

One thing I noticed, one fact that apparently is true, as I understand it, the Federal Trade Commission now has 50 million phone numbers that have been registered under the Federal do-not-call program. Fifty million Americans can't be wrong. They want relief. They want us, as their lawmakers, as their elected Representatives here in Washington, to do something to stop these calls.

The Federal Trade Commission, to its credit, and I appreciate them greatly for doing this, tried to come to their aid, come to their assistance, to make a national do-not-call registry a reality.

I think this is something the Nation is ready for. Fifty million people have already tried to sign up in the first few weeks after the announcement of the national do-not-call program. It is something we as Members of this body and as Members of the Congress, of the Federal Government, should try to do to ensure that the people of this country, if they want it, on a voluntary basis, can have some relief from unwanted telemarketing calls.

Congress mandated that this list be implemented on a national scale, and the President signed it into law. The legislation I am proposing now clarifies our intentions, and I certainly ask my colleagues to support the legislation in any way they can. I hope we will have a vote on this matter in very quick order.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### MORNING BUSINESS

Mr. PRYOR. Mr. President, I ask unanimous consent that there now be a period for morning business.

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

#### THE INTERNET TAX NON-DISCRIMINATION ACT OF 2003

Mr. FRIST. Mr. President, S. 150, the Internet Tax Non-discrimination Act of 2003, will be referred to the Finance Committee for a brief 30-day review. As many of my colleagues are aware, this consensus legislation was unanimously approved by a voice vote by the Senate Commerce Committee on July 31. In addition, the House passed a similar measure on September 17. The current moratorium ends on November 1 and I am committed to acting before it expires.

As the strong bipartisan support of these measures indicates, there is a growing consensus that the Internet should never be singled out for mul-

tipled or discriminatory taxation. Rather, the unprecedented benefits of the Internet to our society and economy should be encouraged by policymakers. I am confident that the Finance Committee's review of this matter will confirm Congress' intent to permanently extend the moratorium, and I look forward to an expedited and non-controversial review of this matter as a member of the committee.

#### NORTHERN KENTUCKY UNIVERSITY'S METROPOLITAN EDUCATION AND TRAINING SERVICES PROGRAM

Mr. MCCONNELL. Mr. President, I rise to pay tribute to Northern Kentucky University's Metropolitan Education and Training Services, METS, program. The ceremony to formally dedicate the METS center is scheduled for this morning in Boone County, KY.

The rapid rate of economic growth in the Northern Kentucky / Cincinnati metropolitan area has created a need for better-trained workers. In an attempt to address this problem, Northern Kentucky University has developed an innovative partnership with the Tri-County Economic Development Corporation, the Northern Kentucky Chamber of Commerce, the Greater Cincinnati Chamber of Commerce, and Delta Air Lines. The partnership ensures that the workforce has the skills needed to promote the region's growth.

Businesses that need educational services or a certain skill-set for its employees can contact METS, who will work with Northern Kentucky University to design the appropriate curriculum. If Northern Kentucky University does not offer a particular set of classes, METS arranges for students to take classes at other institutions via the Internet or Tele-conferencing.

The opening of this new state-of-the-art corporate training center is exciting for the region's business community and Northern Kentucky University. I am confident that METS can serve as a model for rapidly growing metropolitan communities, and I am pleased that this facility is in the Commonwealth. I ask my colleagues to join me in recognizing the official dedication of Northern Kentucky University's METS center.

#### FCC MEDIA OWNERSHIP RULES

Mr. BAUCUS. Mr. President, I rise today in support of Senator DORGAN's effort to overturn the Federal Communication Commission's media ownership rules. I commend Senator DORGAN on his resolve to work with his colleagues in a bipartisan manner to bring forward a commonsense solution to this pressing issue.

Every 2 years the FCC is required to review its media ownership rules. This most recent decision to roll back media ownership limitations was the most sweeping in a generation. Was it in response to the American people

asking for this reform? No, in fact over 2 million Americans contacted the FCC opposing the rule changes. In my office, I received over 1,000 letters from Montanans opposing the decision. It seems that the FCC turned a deaf ear to the will of the American public. I hear them loud and clear.

I support Senator DORGAN's effort for three basic reasons: diversity, localism, and economics. First, if America is to have a vibrant democracy, one where our citizens are free to express their views and have equal accessibility to the news, we as policymakers must protect that right. The FCC's decision allows large corporations that already have considerable clout over what we hear and see to further consolidate. The decision allows TV networks to own more stations reaching more Americans. Even worse, these same stations could own the local newspaper in the same market.

We as Americans must have access to diverse news and information. The FCC's decision runs contrary to this axiom and would allow a few large television stations to reach nearly one-half of the viewing public. If the UHF discount is factored, nearly 90 percent of our Nation's households could be covered by one entity. Diversity is jeopardized when one company has this much leverage over what we see and hear.

Senator DORGAN has pointed out that localism is being lost to the bottom line. I can not agree more. A generation ago, Americans sat around the radio and listened to local news. We huddled around the TV to watch our local news anchor give us the latest information about our communities. Today, news and information is being portrayed as local, when, in reality, it is being broadcast to us from hundreds or even thousands of miles away. Instead of broadcasting news about our communities from our communities, media companies are broadcasting about our communities even though they are nowhere near us. This is not localism and we should not stand idle to this emerging trend.

This decision has the potential to cause job loss in Montana. In Montana we have many "mom-and-pop" newspapers and television stations. Typically, these companies serve the rural areas of our State and do a tremendous job reporting about local activities and news. And they are often owned and operated by local citizens living in the communities they serve. And very often they are run on a very tight budget. The FCC's ruling jeopardizes our local stations and newspapers because these new larger companies will be able to squeeze these companies out of the market through advertising revenues with sheer economic clout. With additional leverage over the media landscape, these small, rural companies will find it harder and harder to compete and keep their doors open. As Montana's senior Senator, I will fight to protect our small TV and newspaper owners.

While I disagree with a majority of the FCC's decision, I would like to point out for small market broadcasters to survive, they may need the chance to utilize duopolies and other means to stay in business. And while I am concerned about the broad sweeping changes the FCC made, I remain cognizant of the fact that small market broadcasters may potentially need to utilize the very changes we may revoke today, and I will work with my colleagues to find market relief for these small broadcasters when warranted.

Over the next several months we will continue to argue the merits of this issue. However, I will only support any legislation that protects diversity, localism, and Montana's small businesses.

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#### LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Berkeley, CA. On May 12, 2003, the victim, a 23-year-old male Sikh wearing a turban, was assaulted while on an evening walk at the University of California. The attacker, and his two male companions, started to walk past the victim, then yelled, "Taliban, look out!" The suspect punched the victim in the nose then pushed him to the ground. The suspect later pulled the victim back to his feet and the men left the scene on foot.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

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#### CMS' PROPOSED CHANGES TO THE 75 PERCENT RULE

Mr. NELSON of Nebraska. Mr. President, I would like to express my concern with a proposed rule by the Centers for Medicare and Medicaid Services, CMS, that would threaten the ability of rehabilitation hospitals to continue to provide critical care.

In my home State of Nebraska, Madonna Rehabilitation Hospital in Lincoln is a nationally recognized premier rehabilitation facility that offers specialized programs and services for those who have suffered brain injuries, strokes, spinal cord injuries, and other rehabilitating injuries. If this proposed rule goes into effect, Madonna would not be able to offer the same critical

care to its patients as it currently does.

When CMS first looked at whether facilities would qualify as an IRF, a list of criteria was created to determine eligibility. They current criteria, generally referred to as the 75 percent rule, were established in 1984 and have not been updated since then. To qualify as an IRF under the 75 percent rule, 75 percent of a facility's patients must be receiving treatment for one of 10 specified conditions. Because the rule has not been updated in almost 20 years, newer rehabilitation specialties are not reflected and, therefore, are not counted in determining facility compliance with the 75 percent rule.

Since the 75 percent rule was implemented, IRFs have argued that the list of conditions should be expanded to reflect advances in modern rehabilitation medicine. The need for new rehabilitation specialties to treat cardiac, pulmonary, cancer, and other conditions was not even foreseeable when the 75 percent rule was implemented. Yet CMS has repeatedly refused to update the rule—even after implementing a payment system that specifically recognizes many more conditions than the 10 listed in the 75 percent rule.

On September 9, 2003, CMS published proposed modifications to the outdated 75 percent rule. I commend CMS for recognizing the need to update the regulation. Unfortunately, I believe that the proposed changes do not go far enough and may have serious consequences for Medicare beneficiaries and other patients who need inpatient rehabilitative care.

On its face, it appears that CMS expanded the rule by increasing the number of conditions from 10 to 12 and by lowering the percentage threshold from 75 percent to 65 percent. However, this "expansion" is illusory. The proposed rule will, by CMS's own estimate, reduce Medicare payments to IRFs by \$223 million annually and shift hundreds of thousands of patients—both Medicare and non-Medicare—into alternative care settings that may be inappropriate.

It is worth noting that Congress gave CMS a directive to implement the rehabilitation prospective payment system in a budget-neutral manner. Yet this rule—without any congressional directive—seriously cuts rehabilitation hospital funding.

Although CMS expanded the number of conditions from 10 to 12, it did so by replacing one of the existing conditions—polyarthritis—with three new conditions that collectively are much more narrow than the original condition. CMS acknowledges that the industry historically has understood hip and knee replacement cases to fall within the definition of "polyarthritis." Unfortunately, CMS now proposes to count joint replacement cases only if the patient has made no improvement after an "aggressive and sustained course of outpatient therapy."

This means that, instead of being directly transferred from an acute care hospital to an IRF, the patient will be forced into a skilled nursing facility, SNF, and/or outpatient therapy before being eligible for inpatient rehabilitation. IRFs would become a setting of last resort, and patients who might have returned to function after a brief IRF stay will be forced to endure weeks if not months, of therapy in other settings that may be inappropriate before being admitted to an IRF.

CMS also proposes to lower the threshold from 75 percent to 65 percent for a three-year period to give facilities time to come into compliance with the new criteria. Although this change is an improvement, it simply does not go far enough to prevent a significant negative impact on rehabilitation patients and providers.

RAND data indicate that only about 25 percent of IRFs, at most, could meet a 65-percent threshold under the current list of 10 conditions. Since the proposed rule actually narrows the agency's interpretation of arthritis-related conditions, the percentage of facilities that could comply with the revised list of conditions is probably lower. This means that, even under a 65 percent standard, at least 75 percent of facilities will be deemed out of compliance if CMS finalizes the proposed rule.

The proposed rule glosses over the negative impact that this dramatic shift will have on patients by assuming that all sites of care are equally effective and equally available. But I am very concerned about the impact that the proposed rule would have on patients living in rural areas, where alternative sites of rehabilitative care may be unavailable or highly inconvenient. Where SNF beds are scarce and few home health providers offer physical therapy services, these patients could be forced to travel long distances for daily outpatient care in a weakened state, risking reinjury and rehospitalization.

Because compliance with the proposed rule will hinge on an IRF's total patient population, not just its Medicare population, CMS estimates that the proposed rule "may have an effect" on approximately 200,000 non-Medicare patients. CMS was not able to quantify or describe this effect because of inadequate information. In my opinion, it would be irresponsible to implement this rule without further studying its likely impact on Medicare beneficiaries, non-Medicare patients, rehabilitation providers, and the Medicare Program.

The Medicare Payment Advisory Commission, MedPAC, agrees that the rule needs to be updated. In a July 7, 2003, letter to CMS Administration Tom Scully, MedPAC Chair Glenn Hackburth proposed that CMS lower the threshold to 50 percent for at least a year to enable an expert panel of clinicians to reach a consensus on the diagnoses to be included in the 75 percent rule.