

provided the universal service program as a means of ensuring that residents of rural and high-cost areas receive the same high quality services and the same affordable rates as their urban counterparts. Yet universal service, one of the most important topics addressed in the Act, remains virtually unchanged by the FCC after three years despite the Commission's statutory responsibility to finish universal service reform in a "single proceeding" and within 15 months of passage of the Act. The FCC did complete a small part of the universal service mandate, the program bringing advanced services to schools and libraries. However, the Commission continues to ignore the most significant aspect of universal service reform, "the preservation and advancement of universal service" and high-cost areas. The Act commands that the Commission make the support mechanisms explicit and predictable. The Commission's failure to do so threatens the affordability of rural residential rates.

The uncertainty created by the FCC's failure to implement universal service is perpetuating the absence of local competition, especially in rural areas. As a consequence, local residential competition will remain at the current inadequate levels until the FCC addresses universal service. Congress intended that carriers providing service to residents of rural and high-cost areas would receive support for the "provision, maintenance, and upgrading of facilities and services" which would otherwise be absent in these areas. Accordingly, the Commission must make the now implicit subsidies explicit and sufficient in order to fulfill Congress' mandate.

Congress is still looking for more competition and more choice in all communications services, especially for rural residents. Let's allow the marketplace to work, which will give consumers in rural areas some real choices at affordable rates.

Mr. President, this year Congress will consider reauthorization of the FCC. I am extremely disappointed with the Commission's track record on implementation of the Act. As we contemplate legislation to change the FCC, its actions over the next several months will determine the outcome of our deliberations. I hope that the FCC will complete the universal service proceeding by July 1, and act in a manner consistent with the Act. I will not accept a universal service proceeding that puts upward pressure on rural rates, and I will hold the FCC accountable if it fails to comply with the Act.●

#### TRIBUTE TO BRIGADIER GENERAL RANDALL M. "MARK" SCHMIDT

● Mr. CRAIG. Mr. President, it is my distinct privilege to rise today to thank Brigadier General Randall M. "Mark" Schmidt for his service as commander of the 366th Wing, Mountain Home Air Force Base, Idaho. Gen-

eral Schmidt has been at Mountain Home since August of 1997, and will soon move on to reassignment as commander, Joint Task Force, Southwest Asia.

I have long been proud of the 366th Wing. The Wing's motto is, "Anywhere, anytime." Mountain Home is unique because it is the Air Force's only air intervention composite wing. The 366th is ready to deploy on a moment's notice with its own integrated command, control, communications, and intelligence capabilities. The Wing is a composite force already built and trained, ready to fight and intervene anytime, any where. However, it is clear that the reason this concept has been a success is because of the dedicated patriots who have had the privilege to serve at Mountain Home. Commander Schmidt has exemplified that tradition.

By all accounts, General Schmidt's service has been nothing short of extraordinary. He has made the goal of "one community" a reality at Mountain Home. He has integrated every airman, regardless of rank, to be part of the 366th team. He puts his words into action. The biggest testament to his talent is the fine work of men and women who are part of the 366th. Indeed, Mountain Home and Idaho have been fortunate to have him.

However, Commander Schmidt's talents do not come as a surprise to me. As a Westerner, a former rancher, and a history buff, I have always been captivated by the pioneer spirit. It is that spirit which brought many of our ancestor to America, and some of them across America to settle in the West. It is that same spirit that isn't afraid of challenges, hardships or hard work, which can be measured and found throughout this great nation, and is at certainly home in the men and women of the United States Air Force.

In addition to saying thank you, let me also take this opportunity to congratulate Commander Schmidt. Secretary Cohen has selected him to be one of a small, select group of Brigadier Generals nominated for promotion to Major General. As he prepares to leave for the desert to serve on joint command, I hope and believe that he will always consider himself an Idahoan.

General Schmidt, thank you, congratulations, and godspeed.●

#### NINTH CIRCUIT DIVISION

● Mr. MURKOWSKI. Mr. President, today I rise to clarify a production and printing problem that occurred with regard to the CONGRESSIONAL RECORD. On January 19, 1999, I, with my distinguished colleague from the State of Washington, Senator GORTON, introduced legislation to reorganize the Ninth Circuit Court of Appeals. Unfortunately, the legislation we introduced, S. 186, was an incorrect draft. I reintroduced the correct draft as S. 253. However, through a glitch in the pub-

lishing of the RECORD, the incorrect language of the bill was again reproduced in the RECORD.

The language appearing in today's record is the correct language of S. 253. This language is identical to the recommendation of the White Commission, the congressionally-mandated Commission structured to study the alignment of the U.S. Court of Appeals.

Mr. President, I ask that the "star print" of S. 253, the Ninth Circuit Reorganization Act of 1999, be printed in the RECORD.

The material follows:

S. 253

*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 "Federal Ninth Circuit Reorganization Act of 1999".

#### SEC. 2. DIVISIONAL ORGANIZATION OF THE COURT OF APPEALS FOR THE NINTH CIRCUIT.

(a) REGIONAL DIVISIONS.—Effective 180 days after the date of enactment of this Act, the United States Court of Appeals for the Ninth Circuit shall be organized into 3 regional divisions designated as the Northern Division, the Middle Division, and the Southern Division, and a nonregional division designated as the Circuit Division.

(b) REVIEW OF DECISIONS.—

(1) NONAPPLICATION OF SECTION 1294.—Section 1294 of title 28, United States Code, shall not apply to the Ninth Circuit Court of Appeals. The review of district court decisions shall be governed as provided in this subsection.

(2) REVIEW.—Except as provided in sections 1292(c), 1292(d), and 1295 of title 28, United States Code, once the court is organized into divisions, appeals from reviewable decisions of the district and territorial courts located within the Ninth Circuit shall be taken to the regional divisions of the Ninth Circuit Court of Appeals as follows:

(A) Appeals from the districts of Alaska, Idaho, Montana, Oregon, Eastern Washington, and Western Washington shall be taken to the Northern Division.

(B) Appeals from the districts of Eastern California, Northern California, Guam, Hawaii, Nevada, and the Northern Mariana Islands shall be taken to the Middle Division.

(C) Appeals from the districts of Arizona, Central California, and Southern California shall be taken to the Southern Division.

(D) Appeals from the Tax Court, petitions to enforce the orders of administrative agencies, and other proceedings within the court of appeals' jurisdiction that do not involve review of district court actions shall be filed in the court of appeals and assigned to the division that would have jurisdiction over the matter if the division were a separate court of appeals.

(3) ASSIGNMENT OF JUDGES.—Each regional division shall include from 7 to 11 judges of the court of appeals in active status. A majority of the judges assigned to each division shall reside within the judicial districts that are within the division's jurisdiction as specified in paragraph (2), except that judges may be assigned to serve for specified, staggered terms of 3 years or more, in a division in which they do not reside. Such judges shall be assigned at random, by means determined by the court, in such numbers as necessary to enable the divisions to function effectively. Judges in senior status may be assigned to regional divisions in accordance with policies adopted by the court of appeals. Any judge assigned to 1 division may be assigned by the chief judge of the circuit for

temporary duty in another division as necessary to enable the divisions to function effectively.

(4) **PRESIDING JUDGES.**—Section 45 of title 28, United States Code, shall govern the designation of the presiding judge of each regional division as though the division were a court of appeals, except that the judge serving as chief judge of the circuit may not at the same time serve as presiding judge of a regional division, and that only judges resident within, and assigned to, the division shall be eligible to serve as presiding judge of that division.

(5) **PANELS.**—Panels of a division may sit to hear and decide cases at any place within the judicial districts of the division, as specified by a majority of the judges of the division. The divisions shall be governed by the Federal Rules of Appellate Procedure and by local rules and internal operating procedures adopted by the court of appeals. The divisions may not adopt their own local rules or internal operating procedures. The decisions of 1 regional division shall not be regarded as binding precedents in the other regional divisions.

(c) **CIRCUIT DIVISION.**—

(1) **IN GENERAL.**—In addition to the 3 regional divisions specified under subsection (a), the Ninth Circuit Court of Appeals shall establish a Circuit Division composed of the chief judge of the circuit and 12 other circuit judges in active status, chosen by lot in equal numbers from each regional division. Except for the chief judge of the circuit, who shall serve ex officio, judges on the Circuit Division shall serve nonrenewable, staggered terms of 3 years each. One-third of the judges initially selected by lot shall serve terms of 1 year each, one-third shall serve terms of 2 years each, and one-third shall serve terms of 3 years each. Thereafter all judges shall serve terms of 3 years each. If a judge on the Circuit Division is disqualified or otherwise unable to serve in a particular case, the presiding judge of the regional division to which that judge is assigned shall randomly select a judge from the division to serve in the place of the unavailable judge.

(2) **JURISDICTION.**—The Circuit Division shall have jurisdiction to review, and to affirm, reverse, or modify any final decision rendered in any of the court's divisions that conflicts on an issue of law with a decision in another division of the court. The exercise of such jurisdiction shall be within the discretion of the Circuit Division and may be invoked by application for review by a party to the case, setting forth succinctly the issue of law as to which there is a conflict in the decisions of 2 or more divisions. The Circuit Division may review the decision of a panel within a division only if en banc review of the decision has been sought and denied by the division.

(3) **PROCEDURES.**—The Circuit Division shall consider and decide cases through procedures adopted by the court of appeals for the expeditious and inexpensive conduct of the division's business. The Circuit Division shall not function through panels. The Circuit Division shall decide issues of law on the basis of the opinions, briefs, and records in the conflicting decisions under review, unless the Circuit Division determines that special circumstances make additional briefing or oral argument necessary.

(4) **EN BANC PROCEEDINGS.**—Section 46 of title 28, United States Code, shall apply to each regional division of the Ninth Circuit Court of Appeals as though the division were the court of appeals. Section 46(c) of title 28, United States Code, authorizing hearings or rehearings en banc, shall be applicable only to the regional divisions of the court and not to the court of appeals as a whole. After a divisional plan is in effect, the court of appeals

shall not order any hearing or rehearing en banc, and the authorization for a limited en banc procedure under section 6 of Public Law 95-486 (92 Stat. 1633), shall not apply to the Ninth Circuit. An en banc proceeding ordered before the divisional plan is in effect may be heard and determined in accordance with applicable rules of appellate procedure.

(d) **CLERKS AND EMPLOYEES.**—Section 711 of title 28, United States Code, shall apply to the Ninth Circuit Court of Appeals, except the clerk of the Ninth Circuit Court of Appeals may maintain an office or offices in each regional division of the court to provide services of the clerk's office for that division.

(e) **STUDY OF EFFECTIVENESS.**—The Federal Judicial Center shall conduct a study of the effectiveness and efficiency of the divisions in the Ninth Circuit Court of Appeals. No later than 8 years after the effective date of this Act, the Federal Judicial Center shall submit to the Judicial Conference of the United States a report summarizing the activities of the divisions, including the Circuit Division, and evaluating the effectiveness and efficiency of the divisional structure. The Judicial Conference shall submit recommendations to Congress concerning the divisional structure and whether the structure should be continued with or without modification.

**SEC. 2. ASSIGNMENT OF JUDGES; PANELS; EN BANC PROCEEDINGS; DIVISIONS; QUORUM.**

(a) **IN GENERAL.**—Section 46 of title 28, United States Code, is amended to read as follows:

**§46. Assignment of judges; panels; en banc proceedings; divisions; quorum**

“(a) Circuit judges shall sit on the court of appeals and its panels in such order and at such times as the court directs.

“(b) Unless otherwise provided by rule of court, a court of appeals or any regional division thereof shall consider and decide cases and controversies through panels of 3 judges, at least 2 of whom shall be judges of the court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. A court may provide by rule for the disposition of appeals through panels consisting of 2 judges, both of whom shall be judges of the court. Panels of the court shall sit at times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel-to-panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may determine by rule the number of judges, not less than 2, who constitute a panel.

“(c) Notwithstanding subsection (b), a majority of the judges of a court of appeals not organized into divisions as provided in subsection (d) who are in regular active service may order a hearing or rehearing before the court en banc. A court en banc shall consist of all circuit judges in regular active service, except that any senior circuit judge of the circuit shall be eligible to participate, at that judge's election and upon designation and assignment pursuant to section 294(c) and the rules of the circuit, as a member of an en banc court reviewing a decision of a panel of which such judge was a member.

“(d)(i) A court of appeals having more than 15 authorized judgeships may organize itself into 2 or more adjudicative divisions, with each judge of the court assigned to a specific division, either for a specified term of years

or indefinitely. The court's docket shall be allocated among the divisions in accordance with a plan adopted by the court, and each division shall have exclusive appellate jurisdiction over the appeals assigned to it. The presiding judge of each division shall be determined from among the judges of the division in active status as though the division were the court of appeals, except the chief judge of the circuit shall not serve at the same time as the presiding judge of a division.

“(2) When organizing itself into divisions, a court of appeals shall establish a circuit division, consisting of the chief judge and additional circuit judges in active status, selected in accordance with rules adopted by the court, so as to make an odd number of judges but not more than 13.

“(3) The circuit division shall have jurisdiction to review, and to affirm, reverse, or modify any final decision rendered in any of the court's divisions that conflicts on an issue of law with a decision in another division of the court. The exercise of such jurisdiction shall be within the discretion of the circuit division and may be invoked by application for review by a party to the case, setting forth succinctly the issue of law as to which there is a conflict in the decisions of 2 or more divisions. The circuit division may review the decision of a panel within a division only if en banc review of the decision has been sought and denied by the division.

“(4) The circuit division shall consider and decide cases through procedures adopted by the court of appeals for the expeditious and inexpensive conduct of the circuit division's business. The circuit division shall not function through panels. The circuit division shall decide issues of law on the basis of the opinions, briefs, and records in the conflicting decisions under review, unless the division determines that special circumstances make additional briefing or oral argument necessary.

“(e) This section shall apply to each division of a court that is organized into divisions as though the division were the court of appeals. Subsection (c), authorizing hearings or rehearings en banc, shall be applicable only to the divisions of the court and not to the court of appeals as a whole, and the authorization for a limited en banc procedure under section 6 of Public Law 95-486 (92 Stat. 1633), shall not apply in that court. After a divisional plan is in effect, the court of appeals shall not order any hearing or rehearing en banc, but an en banc proceeding already ordered may be heard and determined in accordance with applicable rules of appellate procedure.

“(f) A majority of the number of judges authorized to constitute a court, a division, or a panel thereof shall constitute a quorum.”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 3 of title 28, United States Code, is amended by amending the item relating to section 46 to read as follows:

“46. Assignment of judges; panels; en banc proceedings; divisions; quorum.”.

(c) **MONITORING IMPLEMENTATION.**—The Federal Judicial Center shall monitor the implementation of section 46 of title 28, United States Code (as amended by this section) for 8 years following the date of enactment of this Act and report to the Judicial Conference such information as the Center determines relevant or that the Conference requests to enable the Judicial Conference to assess the effectiveness and efficiency of this section.

**SEC. 3. DISTRICT COURT APPELLATE PANELS.**

(a) **IN GENERAL.**—Chapter 5 of title 28, United States Code, is amended by adding after section 144 the following:

**§ 145. District Court Appellate Panels**

"(a) The judicial council of each circuit may establish a district court appellate panel service composed of district judges of the circuit, in either active or senior status, who are assigned by the judicial council to hear and determine appeals in accordance with subsection (b). Judges assigned to the district court appellate panel service may continue to perform other judicial duties.

"(b) An appeal heard under this section shall be heard by a panel composed of 2 district judges assigned to the district court appellate panel service, and 1 circuit judge as designated by the chief judge of the circuit. The circuit judge shall preside. A district judge serving on an appellate panel shall not participate in the review of decisions of the district court to which the judge has been appointed, the clerk of the court of appeals shall serve as the clerk of the district court appellate panels. A district court appellate panel may sit at any place within the circuit, pursuant to rules promulgated by the judicial council, to hear and decide cases, for the convenience of parties and counsel.

"(c) In establishing a district court appellate panel service, the judicial council shall specify the categories or types of cases over which district court appellate panels shall have appellate jurisdiction. In such cases specified by the judicial council as appropriate for assignment to district court appellate panels, and notwithstanding sections 1291 and 1292, the appellate panel shall have exclusive jurisdiction over district court decisions and may exercise all of the authority otherwise vested in the court of appeals under sections 1291, 1292, 1651, and 2106. A district court appellate panel may transfer a case within its jurisdiction to the court of appeals if the panel determines that disposition of the case involves a question of law that should be determined by the court of appeals. The court of appeals shall thereupon assume jurisdiction over the case for all purposes.

"(d) Final decisions of district court appellate panels may be reviewed by the court of appeals, in its discretion. A party seeking review shall file a petition for leave to appeal in the court of appeals, which that court may grant or deny in its discretion. If a court of appeals is organized into adjudicative divisions, review of a district court appellate panel decision shall be in the division to which an appeal would have been taken from the district court had there been no district court appellate panel.

"(e) Procedures governing review in district court appellate panels and the discretionary review of such panels in the court of appeals shall be in accordance with rules promulgated by the court of appeals.

"(f) After a judicial council of a circuit makes an order establishing a district court appellate panel service, the chief judge of the circuit may request the Chief Justice of the United States to assign 1 or more district judges from another circuit to serve on a district court appellate panel, if the chief judge determines there is a need for such judges. The Chief Justice may thereupon designate and assign such judges for this purpose."

(a) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 28, United States Code, is amended by adding after the item relating to section 144 the following:

"145. District court appellate panels."

(c) MONITORING IMPLEMENTATION.—The Federal Judicial Center shall monitor the implementation of section 145 of title 28, United States Code (as added by this section) for 8 years following the date of enactment of this Act and report to the Judicial Conference such information as the Center de-

termines relevant or that the Conference requests to enable the Conference to assess the effectiveness and efficiency of this section.●

#### RULES OF THE COMMITTEE ON RULES AND ADMINISTRATION

● Mr. MCCONNELL. Mr. President, Senate Standing Rule XXVI requires each committee to adopt rules to govern the procedures of the Committee and to publish those rules in the CONGRESSIONAL RECORD not later than March 1 of the first year of each Congress. On February 25, 1999, the Committee on Rules and Administration held a business meeting during which the members of the committee unanimously adopted the rules to govern the procedures of the committee.

Consistent with Standing Rule XXVI, today I am submitting for printing in the CONGRESSIONAL RECORD a copy of the rules of the Senate Committee on Rules and Administration.

The rules follow:

#### RULES OF PROCEDURE OF THE SENATE COMMITTEE ON RULES AND ADMINISTRATION TITLE I—MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the committee shall be the second and fourth Wednesdays of each month, at 9:30 a.m., in room SR-301, Russell Senate Office Building. Additional meetings may be called by the chairman as he may deem necessary or pursuant to the provisions of paragraph 3 of rule XXVI of the Standing Rules of the Senate.

2. Meetings of the committee, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the committee on the same subject for a period or no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in subparagraphs (A) through (F) would require the meeting to be closed followed immediately by a recorded vote in open session by a majority of the members of the committee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of the committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(E) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept se-

cret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Paragraph 5(b) of rule XXVI of the Standing Rules.)

3. Written notices of committee meetings will normally be sent by the committee's staff director to all members of the committee at least 3 days in advance. In addition, the committee staff will telephone reminders of committee meetings to all members of the committee or to the appropriate staff assistants in their offices.

4. A copy of the committee's intended agenda enumerating separate items of legislative business and committee business will normally be sent to all members of the committee by the staff director at least 1 day in advance of all meetings. This does not preclude any member of the committee from raising appropriate non-agenda topics.

5. Any witness who is to appear before the committee in any hearing shall file with the clerk of the committee at least 3 business days before the date of his or her appearance, a written statement of his or her proposed testimony and an executive summary thereof, in such form as the chairman may direct, unless the chairman and the ranking minority member waive such requirement for good cause.

#### TITLE II—QUORUMS

1. Pursuant to paragraph 7(a)(1) of rule XXVI of the Standing Rules, 9 members of the committee shall constitute a quorum for the reporting of legislative measures.

2. Pursuant to paragraph 7(a)(1) of rule XXVI of the Standing Rules, 6 members shall constitute a quorum for the transaction of business, including action on amendments to measures prior to voting to report the measure to the Senate.

3. Pursuant to paragraph 7(a)(2) of rule XXVI of the Standing Rules, 4 members of the committee shall constitute a quorum for the purpose of taking testimony under oath and 2 members of the committee shall constitute a quorum for the purpose of taking testimony not under oath; provided, however, that in either instance once a quorum is established, any one member can continue to take such testimony.

4. Under no circumstances may proxies be considered for the establishment of a quorum.

#### TITLE III—VOTING

1. Voting in the committee on any issue will normally be by voice vote.

2. If a third of the members present so demand, a record vote will be taken on any question by rollcall.

3. The results of rollcall votes taken in any meeting upon any measure, or any amendment thereto, shall be stated in the committee report on that measure unless previously announced by the committee, and such report or announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment by each member of the committee. (Paragraph 7(b) and (c) of rule XXVI of the Standing Rules.)

4. Proxy voting shall be allowed on all measures and matters before the committee. However, the vote of the committee to report a measure or matter shall require the concurrence of a majority of the members of the committee who are physically present at the time of the vote. Proxies will be allowed in such cases solely for the purpose of recording a member's position on the question and then only in those instances when the absentee committee member has been informed of the question and has affirmatively requested that he be recorded. (Paragraph 7(a)(3) of rule XXVI of the Standing Rules.)