

leaders make mistakes and there were some judgments, of course, things that happened that were not absolutely all totally correct, this is the real world, but by and large Commander Massoud, one can say of his life, he fought for the right. He was a major force for good. But as we remember him today on the first anniversary of his death, let us commit ourselves to his vision of a free, prosperous, and more peaceful Afghanistan. And in achieving this we will assure that Commander Massoud will never be defeated.

One year ago, upon hearing of Commander Massoud's death, and as I say, it was an assassination that took place 1 year ago today, 2 days before September 11, I went into a state of shock. It was like taking the breath right out of my lungs. But after regaining my composure, I realized, yes, my friend had been assassinated, but I realized that those who killed Massoud had a purpose. They meant to attack the United States and were eliminating the person that we would turn to to rally the people of Afghanistan and lead a counterattack against the Taliban. That meant that an attack on the United States was imminent.

I called the White House and asked for an emergency meeting with Condoleeza Rice and the top members of the President's National Security Council. I got a call back and was told that the earliest that they could meet me, and they were taking my request very seriously, would be at 2 o'clock the next day.

Well, at 8:45 a.m. that next day, the hijackers' planes began to slam into the World Trade Center. Yes, that could have been averted had we had Commander Massoud fighting against the Taliban much earlier. Unfortunately, we did not provide him the effort and what he needed to defeat the Taliban then.

Commander Massoud would have been making history all this year and would have been doing and helping things for the better, and we will avenge his death and all the victims of 9-11 by rebuilding a peaceful Afghanistan free of tyrants and fanatics.

#### NEXTWAVE AUCTION BILL

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the gentleman from Florida (Mr. STEARNS) is recognized during morning hour debates for 5 minutes.

Mr. STEARNS. Mr. Speaker, I want to thank my colleague from California (Mr. ROHRABACHER) for his continuing support in recognizing this anniversary. NPR had a great tribute to the general this morning which I listened to. I think it is altogether appropriate that the gentleman do this on the House floor, of course, and I want to thank him.

Mr. Speaker, on another matter, I rise to deal with something that is more close to home, and that is dealing with something I am involved with in

telecommunications. I am urging my colleagues to support a bill that I introduced to eliminate impediments that restrict the ability of certain wireless telecommunication providers to, I think, meet the urgent need of the consumers. The bill has bipartisan support and the support of the Subcommittee on Telecommunications and the Internet on which I serve.

I am pleased, Mr. Speaker, that a recent editorial in the Wall Street Journal supports my actions on this matter, and I will be providing the Wall Street editorial to be made a part of the RECORD and part of my speech.

The affected providers are the successful bidders for wireless spectrum that the Federal Communications Commission auctioned off in Auction No. 35. Some of the spectrum had previously been licensed to companies, including NextWave Personal Communications, whose bankruptcy filings, and subsequent failure to pay amounts due to the FCC for their licenses, led to the cancellation of those licenses. The FCC subsequently reclaimed the licenses and reauctioned them off in Auction No. 35 for about \$16 billion.

In June 2001, the D.C. Circuit held that "the Commission violated the provision of the Bankruptcy Code that prohibits governmental entities from revoking debtors' licenses solely for failure to pay debts dischargeable in bankruptcy." In August 2001, after the issuance of that court's mandate, the FCC restored the NextWave licenses to active status. More recently, the Supreme Court granted the FCC's petition for a writ of certiorari to review the D.C. Circuit's judgment. The Supreme Court will not hear argument in the case until the fall of 2002 and is unlikely to announce a decision until the spring of 2003. If the Court reverses the D.C. Circuit's decision, there will be further litigation on remand in D.C. Circuit to resolve issues that court did not reach in its first decision. As a result, there is not likely to be a final resolution of the status of the NextWave licenses any time soon, and the FCC therefore will not be in a position to deliver licenses to the winners of Auction No. 35, until three or more years from the time the auction was concluded.

Now, the status of NextWave's license has been the subject of extended litigation in not only the bankruptcy court, but the United States Court of Appeals for the Second Circuit, the United States Court of Appeals for the District of Columbia Circuit, and soon to be, the Supreme Court of the United States.

Although the FCC recently returned most of the downpayment funds previously deposited by all these successful bidders, it continues to hold, without interest, Mr. Speaker, substantial sums, equal to 3 percent of the total amount of the winning bids. It apparently intends to hold these sums indefinitely.

Despite the lengthy delay in delivering the licenses, moreover, the FCC takes the position that the successful bidders remain obligated, on a mere 10-day notice, to pay the full amount of their successful bids if and when the

FCC, at some unknown future date, establishes its right to deliver those licenses.

Now, I think, as the Wall Street Journal points out, this is grossly unfair to those who bid on these licenses and did so in good faith. Companies calibrate their bids on the understanding of the auction, implicit in any commercial arrangement, that the delivery of the licenses will occur in a reasonable time following these auctions. That expectation is especially crucial in the context of spectrum licenses. Given the recent volatility we have seen in the market prices for spectrum, we can understand that there would be some action by the FCC after the auction.

Moreover, it is particularly burdensome to some companies to have the FCC hold even a small portion of their enormous downpayment without any interest on these amounts. It is not done in the private sector; it should not be done in the government. They are paying no interest on these deposits for extended periods of time.

In addition, winning bidders are obligated, as I mentioned, on very short notice to pay the remaining \$16 billion they bid for the license at issue. Obviously, this adversely affects their capacity to serve the needs of their customers, because they must have this capital always on hand and they cannot use it for long-term benefits for business. This need to keep itself in a position to fulfill that obligation at an indefinite future date impedes its ability to take, as I mentioned, interim steps for building their own businesses.

The FCC's failure to respond appropriately to alleviate these serious burdens, I believe, deserves the public interest. That is why I have dropped bill H.R. 4738. It addresses this problem in two ways, Mr. Speaker.

First, it requires the FCC promptly to refund to the winning bidders the full remaining amount of their deposits and their downpayments. Second, it gives each winning bidder an opportunity to elect, within 15 days after enactment, to relinquish its rights and to be relieved of all further obligations under Auction No. 35. Those who choose to retain their rights and obligations under Auction No. 35 will nonetheless be entitled to a return of their deposits and downpayments in the interim period. If and when the FCC is in a position to deliver the license at issue to those who remain obligated, they will be required to pay the full amount of their bid in accordance with the FCC's existing regulations. Those who elect to terminate their rights and obligations under this auction will be free to pursue their business interests without the burdens under which they must labor.

Mr. Speaker, I urge my colleagues to support this timely and much-needed legislation, and I appreciate the Wall Street Journal bringing to the attention of the Nation this very important problem, and I also hereby submit for

the RECORD the article I have referred to.

[From the Wall Street Journal, Aug. 21, 2002]

ANOTHER TELECOM FIASCO

The telecom shakeout (or meltdown) continues, with Qwest ditching assets to stay solvent, and VoiceStream pursuing a merger in wireless with Cingular. The market will sort all of this out, though it sure would help if the Federal Communications Commission stopped making things worse.

Consider the FCC's ongoing NextWave spectrum fiasco. That small wireless carrier won spectrum licenses in a 1997 FCC auction, but later defaulted on its payments. The FCC revoked the licenses and reauctioned them—even as NextWave was suing to get them back. NextWave won its case, and a red-faced FCC had to tell the other carriers that had just bid \$16 billion that it had nothing to give them.

In the real business world, the FCC would have cancelled the reauction once it couldn't deliver the licenses. But rules are different in FCC-land. The agency may not have delivered any licenses, but it has nonetheless held on to the hefty deposits the second batch of carriers gave it. And, by the way, the FCC has informed those carriers that when it does finally turn over the spectrum (in 2004, optimistically, if ever), it expects them to cough up the entire \$16 billion within 10 business days.

All of this is playing havoc with an industry already in chaos. Verizon Wireless, for instance, bid \$8.7 billion for its share of the spectrum. The FCC took a deposit from the company of \$1.7 billion, and then sat on it—interest free—for 14 months. The FCC finally gave back some of the deposit earlier this year, though it still holds the bureaucratic pocket-change of \$261 million.

Verizon is also stuck with a large liability—money it can't effectively touch because of the 10-day future payment obligation. Credit agencies say they may down-grade its debt because of the \$8.7 billion overhang. Meantime, the company can't afford to run in place for years while the FCC fiddles, so it has redrawn its business strategy around the lost spectrum—which means it may not need it even if it comes free.

The FCC usually hands over licenses within three months, and for good reason: The industry changes faster than a politician's mind. Since January 2001 when the reauction ended, wireless and equipment companies have laid off tens of thousands of workers and lost \$850 billion, or 65%, in market value. (Would that the FCC shrank 65% in size.) Wireless officials estimate that if the reauction were held today, the bids would be about 40% of the original \$16 billion.

But that gets to the heart of the FCC matter: money, and creative accounting. It turns out that when NextWave bid its \$4.8 billion in 1997, the FCC booked the entire amount in the federal budget. Then, when the reauction happened in 2001, it booked that \$16 billion as well—adjusted for what it had lost from NextWave.

Chairman Michael Powell keeps promising a telecom revival, but this FCC money-grubbing doesn't help. The reauction is tying up much-needed investment capital: According to a recent study from AEI economist Gregory Sidak, the frozen \$16 billion, if released, would increase GDP between \$19 billion and \$52 billion. Consumers are also losing out, as new services such as mobile videophones are delayed.

The FCC isn't even helping itself, if it cares. Reputation counts, even in government, and the agency has important auctions to come. Carriers may discount future bids because of uncertainty of ever receiving licenses. Several big players may not be able

to bid at all, since the FCC is already sitting on their capital.

We still believe FCC auctions are the most efficient way of allocating spectrum. But their purpose is defeated when the government keeps the cash but won't deliver the goods.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until 2 p.m.

Accordingly (at 12 o'clock and 44 minutes p.m.), the House stood in recess until 2 p.m.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. DAN MILLER of Florida) at 2 p.m.

PRAAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God of history and ever-present wisdom, ever since 1789 in New York's Federal Hall until this very day, the Government of these United States has been dedicated to the protection of the people and securing human freedom with justice and peace.

Grant guidance to the House of Representatives in their work today so that they may be fellow workers in accomplishing Your holy will in human affairs and the progress of this Nation. May this work benefit all citizens so that with them and for them an earthly city may be built reflecting the values of Your Kingdom. For You are Lord and Savior, now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Maryland (Mr. CUMMINGS) come forward and lead the House in the Pledge of Allegiance.

Mr. CUMMINGS led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESIGNATION FROM THE HOUSE OF REPRESENTATIVES

The Speaker pro tempore laid before the House the following resignation from the House of Representatives.

HOUSE OF REPRESENTATIVES,  
Washington, DC, September 5, 2002.

Hon. J. DENNIS HASTERT,  
*Speaker of the House*,  
Washington, DC.

DEAR MR. SPEAKER: I have been nominated by President Bush and confirmed by the Senate to serve as United States Representative to the United Nations Agencies for Food and Agriculture, with the rank of Ambassador. Therefore, I have submitted my resignation as Member of the House of Representatives, effective close of business, September 9, 2002. I am forwarding to you a copy of my letter of resignation to Ohio Governor Bob Taft.

I am grateful for the opportunity to serve with the distinguished men and women of the House of Representatives for the past twenty-four years. I look forward to working with the Members of the House as I continue service to the Nation in my new position.

Sincerely,

TONY P. HALL,  
*Member of Congress*.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, September 6, 2002.

Hon. J. DENNIS HASTERT,  
*The Speaker, House of Representatives*,  
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on September 6, 2002, at 10:24 a.m.

That the Senate passed without amendment H.R. 3298.

That the Senate passed without amendment H.R. 5012.

That the Senate passed without amendment H.R. 5207.

Appointment: Land's Title Report Commission.

With best wishes, I am  
Sincerely,

JEFF TRANDAHL,  
*Clerk of House*.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 4 of rule I, the Speaker signed the following enrolled bill on Thursday, September 5, 2002.

H.R. 5012, to amend the John F. Kennedy Center Act to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair announces that he will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.