

agreement, we have 15 minutes for the discussion of the Burma matter?

The PRESIDING OFFICER. There are 8½ minutes for debate remaining in morning business followed by 15 minutes for the Senator from Kentucky.

Mr. MCCONNELL. Would it be permissible under the consent agreement for Senator McCAIN and I to proceed on the 15 minutes on the Burma issue?

The PRESIDING OFFICER. The Senator may use that time under morning business.

(The remarks of Mr. MCCONNELL, Mr. McCAIN, and Mrs. FEINSTEIN are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. Who yields time?

The Senator from Virginia is recognized.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DOMENICI. Mr. President, I understand that we have about 6 minutes on our side.

The PRESIDING OFFICER. About 5 minutes.

Mr. DOMENICI. I am going to use those 5 minutes, and then we will be on the Domenici amendment. Then, I will speak a few more minutes, as I have time. I will start by using some time right now.

#### ENERGY

Mr. DOMENICI. Mr. President, I must tell my colleagues that, as chairman of the Energy Committee, I am having a good week for a change. On Monday, Senator CANTWELL came to the floor and sought unanimous consent to bring up one piece of the Energy bill. On Tuesday, the minority leader came to the floor and offered a portion of the Energy bill as an amendment to the Internet tax bill.

We seem to be on a roll. Members know this country has a serious energy problem. They are feeling the political pressure to do something about it. That is good news for this chairman, who has waited so long and worked so hard seeking to develop some sort of political consensus on a broad energy bill.

Fellow Senators, I have never in my 31 years worked on legislation that is so hard to piece together, because every time you have a comprehensive bill, you show it to somebody and they read it in its entirety, they find one piece out of hundreds they cannot support. If I had the wisdom and the time to go to every Senator and let them read it and say what can I take out that would make you happy and have

you go for this bill, I assume that when I was finished, this 900-page authorizing bill would probably end up being just a few sheets of paper.

The truth is that America is crying for a comprehensive energy bill. America is not worried about one Senator's particular concern about one particular aspect. They are worried about the fact we will soon be importing natural gas. We have been using our own natural gas, and now predictions are that we are going to be using foreign natural gas in large quantities very soon.

The consensus that I indicated to you is very hard to achieve. In the last Congress, the House and Senate both passed bills but were unable to resolve their differences in conference. I am not speaking of a few months ago; I mean the last legislative session, the last Congress.

Last year the Senate considered energy legislation for somewhere on the order of 3 months before we were able to pass a bill off the floor. This time we got a conference agreement.

I have been criticized for that conference. Some say we didn't have enough meetings. Some say the meetings were not open to the public. Others say they were not open to the Democratic staff.

Let me tell you, this is good rhetoric, but the truth is we conducted one of the most open conferences that I have been in in almost 32 years in the Senate. We made agreements public as they were reached and at the end, before we circulated the agreement for signature, we held an open meeting and reconsidered all the amendments. When amendments could be agreed to by both bodies, we made changes. That is very different than the way most conferences are conducted. I have asked Senators on both sides of the aisle if they have been involved in bills where they were the minority and they didn't even participate in the conference, and many have said that is almost the course of things as we live in this Senate. Yet we did our best to use the Internet as a new tool. We submitted this to all the press through the Internet. They knew more about this bill if they wanted to report it than anybody has ever known. While doing that, we obviously submitted it to the minority and the minority staff.

I responded to that criticism by dramatically reducing this bill. It is a slimmed-down energy bill. It dramatically reduces the cost for the nontax portions. We have reduced the cost from \$5.4 billion to a minus \$1.3 billion.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### INTERNET TAX NONDISCRIMINATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will re-

sume consideration of S. 150, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 150) to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Pending:

McCain amendment No. 3048, in the nature of a substitute.

Daschle amendment No. 3050 (to the language of the bill proposed to be stricken by amendment No. 3048), to eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, and to increase the Nation's energy independence.

Domenici amendment No. 3051 (to amendment No. 3050), to enhance energy conservation and research and development and to provide for security and diversity in the energy supply for the American people.

The PRESIDING OFFICER. Under the previous order, there will be up to 1 hour of debate only equally divided between the two leaders or their designees.

Mr. DOMENICI. Mr. President, I yield myself up to 15 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DOMENICI. I hope I don't use all that time. Will the Chair advise me when I have used 10 minutes?

The PRESIDING OFFICER. The Chair will do so.

#### AMENDMENT NO. 3051

Mr. DOMENICI. Mr. President, we cut the cost by \$6.7 billion. The amendment before us is not subject to a point of order and it can proceed without any concern in that regard.

We have been criticized heretofore because we had an MTBE safe harbor provision. That provided faulty product liability protection for the manufacturers of MTBE. When the conference report was on the Senate floor, I spent a great deal of time defending that position which was insisted upon by the House. I thought that provision was necessary, but because we could not get that provision accepted by the Senate, it is not in this legislation.

I feel very chagrined today to note, while it has not been to my ear where I have heard it, I understand the oil companies and their major lobbying groups are opposing this bill because of MTBE not being in it. I think that is a shortsighted approach. How are they going to get MTBE if we don't get a bill? If we don't get a bill, we stay right where we are, except we don't have an energy bill for America. What we have is no change in the MTBE law, but we do not have an energy bill.

I urge those who are taking that position to assume the reality of things. If they think we are going to change the original bill and get two more votes—remember, in a cloture situation on the original bill, we got 58 votes. I remind those who think we can go back and fix it that it is also subject to seven points of order. Sooner or later, it would have been defeated by a point of order.

For those who are sitting around thinking that we can get that, they just absolutely are talking irrelevant, they are talking things that cannot happen. Now let's talk about the bill.

I hope my friend LARRY CRAIG comes to the Senate floor before we are finished because I could not have a better helper than he. He understands this bill. I want to suggest to all that this bill, in its slimmed-down manner, when coupled with the tax provisions that are in the tax bill that will come up in the Senate next week, will put before the American people one of the best energy bills we have ever done. The American people are watching as gasoline prices soar, and they are going to be looking today as Senators vote yes or no on keeping this bill alive.

I know it is tough to get 60 votes. I know that Senators have their particular reasons—one little piece of this bill—for voting no. I know there are some Senators even on my side who are being told: Wait around until we get MTBE. We are not going to get MTBE in the Senate. It is an absolute wish that cannot be accomplished. For those who are worried about it, they ought to let us get a bill and then see what happens.

Let me move to a few other issues. Senator BINGAMAN came to the Senate floor yesterday with a list of concerns. He does not support the hydroelectric relicensing provision, the Indian energy provisions, or the electricity title. I understand his perspective, but I contend that his views on these issues are the ones that are outside the consensus. We need consensus. We do not need what one Senator thinks we need; we need consensus. This bill has consensus.

Take the hydroelectric relicensing which is so important to Senators of both parties from the Northwest. We are not trying to build new dams or change the standards. All we are trying to do is streamline the process. Senator CRAIG has been active in that issue, and many Senators voted for it, even though they are not from that area.

Let's take the electricity provision about which many experts have said the future of America lies in the electric grid of America growing and becoming stronger and becoming better, and of all the things we can do, this is the most important.

When I became chairman, I assumed that issue would be an obstacle to reaching consensus in light of the great controversy over the Federal Energy Regulatory Commission's recent rulings. We worked for months to get an agreement, and the final product is, to my amazement, supported by almost all the players in the industry across this land. It is by far the greatest achievement of this bill that we could reach such an agreement in the months since we completed that conference. The agreement has held, and it is here. There are parts of this bill that some criticize, just as there are parts of this

comprehensive legislation that, taken alone, I would criticize; however, on balance, this package is a middle ground in this Congress.

We know this bill is before us in an extraordinary way. We know that if after this vote the McCain vote succeeds, we are wiped out, we are removed from the calendar. We understand that. I guess the probability is that we cannot get cloture, but we are not giving up because we understand there is some kind of bipartisan support for getting cloture.

This bill also has that most attractive part for many Senators, the ethanol provisions, which 31 Republicans voted for when it was introduced. Senators can look at that and see if they voted for it or not, and if they did, they should vote for the Domenici bill. I hate to call it "mine" because it is the result of so many Senators working on both sides of the aisle. I think I would call it the "consensus bill," but maybe people would not like that because they do not think it is consensus for them.

This bill provides great quantities of natural gas from American sources over the next 5 to 10 years—from Alaska and from underground off our shores without in any way violating the moratorium. It produces a modernization which addresses the drilling activities in our country so we can get more oil and gas without harming the environment.

It solves the electric problem. In addition to the grid I talked about, believe it or not, this bill provides that when there is gridlock, when you cannot proceed any further because you run into State lines or you run into somebody else's right-of-way, believe it or not, we got a consensus, including Republicans, that after negotiations that occur in the States or between the companies that are at loggerheads, we have a provision that eminent domain can apply. Nobody thought we would get that. That is an extraordinary position to get and bring before the Senate.

I know it does not sound sexy, as some political issues, but it is good. This bill is filled with very good things. I hope those who are looking at this bill with a microscope, and want to make sure every single provision meets with their satisfaction, understand that the American people are not looking at this bill with a microscope. They are looking at this bill to see if the Senate wants to pass an energy bill. This will be a signal of whether we want to put something together that will help America in this energy crisis.

If we do not want to, then we can send a signal that we do not like this provision and we do not like that provision, but at some point in time the American people are not going to look at that. They are going to see where were the Democrats, where were the Republicans, where were the leaders in trying to get a bill that will help solve America's energy problem.

I see the minority leader in the Chamber, and I understand his great

concern on the ethanol front. I suggest that he has been very helpful in the past in trying to get a comprehensive bill which would include ethanol, and I understand that, but I submit there are an awful lot of people who are very shortsighted.

The PRESIDING OFFICER. The Senator has consumed 10 minutes.

Mr. DOMENICI. I will use 1 more minute and yield the time.

I understand the minority leader is in a predicament because of this being a bill that the consensus was worked out not by his side, although there were some, but predominately by this Senator on this side. I believe the American people are going to say on every major aspect of America's growing dependence, the price of gasoline, the price of natural gas, wiping out of the fertilizer industry in America which affects our agriculture, and on and on, they understand we need an energy bill.

We need this bill. This is as good as we will ever get. Having spoken as well as I can for as long as is prudent in the Senate where one can speak too long—the House does it in 2 or 3 minutes; if they would have forced me I guess I could have done that—but as I started out saying, as the chairman of this committee, it has been a good week and a few good things have happened. There has been some evidence that people want to get this bill done.

I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I did not have the opportunity to hear all of what the distinguished chairman of the committee has said, but what I did hear him say I find myself in agreement with.

Let me first talk procedurally for a moment and then I want to talk substantively. I hope, procedurally, we can reach an agreement to attempt to get to the votes earlier rather than later. I think it would be great if we could have the three cloture votes beginning at noon to accommodate our policy conference meeting. If that could be done, I think it would also accommodate a number of Senators' schedules.

With regard to the larger procedural question, this is not our first choice. This is not the way we ought to approach comprehensive energy legislation or targeted energy legislation, as my amendment did with ethanol. I have made no secret of my frustration and disappointment with regard to the conference process and the way in which Democrats again were locked out of the opportunity to express themselves.

I warned our House colleagues and our leadership on the other side with regard to putting MTBE legislation into the conference report. All those warnings, all those admonitions, all those concerns about being locked out have been expressed on a number of occasions.

As I said the other day, I am also very deeply concerned about the reported decision to delay any real debate about energy legislation until the fall. I think it was reported in the Energy Daily on Tuesday.

So for all of those procedural concerns, we had no choice but to act as we did the other day and to provide at least an opportunity for Senators to be heard and for us to vote once again on legislation that on a bipartisan basis this Senate has supported over and over.

The first vote we will cast this morning will be on the renewable fuels standard. I hope our colleagues will support cloture on it. Two-thirds of the Senate has voted for it in the past. All we need, of course, is 60 votes so I cannot imagine that anybody would flip their vote, having supported it on several occasions, and vote against it as we contemplate its consideration today.

It is the exact same legislation that we have offered. It eliminates the reformulated gasoline programs oxygen standard, replaces it with the renewable fuel standard, and sets a 10-year schedule for assured growth in alternative energy. It contains the same waiver authority agreed to in the energy conference report and it strikes all liability protection for MTBE and ethanol and bans MTBE within 4 years.

So this is an amendment that merits the bipartisan support that it has received before, and I hope our colleagues could support the amendment.

I hope my colleagues will support cloture on the comprehensive Energy bill. Senator DOMENICI did what he said he was going to do. He took out MTBE liability immunity. He has also taken out the provisions having to do with many of the tax incentives created originally in the Energy bill. This is a much different bill. So those who voted against it before I think ought to look very carefully at voting in favor of it this time.

One of the reasons on this side of the aisle that we have always opposed cloture is to protect Members' rights to offer amendments. In this case, there is no concern for the protection of a Senator's rights because they will be protected. We are only bringing cloture on the amendment. The bill is open as wide as it is now to any amendment that Senators wish to offer on energy or on anything else. So we are not in any way excluding or minimizing Senators' opportunities to be heard and to offer other legislation.

I might say the third cloture vote is the critical one. That is the cloture motion that I hope will be defeated, because I believe we have not had a good enough debate on the Internet tax bill. We have not had an opportunity to offer our amendments. We have not really had the kind of debate that an issue of this import requires.

There are very divergent views in the Senate on a bipartisan basis, and I think as we consider those divergent

views it is critical for us to ensure the debate and the opportunity to reach consensus prior to the time we invoke cloture or bring this bill to a premature conclusion and have the vote that I think can be taken at some point as that debate produces the consensus for which we are looking.

So if we are going to accommodate the schedule that I have just suggested, I will not dominate the floor. Let me again reiterate that I hope my colleagues will support the cloture vote on ethanol. I hope they will support the cloture vote on energy. I hope they will oppose the cloture vote on the Internet tax bill.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Idaho.

Mr. CRAIG. My guess is that most Senators understand the process and the procedure we are under, but there is a large body of interest that does not understand what we are doing at all. It is called the American consumer.

I can put it this way: The minority is trying to wrestle control of the floor away from the majority and set their own agenda. That is one way of looking at it. The other way of looking at it is to create an environment of false hope for that consumer who went to the gas pump today and paid more for gas than he or she has ever paid in their life.

I question the integrity of Senators who will argue and opine the problems of energy but set in motion a procedural event that denies us the opportunity to produce for the American consumer a national energy policy.

So go home to your voters and tell them it is no longer big oil's fault, that it is no longer the nuclear industry's fault, it is the politicians' fault because consistently over the last 5 years Democrats and Republicans alike have denied the American consumer a legitimate, comprehensive policy for national energy. So we are now held hostage for some 60 percent of our consumption by a foreign interest. Or we are held hostage by an environmental lawsuit that denies access. Or we are held hostage by the bickering of States who cannot agree that a transmission line ought to cross their territory.

Those are the realities of where we are today. We are going to tell the American farmers they are going to pay 30 percent more this year than they thought for input costs to produce their grains. But who is going to pay for it? The farmer can't. He is hardly breaking even. But the politician in the Senate has created the environment for that 30-percent increase in production costs. It is not the chairman of the Energy Committee, not this Senator who for 5 years has worked to build a comprehensive energy policy, but those who have decided they must have a small piece their way, and their way denies the American consumer the reality of energy.

So the average household—if you are wealthy, my goodness, \$300 or \$400 more in costs; 5 percent of your income

this year will go to energy. But if you are making \$29,000 a year, 20 percent of your income will go to energy. If you are making \$10,000 a year as an American, 40 percent of your income will go to energy.

So let's not stand here and debate the small stuff. Let's say to the American consumer what is an honest statement, that the Senate has not been able to settle on the establishment of a national energy policy that would, had it been implemented, begin to hold down costs and bring production up and bring conservation up and improve the environment and do the very thing that quality energy has always done to the American economy and for the American worker: allowed them to be the most productive, most competitive of any economy and any workforce in the world.

But today that is less the case. Today, the petrochemical industry shuts down and goes offshore because they can't afford to produce in this country. Today, in lieu of natural gas we are going to establish ports and liquefy somebody else's gas and bring it here on a ship. Shame on us for that silly attitude that the American politician has developed.

Does he or she think the American consumer is going to roll over? I don't think so. I think that consumer grows angrier by the day; when they go to the gas pump, weekly, and all of a sudden it is not \$1.50 for regular, it is \$1.65, \$1.75, \$1.80. Last week it hit an all-time high. This week it will hit another all-time high. If you are out in California, you pay \$2.50. If you are in Idaho, you are paying \$2.00 for regular gas.

Now let's talk about the House. Let's talk about our inability to get out to western gasfields. Let's talk about the unwillingness to bring down gas out of Alaska. What have we done? Through the Clean Air Act we said the only way you can meet air shed standards is to generate electricity by the use of natural gas. We saw those turbines begin to go in place over the last good number of years when it was \$2.30 a million cubic feet. Now it is \$5, now it is \$6, and those turbines are shut down.

Shame on us, and I do mean Senators. I do mean this procedure. I do mean this false process.

Is there cynicism afoot? You know, there ought to be. The American consumer ought to grow progressively cynical—become the cynic, I should say, of the process that denies them reasonable high-quality energy.

To the American producer, to the American farmer, to my farmers in Idaho—I know they are calling me. I hear them. They are frustrated and they are angry. They have a right to be. We will play this political game. I must tell you, shame on us because we cannot get it right and the vote today on the Daschle amendment will not get it right.

Tragically enough, the vote today on the alternative that I and others have worked on collectively in a bipartisan way will not be allowed to get it right.

If we fail, and if we go into the fall and gas prices keep ticking up and somebody over in the Middle East says, Got them where we want them, let's crank, I must say the American consumer has a right to grow angry and a right to be frustrated because their political process—and those of us who have been invested with the responsibility of making it work—have denied them reasonable, high-quality energy of the kind they ought to expect. Now they better start demanding it.

I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I hope we can get cloture in a few minutes.

The PRESIDING OFFICER. The Senator will yield.

Mr. DASCHLE. Mr. President, who controls time?

The PRESIDING OFFICER. The leader controls the time.

Mr. DASCHLE. That was my understanding. How much time remains?

The PRESIDING OFFICER. There is 24 minutes 30 seconds on your side, 11 minutes on the other side.

Mr. DASCHLE. How much time will the Senator from Oregon require?

Mr. WYDEN. Five minutes will be plenty, if that is acceptable to the leader.

Mr. DASCHLE. I hope we can yield back as much time as possible to accommodate the votes as quickly as possible, but I am happy to yield to the Senator from Oregon 5 minutes and the Senator from Delaware 5 minutes.

Mr. WYDEN. Mr. President, I will be very brief. We have had 3 full days of debate on the Internet tax question. I am hopeful we will be able to get cloture on the McCain substitute.

If the Alexander proposal, the alternative, is accepted, all across this country folks who now get a message that says "You've got mail," will get a message that says "You have special taxes."

What Senator ALLEN and I have done over the last 3 days on the floor of the Senate is outline, under the Alexander proposal, the scores and scores of local jurisdictions that would be able to impose these special taxes on electronic commerce.

Over the last 7 years, we have heard these State and local projections by governmental bodies about how revenue would be lost. In each instance, colleagues, they have not come to pass. In 1997, for example, the National Governors Association said that our Internet tax freedom bill would cause the virtual collapse of the State and local revenue system. That next year revenue went up \$7 billion.

All we are trying to do in the McCain compromise, and it is, in fact, a compromise—Senator ALLEN and I have sought a permanent ban on multiple and discriminatory taxes on electronic commerce. We are compromising now so that it is a 4-year proposal. We have made it clear to the other side regard-

ing telephone calls made over the Internet, the way in which those are handled and taxed would not be changed. So this is a compromise proposal.

We have had 3 days of debate. It doesn't involve sales taxes or property taxes or utility taxes or any other kinds of taxes. This is a question of whether there ought to be double taxation on something folks have already paid for, and that is Internet access. I hope we will be able to invoke cloture on the McCain substitute and be able to go on with the amendment process. We have had 3 full days of debate. I compared it to prolonged root canal work because I know this is not inherently the most fascinating subject. I hope today we can invoke cloture on the McCain substitute and get about the task of amending and passing the bill, and I yield the floor.

Mr. DASCHLE. Before I yield additional time, I know Senator CARPER wanted 5 minutes, and I will yield to our distinguished manager, the Senator from North Dakota, 5 minutes. But I want to be sure people understand there will be three votes, regardless of the outcome of these votes. There will be a vote on the Daschle amendment; there will be a vote on cloture on the energy amendment offered by the Senator from New Mexico; and there will be a vote on McCain, a cloture vote on the McCain substitute, the amendment pending. There will be three cloture votes.

I know there was some question as to whether there would be a vote, given how the amendments may be resolved. The votes will be cast regardless.

I yield the floor to accommodate the requests made by my colleagues.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 5 minutes.

Mr. CARPER. Mr. President, the question here today is not whether we want to tax people's access to the Internet. We don't. None of us want to do that. That is not the issue.

The question is, are we going to say to State and local governments that have collected a portion of their taxes for years from telecommunications, from telephone services, are we going to take away their ability to do that? We are going to reduce their ability to do that? We are going to reduce their revenue base but at the same time, whatever shortfall they realize, we are not going to make up for it?

Ever since the time of Alexander Graham Bell, State and local governments have been collecting taxes on traditional telephone services. What is at issue here is whether we are going to empty the State and local treasuries to the tune of as much as \$20 billion in the years ahead, at a time when they are facing the greatest fiscal crisis they have faced since World War II.

Are we going to empty the treasury of California by another \$836 million? It is already empty. Do we want to empty the treasury of the State of Con-

nnecticut by some \$170 million, or \$265 million out of Kentucky's treasury, or \$110 million out of Louisiana's Treasury, or \$225 million out of Massachusetts' treasury, or \$360 million out of Michigan's treasury, or \$285 million out of Minnesota's treasury, or \$600 million out of New Jersey's treasury, or \$370 million out of North Carolina's treasury, or \$358 million out of Tennessee's treasury, or \$200 million out of Wisconsin's treasury? The list goes on.

I have said on the Senate floor before and I will say it again: If we want to do something good for the telecommunications industry—I do, and I am supportive of a number of other initiatives for the industry—if we are supportive of tax credits or allowing companies to expense their investments, we should pay for it as Federal legislators. It is wrong for us to say we are going to give a break to the telecommunications industry, or any other industry, and say not only are we not going to pay for it, but we will tell the State and local governments they have to pay for it. In my view, that is wrong. That is not treating other people the way we want to be treated, and it is something we shouldn't countenance today.

We are going to vote on cloture in a short while with respect to the McCain amendment. Let me say this: There is a reasonable compromise between where Senator ALEXANDER and I stand and where Senator McCAIN stands. There is a reasonable compromise. We will get to that compromise with a "no" vote on cloture. I am convinced that we will get it.

I stood here last week and urged people to vote no on the cloture on the Frist bill on asbestos. I said if we do it, we will create a dynamic where real compromise and consensus can be built around asbestos—a very difficult issue. We voted no on cloture, and as we gather here right now, over in SH-216 in Hart there are serious meetings going on to get us to a real settlement on asbestos.

We need real negotiation. A "no" vote on cloture on McCain does not end prospects for consensus, but it actually creates it. I urge my colleagues to vote no.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, let me make a brief comment in response to the comments of my colleague from Idaho.

He is quite correct. We have an urgent situation with respect to energy. We have two subjects at this point. One is the underlying bill, the Internet tax bill, and the other represents amendments offered by my colleague, Senator DASCHLE, and an amendment offered by Senator DOMENICI. I intend to support cloture with respect to both of these initiatives.

I want to respond to my colleague from Idaho who says, Shame on us, this is false procedure, it is politics, and

someone is trying to take over the floor of the Senate, and so on.

If we believe that we have an urgent need to pass an energy bill—incidentally, I was one of those who supported an energy bill when it came to the Senate floor, and it lost by two votes—if there is a time and place to do that, we are going to have a cloture vote. I suggest with respect to his suggestion about anger, hold your anger for a couple of hours until we see how we vote on cloture. If we want to debate energy, let us do that. I am in favor of debating energy. I am also in favor of concluding the bill dealing with Internet taxation.

Also, my colleague, Senator CARPER, said that he is not in support of taxing access to the Internet. I am not, either. I have previously supported a moratorium on taxation. I hope before this process is over, I will be able to support this. But we are dealing with two different subjects.

My colleague from Idaho just described the subject of energy. My point on energy is very simple: There is a way to deal with energy sooner rather than later. The way to do that is vote for cloture in the next half hour or so, which I intend to do.

I yield the floor.

Mr. MCCAIN. Mr. President, I intend to yield 3 minutes to the Senator from Tennessee and then yield the remainder of my time. I understand the Senator from North Dakota is going to yield the remainder of his time also; is that correct?

Mr. DORGAN. Yes.

Mr. MCCAIN. Mr. President, I yield myself 20 seconds before then.

I commend to my colleagues this morning the Washington Post editorial entitled "Energy Follies." I quote:

It would make far more sense for Senators who are interested in some aspect of this legislation—whether ethanol or electricity regulation or renewable fuels—to design bills around those issues and vote on them separately, judging each by its own merits. But that would be too rational for this Senate, which almost seems to prefer doing things sideways.

I ask unanimous consent that the editorial be printed in the RECORD, and I yield 3 minutes to the Senator from Tennessee.

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

[From the Washington Post, April 29, 2004]

#### ENERGY FOLLIES

The Senate's machinations over the energy bill this week seem to prove the existence of a link between overly complex parliamentary procedures and bad law. The original energy bill, as readers will remember, failed to pass last November, and for good reason. Its size, price and expensive perks for industry became too much even for a majority of senators. Since then, Sen. Pete V. Domenici (R-N.M.) and the Senate leadership have been looking for another way to pass it, or at least most of it. They've now found a place: The bill, which in its "slimmed-down" version numbers more than 900 pages, has been attached as an amendment to a bill on Internet tax law.

True, the idea of using an Internet tax bill to pass a law on energy was not original to Mr. Domenici. He proposed his "amendment" only after the Senator minority leader, Thomas A. Daschle (D-S.D.), proposed another "amendment"—one promoting the use of ethanol, a piece of pork much beloved by members of Congress representing corn-producing states.

After Mr. Daschle's proposal, Republicans first condemned the Democratic leader for attaching a "non-germane" proposal to the Internet bill—and then decided not to beat him but to join him. There are various other layers of complication, but the probable result will be a messy series of votes today, after which both amendments will fail. If that doesn't happen, and if Mr. Domenici's amendment gets a full vote, the Senate could find itself grappling with a large, complicated piece of law stuck to another piece of law, which would then become tangled further in conference with the House. We can only hope the Senate will be wise enough to avoid such an outcome.

It would make far more sense for senators who are interested in some aspect of this legislation—whether ethanol or electricity regulation or renewable fuels—to design bills around those issues and vote on them separately, judging each by its own merits. But that would be too rational for this Senate, which seems almost to prefer doing things sideways.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I note that the Washington Post is recommending support for the Alexander-Carper version of the legislation. This is not about taxes. This is not about the Internet. This is about Senators and Congressmen coming to Washington, passing an expensive idea, and sending the bill home to State and local governments.

I am voting against cloture on the McCain proposal and against cutting off debate because this legislation breaks our promise to State and local government.

In 1994, 300 Republicans stood on the Capitol steps and said: No money, no mandate; break our promise, throw us out. In 1995, the Republican majority passed the Unfunded Mandate Reform Act. There are 62 Senators serving in this body today who voted for that.

This legislation breaks our promise in a big way. The Congressional Budget Office tells us it is an unfunded mandate. The National League of Cities says it is a nightmare. The National Governors Association says it can cost States up to \$18 billion a year because of language in the proposal. The commissioner of revenue from the State of Tennessee says in a letter dated yesterday, to put it in dollar terms, Tennessee would lose \$350 million a year, up to about 5 percent of the States budget.

I ask unanimous consent to have those three documents printed in the RECORD.

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

STATE OF TENNESSEE,  
DEPARTMENT OF REVENUE,  
Nashville, TN, April 28, 2004.

Hon. LAMAR ALEXANDER,  
Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR ALEXANDER: We were asked by your office to evaluate the impact of the "McCain Compromise" bill to preempt certain state and local taxes on Internet access and related services. After reviewing the McCain Compromise language, it is our conclusion that the proposed compromise does nothing to mitigate the adverse impact that S. 150 would reap on our state revenue structure. To put this in dollar terms, we believe Tennessee would lose approximately \$350 million annually in revenue. This loss would increase as additional services migrate to the Internet. Given that Tennessee imposes a broad levy on telecommunications services, we believe that the majority of sales taxes collected on this levy are at stake. This loss does not include services which may be bundled with the sale of Internet access.

#### HOW THE MCCAIN COMPROMISE REDUCES STATE REVENUES

First, the proposed language does not do anything to correct the fundamental problems that exist in the definition of Internet access. One aspect of the proposed changes in the McCain Compromise continues to perpetuate the unfunded mandate on states that prevents states from taxing telecommunications "to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access."

This has the effect of exempting telecommunication services that makeup the Internet backbone, the "middle mile" telecommunications used by Internet Service Providers to provide internet access, and the "last mile" telecommunications services used to connect an end user to the Internet. The Alexander-Carper bill provided a much more limited preemption for the "last mile" telecommunications services used to connect the consumer to the Internet.

While the sale of Internet access to the consumer is no longer subject to sales tax in Tennessee, the state does impose tax on all telecommunications services used in connection with providing or receiving Internet access. This tax would be eliminated under S150 or the McCain Compromise.

Second Tennessee is deeply concerned that the term Internet access is defined to "include access to proprietary content, information, and other services that are a part of a package of services offered to users." As long distance services and other services are increasingly bundled with Internet access, we are concerned that these telecommunications services become subject to the preemption pursuant to this broad language.

Third, the VOIP exception to the moratorium actually does nothing for the states' abilities to tax that or similar services that may migrate to the Internet. Current Tennessee law allows the state and local governments to tax VOIP as a telecommunications service, as long as there is no federal preemption. The McCain "exception" to the federal preemption does not apply to voice services that are a package of services offered with Internet access, and since that is how VOIP services are currently sold and probably will continue to be sold, the exception is the McCain bill in fact provides no protection against states losing revenue as phone services migrates to VOIP.

To summarize, Tennessee continues to support the provisions of S. 2084 or a straight 2 year extension of the original moratorium.

If you have further questions, please do not hesitate to call (615) 741-2461 my office of the Tennessee Department of Revenue.

Sincerely,

LOREN L. CHUMLEY,  
Commissioner.

**NGA SUPPORTS REASONABLE EXTENSION OF THE INTERNET TAX FREEDOM ACT**

The National Governors Association (NGA) supports extending the federal ban on state and local taxation of Internet access in a manner that is technology neutral and fiscally fair to state and local governments. Unfortunately, two pieces of legislation currently moving through Congress violate these basic principles. The House of Representatives has already passed H.R. 49 and S. 150 is currently under consideration in the Senate. By permanently expanding the definition of tax-free Internet access, both bills rob state and local governments of existing revenues while creating a tax free zone for future communications services.

The NGA calls upon Congress to adopt S. 2084, the "Internet Tax Ban Extension and Improvement Act." This compromise bill, sponsored by Senators Alexander and Carper, offers a reasonable extension of the moratorium while addressing industry concerns for technological neutrality without unduly burdening state and local governments.

**BACKGROUND**

Although the U.S. Constitution grants Congress broad authority to regulate interstate commerce, the federal government, historically, has been reluctant to interfere with states' ability to raise and regulate its own revenues. State tax sovereignty is a basic tenet of the federalist system and is fundamental to the inherent political independence and viability of states. Only in the most narrowly defined exceptions has Congress crossed that line.

The 1998 "Internet Tax Freedom Act" (ITFA), which imposed a moratorium on state or local taxation of Internet access, is one exception to this long held practice. The ITFA expired briefly in 2000 but Congress renewed it through November 1, 2003. Designed to "jump start" the then-fledgling Internet industry, the moratorium included three important restrictions to protect states:

(1) It applied only to new taxes—existing taxes were grandfathered;

(2) The definition of Internet access, while broad, excluded telecommunication services; and

(3) The bill expired after two years to allow Congress, states and industry the opportunity to make adjustments for rapidly developing technologies and markets.

**THE NGA POSITION**

Today, over 130 million Americans access the Internet using everything from dial-up modems, high-speed broadband, and Digital Subscriber Line (DSL) offerings to wireless technologies and even satellite and power line connections. The Internet's broad reach and technological promise is also transforming entire industries such as telecommunications, which is rapidly migrating all of its services to Internet based technologies and rolling out new services such as Voice Over Internet Protocol (VOIP).

As Congress considers legislation to extend the moratorium, NGA encourages members to adhere to the following guidelines to maintain the balance struck by the original moratorium, a balance that encouraged the growth of the Internet but still respected state sovereignty:

1. Do no harm—Any extension of the moratorium should preserve existing state and local revenues.

The original moratorium protected existing state revenues by grandfathering tax

laws in place before 1998 and prohibiting only new taxes on Internet access. In contrast, H.R. 49 and S. 150 would cost states much needed revenue by repealing the grandfather clause and expanding the law to prohibit taxes on telecommunications "used to provide Internet access." Stating that the proposed bills would trigger a possible point-of-order under the Unfunded Mandates Reform Act, the Congressional Budget Office (CBO) estimates removing the grandfather provision would cost states between \$80 and \$120 million annually. The effect of the second provision could be even greater. "[D]epending on how the language altering the definition of what telecommunications services are taxable is interpreted," the CBO said, "that language also could result in substantial revenue losses for states." With state and local governments collecting over \$18 billion in telecommunications taxes annually, any significant change in the taxability of telecommunications could cost states billions of dollars. At a time when state and local governments are facing large increases in mandatory spending and stagnant revenue growth, Congress should not exacerbate state fiscal problems by interfering with the collection of existing taxes.

2. Be clear—Definitions matter.

The original moratorium split the definition of Internet access into two parts: a broad and inclusive description of Internet access and an absolute exclusion of telecommunications services from the moratorium. The definition read: "Internet access means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services."

The exclusion of telecommunications services protected states by clarifying that Internet access was a separate, distinct and limited service. It also clearly preserved existing state and local taxes on telecommunications services that amounted to over \$18 billion in 1999. The definition, however, allowed some jurisdictions to tax the telecommunications component of certain broadband technologies like DSL while others remained tax-free. This perceived inequity led to a push to alter the definition of Internet access in H.R. 49 and S. 150 to make tax free telecommunications services "used to provide Internet access," as a means of making the ITFA technology neutral. This change, however, is too broad. Not only would it prohibit taxes states and localities are collecting on DSL, it would also exempt all telecommunications services used anywhere along the Internet—from the end-user all the way to and including the "backbone." Compared to the original moratorium, which expressly exempted telecommunications from its scope, H.R. 49 and S. 150 could ultimately put at risk most, if not all, state and local telecommunication tax revenue. (See below.)

H.R. 49 and S. 150 would also intensify a long-standing problem with the original definition: the unlimited ability to bundle together content and "other services" into a single offering of tax-free Internet access. Services such as VOIP highlight the risk states face from this broad definition. Unlike traditional telecommunications services, VOIP uses the Internet to transmit voice communications between computers, phones and other communications devices. Industry observers expect 40 percent of all telephone calls in the United States to be Internet based within five years. If VOIP is allowed to be bundled with Internet access into a single tax-free offering, and telecommunications

used to deliver that offering are also tax free, states could quickly see their telecommunications tax base erode to nothing. Language in S. 150 as amended and S. 2084 that requires service providers to unbundled taxable services from non-taxable Internet access is helpful, but only if the universe of what constitutes Internet access is actually limited.

3. Stay flexible—A temporary solution is better than permanent confusion.

Rapid pace innovation in the Internet and telecommunications industries makes it difficult to define accurately these complex and ever-changing services. The original moratorium was made temporary in part for this reason—to provide Congress, industry and state and local governments with the ability to revisit the issue and make adjustments where necessary to accommodate new technologies and market realities. The fact that the courts, the Federal Communications Commission and Congress are all in the process of examining and redefining the core elements of what constitutes telecommunications and Internet access underscores the need for caution. With so much uncertainty, a temporary extension of the moratorium is the best way to avoid unintended consequences from a permanent moratorium.

**CONCLUSION**

NGA supports S. 2084 because it best reflects a balance between state sovereignty and federal support for the Internet. First, it protects states by drawing a line in the sand to prohibit new taxes on Internet without interfering with existing state taxes. Second, by making the connection from a consumer to their Internet access provider tax free, the Alexander-Carper bill actually levels the playing field for competing technologies without overreaching. Third, it gives Congress, industry and states a chance to revisit the Act by making the moratorium expire after two years. For these reasons NGA supports S. 2084 as a true compromise that is fair to industry, respectful of states, and good for consumers.

**STATE AND LOCAL TELECOMMUNICATIONS TAXES POTENTIALLY AT RISK UNDER H.R. 49/S. 150**

[In millions of dollars]

	Revenues at risk under H.R. 49 <sup>1</sup>	Revenues at risk under S. 150 as amended <sup>2</sup>
Alabama .....	\$213	\$115
Alaska .....	18	13
Arizona .....	308	146
Arkansas .....	146	101
California .....	1,495	836
Colorado .....	293	169
Connecticut .....	276	170
Delaware .....	27	17
District of Columbia .....	120	116
Florida .....	1,490	1,059
Georgia .....	344	182
Hawaii .....	51	48
Idaho .....	37	3
Illinois .....	1,000	807
Indiana .....	265	148
Iowa .....	137	49
Kansas .....	172	74
Kentucky .....	284	192
Louisiana .....	207	69
Maine .....	67	28
Maryland .....	369	222
Massachusetts .....	411	256
Michigan .....	678	477
Minnesota .....	226	135
Mississippi .....	190	90
Missouri .....	334	216
Montana .....	46	7
Nebraska .....	101	59
Nevada .....	52	22
New Hampshire .....	65	56
New Jersey .....	699	473
New Mexico .....	125	101
New York .....	1,904	1,418
North Carolina .....	308	225
North Dakota .....	32	22
Ohio .....	680	345
Oklahoma .....	258	166
Oregon .....	113	63
Pennsylvania .....	672	547
Rhode Island .....	100	77

STATE AND LOCAL TELECOMMUNICATIONS TAXES  
POTENTIALLY AT RISK UNDER H.R. 49/S. 150—Continued  
[In millions of dollars]

	Revenues at risk under H.R. 49 <sup>1</sup>	Revenues at risk under S. 150 as amended <sup>2</sup>
South Carolina .....	196	90
South Dakota .....	48	25
Tennessee .....	348	196
Texas .....	1,724	1,213
Utah .....	160	89
Vermont .....	30	17
Virginia .....	329	148
Washington .....	492	331
West Virginia .....	73	36
Wisconsin .....	363	255
Wyoming .....	22	13
Total .....	18,098	11,732

<sup>1</sup>H.R. 49: Figures assume the loss of all state and local telecommunications transaction taxes and business taxes as companies migrate their telecommunications services to the Internet.

<sup>2</sup>S. 150: Includes all telecommunications taxes except for 911 fees and business taxes such as property taxes, capital stock taxes on net worth, or sales and use taxes on business inputs.

Source: Special Report/Viewpoint “Telecommunications Taxes: 50-State Estimates of Excess State and Local Tax Burden,” Robert Cline, State Tax Notes, June 3, 2002.

ALEXANDER-CARPER INTERNET TAX BILL  
PROTECTS LOCAL AUTHORITY

WASHINGTON.—The following is an opinion-editorial by the National League of Cities that will appear in the Nation's Cities Weekly Monday April 26:

This coming week, Congress will consider two vastly different approaches to local revenue authority in the area of Internet taxes. One is an important step forward in the right direction. The other would be a nightmare for America's cities, towns and consumers.

The stakes in this issue are enormous and far-reaching.

The step in the right direction is offered by Sen. Lamar Alexander (R-Tenn.) and Sen. Thomas Carper (D-Del.) Their bill, the Internet Access Tax Ban Extension and Improvement Act (S. 2084), would preserve local authority to collect existing, legally due taxes and it would help clarify Internet tax issues. The National League of Cities supports the Alexander-Carper bill.

The wrong approach is the “Internet Tax Non-Discrimination Act” (S. 150), which would strip away local authority to collect vital revenue and would cost America's cities and towns billions of dollars in lost revenue.

S. 150 would deny local authority to collect a range of legally due taxes and threaten as much as \$9 billion in local revenue that funds police officers, teachers and other essential local services and infrastructure in cities and towns across America.

By redefining “Internet access,” this bill would squash local and state authority to collect current gross receipts taxes, right-of-way fees, and other existing taxes on telecommunications services.

Not only would the bill trample local revenue authority, it dishes out a multi-billion tax break to the telecommunications industry—at the expenses of local and state taxpayers, small businesses and working families.

The net impact of S. 150? Lost revenues, cuts to services and additional fiscal burdens for local governments.

The National League of Cities strongly opposes S. 150 and urges you to let your members of Congress know that the bill is bad news. The bill is likely to come up for consideration on the Senate floor for debate early this week.

The right approach is the Alexander-Carper bill, S. 2084, which will be offered as a substitute for S. 150.

The Alexander-Carper bill defines Internet access in a way that preserves the ability of local and state governments to continue to

collect telecommunications taxes and franchise fees. Their bill would create parity among all types of Internet platforms, whether phone lines, cable modems or digital subscriber lines (DSL).

Let's be clear. Our position has never been an attempt to tax e-mail or impose new taxes on the Internet. Instead, we are simply insisting that local revenue authority for America's cities and towns not be eroded by an unnecessary law that siphons money out of local coffers and pumps it directly into the telecommunications industry.

On the important issue of protecting local revenue streams to support essential public services, the Alexander-Carper bill is the best solution for America's cities, towns and consumers.

Mr. ALEXANDER. Mr. President, this proposal violates the Budget Act. It breaks our promise. While it has distinguished support among my colleagues, it is a political trick because it means lower taxes here and higher taxes there.

I suggest that my colleagues might go home and ask legislators and mayors whether they plan to fire teachers or raise local property taxes, whether they plan to raise college tuition or raise their State's tax on food, or whether they plan to let prisoners out of jail or put in a new State income tax.

This legislation has the wrong name. It at least has an incomplete name. It ought to be called the “Higher Local Property Tax Act of 2004” or the “Higher State Income Tax Law of 2004” because that is inevitably what would happen. This does not have to happen this way. There is a better way.

I support a 2-year ban on State and local taxation of the Internet. I have suggested four ways to fix the McCain substitute. I would take the Texas law that President Bush passed in 1999 and make it permanent, giving everybody up to a \$25 credit on their tax.

We need to continue this debate. We need a comprehensive review. The industry doesn't need a subsidy. My hope is that Congress will continue to debate and decide if it intends to give an additional subsidy to the high-speed Internet access business that we in Congress pay the bill with Federal dollars rather than sending the bill back to State and local governments.

I thank the Chair.  
The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I intend to yield back the remainder of my time.

I ask unanimous consent that there be 2 minutes equally divided prior to the second and third votes and that the votes be limited to 10 minutes each.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MCCAIN. I yield the remainder of my time.

Mr. REID. I yield the time of the minority.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate

the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on the Daschle amendment No. 3050 to S.150:

Thomas Daschle, Harry Reid, Jeff Bingaman, Kent Conrad, Byron L. Dorgan, Tom Harkin, Dick Durbin, Max Baucus, Daniel L. Akaka, Evan Bayh, Debbie Stabenow, Mark Dayton, Jay Rockefeller, Ben Nelson, Tim Johnson, Carl Levin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 3050 offered by the Senator from South Dakota shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The bill clerk proceeded to called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 40, nays 59, as follows:

[Rollcall Vote No. 73 Leg.]

YEAS—40

Akaka	Durbin	Lieberman
Baucus	Edwards	Lincoln
Bayh	Feingold	Lugar
Biden	Graham (FL)	Mikulski
Bingaman	Hagel	Murray
Breaux	Harkin	Nelson (FL)
Byrd	Hollings	Nelson (NE)
Cantwell	Inouye	Pryor
Carper	Jeffords	Reid
Conrad	Johnson	Rockefeller
Daschle	Kennedy	Sarbanes
Dayton	Kohl	Stabenow
Dodd	Landrieu	
Dorgan	Levin	

NAYS—59

Alexander	DeWine	Miller
Allard	Dole	Murkowski
Allen	Domenici	Nickles
Bennett	Ensign	Reed
Bond	Enzi	Roberts
Boxer	Feinstein	Santorum
Brownback	Fitzgerald	Schumer
Bunning	Frist	Sessions
Burns	Graham (SC)	Shelby
Campbell	Grassley	Smith
Chafee	Gregg	Snowe
Chambliss	Hatch	Specter
Clinton	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Lautenberg	Thomas
Cornyn	Leahy	Voinovich
Corzine	Lott	Warner
Craig	McCain	Wyden
Crapo	McConnell	

NOT VOTING—1

Kerry

The PRESIDING OFFICER. On this vote, the yeas are 40, the nays are 59. Three-fifths of the Senators duly chosen and sworn not having voted in affirmative, the motion is rejected.

Mr. CRAIG. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

## CHANGE OF VOTE

Mr. LAUTENBERG. Mr. President, I have a unanimous consent request that on rollcall vote No. 73, I voted "yea." My intent was to vote "nay." It would not change the outcome. I ask unanimous consent that change be made.

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

(The foregoing tally has been changed to reflect the above order.)

## CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

## CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the 2nd degree pending amendment to Calendar No. 353, S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Bill Frist, John McCain, George Allen, Pete Domenici, Trent Lott, Chuck Hagel, Larry E. Craig, John Ensign, Craig Thomas, Robert F. Bennett, James M. Inhofe, Conrad Burns, Don Nickles, Orrin Hatch, Gordon Smith, Saxby Chambliss, Mitch McConnell.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided.

The Senator from Arizona.

Mr. McCAIN. Mr. President, I urge my colleagues to vote against cloture on the Domenici amendment. It has really no business on an Internet tax bill. We all know that. I read again from the Washington Post of this morning:

It would make far more sense for Senators who are interested in some aspect of this legislation, whether ethanol or electricity regulation or renewable fuels, to design bills around those issues and vote on them separately, judging each by its own merits. But that would be too rational for this Senate which seems almost to prefer doing things sideways.

There is no need for this legislation on the bill. It has no place on it. I can assure my colleagues it would be dropped in conference if it were adopted.

Mr. DOMENICI. How much time do we have?

The PRESIDING OFFICER. The Senator from New Mexico has 1 minute.

Mr. DOMENICI. I yield my time to Senator CRAIG.

Mr. CRAIG. Mr. President, the Senator from Arizona is absolutely right. Energy should not be on an Internet tax bill. But if you want to vote for energy this year, if you want to go home to your consumers and say: I voted for a comprehensive energy bill, this may be the last chance you will have. The reality is, if you vote for cloture on Domenici and then you vote for cloture on McCain, Domenici falls. So weigh it out. Weigh the odds. What do you want to go home and tell the consumer, who

today is paying the highest price for energy in the history of this country? The reason they are paying it is because we can't produce a bill and change our policies.

We have an option. It is quite simple. We can vote for energy by voting for cloture. Then we can vote for McCain, because he is right, it should not be here. Domenici will fall. Then we get to where we ought to be today on an Internet tax bill. We didn't do this. Somebody else did this and fouled the process. Now let's clear it up. Clean it up. Vote for energy, vote for cloture.

Mr. JEFFORDS. Mr. President, as the ranking member of the Senate Environment and Public Works Committee, I want to express my serious concern with the content of the amendment offered by Senator DOMENICI. This amendment differs even from the surprise energy bill that was introduced on February 12, 2004, and placed directly on the Senate's calendar.

Senators should make no mistake, this legislation is not the product of bipartisan consensus in the Senate committees of jurisdiction. In most respects, this amendment is the energy bill conference report we have already defeated. And most importantly, it is not the right energy policy for America.

I agree with Senator DASCHLE that we should try to reach consensus on targeted pieces of energy legislation. We could pass legislation on issues such as renewable motor fuels, as Senator DASCHLE has proposed with his amendment. We could enact fiscally responsible extensions of needed energy tax provisions, such as the wind energy tax credit. National electricity reliability standards are another area in which Senator CANTWELL and I believe there could be agreement and we could pass a bill.

But there should be no agreement on the poor environment policy that is contained in this amendment. The Senate should reject this amendment, and oppose cloture.

As with the energy bill conference report, nearly a hundred sections of this amendment are in the jurisdiction of the Environment and Public Works Committee. We were not consulted on any of these provisions, and I have repeatedly raised concerns about them on the Senate floor.

This amendment does not represent the kind of forward-looking balanced energy policy that our Nation needs. The Senate should be able to ensure that our constituents have reliable electric power without polluting their drinking water. Our constituents deserve cleaner gasoline without requiring them to breath dirtier air. We should be able to promote renewable energy without waiving environmental laws.

This amendment seriously harms the environment. The supporters have said that a waiver of liability for MTBE producers is not contained in this amendment. That does not make the

motor fuels provisions good or workable public policy. Though we know MTBE is environmentally harmful, the amendment would allow this product to be used for 10 more years before we pull it off of the market. In addition, the amendment allows the President to overturn the MTBE ban prior to June 30, 2014, and continue its use indefinitely.

The amendment unravels the ozone designation process in the Clean Air Act by delaying compliance with the national health-based air quality ozone standards until the air in the dirtiest city is cleaned up. Neither the Senate nor the House of Representatives has ever considered this damaging provision. It is a leftover from the failed energy bill conference report.

Changing cities' ozone compliance deadlines under the Clean Air Act doesn't increase our Nation's energy supplies. Exposing the public to continued levels of harmful dangerous air pollution emissions for far more time than allowed under existing law guarantees thousands of more asthma attacks, more hospital visits and more cases of respiratory distress, disease and illness. Recently, the EPA announced that there are record numbers of Americans, more than 165 million, who are breathing unhealthy air.

The change is also unfair to States that have worked hard to achieve compliance with the Clean Air Act's health-based national standards. Why should areas that have done little or nothing to reduce emissions be given a free pass from halting local pollution? This amendment also provides unprecedented relief for a single region of the country from application of the entire Clean Air Act, without a hearing in the Environment and Public Works Committee or Senate consideration.

The amendment continues the administration's drive to greater dependency on old technologies and fuel systems. This focus will increase greenhouse gas emissions and keep us on the wrong path that increases the risks from global warming and climate change.

This amendment also continues to include language from the failed energy bill that exempts oil and gas exploration and production activities from the Clean Water Act stormwater program. The Clean Water Act requires permits for stormwater discharges associated with construction activity. The amendment changes the Act to provide a special exemption for oil and gas construction activities from stormwater pollution control requirements. The scope of the provision is extremely broad. Stormwater runoff typically contains pollutants such as oil and grease, chemicals, nutrients, metals, bacteria, and particulates.

I have told colleagues this before but EPA estimates that this change would exempt at least 30,000 small oil and gas sites from clean water requirements. In addition, every construction site in the oil and gas industry larger than 5 acres

would be exempt as well. The large sites have held permits for 10 years or more. That is a terrible rollback of current law. I want Senators to imagine trying to explain to constituents why an oil drilling site that had to comply with the Clean Water Act for 10 years suddenly no longer needs to do so.

So let's review the contents of this amendment. This amendment pollutes our surface and groundwater by exempting oil and gas development from provisions of the Clean Water Act. It pollutes our drinking water by allowing MTBE to seep into our public and private drinking water systems for 10 more years. The amendment pollutes our land by accelerating development of energy installations on public lands, including parks, wildlife refuges, and sensitive areas. And this amendment pollutes our air in many different ways. It extends pollution compliance deadlines and continues to avoid serious progress in cleaning up our air.

There are too many serious problems with this amendment. We should not invoke cloture on it. The American people do not want energy security at the expense of the environmental quality. We should be passing the pieces of the energy bill where we can reach agreement to do so, like those issues I outlined.

We should not be rushing to pass legislation with such serious consequences. This is an aggressive, overreaching amendment, and it is deeply flawed. I will vote against cloture, and other Senators should as well.

Mr. LEVIN. Mr. President, this amendment incorporates a whole energy bill. It has many provisions that are deeply flawed. But we are voting on whether to end debate on a complicated, flawed energy bill before debate has even begun, making it very difficult to correct those flaws.

The Senate passed a comprehensive and balanced energy bill in July 2003. Then, after weeks of closed-door meetings with virtually no input from Democratic conferees, the Republicans put forward a "take it or leave it" energy conference report that was drastically different than the bill that the Senate passed. I voted against cloture on the conference report in November 2003 because it was deeply flawed and had been produced by a flawed process. The Domenici amendment, the energy bill, which is before the Senate today, suffers from that same problem. There are simply too many provisions on the negative side of the ledger for me to support it, and because this is a cloture vote, voting yes would make it difficult to consider amendments.

At a time when crude oil prices are at 13-year highs, gasoline prices are reaching new record highs daily, diesel prices are breaking records, and high jet fuel prices are straining our airline industry, the Senate should be considering legislation that would do something to lower oil prices. The bill however, would push oil, gasoline, diesel, and jet fuel prices even higher by di-

recting the Department of Energy, DOE, to "as expeditiously as practicable acquire petroleum in amounts sufficient to fill the Strategic Petroleum Reserve to the [1 billion] barrel capacity." By directing DOE to take tens of millions of barrels of oil off the market at a time when supplies are tight and prices high—as they have been for the past 2 years—this bill would tighten supplies in the commercial inventories even further, drive oil and gasoline prices even higher, and keep private sector inventories from building back to normal levels.

The bill would fill the SPR in a manner that is inconsistent with two recent amendments adopted by the Senate. Last fall, the Senate unanimously approved an amendment that Senator COLLINS and I offered to the Interior Appropriations bill, directing DOE to develop procedures to minimize the cost to the taxpayer and maximize the overall supply of oil in the United States when acquiring oil for the SPR. This amendment expressed the sense of the Senate that the DOE's current procedures for filling the SPR have raised oil prices, are too costly for the taxpayers, and have not improved our overall energy security. Unfortunately, this amendment was not included in the Interior Appropriations conference report, and the administration has continued to fill the SPR without regard to the price or supply of oil. This is a significant reason oil and gasoline prices are so high today.

In light of the continuing rise in oil and gasoline prices, and the administration's refusal to suspend SPR shipments, the Senate approved an amendment that Senator COLLINS and I offered last month to the budget resolution for FY 2005. Our amendment would cancel the planned delivery of 50 million barrels of oil to the SPR from now through sometime in 2005 that would have completed the filling of the reserve. The SPR is 93 percent filled already. Our amendment is being considered in the House-Senate conference on the budget resolution.

By directing the DOE to fill the SPR to 1 billion barrels—300 million barrels above its current capacity of 700 million barrels—the bill before the Senate today would worsen a SPR policy that is 180 degrees opposite from the direction the Senate just approved in the Senate budget resolution.

By increasing deposits in a government reserve at a time when commercial supply is scarce and prices are high, oil companies will meet the additional demand for crude oil for the reserve by removing oil from their own inventories rather than purchasing high-priced oil on the spot market. Since the price of oil is so closely tied to inventory levels, filling the SPR under these market conditions both depletes private sector inventories and pushes up prices for America's consumers.

Two years ago, the DOE's own staff explained this as follows: "Essentially,

if the SPR inventory grows, and OPEC does not accommodate that growth by exporting more oil, the increase comes at the expense of commercial inventories. Most analysts agree that oil prices are directly correlated with inventories, and a drop of 20 million barrels over a 6-month period can substantially increase prices."

For these reasons, in 2002, DOE SPR staff recommended against buying more oil for the SPR in tight markets. The administration chose to ignore these warnings. SPR deliveries proceeded. As the DOE staff predicted, oil supplies tightened, private inventory levels fell, and prices climbed.

In summary, the direction in the bill to DOE to fill the Strategic Petroleum Reserve by another 300 million barrels, to a total level of 1 billion barrels, is likely to increase the cost of crude oil and crude oil products, such as gasoline, home heating oil, and diesel and jet fuel, to American consumers and businesses, with no benefits to our national security.

The electricity provisions of the bill before us are also deeply flawed. Instead of improving our current situation, I believe they will make it worse. The massive power failure of August 2003, on top of the massive price manipulation perpetrated by Enron and others, provided additional proof—proof that should not have been needed—that the United States' deregulated energy markets are not functioning well to secure a supply of energy against interruption.

The bill before us—the Domenici amendment—would repeal the Public Utility Holding Company Act of 1934, PUHCA, long-standing consumer and investor protection legislation governing energy industry structure and consolidation. With the repeal of PUHCA, the resulting provisions of the bill before us fail to provide adequate protections to prevent industry market manipulation and consumer abuses.

The Congress needs to enact mandatory reliability legislation, and while some provisions of the bill would be an improvement over the current voluntary system of reliability standards, other provisions of this bill would take us in the wrong direction and could, in fact, make things worse. The bill fails to ensure that regional transmission organizations, RTOs, will have the authority to enforce electric reliability standards in order to prevent, or respond effectively to, another blackout. Further, the "participant funding" provision of this bill shifts the cost of building new electric transmission such that transmission construction will be discouraged and utilities will be encouraged not to participate in RTOs. There is a strong need for a stand-alone electricity reliability bill that sets mandatory standards, requires utilities to join RTOs, and establishes consistent rules for enforcement of standards. But the bill before us today is not the right answer.

Two provisions of the bill would significantly impede the ability of federal

and state agencies to investigate and prosecute fraud and price manipulation in energy markets. If adopted, section 1281 would impede state and Federal authority, other than the Commodity Futures Trading Commission, to investigate and prosecute wrongdoing in financial and commodity markets. It would turn the CFTC into a gatekeeper for all other federal and state investigations into matters within CFTC-regulated markets, which would be an unprecedent intrusion into the enforcement of state and federal consumer protection laws.

Section 1282 would impose a higher, criminal standard, “knowingly and willfully”, for filing false information and for improper phony round trip trading than exists under current law. The new round trip trading provision is inconsistent with current law and the Cantwell amendment that recently passed the Senate, which prohibited market manipulation in electricity markets.

Manipulation is difficult to prove even under current law. By raising the burden of proof, this provision will make it nearly impossible to prove illegal round trip trading or wash sales. Rather than weakening the laws preventing fraud and manipulation in energy markets, the Congress should be strengthening these prohibitions.

Over the past several years, the Permanent Subcommittee on Investigations, which I previously chaired and on which I am now the ranking minority member, has investigated how Enron, financial institutions, and others have manipulated financial energy markets and prices. The record we have established is clear and dramatic. Strengthened oversight and transparency are critical to the proper functioning of our energy and financial markets. The provisions in this amendment will weaken our ability to ensure these markets are functioning properly.

There are some provisions of the bill before us that I support. The amendment contains two provisions that appear on their face to partially address the unfair air quality restrictions placed on a number of Michigan counties. These provisions do not go far enough, however, to remedy the negative impacts that I have fought against for years.

According to the Michigan Department of Environmental Quality, the Environmental Protection Agency, EPA, would not be required to act on the results of the demonstrations study that is required by the so-called Upton language included in this amendment. It also would not relieve new major sources from state new source review regulations, and it would not release Southwest Michigan from Clean Air Act provisions that mandate specific local reductions following completion of the study. Finally, it would not prevent Southwest Michigan nonattainment areas from classification bump-up if the area is unable to attain the standard by the deadline.

The so-called Barton provisions contained in this amendment would help some for two Michigan counties, Cass and Muskegon, those are the only two counties subject to transport that have been designated under Subpart 2 of Section 181 of the Clean Air Act. However, the help is modest because it is workable only if those areas fail to meet the standard by the deadline and the EPA decides to “bump them up” to a higher classification.

We need to do more to prevent restrictions from being placed on areas that are impacted by overwhelming transport. The potential consequences of a nonattainment designation are significant. I will continue to work with the EPA and the Congress to ensure that the Clean Air Act provisions are applied with common sense so that counties are not required to take costly actions for problems that are created downwind, which would be illogical and unfair.

The Senate has worked to create a national energy policy for years, but the bill before us today is not the right answer. Even if we were to pass it today, it will get caught in a logjam between the House and Senate on energy policy that is centered on the issue of the fuel additive methyltertiarybutylether, MTBE. The energy bill conference report that I voted against in November contained a provision that would exempt its producers from liability. In Michigan, it has been estimated that MTBE has contaminated groundwater around over 700 leaking underground storage tank sites. There are similar problems in many other states.

The crux of the matter is that the Senate will not pass legislation that includes the MTBE provision and the House will not pass legislation without it. So we are in a logjam, and I believe that any legislation that we pass will eventually come back to this body containing the MTBE liability exemption, which would then again be rejected.

We should continue work to complete a long-term, comprehensive energy plan that provides consumers with affordable and reliable energy, increases domestic energy supplies in a responsible manner, invests in energy efficiency and renewable energy sources and protects the environment and public health. But the bill before us today, offered to legislation on a completely different matter, is not the right answer. Nor is voting “aye” to end debate on an important bill like energy before the debate has begun.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. As I understand it, under the rule we had a minute to respond. Let me just say that I am disappointed that we didn't get cloture on the Daschle amendment. I am also troubled by the fact that we find ourselves in this position to begin with. We should not be on the Energy bill as an amendment to the Internet tax, but many of us have been asking to have

an energy bill scheduled now for some time for good, open debate, given our failure to pass the conference report. This is our only option. This does not in any way preclude a Senator from offering other energy amendments on the Internet tax bill. It doesn't in any way undermine a Senator's right to be heard on an energy debate.

If we move to cloture, we bring this bill to an opportunity that otherwise we should have had, had the legislation been freestanding. So far that has not happened. I hope Senators will support cloture so we can move this energy legislation forward.

I yield the floor.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 3051, offered by the Senator from New Mexico, Mr. DOMENICI, shall be brought to a close?

The yeas and nays are mandatory under the rules. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY), are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 74 Leg.]

#### YEAS—55

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Dorgan	Nelson (NE)
Bennett	Durbin	Nickles
Bond	Emzi	Pryor
Breaux	Fitzgerald	Reid
Bunning	Frist	Roberts
Burns	Grassley	Santorum
Campbell	Hagel	Sessions
Carper	Harkin	Shelby
Chambliss	Hatch	Smith
Cochran	Hollings	Specter
Coleman	Inhofe	Stevens
Conrad	Johnson	Talent
Craig	Kyl	Thomas
Crapo	Landrieu	Voinovich
Daschle	Lincoln	Warner
Dayton	Lugar	
DeWine	McConnell	

#### NAYS—43

Akaka	Ensign	Lott
Baucus	Feingold	McCain
Bayh	Feinstein	Mikulski
Biden	Graham (FL)	Murray
Bingaman	Graham (SC)	Nelson (FL)
Boxer	Gregg	Reed
Brownback	Hutchison	Rockefeller
Byrd	Inouye	Sarbanes
Cantwell	Jeffords	Schumer
Chafee	Kennedy	Snowe
Clinton	Kohl	Stabenow
Collins	Lautenberg	Sununu
Cornyn	Leahy	Wyden
Corzine	Levin	
Dodd	Lieberman	

#### NOT VOTING—2

Edwards	Kerry
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The PRESIDING OFFICER. On this vote, the yeas are 55 and the nays are 43. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion fails.

Under the previous order, there will now be 2 minutes of debate equally divided prior to the next vote.

The Senator from Arizona.

Mr. McCAIN. I yield my 1 minute to the Senator from Virginia, Mr. ALLEN.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 1 minute.

Mr. ALLEN. Mr. President, on behalf of Senator McCAIN, Senator WYDEN, myself, and others who are in favor of Internet tax freedom, I respectfully urge my colleagues to vote for cloture on this amendment. What is at stake is whether 15- to 18-percent taxes will be imposed upon Internet access.

The Internet is a great invention for the advancement of ideas, of information, for commerce, for telemedicine, and for education. This country has been a leader in technology, although we are falling behind, particularly in broadband. I ask my colleagues to vote for cloture.

There can be germane amendments but allow us to go forward. A vote for cloture is a vote for freedom and opportunity for the American people. Stand on the side of that principle.

The PRESIDING OFFICER. The Senator's time has expired.

The Democratic leader.

Mr. DASCHLE. I ask unanimous consent to take 1 minute of leader time to respond.

Mr. President, I was 1 of those 74 Senators who voted for the motion to proceed. I want to see this bill completed. I would like to find a way to resolve the outstanding differences. I think that can happen.

We have now found ourselves in a position where cloture would deny Senators the opportunity to offer relevant amendments. They may not be germane but they certainly are relevant. So I would vote against cloture in the hope that we can find a way to continue this debate and allow for the offering of amendments that are relevant. My hope is that at the end of the day we can reach a conclusion procedurally as well as substantively.

The PRESIDING OFFICER. Does the Senator from Tennessee wish to speak?

Mr. ALEXANDER. Did I not have 1 minute?

The PRESIDING OFFICER. Is there an objection to the Senator from Tennessee speaking for 1 minute?

Mr. MCCAIN. I ask unanimous consent that the Senator from Tennessee be allowed 1 minute.

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

The Senator from Tennessee is recognized for 1 minute.

Mr. ALEXANDER. Mr. President, since that would put two speakers on that side, I ask unanimous consent that one other speaker on the other side be permitted 1 minute to speak.

Mr. ALLEN. Objection.

The PRESIDING OFFICER. The objection is heard.

The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I am voting against cloture, against cut-

ting off debate. The Senator from Arizona and the Senator from Virginia have worked hard to make this a good amendment. I and my group of colleagues have been working on this issue. We are for a 2-year ban on State and local taxation of Internet access but this does much more than that. A vote against cloture, against cutting off the debate, is a vote to do no harm to State and local governments. It will allow us to continue the debate. I urge my colleagues to vote against cloture.

Mr. KOHL. Mr. President, I rise today to add my voice to the debate surrounding the Internet tax moratorium. I believe strongly we can and should find a reasonable replacement for the expired 1998 moratorium on taxation of internet access, a replacement that balances the fiscal needs and rights of the States and the overwhelming national interest in fostering and growing the internet economy.

The McCain substitute is a solid, and I believe well intentioned, first step toward such a compromise. Its provision to extend the moratorium for 4 years seems a reasonable solution to legislating about an industry that is rapidly changing. The McCain amendment's phasing out of the current grandfather provisions over 3 years seems a reasonable compromise with those who would end the grandfather provisions immediately. The McCain amendment's provisions to exempt "voice over Internet" services from the moratorium seem a reasonable answer to the States' concerns that their undisputed right to tax the telecommunications base be preserved.

In its general framework, the McCain substitute outlines the foundation of a reasonable compromise to the highly contentious issue of taxation of internet access. Unfortunately, the Senate has only had a few days to consider the highly technical and important details of the McCain substitute. And there is legitimate and heated disagreement over exactly what the McCain substitute would do. This is exactly the sort of instance in which the Senate should take the time to debate, consider, and amend where necessary to produce a true compromise that is truly workable. Invoking cloture today would cut off that very legitimate and necessary process, and therefore I cannot support it.

But we need to keep working to reach a compromise on the tax treatment of Internet access. As we struggle as a nation to address our eroding manufacturing base, one answer is to make our Nation more attractive to Internet based companies and our companies more willing to employ new Internet-based technologies. This can't happen if States tax every new form of Internet-access technology.

That is why I am saddened by having to vote against cloture today. This was an extremely difficult decision. I support many aspects of the McCain legislation. However, as both sides continue to argue about the potential effects of

the proposal, the bottom line is that we need more time. We need more time to debate the best possible solution, the way to balance the needs of innovation versus the needs of the States.

I remain hopeful that the vote today is not the end, but rather the beginning. That it is the beginning of a solution, of a compromise of which both sides can be proud. That is not out of reach, and I call on the leaders to leave the McCain bill on the floor and let us continue to work on a compromise.

Mr. SMITH. Mr. President, I rise today in support of the managers' amendment to S. 150, the Internet Tax Nondiscrimination Act. Although the amendment is not perfect, I believe it will sufficiently protect consumers from State attempts to embrace the Internet as a new platform for taxation. Rather than increasing taxes on consumers, we should all work to embrace the Internet for its potential as a critical source of information and services and as a tremendous new marketplace for all to access, not just those that can afford to pay more taxes.

Of course, this vote takes place at a time when the economy is beginning to rebound as a result of tax relief—not tax increases—and the U.S. high-tech sector is getting its second wind, preparing to lead the economy once again into a period of increased productivity and job growth. Let us not stifle this by giving a green light to taxing innovation, to taxing Americans' access to the Internet.

There is no question that technology boosts U.S. economic output and makes U.S. workers more productive, and that the U.S. high-tech sector is a leading force driving our recent economic growth. Between 1992 and 2000, high tech companies created twice as many jobs as non-high private employers nationwide in the United States. Not to mention that these jobs pay, on average, nearly twice as much as other private sector jobs.

Additionally, the Internet and technology have contributed dramatically to our expanding knowledge base, bringing opportunity and hope to those who need them most. Distance learning is offered to more than 3,300 American schools, providing knowledge and education to anyone who can log on, wherever they live. Not to mention, the increased access to government services, born by State, local and Federal Government reliance on the Internet to provide its citizens with valuable government information and services. To realize the full potential of the Internet and the digital economy, every person must be able to participate fully.

But today, we are talking about taxing the Internet, the vital core of the information technology revolution of the 1990s and the single greatest resource for Americans to have increased access to vast information resources and government services. About this, there should be no question, and no debate. With technology playing such a critical role in our economy, society

and way of life, one would expect political leaders to be supportive of its continued growth for all Americans. Taxing Internet access has never been good policy, and it isn't today. Whether access is provided by traditional phone lines, high-speed Digital Subscriber Lines, DSL, or even wireless, the Internet must remain free of taxation.

To the extent that I have any reservations about the amendment, it will likely prolong the different tax regimes for DSL and cable modem service. It is my belief that all high speed data connections should be treated the same and that the government and this legislation should not allow any disparities to continue.

Nevertheless, let me reiterate my support for this bill and the promise that it provides for continued economic growth. I urge my colleagues to join me in supporting this vital measure. I remind them that the economy is not beginning to rebound as a result of more taxes; it is beginning to rebound as a result of less taxes.

The PRESIDING OFFICER. All time has expired. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOUTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate to the pending McCain substitute amendment No. 3048 to Calendar No. 353, S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Bill Frist, John McCain, Jon Kyl, Norm Coleman, Jim Bunning, Gordon Smith, Mitch McConnell, Pete Domenici, Conrad Burns, Rick Santorum, Olympia J. Snowe, Judd Gregg, Wayne Allard, Thad Cochran, Mike Crapo, Larry E. Craig, Ted Stevens, George Allen.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on amendment No. 3048 offered by the Senator from Arizona, Mr. McCAIN, shall be brought to a close?

The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. ENZI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 75 Leg.]

#### YEAS—64

Allard	Bond	Byrd
Allen	Boxer	Campbell
Baucus	Brownback	Cantwell
Bayh	Bunning	Chafee
Bennett	Burns	Chambliss

Coleman	Hatch	Roberts
Collins	Inhofe	Santorum
Cornyn	Inouye	Schumer
Corzine	Kyl	Sessions
Craig	Landrieu	Shelby
Crapo	Leahy	Smith
Dayton	Lincoln	Snowe
DeWine	Lott	Specter
Dole	Lugar	Stabenow
Domenici	McCain	Stevens
Ensign	McConnell	Sununu
Fitzgerald	Mikulski	Talent
Frist	Miller	Thomas
Graham (SC)	Murkowski	Warner
Grassley	Murray	Wyden
Gregg	Nelson (NE)	
Hagel	Nickles	

#### NAYS—34

Akaka	Durbin	Lautenberg
Alexander	Enzi	Levin
Biden	Feingold	Lieberman
Bingaman	Feinstein	Nelson (FL)
Breaux	Graham (FL)	Pryor
Carper	Harkin	Reed
Clinton	Hollings	Reid
Cochran	Hutchison	Rockefeller
Conrad	Jeffords	Sarbanes
Daschle	Johnson	Voinovich
Dodd	Kennedy	
Dorgan	Kohl	

#### NOT VOTING—2

Edwards	Kerry
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The PRESIDING OFFICER (Mr. ENZI). On this vote, the yeas are 64, the nays are 34. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The majority leader.

Mr. FRIST. Mr. President, I am delighted with the outcome of that last cloture vote. It means we can proceed on course to finish this bill—a very important bill.

I congratulate the managers but encourage our colleagues to come forward with germane amendments. We will be working through the afternoon. We will be voting through the afternoon. We can finish the bill this afternoon. We have been debating this bill all week. It is an issue that we debated months ago. We are debating it now. Now is the time to bring those amendments forward so we can have these final votes and complete the bill this afternoon.

Mr. MCCAIN. Mr. President, I raise a point of order that the Daschle amendment is not germane and ask for a ruling from the Chair.

The PRESIDING OFFICER. Point of order is sustained. The amendment falls.

Mr. MCCAIN. Mr. President, I thank all of my colleagues for the comity that has existed in addressing this bill.

I thank, of course, Senator ALLEN, Senator LOTT and Senator SUNUNU, and many others who have helped to get this bill to the point where it is.

We are ready to consider amendments. I assured the opponents of this bill who have fought tenaciously—Senator VOINOVICH, Senator ALEXANDER, and Senator CARPER in particular—that if there is an amendment which they have filed which is not technically germane but is associated with the Internet tax, I would ask consent that it be considered because there was a feeling that they did not have their amendments properly considered. I

hope we can give them that consideration.

I hope we can move forward soon with the amendments. As I last checked, there are about 30 which were filed. I hope we can move forward, debate, and dispose of those amendments. I thank all of my colleagues for their cooperation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak very briefly after the Senator from New Jersey.

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

Mr. WYDEN. Mr. President, having been involved in this issue now for 8 years, I can say it has never been easy. Certainly what we have seen today demonstrates that once more.

But I think the Senate has made an important statement today; that is, as we try to lay out the policies that will say a lot about the future of the Internet, it is critically important this exciting opportunity for Americans not be subject to more discriminatory taxes.

We have said once again in the Senate, we want to try to find common ground around the principle of technological neutrality, for example. If we do not do that, we will be discriminating against the future, because if we do not work it out now in the amendment process, broadband services delivered through DSL would be taxed and Internet access through cable would not be taxed. That is not technological neutrality.

What is going to give Americans the best array of technologies at the cheapest prices is true competition where there is a level playing field for the various technologies. I have said repeatedly I don't want to see the people who now get the message "You've got mail" to get a message that says "You've got special taxes." My colleagues on the other side of the aisle agree with that as well. We have a difference of opinion with respect to how we are going to get that done. Now we will be able to go to the amendment process.

I have compared this exercise repeatedly to something resembling root canal work. I make it clear to my friend from Tennessee, the Senator from Delaware that we are going to do everything possible to make sure there is an adequate opportunity for colleagues to offer their amendments and discuss them. These are very technical, complicated issues. I have spent about as much time on the Senate floor discussing these issues over the last 3 days as any Member. I intend to stay at this post so we give everybody who wants a chance to discuss these issues that kind of opportunity.

Over the last 7 years, we have seen a lot of reports about dire consequences that come about if we pass this legislation. That has not come to pass. I see the distinguished Senator from Connecticut.

We were told in 1997, if we pass that, we will bring the collapse of the revenue system in States and localities, and revenue went up \$7 billion the next year. We have to deal with those issues. In the last two iterations of this legislation, I have said repeatedly that no one has brought forward an example of a local jurisdiction hurt by their inability to discriminate against electronic commerce. That is what this bill does; it makes sure you cannot single Internet out for special taxes.

We will use this amendment process now to address the concerns of various Senators. A lot of Members did not think we would get to this point today, but we have a chance, working with colleagues, to produce a bipartisan bill that will be passed overwhelmingly by the Senate. I intend to stay and work with the Senator from Tennessee and others to make sure they get the discussion on the topics they feel strongly about and that it is fair and thorough. That is my pledge.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I see other Senators waiting to speak, so I will be brief. I acknowledge and congratulate Senator MCCAIN, Senator ALLEN, Senator WYDEN, and others who have worked very hard on this issue. Their point of view on the cloture vote is prevailing. I congratulate them and thank them also for the discussions we have had, trying to assure Members that this legislation, in the end, would do the minimum amount of harm to State and local governments. I would like to continue to do that.

There are a number of amendments that have been filed. We need to have a few minutes to talk about exactly in what order we would like to bring up those amendments. I believe in some cases the Senator from Oregon, the Senator from Virginia, and I intend to do the same thing, but that our language does a different thing. To the extent there is a misunderstanding that produces concerns on my part and among the National Governors Association, the mayors, and the county executives of the country, perhaps we could work those things out by consensus.

I congratulate them on moving ahead with this step. I appreciate the offer to continue to work together. Within a few minutes, we will have an idea of which amendments and in what order we would like to proceed, and we will move along.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I yield to my colleague from Delaware. I know he has a comment he wants to make.

Mr. CARPER. I thank my colleague for yielding. I join Senator ALEXANDER in congratulating Senator WYDEN, Senator ALLEN, and Senator MCCAIN for the vote on the cloture. All week I had a different point of view on how we

wanted to approach this matter. Now that is behind us. We want to approach this in the spirit of comity and see if we cannot find a consensus.

I said yesterday and I reiterate again today, there are four areas of contention, as I see them. We are discussing going from a very narrow moratorium to a very broad moratorium and the issue of what is defined as exempt under the moratorium. It is a good deal broader than what we faced in recent years. That is a matter of concern. Going well beyond access fees and discriminatory taxes is a matter of second concern.

I appreciate Senator MCCAIN's offer to go from a permanent moratorium down to 4 years. We were interested in 2 years. I don't know if there is a similar area there for compromise. I think there is a number between 2 and 4 that might work. That would be consistent with the third area of contention where the duration of the grandfather clause for State and local governments is 3 years. They are protected for 3 years, and the length of the moratorium is 4. If we could put those two together, 3 and 3—3 years for the moratorium and stick with the 3 years for the grandfather clause—I think that actually addresses that concern.

In conversation with Senator WYDEN, Senator ALLEN, Senator MCCAIN, Senator VOINOVICH, and Senator ALEXANDER, everyone says nobody wants to deny State and local governments the opportunity to collect taxes from telephone services that they have collected for decades. I have not talked to anybody who wants to deny State and local governments that have been collecting taxes on telephone services almost since the day Alexander Graham Bell invented the telephone. Everyone says they do not want to deny the ability to collect that for State and local governments. The concern is, as telephone service and commerce communication migrate to the Internet, we want to make sure that as that happens State and local governments do not see those they traditionally rely on cut out.

Those are four areas, and I think there is middle ground—at least on three of them. I don't know if we can ever agree on the breadth and depth of the definition. We will approach it in a good spirit.

I thank Senator DODD for yielding.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I propound a unanimous consent request regarding time. My colleague from Arkansas wishes to speak for 10 minutes on a subject unrelated to the matter before the Senate. I would like to follow her, if I might accommodate my Senator from Arkansas, on a subject matter unrelated to the matter before the Senate. I clearly know the priority is to get amendments up here. If I may, I make such a request, that the Senator from Arkansas be recognized for 10 minutes, and following her remarks I be recognized

for 15 minutes to speak on a matter unrelated to the subject matter before the Senate.

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

The Senator from Arkansas.

#### HONORING OUR ARMED FORCES

Mrs. LINCOLN. Mr. President, I rise today with a heavy heart but with a great sense of Arkansas pride as well to pay tribute to five members of the Arkansas 39th Infantry Brigade who lost their lives fighting for our country in Iraq this past weekend.

According to recent reports, Saturday was one of the deadliest days for the Arkansas service members since 1950 in the Korean War. On Saturday, four soldiers from the Arkansas 39th were killed in a mortar attack, and 27 hours later a fifth Arkansan was killed by a roadside bomb as he patrolled the neighborhoods of Baghdad.

I think back to last fall when I had the honor of attending a sendoff ceremony for the 39th Infantry Brigade in Little Rock, AR. That ceremony brought together soldiers, families, friends, and loved ones to commemorate the occasion and wish them the best in their mission, to join together in prayer and send them off with the idea that we would be back soon to welcome them home safely.

The sendoff was not a celebration. In fact, it was a sobering occasion. After all, no one relishes the prospect of traveling halfway around the world, far from family and friends and home, to take on a dangerous mission. But even at such a somber occasion something special happens. Differences begin to fade away. The soldiers that were standing before me were no longer from big cities or small cities, they were no longer Black or White, and they were no longer male or female. Their differences did not exist. Those brave soldiers were Americans, and for the defense of this Nation, they become one of mind and one of mission.

The oneness of purpose that the 39th exhibited that day should serve as a lesson to those of us they leave behind. They are sacrificing their lives not just for their kind and kin but for every American who enjoys liberty and peace.

When a member of the 39th patrols Baghdad, he does not just patrol it for the sake and safety of Lewisville, AR, or Little Rock, AR, or Hazen or Hummoke or Batesville, AR; he patrols Baghdad for the sake and the safety of all Americans and the values and the ideals that we, as Americans, believe in and support. When a member of the 39th Infantry pays the ultimate price in battle, he does it not just for the sake of his children but also for the sake of my children and your children as well. In the end, these courageous souls are not only protecting our liberty, they are also teaching us what it means to be a part of one American family—one American family.

In this time, when so many Americans are willing to lay their lives on

the line, we in this body—we in this Nation—must become one America. We must understand what it takes to be one with the sacrifices that we, too, must undertake.

Unfortunately, carrying out the duty of a nation requires sacrifices, and some of those are sacrifices we would rather not take. This weekend, we were once again reminded of the sacrifices that are required to protect our Nation. We, too, as leaders in this body—all Americans—must make sacrifices, too—to govern, to protect, to get along, and to make this Nation strong. Our sacrifices are not even worthy to be compared to what these brave Americans have done and the sacrifices they have made, but our sacrifices, too, are all too important, that the sacrifices they have made will not have been done in vain, that our Nation can remain as strong as it has ever been, and that each of us—from big cities and small, men and women, Black and White, Republican and Democrat—must become one America.

Over the course of those 2 days, the State of Arkansas lost five brave soldiers who made the ultimate sacrifice to make the world a better place. I know that my colleagues in the Senate join me in paying tribute to CPT Arthur “Bo” Felder, 36 years old, of Lewisville, AR; CWO Patrick W. Kordsmeier, 49 years old, of North Little Rock, AR; SSG Stacey C. Brandon, 35 years old, of Hazen, AR; SSG Billy Joe Orton, 41 years old, of Humnoke, AR; and SP Kenneth A. Melton, 30 years old, of Batesville, AR.

Captain Felder served as a youth director at Saint Luke Missionary Baptist Church in North Little Rock. He was known as someone who felt at ease with children, who loved them, cared for them, and wanted to help prepare them for the future. It was reported in the Arkansas Democrat Gazette that Captain Felder was remembered by his friends as a person of faith and prayer.

Chief Warrant Officer Kordsmeier was killed as he rushed to the aid of his fellow soldiers. His selfless act illustrates the kind of courage which is necessary to keep this Nation strong and free.

According to the Arkansas Democrat Gazette, Sergeant Stacey Brandon was a prison guard for the State Department of Correction and later worked at the Federal prison in Forrest City, AR.

His friends said of him:

He was a very outstanding young man whose loss will affect a lot of people. He was one of the young people you could admire.

Sergeant Orton was loved by his family and friends. It is reported that when they learned of his death over 100 people gathered around his home to stand vigil and to support his family. It was noted by those there that Billy had given his life for the cause of freedom.

Many of Specialist Melton's fellow soldiers from Bravo Company were especially affected by his death. He had known and worked with many of them for years. It is reported that upon the

announcement of Specialist Melton's death, his comrades did not think of the dangers of their mission but of comforting Specialist Melton's wife and children.

Saturday's deadly attack on Camp Cooke, the base camp for Arkansas' 39th Infantry, occurred at 5 a.m. Captain Felder, Chief Warrant Officer Kordsmeier, Sergeant Brandon, and Sergeant Orton were killed in the final moments of the attack when they took a direct mortar hit as they emerged from the bunker where they had been taking cover. On Sunday, Specialist Melton was killed by a roadside bomb as he manned a machine gun atop his Humvee.

These five brave men are a shining example of the citizen soldiers who are fighting in the deserts of the Middle East. Those serving in Iraq today are not only military men, but they are also doctors, lawyers, police officers, firemen, teachers, factory workers, business owners, and elected officials. Most importantly, they are husbands and wives, they are mothers and fathers.

In short, they are our American family. They are the leaders of their respective communities. Their loss will not only be felt on the battlefield but also by their families, friends, and communities who will miss their love and leadership.

When their Nation called, these brave men answered. They did so without regard to politics or party. They did so without regard to the many small differences we allow to divide us as a nation.

I am sure the entire Senate body will join with me as we send our condolences and sympathy to the families and friends of these brave Americans, to send our thanks for the courageous way they have served their country. They left their homes as family members, co-workers, and friends, and they return as heroes.

I am honored and humbled to pay tribute to their sacrifice. It is hard to find the words that you might think could match those sacrifices because there are no words. But we try. I challenge my colleagues today, let us not just use words. Let us use actions. Let our work be an example of the sacrifices we are willing to take by saying to one another, we will be one America.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Connecticut.

Mr. DODD. Mr. President, before I begin my remarks, may I also make a unanimous consent request that at the conclusion of my remarks, the distinguished Senator from West Virginia, Mr. BYRD, be recognized for 20 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. My remarks will be off the subject matter of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Reserving the right to object, will the Senator from Connecticut restate what his request is?

Mr. DODD. At the conclusion of my remarks, which are about 15 minutes off the subject matter of the bill, Senator BYRD of West Virginia be recognized for 20 minutes.

Mr. ALLEN. I ask the Senator from Connecticut, is the subject of Senator BYRD's remarks the Internet tax issue?

Mr. DODD. I do not know. I have not asked the Senator.

No, it is not. It is a tribute to a constituent.

Mr. ALLEN. Mr. President, I understand the nature of Senator BYRD's remarks. We all want to get to the amendments that might be proposed on the Internet tax issue, but knowing the subject matter of Senator BYRD's remarks, there is no objection.

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

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from Connecticut.

#### IRAQ

Mr. DODD. Mr. President, I commend my colleague from Arkansas for her very eloquent remarks. While she addressed them to four specific individuals from her State, she could have been speaking for any one of our States in talking about any one of the several hundred young men and women who have lost their lives in Iraq over the last year. I thank her for the eloquence of her remarks, the sense of passion and commitment she brought to them. I know she is joined by all of us—certainly this Senator—in expressing deep sorrow for the loss of these Arkansans. We will certainly keep them in our thoughts and prayers.

My remarks follow on a little bit with the remarks of my colleague from Arkansas. Later today or tomorrow, this body will be asked to vote on the confirmation of the first Ambassador to be sent to post-Saddam Hussein Iraq, John Negroponte. Presently, he is our Ambassador to the United Nations. Ambassador Negroponte has a very distinguished diplomatic career and is well suited to undertake what is surely going to be an extremely difficult and complex assignment, likely the most difficult one of his career, and certainly one of the most difficult in the history of the diplomatic corps, going back over the more than 200-year history of our Nation.

While we have had our differences from time to time, I happen to believe John Negroponte is eminently qualified to take on this post. I thank him for his willingness to assume this responsibility, if he is confirmed, and I believe he will be. I also thank his family for their willingness and understanding that our country needs John Negroponte's service at this critical hour.

During his nomination hearing before the Foreign Relations Committee, I stressed to Ambassador Negroponte

that it would be terribly important for him to be candid with this Congress and the American people about what is happening in Iraq and what is not occurring. As we send our sons and daughters, mothers and fathers, brothers and sisters in harm's way, as we have just heard our colleague from Arkansas so eloquently describe, the American people have every right to expect and demand that U.S. officials are telling them the truth about what is happening in Iraq because if they lose faith in what our government is telling them, the United States will not be able to sustain the long and difficult task we have undertaken in this faraway country. Ambassador Negroponte acknowledged his obligation to keep us informed. I am very confident he will do so.

While I intend to support Ambassador Negroponte's nomination when the Senate votes on this matter, I would not want that vote of support for him to be interpreted as an endorsement of the U.S. policy in Iraq, as it is presently being conducted. I am deeply troubled about the pace and direction of our policy in that country. The situation in Iraq could not be more volatile. Yet the Bush administration seems hell-bent to stick to the planned date of June 30 for the transfer of sovereignty to the Iraqi Government. Given the recent upsurge in violence in places such as Falluja and Najaf, given the absence of an effective Iraqi security force to deal with such acts, and given the inadequate numbers of U.S. and foreign troops in that country to restore and maintain stability, I wonder—and I assume others do as well—whether we are setting ourselves up for a catastrophic failure by rigidly adhering to this deadline of June 30.

This coming Saturday, May 1, will be the 1-year anniversary of President Bush's declaration of mission accomplished in Iraq. Recent events make it painfully obvious that nothing could be further from the truth; rather, our mission may be just beginning. Certainly the return of sovereignty to Iraq is a laudable goal which I support, as I assume most all of my colleagues do. It should and must be our end game. But a transfer of authority will not in and of itself be a panacea for all the problems Iraq faces. Moreover, if we do it prematurely, it could put our whole mission and the future of Iraq at risk.

This has been obvious to many of us for some time. But the Bush administration continues to plunge forward with the hope and prayer that everything somehow will work out after June 30. It does so without any clear sign that Iraq is ready for us to turn over authority or its institutions are at all capable at this juncture of successfully taking on this incredible responsibility. In fact, I would argue that all the evidence before us suggests that Iraq is not ready and will not be ready in the coming 62 days. Ironically, in light of recent events, with each step closer to June 30 we seem to be taking

a step back in terms of our readiness to hand over control to the interim transitional Iraqi Government.

Last week, the Senate Foreign Relations Committee held three consecutive hearings on the situation in Iraq. I commend Senator LUGAR and Senator BIDEN for holding the hearings. On Tuesday, the committee considered the nomination of Ambassador John Negroponte to be the first Ambassador to post-Saddam Hussein Iraq. Many questions were explored in the course of those hearings. Frankly, with respect to many of those questions, there were no or very few clear answers. However, we did receive some very excellent testimony from expert witnesses with very different backgrounds—from the U.S. military, from academia, from policing experience, and counterterrorism.

Despite their different expertise, all of the witnesses were in agreement on one thing: that is, a major course correction with respect to U.S. efforts in Iraq is badly needed, and needed immediately. I have come to a very similar conclusion. Let me be clear. This need for a correction in our policy is not because our men and women in uniform have somehow failed to do their jobs. Quite the contrary, these men and women have performed every task that has been asked of them with the highest degree of professionalism, patriotism, and heroism. Let there be no doubt about that in the mind of any single American. But it is now more than 1 year after the end of major combat, and arguably the dangers to our troops have never been greater 1 year later.

Why then are our troops in so much danger? I believe the answer, unfortunately, is quite simple. We have failed to craft and implement an effective stabilization plan for the nation of Iraq. This is not the fault of those in uniform; rather, it is the responsibility of top civilian officials in the Department of Defense and the White House who from the very beginning ignored—in fact, scoffed at and thwarted—recommendations from leading uniformed officers, including GEN Eric Shinseki, that several hundred thousand troops would be needed to complete our mission in Iraq. In retrospect, it certainly seems that General Shinseki's judgment was right on the mark. More recently, military experts have concluded that we are likely, at least in the short term, to need an additional 50,000 U.S. troops if we are going to be able to secure the peace in that country.

We are also going to need a similar number from our European allies in NATO, and we need these reinforcements soon before events spin even further out of control than they already have.

Indeed, I wonder if last March we had sent a larger number of troops to Iraq—and had broad international participation—whether we would now be facing the same unacceptable lack of

security throughout that country. I also wonder what effect increased security in Iraq would have had with respect to Iraqis' tolerance of a U.S. military presence in their country.

Unfortunately, this lack of security has been evident from the earliest days of the conflict, when it first became apparent that the administration had not paid sufficient attention to the security needs of Iraq. Museums were looted. Ordinary civilians took up arms to guard their neighborhoods. Lawlessness prevailed throughout much of the country. Most importantly, in that short period of time, we lost the confidence of the Iraqi people.

This isn't simply my observation. I was told very directly by an Iraqi during my trip to the nation back in December, well before the recent flareup in violence over the last several weeks—this Iraqi citizen is a Shiite, a moderate, a forward-looking individual. He very frankly told me that the lawlessness which followed the war negatively impacted Iraqis' confidence as to the intentions, preparedness, and capabilities of coalition forces to create a safe and secure Iraq.

His contention was reinforced by Hasan Zirkani, who in November 2003 listed the lack of law and order, rampant unemployment, and the lack of basic services as sources of Shiite unrest. I would note that Mr. Zirkani is a Shiite cleric who supports Moqtada al-Sadr, the radical leader who commands the loyalty of the group responsible for much of the recent violence and unrest in Iraq.

I also point to a February 2004 nationwide poll in Iraq, which showed that 64 percent of the Iraqi people consider regaining public security as their "first priority" over the next 12 months.

Disturbingly, the Bush administration has attempted to make up for its lack of security preparation in the same reactive and hasty manner as much of the planning for post-war Iraq was carried out. One example of this has been the assembling of the various Iraqi security forces, a process which most experts agree was done far too quickly, with little or no training, and with inadequate vetting. We all witnessed the consequences of these rushed activities during the recent upsurge in violence, when Iraqi forces collapsed in the face of armed resistance.

Insecurity in Iraq has also affected the ability of U.S. and foreign NGOs to perform the necessary humanitarian and reconstruction duties that would help them turn around the mood in the Iraqi streets. Unfortunately, due to the lack of security, many are unwilling or unable to operate in that country. In many places, reconstruction activities have come to a screeching halt. Contractors sit in hotel lobbies in Kuwait and Jordan, waiting for order to be restored so they can return to their projects.

The administration says we are on course for June 30. I ask: What is that course? Where is all this leading?

One thing is clear: From the very beginning, the Bush administration has done an inadequate job of preparing for the peace in Iraq. It has attempted to fix problems in shortsighted, often haphazard ways. It has only begrudgingly moved to adapt to the resulting strategic realities on the ground.

That is why I believe it is fair and responsible to question the administration's plans as they relate to the upcoming June 30 deadline. How much more complex will this situation be if we try to stand up an Iraqi authority prematurely—if we stubbornly adhere to this date? What happens if that authority crumbles?

I don't underestimate the problem of delaying the turnover. Clearly, if U.N. Special Envoy Brahimi were to announce that the turnover on June 30 is impossible, that would make our choice much easier. But we must recognize that the situation in Iraq is incredibly fragile. If this effort to build a stable and democratic Iraq is to succeed, it is going to need enormous international support. That support will not be forthcoming if the interim government in Iraq is not perceived as legitimate—both by the Iraqi people and the international community.

I emphasize again that I understand there will be a cost by delaying the June 30 date. My point is that whatever that cost is, the cost of adhering to that date, sticking to it prematurely I think would be far more precarious than whatever damage may be associated with delaying the date beyond the June 30 date. Indeed, for all the difficulties in delaying the turnover of authority in Iraq, they pale in comparison, in my view, to going forward and seeing the situation irreversibly spiral downward.

Equally troubling is that the administration is now saying that our handover of sovereignty to the Iraqis on June 30 will be "limited." Mr. President, I don't quite understand what that means. I suspect the Iraqi people don't either. The law of administration for the state of Iraq, the so-called transitional law, which was drafted and approved earlier this year, calls for the establishment of a "fully sovereign Iraqi interim government."

Now it would appear that a yet-to-be-negotiated annex to that transitional law is going to spell out the limits of Iraq's sovereignty after June 30. Of course, nobody yet knows what that annex is going to look like—what concessions the administration will have to make to get the various Iraqi factions to sign off on the individuals who will make up the interim government, or whether those concessions, made in haste, in the long run will undermine our goal of a fully independent and democratic Iraq.

I don't pretend to have all the answers with respect to what needs to be done before sovereignty is handed back

to the Iraqi people. But I will say that the rapidly deteriorating security situation, combined with the lack of legitimacy for the U.S. presence in Iraq, has created conflicting pressures on the administration with respect to the June 30 deadline.

Administration officials assert if we hand over authority to the Iraqis on schedule, the U.S. presence in that country will become less controversial. I disagree. The way to enhance U.S. legitimacy is to get the security situation turned around. That isn't going to happen by simply declaring Iraq a sovereign nation on July 1; it is only going to happen with a carefully planned and implemented stabilization program.

That stabilization program will require more troops on the ground—our troops and troops from other nations sanctioned by a clear U.N. mandate. Whether that can be accomplished by June 30 remains to be seen. I think it is very unlikely.

As I mentioned earlier, we are only 62 days away from the turnover date. Yet, we still don't know who we are turning that authority over to. We don't know whether the individuals to be chosen by a U.N. special envoy will be acceptable to the Iraqi people.

What we do know is that virtually every day more Americans and more Iraqis are dying. Recent events have forced the Bush administration to acknowledge some of these realities. I do not think we should dismiss out of hand that a course correction may be called for that makes the primary focus of our efforts security; or that we put off, for a time, the standing up of an unelected interim government.

That would also give us additional time to make sure that when authority is transferred, it is transferred to a body that has legitimacy in the eyes of the international community and the Iraqi people. To help do this, we need to go to the U.N. and NATO before turning over authority, not after. The U.N. and NATO would be invaluable partners in tackling a task never before attempted from the outside: converting dictatorship into democracy. It would infuse our efforts with much-needed legitimacy.

There are roughly 9 weeks left before June 30. In the interim, a lot could be accomplished in Iraq that might make the turnover of sovereignty possible on the timetable the administration has laid out. We could have achieved, before that date, a clear and concrete U.N. mandate for nation building in Iraq. We could have a secured commitment for a significant NATO troop deployment in that nation. We could have deployed additional troops to address the security challenges of a growing insurgency movement—including troops from governments in the region. But we have not achieved any of those things yet. We need to be honest about that.

Mr. President, now is the time for a careful, informed debate in America about U.S. policy in Iraq, especially

about the wisdom of our set deadlines—the pros and cons of moving forward as planned. After that debate, as June 30 draws nearer, we may in fact determine that sufficient progress has been made to go ahead as planned with the turnover of sovereignty. That may in fact be the right thing to do. But if on balance we conclude it is not, we in Congress need to say so publicly and on a bipartisan basis. The Bush administration needs to do so as well. Then we need to act accordingly.

Former U.S. Ambassador to Saudi Arabia, Chas Freeman, recently sent an e-mail to some of his friends concerning the situation in Iraq. It was printed in the Washington Post about 2 weeks ago. He concluded with these comments:

Military triumph does not necessarily equate to a political victory. Wars end only when the defeated accept defeat, not when the victor declares victory. A victory that does not produce peace can be much more costly than protracted confrontation that accomplishes deterrence. Arrogant daydreams that inspire military actions can become humiliating nightmares that produce political debacles.

Before our daydreams for a free and democratic Iraq become our nightmares of a bottomless quagmire, let us do the sensible thing and at least honestly take a hard look at our decision to turn back authority to the Iraqi people on June 30—before we are sure that "victory is going to produce peace." Once we have allowed the Iraqi people to govern themselves, it is going to be virtually impossible to take that sovereignty back without enormous loss of the blood and treasure of both of our peoples.

That is something no one wants to see happen. I urge the administration to think about the wisdom of moving forward on the June 30 date.

Mr. REID. Mr. President, I know the order is that the distinguished senior Senator from West Virginia gets the floor. I ask unanimous consent that I be able to ask, under my time postclosure, some questions of the Senator from Connecticut.

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

Mr. REID. Is that OK with the Senator from West Virginia?

Mr. BYRD. It is.

Mr. REID. Mr. President, I have been fascinated with the statement of the Senator from Connecticut. What triggered my mind was the statements he made about General Shinseki who said we would need a couple hundred thousand troops over there. I ask the Senator from Connecticut, what happened to him? He is gone.

Mr. DODD. He is gone. He retired. He was not fired.

Clearly, the message was quite clear that he had stepped out of line by saying what he thought from a military standpoint—he had a distinguished career of many years in military service—that in order to be successful, that number of troops was necessary. He was, in a sense, penalized, at the very

least rhetorically for suggesting as such.

Mr. REID. I ask the Senator, does he remember a man named Larry Lindsey? I suggest he was on the Board of Governors working with Alan Greenspan. He also was the chief economic adviser to President Bush. Does the Senator from Connecticut remember a time just a short time ago after the war started that he said he thought the war could cost as much as \$200 billion?

Mr. DODD. I recall that.

Mr. REID. He was even more lenient than that. The news article I have says it would be between \$100 billion to \$200 billion. The Senator recognizes that he was also given his walking papers; is that true?

Mr. DODD. That is exactly what happened. He was also highly condemned for suggesting a number that now looks small in comparison to what the real pricetag is going to be.

Mr. REID. Before asking my final question, I ask the Senator from Connecticut, I am confident he is aware of the last press conference that the President held; is that true? Does the Senator remember the question that was asked in that press conference where the President said, when asked the question about having made mistakes, he couldn't remember any? I ask the Senator from Connecticut if he thinks this is a mistake made by the President: No. 1, going on the aircraft carrier and having a banner above it saying "Mission Accomplished"? The Senator is aware that since that time, about 700 American soldiers have been killed; is that true?

Mr. DODD. That number I think is roughly correct. Most of those, by the way, have died since May 1 of last year.

Mr. REID. So it is fair, is it not, that could have been a mistake?

Mr. DODD. I think by anyone's estimation to declare that the mission was accomplished was a mistake.

Mr. REID. Does the Senator from Connecticut also think it was a mistake for the President to say—when asked about whether there would be any people who would cause trouble there, does the Senator from Connecticut remember him saying, "Bring 'em on"?

Mr. DODD. I do recall that statement he made.

Mr. REID. I suggest to the President's people that they should advise him the next time he is asked that question, he could at least relate to those two things—No. 1, "Mission Accomplished," and No. 2, "Bring 'em on." Since the time of "Bring 'em on," hundreds of soldiers have been killed and thousands maimed for life and injured in other ways.

I appreciate very much that statement of the distinguished Senator from Connecticut.

Mr. DODD. Mr. President, if I may take 1 additional minute, my point is, I voted in favor of the authority. I believe it was the right thing to do. My concern is the June 30 date. I am con-

cerned, and I realize there is a cost in changing it. We need to evaluate whether turning sovereignty over at that date is going to serve our interests. That was the sum and substance of my remarks.

I appreciate the questions my colleague from Nevada raised. I made comments regarding holding rigidly to a date that could turn out to be a mistake.

Mr. REID. I say to my friend, I also voted for the resolution. I think it is extremely important that we who support the effort in Iraq, protecting the men and women who are representing our country over there, have the ability to speak out freely on this issue and not be criticized as having been unpatriotic for having done so.

The Senator from West Virginia was originally almost a lone voice speaking out against this event. Time has shown perhaps his vision was more meaningful than people realized at the time. I appreciate the Senator responding to my questions.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized.

Mr. MCCAIN. Will the Senator from West Virginia yield to me 30 seconds for a comment?

Mr. BYRD. Absolutely.

Mr. MCCAIN. I thank the Senator from West Virginia.

It is the intention of all to finish this legislation tonight. I hope those with amendments will come over during the period that Senator BYRD makes his remarks so we can proceed with amending this legislation. I regret it, but I will object to further extraneous conversation or dialog until we finish consideration of this bill because I do not want to inconvenience Members by keeping them in late tonight. We have some 31 relevant amendments. We need to get about addressing them.

I thank the Senator from West Virginia for allowing me to comment.

Mr. REID. If I can, as a matter of trying to lay out what is ahead of us, Senator WYDEN spoke with me and one other Senator indicating they worked to get cloture on this amendment that the Senator from Arizona filed. There has been an agreement—I have not been part of those agreements—that Senator WYDEN, Senator CARPER, and others would have an opportunity to offer amendments. The Senator from Arizona has indicated that he will do everything within his power to make sure those amendments are offered and debated in an orderly time.

My only statement to the Senator from Arizona is, I think it may be difficult to finish this bill today because he talked about extraneous matters. The Senator from West Virginia has a right to speak for 1 hour on this matter, as do I and others. No one is attempting to stall this legislation. The Senator from Arizona had a very important vote, but I hope this matter is not, in effect, going to be jammed through. This is an important piece of

legislation. We will work with the majority as much as we can, but based on my experience in the Senate—the Senator from Arizona and I came on the very same day, so one does not have more experience than the other—I think it will be difficult to finish tonight. If we can, we will work with you. I think it is extremely difficult to finish tonight.

Mr. MCCAIN. If the Senator will yield for one additional comment, I appreciate what the Senator from Nevada said. He is very experienced at floor procedures. I point out we have been on this bill all week. I would hope we could finish it tonight. I see no reason why we cannot.

I understand his skepticism. In no way did I mean to criticize the very important statements being made on the vital issue of national security.

I thank the Senator from West Virginia for his indulgence. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

SGM MICHAEL BOYD STACK

Mr. BYRD. Mr. President, on Easter Sunday, April 11, 2004, this Nation lost a fine soldier, a good man, a loving father and husband, and a faithful Christian when SGM Michael Boyd Stack of C Company, 2nd Battalion, 5th Special Forces Group Airborne, was killed in an ambush in Iraq.

SGM Stack is 1 of more than 700 men and women who have given their lives in this conflict and 1 of the more than 100 who were killed in the month of April alone. Each is mourned. Each is honored. Each is sorely missed.

These men and women knew the meaning of duty, honor, and courage. They and their comrades in arms still serving are most emphatically not the summer soldier and the sunshine patriot whom Thomas Paine warned against, who shrink from the service of their country in times of crisis.

SGM Stack and his fallen comrades wore the uniform of the United States proudly and bravely. When told to go to Iraq and Afghanistan, they saluted and prepared to go. They said their farewells to their loving and fearful families and set off. From spare bivouacs, they patrolled dusty streets and lonely highways. They faced rocket-propelled grenades, improvised landmines, sniper fire, and ambush. They looked out for one another with humor and grace and caring. They gave their very best. In the end, they gave their all.

Soldier, rest!  
Thy warfare o'er,  
Sleep the sleep that knows not breaking,  
Dream of battled fields no more,  
Days of danger, nights of waking.

So said Sir Walter Scott in the Lady of the Lake.

These fallen heroes made the ultimate sacrifice, bravely and unshirking. When all is said and done, all policy laid aside, out there at the sharp end of the spear, these men and women did what good soldiers do. They stood

shoulder to shoulder and did not flinch. In the heat of battle, in the threat of danger, in the face of death, they did not flinch.

SGM Stack had faced such dangers before. His 27-year Army career spanned the cold war, the first Gulf war, and the conflict in the Balkans. His experience and his cool head in tense situations made him a valued member of his company and his battalion. He volunteered for Airborne School and service in the 82d Airborne Division upon his enlistment in 1977. He joined the Special Forces in 1988; serving 16 years with the 3d, 5th, and 10th Special Forces Groups, and as an instructor in the 1st Special Warfare Training Group. Much of what he did will never be made public, but he earned the unqualified respect and admiration of his fellow soldiers. The high standard of professionalism, ability, teamwork, and fairness that SGM Stack exemplified and taught to new generations of Green Berets will be his legacy to the Army, as well as in the Armed Forces of other nations that he helped to train.

Even as a young platoon sergeant, he was known as "No Slack Billy Jack Stack," in recognition of the high standards he expected, and required, of the men he led. He cared deeply for his men and died among them, manning a .50-caliber machine gun in the heat of battle, keeping them safe and striving, as always, to achieve the mission goals.

SGM Stack was a professional soldier, hard-eyed and competent, the very picture of a happy warrior, who might have inspired these words by the poet William Wordsworth:

Who is the happy Warrior? Who is he  
That every man in arms should wish to be?  
It is the generous Spirit, who, when brought  
Among the tasks of real life, hath wrought  
Upon the plan that pleased his boyish  
thought:

Whose high endeavors are an inward light  
That makes the path before him always  
bright:

Who, with a natural instinct to discern  
What knowledge can perform, is diligent to  
learn;

Who, doomed to go in company with Pain,  
And Fear, and Bloodshed, miserable train!  
Turns his necessity to glorious gain;  
In face of these doth exercise a power  
Which is our human nature's highest dower:  
Controls them and subdues, transmutes, be-  
reaves

Of their bad influence, and their good re-  
ceives:

Whose powers shed round him in the com-  
mon strife,

Or mild concerns of ordinary life,  
A constant influence, a peculiar grace;  
But who if he be called upon to face  
Some awful moment to which Heaven has  
joined

Great issues, good or bad for human kind,  
Is happy as a Lover; and attired  
With sudden brightness, like a Man inspired;  
And, through the heat of conflict, keeps the  
law

In calmness made, and sees what he foresaw.

In and out of uniform, SGM Stack set high standards for himself. He earned his college degree while serving in the

Army. He was active in his church. He kept a Holy Bible in his desk at work, by his chair at home, and in the pocket of his battle dress uniform. He had the quiet confidence of a man who keeps the Lord close to his heart. Before leaving on his final patrol, SGM Stack asked the unit chaplain to say a prayer over his men.

He kept his family close as well. He went home to lunch most days. He lavished love on his young children and took great pride in the accomplishments of his older children. In his wife, Suzanne, he had a soulmate with whom he was planning a long and happy retirement, a retirement which never came. He relished quiet hours spent with family and friends, and he took justified pride in his cooking abilities at such times. He was slow to anger and quick to forgive. He left behind him a full measure of that best portion of a good man's life. His little, nameless, unremembered acts of kindness and of love.

SGM Stack is survived by his wife, Victoria Suzanne Stack; his children Milissa, Virginia, Jillian, David, and William; step-son Bryan, and grandchildren Jakob, Tylor, and Jesse. His father, Cecil, and mother, Antoinette Stack, also mourn him, as do his brother, Cecil Stack, Jr., and sisters Tammy, Kimberly, and Christina.

Military service was a tradition in the Stack family that stretches across generations. SGM Stack's father, brother, and nephew all served or served in the Army. SGM Stack's father-in-law retired from the Air Force. The Nation owes a deep debt of gratitude to such families, who have answered the call to arms so often and so willingly in our history.

Today, as SGM Michael Stack is laid to rest at Arlington Cemetery, joining the quiet ranks of fallen heroes there, no words can truly comfort hearts that loved him and that are grieving. But at this Easter season, especially, we are reminded that death is not the end, but only a parting for a little while. Michael's faith gave him comfort as he stepped in front of danger; may that same faith sustain his family that they will surely be together again.

Once again, I reach for the words of William Wordsworth, from his Ode, *Intimations of Immortality*:

Though nothing can bring back the hour  
Of splendor in the grass, of glory in the flow-  
er;

We will grieve not, rather find  
Strength in what remains behind;  
In the primal sympathy  
Which having been must ever be;  
In the soothing thoughts that spring  
Out of human suffering;  
In the faith that looks through death,  
In years that bring the philosophic mind.

I offer the thanks of a grateful Nation to SGM Stack, who served his country in the Army, who served his country with great honor and distinction. To his family, I offer my sincere condolence for their loss. I pray that the Lord gives them strength to bear this sad burden until, in the fullness of time, they are all united again.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, before the leader yields, I thank the leader. This was a very gracious thing to do. We don't do it often enough. I commend the Democratic leader for taking out a few minutes to recognize people who make such a difference here every single day. The leader does this repeatedly, and I commend him for it.

I associate myself with his remarks, and I wish to express our deep gratitude to Tom and his family for remarkable service to this country. I hope the people out there realize with all that happens within the view of a television camera, there are literally hundreds of people who make this government of ours, in spite of all of its inefficiencies, function remarkably well, and Tom certainly falls within that category. I thank the leader for taking a few minutes out to recognize him.

Mr. DASCHLE. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BURNS. Mr. President, I ask unanimous consent that I may proceed as in morning business for the next 10 minutes.

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

#### IRAQ

Mr. BURNS. Mr. President, I have heard my colleagues come to the Senate today criticizing the President about the handling of Iraq and the war on terrorism. I hate for it just to lie there and somebody not explain to the American people that we are at a war. This is a war that is as big as World War II or World War I. It is global in its size, but it is with a different enemy than we have ever known before in the history of this country or any other country. It is terrorism. It is performed by people who do not wear uniforms, who operate in the shadows and are faceless, are indiscriminate in whose life they take—whether they be combatants or noncombatants, men or women, young or old—and a respecter of no nationality. That is the enemy.

Some would actually question the decision to move against Iraq or Afghanistan. Let me remind my fellow Americans and also my colleagues, we could go back as far as Beirut when a building was bombed there and over 200 marines lost their lives. It was a car

bombing. We had never experienced that before. It gave us a pattern of what was to come in later years.

We have heard the crying of the Iraqi people. I believe the spirit of freedom lives in their breast as it does in ours. But let's look at the track record, how we got to where we are today.

Do you recall the World Trade Center, the first time it was hit, February 26, 1993? Six people died. Cyanide gas and other chemicals were found in that building. Next, we move to June 25, 1996, when 19 Americans were killed and 372 were wounded at a place called Khobar Towers in Saudi Arabia. Nothing was done about either one of those attacks.

Then came August 7, 1998. Two embassies were bombed; one in Tanzania, one in Kenya, eastern Africa.

Then came October 12, 2000. The USS *Cole* was attacked in Yemen. Seventeen American sailors died.

Then we come to September of 2001—September 11; 9/11—and the World Trade Center, New York City. Two airplanes were flown into the two towers. Over 2,500 people were killed on that fateful day that most of us remember. There was another attack in Washington, DC, at the Pentagon on that same day. On that day some 3,000 people died. We did not even lose that many at Pearl Harbor when Japan attacked our forces, the U.S. Navy.

We could go on about Santiago, on September 27, 2001; the U.S. housing compound in Saudi Arabia—all of those terrorist attacks on American citizens.

Because we did nothing to answer any of those attacks, was that basically a green light to go ahead? How long do we have to apologize and say, Well, we are trying to find a way to take care of this cancer that has invaded our world?

So the decision was to say, after 9/11: Let's go after the cancer. And we did that. And al-Qaida, even though it operates, I will tell you, it does not operate as freely as it did.

The American people, have they forgotten we have not been hit by another terrorist act in this country since we made the decision to tear the heart out of the dragon?

And then the idea of Iraq and weapons of mass destruction, he had them. He used them. He manufactured them. People were even trained.

I do not think we need to apologize to anybody anymore for the actions we are taking. Enough is enough, for the protection of our country and for the protection of the people who live here, who work here, and long to be free.

Just ask the young men. For everybody who would say, Well, this thing is falling apart, do you realize our recruitments are up? People who are reenlisting in the service—those numbers are up. If you talk to our young people there in Iraq, who are doing those patrols—and I have done that; I have been there—they know what the mission is. They know the risk involved. They willingly accept it be-

cause they have a great heritage of generations before them. When called upon to make the sacrifice for national security, Americans have always answered the call—even in light of those who would be apologists.

So we as, say, the political arm also have an obligation to make sure they inherit the world they think they are getting. They are willing to die for it. We should support them because they understand the next generation will. If you wanted to take a poll on how many people wanted to be on Normandy Beach on June 6, 1944, I doubt you would get a majority of people who would like to have been there. But we went. We answered the call. That is what is important. We cannot lose our will as a people or a society or as our military forces. That is what I am hearing is our will. They understand what is at stake for the next generation. That is what has made this country great. We always think about the next generation. It is not about our own generation. It is about our kids. That is what this is all about.

If we keep backing and shrinking away, then our enemy will take whatever we give them, and we will pay an even higher price than we have already paid—Americans killed, innocently, going about their own business in their own way in a free country.

We have men and women who have answered the call and a Commander in Chief who is doing his level best to not only end it in an honorable way but to also secure the freedom and the safety of people in a part of the world where that has been done very few times. He is to be commended for it.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from California.

Mrs. BOXER. Mr. President, I ask unanimous consent that I may speak for up to 20 minutes as in morning business.

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

#### HONORING OUR ARMED FORCES

Mrs. BOXER. Mr. President, today I rise to pay tribute to 59 young Americans who have been killed in Iraq from March 22 to April 26. All of them to whom I am going to pay tribute were from California or were based in California.

I have previously read the names of all the others connected to California who have died. Sadly, these numbers are going up. I was shocked to just hear on the radio that 11–11—of our troops have been killed today in Iraq.

So I am going to read the names of those who are connected to California. And this, again, is from March 22 until Monday of this week.

LCpl Jeffrey C. Burgess, age 20, died March 25, due to enemy action near Fallujah. He was assigned to Marine Wing Support Squadron 373, Marine Wing Support Group 37, 3rd Marine Aircraft Wing, I Marine Expeditionary Force, Marine Corps Air Station, Miramar, CA.

LCpl James A. Casper, age 20, died March 25, due to a noncombat-related incident at Al Asad. He was assigned to 2nd Battalion, 11th Marines, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

MSgt Timothy Toney, age 37, died March 27, due to a noncombat-related incident at Camp Wolverine, Kuwait. He was assigned to Headquarters Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

PFC Leroy Sandoval, age 21, died March 26 due to hostile fire in the Al Anbar Province. He was assigned to 2nd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl William J. Wiscowiche died March 30 due to enemy action in Al Anbar Province, age 20. He was assigned to 1st Combat Engineering Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA. He was from Victorville.

PFC Dustin Sekula, age 18, died April 1 due to injuries sustained from enemy fire in Al Anbar Province. Assigned to 2nd Battalion, 7th Marines, 1st Marine Division, I Marine Expeditionary Force, Twentynine Palms, CA.

PFC Geoffrey Morris, 19. Private Morris died April 4 due to injuries received from hostile fire in Al Anbar Province. Assigned to 2nd Battalion, 4th Marines, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl Aric Barr, age 22, died April 4 due to injuries received from enemy action in Al Anbar Province. Assigned to Twentynine Palms, CA, the same battalion, the same division, the same force.

Cpl Tyler Fey, age 22. Corporal Fey died April 4 due to injuries received from enemy action in Al Anbar Province. He was assigned to the same battalion, the same division, the same force, Twentynine Palms, CA.

We have been hurting in California.

LCpl Matthew Serio, age 21, died April 5 due to injuries received from hostile fire in Al Anbar Province; also from Camp Pendleton, the same battalion, the same division, the same force.

Sgt Michael W. Mitchell, age 25, died April 4 in Baghdad when his unit was attacked with rocket-propelled grenades and small arms fire. He was assigned to the Army's 2nd Battalion, 37th Armor Regiment, 1st Brigade, 1st Armored Division, Ray Barracks, Friedberg, Germany. Sergeant Mitchell was from Porterville, CA.

SP Casey Sheehan, age 24, died April 4 in Baghdad when his unit was attacked with rocket-propelled grenades and small arms fire. He was assigned to the Army's 1st Battalion, 82nd Field Artillery Regiment, 1st Cavalry Division, Fort Hood, TX. Specialist Sheehan was from Vacaville, CA.

Cpl Jesse Thiry, age 23, died April 5 due to injuries received from hostile fire in Al Anbar Province. Assigned to

1st Battalion, 5th Marines, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

PFC Christopher Ramos, age 26. Private First Class Ramos died April 5 due to injuries received from hostile fire in Al Anbar Province; the same battalion, same Marine division, same force, Camp Pendleton, CA.

Another from the same battalion, the same force at Camp Pendleton, is PFC Derrick Hallal, age 24, died April 6 due to hostile fire in Al Anbar Province.

PFC Christopher Cobb, age 19, died April 6 due to hostile fire in Al Anbar Province; also from Camp Pendleton, CA.

PFC Ryan Jerabek, age 18, died April 16 due to hostile fire in Al Anbar Province; also from Camp Pendleton, CA.

PFC Moises Langhorst, age 19, died April 5 due to hostile fire in Al Anbar; same battalion, from Camp Pendleton, CA.

LCpl Travis Layfield, age 19, assigned to 2nd Battalion, 4th Marines, 1st Marine Division, same force, Camp Pendleton, CA. He was from Freemont, CA.

LCpl Anthony Roberts died April 6 due to hostile fire in Al Anbar Province; the same group of marines from Camp Pendleton.

SSgt Allan Walker died April 6 as a result of a gunshot wound while conducting combat operations in the Al Anbar Province. He was from the same battalion, division, force at Camp Pendleton. He was from Palmdale, CA.

LCpl Kyl Crowley died April 6 as a result of a gunshot wound while conducting combat operations in the Al Anbar Province. He was from the same battalion, same division, same force, Camp Pendleton, CA. He was from San Ramon, CA.

PFC Benjamin Carman, age 20, died April 6 due to hostile fire in Al Anbar Province. He was assigned to the same group as the others, Camp Pendleton, CA.

LCpl Marcus M. Cherry, age 18. He died as a result of a gunshot wound while conducting combat operations in Al Anbar Province. He was from the same battalion, same division, same force, Camp Pendleton. Lance Corporal Cherry was from Imperial, CA.

LCpl Shane Goldman died April 5 due to injuries received from hostile fire in Al Anbar Province. He was from the same battalion, same division, same force, Camp Pendleton, CA.

2LT John Wroblewski. Second Lieutenant Wroblewski died April 6 due to injuries received from hostile fire in Al Anbar Province. He was assigned to the same group at Camp Pendleton.

CPT Brent Morel, age 27, died from hostile fire in Al Anbar Province on April 7. He was assigned to the same group, Camp Pendleton.

Petty Officer Third Class Fernando Mendezaceves, age 27, killed April 6 in Iraq while conducting combat operations in the Al Anbar Province. He was assigned to the Naval Medical Center in San Diego, 1st Marine Division Detachment, San Diego.

PFC Christopher D. Mabry, 19, died April 7 due to injuries received from hostile fire in Al Anbar Province. He was part of the same group from Pendleton, CA.

SSgt William Harrell, age 30, died April 8 of a gunshot wound while conducting combat operations in Al Anbar Province. He was from Placentia, CA. He was part of the same marine group, Camp Pendleton.

ILT Joshua Palmer died April 8 of wounds received from small arms fire while conducting combat operations in the Al Anbar Province. He was assigned to the same group of marines, Camp Pendleton, CA. He was from Banning, CA.

LCpl Michael Wafford, 20, died April 8 due to injuries received from hostile fire in Al Anbar Province. He is from the same Marine regiment, division, force at Camp Pendleton, CA.

Cpl Nicholas J. Dieruf, age 21. Corporal Dieruf died April 8 due to injuries received from enemy action in Al Anbar Province. He was assigned to 1st Light Armored Reconnaissance Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl Christopher B. Wasser, age 21. Lance Corporal Wasser died April 8 due to injuries received from enemy action in Al Anbar Province. He was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, at Twentynine Palms, CA.

LCpl Levi T. Angell, age 20. Lance Corporal Angell died April 8 due to injuries received from hostile fire in Al Anbar Province. He was assigned to Combat Service Support Group 11, 1st Force Service Support Group, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Matthew E. Matula, age 20. Corporal Matula died April 9 from hostile fire in Iraq. He was assigned to 2nd Battalion, 1st Marines, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl Elias Torrez, III, age 21. Lance Corporal Torrez died April 9 from hostile fire in Iraq. He was assigned to 3rd Battalion, 7th Marines, 1st Marine Division, I Marine Expeditionary Force, Twentynine Palms, Ca.

PFC Eric A. Ayon, age 26. Private First Class Ayon died April 9 as a result of shrapnel wounds from an explosion while conducting combat operations in the Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA. Private First Class Ayon was from Arleta, CA.

PFC Chance R. Phelps, age 19. Private First Class Phelps died April 9 from hostile fire in Al Anbar Province. He was assigned to 3rd Battalion, 11th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LC John T. Sims, Jr., age 21. Lance Corporal Sims died April 10 from hos-

tile fire in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

ILT Oscar Jimenez, age 34. First Lieutenant Jimenez died April 11 due to a gunshot wound to the head and thigh received in Al Anbar Province. He was assigned to 3rd Battalion, 4th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA. He was from San Diego, CA.

PFC George D. Torres, age 23. Private First Class Torres died April 11 after sustaining a gunshot wound to the head while conducting combat operations in the Al Anbar Province. He was assigned to 1st Battalion, 5th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA. He was from Long Beach, CA.

LC Phillip E. Frank, age 20. Lance Corporal Frank died April 8 from hostile fire in Al Anbar province. He was assigned to 2nd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Daniel R. Amaya, age 22. Corporal Amaya died April 11 from hostile fire in Al Anbar Province. He was assigned to 3rd Battalion, 4th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Twentynine Palms, CA.

LCpl Torrey L. Gray, Age 19. Lance Corporal Gray died April 11 from hostile fire in Al Anbar Province. He was assigned to 3rd Battalion, 4th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Twentynine Palms, CA.

PVT Noah L. Boye, age 21. Private Boye died April 13 from hostile fire in Al Anbar Province. He was assigned to 1st Battalion, 5th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl Robert P. Zurheide, Jr., Age 20. Lance Corporal Zurheide died April 12 from hostile fire in Al Anbar Province. He was assigned to 2nd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl Brad S. Shuder, Age 21. Lance Corporal Shuder was killed in action April 12 while conducting combat operations in the Al Anbar Province. He was assigned to 2nd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Kevin T. Kolm, Age 23. Corporal Kolm died April 13 from hostile fire in Al Anbar Province. He was assigned to 3rd Assault Amphibian Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

SSG Victor A. Rosaleslomeli, Age 29. Staff Sergeant Rosaleslomeli died April 13 in Iraq when an improvised explosive device exploded near his escort vehicle. He was assigned to the 2nd Battalion, 2nd Infantry Regiment, 1st

Infantry Division, Vilseck, Germany. He was from Westminster, CA.

**SGT Brian M. Wood, Age 21.** Sergerant Wood died April 16 in Tikrit when his military vehicle pulled off the road and apparently hit a mine while on patrol. He was assigned to the Army's 9th Engineer Battalion, 2nd Brigade Combat Team, 1st Infantry Division, Schweinfurt, Germany. Sergeant Wood was from Torrance, CA.

**SSG Jimmy J. Arroyave, Age 30.** Staff Sergeant Arroyave died April 15 due to a non-combat related vehicle accident northeast of Ar Ramadi, Iraq. He was assigned to Combat Service Support Battalion 1, Combat Service Support Group 11, 1st Force Service Support Group, I Marine Expeditionary Force, Camp Pendleton, CA. He was from Woodland, CA.

**LCpl Gary F. VanLeuven, age 20.** Lance Corporal VanLeuven died April 17 due to injuries received from enemy action in Al Anbar Province. He was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, at Twentynine Palms, CA.

**LCpl Ruben Valdez, Jr., age 21.** Lance Corporal Valdez died April 17 due to injuries received from enemy action in Al Anbar Province. He was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, at Twentynine Palms, CA.

**LCpl Michael J. Smith, Jr., age 21.** Lance Corporal Smith died April 17 due to injuries received from enemy action in Al Anbar Province. He was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, at Twentynine Palms, CA.

**CPT Richard J. Gannon, II, age 31.** Captain Gannon died April 17 from an explosion while conducting combat operations in the Al Anbar Province. He was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, at Twentynine Palms, CA. Captain Gannon was from Escondido, CA.

**PFC Leroy Harris-Kelly, age 20.** Private First Class Harris-Kelly died April 20 north of Tallil, Iraq, when his truck went off the road and rolled over because of limited visibility and dangerous driving conditions. He was assigned to the 596th Maintenance Company, 3rd Corps Support Command, V Corps, Darmstadt, Germany. He was from Azusa, CA.

**Cpl Christopher A. Gibson, age 23.** Corporal Gibson died April 18 due to injuries received from enemy action in Al Anbar Province. He was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, at Twentynine Palms, CA. He was from Simi Valley, CA.

**Cpl Jason L. Dunham, age 22.** Corporal Dunham died April 22 due to injuries received from enemy action in Al Anbar Province. He was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expedi-

tory Force, at Twentynine Palms, CA.

Sadly, since this list was compiled, we have suffered more and more losses. Today alone, I understand from radio reports, we have lost 11 soldiers. So this list that I read pays tribute to those lost between March 22 and Monday of this week. It took me too long, Mr. President, and I had to ask for more time because, sadly, we have lost more than 700 people, and the numbers are escalating.

I say to the families not only of these brave servicemen—and I don't think there was a woman in this particular list—I say to the parents who have lost a child here, and I say to the wives or the husbands who have lost a spouse here, and I say to the children who have lost a dad here, or the siblings who have lost a brother or sister here, you should be very proud of your family member; that love of country takes many forms, and one form is being willing to carry a weapon on to the field of battle where you face death, and that is what these brave men and women are doing right now.

As a Senator, I owe you a plan, I owe you a clear mission, I owe you a clear exit strategy. Working on the Foreign Relations Committee with my colleagues on both sides of the aisle—Senators LUGAR, BIDEN, KERRY, DODD, SAR-BANES, CHAFEE, and all the Members on both sides of the aisle, we owe it to the people to come together now and figure this out.

My friend from Montana said this is a war against terrorism. I want to bring us back for a moment to September 11 when the whole world was with us against Osama bin Laden, and I gave the President full authority to go get the people who did this to us.

After September 11, as each of us were trying to find out what happened, I asked the State Department about al-Qaida and where al-Qaida operated.

I have a booklet that was printed after September 11 from the Bush administration's State Department. Al-Qaida operated at that date in 45 countries, including our own. Iraq was not on the list. And somehow because we did not have a plan and we lost the support of most of the world for this, we find ourselves alone in this matter.

For every name that I read, there is a family grieving with tears that we can only imagine. We owe it to them now, because we are where we are, not to come to the floor and snipe at each other, but to find a plan so we can make sure the world is with us and make sure the Iraqi people are with us.

Yes, we are going to have those elements—the Baathists and the extremists—but if we can win the hearts and minds of the Iraqi people, as we have been saying on the Foreign Relations Committee for so long, we can turn this around. But we need to do it with the world behind us, and that takes leadership.

For me to come to the floor and talk about all these deaths and then have to

ask for additional time because there are so many deaths that I ran out of time—this is not what the American people were told. We need a plan. We need more support. We need an exit strategy that makes sense that gives us pride, that gives the people of Iraq pride, that gives them at least the limited sovereignty they have been promised.

This is a very hard time. I support our men and women in Iraq. I am going to work overtime in a bipartisan way to make sure the tone around here can change, and we can come together.

Yes, we differed on the way in. I differed with how we went in and with whom we went in, but we are where we are, and now is a time to figure out a way to get us out of there in a way that makes the world safer, makes us safer, and once more puts America in the front of the world as the country that will, in fact, be able to bring democracy in a way that makes sense for the people of the world.

I am going to give back my time because I am very anxious to get this bill passed with my colleagues, Senators MCCAIN, WYDEN, ALLEN, and others.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I thank the Senator from California for her courtesy.

I would like to report that after a very productive meeting amongst the principals who have been involved in this legislation, I might add, I was reminded, for about 8 years now, and thanks to the good offices of Senators DORGAN, VOINOVICH, ALLEN, LOTT, ALEXANDER, and CARPER, I think we have the outline of an agreement that I hope can lead to a successful conclusion within the next hour or so.

We have refined the issues basically down to two. One of them is the issue of a moratorium. We expect Senator LAUTENBERG to come to the floor with an amendment on the issue of moratorium, the numbers of years of a moratorium for different protocols, and also one on the definition of the backbone. It is not clear whether the second issue will require a recorded vote.

We also reached an agreement on an amendment I will propose on behalf of all of us in a few minutes that has to do with the voice over Internet protocol issue, a definition to which we have agreed.

I inform my colleagues, I think it is very possible that we could have one or two more votes and then vote on final passage. At least I am hopeful of that outcome. I again thank my colleagues for their progress.

I will also mention that there are a couple of Senators who are being checked in who had amendments to make sure their concerns are being addressed in the amendments that may be proposed.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I thank Senator McCAIN for his leadership. We did just conclude a meeting and, as a result of that meeting, it appears to me we should be able to complete this legislation likely this afternoon. We dealt with the question of the voice over Internet protocol, VOIP. I think Senator McCAIN will offer an amendment that reflects an agreement on all sides of that issue. That is one of the issues resolved.

There still remains some issues dealing with the grandfather issue. I believe Senator LAUTENBERG will offer an amendment on that issue. Senator LOTT has an amendment. I am not certain whether they need votes. In any event, they will be working on those.

The other issue is the definition as to what extent this legislation applies to certain activities with respect to taxation of telephone and telecommunications issues and the Internet.

The underlying bill is a Federal pre-emption of taxation with respect to the Internet. The point of the legislation, as introduced, is to effectively prevent taxing the connection to the Internet, believing that the buildout of broadband services in this country is good for the country and will expand the economy and create jobs.

Almost all of us previously voted for a moratorium on taxes on the Internet. I voted for it, and so has most of my colleagues. This iteration of that moratorium has become increasingly complicated because since the moratorium, new technologies have developed, and it has caused more difficulties in negotiating. Even though we do not have agreement on every feature, my expectation is that in the next couple of hours the likelihood is this legislation could be completed in the Senate.

Again, I appreciate the leadership of Senator McCAIN. A group of us have been active in trying to see if we can find common definitions and common intent with respect to this important legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I share the view of the chairman of the Commerce Committee and Senator DORGAN. I think the end is now in sight. I see the distinguished Senator from Virginia on the floor right now, and I commend him for all the effort and the relentless pursuit of a cause that he and I have shared for many years, going back to when he was Governor and when I was the original Senate sponsor.

We have held steadfast to the proposition that the Internet, this extraordinary national and global treasure, should not be subject to multiple and discriminatory taxes. I think the earlier Senate vote indicates that a majority of the Senate is prepared to support policies which will ensure that the Internet is healthy and vibrant for the future.

I see the chairman of the Commerce Committee on the floor. People felt

strongly about the question of telephone calls over the Internet. The chairman of the Commerce Committee came, had a very constructive definition which made clear or clearer what Senator ALLEN and I have felt all along, and that is that there should not be a change in the status quo. That is very constructive.

My guess is that the big challenge over the course of the afternoon will be on the issue of definitions. Certainly there are definitions with respect to how what is called the backbone of the system, the architecture, is handled. Depending on how it is written, that definition could provide for taxes on BlackBerrys and e-mails and the kind of thing that the Senator from Virginia and I have opposed strongly. We will have to oppose that once again, but I want to make it clear, as I did earlier in the afternoon, that we are anxious to deal with the remaining issues in a collegial fashion with the Senator from Tennessee. The Senator from Tennessee has made it clear he wants to move this bill along.

I join my colleagues in saying that after 8 years of being at this, literally since the time I came to the Senate early in 1996, I suspect in a few hours the Senate will have acted once more in a bipartisan fashion.

I want to wrap up by commending the Senator from Virginia. He has been willing to compromise with respect to issues but he has never compromised on principle, and I appreciate that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, we await the arrival of Senator LAUTENBERG so we can move forward with his amendment. Then I am informed that at least Senators ALEXANDER, CARPER, and VOINOVICH do not intend to offer their amendment on definition, but there are other Senators who also have an interest in this issue. So it is not for sure that we are not going to have an amendment on that issue.

As I mentioned, moratorium and the grandfather issues need to be addressed, and Senator LAUTENBERG's amendment addresses the issue of grandfathering. So we await his arrival in hopes that we can get that disposed of, and then the Lott amendment and then we would be ready to move to final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CHAFFEE). Without objection, it is so ordered.

Mr. REID. Mr. President, this morning we came to the floor and were con-

fronted with a situation where we tried to get an extension of a highway bill. That was objected to by the senior Senator from the State of Missouri. We talked a little bit at that time, and what we talked about is, basically, if there is no extension given—which has been cleared on our side, by the way—there will be some 5,000 Federal employees of the U.S. Department of Transportation laid off. They may be able to wait until Monday, but certainly they will be able to wait no longer.

What does this mean? It means new highway and bridge projects will be shelved. It will stop reimbursement payments to the States for projects already incurred. It will halt safety grants to the States. It will stop work on transit construction in the Nation's cities and towns. It will interrupt enforcement of motor carrier safety regulations. It will disrupt inspection efforts at our Nation's borders. All we are asking is a temporary extension.

I said this morning, and I say tonight, Senator INHOFE has been a real soldier. He has been with us every step of the way to get a highway bill that is meaningful. No one can question the conservative credentials of JIM INHOFE from Oklahoma. The Senator from Oklahoma is noted for being a person who watches where the money is spent. But he recognizes the bill we reported and passed in the Senate, a bill that was some \$318 billion, is legislation that is important for the country. It is important for the State of Oklahoma. It is important for the State of Nevada. It is important for the State of Rhode Island. It is important for the State of Virginia, and every other State I see represented on this Senate floor—which is no other State at this time.

This is something we have to do. I think it would be a terrible shame, and I can't imagine the reason that my friend, the distinguished senior Senator from Missouri, has used for wanting to object to this extension.

He says: I want a conference appointed.

Mr. President, we have said there are other ways of arriving at this. There are other ways of having legislation approved by the body, by the House, and sent to the President.

I have in my hand bills enacted into law without using conferencing. This is an effort to negotiate differences in language between the House and the Senate. We have, just in the 108th Congress, 21 different measures, important measures: TANF, military family relief, Tax Relief Act, veterans' benefits, and many other pieces of legislation—18 others, to be specific.

I think it is a tightrope I would not want to go to Nevada on, saying that I objected to the highway bill and I am closing the Department of Transportation because the minority won't agree to a conference. I don't think that is very good reasoning. I think the people of the country would also think it is not good reasoning.

We have worked, in a bipartisan manner, to produce a highway bill in the Senate. That legislation achieved 76 votes. We received a letter from 20 Republican Senators, dated today, supporting the Senate funding levels. These are Republican Senators, 20 Senators. These are Senators, any one of which—

Mr. MCCAIN. Parliamentary inquiry. The PRESIDING OFFICER. Does the Senator yield for the parliamentary inquiry?

Mr. REID. I am happy to.

Mr. MCCAIN. At what time does the Pastore rule apply?

The PRESIDING OFFICER. It does not apply postclosure.

Mr. REID. Three hours. Pastore works 3 hours after we take up a measure. So that wouldn't apply here.

I appreciate my friend's interest.

Mr. MCCAIN. I thank the chairman.

The PRESIDING OFFICER. But we are postclosure and germane debate is required.

Mr. REID. Certainly, I understand that totally. Mr. President, the reason I understand that is the legislation that is before this body, this Internet legislation, has so many ramifications that are important to what is going on in the country today. One of the things going on in the country today is how we have improved the way we work on transportation generally. But for the high-tech industry we couldn't do many of the things that are done today. There are many different things we do today that we didn't do 5 years ago, or even 10 years ago as a result of computerization.

The vehicles on the roads now, with some exceptions in the State of Nevada, Department of Transportation vehicles, have computers in them. So I have no qualms, using my hour's time on this legislation, talking about the importance of the highway bill and, of course, the fact is, with the highway bill there are many high-tech propositions that would be affected by this underlying legislation.

Mr. President, I have a letter. I would read all the names, but, frankly, I can't read them because I can't read some of the signatures. But I do see one signature that jumps out at me: ELIZABETH DOLE. She has been Cabinet Secretary two or three times, but one of those times she was a Secretary. In one of our President's Cabinets she was Secretary of Transportation.

ELIZABETH DOLE is one of those supporting the \$318 billion bill. Virtually every Senator on the Democratic side supports it. That is 69 votes right there.

I hope what we are doing today is only for a short time. We need in the worst way to find out a way of getting Senator BOND to agree to this extension. This Nation expects nothing less.

The Republican leadership is going to meet today or tomorrow and talk about what they think should be the size of this bill. The vast majority—far more than 67 Senators, the veto-proof

number of Senators—believe we should have a higher number.

It is very clear. If a bill came to the Senate or the House with \$318 billion for highway transit, we would override any veto of the President. Why? Because this bill does not raise the debt. It is paid for out of trust fund money, and revenue streams are already in place.

Not only do we have a lot of people supporting this legislation, as I indicated earlier today—and it is now in the RECORD—but we have hundreds of organizations that support this legislation: U.S. Chamber of Commerce; Laborers International Union of North America; Associated General Contractors—they are not together very often on anything—American Road & Transportation Builders Association; International Union of Operating Engineers; American Public Transportation Association; National Asphalt Pavement Association; National Stone, Sand & Gravel Association; Association of Equipment Manufacturers; American Waterways Operators; Air Transport Association; and Waterways Work.

These are only a few of the hundreds of organizations that want us to proceed.

I hope we can do this. It would be a shame to lay off 5,000 people. The impact it would have on their immediate families is important. But the impact it would have on this country—we are just beginning to come out of a recession, so I am told. We are really fighting for jobs. One way to work to have more jobs is to keep the highway program going.

This legislation that is before the Senate is about as high tech as you can get. We know for every \$1 billion spent in infrastructure development, 47,500 jobs are generated. That is important. That is only for direct jobs, and thousands of other jobs are spun off from that.

I hope we can move forward. I understand the importance of consumer-friendly legislation. Let us please not have an objection to this legislation.

I am not going to ask unanimous consent until Senator BOND has some knowledge that I will do that. But I will do that later in the day.

I appreciate everyone's courtesy. I know they stretched the rule a little bit for me. I am very grateful. Even though the highway bill is high tech, I am not sure it is that high tech.

Mr. MCCAIN. Mr. President, I would never, ever believe that my friend from Nevada would stretch any of the Senate rules. Of course, I appreciate his real knowledge of the rules of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

AMENDMENT NO. 3082 TO AMENDMENT NO. 3048

Mr. LOTT. Mr. President, I call up amendment No. 3082, which is my amendment to the McCain underlying amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 3082 to amendment No. 3048.

Mr. LOTT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To extend the 1998 grandfather from 3 years to 4 years)

On page 5, line 2, strike "2006" and insert "2007".

Mr. LOTT. Mr. President, in order to explain exactly what is involved, it is quite simple. The amendment would extend the 1998 grandfather coverage in the bill from 3 years to 4 years. I support ending this grandfather provision for States that had already enacted some Internet tax by 1998. I support phasing that out.

I would like to have this issue dealt with in a broad, comprehensive way. I hope the Commerce Committee will do that in the next year or two. I felt that 3 years was enough of an extension of that grandfather clause. But I have talked to a number of Senators on both sides of the aisle who say that in the interest of fairness you have the grandfather clause phased out in 3 years, and this bill is for 4 years. Wouldn't it be fairer, and we would be more supportive of it, if we could get these two provisions in the same position?

For that reason, I filed an amendment yesterday just before 1 o'clock. I have discussed this with Senator STEVENS, Senator MCCAIN, and Senator WYDEN. Members on both sides are aware of what this amendment is. Senator SUNUNU had some reservations about it but understands what we have done.

We are prepared to go forward with this amendment now. I am willing to do it because I think it is so important that we have Senators who feel good about this legislation and believe it is fair so we can get a bill, get it now, and deal with this moratorium after these many months of laboring to do the right thing.

That is basically what this is all about. I hope my colleagues will support it and it can be accepted, hopefully, on a voice vote.

Mr. MCCAIN. Mr. President, I thank the Senator from Mississippi for his very adroit, as always, capable work on this issue and moving this legislation along.

I thank my colleague from New Hampshire, Mr. SUNUNU, who feels very strongly about this issue. I know we will be revisiting this issue again.

I thank my colleagues. I strongly recommend that we agree to the amendment by voice vote.

I yield the floor.

Mr. DORGAN. Mr. President, I have no objections to the amendment that is being offered by my colleague from Mississippi. We discussed the amendment earlier today. It is an amendment

I support. I hope we can agree to it without a recorded vote. I think that makes sense.

I might say while addressing this at the moment that I am trying to get in touch with Senator FEINSTEIN to determine whether she intends to offer an amendment on this subject. I believe that is perhaps the last amendment on our side of which we need to try to determine the disposition. As soon as we determine what that is, I will let Senator McCAIN know.

Once again, I do not object at all to the amendment offered by Senator LOTT. I think a voice vote is in order.

I yield the floor.

Mr. McCAIN. Mr. President, there is no further debate on the amendment.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 3082) was agreed to.

Mr. LOTT. Mr. President, if the Senator will yield, this appears to be a moment where we are waiting for other Senators to be contacted to further work on amendments that may or may not be offered. I want to take this opportunity to say something positive about this institution which has been having difficulties lately.

This bill shows what you can do when Senators will work together on a very difficult issue. Senators prefer not to vote on this issue. We have friends on both sides—all of us. We have heard from our Governors, mayors, and from the industry. We have heard from all different points of view. But with the tenacity and persistence of Senator ALLEN, Senator WYDEN, the chairman of the committee, and the manager on the Democratic side—they have some feel for what this institution can do and should do. I think they all deserve a lot of credit. We may actually get something done. This is something that needs to be done and something of which we can all be proud.

I was talking to Senator DASCHLE earlier today repeating my oft-stated opinion that when you govern and when you produce results, everybody wins regardless of party. That is what we are really here for.

I say to those who are on the other side of this issue—former Governors, of course, led by Senator ALEXANDER, Senator CARPER, and Senator VOINOVICH—they have been eloquent in their presentations. They have made us all uncomfortable with the points they made while submitting their arguments. They have been dogged, but they have also been reasonable.

If we get this bill completed today, the people on all sides can feel good about how it was done. I commend all concerned. It makes me feel good for a change about what we are doing.

I yield the floor.

AMENDMENT NO. 3104 TO AMENDMENT NO. 3048

Mr. McCAIN. I have submitted an amendment to the desk on behalf of Senator LAUTENBERG, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. McCAIN] for Mr. LAUTENBERG, proposes an amendment numbered 3104 to amendment No. 3048.

The amendment is as follows:

(Purpose: To require the Comptroller General to study the impact of the Internet Tax Freedom Act on State and local governments and on broadband development)

At the appropriate place, insert the following:

**SEC. \_\_\_\_\_. GAO STUDY OF EFFECTS OF INTERNET TAX MORATORIUM ON STATE AND LOCAL GOVERNMENTS AND ON BROADBAND DEPLOYMENT.**

The Comptroller General shall conduct a study of the impact of the Internet tax moratorium, including its effects on the revenues of State and local governments and on the deployment and adoption of broadband technologies for Internet access throughout the United States, including the impact of the Internet Tax Freedom Act (47 U.S.C. 151 note) on build-out of broadband technology resources in rural under served areas of the country. The study shall compare deployment and adoption rates in States that tax broadband Internet access service with States that do not tax such service, and take into account other factors to determine whether the Internet Tax Freedom Act has had an impact on the deployment or adoption of broadband Internet access services. The Comptroller General shall report the findings, conclusions, and any recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce no later than November 1, 2005.

Mr. LAUTENBERG. Mr. President, I offer an amendment, No. 3104, to the McCain substitute amendment to S. 150, the Internet Access Tax Moratorium bill. My amendment, if adopted, would require the General Accounting Office, GAO, to conduct a study on the impact of the moratorium and report its findings back to Congress by November 1, 2005.

GAO would be tasked with analyzing the revenue impact of the Internet tax moratorium on State and local governments. GAO would also be tasked with analyzing the effect of the moratorium on the deployment and adoption of broadband technologies for Internet access throughout the United States.

The amendment directs GAO to compare deployment and adoption rates in States that tax broadband Internet access service with States that do not tax such service, and to take into account other factors to determine whether the Internet Tax Freedom Act has had a positive impact on the deployment and adoption of broadband Internet access services.

Having GAO conduct such a study is important because we simply don't know what the real impact of this legislation will be on the tax revenues of State and local government. The way Internet "access" is defined in the bill, it could be a giant loophole ripe for exploitation by telecommunications companies, especially with regard to the emerging market of Internet telephony, which is commonly referred to as

"Voice over Internet Protocol", VoIP. Tax and public utility officials I have spoken with in New Jersey are very worried that S. 150 could cost the State and jurisdictions within the State hundreds of millions of dollars annually. This is revenue they desperately need to provide essential services.

Furthermore, we simply don't know what the real impact of this legislation will be on the telecommunications industry and on future broadband deployment, both of which are so important to our economy. Supporters of the bill claim that the moratorium is essential. But I would note that three economists at the University of Tennessee compared Internet access rates in jurisdictions with Internet taxes and jurisdictions without any such taxes. The access rates were the same. In other words, the moratorium may not be having any beneficial effect. That is something we need to find out.

Mr. President, I understand that my amendment will be adopted and I appreciate Chairman McCAIN's support for it. I think it is an eminently reasonable amendment, and I hope that it can be protected in the Conference Committee deliberations on this bill.

Mr. McCAIN. Senator LAUTENBERG's amendment calls for a GAO study on broadband for the effects of tax moratorium on State and local economies and other impacts of this Internet tax moratorium. I find it a very valuable amendment. It would be very helpful because this is a moratorium, not a permanent ban. It would be very helpful as we debate this issue, which I imagine will start again in a year or so.

The Lautenberg amendment is a good amendment. Senator LAUTENBERG is a conferee, and I know Senator DORGAN will agree we will fight to make sure this GAO study is included.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I support the Lautenberg amendment. His suggestion makes a great deal of sense. I hope we can voice vote the Lautenberg amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3104) was agreed to.

Mr. McCAIN. As far as I know—and Senator DORGAN is more aware than I am—we have one more amendment we agreed to which I hope to propose within a couple of minutes. Senator FEINSTEIN may or may not be proposing an amendment. We will find out shortly. Then we would be prepared to go to final passage.

I yield the floor.

Mr. DORGAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

**MR. McCAIN.** Mr. President, while we are awaiting the amendment and the presence or decision on Senator FEINSTEIN's amendment, I wish to make a couple of comments about individuals. I specifically speak of Senator ALEXANDER, Senator VOINOVICH, and Senator CARPER, who fought very hard and valiantly on this issue. We have honest differences of opinion on this issue.

It is very likely we will pass this legislation, but Senator ALEXANDER, Senator VOINOVICH, Senator CARPER, and Senator DORGAN have had an enormous impact. We have gone from a permanent ban to a 4-year moratorium. We are changing the definition of voice over Internet protocol. We have made significant changes to this legislation thanks to their efforts.

Throughout, our debate has been characterized by mutual respect and understanding that we just have fundamental differences of opinion. I congratulate them on a battle well fought. Although they may have lost in passage of the legislation, they improved it dramatically, and I say that from a position on both sides of the issue. They brought into play their backgrounds as Governors of their respective States and bring a much needed perspective to this body. I congratulate them for their very outstanding work, particularly over the long period of time we have been involved in this issue.

If we pass this bill shortly—and we may not—there are two individuals who deserve the credit: Senators ALLEN and WYDEN, who took up this legislation years ago, and followed it. They have been relentless, dedicated advocates, and have brought their debate and discussion all over America. They have done an outstanding job. They are the ones who, I believe, deserve the credit on all of it for the magnificent work they have done on an issue that is of great importance and profound importance to small and large businesses all over America. I thank them for their valued efforts.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Oregon.

**MR. WYDEN.** Before the Senator leaves the floor, I don't want to turn this into a bouquet-tossing contest, but I came to the Senate in the winter of 1996 as a new member of the Commerce Committee. The chairman of the committee was exceptionally helpful in terms of working on the legislation then. We have gone through two iterations already.

Senator DORGAN and I have spent untold numbers of hours talking about this vastly important bill, more than either of us would have wanted. The Senator from Virginia is here as well, and the fact that he has been involved so extensively has been an enormous help. The Senator from Virginia has consistently talked about standing up for freedom. He is absolutely right.

There is a reason the Gray Panthers, for example, are for this legislation. They and millions of other consumers understand how important it is that we not hammer Internet access.

We will have other debates with respect to the future of the Internet. Certainly the Senator from North Dakota has talked passionately, for example, about a project the Governors were talking about, the streamlined sales tax concept. So we will have these other debates.

But the chairman of the Commerce Committee, who was so gracious to me and the Senator from Virginia, helped us consistently through this 8-year-long battle. I want the chairman of the Commerce Committee to know I am very appreciative of all of the help and support he has given us in this cause.

We are going to be wrapping up the work of the Senate in just a few minutes, and a lot of people who have said it just was not in the cards, it just was not to be, the Senate was gridlocked—suffice it to say there will be further debates as we discuss this with the other body.

This is a very significant step forward. Every Member of the Senate, in my view—and I have talked to almost every Member about this on a personal basis—every Member understands the value to the opportunity of a healthy and vibrant Internet. What we had over the last few days is a debate about the best set of policies to attain that objective. This will not be the last debate. For example, even in an area where we have come to an agreement with respect to the taxation of telephone calls made over the Internet, this is not the last word. As the Senator from Tennessee and I have discussed, we still have the Federal Communications Commission in a position to take a more comprehensive look, for example, on how phone calls made over the Internet are going to be regulated and dealt with by the various jurisdictions.

This debate is sure to continue for many days ahead, but this is a banner day. This is a day when the Senate has made some judgments that will help keep the Internet healthy and vibrant in the days ahead. That is a great success. I commend my colleagues for being patient enough to deal with the subject.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Missouri.

UNANIMOUS CONSENT REQUEST—H.R. 3550

**MR. BOND.** Mr. President, a few moments ago, my good friend from Nevada talked about how the highway transportation system in Nevada depends upon the Internet and all the technology there. And I agree with him. We are very proud of the technology, the intelligence transportation systems, and other things we have in our Missouri Department of Transportation, our highway entity.

I was very pleased he read off a list of people who support the measure we passed in the Senate. That just rein-

forces what I have said for a long time. We had an overwhelming vote to get the number of \$255 billion for highways. We had an overwhelming vote to get a bill to the floor. We had an overwhelming vote of 76 to 21 to pass a good 6-year highway bill.

My good friend from Nevada worked very closely with us. I tell you, as long as I have been in the Senate, I do not know if we ever had better bipartisan cooperation than Senator INHOFE and I on the Republican side have had with Senator JEFFORDS and Senator REID on the Democratic side.

Mr. President, 11 weeks ago, we passed this wonderful highway bill. This, what I hold in my hand, is the highway bill. It passed overwhelmingly. It is a 6-year, \$318 billion bill for all of transportation. Do you know what? It is still sitting at the desk. I was on this floor raising Cain with our House colleagues because they would not move. I believe my friend from Nevada joined with us.

Well, they moved. It will be 4 weeks tomorrow that they moved. Now, something that maybe a lot of people don't understand is, when you pass a bill like this, it doesn't go into the President's hands; it doesn't become law. You have to take some procedural steps to move it out of here. You have to substitute this bill for the House bill. You have to insist on a conference. You have to name conferees and send it back to the House—procedural items.

For most of the time I have been here, it happens automatically. Once you have a conference, then the Republican and Democratic conferees from the House sit down with the Republican and Democratic conferees from the Senate, and you can move forward.

But do you know what. We are stuck. We are stymied. Senator REID wants to know what we can do. I say, very simply, what we need to do is to stop blocking the transfer of this bill back into conference with the House. What part of "yes" don't you understand? This is a simple matter. Now we have kicked the can down the road. We have had extensions and extensions, and we can't sit down and talk with our House colleagues.

And I said: Wait a minute. We have intelligence transportation systems in Missouri and every other State in the Nation. We have a need for good highways, roads, and bridges, to promote our homeland security, to create jobs, to relieve congestion, to promote long-term economic growth, and for safety. At least a third of the 43,000 people killed on highways every year in the Nation are killed because of unsafe highways.

So my good friend from Nevada wants to know what he can do to get an extension; and I said so this morning. I said: It is very easy. Let us move forward on the bill. We have tough issues to work out with the White House. We cannot work on those issues until we can sit down with the House and move forward. We have been

blocked by the actions of the other side.

I asked unanimous consent this morning to move forward, and the distinguished minority whip on the other side had another unanimous consent request. I said I would be happy to accept his if he accepts this one. Let's move the process forward. This is not rocket science. This is a necessary procedural step.

I am going home to Missouri this weekend. And do you know what. People are going to ask me: Why haven't you passed a highway bill? I would not be surprised if at least 90 percent of the Members of this body are asked the same question: Why haven't you passed a highway bill? One simple answer: 76 Members of this body voted for it, but now the other side objects to the procedural steps we need to take to move this into conference.

Nothing is going to happen until we move this bill into conference. This is not some strange procedure. Up until this year, this has been the normal procedure. Maybe if my colleague is sufficiently concerned about the extension, maybe if I renewed my request, he would be willing to move the bill forward.

Therefore, Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the House-passed highway bill, H.R. 3550; provided further that all after the enacting clause be stricken and the text of S. 1072, as passed, be inserted in lieu thereof; the bill then be read a third time and passed; further that the Senate then insist on its amendment, request a conference with the House, and the Chair then be authorized to appoint conferees on the part of the Senate, with a ratio of 11 to 10.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, we have a bill that is about to be completed, and I do not want to interfere. I have a statement that will take a few minutes. But I want the RECORD spread with the fact that after I do object, sometime before the day is out I will renew my request for the 2-month extension together with a statement.

So at this time, I say to the two managers of the bill, do you want to do something on this bill that is now before the Senate? I ask, through the Chair, the distinguished chairman of the Commerce Committee, are you ready to do something right now on the bill? Otherwise, I will give my statement.

As I said to the Chair, I do not want to take away from moving this bill forward if people are ready to do something. But we are waiting for Senator FEINSTEIN, I understand.

Mr. MCCAIN. That is correct. Please proceed.

Mr. DORGAN. Mr. President, if I might respond, Senator FEINSTEIN has actually left her office and is on her way.

Mr. REID. Mr. President, I will speak very briefly. When she shows up, I will finish within a couple minutes.

The PRESIDING OFFICER. The Senator from Missouri has the floor.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Missouri.

Mr. BOND. Mr. President, I am sorry there continues to be an objection. I do not want to hold up this bill any longer. I want to see the Internet tax moratorium bill pass. I want to see us move forward on highways and transportation. I felt it was necessary to come down to clarify, based on what my good friend from Nevada said, that I am trying to move the process along. And when he asks his unanimous consent, I would ask that my unanimous consent be added to it so we can move forward. That is all we are doing.

This is very simple, standard procedure. I appreciate the time of the managers and everybody else. But there are an awful lot of people in this country who are waiting for a good 6-year Transportation bill, one like we passed in this Senate.

I appreciate my colleagues' time. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Mr. President, this will be the third extension of this very important legislation. The first extension was the 5-month extension. We did that because we could not get our act together: Senator INHOFE, Senator JEFFORDS, Senator BOND, and this Senator. As a result of that, we got a commitment from the majority leader and the minority leader we could take up this bill at a specified time in February. Everyone lived up to that agreement, and we did that. Within almost a record period of time, we passed this very important legislation. So that was the reason for the first extension.

The second extension was necessary because the House had not yet done their legislating. We asked for a 2-month extension on this matter on February 27.

At that time Senators MCCAIN and LIEBERMAN objected to that extension because they had some problems with the 9/11 Commission. As a result of that, a number of us came to the floor and said: How could Senator MCCAIN and Senator LIEBERMAN do such a thing? And in the process, statements were made, some of which were by the distinguished Senator from Missouri.

I quote from the CONGRESSIONAL RECORD of that date. I will not read the whole statement. I will read that which is pertinent. This is a quote from the distinguished Senator from Missouri:

What the Senators from Arizona and Connecticut are doing is seeking to hold hostage the whole highway program in the United States.

I agree. That is what is happening now.

The Senator further went on to say: This extension expires on Sunday.

Just as it does now.

If we fail to extend this, there will be a shutdown of any further contract authority for Federal aid highway projects and a shutdown of payments for work already contracted for by the States and performed by contractors. This means no further projects can be approved or awarded. It also means that not only the Federal Highway Administration but also the National Highway Traffic Safety Administration, the Federal Motor Carrier Administration, as well as the Bureau of Transportation Statistics, will cease operation.

**Skiping:**

Not only are we talking about people's livelihoods, we are shutting down the Federal agencies, which will have an adverse consequence for our Nation's highways, motor carrier safety, and consequently for the condition and operation of our Nation's surface transportation system.

**Skipping down two more paragraphs:**

Jobs will be lost in the private sector. An extension is bad enough, but a complete disruption of the program when there are crucial job needs across the country will have an economic impact on the families directly, and on the economy.

**Next paragraph:**

We need the extension to stop playing politics with people's jobs in this most important legislation.

Mr. BOND. Mr. President, will my colleague yield for a question?

Mr. REID. I will shortly.

I could not have said it better myself. That is what we are facing right now. We are facing a shutdown of jobs. We will furlough 5,000 people in the agencies that were referred to on February 27 by my friend.

The people of this country should understand there are different ways of getting a bill to the President's desk. It is not necessarily with a conference. I have told Senator INHOFE and Senator FRIST that does not mean we are not going to go to conference.

I say to my friends, anyone within the sound of my voice, if conferees were appointed right now, immediately, the first thing we would do is say: OK, staff, majority staff, minority staff, majority and minority staff from the House, get together and work on this. See what you can come up with. Bring it back to us. That would take a couple of weeks to do that.

Then we would work through whatever they couldn't work through themselves. Finally, the Members would agree on certain things. Then if there were things we could not agree on, we would take it to the full conference.

We are weeks and weeks away from that if we appoint a conference right now. The point is, we are not appointing conferences right now because, as I said before, we have on many occasions, more than 20 times already in this year's Congress, passed legislation by what we call preconferencing it. It does not matter what you call it.

I have the same goal as the Senator from Missouri. We want a highway bill. I appreciate and admire and respect his energy in helping arrive at this bill where we now have a bill that is good

for the American people, a 6-year bill, \$318 billion that is good for roads and transit.

I hope the Senator has made his point, but I do believe we need to get this short 2-month extension done and then if there is something that comes up in 2 months that the Senator thinks we are not making progress on the legislation, then he may want to try something such as this again.

I yield to my friend who said he had a question.

Mr. BOND. Mr. President, I express my appreciation to the Senator from Nevada for reciting the deathless prose that I shared with this body the last time we were trying to get an extension. I made those statements because the highway bill is so important.

I ask my friend if he understands my message today—I know what the process is like; we go through this process of appointing conferees, and it takes a long time to get it done—if he understands that the way to move forward is to stop objecting to the simple procedural process of substituting this bill for the House bill, reading it a third time, passing it, naming conferees, sending it to the House and asking for a conference, all he has to do is to say yes to the unanimous consent request. I will say yes to his request and we can get on with the business. This is absolutely an unnecessary procedural delay. Every day we fail to appoint conferees, we are further down the road.

Did I make myself clear to my friend from Nevada? If he will agree to take the procedural steps, I will be happy to remove my objection to the extension.

Mr. REID. Mr. President, in answer to the Senator from Missouri's question, I certainly understand the point he is making. I simply do not agree.

I, therefore, at a subsequent time before we adjourn this evening, will ask unanimous consent that the Senate pass a 2-month extension, something the House has already done.

At this time Senator FEINSTEIN has arrived and I would only end by saying that I personally would not want to return to Nevada, recognizing that I would not agree to a 2-month extension. In Nevada, it would wreak havoc with the growth of the State there.

The fact is, even where there is not rapid growth, as in Nevada, there are repairs that must be done. The construction season is upon us. Some of these projects will never go forward.

AMENDMENT NO. 3105 TO AMENDMENT NO. 3048

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, Mr. ALLEN, Mr. VOINOVICH, Mr. ALEXANDER, Mr. DORGAN, Mr. CARPER, and Mr. WYDEN, proposes an amendment numbered 3105 to amendment No. 3048.

The amendment is as follows:

On page 8 strike lines 1 through 9 and insert the following:

**"SEC. 1108. EXCEPTION FOR VOICE SERVICES OVER THE INTERNET."**

"Nothing in this Act shall be construed to effect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging."

Mr. MCCAIN. Mr. President, I submit the amendment on behalf of myself, Senator ALLEN, Senator VOINOVICH, Senator ALEXANDER, Senator DORGAN, Senator CARPER, and Senator WYDEN. It refines the language concerning the voice over Internet protocol. It is a product of an agreement of language between all of us. I ask for its consideration.

Before I do that, I believe Senator FEINSTEIN has an amendment she wants to propose. I hope we can get an agreement, say, 40 minutes equally divided, if that would be agreeable.

Mrs. FEINSTEIN. That would be fine.

Mr. MCCAIN. Forty minutes equally divided, followed by a recorded vote, which would then be followed by final passage. I ask unanimous consent that after disposal of the pending amendment, no more amendments be in order, that there be 40 minutes equally divided between myself and Senator FEINSTEIN, a vote on the amendment, followed immediately by a final passage recorded vote.

Mr. REID. Reserving the right to object, I direct this question to the manager of the bill, Senator DORGAN. Is that correct, that all amendments have been offered?

Mr. DORGAN. Mr. President, to my knowledge, all of the amendments that have been previously noticed would not be offered. We have tried to check with the authors. A number of them would not be in order postclosure. We have checked with the authors of the amendments that were noticed. My understanding is that there are no amendments on this side other than Senator FEINSTEIN. At least we have not been notified that there is an amendment out there other than Senator FEINSTEIN.

Mr. REID. I would say also to the two managers of the bill, then we should be advised there will be at least two more votes, perhaps on Feinstein and final passage.

Mr. MCCAIN. That is correct.

Mr. REID. I would say also to my two friends, I always like to have the trains run on time. This is excellent work. I appreciate this. I thought it couldn't be done today. I have no objection.

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

The question is agreeing to amendment No. 3105.

The Senator from Tennessee.

Mr. ALEXANDER. Is it appropriate for me to make a few remarks on the McCain amendment?

The PRESIDING OFFICER. It is.

Mr. ALEXANDER. I won't take many minutes, but I wanted to do this while

the chairman of the committee and Senators WYDEN and ALLEN and DORGAN are all here. I intend to vote for this legislation tonight. This is a good result.

Senator LOTT made some comments a few minutes ago about how the Senate can sometimes come to a good conclusion. Before I came to the Senate, I spent a year and a half teaching a course in American character at the Kennedy School of Government at Harvard. What we talked about there was what distinguishes our country is that we agree on a few principles. Professor Samuel Huntington pointed out that our politics is a conflict between those principles. We had a conflict here between laissez-faire free market principles and federalism, and they are both very important.

We have been working hard to come to agreement, and we got a good result. Senator ALLEN and Senator WYDEN should feel very good about what they have been able to accomplish, and this has been a fashion of theirs for a long time. I feel good about the fact that Senators CARPER, VOINOVICH, GRAHAM, FEINSTEIN, and others have been able to remind us of the importance of a strong Federal system as we debate our issues, and that we promise as a Congress to do our best to minimize harm to State and local governments as we take important actions here.

So what pleases me about the result is what Senator MCCAIN talked about—moving from a permanent ban to 4 years. I think that is good. Far and away, the most important result is the clarification that Senator MCCAIN has been able to achieve on the question of whether we are trying to decide what to do about telephone calls made over the Internet. That is not what we are trying to do with this legislation. We had that in our mind on both sides, but we have not been able to agree on that. That is far and away the biggest issue for State and local governments, because they collect up to \$18 billion a year in taxes on telephone services. That may change as time goes on, but we did not want ambiguous language, or a misunderstanding, or to run the risk during the period of this moratorium—which we prefer to call a temporary timeout—that anyone would think we were trying to decide the issue of what to do about telephone calls made over the Internet.

Senator MCCAIN's amendment makes that clear and it speaks for itself. Also, he has been able, through his final suggestion, to leave some grandfather extensions in the bill. I would like to see more. We will have a chance to vote on more in a minute.

The area where we did not go as far as we would like on our side was in the definition. It expands the tax exempt coverage to what we call the backbone and a number of other Internet activities. But this is a good result. It should be a wake-up call to Members of the Congress that this is the fastest-growing new technology in America. It is

going to change the way we live, and it should be a wake-up call to us who care about federalism—all of us, and Governors and mayors everywhere—that we are going to have to do careful, creative, constructive thinking about what the impact of this is on our Federal system. What does it do to Governors, mayors, and county commissioners?

We are making a temporary decision here, but the Commerce Committees of this Congress have already said they are going to take the issue up in November. So from where we started in December, to where we are today, I feel very good about it.

I especially thank the chairman of the Commerce Committee, who has, from the beginning, in terms of allowing me to testify before the committee—I am not a member of the Commerce Committee; this is not an area in which I am usually involved—he respected my effort, and that of others, to push the issue of federalism forward. I thank him for helping us create a very good result.

So while I intend to be a cosponsor of Senator FEINSTEIN's bill, I believe that what we have achieved so far goes a long way in minimizing the effect of this legislation on doing harm to State and local governments. It taught all of us that this is an issue we need to learn more about to make sure we deal with it intelligently.

I thank you for the time. I thank the Senator from Arizona for his leadership. Also, Senator ALLEN and Senator WYDEN have been congenial as well as effective in their work. I am grateful for that as well. I have enjoyed working with them.

The PRESIDING OFFICER. Is there further debate on the McCain amendment?

Mr. DORGAN. Mr. President, Senator MCCAIN has offered this amendment with agreement from all of us who have participated earlier today in a meeting to discuss areas of disagreement. This was one of the areas of disagreement. It is called VOIP, voice over Internet protocol. We had concern about the section of the McCain substitute that dealt with this topic.

After a meeting, we were able to reach agreement on the language. So what Senator MCCAIN is now offering is an amendment to his substitute which actually deals with this issue in a manner that is consistent with the intent of everyone who has participated in the meeting. I am pleased to support it. I think it improves this bill and adds to the bill language that reflects the intent of all of us who have worked together on it.

So I fully support the amendment offered by Senator MCCAIN. There is no objection to passing it by a voice vote.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MCCAIN. The Senator from Delaware would like to make a comment.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. Mr. President, I have listened, and I understand we are debating—actually embracing—the McCain amendment to modify the language that would ensure States which have traditionally been able to derive revenue from telephone communications would continue to be able to do that. As we go forward in time—and those communications are expected to migrate to the Internet—we want to make sure we don't undercut the ability of States to continue to derive some revenues from this.

We had a good exchange an hour or so ago among Senators ALEXANDER, VOINOVICH, myself, and our friends who have different views on the overall bill. I am pleased we were able to come to an agreement, not just in spirit but in letter as well. We all said we were interested in the same thing. We don't want to undercut the bill. The language in the original amendment did not appear to do that—at least to us. We would rather not have ambiguity going forward.

At a future date, if there is a court hearing and a judge is looking at the language, trying to figure out what we meant, we want the judge to understand very clearly that this body, the Congress, has no interest in taking away the ability of States to raise revenue from a longstanding traditional source—some say it goes back to the time when Alexander Graham Bell invented the telephone. I don't know if the tax has been around that long, but I think this preserves that for the States, and that is important, as telephone communications migrate to the Internet.

I thank my colleagues, Senators MCCAIN, ALLEN, and WYDEN, for working with us. In fact, our staffs helped thread the needle in a very constructive and tough way.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 3105) was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized to offer an amendment.

AMENDMENT NO. 3052, AS MODIFIED, TO  
AMENDMENT NO. 3048

Mrs. FEINSTEIN. Mr. President, I have sent a modification to the desk to amendment No. 3052.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN] proposes an amendment numbered 3052, as modified, to amendment No. 3048.

The amendment is as follows:

(Purpose: To extend the grandfathers for the term of the moratorium extension)

On page 5, line 20, strike "2005." and insert "2007."

Mrs. FEINSTEIN. Mr. President, essentially, this is a one-line amendment. It takes page 5 of the bill and strikes the date 2005 and inserts 2007.

Essentially, this amendment makes both grandfather clauses in the bill 4-years in duration. This would mean no new taxes for the industry that is concerned, and the cities and counties would not lose the revenue they currently receive, for at least 4 years.

I want to say again—I said this yesterday—not one single California company that supports this bill has contacted me, but I have heard from representatives of 478 cities in the State saying: Please, don't do this. It may well be because in California, local jurisdictions have very limited revenue sources. It is either the property tax or a small amount of sales tax or if they have a hotel tax, but there are not many tax vehicles. So utility user taxes, as well as telephone taxes, have for many cities been a critical part of their budget, for some up to 15 percent. That is just a fact. California may be an anomaly. Maybe I know this because I have been a mayor for 9 years and a county supervisor for 9 years.

This would affect telecommunications services, taxes that have been in place since the old moratorium was enacted, particularly local exchange.

For the city of Los Angeles, whose chief administrative officer, William Fujioka, has said his city could lose \$40 million a year if local exchange service is not protected. So this grandfather clause to the largest city in my State is worth \$40 million a year of taxes that have been levied, of revenues that are counted upon to balance the budget.

Senator INOUYE joins me in cosponsoring this amendment, as do Senator CARPER, Senator ALEXANDER, Senator VOINOVICH, and Senator HOLLINGS.

It seems to me that it is not unreasonable to say to hard-pressed cities and counties that you have 4 years to find other revenue sources or make the necessary cuts. This does not have to be done immediately. None of the companies who benefit from this bill are suffering. As a matter of fact, most of them are doing very well. It is the cities that have the hard time funding police officers, funding firefighters, and it is not easy. Nearly every city in the State of California has a deficit and is losing revenues. I cannot just stand here on the floor of the Senate and let this happen because I have news for everybody: Where people want their services is on the local level.

Some say: Oh, no, this will not happen. But when you ask the technical analysts and the attorneys of these communities whether it will happen, they say yes.

I very much appreciate the change that was made in the Voice Over Internet Protocol language of the bill. This goes a long way. I very much appreciate the 4-year grandfather clause given for Internet access. That goes a further distance.

There is this 2-year grandfather for those who use DSL or these local exchanges—and I do not understand why one is 4 years and the other is 2 years. I do not understand why these companies cannot wait 4 years before they are going to end up socking it to the cities. It may be that in some States this is not the case. I know it is the case in my State.

Again, I am very pleased to be joined by Senators INOUYE, ALEXANDER, CARPER, VOINOVICH, and HOLLINGS as co-sponsors of this amendment. It seems to me to make sense. It seems a compromise which for the proponents should be relatively easy to make. I think it will make a big difference to the cities of California.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? Who yields time to the Senator from Oregon?

Mr. WYDEN. Mr. President, I believe we have an agreement to share the time. I am allocated 10 minutes to speak on this amendment. I am not going to take 10 minutes, but it will come from the allocation under the agreement worked out by the chairman of the committee and the manager of the bill, Senator DORGAN.

The PRESIDING OFFICER. This is off the chairman's time?

Mrs. FEINSTEIN. This would come off Senator McCAIN's time.

Mr. WYDEN. Yes, that will be fine. I will not take 10 minutes.

Mr. President, the Senator from California knows how much respect I have for her, but I must profoundly disagree with this amendment. This amendment would essentially reward bad behavior. What we have is a number of jurisdictions doing what clearly is in violation of the law. We do not even think they are in California, but in jurisdictions around the country people are taxing DSL. We are convinced that is clearly against the law. It certainly promotes technological inequality because we have a situation where cable gets a free ride, and then they end up taxing DSL.

The Feinstein amendment would make the 2-year DSL grandfather 4 years. Some of these grandfathers in this bill are going to live longer than Methuselah. It certainly does not make sensible public policy, and it does not make sensible public policy when we would be discriminating against the future. The future is broadband, high-speed Internet access through DSL. This would allow folks to keep taxing DSL, which has certainly been contrary to the spirit of everything we have done over the last 7 years. It, in effect, would be rewarding bad behavior. It would certainly discriminate against DSL relative to cable.

I think this would be a significant mistake. Certainly, there are different technology platforms for Internet access, but for 8 years, the central proposition I tried to advance on this legislation is that there ought to be technological equality; that we ought not to

treat all technologies differently. We had a number of jurisdictions violate that. They have gone out and stuck it to DSL. So DSL gets taxed, and cable does not get taxed. We don't think it happens in California, but it certainly has happened around the country.

I do not think we ought to let these grandfathers outlive us all. That is essentially where we are going on this issue. We just keep extending the life of these grandfathers. It is going to do great damage to the country's future by particularly discouraging broadband development through DSL.

I hope the Senate will oppose the amendment. I cannot say there is anybody I would rather not oppose than the Senator from California. I agree with her on virtually everything under the Sun with respect to public policy.

But, Mr. President, I say to the Senate, if they vote for the Feinstein amendment, they are rewarding bad behavior. They are encouraging technological inequality. We have already taken steps to let some of these grandfathers live longer than I certainly would. We are now saying that some of them are going to make Methuselah look young. I think it is a mistake. I urge my colleagues to oppose the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I would like to be sure the record is correct. I appreciate the comments of the Senator from Oregon. He knows I respect him and enjoy working with him. There is no problem there.

Let me make sure the record is correct. California's cities do not tax DSL. We are not one of the 27 states.

Mr. WYDEN. We agree.

Mrs. FEINSTEIN. That is not the issue. The issue is the local exchange and because of the particular "proposition 13" situation where local revenues are so restricted, property taxes are so restricted, it is extraordinarily difficult. So utility user taxes, local exchange taxes actually play a substantial role in some smaller cities' budgets. That is just a fact.

Los Angeles, the biggest city, a city with a lot of problems, a city with a big gang population, needs a lot of police. Some of that police force is actually funded from this local exchange money, which totals \$40 million a year.

I yield time to the distinguished Senator from Tennessee. May I ask how much time he would like.

Mr. ALEXANDER. Three minutes.

Mrs. FEINSTEIN. I yield 3 minutes of my time to Senator ALEXANDER.

Mr. ALEXANDER. I thank the Senator from California for her leadership on this issue. From the beginning, because of her background as mayor of San Francisco, she has had a clear understanding of the effect of this debate on the ability of cities and States to do what they are expected to do, and the importance of our Federal system of government.

Now, Senators should consider on both sides of the aisle what this means. It means we have largely come to a consensus, at least from my point of view, about what we want to do. We have decided that for the States that were already taxing Internet access in 1998, they should have 4 years more as we have a 4-year moratorium on new taxes.

What the Senator from California is saying is, then the States that are taxing Internet access that is delivered in other kinds of ways should also have the same 4 years. I believe she is right. Senator FEINSTEIN's position says no new taxes, no new harm, and treat all States the same. That is a fair result that fits with the consensus that we have developed for the rest of this legislation, and I will support it, vote for it, and cosponsor it. I hope our colleagues will do the same.

The PRESIDING OFFICER. Who yields time?

Mr. McCAIN. I yield to the Senator from Virginia such time as he may consume.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, the Senator from California mentioned waiting for 4 years while this bill ends. The reality is that those who are paying taxes right now because some States and localities have started taxing DSL in the last several years, that means consumers, with the amendment that was approved in the McCain amendment, that the consumers are going to be taxed for 2 more years. The design of this bill, as amended, is to protect taxpayers. It is to protect consumers. It is to expand opportunity, jobs, and commerce to people all across this country.

The grandfather clause that Senator McCRAIN put in his amendments, particularly on the DSL, is different than what we passed out of the committee, which was to stop these DSL taxes immediately because what has happened in the last few years is some of these localities and States have figured out ways around the intent of the original Internet tax moratorium and, indeed, are taxing the backbone. Having a 4-year grandfather on DSL taxes, on the backbone, on high-speed broadband, rewards those who have been the most aggressive in looking at loopholes to tax. It is going to cause probably more litigation as well because it can always be argued over.

The reality of taxes is that they want to put them on DSL. They want telecommunications taxes. Telecommunications taxes on average across this country are about 15 to 17 percent. Some places it is worse than others. Richmond, VA, is about the worst in the whole country. About 27 percent is the local tax. These are the kinds of taxes that are going to be imposed on DSL bills, whether from the telephone, wireless, BlackBerrys or Y5.

The issue is this is the way that our Internet access bills should look, without DSL taxes on it. Here is the cost,

\$23.90, \$25, \$37, whatever it may be, no taxes, clear, simple, understandable, and more affordable. If taxes are put on, the Internet service bill will look like what a telephone bill looks like right now, and this is just one page of it, but all the local taxes, all the State taxes, all the Federal taxes, again, on average in this country are about 17 percent. This is what we are trying to prevent.

The Feinstein-Alexander amendment, though, would allow this sort of taxation onto the Internet service access bill. One of the problems we have, and Senator WYDEN brought it up, is how do we ever get rid of taxes? Guess what. Part of this tax was put in as a luxury tax on telephone service to finance the Spanish American War in 1898. Everybody is still paying that tax. That war has been fought and won over 100 years ago. That is how difficult it is, nearly impossible, to ever get rid of taxes.

The McCain compromise allows those who are taxing DSL to wean themselves off of that tax over 2 years. The reality is if the grandfather is allowed to go on 4 years, which is the duration of the entire measure on the moratorium, they will never take off those taxes. So I say to my colleagues, the time to act is now because this is how it will impact across the country.

Say someone wanted to e-mail from Washington, DC, to Los Angeles, CA. That is going to be routed to Chicago, which has a hub, another big hub in Austin, across all the way to the Bay area of San Francisco that has a hub, and then to Los Angeles. That is the way it would go. All of these jurisdictions in between that 3,000 miles are going to be able to put on these DSL taxes. This is what we are trying to stop.

The ones that have been doing it—and it is unclear how many States are doing it at this point. Some say 8, some say 12, some say 20. The point is, there is going to be 3,000 miles of taxes from localities, States, and jurisdictions in between.

The States will have enough time with the McCain compromise, which is, I think, very generous to those who are advocates of allowing taxation on the Internet, to have 2 more years to wean themselves off of it.

The big issue on the fiscal impact that one would hear all the time was voice over IP, worrying about telephone service migrating to the Internet. That has been resolved. The junior Senator from Tennessee, Mr. ALEXANDER, and I debated and discussed it. All of us worked on it, and finally, this afternoon we were able to get language that everyone could agree upon.

So when folks say it is going to have such a big hit, a big cost on States and localities, the voice over amendment, which we all adopted unanimously, will take away those fiscal impacts.

What we are now talking about, though, is whether there is going to be 3,000 miles of taxation and subjecting

Internet traffic to that sort of taxation. This is clearly undesirable, particularly when we are trying to get high-speed broadband built out to rural and small town communities. If we start increasing taxes on DSL and broadband, it is going to make it very difficult to get companies to invest, but most importantly it will mean more people will be unable to afford DSL or high-speed broadband services.

So I ask my colleagues to make sure we avoid this sort of taxation. Do not let all those States in America put on taxes like the ones we see on our telephone bill. Let us make sure we act on this amendment to defeat it. The defeat of this amendment will be a protection to consumers, and it also will be a vote to expand economic opportunity and prosperity for all Americans everywhere in our country.

I respectfully urge my colleagues to defeat or vote no on the Feinstein-Alexander amendment because it is contrary to the desirability of economic opportunity for Americans. Adding more taxes, or allowing these taxes to continue for 4 years, is not the policy to make this country more competitive, individuals more free, with greater opportunities.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). Who yields time?

Mrs. FEINSTEIN. How much time do I have remaining?

The PRESIDING OFFICER. Twelve minutes.

Mrs. FEINSTEIN. I yield 4 minutes to the Senator from Ohio, Mr. VOINOVICH.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, perhaps I have been in local and State government too long. I really do care about my brothers and sisters in State government and in local government.

I was not going to speak on the Feinstein amendment, but I have some statistics about the fiscal stress on the States that would lose the DSL after they sunset the exemption in the next 2 years. I am here to urge my colleagues to support the 4-year extension for those States that have used DSL.

The reason for it is this: The States are under one of the worst fiscal constraints they have been in since the Second World War. Alabama, projected deficit next year, \$620 million; Alaska, \$475 million; Arizona, the State of the Senator MCCAIN, sponsor of the underlying compromise, \$1.1 billion; California, \$15 billion; Connecticut, \$200 million; Illinois, \$2 billion; Indiana, \$595 million; Kentucky, \$200 million; Louisiana \$500 million; Minnesota, \$185 million; Mississippi, \$709 million—a small State, lots of money; Missouri, \$600 million; New Jersey, \$5 billion; New York, \$5.1 billion; North Carolina, \$400 million; Rhode Island, \$188 million; South Carolina, \$300 million.

The States are in trouble. If we give them an extra 2 years so they can make the adjustment in terms of losing

these dollars, I think it will help them segue into a situation where they can get themselves back on track.

The last thing I would say is that the way this is going, I think it could end up being the largest unfunded mandate on the States. We should at least give these States a break.

I urge my colleagues to include passing the Feinstein amendment.

The PRESIDING OFFICER. Who yields time? The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Ohio for his comments and for his leadership.

I yield 5 minutes to the Senator from Delaware, Mr. CARPER.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. I thank Senator FEINSTEIN for yielding time and particularly for offering this amendment. I would say to my colleagues, I believe we have made pretty good progress, not just today but over the last several weeks, maybe the last several months, in terms of narrowing our differences. I am encouraged by that. I hope others of us are as well.

One of the great concerns some of us had was a moratorium on the ability of State and local governments to collect certain kinds of revenues that lasted forever. I am pleased that is not the case anymore. We have a moratorium of a finite duration, and the duration of the moratorium will be 4 years. I am encouraged that we entered into a healthy negotiation on just how can we make sure State and local governments which traditionally derive revenue from telephone operations continue to do that. We had a good-faith negotiation, and that led to an amendment offered by Senator MCCAIN that was accepted unanimously. That was a very important provision.

There is one more issue I believe needs to be addressed. It is addressed in the Feinstein amendment. If somehow the Feinstein amendment could be adopted, I believe we would have a bill—in fact, we would have a bill I would vote for. I know the Presiding Officer, Senator ALEXANDER, with whom I have worked very hard on these issues, indicated he would very likely do the same thing. For us to come from sort of how far apart we were to the point where we could actually vote for this bill were this change enacted is no small amount of progress.

Some of my colleagues have said to me that this is a complex issue. It is. Some have said to me I don't really understand most of these issues. I have studied hard. I confess there is still a good deal I don't know. But I would share with my colleagues, whether you understand the intricacies of the backbone of the Internet and what DSL means, I think we understand this and I hope we could agree on this: If we are going to say that on the one hand we are going to extend the moratorium for 4 years, and we are going to say to State and local governments there are

certain things you can't do during those 4 years, I think there is a great virtue in saying to those States that are legally collecting revenues that they can continue to do that. They have not violated the law. In fact, the old moratorium enacted in 1998 explicitly said the moratorium did not apply to telecommunications services. That is what it said.

DSL has a telecom component in it. As such, States are not prohibited from taxing DSL. Around 17 States currently do. All we are asking in this amendment is that the grandfather clause, both for dial-up and for DSL, run coterminously with the term in the McCain compromise, and that is 4 years.

If we have a 4-year moratorium, why shouldn't we have a 4-year grandfather in States that are not doing anything illegal but, frankly, exercising their rights as sovereign States? I like that symmetry and balance. What I like maybe even more is it enables those of us who fought very hard over these issues in recent weeks and months to actually come together in the end and vote for this package.

So I say to my colleagues, if you voted earlier today, maybe, for cloture, and you thought in voting for cloture you were voting for a 4-year grandfather for State and local governments, you did not. What you thought you were voting for and what you thought you were getting, you did not get. You have the opportunity now to make amends for that, and I hope you will do that by voting for the Feinstein amendment: 4-year moratorium, 4-year grandfather. It is a good symmetry, and, frankly, it is a very good compromise and one that will enable us to go ahead and proceed on this bill and pass it and ultimately to enact it.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from California.

Mrs. FEINSTEIN. Mr. President, I want to comment for a couple of minutes on the discussion that was had with Senator MCCAIN, Senator DORGAN, and Senator WYDEN and the concern here of the telecommunications taxes which have been exempted from the bill—in other words, those that have always been a legitimate source of revenue raising. I have an Ernst & Young study going back to 1999 that shows, for example, in the taxes collected by California in the year 1999, on telecommunications transaction taxes, the amount was \$802 million. It doesn't say which precise taxes those are. This is the depth of this problem. This is not a small problem. What bothers me is we are moving on without really knowing. The finance officers of the larger cities of California tell me one thing. The Senator from Arizona believes that is not correct and says the intention of the bill is not, in fact, to make these non-DSL telecommunications services tax-exempt.

I would like to ask the Senator from Arizona.

Mr. WYDEN. Will the Senator yield briefly? Because I have been following this, along with the Senator from Arizona, and we may be able to have a colloquy to work this out.

California does not tax DSL now.

Mrs. FEINSTEIN. Correct.

Mr. WYDEN. That is good. California does not tax the backbone of the communications system now. California does, based on these analyses that have been given you, tax various telecommunications services. I think it would be fair to all of us to say it is our desire to keep the status quo in California.

In other words, various services are paying telecommunications taxes now. The reading of our proposal indicates there is nothing which would prevent California from being able to continue to impose those taxes.

Would it be acceptable to the Senator from California to have a colloquy which would allow us to include some report language stipulating in those areas where communications services are being taxed now that there is nothing in the McCain proposal which would change that? If that would be acceptable to the Senator from California, we might be able to work out with the chairman of the committee and the Senator from Virginia report language and withdraw her amendment. That would protect the status quo in California. It would, however, make sure we are not rewarding bad behavior in other States around the country that tax DSL.

If the Feinstein amendment is offered in its current form, I will oppose it very strongly. The Feinstein amendment, if it is offered, and if we can't agree on a colloquy, would promote technological inequality. It would nail DSL and give cable a free ride.

I will urge the Senate to oppose the Feinstein amendment, but I would be open to report language with my colleague from California to make sure it is the intent of the Senate to keep the status quo in California where DSL isn't taxed and the backbone isn't taxed where the Senator has been concerned.

Mrs. FEINSTEIN. If I might respond to that question through the Chair, we have worked with a group—the Senator from Delaware, the Senator from Ohio, the Senator from Tennessee—all along on this. I don't know the particular situation of their States. I don't know whether they tax DSL. I do know that the bill exempts telecommunications, and telecommunications has been a legitimate source of revenue which is now affected by this grandfather clause. Obviously, if I could get half a loaf for my State, I do not want to sell out those whom I have been working with over the last week.

The PRESIDING OFFICER. The time of the Senator from California has expired.

Mr. DORGAN. Mr. President, I ask unanimous consent that the Senator from California be given 2 additional minutes.

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

Mrs. FEINSTEIN. Mr. President, I would like an opportunity to talk with the Senator from Tennessee, the Senator from Ohio, and the Senator from Delaware to see if we can work something out that might meet the concern of the Senator from Oregon.

Mr. McCAIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Nine minutes.

Mr. McCAIN. Maybe the Senator could do that in the next few minutes while I make a couple of comments, if that is agreeable.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I would like to be clear that a tax on DSL services is a tax on Internet access. Seventeen States have cleverly found a way to get around the Internet tax moratorium. Right now, 17 States have gotten around at least the spirit if not the letter of the Internet tax moratorium by taxing DSL service.

The heart of this compromise to the original legislation had no grandfathering whatsoever—none, zero. So we put in a compromise that would have called for 3 years of non-DSL taxation, 2 years grandfathering in for non-DSL taxes. This would have given the DSL taxing States 2 years to adjust their budgets. Then we went from 3 years to 4 years' moratorium, lifting the moratorium for those who are taxing non-DSL taxes.

If we do this, we are gutting the compromise. It is unfair to DSL consumers. Why should consumers in one-third of all States be treated differently from the rest of the country?

I strongly oppose the amendment. I would like to work out the compromise as discussed between Senator FEINSTEIN, Senator WYDEN, and Senator ALLEN. I hope we can agree to it.

In the meantime, I ask unanimous consent to send an amendment to the desk on behalf of myself and Senator HUTCHISON which would then allow the State of Texas to have their "access line fee" included in the voice over IP compromise language.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, I didn't understand exactly what was agreed to.

The PRESIDING OFFICER. Is there objection to consideration of the amendment?

Mr. DORGAN. I reserve the right to object so I can understand what is happening.

Mr. McCAIN. Mr. President, 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. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. MCCAIN. Mr. President, I have an amendment at the desk, and I ask unanimous consent for its consideration on behalf of Senator HUTCHISON.

If there is an objection, just object and let us move on.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCAIN. What is the parliamentary situation, Mr. President?

The PRESIDING OFFICER. The Feinstein amendment is pending.

The PRESIDING OFFICER. There are 2 minutes 15 seconds for the Senator from Arizona, and 1 minute 42 seconds for Senator FEINSTEIN.

Mr. MCCAIN. Mr. President, we have compromised. We have been working on this issue for a long period of time. This is a compromise that is not widely regarded, and Senator ALLEN and Senator WYDEN accepted this grandfathering clause with great reluctance. Now the whole grandfathering clause would be made moot. I don't think consumers in one-third of all States should be treated differently than the rest of the country. I urge my colleagues to reject this amendment.

I yield back the remainder of my time.

PRESIDING OFFICER. The Senator from California has a minute 42 seconds.

Mrs. FEINSTEIN. Mr. President, I thank my colleagues for the discussion. The discussion shows how rapidly we are doing something about all the ramifications we may not know. This concerns me greatly.

This amendment is a simple amendment. It simply extends the grandfather clause and secures the telecommunications areas for those cities and States that have been using this methodology for revenue raising for years. In California, in 1999, the amount was \$802 million that came from this area. For Los Angeles, in 1 year it is \$40 million.

I hope Members of this body would be willing to move the 2-year grandfather clause to 4 years. This gives an opportunity for this to be sorted out. There is a Ninth Circuit Court opinion affecting DSL and cable. No one knows how that will sort itself out because it just came out a few weeks ago. The legislation may well be affected by it.

All I am asking is, make the grandfather clauses in both areas even. Raise the 2-year in this one—which affects the local exchange of telecommunications—to 4 years.

I yield the floor.

The PRESIDING OFFICER. All time has expired.

Mr. MCCAIN. I move to table the Feinstein amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Utah (Mr. BENNETT) and the Senator from Kentucky (Mr. BUNNING) are necessarily absent.

I further announce that if present and voting the Senator from Kentucky (Mr. BUNNING) would vote "yes."

Mr. REID. I announce that the Senator from Louisiana (Mr. BREAUX), the Senator from Massachusetts (Mr. KERRY), are necessarily absent.

The PRESIDING OFFICER (Mr. TAL-ENT). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 37, as follows:

[Rollcall Vote No. 76 Leg.]

YEAS—59

Allard	Dole	McConnell
Allen	Domenici	Miller
Baucus	Ensign	Murkowski
Bond	Fitzgerald	Murray
Boxer	Frist	Nelson (NE)
Brownback	Graham (SC)	Nickles
Burns	Grassley	Roberts
Campbell	Gregg	Santorum
Cantwell	Hagel	Schumer
Chambliss	Hatch	Sessions
Cochran	Hutchison	Shelby
Coleman	Inhofe	Smith
Collins	Kohl	Snowe
Cornyn	Kyl	Specter
Corzine	Landrieu	Sununu
Craig	Leahy	Talent
Crapo	Lieberman	Thomas
Dayton	Lincoln	Warner
DeWine	Lott	Wyden
Dodd	McCain	

NAYS—37

Akaka	Edwards	Lugar
Alexander	Enzi	Mikulski
Bayh	Feingold	Nelson (FL)
Biden	Feinstein	Pryor
Bingaman	Graham (FL)	Reed
Byrd	Harkin	Reid
Carper	Hollings	Rockefeller
Chafee	Inouye	Sarbanes
Clinton	Jeffords	Stabenow
Conrad	Johnson	Stevens
Daschle	Kennedy	Voinovich
Dorgan	Lautenberg	
Durbin	Levin	

NOT VOTING—4

Bennett	Bunning
Breaux	Kerry

The motion was agreed to.

Mr. KENNEDY. Mr. President, much of Massachusetts' economy is now based on technology and innovation. The high-tech industry tripled in Massachusetts over the past decade and drove our region's economy. The Massachusetts telecommunications sector employs over 110,000 workers in the State. We need to support their continued growth. We need to make broadband a priority since the technology can add \$300 billion a year to the U.S. economy and generate more than 1.2 million jobs. That is why this legislation is so important.

The issue on final passage of the McCain compromise amendment is whether the Nation continues to have a moratorium preventing taxation on access to the Internet. I have always supported the moratorium in the past, and I will do so again today.

I opposed cloture earlier today because I thought there was room for improvement, and I wanted the Senate to take the time to get it right. I am pleased with the improvements that have been made during the course of today's debate.

Congress should not jeopardize the continued advance of information technology by allowing the tax moratorium to disappear, subjecting the Internet to "multiple and discriminatory taxes." We clearly need to reinstate the moratorium. Now is the time to pass this legislation.

AMENDMENT NO. 3048

The PRESIDING OFFICER. The question is on agreeing to the McCain substitute, amendment No. 3048, as amended.

The amendment (No. 3048), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

DIAL-UP ACCESS

Mr. DAYTON. Mr. President I have some concerns about the impact of S. 150 that I wish to address to the gentleman from Oregon, the author of the Internet Tax Freedom Act. It is my understanding that S. 150 provides that Internet access services do not include telecommunications services purchased by customers to obtain dial-up access to the Internet. I also understand that S. 150 provides that only telecommunications services purchased or used by the provider of Internet access in providing Internet access are included within the moratorium.

Further, I understand that the Internet access moratorium does not apply to the sale or use of telecommunications services that are carried or "routed" over the internet that are not purchased or used to provide internet access, for example, services that are comparable to today's circuit switched voice but which are provided over internet protocol. This is often called "Voice Over Internet Protocol," or VOIP. Finally, to the extent that a telecommunications carrier sells both internet access services and telecommunications services, I understand that the charges for internet access are covered by the moratorium subject to the accounting rule covering aggregated charges for internet access and telecommunications services. Am I correct in my analysis of S. 150?

Mr. WYDEN. I appreciate the question from the Senator from Minnesota, who is distinguishing himself for his keen interest in technology issues. He is correct in his understanding of those matters and in his reading of the legislation.

As the author of the original Internet Tax Freedom Act, it is my intent that when it comes to services that are comparable to today's circuit switched voice but which are provided over internet protocol, what some call VOIP, the legislation's moratorium would not apply. In other words, the internet access moratorium would not apply to the sale of telecommunications services that are carried or routed over the Internet that are comparable to circuit switched voice services.

Mr. BAUCUS. Mr. President, I support the Internet Tax Freedom Act. This bill represents a reasonable compromise. We should enact it.

A tremendous amount of work went into this bill. I commend the Commerce Committee for its effort to resolve some of these complex issues. In particular, I commend Chairman McCANN and Senator HOLLINGS for working to bring parties together and develop a common-sense bill.

Last fall, the Senate entered an order recognizing that the Commerce and Finance Committees share jurisdiction over this bill. That order granted sequential referral of this bill to the Finance Committee after the Commerce Committee acted. We inherited a host of unresolved issues. And, after thorough examination—and in consultation with members of the Finance Committee—we decided to allow the bill to be discharged without a markup.

Let me briefly explain what this compromise bill does. Importantly, the bill extends the moratorium for 4 years. Some argue that this is too long, and others believe that the tax moratorium should be permanent. Four years represents a reasonable compromise. Four years will allow us to revisit unresolved issues in the future.

Next, the bill allows States to continue tax telecommunications if they decide they want to. The bill makes clear that when phone lines are carried over the Internet in the future using Voice Over Internet Protocol technology, States will still be able to assess telecommunications taxes on that service. I know several Senators had concerns about protecting their States' ability to tax phone service, and this bill meets their concerns.

Finally, the bill provides a soft landing for States that have been grandfathered under the 1998 act. The 1998 act allows certain States, who taxed Internet access prior to 1998, to continue to do so. It is time to make the Internet Tax Freedom Act national policy. The Internet is a national treasure, and a pillar of interstate commerce. In future legislation we should phase out the grandfather clause and allow us to move this national policy forward, without leaving any State behind.

This does not mean that I believe the bill is perfect. But it is a good bill. And it should move forward.

But before I agreed to support this bill, I made sure of two things: One, this bill would not harm Montana's businesses and citizens; and two, this bill would bring jobs and economic growth to Montana.

First, this bill will not harm Montana. It accommodates Montana's special needs in Universal Service and emergency 911 services.

This bill does not jeopardize the Universal Service program. Universal Service helps Montana rural telephone companies to provide telephone access to rural areas. Universal Service is extremely important to Montana.

Rural America stands on the edge of a digital revolution. Technology will move us to places about which we can only dream. But we must preserve the networks that will provide us that opportunity.

The telecommunications network in Montana is among the best in the country. Over 140 communities have DSL. We have 95 videoconferencing sites spread throughout the state. The Universal Service Fund helped build this network.

In addition, this bill would not harm Montana because it helps maintain emergency communications through the federal enhanced 911 program, or E-911.

E-911 allows police, fire, and emergency workers automatically to locate those who call 911. In Montana, where open space can go on for miles, this technology can mean the difference between life and death.

Many State and local governments have diverted 911 funds to other uses—away from development of an 911 network. This bill ensures that those providers that use the 911 network continue to pay for it.

We need to ensure funding of this extremely important program. I appreciate the efforts of Chairman McCANN and Senator HOLLINGS to ensure that 911 is protected.

Second, this bill will bring good jobs to Montana. Companies like Internet Montana—an Internet service provider headquartered in Bozeman—provide Internet access to thousands of subscribers in Montana and neighboring States.

Keeping Internet access tax-free helps businesses like these grow. Keeping Internet access tax-free breaks down costly barriers. This keeps jobs in Montana.

The next 5 years will bring change in the technology and the market for Internet access. Technological advances will blur the very definitions of Internet service and use. These changes will affect how we access the Internet, and how much we pay for doing so. These changes pose challenges for writing legislation.

This bill represents an attempt to balance the interests of those who want to make sure that the Internet remains taxfree, with those who are concerned that if we try to define Internet access, we may erode State and local tax coffers.

As technology changes, we will need to watch this delicate balance. I look forward to working with my colleagues to ensure that this legislation lives up to its promise.

Mr. LEAHY. Mr. President, I am pleased to cosponsor and strongly support the Internet Tax Nondiscrimination Act, S. 150. I thank Senator WYDEN, Senator ALLEN, Senator McCANN and others for their leadership on this legislation.

I also support Senator McCANN's compromise amendment to extend for 4 years the moratorium on taxes on

Internet access and multiple and discriminatory taxes on electronic commerce. In addition, the McCain amendment would safeguard fees for universal service and 9-1-1 or e-9-1-1 services and does not affect the emerging technology of Voice Over Internet Protocol, VOIP.

I urge the Senate to support electronic commerce by keeping it free from discriminatory and multiple State and local taxes and from Internet access taxes.

The Internet has changed the way we do business. Today businesses can sell their goods and services all over the world in the blink of an eye. E-commerce has created new markets, new efficiencies and new products.

The growth of electronic commerce is everywhere, including my home State of Vermont. For example, the Vermont Teddy Bear Company, which employs more than 300 Vermonters, sells online 60 percent of its bears during its two busiest times of the year—for Valentine's Day and Mother's Day. That is 60 percent of all Vermont teddy bears sold online during this busy time.

Hundreds of Vermont businesses are selling online, ranging from Al's Snowmobile Parts Warehouse to Ben & Jerry's Homemade Ice Cream. These Vermont cybersellers are of all sizes and customer bases, from Main Street merchants to boutique entrepreneurs to a couple of famous ex-hippies who make great ice cream.

What Vermont online sellers have in common is that Internet commerce allows them to erase the geographic barriers that historically limited our access to major markets. With the power of the Internet, Vermonters can sell their products and services anywhere, anytime.

Although electronic commerce is beginning to blossom, it is still in its infancy. Stability is the key to reaching its full potential, and creating out new tax categories for the Internet is exactly the wrong thing to do.

E-commerce should not be subject to new taxes that do not apply to other commerce. Indeed, without the current moratorium, there are 30,000 different jurisdictions around the country that could levy discriminatory or multiple Internet taxes on E-commerce.

Let's not allow the future of electronic commerce—with its great potential to expand the markets of Main Street businesses—to be crushed by the weight of discriminatory or multiple taxes.

I also believe that extending the ban on Internet access taxes will help Vermonters end the digital divide and help Vermonters compete for better jobs. Recently, the University of Vermont released a study that found only 39 percent of Vermonters who earning less than \$20,000 a year have a personal computer, while 67 percent of Vermonters who earn more than \$35,000 a year own a personal computer. And 92 percent of Vermonters who do own a computer are connected to the Internet. We have to close this digital divide

for Vermonters to have the skills for the good-paying jobs of the 21st century.

We need to bar Internet access taxes and multiple or discriminatory taxes on goods and services sold over the Internet to provide the stability necessary for electronic commerce to flourish, and to close the digital divide for all Americans.

Mr. ENZI. Mr. President, we are about to vote on final passage of the Internet access tax moratorium. After months of negotiations, I believe the amended version before us represents a fair and reasonable compromise. It addresses, although not entirely, most of the concerns I raised when we debated this bill in November. I plan to vote for it today.

I do not support taxing the Internet. I never have. I stood before you 2 years ago and proposed an amendment that would have put in place a “permanent” moratorium. But my colleagues, at the time, presented a very compelling argument as to why a ban on taxing the Internet should not be made permanent. They said we should simply extend the moratorium for 2 years rather than put in place a permanent mandate on technological development.

The major point of contention, they said, was the way in which we defined “Internet access.” They said we needed to let technology develop before defining what could and could not be taxed 10 years down the road. In retrospect, I agree with my colleagues, and I agree with my colleagues now. The moratorium needs to be extended for 4 years, as is done in this compromise. We need to put in place a moratorium for 4 years because it is extremely difficult to write a definition today that will protect and promote technology even 5 years down the road. Technology is simply changing too fast for us to make those kinds of decisions with any certainty.

For example, in my home State of Wyoming, we have a small telephone company in the northwestern part of the State that serves about 7,000 people. Two years ago, in this small community, the company was working to update their plain old telephone system so they could handle the capacity needed for dial-up networking.

Today, after 2 years of upgrades and investments, the company now offers to every single customer a package of high-speed Internet access, digital cable service, multiple telephone lines, and voice over the Internet in some areas. Talk about rapidly changing technology. This company is making things happen. However, at the same time, the company’s progress highlights the difficulty we face in determining what is and what is not Internet service.

For instance, most of us don’t know exactly when a local telephone call ceases to be a telephone call and becomes a dial-up Internet service. We don’t understand how to decipher a digital packet of voice information from a

digital packet of Internet service information. And we certainly don’t know exactly how the digital data in our BlackBerrys connects to our desktop computers at home, to our laptop computers in the car, or to our mobile phones in our pockets. But, we do know when we are trying to make a phone call and when we are typing with our fingers.

Voice telecommunications are treated differently than other broadband Internet services, and that is a fact. It is not fair and it is not right, but it is a fact. The compromise before us recognizes this problem. That is why it carves out VOIP or voice over the Internet. I am pleased my colleagues were able to craft language this afternoon that improved the original VOIP provision included in the McCain substitute. The new language makes it more clear and easier for our States, cities, businesses, and judicial system to interpret.

I am glad my colleagues were able to reach an agreement on the issue of VOIP. Unfortunately, we weren’t as lucky on the definition of “internet access service.” The Allen-Wyden, Alexander-Carper and McCain proposals all contained different definitions that would restrict the ability of States and locals to tax telecommunications services. What troubled me was that each definition would have cost our States millions of dollars, but nobody could tell me exactly how much it would have cost them. That is the problem.

CBO was unable to estimate how much our States and locals would lose under the Allen-Wyden or McCain definitions, but clearly stated that the loss could be “substantial.” The most concrete numbers from CBO were provided in a letter dated November 5, 2003. In that letter, CBO estimated that revenue losses could range from \$80 to \$120 million per year to State and local governments that are already taxing Internet access and were covered by the “grandfather clause.”

Additionally, CBO states that “other states are currently imposing taxes on charges for the portions of DSL services they do not consider Internet access.” Those States would lose between \$40 and \$75 million per year. As you will recall, under the Allen-Wyden and McCain definition, taxation of all DSL services would be preempted.

The Multistate Tax Commission estimates that the loss could be as much as \$4 billion to \$8 billion under the Allen-Wyden and McCain definitions. Given these two examples, there is clearly a lot of discrepancy between the agencies that are supposed to know the most.

Of course, the Alexander-Carper definition wasn’t perfect either. It would have also cost our States millions of dollars over time, but it would have been far less significant. It would have prevented States from collecting new revenue from consumers who are paying for the last mile of their DSL services. However, once again, nobody

could tell me—including CBO—how much the Alexander-Carper definition would have cost. With over \$20 billion being collected from taxes on telecommunications services every year, this imprecise data made it difficult for me to support any definitions. That is why we had to include other provisions—like the grandfather provisions and the VOIP language—that would help cushion the impact this bill will have on our States and locals.

The grandfather provisions are important because they ensure that States and locals that are currently taxing do not lose millions of dollars over the next couple of years. I had hoped all of the grandfather clauses would expire at the same time, but we were beat fair and square. The problem is that extending the grandfather for some States for only 2 years still creates an unfunded mandate.

As many of you know, this is an issue I have followed closely for years. Questions about unfunded mandates have always been the issues that cause me, especially when I served in the Wyoming State legislature, to sit up and take notice. Whenever Congress takes up an issue that could have an effect on State revenues, every State Governor and legislature stops what they are doing to see what we are up to—and how it may affect them—or more to the point—what it is going to cost them.

So now, after months of hearings, meetings and negotiations, we are getting ready to pass a bill that could create an unfunded mandate for a couple of years but doesn’t do it permanently, which I am pleased about. The original Allen-Wyden bill proposed a “permanent” moratorium on access taxes and “permanent” definition of internet access. My question was whether or not we should lock any type of technology in a glass box labeled “permanent” when that technology is changing shape and size at the speed of light. The problem with the word “permanent” was that it didn’t allow for a lot of wiggle room. The changing shape of technology would break the glass box whether we like it or not, so I am pleased that we crafted a bill that will keep the latch open to allow for expansion and future growth. That way we can check on the progress of technology in 4 years, and then decide whether we should lock it up tighter or change its design to allow for more expansion and development.

The key words here are time and change. By signing on to something that was supposed to be “permanent” we would have been committing ourselves to something that might not have survived the test of time. Things are moving quickly and changing fast and we are trying to make decisions about what lies down the road based on what we have just driven past—or the scenery that surrounds us right now. It might work. But it might not. It might not because no other product of technology has seen such growth and

change in the past few years as the Internet and information technology. That is what has made it a difficult issue to track and to address in terms of what its future may hold. The bill we have before us is an effort to allow some of these issues to ripen, while protecting internet users from future taxation.

That being said, I think we might benefit from taking a look at the past history of the issue before we try to form an opinion on its future. Two years ago, I stood before you and offered an amendment that would have—like this bill—made the moratorium on Internet access permanent. At the time, I believed we were taking a fair and equitable approach to a prohibition on taxing the Internet.

My amendment, which was cosponsored by my good friend and colleague from North Dakota, Senator DORGAN, would have made the ban on taxing the Internet permanent, and it would have simplified the extremely cumbersome network of State sales and use taxes. My amendment failed, in part because most Senators did not want to put in place a “permanent” moratorium.

The other reason my amendment failed was because it addressed a complex issue that most Senators did not understand. It was the issue of streamlined sales and use tax. I introduced the Streamlined Sales and Use Tax Act in 2001 and again last year because it would greatly reduce the complexity of our system of sales and use taxes.

This year, Senator DORGAN and I have been joined by 18 bipartisan co-sponsors in introducing S. 1736. Like our bill in the 107th Congress, S. 1736 would make it easier for American consumers and businesses to conduct sales from remote locations and help States begin to recover from years of budgetary shortfalls. It would authorize States that have signed the Streamlined Sales and Use Tax Agreement and have passed legislation simplifying their tax system to require all sellers to collect and remit sales taxes.

S. 1736 is a critical piece of legislation that many of my colleagues are learning more about and recognizing its growing importance as Internet usage explodes. Two years ago the revenue loss attributed to the Internet sales tax loophole was fairly minimal. Today, the revenue loss has ballooned as online and other remote sales have increased. The States have responded to this budget crisis by signing the Streamlined Sales and Use Tax Agreement and implementing legislation that drastically simplifies their sales and use tax systems. In fact, 20 States have already signed into law the necessary implementing legislation, while 9 others are currently in the process of doing so.

Two years ago, my colleagues said the States hadn't come far enough in the process to warrant congressional action. I think the opposite can be said today. The States have taken the bull by the horns and are poised to act.

Now, Congress needs to step up and do the same.

The sales and use tax bill has been referred to the Finance Committee and I hope to work with Chairman GRASSLEY and others to bring it up in committee some time this year. But, that is not what we are talking about here today.

Let me be clear—we are not talking about sales and use taxes today as part of the internet access tax moratorium. These are two completely separate issues. Today we are talking about the Internet access tax moratorium.

The compromise before us doesn't address every concern raised by the States and locals, but it doesn't address every concern raised by industry either. But, isn't that the sign of a true compromise? Both sides have to give a little in order to come up with the best product.

I have worked with my colleagues on both sides of the issue to find middle ground that would protect consumers and ensure that States and localities don't lose billions in tax revenue. I think we have found the middle ground. I have talked to both Republicans and Democrats and this is the bipartisan solution.

I urge my colleagues to vote for this bill, so we can allow the use of the Internet to continue to prosper and grow. It is a valuable resource because it provides access on demand. In addition, it is estimated that the growth of online businesses will create millions of new jobs nationwide in the coming years. I hope you will vote with me in favor of both.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass?

Mr. McCAIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Utah (Mr. BENNETT) and the Senator from Kentucky (Mr. BUNNING) are necessarily absent.

I further announce that if present and voting the Senator from Kentucky (Mr. BUNNING) would vote “yes.”

Mr. REID. I announce that the Senator from Louisiana (Mr. BREAX) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 3, as follows:

[Rollcall Vote No. 77 Leg.]

YEAS—93

Akaka	Biden	Campbell
Alexander	Bond	Cantwell
Allard	Boxer	Carper
Allen	Brownback	Chafee
Baucus	Burns	Chambliss
Bayh	Byrd	Clinton

Cochran	Gregg	Murray
Coleman	Hagel	Nelson (FL)
Collins	Harkin	Nelson (NE)
Conrad	Hatch	Nickles
Cornyn	Hollings	Pryor
Corzine	Hutchison	Reed
Craig	Inhofe	Reid
Crapo	Inouye	Roberts
Daschle	Jeffords	Rockefeller
Dayton	Johnson	Santorum
DeWine	Kennedy	Sarbanes
Dodd	Kohl	Schumer
Dole	Kyl	Sessions
Domenici	Landrieu	Shelby
Dorgan	Leahy	Smith
Durbin	Levin	Snowe
Edwards	Lieberman	Specter
Ensign	Lincoln	Stabenow
Enzi	Lott	Stevens
Feingold	Lugar	Sununu
Feinstein	McCain	Talent
Fitzgerald	McConnell	Thomas
Frist	Mikulski	Voinovich
Graham (SC)	Miller	Warner
Grassley	Murkowski	Wyden

NAYS—3

Bingaman	Graham (FL)	Lautenberg
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NOT VOTING—4

Bennett	Bunning
Breaux	Kerry

The bill (S. 150), as amended, was passed, as follows:

S. 150

*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 “Internet Tax Nondiscrimination Act”.

#### SEC. 2. FOUR-YEAR EXTENSION OF INTERNET TAX MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

“(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2007:

“(1) Taxes on Internet access.

“(2) Multiple or discriminatory taxes on electronic commerce.”.

(b) CONFORMING AMENDMENTS.—(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

“(10) TAX ON INTERNET ACCESS.—

“(A) IN GENERAL.—The term ‘tax on Internet access’ means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

“(B) GENERAL EXCEPTION.—The term ‘tax on Internet access’ does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.”.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking “except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998.”.

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting “The term ‘Internet access service’ does not include telecommunications services, except to the extent such services are

purchased, used, or sold by a provider of Internet access to provide Internet access.”.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting “The term ‘Internet access’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

#### **SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.**

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

#### **“SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.**

“(a) PRE-OCTOBER 1998 TAXES.—

“(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

“(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) TERMINATION.—This subsection shall not apply after November 1, 2007.

“(b) PRE-NOVEMBER 2003 TAXES.—

“(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

“(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) TERMINATION.—This subsection shall not apply after November 1, 2005.”.

#### **SEC. 4. ACCOUNTING RULE.**

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

#### **“SEC. 1106. ACCOUNTING RULE.**

“(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

“(b) DEFINITIONS.—In this section:

“(1) CHARGES FOR INTERNET ACCESS.—The term ‘charges for Internet access’ means all charges for Internet access as defined in section 1105(5).

“(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term ‘charges for telecommunications services’ means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

#### **SEC. 5. EFFECT ON OTHER LAWS.**

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

#### **“SEC. 1107. EFFECT ON OTHER LAWS.**

“(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

“(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or  
“(2) in effect on February 8, 1996.

“(b) 911 AND E-911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E-911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E-911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E-911 services.

“(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.”.

#### **SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.**

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 5, is amended by adding at the end the following:

#### **“SEC. 1108. EXCEPTION FOR VOICE SERVICES OVER THE INTERNET.**

“Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.”.

#### **SEC. 7. GAO STUDY OF EFFECTS OF INTERNET TAX MORATORIUM ON STATE AND LOCAL GOVERNMENTS AND ON BROADBAND DEPLOYMENT.**

The Comptroller General shall conduct a study of the impact of the Internet tax moratorium, including its effects on the revenues of State and local governments and on the deployment and adoption of broadband technologies for Internet access throughout the United States, including the impact of the Internet Tax Freedom Act (47 U.S.C. 151 note) on build-out of broadband technology resources in rural under served areas of the country. The study shall compare deployment and adoption rates in States that tax broadband Internet access service with States that do not tax such service, and take into account other factors to determine whether the Internet Tax Freedom Act has had an impact on the deployment or adoption of broadband Internet access services. The Comptroller General shall report the findings, conclusions, and any recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce no later than November 1, 2005.

#### **SEC. 8. EFFECTIVE DATE.**

The amendments made by this Act take effect on November 1, 2003.

Mr. ALLEN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. FRIST. Mr. President, I congratulate the two managers and all the many Senators on both sides of the aisle who helped bring this bill to conclusion. It has been a tough road, a difficult road. There has been tremendous

debate. It wasn’t both sides of the aisle but in the Chamber itself.

There are going to be no further votes this evening. The Senate will reconvene on Monday. At that time we will resume consideration of the JOBS bill, the FSC/ETI bill. The chairman and ranking member of the Finance Committee have lined up Senators to offer amendments on Monday and therefore we will make progress on the bill on Monday. Any votes ordered on amendments during Monday’s session will be delayed until Tuesday.

#### **MORNING BUSINESS**

Mr. FRIST. I now ask unanimous consent there be a period for morning business with Senators to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask the distinguished Senator from Alaska if I could do a colloquy, without delaying him?

Mr. STEVENS. Fine.

#### **INTERNET TAX NONDISCRIMINATION ACT**

Mrs. HUTCHISON. Mr. President, I voted for the bill that has just passed because I have said all along I am against taxing Internet access. I think it is a disruption of interstate commerce. I have said that all along.

The reason I have been concerned about this bill is I have been very afraid that the city franchise taxes that are collected in my State of Texas were somehow going to be brought into the bill. I have now been working with the Senate leaders, the managers of the bill, Senators MCCAIN, ALLEN, WYDEN, and Senator DORGAN, to assure that it was not the intent to take the Texas franchise fee, which is called an access line fee in Texas, to be included in the ban on Internet access. It is not Internet access; it is a franchise fee.

I very much hope we can clarify the record on this point and assure that in conference the definition will be clear so it will be recognized under Federal law 47 U.S.C., section 1104(8)(B), that the Texas access line fee is included as a franchise fee or similar fee, and included in the exceptions from the definition of tax.

I hope we have an assurance from the managers of the bill that this Texas access line fee, which is a franchise fee, would not be included within the definition of Internet access tax.

Mr. WYDEN. Will the Senator yield?

Mrs. HUTCHISON. I am happy to yield.

Mr. WYDEN. I am glad to work with the Senator. I wish to consult with the chairman and also Senator ALLEN, but it has always been our intent—and as the prime Senate sponsor of the law back in 1998 it was always my intent—that franchise fees not be affected by the Internet tax moratorium.