpretation and move related legislation swiftly through the Senate.

Many thanks, John.

Sincerely,

JESSE.

—
U.S. SENATE, COMMITTEE ON
COMMERCE, SCIENCE, AND
TRANSPORTATION,
Washington, DC, October 23, 1997.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR JESSE: I am aware of your concern over whether Section 3002(a) of the Balanced Budget Act would permit the Federal Communications Commission to use comparative hearings where mutually-exclusive applications have been filed for initial licensees or construction permits for commercial radio and television stations. As a principal proponent of this part of the legislation, I am happy to have this opportunity to respond to your question.

Section 3002(a) specifically states that, with respect to competing applications filed before July 1, 1997, the Commission "shall have the authority to conduct" auctions. Therefore, the Commission's authority to conduct auctions in these situations is clearly and explicitly permissive, not mandatory. Moreover, the statute contains no provision affecting the Commission's existing authority to hold comparative hearings, although it does explicitly repeal the Commission's authority to conduct lotteries. Read together under long-established principles of statutory interpretation, there can be no doubt that these provisions: (1) permit, but do not require, the use of auctions to select initial licensees for commercial radio and television stations; and (2) that the Commission is (a) permitted, but not required, to use comparative hearings to select such licensees or permittees in cases where it determines that auctions should not be used, but (b) is not permitted to use lotteries to select licensees or permittees for any service.

As to the impact of legislative history (conference reports, floor statements, and other such collateral material), it is a basic tenet of statutory interpretation that where, as here, the letter of the law is unambiguous on its face, legislative history cannot be read to override it. Therefore, any such statements that appear inconsistent with the clear terms of the statute cannot be interpreted to contradict it or to call it into question.

Finally, in the unlikely event that any future court opinion misconstrues the statute, I will do whatever is necessary to secure the passage of legislation that will restate the terms of the statute as reflected in this letter.

I sincerely trust this will answer your questions fully. I would be pleased to provide you with anything further you might wish on this issue at any time you feel it would be helpful.

Sincerely,

JOHN MCCAIN,
Chairman.

Mr. HELMS. Mr. President, if it is in order and agreeable to the manager of this nomination, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair. I thank the manager.

I yield the floor.

Mr. MCCAIN addressed the Chair.

The ACTING PRESIDENT pro tempore. For the information of the Senator from Arizona, he has about 3½ minutes.

Mr. MCCAIN. Thank you, Mr. President.

Mr. President, I thank the Senator from North Carolina for his cooperation on what is a very important issue with one of his constituents, and one of great importance to him. I am grateful for his cooperation and that of his staff in resolving it.

I reserve the remainder of my time.

Ms. MOSELEY-BRAUN. Mr. President, I strongly support the nomination of William Kennard to serve as Chairman of the Federal Communications Commission, and I urge all of my colleagues to do the same.

There is perhaps no industry that has undergone more rapid or greater change than the telecommunications industry. In terms of technology, ownership, and opportunities, the communications industry has literally undergone a revolution. These changes will create opportunities for consumers, existing companies, and new entrants. In the coming years, the FCC will face enormous challenges as it attempts to cope with these changes and finishes implementing the provisions of the Telecommunications Act of 1996.

No one is more prepared for that challenge than Bill Kennard. He has demonstrated exceptional leadership and mastery of the issues during his 4 years as general counsel of the FCC, and his many years as a telecommunications lawyer. When I think of Mr. Kennard, I think of something that Jean-Claude Paye, former Secretary General of the Organization for Economic Cooperation and Development, said of the changing times in which we live. He said that societies concerned about their economies ought to look to their fraying social fabric, as economic growth is the weave of national character. The waft of it, he said, are the people who embrace and master social change.

Bill Kennard is one of those individuals. He will bring to the helm of the FCC not only an understanding of the industry and the economics, but the social and societal implications of the issues that he will address as Chairman of the FCC.

Mr. President, I expect great things from Bill Kennard and I look forward to working closely with him as he steers the telecommunications industry into the 21st century. I commend the President for choosing such a qualified and competent individual for this duty, and I hope that every one of my colleagues will support his nomination.

I thank the managers of this nomination, and I yield the floor.

Mr. HUTCHINSON. Mr. President, I rise today in support of the nomination of William E. Kennard to the Federal Communications Commission [FCC].

The telecommunications industry has seen incredible technological advances made over the last two decades. As a result, the responsibilities and scope of the FCC have increased dramatically. Today, it is more important than ever for FCC Commissioners to be able to respond and adapt to these changes in a timely manner.

Recently, the FCC issued a regulation that will have a profound impact on the trucking industry nationwide. While ordinarily one would not think of an FCC action having an adverse impact on trucking companies, such is not the case in this situation. On October 9, the FCC issued a regulation implementing a provision of last year's Telecommunications Act, which directed the FCC to provide for adequate compensation of pay phone operators. The new FCC regulation ordered long-distance companies to pay payphone owners 28.4 cents per call for each call to a toll-free number unless the payphone owner and the long-distance company have a contract specifying a different rate. The charge applies to both customer toll-free numbers and to company access numbers, including those on prepaid calling cards. The charge became effective immediately.

Long-distance carriers, in turn, are passing this charge along to their customers. The carriers are not limited to a set charge and as a result the amount being charged varies depending on the carrier.

Pay phones are the life line between the Nation's 3.2 million truck drivers and their home offices. A driver will call in numerous times during the day and in most cases will talk no longer than 2 minutes. Nevertheless, under this new rule, the trucking company will be charged each time a driver calls in.

Arkansas has been fortunate to have a significant trucking industry based in our State. Some of the largest trucking companies in the Nation are headquartered there. This new regulation will have a devastating effect on their business costs. For instance, in the case of J.B. Hunt Trucking, it is estimated that this new regulation will increase the company's phone bill by approximately \$200,000 a month. This will equate to \$2.1 million annually.

Smaller trucking firms have also contacted me and said their phone bills are projected to double under this new rule. A small business is completely unable to absorb an increase of this magnitude.

When it comes to using payphones, the trucking industry is virtually a captive consumer. There is no real alternative and no option to avoid paying what is, in effect, a very expensive tax.

Mr. President, we need to explore alternatives to provide some relief to this industry. I will be contacting the FCC Commissioners to work with them on this problem and I would encourage my colleagues to do the same.

The ACTING PRESIDENT pro tempore. Who requests time?

Mr. HOLLINGS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank the distinguished Chair.

Mr. President, I am privileged to support the confirmation of Bill Kennard's nomination to be Chairman of the Federal Communications Commission. You will find no one more qualified than William Kennard.

Mr. President, today, the Senate will consider the nomination of William Kennard for Chairman of the Federal Communications Commission [FCC].

Mr. Kennard has spent his career in the communications field—as a first amendment attorney with the National Association of Broadcasters; as a communications lawyer in private practice; and the last 3 years as general counsel of the FCC. Mr. Kennard brings a tremendous amount of experience to the job at a critical time in the communications industry. A great deal of work remains to be done to fully implement the 1996 act. He is eminently qualified for the task at hand.

The overarching goals of the 1996 act are to preserve Universal Service, and to provide a transition from monopoly to open competition. Mr. Kennard understands that neither of these objectives will happen on their own accord. It will be the responsibility of Mr. Kennard, the three new commissioners confirmed last night, along with Commissioner Ness, to fulfill these objectives by balancing the competing interests of industry with the public interest.

For the past 20 months, the FCC has been doing its best to implement the Telecommunications Act of 1996. The rules adopted by the FCC have generated a great deal of controversy and subsequent litigation. Most of those issues are either pending in the courts or before the FCC on reconsideration. So it goes without saying that Mr. Kennard will have a very important, and sometimes difficult, job ahead of him.

First, and foremost, the new Commission must understand that the Universal Service System we have today is a mechanism designed to maintain low-cost affordable phone service in rural and high-cost areas. These areas of the country would not have had telephone service, much less any economic development, were it not for the Federal support and Government mandate of Universal Service. The Commission should be vigilant to maintain Universal Service and its attendant benefits.

The second issue is the promotion of competition across the various industries. Much of the deregulation of the act was premised on the commitments made by industry to compete with each other. Now some segments of the industry are having second thoughts about competition. The grand plans pledged to the Congress over 2 years ago no longer seem so grand. Competi-

tion does not come with a money-back guarantee. The Congress did not guarantee any incumbent continued marketshare. Nor did the Congress guarantee that competitors would gain marketshare. What the Congress attempted to guarantee was the right to compete under certain conditions. It will be the FCC's job to enforce those conditions to bring the benefits of competition to consumers. More importantly, though, its job will be to protect consumers where competition and the marketplace fail.

As the FCC decides each of these issues, the most important aspect of its responsibility is to safeguard the public interest. The FCC's job is to protect consumers by promoting competition and removing barriers to entry or, in the alternative, enforcing regulation where competition does not exist.

Mr. President, you will find the frustration of those addressing this particular subject comes about from a failure of implementation by the private industry itself. We worked for 4 years on the Telecommunications Act that passed last year. It is noted that we had 95 votes. A strong bipartisan support was worked out to the satisfaction of all the entities. Now we find some of those entities coming in and petitioning and enjoining and appealing to the U.S. Supreme Court. There are some 73 local carriers that now have enjoined their local commissions.

You will find one particular RBOC that has petitioned the Court on the constitutionality of what we enacted after they sent a wonderful letter in support of what we enacted.

What you are seeing on behalf of the industry overall is a freezing of the board by the majority. And there has been very little movement of cable into telephone, telephone into cable and RBOC into long distance. They have not met the so-called checklist, and have held up on it. That is what is really in force.

So some of these mergers could well break it loose in the telecommunications wall—again, the wall of competition.

Mr. Kennard, I am convinced, understands what is going on. He would have to at the Commission level as the general counsel. I hope under the law and the requirements of public interest and in balancing all of the interests of the various carriers with that public interest in mind that we can move forward.

So I appreciate the situation and would be delighted to yield to others.

Mrs. BOXER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from California is recognized.

Mrs. BOXER. Mr. President, what is the order?

The ACTING PRESIDENT pro tempore. I understand the Senator from South Carolina yielded to the Senator from California.

Mr. HOLLINGS. I would be glad to yield that time. Go right ahead.

The ACTING PRESIDENT pro tempore. The Senator from California is recognized.

Mrs. BOXER. Thank you.

Mr. President, I am pleased to add my voice to support the nomination of William Kennard to be the Chairman of the Federal Communications Commission, and I am proud to say that he is a native of my home State of California. I join with Senator FEINSTEIN today in this moment of pride.

Bill Kennard's experience and knowledge of communications issues will be extremely important in helping the FCC deal with the many, many difficult challenges it faces. He has been their general counsel since 1993 serving as the principal legal adviser of the agency during an extraordinary period in the history of communications.

The last 4 years have seen dramatic changes in communications technology, communications markets, and communications policy. We know one important thing is for certain. There will be more historic changes almost every month and every week in this area.

In a series of historic decisions, the FCC has rewritten the rules governing every lane of the information superhighway—local, long distance, international telecommunications, satellite, spectrum, broadcast television, and multichannel TV.

Bill Kennard has a bird's-eye view of these important changes, providing excellent advice and counsel to the FCC Chairman and Commissioners.

Prior to joining the FCC, Bill Kennard practiced communications law for several years where he specialized in broadcast, cable TV, and cellular matters. He knows where the communications world has been. And he has a strong vision for the future of the communications world.

I urge the Senate to give unanimous approval to this very important nomination.

I yield my time to the Senator from South Carolina.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair.

I think the distinguished Senator from New Jersey has his own time. I would be delighted to yield whatever time is necessary.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. TORRICELLI. I thank very much the Senator from South Carolina for yielding the time.

Mr. President, I am very pleased to join in recommending to the Senate William Kennard to be Chairman of the Federal Communications Commission.

By his record as general counsel, Mr. Kennard's tenure as Chairman of the Commission promises to be both able and insightful at a time of extraordinary technological change in the United States.

Yesterday, at my request, this nomination was held until today so I would have an opportunity to meet with Mr.

Kennard. What may be the best proof is former Speaker O'Neill's maxim that "all politics is local." At a time when the Commission is dealing with great national and, indeed, global issues, in this moment of extraordinary change in the industry, I needed an opportunity to address with Mr. Kennard a continuing problem with the Commission in my own State of New Jersey.

For 15 years my predecessor, Senator Bradley, brought to this body the continuing problem that the 8 million people of the State of New Jersey are largely without internal communication because of the dominance of Philadelphia and the city of New York in television and radio. Indeed, New Jersey alone, through most of this century, has been without a commercial television station until Senator Bradley led the effort to bring one of those licenses to the State of New Jersey. The State still, in its commercial, political and cultural development, is not properly served. That problem has now repeated itself with New Jersey's largest county, home to nearly a million people in Bergen County, NJ, which may be without FM radio service. I know in the great plethora of issues this does not seem like a significant question unless you live in the State of New Jersey.

Bergen County, NJ, is host to more Fortune 500 corporations than all but a few counties in America. It is one of the highest income counties in the entire United States of America and, indeed, has more people than six States in the United States of America. But from everything from its internal political debate to news about emergencies within the county to the simple matter of school closings due to weather, people are unable to get basic information. Those licenses rest in the city of New York. Indeed, most of them should. But one, at least one of them, as, indeed, with one television station, should be in this area of suburban New Jersey.

I spoke at length yesterday with Mr. Kennard. I am convinced that he is as sensitive to the problem that the Commissioners responded to for Senator Bradley on previous occasions and that under Mr. Kennard's leadership the Commission will respond as well in sensitivity to both the ongoing television problem but also this new dilemma of how to ensure a continued FM radio presence. Therefore, I was very pleased last night to have participated in asking that the nomination come to the floor today and am very pleased today to rise in support of Mr. Kennard's nomination.

For years, the 840,000 residents of Bergen County have relied on local FM radio in order to receive valuable traffic, weather and news information, as well as popular music entertainment. Indeed, on multiple occasions, this service has served as a crucial link between the residents of Bergen County and critical emergency information. In 1996, when a water main break left over

a half-million residents without water for nearly 3 days, a local FM station was the only source of live coverage from the scene of the break and the only source of continuous, round-the-clock reports throughout the emergency. Again during the recent explosion of the Napp Chemical plant in Lodi, NJ, a local FM station was the primary source of onsite news and information about the risks of possible toxic fumes which originated from the plant. Also, for years local FM service has provided extensive school closing reports during snowstorms, and notified the public of road conditions and other weather-related emergency information.

However, the survival of FM service in Bergen County has recently been threatened by another Washington regulatory bureaucracy out of touch with the people it is supposed to serve: The Federal Communications Commission [FCC]. Mr. President, I am here today to ensure that the FCC does not succeed in ending FM service for Bergen County. This is a matter of principle, and it is the right thing to do for the residents of my State. Until the advent of local FM service, the residents of Bergen County had to rely upon radio stations in New York City to provide them with their news and information. Unfortunately, radio stations in New York City focus on the news and needs of the residents of that city, and often-times ignore those living in the New Jersey suburbs.

Bergen County has more than 70 municipalities and school districts, six State legislative districts, two congressional districts, 231 square miles, and a population larger than the States of Alaska, Montana, North Dakota, South Dakota, Vermont, Wyoming, and the District of Columbia. It is a county of tremendous size and importance, and it deserves an FM news and information source of its own.

Yesterday, I met with William Kennard, the President's nominee to be Chairman of the FCC, and I am confident that the commissioners of the agency will work with my office to preserve FM service for Bergen County. If the FCC is to continue in its mission to ensure broadcast capability for the public interest, then the commissioners must end this instance of broadcast discrimination against the people of Bergen County, NJ.

I yield my time to the Senator from South Carolina.

The ACTING PRESIDENT pro tempore. Who seeks recognition?

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. FORD. Mr. President, I understand there is some time left to discuss the nominee?

The ACTING PRESIDENT pro tempore. The Senator is recognized.

Mr. FORD. I thank the Chair.

Mr. FORD. Mr. President, I join my colleagues today in voicing my strong support for the nomination of William Kennard to serve as Chairman and member of the Federal Communications Commission.

With the passage of the Telecommunications Act of 1996, the Federal Communications Commission faces the daunting challenge of being a regulatory agency that will promote a deregulated telecommunications industry. The FCC requires a leader who will be able to charter the agency and the industry through these uncharted waters.

Mr. Kennard brings a keen understanding of the telecommunications industry and superb academic credentials to the agency. His years of experience as the FCC's general counsel have provided him with the experience and insight to hit the ground running. I am confident that he has the leadership qualities to effectively lead the multi-member agency and to forge the consensus needed for the FCC to accomplish the goals of the 1996 act. He will bring keen intellect, good judgment, and common sense to the office of Chairman and to the agency as a whole.

I believe that Mr. Kennard is an outstanding nominee. I am convinced, through my personal experiences of meeting him as well as from discussions from around the entire telecommunications industry, that he will serve with distinction. I strongly support his nomination and encourage my colleagues to do the same. I look forward to working with Chairman Kennard in the future and offer him my congratulations on his confirmation.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ROBERTS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The question is, Will the Senate advise and consent to the nomination of William E. Kennard, of California, to be a member of the Federal Communications Commission. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 284 Ex.]

YEAS—99

Abraham	Biden	Bryan
Akaka	Bingaman	Bumpers
Allard	Bond	Byrd
Ashcroft	Boxer	Campbell
Baucus	Breaux	Chafee
Bennett	Brownback	Cleland

Coats	Harkin	Moseley-Braun
Cochran	Hatch	Moynihan
Collins	Helms	Murkowski
Conrad	Hollings	Murray
Coverdell	Hutchinson	Nickles
Craig	Hutchison	Reed
D'Amato	Inhofe	Reid
Daschle	Inouye	Robb
DeWine	Jeffords	Roberts
Dodd	Johnson	Rockefeller
Domenici	Kempthorne	Roth
Dorgan	Kennedy	Santorum
Durbin	Kerrey	Sarbanes
Enzi	Kerry	Sessions
Faircloth	Kohl	Shelby
Feingold	Kyl	Smith (NH)
Feinstein	Landrieu	Smith (OR)
Ford	Lautenberg	Snowe
Frist	Leahy	Specter
Glenn	Levin	Stevens
Gorton	Lieberman	Thomas
Graham	Lott	Thompson
Gramm	Lugar	Thurmond
Grams	Mack	Torricelli
Grassley	McCain	Warner
Gregg	McConnell	Wellstone
Hagel	Mikulski	Wyden

NAYS—1

Burns

The nomination was confirmed.

Mr. SHELBY. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

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

Mr. ENZI. I thank the Chair.

(The remarks of Mr. ENZI pertaining to the introduction of S. 1332 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. ENZI. I yield the floor.

Mr. FORD. 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. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BYRD. Mr. President, what is the business before the Senate and what is the pending question?

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The PRESIDING OFFICER (Mr. GREGG). The clerk will report the pending business.

The bill clerk read as follows:

A bill (S. 1173) to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Chafee-Warner amendment No. 1312, to provide for a continuing designation of a metropolitan planning organization.

Chafee-Warner amendment No. 1313 (to language proposed to be stricken by the committee amendment, as modified), of a perfecting nature.

Chafee-Warner amendment No. 1314 (to amendment No. 1313), of a perfecting nature.

Motion to recommit the bill to the Committee on Environment and Public Works, with instructions.

Lott amendment No. 1317 (to instructions of the motion to recommit), to authorize funds for construction of highways, for highway safety programs, and for mass transit programs.

Lott amendment No. 1318 (to amendment No. 1317), to strike the limitation on obligations for administrative expenses.

Mr. BYRD. Mr. President I thank the Chair.

Mr. President, has the time under the Pastore amendment run its course?

The PRESIDING OFFICER. The Senator is advised that the Pastore rule will expire at 2:02.

Mr. BYRD. I thank the Chair.

I ask unanimous consent I may speak out of order.

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

Mr. BYRD. Mr. President, some days ago, the two distinguished Senators, Mr. CHAFEE and Mr. DOMENICI, offered an amendment which they proposed to call up at some point during the debate on the highway bill. There has been no floor discussion of that amendment. I have seen and read various things that are being written about the amendment and in criticism of the amendment which Senators GRAMM, BAUCUS, WARNER and I have offered for printing. My colleagues and I had offered an amendment several days ago and indicated we were offering it for printing, and that we intended to call it up at such time as the amendment tree was dismantled, and we would have an opportunity to call up the amendment.

There have been some discussions of our amendment, but I think it is appropriate to talk about the amendment now that has been offered, I assume, as an alternative to our amendment. I don't know what the prognosis of this bill is—whether it will be taken down and no action taken on extending the highway bill, or whether there will be a 6-month extension, or whether there will be a 6-year bill. I should think that the chances for the latter are diminishing with every passing minute.

In any event, it seems to me that there ought to be some discussion about the Chafee-Domenici amendment. I have spoken to Mr. CHAFEE a number of times about the amendment and have indicated to him that I thought we ought to have some discussion of it so that certain questions might be clarified. I personally have a few things to say about the amendment. I think the public is entitled to some enlightenment as to what it does and what it does not do. So that is the reason why I have chosen to take the floor at this time.

The sponsors of this amendment, my friends Senators DOMENICI and CHAFEE, have brought forward an amendment that claims to be an alternative to the

Byrd-Gramm-Baucus-Warner amendment. I think when all Members thoroughly review the Domenici-Chafee amendment they will find that it is not an alternative at all. Rather, it is an effort designed to obfuscate and confuse Senators into thinking that they, the authors of the amendment, have accomplished the same ends as the Byrd-Gramm amendment.

Senators ought not be confused. I can understand how they are being confused, however. There have been no discussions of the Chafee-Domenici amendment on the floor. There has been discussion of it in memos that have been passed around, letters, articles in various publications, one of which was Congress Daily on yesterday, which was not accurate in many ways. Inasmuch as there has been considerable discussion of the Byrd-Gramm amendment, I think there ought to be an explanation of the Chafee-Domenici amendment and it ought to be out here on the floor in open view where everybody can see what is being said and hear what is being said and make up their own minds.

I feel very much like I am being shot at by someone behind a barricade. They don't come out in the open in public view and take their shots at the Byrd-Gramm amendment there, but I am being shot at. All kinds of things are being said about this amendment that I have offered, many of which things are absolutely not true. Also, many things are being claimed on behalf of the Chafee-Domenici amendment that are likewise inaccurate. So I think that there ought to be more discussion regarding the Chafee-Domenici amendment. Let's talk about it.

The differences between these amendments—the Chafee amendment on the one hand; and my amendment on the other—are as simple as they are stark. The Byrd-Gramm amendment authorizes an additional \$31 billion in contract authority for investment in our Nation's highways over the 6 years covered in the underlying ISTEA bill.

The Domenici-Chafee amendment authorizes not even one, not even one additional dollar in contract authority for this 6-year period.

The Byrd-Gramm-Baucus-Warner amendment authorizes the spending of a 4.3-cent gas tax that is now going into the highway trust fund on our transportation needs over the next 6 years. The Domenici-Chafee amendment does not authorize any of this gas tax revenue to be spent on our highway, bridge and safety needs. That is a big difference. Our amendment authorizes the spending of the 4.3-cent gas tax that is now going into the highway trust fund.

We say it ought to be spent. The American people are being told that that is what it's for. They are not being told that if it goes into the general fund, it will be spent on the various