Carolina (Mr. HELMS) were added as cosponsors of S. Con. Res. 148, a concurrent resolution recognizing the significance of bread in American history, culture, and daily diet.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN:

S. 3111. A bill to compensate agricultural producers in the State of New Mexico that suffered crop losses as a result of use of a herbicide by the Bureau of Land Management; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. BINGAMAN. Mr. President, I rise today to introduce a bill that I do believe should not be necessary, and I hope ultimately will not be needed. Unfortunately, the failure of the Federal Government to own up to its responsibility has left a small group of farmers in Southern New Mexico with no other option.

As I understand it, last July the Bureau of Land Management and the Natural Resources Conservation Service applied herbicide, Tebuthiuron, on a ranch in Southern Eddy County to help control woody brush. The brush control was part of an EQIP project under NRCS.

I have no reason to doubt the application was consistent with label requirements and normal practice. Unfortunately, as frequently happens in New Mexico in July, a heavy rainstorm struck the area and the pellets of herbicide were apparently washed into the Black River. The river is the source of irrigation water for a number of farmers in the vicinity of the town of Malaga.

Unaware of the contamination in the water, farmers irrigated their fields in the normal way. Almost immediately, damage to cotton, hay and other crops was observed. The Eddy County Extension Office of the Cooperative Extension Service at New Mexico State University was asked to investigate the damage to the crops.

Mr. Woods E. Houghton of the Eddy County Office conducted a thorough review of the evidence and in a report dated August 20, 2002, concluded that Tebuthiuron was the likely cause of the crop damage. The report noted levels of Tebuthiuron of over 2 parts per million in some samples. Later tests by the State Chemistry Laboratory found levels over 5 pm. I ask unanimous consent that the August 20th Cooperative Extension Service report be printed in the RECORD at the conclusion of my remarks, exhibit 1.

All the evidence seems to point to the government's application of Tebuthiuron as the most likely source of the poisoning of the crops in Malaga. Last month, I asked the heads of BLM and NRCS to look into the situation and to advise me what recourse is available to the farmers who have lost their crops. Unfortunately, the agencies have not assumed any responsibility for the contamination. Moreover, normal crop insurance doesn't cover damage caused by chemicals.

What are the farmers of Malaga, NM, to do? Through no fault of their own, they have lost their crops, and the Federal Government is not willing to take responsibility. For example, Mr. Oscar Vasquez and his family have lost 130 acres of cotton, 20 acres of hay and 1 acre of full-grown pecan trees. As Mr. Vasquez points out, his losses may persist for several years. He has asked for my assistance in securing compensation for his losses. I ask unanimous consent that a letter to me by Mr. Vasquez be printed in the RECORD at the conclusion of my remarks, exhibit 2. It appears that as many as nine farmers have suffered direct losses from the contamination of their crops and an additional thirteen farmers suffered losses when they couldn't irrigate because of the contamination in the water.

I have urged the heads of BLM and NRCS in the strongest terms possible to do what they can to assist the farmers of Malaga. Unfortunately, nobody wants to take responsibility. The Federal Government's response so far is to suggest the farmers sue the government, but that's a long, drawn-out process. It is also an unacceptable response if the Federal Government is found to be responsible.

The farmers of Malaga need help paying their bills now. These are not rich people, but hard working family farmers. Many have farmed the same land for many, many years. I ask unanimous consent that a recent article from the Carlsbad Current Argus describing the impact this event is having on a number of the farmers of Malaga be printed in the RECORD at the end of my remarks, exhibit 3.

At this point I don't see any other option than to ask that Congress provide some relief to the farmers of Malaga that have suffered losses because of this unfortunate situation. I note that last year Congress provided financial compensation to farmers in Idaho that suffered crop losses in a very similar situation and where BLM and NRCS refused to provide compensation. When a federal program was clearly the source of the contamination in the water, I do believe the government has a responsibility to come to the assistance of the people who have suffered losses.

It is my hope that the agencies involved will step forward, acknowledge their responsibility, and do what is right and necessary to compensate the farmers. Unfortunately, it now appears the agencies are not inclined to do the right thing. Instead, they tell us the affected farmers are free to file a tort claim; we all know what a costly and time-consuming process any legal action can be. However, the farmers need help right now. While it is not the best way, I do believe Congressional action may be the only way of getting these farmers the financial help they need in a timely manner.

The bill I am introducing today simply authorizes the Secretary of Agriculture, in consultation with the Secretary of the Interior, to use funds of the Commodity Credit Corporation to compensate the farmers for their losses. We are still working with the Cooperative Extension Service at New Mexico State University to determine the total amount of the losses, but in light of the small area affected, I fully expect the sums needed to be very modest, indeed.

Mr. President, I ask unanimous consent that a letter supporting this legislation from Frank DuBois, New Mexico's Secretary of Agriculture, exhibit 4, and a copy of the bill be printed in the RECORD.

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

S. 3111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COMPENSATION OF NEW MEXICO PRODUCERS FOR CROP DAMAGE FROM BLM USE OF HERBICIDE.

(a) IN GENERAL.—The Secretary of Agriculture, in consultation with the Secretary of the Interior, may use such funds of the Commodity Credit Corporation as are necessary to compensate agricultural producers in the State of New Mexico that suffered crop losses as a result of the use of the herbicide tebuthiuron by the Bureau of Land Management during the 2002 calendar year.

(b) LIABILITY.—Nothing in this section constitutes an admission of liability by the United States arising from the use of the herbicide tebuthiuron by the Bureau of Land Management.

(c) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Agriculture may promulgate such regulations as are necessary to implement this section.

(2) PROCEDURE.—The promulgation of the regulations and administration of this section shall be made without regard to—

(A) the notice and comment provisions of section 553 of title 5, United States Code;

(B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(C) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(3) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this subsection, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

COOPERATIVE EXTENSION SERVICE,
NEW MEXICO STATE UNIVERSITY,
Las Cruces, NM, August 20, 2002.

Saturation report of cotton damage in the Malaga NM area approximately, 350 acres.

Background: Oscar Vasquez farm, and his landlords.

2001 crop year, cotton except 10 acres (Duarte); 23 acres on home place, which was in alfalfa.

Pre 15 January 2002 field were moldboard, disked to comply with pink bollworm regulations. They were also treated with 1 pint Trifluralin, 1 pint Caporal per acre. This was incorporated with a spring tooth harrow and disked one time. Watered on 15–30 January 2002 and first part of February 2002, with black river water.

15 March 2002 stale bed worked up.

21 April 2002 Planted with DG–206 NK seed.
25 June 2002 irrigated with CID water.
2 July 2002 Cultivated.
10–11 July 2002 sprayed for boll-worms (Heliothis zia) with 1.5 pint Lorsban and 1-pint Amigo surfactant per acre.
26 July 2002 Boll weevil control committee sprayed fields Malthion ULV.
20–23 July 2002 Irrigated with black river water.
18–19 July 2002 Rain floodwater on black river.
27 July 2002 Oscar noticed problems with cotton.
30 July 2002 Oscar called Woods E. Houghton county agent.
31 July 2002 Woods E. Houghton visited Oscar Vasquez farm, and concluded something in the water caused problems. Woods took soil and plant samples. Samples sent to Dr. Bob Flynn for Ecreading. Dr. Goldberg and Dr. McWilliams for diagnosis of disease or nutrition disorders if they occurred. Surface water bureau notified NM ED department Dr. Jim Davis. Suspected possible illegal disposal of produced water which is high in saline. High salt consternation could cause similar damage.
7 Aug 2002 Woods Houghton and Jim Ballard of Eddy County Sheriff Office, flew over and photographed. Talked with Oscar again. Recalled BLM treated a number of acres above on the black river with Spike (Tebuthiuron) 8 July 2002. Confirmed this with Mr. Mike Ramirez BLM. Reported possible off target effects to Ms. Margery Lewis NMDA and Mr. Russell Knight NMDA. Conferred with Mr. Tom Davis CID.
8 Aug 2002 Dr. Flynn reported that the unhealthy plants had a lower Ec value then the healthy plant soil samples. The problem most likely not salt or produced water.
16 Aug 2002 Received from Dr. Goldberg diagnosis record, which indicated that no plant pathogenic microorganisms were isolated from the sample submitted.
Symptoms: Plant Yellowing at top and then turned clororotic followed by necrosis between veins and on leaf edges with DG–206. On ACLA 1517–99 started from bottom to top but same symptoms. Fruit drop starts first. Plants die from top down. Some plants appear to recover set new flowers and attempting new growth. Most 90% or more die back almost completely. Symptoms atypical of Spike but consistent with chlorophyll inhibitors. Also the root hairs are dead and brittle do not stay attached to plant when pulled up.
Other Information: On contact with BLM and NRCS equip project on three mile draw area was treated with Tebuthiuron (Spike 20p) on 8 July 02. Approximately 2,300 acres were treated some at 0.5AI and some at 0.75 AI per acre. This draw drains in to the black river above the diversion. The diversion diverts water to the farms, which are reporting damage. M&M Air Service was the applicator. Laboratory results from Analytical Pesticide Technology Laboratories Wyamissing Pa. Reported results of soil 0.187 ppm, cotton 1 1.66ppm, cotton 2 2.03ppm, Elm collected at diversion 0.196ppm, Cottonwood collected at diversion 0.329ppm. These samples were collected by Mr. Tom Davis and submitted by Carisbad Irrigation District for analysis. Samples were also taken by Mr. Russell Knight and Mr. Woods Houghton on 09 Aug. 02. The hydrograph of blackriver at USGS gauging station above the diversion but below three-mile draw show the water flow on the 17 July at less then 4 CFS, on 18–19 July it peaked at greater the 100 CFS. This area experienced high intensity short duration storm in this time frame. There are older treatment areas in the vicinity as well.
Conclusion: Tebuthiuron Herbicide contamination of black river prior to irrigation has resulted in cotton crop losses. That flash flooding may have contributed to off target movement of products containing Tebuthiuron.

WOODS E. HOUGHTON,
Eddy County Agriculture Agent/
Acting Program Director.

SEPTEMBER 17, 2002.

Senator JEFF BINGAMAN,
Albuquerque, NM.

DEAR SENATOR BINGAMAN: I am writing this letter to ask for your help with a serious problem that has occurred on my own Farm, and my rented Farms.

My name is Oscar Vasquez, I farm approximately 320 acres of cotton, and alfalfa for 27 years. I own 145 acres, and share crop 175 acres from my neighbors, Mr. Damon Bond, Mrs. Catalina Carrasco, and Mr. Pedro Duarte.

On July 20, 2002, I began watering my cotton with Black River water as I would normally, and continued for 8 days. On July 27, 2002, I began to see wilting effects on the cotton fields I started watering first. I contacted Mr. Woods Houghton, our Eddy County Extension agent. He came and saw the damage on my cotton, it took us till August 7, 2002, to conclude that my cotton had received the damage thru the contaminated irrigation water. We also concluded that the BLM had applied herbicide called Tebuthiuron (Spike) to approximately 2400 acres on Three Mile Draw which is on the Gene & Kathy Hood Ranch, above the Black River Irrigation Diversion Dam.

The BLM and the NRCS (National Resource Conservation Services), applied this chemical to control brush on the Hood Ranch. The chemical was applied by airplane in pellet form on July 8, 9, & 12. The Hood Ranch received a 2½″ rain in 45 minutes on the 18th & 19th of July washing the chemical in the Black River. I began to irrigate my cotton on July 20, 2002. My cotton crop has since sustained severe damage, with the chemical terminating the crop before maturity, therefore my crop is totally ruined.

I have contacted my cotton buyer and he does not want to buy my cotton crop this year. I have sold him 23 consecutive cotton crops in the past. What am I to do with this damaged crop? Do I harvest it? If I do, who will buy it? Or do I destroy it, or graze it? I need answers to all these questions.

New Mexico Agriculture Department has not assumed the responsibility to let me know what to do. The BLM has not assumed the responsibility either. What are my Landlords going to do for income this year. Mr. & Mrs. Damon Bond are 86 years old, Mrs. Catalina Carrasco is 68 years old, and a widow, Mr. Pedro Duarte is a little better off, he is 47 years old and has a job. I am 53 years old with the last of 5 children attending NMSU. My wife and I do not hire any help on the Farm, we do all the tractor and manual labor work ourselves

We would appreciate an answer to all our problems, preferably our income problem. The long term damage of these chemical effect is 5 years, or longer. Thank you for your cooperation.

Sincerely yours,

OSCAR VASQUEZ

P.S. Please see attached evidence gathered by Woods Houghton NM Eddy County Extension Agent, and the test results on soil and foliage samples by N.M.A.D. Laboratories. The total acreage is 130 acres of Cotton, 20 acres of Hay, and 1 acre of full grown Pecan Trees, on the Oscar Vasquez Farm.

[From the Current Argus, Oct. 5, 2002]

FIGHTING FOR THE FARM: MALAGA FARMERS FACE UNCERTAIN FUTURE AFTER CROPS DAMAGED

(By Stella Davis)

MALAGA.—Oscar and Gloria Vasquez sit at the table in their dining room with a morning cup of coffee. But these days, the couple gets little pleasure in gazing out through the large dining room window facing their farm fields.

Where normally they would see healthy stands of cotton, all they see now are rows of small, leafless cotton stalks with stringy cotton bolls.

The couple farms about 320 acres—145 acres are owned by them and the 175 remaining acres they sharecrop for three other families who depend on the income from their shares.

Disaster struck Malaga farmers in late July when they watered their fields from the Black River diversion dam, unaware the water had been contaminated with the herbicide, tebuthiuron.

Later they discovered the Bureau of Land Management applied the herbicide on the ground just above the diversion dam to control woody vegetation on range and ranchland.

The chemical was applied in conjunction with a federal cost share program through the Natural Resource Conservation Service, an agency of the U.S. Department of Agriculture. The rancher and the federal agency share the cost of applying the chemical on private ranch land.

''This crop is our income. It's our living. We are losing money, and the bills are coming in,';' Oscar Vasquez said. ''I can survive this year, but there are other farmers who won't. They will be wiped out financially. I have two cousins, Tony and Mike Vasquez, who also have crop damage. They are in their sixties and the income loss will be devastating for them.''

Oscar Vasquez, 53, said he has always tried to meet his commitments and financial obligations and is proud that he and his wife have put five children and a daughter-in-law through college.

''My wife and I put them through college, and our youngest is ready to graduate. They all went into engineering and graduated from New Mexico State University. We worked hard on the farm to make the income to put them through college. It's expensive to put kids through college, but we managed. I feel it is a privilege to send my kids to school. The next few months are going to be tight in meeting our son's college expenses. This couldn't have come at a worse time. He's close to finishing.

''We will make it through this year financially, but I don't know what is going to happen next year,'' he said. ''We don't know how long the soil will stay contaminated. I have a payment coming due on a mechanical baler, and there are costs associated with planting cotton that I will have to cover without the income from the crops. I usually grow hay and cotton. But because water was scarce this year, I chose to grow cotton and put all the water on it. Now I don't have anything.''

In another farmhouse about a mile down the road, Dick Calderon worries how he is going to take care of his wife, twin 4-year-old daughters, a 6-year-old son and his elderly parents living next door, as well as meeting all his financial obligations.

Over half of his cotton crop is dying from water contamination, and his alfalfa died due to lack of water.

His Federal farm loans are coming due, as are his tractor and equipment loans.

Damon and Marie Bond, both 86, rely on income from the farm that the Vasquezes

sharecrop for them. This year they will have to live on less. Their cotton crop is also damaged.

The Vasquezes, Calderon and the Bondses are among 11 families that have fallen victim to the agriculture disaster.

They say they are frustrated they feel the state Department of Agriculture—the lead agency in the investigation of the crop kill—has not given them answers or direction on what they should do with their contaminated crops. Even worse, they said, no one has stepped up to the plate to take responsibility.

''I began watering my cotton with Black River water as I would normally and continued for eight days,'' Vasquez said. ''On July 27, I began to see wilting effects on the cottom fields that I started watering first.''

Alarmed, Vasquez contacted the county extension agent to identify the cause.

''I contacted Woods Houghton, and he worked with me to determine what caused the damage,'' Vasquez said. ''He's been the only one who has tried to help us and do right by us.''

Houghton's detective work, poring over books and data for many hours, revealed the cotton crop showed classic signs of chemical damage. More sleuthing on his part showed tebuthiuron was the cause.

After further investigation, farmers learned the chemical had been applied in the early part of July. On July 18 and 19, more than 2 inches of rain fell on the Black River area in a 45–minute period, and the chemical washed into the river.

Within days of Vasquez's report of crop losses, other farmers who irrigated shortly after the rain began reporting crop losses that ranged from cotton—the most susceptible to tebuthiuron-to alfalfa and pecan and cottonwood trees.

Calderon said the fear is ever present that the family farm could be lost.

''We are going into the third month, and we have not got any answers yet,'' Calderon said. ''The financial stress for me is pretty high right now. I planted 45 acres of cotton, and I've lost over half. I also lost my hay too. I had to stop watering because the water was contaminated. It's dried up, and farming has come to a dead stop for a lot of us. We need some answers. We don't know what to do with what we have in the ground.''

Vasquez said no one wants to buy the contaminated cotton. Harvesting it would be financial suicide, he said.

''The cotton market is down, which is bad enough, and then this,'' he said. ''We get about $50 per bale, but when you add up the cost to harvest one bale, it adds up to $135. No one wants to buy damaged cotton, so why would we go to the cost of harvesting it at $135 per bale.''

He said the state Department of Agriculture has agreed to one thing: Seed from the contaminated cotton cannot be fed to livestock.

''We sell the seed to the dairies in Roswell,'' Vasquez said. ''They use it to feed the cows. So there is another amrket loss for us.''

Vasquez's cousin, Mike Vasquez, said he has lost 25 acres of cotton, and the loss of income will be devastating.

''I have disaster insurance, but I've been told it does not cover manmade disasters,'' he said. 'I didn't cause this disaster. The federal government did. I may be poor, but I'm not stupid. Why would I damage my crop that is my livelihood? I'm not that dumb to put down a herbicide in our monsoon season. The BLM, which is the federal government, did that and look what it has brought us (farmers) financial ruin.

''We don't know what this stuff has done to the soil and we don't know for how long the soil will be contaminated. It could be several years. But no one is stepping up to take blame for what has happened. The cotton is still in the gound, and we don't know what to do with it.

Mike Vasquez, who retired after 30 years with the city of Carlsbad's water department, said farming supplements his modest retirement income from the city, and he has had many recent sleepless nights worrying how he is going to pay his farm loans.

''The worry is making me physically sick,'' he said. ''We need some answers, and nobody is giving them to us. We also need some financial relief. There has to be someone out there that can give us the answers we need.''

Marie Bond, 86, who lives near Oscar and Gloria Vasquez, said the loss of income this year is a blow, but she and her husband will just have to tighten their belts and make do with less.

''Anything that happens to Oscar happens to us,'' she said. ''My husband and I have weathered some rough times in our lives and, although the income from the farm is important, we will make, it. It's a lot harder on Oscar because he has the expenses that have to be paid and there is no money coming in right now,'' she said.

''This is something that should not have happened. It could have been avoided. It's just terrible.''

DEPARTMENT OF AGRICULTURE,
STATE OF NEW MEXICO,
Las Cruces, NM, October 3, 2002.

Hon. JEFF BINGAMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: We have received complaints from 22 farmers in the Carlsbad region indicating they have crop damage which appears to be from alleged movement of a herbicide from an area treated by the Bureau of Land Management (BLM) and the Natural Resource Conservation Service (NRCS). We are currently investigating the complaints to determine if there were violations of state or federal law. I seek your assistance in providing financial support for the individuals whose crops were damaged.

On August 7, 2002, the New Mexico Department of Agriculture (NMDA) received its first complaint regarding crop damage due to alleged movement from an area treated with Tebuthriuron (Spike) in the Three-Mile Draw area. Preliminary investigation indicates the BLM and the NRCS treated approximately 2,400 acres of rangeland. We also found evidence of significant precipitation which occurred after application in the approximate treated area.

NMDA has taken samples from the complainants' fields as part of the investigation. Some of the samples analyzed thus far have tested positive for Tebuthiuron. We will continue to analyze the remaining samples and will provide you with the results when they are complete.

It is my understanding that some of the complainants have crop insurance; however, chemical related damages are not covered. The affected individuals will suffer a severe financial hardship if assistance is not provided. It is also clear these individuals have suffered losses through no fault of their own. Many are small farmers and may not survive without direct financial assistance.

In 2001 Congress authorized the expenditure of not more than $5 million from the Commodity Credit Corporation to pay claims of crop damage that resulted from the BLM's use of herbicides during the 2001 calendar year in the state of Idaho Enclosed is a copy of Section 757 of Public Law 107–76, which provides the funding. Similar consideration should be given to the affected New Mexico farmers. Our investigation is not complete at this time, but I believe it is very important to bring this matter to your attention since the relevant appropriation bills have not been passed by Congress.

If you have any questions, please contact me.

Sincerely,

FRANK A. DUBOIS.

By Mr. MCCAIN:

S. 3112. A bill to amend the Internal Revenue Code of 1986 to provide for a deferral of tax on gain from the sale of telecommunications businesses in specific circumstances or a tax credit and other incentives to promote diversity of ownership in telecommunications businesses; to the Committee on Finance.

Mr. MCCAIN. Mr. President, today I am introducing The Telecommunications Ownership Diversity Act of 2002. This legislation is designed to ensure that new entrants and small businesses will have the chance to participate in today's telecommunications marketplace.

At a time when the telecommunications industry is economically depressed, this bill promotes the entry of new competitors and small businesses into the field by providing carefully limited changes to the tax law. Too often today, new entrants and small businesses lose out on opportunities to purchase telecom assets because they don't offer sellers the same tax treatment as their larger competitors. Specifically, a small purchaser's cash offer triggers tax liability, while a larger purchaser's cash offer triggers tax liability, while a larger purchaser's stock offer may be accepted effectively tax-free. When an entity chooses to sell a telecom business, our tax laws should not make one bidder more attractive than another.

This legislation would give sellers of telecommunications businesses a tax deferral when their assets are bought for cash by small business telecom companies. It would also encourage the entry of new players and the growth of existing small businesses by enabling the seller of a telecom business to claim a tax deferral on capital gains if it invests the proceeds of any sale of its business in purchasing an interest in an eligible small telecom business.

While large companies continue to merge into even larger companies, small businesses have faced substantial barriers in trying to become long-term players in the telecommunications market. These barriers can be even more formidable for members of minority groups and for women, for whom it has historically been more difficult to obtain necessary capital. Since new entry and the ability to grow existing businesses are key components of competition, and since competition is usually the most successful way to achieve the goals of better service and lower prices, restricting small business' ownership opportunities does not serve consumers' interests.

It's easy to forget that telecommunications industry transactions are routinely valued in the billions. Even radio, which has traditionally been a comparatively easier telecom segment to enter, has been priced out of range of most would-be entrants. In addition to these monetary barriers, the tax code makes cash sales less attractive to sellers than stock-swaps. So new entrants and smaller incumbents, which typically must finance telecom acquisitions with cash rather than stock, are less-preferred purchasers than large incumbents. As a result, telecom business sellers have little incentive to sell their businesses to new entrants and small incumbents.

But what should Congress do? Clamp down on merger activity? Insist that hopelessly-outdated ownership restrictions set by the Federal Communications Commission be retained? Rush to concoct new telecom ownership ''opportunities'' from government programs or regulations that, in the real world, present small business with only one real opportunity, the opportunity to fail? None of these proposals would succeed because all of them, like the Telecommunications Act of 1996, ignore marketplace realities instead of working with them.

One answer is to level the playing field and give established telecom industry players the same economic incentives to deal with new entrants and small businesses as they currently have with respect to larger companies. And that's what this legislation would do.

Specifically, the bill would amend the Internal Revenue Code by adding a new Section 1071 entitled ''Nonrecognition of gain on certain sales of telecommunications business.'' This new section of the tax code would allow a telecom business seller to elect to have capital gains deferred under the existing Section 1033 rules for any ''qualified telecommunications sale.'' The aggregate amount of any gain deferred under the qualified sale would be limited to $250 million per transaction, and less than $84 million per taxable year.

A qualified telecommunications sale would be defined in two ways. The first type of qualified sale would be sales to an ''eligible purchaser'' of either the assets of a telecom business or the stock that makes up a controlling interest in a corporation with substantially all of its assets in one or more telecom businesses. Eligible purchasers would include economically and socially disadvantaged businesses that qualify under a carefully drawn three-part test. The second type of qualified sale would be the sale of any telecom business to any purchaser, as long as the seller reinvests the proceeds in equity interests in eligible small telecom businesses.

To account for the variety of telecommunications services available today, the legislation would broadly define telecommunications businesses eligible for capital gains tax deferral to include not only radio, broadcast TV, DBS, and cable TV, but also wireline and wireless telephone service providers and resellers.

Some may be concerned that this legislation could potentially allow entities seeking to ''game the system'' to set up eligible purchasers to take advantage of the bill's provisions. In order to eliminate the potential for abuse, the bill would require the eligible purchaser to hold any property acquired for three years, during which time it could only so sold to an unrelated eligible purchaser. Moreover, the bill would require the General Accounting Office to thoroughly audit and report on the administration and effect of the law every two years.

By sharing with smaller companies a portion of the investment benefits our tax laws give to the major telecom companies we have a chance to make sure that, at the end of the day, we won't regret what ''might have been'' for small business. By enabling individuals and small businesses to use industry restructurings as opportunities for expansion, we will keep faith with those who have been, and remain, enduringly valuable contributors to our free-market system.

Over the next several months, I look forward to working with interested organizations to further improve this legislation. In particular, I welcome comments on how to further refine the concepts of ''qualified telecommunications business'' and ''eligible purchaser'' to ensure that this legislation can meet its goals in the most fair and effective manner.

Revolutionary developments in the telecommunications industry have been made by gifted individuals with small companies and unlimited vision. In this sense, the telecommunciaitons industry is a true microcosm of the American free-market system. New entrants and small businesses should have a fair chance to participate across the broad spectrum of industries that will make up the telecommunications industry in the Information Age. This legislation will help them do that.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3112

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 ''Telecommunications Ownership Diversification Act of 2002''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Current trends in the telecommunications industry show that there is increasing convergence among various media, including broadcasting, cable television, and Internet-based businesses, that provide news, information, and entertainment.

(2) This convergence will continue, and therefore, diversifying the ownership of telecommunications facilities remains a preeminent public interest concern that should be reflected in both telecommunications and tax policy.

(3) A market-based, voluntary system of investment incentives is a very effective, lawful, and economically sound means of facilitating entry and diversification of ownership in the telecommunications industry.

(4) Opportunities for new entrants to participate and grow in the telecommunications industry have substantially decreased since the end of the Federal Communications Commission's tax certificate policy in 1995, particularly in light of the increase in tax-free like-kind exchanges, despite the most robust period of transfers of radio and television stations in history. During this time, businesses owned or controlled by socially disadvantaged individuals, including, but not limited to, members of minority groups and women, have continued to be under represented as owners of telecommunications facilities.

(5) Businesses owned or controlled by socially disadvantaged individuals are and historically have been economically disadvantaged in the telecommunications industry. For these businesses, access to and cost of capital are and have been substantial obstacles to new entry and growth. Consequently, diversification of ownership in the telecommunications industry has been limited.

(6) Telecommunications facilities owned by new entrants may not be attractive to investors because their start-up costs are often high, their revenue streams are uncertain, and their profit margins are unknown.

(7) It is consistent with the public interest and with the pro-competition policies of the Telecommunications Act of 1996 to provide incentives that will facilitate investments in, and acquisition of telecommunications facilities by, socially and economically disadvantaged businesses, thereby diversifying the ownership of telecommunications facilities.

(8) Increased participation by socially and economically disadvantaged businesses in the ownership of telecommunications facilities will enhance competition in the telecommunications industry. Permitting sellers of telecommunications facilities to defer taxation of gains from transactions involving socially and economically disadvantaged businesses, and resulting from investments in designated capital funds that provide capital for such entities, will further the development of a competitive and diverse United States telecommunications industry without governmental intrusion in private investment decisions.

(9) The public interest would not be served by attempts to diversify the ownership of telecommunications; businesses through any approach that would involve the use of mandated set-asides or quotas.

(10) Today, the telecommunications industry is struggling to survive one of its most troubling times. Therefore, facilitating voluntary, pro-competitive transactions that will promote ownership of telecommunications facilities by economically and socially disadvantaged businesses will aid in providing the investment and capital that is crucial to this sector.

(b) PURPOSE.—The purpose of this Act is to facilitate voluntary, pro-competitive transactions that will promote ownership of telecommunications facilities by economically and socially disadvantaged businesses.

SEC. 3. NONRECOGNITION OF GAIN ON QUALIFIED SALES OF TELECOMMUNICATIONS BUSINESSES.

(a) IN GENERAL.—Subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to gain or loss on disposition of property)

is amended by inserting after part IV the following new part:

''PART V—CERTAIN SALES OF TELECOMMUNICATIONS BUSINESSES

''Sec.
''1071. Nonrecognition of gain on certain sales of telecommunication businesses.

''SEC. 1071. NONRECOGNITION OF GAIN ON CERTAIN SALES OF TELECOMMUNICATION BUSINESSES.

''(a) IN GENERAL.—In case of any qualified telecommunications sale, at the election of the taxpayer, such sale shall be treated as an involuntary conversion of property within the meaning of section 1033.

''(b) LIMITATION ON AMOUNT OF GAIN ON WHICH TAX MAY BE DEFERRED.—The amount of gain on any qualified telecommunications sales which is not recognized by reason of this section shall not exceed $250,000,000 per transaction and shall not exceed $83,333,333 per taxable year. Excess amounts can be carried forward in future years subject to the annual limit.

''(c) QUALIFIED TELECOMMUNICATIONS SALE.—For purposes of this section, the term 'qualified telecommunications sale' means—

''(1) any sale to an eligible purchaser of—

''(A) the assets of a telecommunications business, or

''(B) stock in a corporation if, immediately after such sale—

''(i) the eligible purchaser controls (within the meaning of Section 368 (c)) such corporation, and

''(ii) substantially all of the assets of such corporation are assets of 1 or more telecommunications businesses; and

''(2) any sale of a telecommunications business, if the taxpayer purchases, within the replacement period specified in section 1033(a)(2)(b), 1 or more equity interests in an entity that is an eligible purchaser as defined in subsection (f)(1)(A) (the Telecommunications Development Fund.).

''(d) SPECIAL RULES.—

''(1) IN GENERAL.—In applying section 1033 for purposes of subsection (a) of this section, stock of a corporation operating a telecommunications business, whether or not representing control of such corporation, shall be treated as property similar or related in service or use to the property sold in the qualified telecommunications sale.

''(2) ELECTION TO REDUCE BASIS RATHER THAN RECOGNIZE REMAINDER OF GAIN.—If—

''(A) a taxpayer elects the treatment under subsection (a) with respect to any qualified telecommunications sale, and

''(B) an amount of gain would (but for this paragraph) be recognized on such sale other than by reason of subsection (b),

then the amount of gain described in subparagraph (B) shall not be recognized to the extent that the taxpayer elects to reduce the basis of depreciable property (as defined in section 1017(b)(3)) held by the taxpayer immediately after the sale or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary.

''(3) BASIS.—For basis of property acquired on a sale or exchange treated as an involuntary conversion under subsection (a), see section 1033(b).

''(e) RECAPTURE OF TAX BENEFIT IF TELECOMMUNICATIONS BUSINESS RESOLD WITHIN 3 YEARS, ETC.—

''(1) IN GENERAL.—If, within 3 years after the date of any qualified telecommunications sale, there is a recapture event with respect to the property involved in such sale, then the purchaser's tax imposed by this chapter for taxable year in which such event occurs shall be increased by 20 percent of the lesser of the consideration furnished by the purchaser in such sale or the dollar amount specified in subsection (b).

''(2) EXCEPTION FOR REINVESTED AMOUNTS.—Paragraph (1) shall not apply to any recapture event which is a sale if—

''(A) the sale is a qualified telecommunications sale, or

''(B) during the 60-day period beginning on the date of such sale, the taxpayer is the purchaser in another qualified telecommunications sale in which the consideration furnished by the taxpayer is not less that the amount realized on the recapture event sale.

''(1) RECAPTURE EVENT.—For purpose of this subsection, the term 'recapture event' means with respect to any qualified telecommunications sale—

''(A) any sale or other disposition of the assets or stock referred to in subsection (c) which were acquired by the taxpayer in such sale, and

''(B) in the case of a qualified telecommunications sale described in subsection (c)(1)(B)—

''(i) any sale or other disposition of a telecommunications business by the corporation referred to in such subsection, or

''(ii) any other transaction which results in the eligible purchaser business not having control (as defined in subsection (c)(1)(B)(i)) of such corporation.

''(f) DEFINITIONS.—In this section:

''(1) ELIGIBLE PURCHASER.—The term 'eligible purchaser' means—

''(A) the Telecommunications Development Fund established under section 714 of the Communications Act of 1934 (47 U.S.C. 614), or any wholly-owned affiliate of that Fund;

''(B) an economically and socially disadvantaged business, as defined in paragraph (2) of this subsection; and

''(C) an entity qualified under section 851, if more than 50 percent of its gross income is derived from equity investment in an economically and socially disadvantaged business or businesses, as defined in paragraph (2) of this subsection, as determined by the Secretary.

''(2) ECONOMICALLY AND SOCIALLY DISADVANTAGED BUSINESS.—The term 'economically and socially disadvantaged business' means a person that is designated by the Secretary as an 'economically and socially disadvantaged business' based on a determination that the subject person—

''(A) meets the control requirements of paragraph (6);

''(B) will be a telecommunications business after the purchase for which the eligibility determination is sought; and

''(C) before the purchase for which the eligibility determination is sought does not have:

''(i) attributable ownership interests in television broadcast stations having an aggregate national audience reach of more than 5 percent as defined by the Federal Communications Commission under section 73.3555(e)(2)(i) of title 47 of the Code of Federal Regulations as in effect on January 1, 2001;

''(ii) attributable ownership interest in: (a) more than 50 radio stations nationally; and (b) radio stations with a combined market share exceeding 10 percent of radio advertising revenues in the relevant market as defined by the Federal Communications Commission; or

''(iii) attributable ownership interests in any other telecommunications business having more than 5 percent of national subscribers.

''(3) RELEVANT MARKET.—The term 'relevant market' means the local market served by the radio station or stations being purchased.

''(4) TELECOMMUNICATIONS BUSINESS.—The term 'telecommunications business' means a business which, as its primary purpose, engaged in electronic communications and is regulated by the Federal Communications Commission pursuant to the Communications Act, including a cable system (as defined in section 602(7) of the Communications Act of 1934 (47 U.S.C. 532(7)), a radio station (as defined in section 3(35) of that Act (47 U.S.C. 153(35)), a broadcasting station providing television service (as defined in section 3(49) of that Act (47 U.S.C. 153(49)), a provider of direct broadcast satellite service (as defined in section 335(b)(5) of that Act (47 U.S.C. 335(b)(5)), a provider of video programming (as defined in section 602(20) of that Act (47 U.S.C. 602(20)); a provider of commercial mobile services (as defined in section 332(d)(1) of that Act (47 U.S.C. 332(d)(1)), a telecommunications carrier (as defined in section 3(44), of that Act (47 U.S.C. 153(44)); a provider of fixed satellite service; a reseller of telecommunications service or commercial mobile service; or a provider of multichannel multipoint distribution service.

''(5) PURCHASE.—The taxpayer shall be considered to have purchased a property if, but for subsection (d)(2), the unadjusted basis of the property would be its cost within the meaning of section 1012.

''(6) CONTROL.—

''(A) INDIVIDUALS.—For purposes of paragraph (2)(A), an individual who meets the requirements of paragraph (7) also meets the requirements of this paragraph.

''(B) ENTITIES.—For purposes of paragraph (1)(B), an entity meets the requirement of this paragraph if the requirements of subparagraph (C), (D), or (E) are satisfied.

''(C) 30-PERCENT TEST.—The requirements of this subparagraph are satisfied if—

''(i) with respect to any entity which is a corporation, individuals who meet the requirements of paragraph (7) own 30 percent or more in value of the outstanding stock of the corporation, and more than 50 percent of the total combined voting power of all classes of stock entitled to vote of the corporation; and

''(ii) with respect to any entity which is a partnership, individuals who meet the requirements of paragraph (7) own 30 percent or more of the capital interest and the profits interest in the partnership, and more than 50 percent of the total combined voting power of all classes of partnership interests entitled to vote.

''(D) 15-PERCENT TEST.—The requirements of this subparagraph are satisfied if—

''(i) with respect to any entity which is a corporation—

''(I) individuals who meet the requirements of paragraph (7) own 15 percent or more in value of the outstanding stock of the corporation, and more than 50 percent of the total combined voting power of all classes of stock entitled to vote of the corporation; and

''(II) no other person owns more than 25 percent in value of the outstanding stock of the corporation; and

''(ii) with respect to any entity which is a partnership—

''(I) individuals who meet the requirements of paragraph (7) own 15 percent or more of the capital interest and profits interest of the partnership, and more than 50 percent of the total combined voting power of all classes of partnership interests entitled to vote; and

''(II) no other person owns more than 25 percent of the capital interest and profits interest of the partnership.

''(E) PUBLICLY-TRADED CORPORATION TEST.—The requirements of this subparagraph are satisfied if, with respect to a corporation the securities of which are traded on an established securities market—

''(i) individuals who meet the requirements of paragraph (7) own 50 percent or more of

the total combined voting power of all classes of stock entitled to vote of the corporation; and

''(ii) the stock owned by those individuals is not subject to any agreement, arrangement, or understanding which provides for, or relates to, the voting of the stock in any manner by, or at the direction of, any person other than an eligible individual who meets the requirements of paragraph (7), or the right of any person other than one of those individuals to acquire the voting power through purchase of shares or otherwise.

''(F) CONSTRUCTIVE OWNERSHIP.—In applying subparagraphs (C), (D), and (E), the following rules apply:

''(i) Stock or partnership interests owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

''(ii) An individual shall be considered as owning stock and partnership interests owned, directly or indirectly, by or for his family.

''(iii) An individual owning (otherwise than by the application of clause (ii)) any stock in corporation shall be considered as owning the stock or partnership interests owned, directly or indirectly, by or for his partner.

''(iv) An individual owning (otherwise than by the application of clause (ii)) any partnership interest in a partnership shall be considered as owning the stock or partnership interests owned, directly or indirectly, by or for his partner.

''(v) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

''(vi) Stock or partnership interests constructively owned by a person by reason of the application of clause (i) shall, for the purposes of applying clause (i), (ii), (iii), or (iv), he treated as actually owned by that person, but stock constructively owned by an individual by reason of the application of clause (ii), (iii), or (iv) shall not be treated as owned by that individual for the purpose of again applying any of those clauses in order to make another the constructive owner of the stock or partnership interests.

''(7) INDIVIDUALS.—An individual is described in this paragraph if that individual is

''(A) a United States citizen, and

''(B) a member of a socially or economically disadvantaged class determined by the Secretary of Treasury to be underrepresented in the ownership of the relevant telecommunications business.''.

SEC. 4. TELECOMMUNICATIONS BUSINESS CREDIT.

(a) IN GENERAL.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to rules for computing investment credit) is amended by inserting after section 48 the following:

''SEC. 48A. TELECOMMUNICATIONS BUSINESS CREDIT.

''For purposes of section 46, there is allowed as a credit against the tax imposed by this chapter for any taxable year an amount equal to 10 percent of the taxable income of any taxpayer that at all times during that taxable year—

''(1) is a local exchange carrier (as defined in section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)));

''(2) is not a Bell operating company (as defined in section 3(4) of that Act (47 U.S.C. 153(4))); and

''(3) is headquartered in an area designed as an empowerment zone by the Secretary of Housing and Urban Development.''.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENT OF SECTION 46.—Section 46 of such Code (relating to amount of credit) is amended by—

(A) striking ''and'' in paragraph (2);

(B) striking ''credit.'' in paragraph (3) and inserting ''credit; and''; and

(C) adding at the end the following: ''(4) the telecommunications business credit.''.

(2) CLERICAL AMENDMENTS.—

(A) The analysis for part III of subchapter 0 of chapter 1 of such Code is amended by adding at the end thereof the following:

''1071. Sale of telecommunications business.''.

(B) The table of sections for Subpart E of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 48 the following:

''48A. Telecommunications business credit.''

SEC. 5. EXCLUSION OF 50 PERCENT OF GAIN.

Section 1202 of the Internal Revenue Code of 1986 (relating to 50 percent exclusion for gain from certain small business stock) is amended—

(1) by adding at the end of subsection (a) the following:

''(3) CERTAIN TELECOMMUNICATIONS INVESTMENTS BY CORPORATIONS AND INVESTMENT COMPANIES.—Gross income does not include 50 percent of any gain from the sale or exchange of stock in an eligible purchaser (as defined in section 1071(f)(1)) engaged in a telecommunications business (as defined in section 1071(f)(3)) held for more than 5 years.'';

(2) by striking subparagraphs (A) and (B) of subsection (b)(1) and inserting the following:

''(A) in the case of gain from the sale or exchange of qualified small business stock held for more than 5 years—

''(i) $10,000,000 reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by such corporations; or

''(ii) 10 times the aggregate adjusted bases of qualified small business stock issued by such corporations and disposed of by the taxpayer during the taxable year; and

''(B) in the case of gain from the sale or exchange of stock in an eligible purchaser engaged in a telecommunications business for more than 5 years—

''(i) $20,000,000 reduced by the aggregate amount of eligible gain taken into account by their taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by the eligible purchaser engaged in a telecommunications business; or

''(ii) 15 times the aggregate adjusted bases of stock of an eligible purchaser engaged in a telecommunications business issued by such eligible purchaser and disposed of by the taxpayer during the taxable year.'';

(3) by striking ''years'' in subsection (b)(2) and inserting ''years or any gain from the sale or exchange of stock in an eligible purchaser engaged in a telecommunications business held for more than 5 years.''; and

(4) by striking '' '$10,000,000'.'' in subsection (b)(3)(!) and inserting '' '$10,000,000', and paragraph (1)(B) shall be applied by substituting '$10,000,000' for '$20,000,000'.''.

SEC. 6. EFFECTIVE DATE—TECHNICAL AND CONFORMING CHANGES.

(a) TAXABLE YEARS.—The amendments made by section 4 shall apply to taxable years ending after the date of enactment of this Act.

(b) SALES.—The amendments made by section 3 shall apply with respect to a sale described in section 1071(a) of the Internal Revenue Code of 1986 (as added by this section) of a telecommunications business or any equity interest on or after the date of enactment of this Act. The amendments made by section 5 shall apply to sales on or after the date of enactment of this Act.

(c) TECHNICAL AND CONFORMING CHANGES.—The Secretary of the Treasury shall, within 150 days after the date of enactment of this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a draft of any technical and conforming changes in the Internal Revenue Code of 1986 which are necessary to reflect throughout the Code the changes in the substantive provisions of the Code made by section 3(a).

SEC. 7. REGULATIONS.

The Secretary of the Treasury, in consultation with the Federal Communications Commission, shall promulgate regulations to implement this Act no later than 90 days after the effective date of this Act. The regulations shall provide for determination by the Secretary as to whether an applicant is an ''eligible purchaser'' as defined in new section 1071(f) of the IRC of 1986 (as added by section 3 of this Act). The regulations shall further provide that such determinations of eligibility shall be made not later than 45 calendar days after an application is filed with the Secretary. The regulations implementing section 1071(f)(7) of such Code (as added by section 3 of this Act) shall be updated on an ongoing basis no less frequently than every 5 years.

SEC. 8. BIENNIAL PROGRAM AUDITS BY GAO.

No later than January 1, 2004, and no less frequently than every 2 years thereafter, the Comptroller General shall audit the administration of sections of the Internal Revenue Code of 1986 added or amended by this Act, and issue a report on the results of that audit. The Comptroller General shall include in the report, notwithstanding any provision of section 6103 of the Internal Revenue Code of 1986 to the contrary—

(1) a list of eligible purchasers (as defined in section 1071(f)(1) of such Code) and any other taxpayer receiving a benefit from the operation of section 48A or 1202 of such Code as that section was added or amended by this Act; and

(2) an assessment of the effect the amendments made by this Act have on increasing new entry and growth in the telecommunications industry by socially and economically disadvantaged businesses, and the effect of this Act on enhancing the competitiveness of the telecommunications industry.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 340—AFFIRMING THE IMPORTANCE OF A NATIONAL DAY OF PRAYER AND FASTING, AND DESIGNATING NOVEMBER 27, 2002, AS A NATIONAL DAY OF PRAYER AND FASTING

Mr. SANTORUM (for himself and Mr. BROWNBACK) submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 340

Whereas the President has sought the support of the international community in responding to the threat of terrorism, violent extremist organizations, and states that permit or host organizations that are opposed to democratic ideals;

Whereas a united stance against terrorism and terrorist regimes will likely lead to an increased threat to the armed forces and law enforcement personnel of those states that oppose these regimes of terror and that take an active role in rooting out these enemy forces;