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1st Session }

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GUIDE FOR PREPARATION OF COMMITTEE
REPORTS

FOR THE USE OF THE STAFF
OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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TABLE OF CONTENTS

Introduction.....	1
Essential Components of a Committee Report.....	3
Purpose of Bill.....	4
Background and Needs	6
Legislative History	13
Summary of Major Provisions	17
Estimated Costs	20
Regulatory Impact Statement.....	25
Congressionally Directed Spending.....	29
Section-by-Section Analysis	32
Votes in Committee	38
Agency Comments	42
Supplemental, Minority, and Additional Views	43
Changes in Existing Law	49
Very Long or Very Short Measures.....	54
Review and Filing of Report	79
Things To Avoid.....	82
A Few Matters of Style	83
Appendix: How To Introduce a Bill.....	85

INTRODUCTION

While the Standing Rules of the Senate do not require a standing committee to file a written report accompanying a bill or resolution reported by the committee, it has been the practice of the Committee on Commerce, Science, and Transportation to submit a written report whenever the Committee files a reported bill or resolution. This practice has applied equally to the reporting of bills and resolutions referred to the committee and to original bills or resolutions reported by the committee.

Paragraph 4(a) of rule XVII of the Standing Rules of the Senate requires that any report filed by a committee lie over 1 day for consideration. The 1-day layover rule can be waived by unanimous consent. Paragraph 5 provides that any bill or resolution reported by a standing committee may not be considered in the Senate unless the reported bill or resolution has been available to Senators for at least 2 calendar days (excluding Sundays and legal holidays) before it is considered. The 2-day availability rule can be waived

by mutual agreement of the Majority Leader and the Minority Leader, or, presumably, by unanimous consent.

A committee report does not have the force of law, but it is useful as a way of providing guidance to an administering officer, agency, or other interested party with respect to the manner in which a law, or a change in existing law, is to be implemented or enforced. In addition, the courts frequently refer to committee reports, as an important component of the legislative history of a statute, in interpreting provisions of law that may be ambiguous or the application of which to a particular set of circumstances is not clear on the face of the statute.

This guide has been written to assist the staff in the preparation of committee reports that contain the elements required by the Standing Rules of the Senate and that are consistent in format and style. It is intended also to provide guidance with respect to circumstances in which deviation from the standard format, or the inclusion of optional components, may be appropriate.

ESSENTIAL COMPONENTS OF A COMMITTEE REPORT

Except as noted in the detailed discussion of each component listed below, each committee report should include the following components in the following order:

- Purpose of the Bill
- Background and Needs
- Summary of Provisions
- Legislative History
- Estimated Costs
- Regulatory Impact Statement
- Congressionally Directed Spending
- Section-by-Section Analysis
- Rollcall Votes in Committee
- Additional, Supplemental, or Minority Views
- Changes in Existing Law

Note: The parts of the report that precede the purpose-of-the-bill component are prepared by the Committee's Legislative Counsel. This includes the front page, the member and staff roster on the next page, and the head and introductory paragraph¹ that precedes the purpose of the bill.

¹The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. _____) to . . . , having considered the same, reports favorably thereon [without amendment or with amendments or with an amendment (in the nature of a substitute)] and recommends that the bill [(as amended)] do pass. The matter in black brackets should reflect the Committee's action on the measure.

PURPOSE OF THE BILL

This section of the report is intended to inform the reader, as quickly and simply as possible, of the main thrust of the reported bill. This can usually be accomplished in a single sentence for a simple measure and no more than 3 to 5 sentences for a lengthy or complex measure.

The most common mistake in writing this section is to make it too long. Bear in mind that this section contains the first few sentences of the report, and the objective is to give the reader a quick overview of the subject matter of the bill. Save any detailed descriptions of the legislation, as well as arguments as to the need for the legislation, for later sections of the report.

EXAMPLES

The purpose of the Air Cargo Security Improvement Act, S. 165, as reported, is to enhance the security of cargo transported by air, particularly aboard passenger aircraft.

* * * * *

The purpose of S. 886, the National Oceanic and Atmospheric Administration (NOAA) Corps Confirmation Correction Legislation, is to ratify the otherwise legal appointments and promotions in the commissioned corps of NOAA that failed to be submitted to the Senate for its advice and consent as required by law.

* * * * *

The purpose of this legislation, as reported, is to reauthorize the United States Fire Administration (USFA) for fiscal years (FYs) 2004 through FY 2008, and re-establish the position of Administrator of the USFA. The legislation also would establish and authorize funding for programs under the USFA to support the development of voluntary consensus standards for new firefighting technology, improve coordination between Federal, State, and local fire officials, and authorize the National Fire Academy to train firefighters to respond to acts of terrorism.

* * * * *

S. 1234 would amend the Federal Trade Commission Act (FTCA) (15 U.S.C. 41 et seq.) to carry out the functions, powers, and duties of the Federal Trade Commission (FTC or Commission). The bill would authorize funding levels to be appropriated for fiscal years 2004 through 2007, as well as authorize the FTC to accept both reimbursement from other agencies that may seek the Commission's assistance, and gifts that do not create a conflict of interest. The bill also would improve the Commission's ability to provide more timely and effective international consumer protection.

* * * * *

The purpose of this legislation is to amend section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) by adding a new paragraph (9) to: (1) require providers of wireless directory assistance services to obtain the express prior authorization of a subscriber before listing his or her wireless telephone number in a directory assistance database; (2) require such providers to remove the wireless telephone number of any subscriber from any directory assistance database upon request and without any charge to the subscriber; (3) require telecommunications carriers to avoid disclosing on their customer bills any wireless telephone numbers of consumers who have indicated such a preference to their wireless carriers; (4) prohibit the publishing (in printed, electronic, or other form), sale, or other dissemination of a wireless telephone number without consent; and (5) prohibit wireless directory assistance providers from charging consumers for exercising any of their rights provided under this legislation.

BACKGROUND AND NEEDS

This section of the report should set forth a concise summary of why the legislation is necessary or desirable. It often contains a brief description of an existing problem, the inadequacies of current programs or law in dealing with the problem, and the need to address the problem through new legislation by modifying the current law applicable to the circumstances that create the problem. Except for a lengthy, complex, or controversial bill, a few short paragraphs may suffice.

An effort should be made here, also, to keep the written matter as concise and to-the-point as possible, consistent with providing an *overview* of what problem the bill is intended to address and how it proposes to address that problem.

EXAMPLES

The NOAA Corps is the smallest of the seven uniformed services of the United States (the others are the four Department of Defense services, the Coast Guard, and the Public Health Service). The NOAA Corps is comprised of slightly over 250 commissioned officers and operates a wide variety of specialized aircraft and ships used to conduct NOAA's environmental and scientific missions. Its commissioned officers provide NOAA with an important blend of operational, management, and technical skills that support the agency's science and surveying programs at sea, in the air, and ashore. Corps officers operate and manage NOAA's ships and aircraft as well as serve in the agency's research laboratories and program offices throughout the nation and in remote locations around the world.

The NOAA Corps officer appointments and promotions are similar to the other uniformed services and, under section 226 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3026) and its antecedent, require nomination by the President and must be submitted to the Senate for its advice and consent. Historically, the Commerce Committee has considered NOAA promotions, along with routine Coast Guard officer promotions, during Full Committee Executive Sessions.

It recently came to the Committee's attention that NOAA has failed since October 1, 1999, to submit any of its NOAA Corps officer appointments and promotions to the President for nomination and subsequently to the Senate for its advice and consent. Since then, the NOAA Corps has made approximately 251 appointments and promotions, involving approximately 196 officers. An ongoing Department of Commerce investigation indicates these procedural problems may have existed prior to October 1, 1999, and additional officers' appointments and promotions may also be affected. These revelations raise serious questions concerning the validity of these

appointments and promotions that could affect each individual officer's pay, entitlements, job status, and the ability to carry out the officer's official actions.

To address this serious situation, the legislation is designed to provide a framework for retroactive appointments and promotions for the affected officers in a manner that will protect the professional and financial aspects of their positions, and that will ensure that all past actions taken in the line of duty by such officers after their appointments and/or promotions are considered to have been official actions. The bill states that all actions performed in the line of duty by these NOAA corps officers are ratified and approved. In addition, the legislation states that all Federal agency actions (with respect to pay, benefits, and retirement) in relation to an unconfirmed NOAA corps officer shall be considered legally binding.

The bill provides that the President, acting alone, can make appointments and promotions for up to 180 days to allow these officers to maintain their status until the full Senate gives its advice and consent for these appointments and promotions going forward. Once this bill is enacted into law, the Administration is expected to submit the list of these officers to the Senate for its advice and consent.

* * * * *

Today, there are approximately 140 million wireless telephones in use in the United States. Several studies over the last decade have shown that most consumers cite safety and security (including the ability to communicate in an emergency) as their main reason for purchasing a cell phone. Even if their own lives are not affected, many Americans have indicated they are willing to be "Good Samaritans" and use their wireless phones to report emergencies to local public safety authorities when they see them occurring. Of the approximately 200 million calls placed to 911 each year, more than 56 million, or 28 percent, of the calls are made from wireless phones. Some metropolitan areas show even higher percentages of wireless 911 calls than the nationwide average, with several receiving a majority of their 911 calls from wireless phones.

Unlike calls to 911 from land-based wireline telephones, most public safety operators answering wireless 911 calls do not have information regarding the name, telephone number, and location of the caller — referred to as enhanced 911 (E-911) services. Without this information, emergency response times may be delayed while the operators attempt to determine the location of the emergency. In many instances, wireless 911 callers do not know their exact location (particularly in rural areas), and some who are injured or disoriented cannot respond to operators' questions regarding their location. Medical emergency and public safety responders speak of a "golden hour" — the first hour after serious injury when there is the greatest chance of saving life. As time elapses, chances of survival diminish and the severity of injuries increase. Prompt and accurate location information — especially from the increasing numbers of wireless 911 calls — is therefore critical to delivering emergency assistance to victims within the first hour.

Implementation Problems

Successful wireless E-911 implementation requires the cooperation of three discrete groups: wireless carriers, wireline telephone companies (also known as local exchange carriers), and Public Safety Answering Points (PSAPs). A PSAP is the emergency operator dispatch point that receives 911 calls for a community. There are approximately 6,100 PSAPs nationwide. In short, the wireless carrier must be able to determine the location of the caller, the local exchange carrier must carry that location information from the carrier to the PSAP, and the PSAP must be capable of receiving such information. In many ways, the initiation of wireless E-911 implementation begins with the PSAP, because no other obligations are imposed on any other party until the PSAP submits a request for E-911 service.

It is estimated that only 10 percent of the PSAPs nationwide have made requests to receive wireless E-911 location information (known as "Phase II" requests). One major reason for the delay in PSAP requests is that PSAPs are not ready to receive the E-911 information that will be sent to them by wireless carriers. In order to receive this information, PSAPs must first make software and hardware upgrades in their operations centers, as well as make appropriate trunking arrangements with local wireline telephone companies to enable wireless E-911 data to pass from the wireless carrier to the PSAP. As required by the FCC, however, PSAPs also must have the means of covering their costs in order to make a valid request to the wireless carrier for E-911 service. Absent a valid PSAP request, a wireless carrier is under no obligation to deploy E-911 services.

State Funding Problems

The FCC's rules do not mandate any specific State action nor specify any particular mechanism for funding the technology and service capabilities necessary to enable the PSAP to make a valid service request. Some PSAPs are able to fund upgrades from existing State budgets, but most PSAPs must rely on funds collected pursuant to State authority for public safety services. Currently, over 40 States have established some type of wireless fee or surcharge on consumers' mobile phone bills to fund, either in whole or in part, PSAP upgrades for wireless E-911 service. In the States relying on monthly surcharges, subscribers' fees range from 20 cents to \$2 per month, with the average about 60 cents per month.¹ In many States, however, State laws do not specifically limit the use of wireless E-911 surcharges to wireless E-911 upgrades. These States' surcharges can be used for other public safety purposes if not spent on wireless E-911.

Recently, State lawmakers and administrators have begun investigating the use of E-911 funds, and have discovered instances in which E-911 funds have been used for purposes other than the provision of E-911 service. Observers claim as many as 11 States have been "raiding" their collected E-911 funds to satisfy other State obligations. In New York, for example, nearly \$200 million collected as E-911 surcharges have been diverted for other public safety pur-

¹ NENA Fact Sheet: Enhanced Wireless Emergency Communications: Implementation Process and Status, National Emergency Number Association (NENA), October 2001.

poses, while the State's PSAPs have remained underfunded and unready to request E-911 service from carriers. Although State administrators supporting these diversions argue that their decisions are justified given more pressing State funding needs, investigators also have found some egregious examples of such funds being used to cover expenses for dry cleaning and lawn mowing services for State police (e.g., New York).

* * * * *

Congress formed the United States Olympic Association (USOA) in 1950 under the "Act to Incorporate the United States Olympic Association." In 1964, the USOA was modified and became the USOC. Additional modifications to the USOC resulted from a study conducted by President Gerald Ford's Commission on Olympic Sports (Ford Commission). From 1975 to 1977, the Ford Commission evaluated each Olympic sport and determined how to correct factional disputes between the sports. Senator Stevens, who served on the Ford Commission, sponsored what later became known as the Ted Stevens Olympic and Amateur Sports Act, which was enacted in 1978 (the Act). The Act named the USOC as the central coordinating organization for athletes and sports of the Olympic and Pan-American Games.

In its current form, the USOC performs a variety of functions. It provides financial, educational, training, and medical support for Olympic athletes. The USOC receives no permanent funding from the government. Though the 1978 charter granted the USOC several million dollars in seed money, the funds were never appropriated.¹ Thus, the USOC supports its activities primarily through corporate sponsorship and licensing agreements for the rights to broadcast Olympic events. The USOC's current annual revenue is approximately \$125 million.

The USOC is often criticized for being an unwieldy bureaucracy with a board of directors comprised of 124 members, and for being the subject of too many scandals. Some examples of scandals include, in 1980, 25 athletes sued the USOC for boycotting the 1980 Games, claiming that the USOC had violated their constitutional rights. In the early 1990s, the Committee was accused of buying out two USOC officials in order to hire a new USOC executive director. In 1991, the resignation of then-USOC President Robert Helmick forced the USOC's special counsel to admit certain ethical problems with Helmick's leadership. And, in an effort to secure the selection to host the 2002 Winter Games in Salt Lake City, Utah, local organizing committee members were accused of taking bribes.

Earlier this year, the USOC was again the subject of public embarrassment when then-USOC CEO Lloyd Ward became the subject of a USOC Ethics Committee investigation for a possible conflict-of-interest violation. The investigation was rumored to be the result of tension between Mr. Ward and the former USOC president, Marty Mankamyer. The Ethics Committee determined that Mr. Ward (a former CEO of Maytag) had committed two "technical violations" of the USOC's ethics code, and indicated to the Execu-

¹ In 1981, the USOC did receive a one-time appropriation from Congress of \$10 million to compensate the USOC for lost revenue caused by the United States' boycott of the 1980 Olympic Games in Moscow.

tive Committee that the problems could have been remedied through timely ethical compliance counseling. In the end, it was the Executive Committee that decided that the only punitive action to be taken against Mr. Ward would be the reduction of Mr. Ward's annual bonus by several hundred thousand dollars. In an act of protest of the Ethics Committee's decision, Executive Committee member Brian Derwin, Chief Ethics Compliance Officer, Patrick Rodgers, and three members of the 10-person Ethics Committee resigned their volunteer posts. Less than one month later, Ms. Mankamyer succumbed to intense USOC pressure to resign. The same pressure forced Lloyd Ward to resign on March 1, 2003.

* * * * *

On November 16, 2001, Congress passed the Aviation and Transportation Security Act (ATSA) in response to the terrorist attacks on September 11th of that year. The Act, which was signed into law on November 19, 2001, implemented a new regime for aviation security and created the Transportation Security Administration (TSA) within the Department of Transportation (DOT) to oversee security for all modes of transportation. The TSA has since been transferred to the Department of Homeland Security (DHS). ATSA (P.L. 107-71) contained numerous provisions and deadlines designed to increase aviation security targeted at the safety and security of airline passengers.

With respect to the security of air cargo, ATSA contained two key provisions. The first dealt with passenger aircraft and required that the TSA provide for the screening of all cargo and mail that will be carried aboard such aircraft (section 110). Almost all passenger flights carry cargo alongside luggage in the belly of the plane. Such cargo can encompass anything from pallets of computer chips to refrigerated cartons of chicken. According to a Federal Aviation Administration (FAA) estimate, approximately 22 percent of all air cargo loaded in the United States in 2000 was carried on passenger flights.

ATSA required that all checked airline bags be screened by explosive detection systems by December 31, 2002, which was later extended to 2003 for a limited number of airports. A similar timetable was not specified for screening cargo.

The second provision required that a system must be in operation as soon as practicable after the date of enactment of ATSA (section 10), to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft .

I. ACTIVITY BEFORE SEPTEMBER 11, 2001

The air cargo system involves numerous participants that all require some level of security oversight. Typically, a shipper takes packages to an indirect air carrier (IAC, also known as a freight forwarder). An IAC is defined as any person or entity, excluding an air carrier, that engages indirectly in the transportation of property by air, and uses the services of a passenger air carrier. This does not include the United States Postal Service. The IAC may consolidate packages from many shippers into single containers. The IAC then uses trucks, either its own or hired, to deliver the bulk freight to air carriers for transport.

Before the attacks of September 11, 2001, the FAA was generally responsible for oversight of civil aviation security. The bombing of Pan Am Flight 103 in 1988 led to the passage of the Aviation Security Improvement Act of 1990, which required the FAA to begin an accelerated 18-month research and development effort to find an effective explosives detection system to screen baggage and cargo. Following the 1996 crashes of ValuJet flight 592 and TWA flight 800, the White House Commission on Aviation Safety and Security was created to assess vulnerabilities of safety and security confronting aviation. The Commission recommended that the FAA implement a comprehensive plan to address the threat of explosives and other threatening objects in cargo and to work with industry to develop new initiatives in this endeavor. The FAA subsequently created Federal and industry partnerships, the Baseline Working Group, and later, the Cargo Working Group, to find ways improve air cargo security.

Under the FAA's program, front-line responsibility for screening air cargo fell on two groups: the carriers and IACs. Both were required to adopt and carry out FAA-approved security programs.

The key element of FAA's cargo security program before September 11, 2001, was the Known Shipper Program. A known shipper is essentially one that has an established reputation and thus is "known" to the industry and to the FAA. This program allowed an air carrier or IAC to transport a package from a known shipper with no more screening than an examination of its exterior. Packages from unknown shippers would be screened by X-ray or physically inspected before being placed aboard a passenger aircraft. Under the FAA's cargo security program, IACs were not allowed to accept packages from unknown shippers. If the IAC does not have an existing relationship with the business that seeks to ship goods, it must follow established regulations to ensure the company is a trustworthy business. The FAA's security oversight and implementation responsibility of the Known Shipper Program was transferred through ATSA to the TSA.

Before September 11, 2001, the DOT Inspector General (IG) had been conducting tests of cargo security. The IG found that air carriers and indirect air carriers were not always complying with the FAA's Known Shipper Program, and that the FAA had not developed and implemented an adequate policy or oversight system to ensure compliance.

II. ACTIONS SINCE SEPTEMBER 11, 2001

A number of important changes were implemented after September 11, 2001, regarding the shipment of cargo on passenger air carriers. These changes included the requirement that only cargo from known shippers could be accepted on passenger air carriers and all cargo from unknown shippers and mail weighing more than 16 ounces had to be diverted to all-cargo air carriers.

The Known Shipper Program continues to be TSA's primary means of compliance with ATSA screening mandates today. According to the agency, it has strengthened the process through which a shipper becomes "known". The TSA has developed a national database of known shippers and is re-validating every business in the known shipper program.

Many of the other changes implemented by TSA are sensitive or classified information.

III. AIR CARGO ISSUES AND CONCERNS

The IG has expressed some concerns that the TSA's cargo security program is continuing to rely on the Known Shipper Program, which has weaknesses, and that very little cargo is actually screened. The IG believes that TSA must reevaluate its program to determine whether current procedures should be retained, identify new principles and controls that should be added, and develop a strategic plan to screen all cargo. The IG also is recommending that, until screening of all cargo is feasible, TSA develop and implement a plan for random screening of cargo using x-ray, canines, or explosives detection equipment. In addition, the IG advocates a requirement that a provider of cargo transportation lose its certification when TSA inspections and testing have continuously found the provider in noncompliance with cargo security requirements.

The size and nature of air cargo can vary widely. Airlines are financially dependent on cargo, which carries higher profit margins than passenger traffic. One of the key problems with any attempt to screen all cargo on passenger aircraft at this time is that any type of physical inspection or electronic screening would be extremely expensive and time-consuming. Some industry observers believe that any changes causing additional expense or delay to the air cargo system could cause widespread disruption to United States businesses, which have grown dependent on moving goods rapidly, as well as creating further financial difficulties for the troubled United States airline industry.

LEGISLATIVE HISTORY

This section of the report should set forth a concise legislative history of the bill as reported. That history would typically include the sponsor, an up-to-date list of cosponsors (some of whom may have been added after the introduced bill was printed), the date of introduction, any hearings on the bill held by the committee, and the executive session at which it was considered by the committee. It may also contain a statement with respect to companion bills introduced in the House of Representatives and a discussion of similar bills, including a description of any action taken with respect to such other bills.

Note that any rollcall votes during the executive session at which the bill was considered by the committee are reported in a separate section of the report.

An excessively long and detailed legislative history interrupts the continuity of a committee report, so this information should be provided in 1 or 2 brief paragraphs if possible. It is not necessary to list witnesses or excerpt their testimony in this section, as that information is available in the hearing record. Since the focus of the report should be on the measure being reported during the current session, one generally should avoid recounting the legislative history of similar measures considered in previous Congresses. This does not preclude discussion of other measures and action by previous sessions, however, where that discussion is an important part of the legislative history of the current measure.

EXAMPLES

S. 1260 was introduced on June 13, 2003, by Senator McCain and Senator Brownback and was referred to the Committee on Commerce, Science, and Transportation. A hearing on the FAA Reauthorization was held on April 10, 2003. On June 19, 2003, the Committee met in open executive session and, by a voice vote, ordered S. 1260 reported without amendment.

* * * * *

Senator Burns, the chairman of the Communications Subcommittee of the Committee on Commerce, Science, and Transportation, introduced S. 1250 on June 12, 2003, with Senator Clinton as an original cosponsor. The bill is also cosponsored by Senator Lautenberg.

On March 5, 2003, the Communications Subcommittee held a hearing on the implementation of E-911 services for wireless phones. Three members of Congress appeared before the Committee, in addition to a State assemblyman, and a diverse group of companies, associations, and private parties interested in E-911 services.

On June 26, 2003, the Committee met in open executive session and by voice vote ordered the bill reported without amendment.

* * * * *

On April 8, 2003, Senator McCain introduced S.824, a bill to reauthorize the FAA and its programs, as well as streamline airport capacity projects and improve aviation security. The bill was originally co-sponsored by Senators Hollings, Lott, and Rockefeller. Sections of the bill regarding the streamlining of airport capacity projects largely arose from provisions provided in S. 633, the Aviation Delay Prevention Act, which was reported favorably out of the Commerce Committee in the 107th Congress. A substantial portion of the FAA's research and development sections were essentially identical to S. 2951, the Federal Aviation Administration Research, Engineering, and Development Act of 2002, which also was reported favorably out of the Commerce Committee and passed by the Senate during the 107th Congress.

On April 10, 2003, the Commerce Committee held a hearing on S. 824.

On May 1, 2003, the Committee ordered S. 824 to be reported favorably with an amendment in the nature of a substitute.

* * * * *

Senators Brownback (for himself, Mr. Allen, and Mr. L. Graham) introduced S. 2056 on February 9, 2004. The Committee held a hearing on indecent and violent programming and its effect on children on February 11, 2004, where all five FCC Commissioners testified.

On March 9, 2004, the Committee held an executive session at which S. 2056 was considered. The bill was approved unanimously by voice vote and was ordered reported with amendments. The Committee first approved a perfecting amendment by Senators McCain and Brownback that would impose a per-utterance penalty; require the FCC to consider a number of factors when assessing a fine; create a cap on the total amount a broadcast licensee may be fined during a 24-hour period; establish deadlines for the FCC to act on indecency complaints; and compel the FCC to report to Congress annually about its indecency enforcement activities. The perfecting amendment was modified by a second-degree amendment by Senator Stevens that would create an escalating fine structure; double the cap on fines if the FCC finds certain aggravating factors present; and require the FCC to commence a license revocation proceeding against any licensee that has paid, or been ordered by a court to pay, fines arising from three indecency violations during its license term. Additionally, the Committee approved an amendment offered by Senator Stevens that would eliminate any restrictions on broadcasters or associations representing broadcasters from instituting a voluntary industry code of conduct governing a family viewing policy. The Committee also approved an amendment by Senators Stevens and Allen that would "streamline" the process for imposing financial penalties against non-licensees who violate 18 U.S.C. 1464, and increase the cap on fines against non-licensee violators. An amendment by Senators Dorgan, Lott, Snowe, and Cantwell was approved that would require the relationship between media consolidation and indecent broadcasts to be studied by

the General Accounting Office (GAO) and would suspend the FCC's June 2, 2003, media ownership rules while the GAO conducts its study.

The Committee also approved an amendment by Senators Hollings and Stevens that would require the FCC to study the effectiveness of the V-Chip and prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience, if the V-chip is determined to be ineffective.

The amendment is substantially similar to legislation previously reported favorably by the Committee. In October, 1993, the Committee held a hearing on television violence to consider a variety of legislative proposals. Attorney General Janet Reno testified that the legislation pending before the Committee, including S. 1383, the Hollings-Inouye legislation establishing a safe harbor for violent programming, would be constitutional.

On July 11, 1995, the Committee held its second hearing on television violence to consider pending measures, including S. 470, the Hollings safe harbor legislation. S. 470 (104th Congress) is identical to S. 1383 (103rd Congress). The Committee subsequently reported S. 470, as introduced, on August 10, 1995, by a recorded vote of 16 to 1, with two Senators not voting. No further action was taken during the 104th Congress.

On February 26, 1997, Senator Hollings with Senators Inouye and Dorgan as co-sponsors, introduced S. 363. S. 363 was similar to S. 470 but allowed the Commission to implement a safe harbor if it did not implement a content-based ratings system. On February 27, 1997, the Committee held another hearing on television violence in which S. 363 was addressed. Groups such as the APA expressed their disapproval of the current age based rating system proposed by the industry and noted their preference for a content-based ratings system. Kevin Saunders, Professor of Law at the University of Oklahoma, testified that violent programming could arguably be considered obscene or indecent and the safe harbor approach is constitutional.⁴⁶ On May 1, 1997, the Committee reported S. 363 with one amendment to add findings by a recorded vote of 19 to 1.

On April 26, 1999, Senator Hollings introduced S. 876, safe harbor legislation that was substantially similar to S. 470 and S. 1383. The bill was co-sponsored by Senators Byrd, Durbin, and Inouye. On May 13, 1999, the Committee held its third hearing on television violence and safe harbor legislation. Senator Hollings' bill, S. 876 was discussed at length, and testimony was offered as to the constitutionality of the measure as well as the adverse harm to children affected by exposure to violence on television. On September 20, 2000, the Committee reported S. 876, as amended, by a recorded vote of 17 to 1, with one Senator voting present.

On April 10, 2003, the Committee held its fourth hearing on the impact of violent material on children. Specifically, the witnesses testified on neurobiological research in the field of brain mapping and conclusions reached on the impact of media violence on chil-

⁴⁶ Testimony of Kevin Saunders, J.D., Ph.D. before the Senate Committee on Commerce, Science, and Transportation, February 27, 1997. p. 17 and 7.

dren. On February 1, 2004, the Committee held its fifth hearing on television violence. Senator Hollings's safe harbor legislation, S. 161, which was incorporated with minor changes as an amendment into S. 2056, was discussed by the five FCC Commissioners.

SUMMARY OF MAJOR PROVISIONS

This section should be used to set forth the major provisions of the bill in a summary fashion, with special emphasis on any change in policy contained in the reported bill. Special care should be taken to ensure that the summary accurately reflects the bill as *reported*. This section may be omitted in a report on a short bill, particularly if it would do nothing more than repeat the material in the "PURPOSE OF THE BILL" section.

Bear in mind that this section is a *summary* of the *major* provisions of the bill. It should neither paraphrase the bill nor duplicate the section-by-section analysis that appears in a subsequent section of the report.

This section should omit minor, technical, and conforming provisions of the reported bill.

EXAMPLES

S. 165 would provide for several steps to improve the security of air cargo, particularly that which is carried aboard passenger aircraft. The TSA would be required to develop a strategic plan to ensure that all air cargo is screened, inspected, or otherwise made secure. TSA also would be required to develop a system for the regular inspection of air cargo shipping facilities. A database of known shippers would be established in order to bolster the Known Shipper Program. Indirect air carriers could have their certificates revoked if TSA finds that they are not adhering to security laws or regulations. The existing Federal security program for indirect air carriers would be reviewed and assessed for possible improvements. TSA would develop a security training program for persons who handle air cargo. All-cargo carriers would be required to develop security plans that would be subject to approval by the TSA.

S. 165 also would alter a provision in ATSA to expand the requirements of background checks for alien flight school applicants to include all aircraft instead of aircraft weighing 12,500 pounds or more.

S. 165 also would require a number of studies to be undertaken by the Department of Transportation and the Department of Homeland Security.

* * * * *

S. 1404 would amend the Act to—

- (1) reduce the size of the existing USOC board of directors from 124 members to nine elected members, five of whom would be independent, two representatives of the Athletes Advisory Council (AAC), and two representatives of the National Governing Bodies Council (NGBC) (in addition, the speaker of a newly-formed assembly and the U.S. members of the Inter-

national Olympic Committee (IOC) would serve on the board as ex officio members);

(2) designate the board as the principal governing body of the USOC;

(3) require that the board appoint a chief executive officer to carry out the policies and priorities of the USOC;

(4) require that the board establish four standing committees of the board (audit, compensation, ethics, and nominating and governance);

(5) create an assembly consisting of the many USOC stakeholders as provided in section 220504 of the Act, including a maximum of three individuals who represented the United States at the Olympics not within the preceding 10 years;

(6) require that the assembly have authority as provided by the board to determine matters pertaining to the Olympic Games;

(7) require that the assembly elect a speaker;

(8) require the board to establish whistleblower procedures for the treatment of complaints received by the USOC, as well as procedures to protect employees from retaliation for submitting a complaint;

(9) modify the existing ombudsman function;

(10) increase the operational and financial transparency of the USOC by requiring the USOC to report Congress and the President on a biennial basis;

(11) provide basic ethics and compliance guidance to the USOC ethics committee; and

(12) allow the National Senior Games Association of Baton Rouge, Louisiana, to use the words "Senior Olympics" to promote national athletic competition among senior citizens.

* * * * *

The CAN-SPAM Act, S. 877, aims to address the problem of spam by creating a Federal statutory regime that would give consumers the right to demand that a spammer cease sending them messages, while creating civil and criminal sanctions for the sending of spam meant to deceive recipients as to its source or content. Under the legislation, enforcement would be undertaken by the FTC and, in some cases, industry-specific regulatory authorities. In addition, the bill would enable State attorneys general and ISPs to bring actions against violators.

If enacted, S. 877 would require senders of all commercial e-mail to include a valid return e-mail address and other header information with the message that accurately identifies the sender and Internet location from which the message has been sent. Except for transactional or relationship e-mail messages (as defined therein), the legislation would also require senders of commercial e-mail to provide an Internet-based system for consumers to opt out of receiving further messages from that sender. Moreover, a sender of UCE would be required additionally to include in the e-mail message itself a valid physical address of the sender as well as clear and conspicuous notice that both the message is an advertisement or solicitation and that the recipient may opt out of further UCE from the sender.

S. 877 would also require businesses to ensure that they are not promoted in e-mail sent with false or misleading transmission information. The bill would hold the promoted businesses responsible if they: (1) know or should know about such deceptive promotion; (2) are receiving or expect to receive an economic benefit from it; and (3) are taking no reasonable precautions to prevent such promotion or to detect and report it to the FTC.

ESTIMATED COSTS

Paragraph 11(a) of rule XXVI of the Standing Rules of the Senate requires reports for each bill or joint resolution reported by a committee to include an estimate of the cost of carrying out the reported measure for the 5 fiscal years following the fiscal year in which it is reported. This rule applies to *each* reported bill or joint resolution, without regard to whether it specifically authorizes or requires the expenditure of funds.

Cost estimates are prepared by the Congressional Budget Office (CBO) and are transmitted with a cover letter addressed to the chairman and the ranking member. They also appear on the CBO website where they can be accessed online and printed for inclusion, as a hard copy attachment, in the report.

Because of the number of legislative measures on which the CBO may be working at any given time, the need for specialized analysis of the impact of legislation, and the complexity of the estimating process, it may be several days or even weeks before the estimate can be released. Under no circumstances should staff hold off on preparing a committee report until the cost estimate is received from CBO.

To facilitate the cost estimate process:

- Identify the CBO analyst responsible for making the original estimate as early as practicable. This can be done by calling CBO or by reviewing a recent committee report dealing with the same or a similar subject matter.
- Through the Committee's Legislative Counsel, make sure that the appropriate CBO analyst has a copy of the draft reported bill text as soon as possible after the mark-up, and that the analyst is promptly apprised of any subsequent revisions to that text.
- Promptly provide the CBO analyst any additional information requested, as well as any additional information that may be important in estimating the cost of implementing the measure.
- Alert the CBO analyst to the anticipated filing date for the report. This is particularly important if the bill and report are to be filed within days after the mark-up.

The cost estimate is an important element of the report and may become a critical factor in the consideration of a reported bill, affecting the decision of the Budget Committee to clear a bill for floor consideration or subjecting the bill to a point of order.

In extraordinary circumstances, such as the last week before adjournment, it may be necessary for the committee to waive this requirement.

The *waiver* language is as follows:

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee

states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

EXAMPLES

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 7, 1992.

Hon. ERNEST F. HOLLINGS,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2788, the National Marine Sanctuaries Program Amendments Act of 1992.

Enactment of S. 2788 would affect direct spending and receipts and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2788.
2. Bill title: National Marine Sanctuaries Program Amendments Act of 1992.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 16, 1992.
4. Bill purpose: S. 2788 would amend the Marine Protection, Research, and Sanctuaries Act of 1972 to expand the purposes and policies of the act, clarify the definition of "marine environment," and add new requirements regarding sanctuary designation and implementation, international cooperation, prohibited activities, enforcement, and damage payments. In addition, the bill would authorize appropriations for the marine sanctuary program for fiscal years 1993 through 1995, establish advisory councils to advise the Secretary of Commerce regarding the designation and management of marine sanctuaries, and designate the Provasoli-Guillard Center for the Culture of Marine Phytoplankton as a national center and facility. The bill also would establish a Hawaiian Islands Humpback Whale Sanctuary and would authorize funds to carry out the designation of the new sanctuary.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1993	1994	1995	1996	1997
Authorizations:					
Authorization level	11	13	15	0	0
Estimated outlays	6	11	13	6	2
Estimated revenues	(1) ¹	(1) ¹	(1) ¹	(1) ¹	(1) ¹
Direct spending:					
Estimated budget authority	(1) ¹	(1) ¹	(1) ¹	(1) ¹	(1) ¹
Estimated outlays	(1) ¹	(1) ¹	(1) ¹	(1) ¹	(1) ¹

¹ Less than \$500,000.

The costs of this bill fall within budget function 300.

Basis of estimate: CBO assumes that all funds authorized would be appropriated and that spending would occur at historical rates. In addition, CBO expects that funding for the advisory councils established in the bill would come from the authorized funds.

Under current law, NOAA has the authority to collect civil penalties for violations of regulations protecting marine sanctuaries from environmental damage. Penalties owed under the Marine Protection, Research, and Sanctuaries Act of 1972 receive no preference over amounts owed to other creditors in the case of an individual who cannot meet debt obligations. Section 9 of the bill would allow NOAA to receive priority treatment over other creditors when making a claim on a vessel. In addition, the section would increase from \$50,000 to \$125,000 the maximum civil penalty per violation. Based on information from NOAA, CBO estimates that this section would cause a negligible increase in receipts. Because the agency has the authority to spend such receipts, there would also be a small increase in direct spending resulting from the collection of these receipts.

In addition to levying civil penalties, NOAA has the authority to charge individuals who injure or damage sanctuary resources for the cost of the damage sustained. Under current law, interest does not accrue on damage assessments. Under section 12 of the bill, interest would accrue on any outstanding damage payments owed under the Marine Protection, Research, and Sanctuaries Act. CBO estimates that this section would cause a negligible increase in revenues and a corresponding small increase in direct spending from these collections. The total increase in revenues and in direct spending from sections 9 and 12 would amount to less than \$500,000 a year.

CBO expects that establishing the Hawaiian Islands Humpback Whale Sanctuary would result in only those costs (\$800,000) authorized for the sanctuary. The creation of another sanctuary could increase receipts from penalties, but this increase would depend on a number of factors that cannot be predicted at this time, such as the amount of traffic in the sanctuary or the amount of the fines that would typically be assessed. Any such receipts are not likely to be significant. In addition, CBO estimates that establishing the sanctuary would not result in a loss of receipts from mineral leasing activity. Based on information from the Department of the Interior, it appears that no mineral leases are currently in place in the designated areas.

6. Pay-as-you-go considerations: Title II and sections 9 and 12 of the bill would result in small increases in receipts and direct

spending. CBO estimates that these amounts would be less than \$500,000 in each fiscal year.

7. Estimated cost to state and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On June 5, 1992, CBO prepared an estimate for H.R. 4310, the National Marine Sanctuaries Reauthorization and Improvement Act of 1992, as ordered reported by the House Committee on Merchant Marine and Fisheries. This bill is similar to the one reported in the House. The two cost estimates differ primarily because the funding authorized in S. 2788 is less than that in H.R. 4310.

10. Estimate prepared by: Patricia Conroy.

11. Estimate approved by: Paul Van de Water, for C.G. Nuckols, Assistant Director for Budget Analysis.

* * * * *

S. 2603—Junk Fax Prevention Act of 2004

S. 2603 would amend current law and regulations relating to unsolicited advertisements sent via telephone facsimile machine. The bill would direct the Federal Communications Commission (FCC) to issue regulations to control such advertisements and would require the FCC and the Government Accountability Office to issue reports to the Congress on the effectiveness of those regulations. The FCC currently enforces laws relating to unsolicited advertisements, including assessing and collecting civil penalties for violations of such laws. (Civil penalties are recorded in the federal budget as revenues.) Based on information from the FCC, CBO estimates that implementing S. 2603 would not have a significant effect on revenues or spending subject to appropriation. Enacting the bill would not affect direct spending.

S. 2603 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 2603 would impose private-sector mandates, as defined in the UMRA, on senders of unsolicited facsimile advertisements. The bill would require senders to include an opt-out notice that is clear, conspicuous, and on the first page. Such a notice would allow recipients to contact the sender to prevent them from sending unsolicited advertisements in the future. Additionally, the opt-out notice must include “a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and a cost-free mechanism for a recipient to transmit a request.” The cost-free mechanism might include either a toll-free or a local telephone number.

Regulations promulgated by the FCC in July 2003, which are slated to take effect in January 2005, would require written permission from recipients prior to senders’ transmission of any unsolicited fax advertisements. If this bill were enacted, it would eliminate the requirement to obtain written permission from customers but replace this requirement with the opt-out mechanism. Based on information from industry sources, CBO expects that the aggregate direct cost of mandates in the bill would be fully offset by savings from the bill and thus would fall below the annual threshold estab-

lished by UMRA for private-sector mandates (\$120 million in 2004, adjusted annually for inflation).

On July 7, 2004, CBO transmitted a cost-estimate for H.R. 4600, the Junk Fax Prevention Act of 2004, as ordered reported by the House Committee on Energy and Commerce on June 24, 2004. The two pieces of legislation are similar, and the estimated costs are the same.

The CBO staff contacts for this estimate are Melissa E. Zimmerman (for federal costs), Sarah Puro (for the state and local impact), and Karen Raupp (for the private-sector impact). The estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires reports for each bill or joint resolution reported by a committee to include “an evaluation, . . . of the regulatory impact which would be incurred in carrying out the bill or joint resolution.”

Specifically, this rule requires that the evaluation include the following:

- An estimate of the number of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses.
- A determination of the economic impact of such regulation on the individuals, consumers, and businesses affected.
- A determination of the impact on the personal privacy of the individuals affected.
- A determination of the amount of additional paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution, which may include—
 - estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill or joint resolution could be substantial; and
 - reasonable estimates of the recordkeeping requirements that may be associated with the bill or joint resolution.

Staff members should not treat the regulatory impact statement as mere boilerplate. Unlike the cost estimate, which is prepared by the Congressional Budget Office, there is no office to which the preparation of the regulatory impact statement may be delegated. Resources available to the staff for preparation of the statement include testimony presented at hearings, the administering Federal agency for any program established or modified by the legislation, and the Congressional Research Service.

Particular care should be taken in stating any expected increase or decrease in regulatory burden as the committee report may be cited during floor debate by opponents of the Committee’s reported bill or joint resolution. The Committee on Homeland Security and Governmental Affairs (HSGAC) in the past has informally monitored all regulatory impact statements and may send a letter to the chairman of any committee that files a statement HSGAC considers to be inadequate.

Ultimately, however, the staff member must make sure that the regulatory impact statement accurately and completely reflects any major changes in regulatory activity. When regulatory activity will be increased, the staff member must provide a full and effective explanation as to the need for the increased regulation. Any decrease in regulatory burden should be noted as carefully and thoroughly as any increase in regulatory burden.

Finally, if the bill or joint resolution would not affect any of the regulatory burdens for which a determination is required, the report should reflect that assessment. Thus, if a bill would merely continue existing programs with little or no change in the regulatory impact of those programs, a concise, one paragraph regulatory impact statement will suffice.

In extraordinary circumstances, such as bills or joint resolutions ordered reported (or reports written) during the last week before adjournment, it may be necessary for the committee to waive this requirement.

The *waiver* language is as follows:

In compliance with subsection (b)(2) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraph (1) of that subsection in order to expedite the business of the Senate.

The *no-impact* language is as follows:

Because S. _____ does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

EXAMPLES:

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

The bill, as reported, will clarify the Coast Guard's existing authority to establish separate lines dividing the high seas and inland waters for purposes of determining the applicability of inland navigational rules and various marine safety laws. It will have no effect on the number of individuals regulated or on the personal privacy of such persons. For the operators of barges within the lines of demarcation, however, the costs of compliance with regulations and the amount of paperwork required for such compliance will be reduced.

* * * * *

NUMBER OF PERSONS COVERED

The bill would require the development of Federal inter-agency assessments on harmful algal blooms and hypoxia, as well as prediction and response plans at the request of State, tribal, and local governments. It does not authorize any new regulations and therefore will not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

The bill would authorize \$26 million in FY 2004, \$26.5 million in FY 2005, \$27 million in FY 2006, \$27.5 million for FY 2007, and \$28 million for FY 2008. in appropriations to the Secretary of Com-

merce. These funding levels are relatively modest and are not expected to have an inflationary impact on the nation's economy.

PRIVACY

The bill will not have any adverse impact on the personal privacy of individuals.

* * * * *

NUMBER OF PERSONS COVERED

S. 165 is intended to improve aviation security by making modifications to P.L. 107-71, the Aviation and Transportation Security Act (ATSA). The bill affects TSA and other entities already subject to TSA rules and regulations, and therefore the number of persons covered should be consistent with the current levels of individuals impacted under the provisions that are addressed in the bill.

ECONOMIC IMPACT

S. 165 is not expected to have an adverse impact on the nation's economy. It is anticipated that Sections 2 through 6 would have positive economic impacts to their respective areas, and should provide significant support to the aviation industry. The bill addresses cargo security and would authorize the necessary funding to establish a system that ensures all air cargo is secure by requiring TSA and the air cargo industry to take steps to protect the system.

PRIVACY

S. 165 would have minimal effect on the privacy rights of individuals, but a provision on identification training raises the issue of a person proving their identity, potentially with the aid of technology. The use of biometrics and other identifiers raise a number of questions that need to be addressed by TSA to ensure that the privacy rights of individuals are protected. Senator Wyden's provision is intended to ensure privacy for passenger screening.

PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens resulting from the passage of this legislation. In those areas where the bill does require additional paperwork, it is aimed at improving the security of the national air transportation system. S.165 would require the establishment of a database to improve the system by which known shippers of cargo are identified, and would require reports to Congress on several security matters addressed by other provisions.

* * * * *

NUMBER OF PERSONS COVERED

Section 202(5) of this legislation would direct the Administrator of the USFA (the Administrator) to support the development of new voluntary consensus standards for new firefighting technologies through national voluntary consensus standards organizations. Recipients of grants through the Assistance to Firefighters program, as defined by section 33 of the Federal Fire Prevention and Control

Act of 1974 (15 U.S.C. 2229), would be required by regulation to purchase equipment for which applicable voluntary consensus standards have been established.

ECONOMIC IMPACT

This legislation would not have an adverse economic impact on the nation. The bill would promote the development of more effective equipment and the establishment of better coordination and training for response to fires, terrorist attacks, and other national emergencies.

PRIVACY

S. 1152 would not have a negative impact on the personal privacy of individuals.

PAPERWORK

The legislation would not increase paperwork requirements for private individuals or businesses. The bill would require two reports from the Federal government. The first report would be from the Administrator to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science, within 90 days after the enactment of this legislation, on the need for a strategy concerning the deployment of volunteers and emergency response personnel, including a national credentialing system, in the event of a national emergency. The second report would be from the Under Secretary of Emergency Preparedness and Response at the Department of Homeland Security to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science, within 180 days after the date of enactment, on revisions that the Under Secretary has made to the Federal Response Plan for responding to terrorist attacks, particularly in urban areas, including fire detection and suppression, and related emergency services. The legislation also would establish a \$3,000,000 grant program for fire fighting equipment necessary to fight fires using foam in remote areas without access to water. Applicants to this grant program would have to file documents to apply for this program.

CONGRESSIONALLY DIRECTED SPENDING

Section 521 of the Honest Leadership and Open Government Act of 2007 (Pub. L. 110-81) amended the Standing Rules of the Senate by adding a new rule XLIV, "Congressionally Directed Spending and Related Items" that requires the Committee to identify "Congressionally directed spending items" in committee reports. A bill reported by the committee that contains such an item is subject to a point of order unless the Majority Leader certifies that each such item has been identified "through lists, charts, or other similar means including the name of each Senator who submitted a request to the committee for each identified item."

DISCLOSABLE ITEMS

Paragraph 5(a) of the rule defines the term "congressionally directed spending item" as "a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process". The rule applies also to "limited tax benefits" and "limited tariff benefits", but the Committee would rarely, if ever, include such items in its reported bills because of jurisdictional considerations.

Paragraph 4(b) of the rule requires a committee that reports a bill or joint resolution that includes a congressionally directed spending item, or that includes such an item in the committee report, to identify the item on a publicly accessible congressional website through lists, charts, or other similar means "as soon as practicable". The items are to be identified by the name of each Senator who submitted a request to the committee for each item. The availability on the Internet of a committee report that contains this information satisfies this requirement.

WHAT MUST BE DISCLOSED

Paragraph 1(a)(1) of the rule requires a disclosable item to be identified through lists, charts, or other similar means, including the name of each Senator who submitted a request to the committee for each identified item.

INFORMATION TO BE PROVIDED BY SENATOR'S OFFICE

Paragraph 6(a) of the rule requires a Senator who requests a congressionally directed spending item in a bill or joint resolution to provide a written statement to the chairman and ranking member that includes—

- (1) the Senator's name;
- (2) the name and location of the intended recipient, or, if there is no specifically intended recipient, the intended location of the activity;
- (3) the purpose of the item; and
- (4) a certification that neither the Senator nor the Senator's immediate family has a pecuniary interest in the item.

48-HOUR RULE

Paragraph 1(a)(2) of the rule requires the Majority Leader to certify that the disclosed information has been available on a publicly accessible congressional website in a searchable format for at least 48 hours before the Senate votes on a motion to proceed to consider the bill.

EXAMPLES

CONGRESSIONALLY DIRECTED SPENDING

In accordance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

Section	Earmark/Provision	Member
Authorization	Construction of Chelsea Street Bridge in Chelsea, MA.	Sen. Kerry
Section 103	Web-based risk management data system	Sen. Kerry
Section 503	Coast Guard to maintain LORAN-C Navigation System.	Sen. Kerry
Section 705	Olympic Coast National Marine Sanctuary	Sen. Cantwell
Section 707	Improved Coordination with tribal governments	Sen. Cantwell
Section 716	Vessel traffic risk assessments	Sen. Stevens
Section 717	Oil spill liability trust fund investment amount data.	Sen. Stevens
Section 904	Data	Sen. Stevens
Section 918	Fur Seal Act authorization	Sen. Stevens
Section 919	Study of relocation of Coast Guard Sector Buffalo facilities.	Sen. Clinton

* * * * *

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

* * * * *

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

Section	Provision	Member
Sec. 805	Olympic Coast National Marine Sanctuary	Senator Cantwell
Sec. 814	Oil spill liability trust fund investment amount	Senator Begich

SECTION-BY-SECTION ANALYSIS

This section of the report contains a detailed analysis of the *reported* bill. It begins with the first section of the bill and proceeds in numerical order by section until all sections of the bill have been discussed.

The discussion of each section should contain such analysis and amplification as is necessary to make clear the intent of the provision. If the intent of the provision is evident on its face, no further amplification is needed or desirable. The staff member should merely describe that section, taking care to be sure that the description does not appear to change the meaning of the provision in any way.

There will be instances in which the Committee wishes to amplify the intent of a provision, including—

- (1) expressing the Committee's view or expectation as to how a provision is to be implemented;
- (2) providing examples of how complex provisions are intended to work in real-life situations; and
- (3) providing guidance as to how qualifying words and phrases, such as "reasonable", "substantial", and "to the greatest extent practicable" should be interpreted.

Particular care should be taken in writing such material, as the courts and administering agencies may turn to the section-by-section analysis for guidance in interpreting the statutory language, particularly if its application to a specific set of circumstances is unanticipated or unclear. If the section-by-section analysis is carelessly written, the risk that the court or administering agency may reach an interpretation that is at odds with the Committee's expectations is increased.

If the text of a section was changed significantly by amendment during the mark-up, it may be helpful to describe the text of the section as it appeared in the original text before describing the section as amended so a reader may more easily grasp the policy concerns of the Committee in adopting the amendment.

While each section of a bill must be described, it is not necessary to include a description of every subsection. If, on the other hand, a subsection, paragraph, subparagraph, or clause is critical to the interpretation of the section, then it should be separately described. The analysis of a section setting forth the definition of various terms used in a bill might read as follows: "Section 2 contains the definitions of 26 terms used in the bill, of which the most important are the following: . . .".

EXAMPLES²

Section 1. Short title.

This section would provide that the legislation may be cited as the “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003” or as the “CAN-SPAM Act of 2003”.

Section 2. Congressional findings and policy.

* * * * *

Section 3. Definitions.

This section would define 19 terms used throughout the bill, some of which have a specific contextual meaning in the statutory regime created by the legislation. The following definitions included in S. 877 are of particular importance:

Affirmative Consent.—The term “affirmative consent” means that the message is being sent with the express consent of the recipient. Pursuant to this definition, affirmative consent is intended to require some kind of active choice or selection by the recipient; merely remaining passive, as in the case where a consumer fails to modify a default setting expressing consent, is not a sufficient basis for affirmative consent. If the recipient’s consent was prompted by a request for such consent, as opposed to consent expressed at the recipient’s own initiation (as in the case where a consumer wants a product catalogue and e-mails the company to ask for it), then such request must be clear and conspicuous or affirmative consent will not be deemed present. This definition does not require consent on an individual, sender-by-sender basis. A recipient could affirmatively consent to messages from one particular company, but could also consent to receive either messages on a particular subject matter (e.g., gardening products) without regard to the identity of the sender, or messages from unnamed marketing partners of a particular company. The only limitation on such third-party affirmative consent is that the person granting such consent must have been provided clear and conspicuous notice, at the time such consent is granted, that the person’s e-mail address may be transferred to such third parties. The purpose of this limitation is to ensure that consumers are fully informed of the scope of any third-party consent they may grant.

Commercial Electronic Mail Message.—The term “commercial electronic mail message” means any electronic mail message where the primary purpose is the commercial advertisement or promotion of a product or service. This definition is intended to cover marketing e-mails. Advertisements for content on an Internet website operated for a commercial purpose are included within the definition because an e-mail urging the recipient to visit a particular commercial website is just as much a marketing message as an e-mail urging the purchase of a specific product or service. However, the definition is not in-

²Because of length, only portions of the section-by-section analyses are shown in the examples).

tended to cover an e-mail that has a primary purpose other than marketing, even if it mentions or contains a link to the website of a commercial company or contains an ancillary marketing pitch.

Electronic Mail Message.—The term electronic mail message means a message sent to a unique electronic mail address. The definition is intended to apply to the message in the form that it is sent, regardless of whether or in what form it is received. For example, an electronic mail message may be blocked by filtering software, or truncated or altered by some other type of software installed by the recipient or the recipient’s Internet service provider. Such downstream effects have no impact on what constitutes the underlying electronic mail message for purposes of this Act.

Header Information.—The term “header information” means the source, destination, and routing information attached to the beginning of an e-mail message, including the originating domain name and originating e-mail address, and any other information that appears in the line purporting to identify the person initiating the message (commonly referred to as the “from” line).

Implied Consent.—The term “implied consent”, in reference to a commercial e-mail message, means that two requirements are met. First, a business transaction, between the sender and recipient, must have occurred within a 3-year period ending upon receipt of the message. A business transaction may include a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient. However, merely visiting a free website and browsing its content does not constitute a “transaction” for purposes of this definition. Second, the recipient of the message must have been given clear and conspicuous notice of an opportunity not to receive UCE from the sender and has not exercised that opportunity. Unlike affirmative consent, implied consent does not require an active choice or request by the recipient, so long as the recipient has been given the ability via conspicuous notice to decline receiving additional messages from the sender. The definition also clarifies that a recipient’s implied consent may apply only to a particular division or line of business within a particular corporation, rather than the entire corporation, if the corporation represented itself as a particular division or line of business in its dealings with the recipient. The rationale for this is that it would be unfair to read the recipient’s implied consent more broadly, when the recipient may not have been aware of the identity of the broader corporation.

* * * * *

Procure.—The term “procure”, when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or induce another person to initiate the message on one’s behalf, while knowingly or consciously avoiding knowing the extent to which that person intends to comply with this Act. The intent of this definition is to make a company responsible for e-mail messages that it hires a third party to send, unless that third party engages in renegade behavior

that the hiring company did not know about. However, the hiring company cannot avoid responsibility by purposefully remaining ignorant of the third party's practices. The "consciously avoids knowing" portion of this definition is meant to impose a responsibility on a company hiring an e-mail marketer to inquire and confirm that the marketer intends to comply with the requirements of this Act.

* * * * *

Section 2. Authorization of appropriations.

This section would amend section 32(a) of the CPSA to authorize appropriations for the CPSC not to exceed \$60,000,000 for fiscal year 2004, \$66,800,000 for fiscal year 2005, \$70,000,000 for fiscal year 2006, and \$73,600,000 for fiscal year 2007.

Section 3. FTE staffing levels.

This section would amend section 4(g) of the CPSA to authorize the Commission to hire and maintain a full-time equivalent staff of 471 persons throughout the reauthorization period.

Section 4. Executive director and officers.

This section would amend section 4(g) of the CPSA to conform the Commission's employee position titles that currently exist but that have not been formally authorized. No staff title changes entail the re-designation of career staff as political staff, or vice versa.

Section 5. Substantial product hazard recalls.

This section would amend section 15 of the CPSA to authorize the Commission to conduct defective product recall notification otherwise required of a manufacturer, retailer, or distributor under the CPSA. Pursuant to this section, in the event that the Commission makes a preliminary hazard determination that there exists a Class A or B product hazard (as defined in the CPSC handbook), and the Commission finds that the manufacturer, retailer, or distributor is financially unable to provide adequate notification to the consumers of the product as required by the CPSA and that such notification is the public interest, then the Commission may provide notification. This section would require that within 120 days of enactment, the Commission prescribe strict standards for determining when a manufacturer is financially unable to effect adequate notifications required by the CPSA.

* * * * *

Section 3. Chairman designated with Senate confirmation.

Section 3 would make the President's designation of one of the STB members to serve as Chairman subject to Senate confirmation.

Section 4. Expedited procedure for small rate challenges.

Section 4 would require the STB to issue new regulations to address small rate challenges within 180 days following enactment. The rules would establish standards for determining what rate cases will be eligible to use expedited procedures taking into account the size of the shipper, the value of the case and other rel-

evant factors, and establish the specific test or tests for determining whether the challenged rate is reasonable. Filing fees in small rate cases would not exceed the fee charged to bring a civil action in United States District Court. An initial decision could be made by an ALJ, with an opportunity to appeal the ALJ's decision to the Board. Finally, the amendment would require the STB to make recommendations to Congress for any additional legislative changes the Board determines are necessary to address the handling of small rate cases.

Section 5. Application of certain agreements.

This section would codify the voluntary agreement reached by railroad labor and railroad management in March 2001 with respect to the implementation of collective bargaining agreements in the event of additional mergers. It provides that when newly consolidated rail operations involving the signatories to the agreement are subject to multiple collective bargaining agreements, the labor union parties, rather than the rail management parties, may choose which collective bargaining agreement will govern the new operations. Codifying this agreement would ensure that it will not be set aside by STB-appointed arbitrators in the event of another round of mergers.

* * * * *

Section 2. Definitions.

Section 2 would define the key terms, "Administrator" and "NASA."

Section 3. Findings.

Section 3 would identify key findings of the bill concerning the history, the future, and the value of programs at NASA.

TITLE I—AUTHORIZATION OF APPROPRIATIONS

Section 101. Exploration capabilities.

Section 101 would authorize funding in the following areas: (1) International Space Station; (2) Space Shuttle; (3) Space Flight Support; (4) Transportation Systems; and (5) Human and Robotic Technology. The funding amounts for each of these areas for FY 2005 through FY 2009 are as shown in Figure 3.

FIGURE 3—Authorization Levels
(In \$ millions)

	FY 05	FY 06	FY 07	FY 08	FY 09
Exploration Capabilities					
International Space Station	1,863	1,764	1,780	1,779	2,115
Shuttle	4,319	4,326	4,314	4,027	3,030
Space Flight Support	492	435	430	456	453
Transportation Systems	689	1,261	1,624	1,423	1,863
Human and Robotic Tech.	1,079	1,303	1,301	1,370	1,433

FIGURE 3—Authorization Levels—Continued
(In \$ millions)

	FY 05	FY 06	FY 07	FY 08	FY 09
Exploration and Aeronautics					
Space Science	4,138	4,404	4,906	5,520	5,561
Earth Science	1,485	1,390	1,368	1,343	1,474
Biological/Physical Research	1,049	950	938	941	944
Aeronautics Technology	919	957	938	926	942
Education	169	169	171	170	170
Inspector General	28	29	30	31	32
TEA	15	16	16	16	17
TOTAL	16,245	17,003	17,816	18,002	18,034

Section 102. Exploration, science, and aeronautics.

Section 102 would authorize funding in the following areas: (1) Space Science; (2) Earth Science; (3) Biological and Physical Research; (4) Aeronautics Technology; and (5) Education. The funding amounts for each of these areas for FY 2005 through FY 2009 are as shown in Figure 3.

* * * * * * *

Section 105. Total authorizations.

Section 105 would provide the total authorization levels for NASA for FY 2005 through FY 2009 and are as shown in Figure 3. The bill would provide authorizations for a total of five years for NASA. Many research projects involved several years of effort before results can be realized. The Committee acknowledges that many things can change within a five year period. Nevertheless, the Committee is concerned that NASA has not continued its support for certain research areas for the entire duration of the authorization period. During the previous NASA authorization act (P.L. 106-391), authorization was included for immediate clinical trials for islet transplantation in patients with Type I diabetes utilizing immunoisolation technologies derived from NASA space flights. NASA funded the initial research into this area but failed to provide all of the authorized levels prescribed by the authorization legislation. The research has progressed successfully while NASA has missed an opportunity to support the space technology for the development of a bio-mechanical system that may be used by medical professionals to treat diabetic patients as well as many other hormone deficient diseases.

VOTES IN COMMITTEE

Paragraph 7(c) of rule XXVI of the Standing Rules of the Senate requires bills or joint resolutions ordered reported by a committee to include “a tabulation of the votes cast by each member of the committee in favor or and in opposition to such measure or matter.” The committee report, thus, must include a description of, and a list of the votes for and against, any amendment considered during mark-up on which there is a rollcall vote, as well as any rollcall vote ordering a bill or joint resolution to be reported. Any votes made by proxy should be indicated as such.

The description may also include a short statement of any measure adopted by voice vote that is subsequently modified by action taken by rollcall vote.

In recent practice (since the 108th Congress) the Committee has agreed at the beginning of an executive session to report some or all of the bills on the agenda subject to further amendment. This is usually phrased as a unanimous consent request to a motion, offered typically by the ranking member, that the measures be reported “subject to further amendment.” For reporting purposes, this consent to the Chairman’s unanimous consent request is treated as if it were a voice vote. Occasionally, this practice has extended to include the adoption, by voice vote, of a package of amendments (usually referred to as “a manager’s amendment”) or a substitute amendment “subject to further amendment”. After agreeing to the motion, the Committee may proceed to further consideration of the bills ordered reported and may adopt additional amendments by voice or rollcall vote. (This is the reverse of the Senate floor procedure under which all amendments are disposed of before a vote is taken on a bill as amended.) A short description of the action taken by voice vote will explain more clearly to the reader what the Committee did.

The Committee clerk keeps a tally sheet record of the rollcall votes taken during an executive session and that record, kept in the Committee’s Public Information Office, is part of the official records of the Committee. The Committee’s Legislative Counsel will prepare and format the list of votes for the report, but the description of the subject matter on which the vote was taken is written by the committee staff.

EXAMPLES

Senator Ensign offered an amendment, to the amendment (in the nature of a substitute) offered by Senator McCain, to increase the number of extraperimeter slots at Ronald Reagan Washington National Airport. By rollcall vote of 11 yeas and 11 nays as follows, the amendment was defeated:

YEAS—11	NAYS—11
Mr. Stevens ¹	Ms. Snowe ¹
Mr. Burns	Mr. Fitzgerald ¹
Mr. Lott	Mr. Allen
Mrs. Hutchison ¹	Mr. Hollings
Mr. Brownback ¹	Mr. Inouye ¹
Mr. Smith	Mr. Rockefeller
Mr. Ensign	Mr. Kerry ¹
Mr. Wyden	Mr. Breaux ¹
Mrs. Boxer	Mr. Dorgan
Ms. Cantwell	Mr. Nelson
Mr. McCain	Mr. Lautenberg

¹By proxy

Senator Boxer offered an amendment, to the amendment (in the nature of a substitute) offered by Senator McCain, to improve the training requirements for and require the certification of cabin crew members. By rollcall vote of 12 yeas and 10 nays as follows, the amendment was adopted:

YEAS—12	NAYS—10
Mr. Smith	Mr. Burns
Mr. Hollings	Mr. Lott
Ms. Inouye ¹	Mrs. Hutchison
Mr. Rockefeller ¹	Ms. Snowe ¹
Mr. Kerry ¹	Mr. Brownback
Mr. Breaux ¹	Mr. Fitzgerald ¹
Mr. Dorgan ¹	Mr. Ensign
Mr. Wyden ¹	Mr. Allen
Mrs. Boxer	Mr. Sununu
Mr. Nelson	Mr. Lautenberg
Ms. Cantwell	
Mr. McCain	

¹By proxy

Mr. Hollings made a motion to reconsider the vote by which the Ensign amendment was defeated. By rollcall vote of 12 yeas and 10 nays as follows, Mr. McCain voting present, the motion carried:

YEAS—12	NAYS—10
Mr. Stevens ¹	Ms. Snowe ¹
Mr. Burns	Mr. Fitzgerald ¹
Mr. Lott	Mr. Allen
Mrs. Hutchison	Mr. Inouye ¹
Mr. Brownback	Mr. Rockefeller ¹
Mr. Smith	Mr. Kerry ¹
Mr. Ensign	Mr. Breaux ¹
Mr. Sununu	Mr. Dorgan ¹
Mr. Hollings	Mr. Nelson
Mr. Wyden ¹	Mr. Lautenberg
Mrs. Boxer	
Ms. Cantwell	

¹By proxy

The Committee reconsidered the vote by which the Ensign amendment was defeated. By rollcall vote of 12 yeas and 11 nays as follows, the amendment was adopted:

YEAS—12	NAYS—11
Mr. Stevens ¹	Ms. Snowe ¹
Mr. Burns	Mr. Fitzgerald ¹
Mr. Lott	Mr. Allen
Mrs. Hutchison	Mr. Hollings
Mr. Brownback	Mr. Inouye ¹
Mr. Smith	Mr. Rockefeller
Mr. Ensign	Mr. Kerry ¹
Mr. Sununu	Mr. Breaux ¹
Mr. Wyden ¹	Mr. Dorgan ¹
Mrs. Boxer ¹	Mr. Nelson
Ms. Cantwell	Mr. Lautenberg
Mr. McCain	

¹By proxy

* * * * *

Senator Breaux offered an amendment to apply the penalties for obscene, etc., broadcasting to multichannel video programming distributors (other than with respect to pay-per-view, etc., programming) until the FCC determines that 85 percent of the households with children are using the V-chip or similar technology to block offensive programming or have affirmatively opted out of using it. By rollcall vote of 11 yeas and 12 nays as follows, the amendment was defeated:

YEAS—11	NAYS—12
Mr. Lott	Mr. Stevens
Mr. Ensign	Mr. Burns
Mr. Hollings	Mrs. Hutchison
Mr. Rockefeller ¹	Ms. Snowe ¹
Mr. Kerry ¹	Mr. Brownback
Mr. Breaux	Mr. Smith
Mr. Dorgan	Mr. Fitzgerald
Mr. Wyden	Mr. Allen
Mrs. Boxer	Mr. Sununu
Mr. Nelson	Mr. Inouye
Mr. McCain	Ms. Cantwell
	Mr. Lautenberg ¹

¹By proxy

By a rollcall vote of 23 yeas and 0 nays as follows, the bill was ordered reported with amendments:

YEAS—23	NAYS—0
Mr. Stevens	
Mr. Burns	
Mr. Lott	
Mrs. Hutchison ¹	
Ms. Snowe ¹	
Mr. Brownback	
Mr. Smith	

Mr. Fitzgerald
Mr. Ensign
Mr. Allen
Mr. Sununu¹
Mr. Hollings
Mr. Inouye
Mr. Rockefeller¹
Mr. Kerry¹
Mr. Breaux
Mr. Dorgan
Mr. Wyden
Mrs. Boxer
Mr. Nelson
Ms. Cantwell¹
Mr. Lautenberg¹
Mr. McCain

¹By proxy

AGENCY COMMENTS

This section of the report is optional. Agency comments generally would be received by the Committee in the context of a hearing and may be discussed in the legislative history. This section, nonetheless, may contain any relevant agency comments on a proposed bill or joint resolution submitted by a government agency for the Committee's consideration. The comments should be printed only if they are particularly relevant to the consideration of a portion of the bill, or if significant comments were received after the hearing on the measure. This section may also be an appropriate place to include agency comments submitted in response to a request from the Committee during or after the hearing process.

If the agency comment includes a lengthy attachment, it is sufficient to note that the attachment was received and is contained in the Committee files.

SUPPLEMENTAL, MINORITY, AND ADDITIONAL VIEWS

Paragraph 10(c) of rule XXVI of the Standing Rules of the Senate provides that "If at the time of approval of a measure or matter by any committee . . . , any member of the committee gives notice of intention to file supplemental, minority, or additional views, that member shall be entitled to not less than three calendar days in which to file such views. All such views so filed by one or more members of the committee shall be included within, and shall be made a part of, the report filed by the committee with respect to that measure or matter."

In recent practice, the Committee has not strictly enforced this rule with respect to its reports, and has included supplemental, minority, or additional views in its reports without regard to whether timely notice has been given and without regard to when the views were filed with the committee.

Supplemental, minority, or additional views may either support or disagree with the Committee position on a bill or joint resolution. Minority views may only be submitted by a Senator who voted against the amendment that is the subject of those views or against reporting the bill or resolution.

Generally, supplemental, minority, or additional views are drafted by the staff of the Senator whose views are expressed and those views are not subject to editing by committee staff. The Senator's staff should deliver a copy of the views directly to the Committee's Legislative Counsel, although the staff member may wish to provide a courtesy copy to the committee staff members responsible for preparing the overall report. It is considered inappropriate, however, for the committee staff to respond, in the report, to supplemental, minority, or additional views submitted by or on behalf of a Senator.

EXAMPLES

ADDITIONAL VIEWS OF SENATOR HOLLINGS

I applaud this bill as an attempt to achieve necessary reforms in human space flight and to endorse the results of the Columbia Accident Investigation Board regarding the management and institutional problems that exist at NASA. However, I have serious concerns about the redirection given to NASA by this Administration and the consequences, unintended though they may be, for the future of space in the nation's civil and economic endeavors.

Specifically, I applaud the measures the bill's provisions that:

- (1) endorse the results of the Columbia Accident Investigation Board regarding the Shuttle Return-to-Flight and other changes at NASA to improve the safety and technical engineering management of the agency;

(2) authorize an expansion of robotic study and exploration of Earth's solar system;

(3) call on NASA aggressively to pursue a new human crewed vehicle and safe concepts of space flight operation;

(4) enhance the participation in space and ensure a new spirit of openness and inclusion of the space industry and other nations in NASA's exploration program;

(5) establish, as a matter of policy, that it is contrary to the interests of the United States to have a sustained period of interruption in U.S. human space flight capabilities that would disrupt relationships with other nations, make industry investments uncertain, introduce discontinuities in science, risk the sustainability of the unique skills acquired over many years among human space flight managers and operations personnel, and allow anyone to question the preeminent status and role of the United States as the world's leader in human space flight operations and engineering; and

(6) seek to improve NASA program and financial management.

But the bill does not go far enough in a number of areas and, in some, goes too far indeed. The bill endorses NASA's program for the next five years and then seeks to create a measure of control over NASA spending, priorities, and purposes that is illusory at best.

My own assessment of the cost of NASA's redirection is that it sacrifices more than NASA lets on, causing severe dislocations to long-standing NASA initiatives in basic physics, solar, Earth, and aeronautics research. Moreover, we do not know the final price tag of this shift in U.S. space policy, and future dislocations that may result.

While the Administration is undergoing a review of its space transportation policy, it has not yet announced which Federal agency will be responsible for U.S. space transportation in the future. We do not know how NASA's new program, focused narrowly on deep space exploration "beyond low Earth orbit," relates to the original broader purpose of the 1958 Space Act, to establish a single, U.S. civilian agency to oversee and sponsor all U.S. research, development, and technological advancement in aeronautics and space. If NASA and its \$15 billion budget will only be dedicated to planetary exploration and not these broader purposes, which agency will oversee and perform those activities and where will that funding come from? These are questions that all of us in Congress have asked ourselves and we do not have the answers.

Not only do we not have a price tag, we do not have a plan. I understand the impetus of those who want us to move out in this new direction, restoring credibility and sustainability to this pursuit; but I do not understand the urgency and impatience. In order to meet the third criteria set out by the President's Commission on Implementation of U.S. Space Exploration Policy (aka the Aldridge Commission), affordability, I do not know how we can proceed to enact five years of funding for a program that hasn't even been defined yet. As I have said before, this "go-as-you-pay" approach is merely a license to throw fiscal discipline out the window and drag out projects until they never finish, nothing more, nothing less.

Throughout the past year and a half, there have been two basic objectives in my approach to NASA and the future of U.S. space policy. The first is to rationally address the nation's future ambitions in space, given the significance of the loss of the Space Shuttle Columbia and the healthy bout of soul-searching about the future that has engaged the nation. The second is to achieve a public accounting for the loss, without recrimination but with a steadfast resolve to ensure that the circumstances that led us here are never repeated again.

Sadly, I must say that I have failed in those causes. I cannot say that I believe the nation has taken the Columbia tragedy to heart, fully contemplating and addressing all the antecedents, circumstances, and causes of the failure of this institution, this program, and this vehicle. I and others, including the members of the Columbia Accident Investigation Board, believe that many of these root causes are mired in the circumstances of an agency pressed to accomplish too much with too little and as a result promising to do more than could humanly be delivered. It is not obvious to me, given the events that have occurred since the accident, that this cycle has been broken.

Second, it is not clear to me that NASA has fully learned the lessons of Columbia and, before it, the common set of lessons of the Challenger disaster. I hope, in coming and future years, that NASA is able and willing to step back more fully from these disasters, once the passion of re-flight is past, to listen even more deeply to what the safety, behavioral science, and organizational research community is trying to say about the demands of being an enduring, high reliability organization. No doubt, there is an impressive steadfastness to NASA's recovery actions, but true reform is something more to achieve than a one or two year set of "behavioral adjustments" and re-flight events.

In order to achieve real reform, I believe NASA must make fundamental changes in its principles of management and in its organization, the distribution of its roles and responsibilities, and in the performance of its functions of safety in flight operations, not just in its advisory processes of safety in development and engineering. This was a core theme in the recommendations of the Rogers Commission at the time of the Challenger disaster and should now be revisited.

Lastly, let none of these words discount the bravery and earnestness of astronauts and the operators, engineers, and safety officials who stand behind them. The strength of NASA and our space industry is its people. Together we can move NASA forward.

* * * * *

MINORITY VIEWS OF SENATOR ALLEN

S.1963 is unnecessary and counterproductive for an industry that has a proven track record of innovation, lower prices, and protecting consumer privacy. The six largest wireless carriers, rep-

representing more than three-quarters of all subscribers,¹ have specifically committed to this Committee that they will safeguard the privacy of wireless phone numbers, either by creating a directory assistance database that includes only the numbers of subscribers who affirmatively choose to be listed through an opt-in method or by not participating in any wireless directory assistance program. Those carriers who are planning a database have further committed not to charge subscribers who elect to keep their wireless numbers unlisted or if they elect to remove their numbers from the database. In testimony before the Committee, the wireless industry also assured us that wireless numbers from the directory assistance database will not be published in a directory and that the aggregated database will not be sold to any third-party or be available anywhere on the Internet. Finally, child privacy will be protected because customers must be 18 years or older to sign a contract and choose whether to be listed in the database. In the face of these commitments, I see no need for the bill.

Legislating in advance of any evidence of a problem is not only unnecessary in this case, it is also counterproductive. The wireless industry has thrived in the deregulatory environment established by Congress in 1993 and is now one of the country's most competitive businesses. More than 90 percent of Americans live in markets served by four or more wireless operators, and a nearly ubiquitous 98 percent of Americans live in a market served by three or more operators. Competition has driven wireless carriers to offer better service at lower prices. Carriers compete on the basis of service and feature options and calling plans, including lower prices, free voicemail, caller ID, and 3-way calling. Competitive forces in the wireless industry will discipline market participants more effectively than any regulator or regulation can.

Imposing government rules for a wireless service offering would represent a marked and unjustified departure from the successful bipartisan policy of deregulation. Faced with unnecessary government regulation, carriers may decide not to offer a directory assistance database at all, leaving small businesses and others who rely substantially or even exclusively on their wireless phones no other choice but to pay to have their number listed in a landline directory—if they have that option at all, which many do not. The bill may even deter future innovations and industry initiatives for fear government mandates will be added even before the first customer signs up.

Representative of the problems with this bill is the requirement that all telecommunications carriers, wireline as well as wireless, “mask” wireless telephone number information in the bills they send to their customers. While seemingly innocuous, compliance with this mandate would be costly and onerous. Carriers would essentially have to create a separate database of customers who elected not to have their number included in the directory assistance database, and every wireline and wireless carrier would have to check bills against that database to remove any numbers of customers who had not opted into the directory. No carrier currently

¹ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service, Ninth Report, FCC 04-216 Paragraph 20 and Table 4 (rel. Sept. 28, 2004).

has the technology to create the required database, query it, and reflect the results on bills. Requiring the creation of a separate database as a condition of providing directory assistance creates a very real risk that the entire directory assistance project will be deferred or even abandoned, to the detriment of consumers who desire such a resource.

Let me be clear that consumer privacy must be effectively protected, in the context of wireless services and otherwise. If wireless carriers do not act in conformance with the commitments they have made to us, I would not hesitate to support remedial legislation. In this case, however, passing a law when there no evidence of harm and every indication that statutory intervention is unneeded not only puts the cart before the horse, it will discourage the private sector from even trying to develop non-regulatory solutions to such matters as privacy protection. For these reasons, I oppose S. 1963.

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ADDITIONAL VIEWS OF SENATOR MCCAIN AND SENATOR HOLLINGS

During the Committee's consideration of S. 2645, it was the Committee's intent to adopt an amendment offered by Senators McCain and Hollings to increase the authorization amounts and make other changes to the underlying bill. Due to the invocation of a Senate rule, the consideration of amendments to this bill was prevented. It is our expectation and hope, however, that this amendment will be agreed to and accepted as this legislation receives further consideration before the full Senate.

The amendment would authorize the CPB's annual funding account at the following levels:

- \$428 million for FY 2007;
- \$458 million for FY 2008;
- \$490 million for FY 2009;
- \$524 million for FY 2010; and
- \$560 million for FY 2011.

The amendment would authorize the Department of Commerce's PTFP program at the following levels:

- \$50,000,000 for FY 2005;
- \$53,500,000 for FY 2006;
- \$57,240,000 for FY 2007;
- \$61,240,000 for FY 2008;
- \$64,200,000 for FY 2009;
- \$68,480,000 for FY 2010; and
- \$73,270,000 for FY 2011.

The amendment would also add an additional section to the bill relating to representatives, organizations, affinity groups, and rural communities.

Under current law, a nine-person Board of Directors governs CPB, sets policy, and establishes programming priorities. Only five members of the board at any time may be from one political party. The President appoints each member, who, after confirmation by the Senate, serves a six-year term. By statute, Board members must be United States citizens who are "eminent in such fields as education, cultural and civic affairs, or the arts, including radio

and television". (47 U.S.C. 396(c)(2)) Additionally, at least two members of the Board must be persons representing public broadcasting licensees.

The additional section would amend the law to clarify that at least one of the nine-member CPB Board should be selected from among individuals who represent the licensees and permittees of public television stations, and that at least one additional CPB Board member should be selected from among individuals who represent the licensees and permittees of public radio stations. Although the President has full discretion in selecting his nominees to the CPB Board, the President is urged to give consideration to the suggestions made by the licensees and permittees. Additionally, the Committee encourages the President to select board members who represent the diverse geography of licensees and permittees—rural, urban, non-contiguous States, territories, and Native American reservations.

In addition, to ensure that CPB's funding priorities are responsive to the needs of local stations and the communities they serve, this section would amend various portions of the law to require consultation with public radio and television licensees and representatives designated by their national organizations when allocating money from CPB's national programming fund, its digital fund, the fund for Community Service Grants, and the Interconnection Fund. Organizations like APTS, PBS, and NPR are member service organizations that represent the vast majority of local stations. They have elected boards that are representative of the diversity of types of local stations and can play a constructive role in assisting CPB with developing policies and procedures that will enhance localism and service to communities.

CHANGES IN EXISTING LAW

Paragraph 12 of rule XXVI of the Standing Rules of the Senate requires that whenever a committee reports a bill or joint resolution *repealing* or *amending* any statute, the reports shall include “(a) the text of the statute or part thereof which is proposed to be repealed; and (b) a comparative print of that part of the bill or joint resolution proposed to be amended, showing by stricken-through type and italics, parallel columns, or other appropriate typographical devices the omissions and insertions which would be made by the bill or joint resolution.” This rule is commonly referred to in the Senate as the “Cordon Rule”. A similar rule in the House of Representatives is commonly known as the “Ramseyer Rule”.

As with the statement of estimated costs and the regulatory impact statement, this part of the report may be waived by the committee where “in the opinion of the committee, it is necessary to dispense with the requirements . . . to expedite the business of the Senate”.

It is important to distinguish between a provision contained in a bill or joint resolution that repeals or amends an existing provision of law—which should be shown in this part of the report—and a provision contained in a bill or joint resolution that, if enacted, would become law without changing the text of any existing statute. The latter, often referred to as a “stand-alone provision” is not shown in this part, notwithstanding the fact that its enactment would create a new provision of Federal law, because it does not alter or repeal the text of an existing statute.

If the bill or joint resolution, as ordered reported, does not alter or repeal the text of an existing statute, then the report should state that the bill or joint resolution makes no change in existing law.

This section of the report is prepared by the Committee’s Legislative Counsel, based on the final pre-filing version of the bill or joint resolution as ordered reported.

The *waiver* language is as follows:

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of that paragraph in order to expedite the business of the Senate.

The *no change* language is as follows:

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

EXAMPLES

[Modification of existing statutory text]

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE III—PROVISIONS RELATING TO RADIO

PART IV. ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS, FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING

Subpart A—Assistance for Public Telecommunications Facilities

SEC. 391. AUTHORIZATION OF APPROPRIATIONS.

[47 U.S.C. 391]

There are authorized to be appropriated **[\$42,000,000 for each of the fiscal years 1992, 1993, and 1994,]** *\$50,000,000 for fiscal year 2005, \$52,000,000 for fiscal year 2006, \$54,008,000 for fiscal year 2007, \$56,240,000 for fiscal year 2008, \$58,490,000 for fiscal year 2009, \$60,820,000 for fiscal year 2010, and \$63,250,000 for fiscal year 2011,* to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications **[facilities]** *facilities, including analog and digital broadcast facilities and equipment,* as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary pursuant to this subpart have been submitted within such fiscal year. Sums appropriated under this subpart may be used by the Secretary to cover the cost of administering the provisions of this subpart.

* * * * *

[Addition of new section]

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

CHAPTER. 63. MAIL FRAUD

§ 1351. Commercial electronic mail containing fraudulent transmission information

(a) *IN GENERAL.*—Any person who initiates the transmission, to a protected computer in the United States, of a commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretense or representations, shall be considered materially misleading.

(b) *DEFINITIONS.*—Any term used in subsection (a) that is defined in section 3 of the CAN-SPAM Act of 2003 has the meaning given it in that section.

* * * * *

[Repeal of section]

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2001

[PUBLIC LAW 106-553, APPENDIX B; 114 STAT. 2762A-111]

[SEC. 632. (a)(1) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to—

[(A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels); and

[(B) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

[(2) The Federal Communications Commission may not—

[(A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A); or

[(B) extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99-25 (47 CFR 73.853), except as expressly authorized by an Act of Congress enacted after the date of the enactment of this Act.

[(3) Any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modifies its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.

[(b)(1) The Federal Communications Commission shall conduct an experimental program to test whether low-power FM radio stations will result in harmful interference to existing FM radio stations if such stations are not subject to the minimum distance separations for third-adjacent channels required by subsection (a). The Commission shall conduct such test in no more than nine FM radio markets, including urban, suburban, and rural markets, by waiving the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program. At least one of the stations shall be selected for the purpose of evaluating whether minimum distance separations for third-adjacent channels are needed for FM translator stations. The Commission may, consistent with the public interest, continue after the conclusion of the experimental program to waive the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program.

[(2) The Commission shall select an independent testing entity to conduct field tests in the markets of the stations in the experimental program under paragraph (1). Such field tests shall include—

[(A) an opportunity for the public to comment on interference; and

[(B) independent audience listening tests to determine what is objectionable and harmful interference to the average radio listener.

[(3) The Commission shall publish the results of the experimental program and field tests and afford an opportunity for the public to comment on such results. The Federal Communications Commission shall submit a report on the experimental program and field tests to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than February 1, 2001. Such report shall include—

[(A) an analysis of the experimental program and field tests and of the public comment received by the Commission;

[(B) an evaluation of the impact of the modification or elimination of minimum distance separations for third-adjacent channels on—

[(i) listening audiences;

[(ii) incumbent FM radio broadcasters in general, and on minority and small market broadcasters in particular, including an analysis of the economic impact on such broadcasters;

[(iii) the transition to digital radio for terrestrial radio broadcasters;

[(iv) stations that provide a reading service for the blind to the public; and

[(v) FM radio translator stations;

[(C) the Commission's recommendations to the Congress to reduce or eliminate the minimum distance separations for third-adjacent channels required by subsection (a); and

[(D) such other information and recommendations as the Commission considers appropriate.]

* * * * *

[No amendment or repeal]

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

VERY SHORT OR VERY LONG MEASURES

If a bill is very short or very long, it is appropriate to modify the report format as necessary.

For very short bills, sections may be combined or omitted if this would prevent needless repetition of material that has already been presented. There is nothing wrong with a 1-page report if one is dealing with a routine, 1-paragraph bill establishing National Salt Water Taffy Week. The summary of major provisions section is frequently omitted in shorter bills that do not really have major and minor provisions. A report does not need separate sections for background and needs, a summary of major provisions, and a section-by-section analysis if it is to accompany a one section bill that merely reauthorizes appropriations for the Federal Widget Commission.

For particularly long, complex, or controversial bills (such as transportation deregulation, telecommunications reform, or broadcast obscenity rules), it is appropriate to expand the report to deal with, e.g., different industry segments or constitutional issues raised by the measure.

A long report is not very helpful if the reader is unable to find needed information quickly and easily. The general proposition that information should be presented as concisely and clearly as possible applies with special emphasis in a longer report.

Special care should be taken to limit the discussion to essential material and to rework that discussion until it is as clear and concise as possible. Short paragraphs, the frequent use of headings and subheadings, bullet points, and even a table of contents will aid the reader in finding needed information quickly.

Make sure, as nearly as possible, that the discussion of each major issue occurs in one easily located place in the report, rather than being fragmented and scattered throughout the report. If a point needs to be re-emphasized, a cross-reference to the appropriate portion of the earlier discussion is generally preferable to restating the matter. Bear in mind that the purpose of the report is to present, in a clear and usable fashion, material that is essential to understanding the legislative measure.

For long, controversial, and complex legislation, one may need to add sections to the report in addition to the sections discussed previously in this guide in order to keep it well organized and present the essential material. For example, if a bill was the subject of prolonged and unusual consideration before the Committee, this activity may be described in a concise fashion under the heading "COMMITTEE CONSIDERATION". Similarly, if the bill was significantly altered by numerous amendments in the mark-up, the most significant amendments might be explained under the heading "COMMITTEE AMENDMENTS". Other, less significant, amendments may be

dispensed with by including a notation that the Committee also adopted several minor, technical, or conforming amendments.

If a bill is unusually important or significant, the section on "BACKGROUND AND NEEDS" may be expanded to include a longer, well-organized discussion of the need for the legislation. Finally, if a bill is particularly controversial, the report may contain a section entitled "MAJOR ISSUES" which briefly discusses the most important issues in the measure.

When you begin to enlarge sections or add new sections to a report, it may be necessary to rearrange the order of the sections. This is permissible if the final report is easy to read and organized in a logical fashion. You should be certain, however, that the reader is given a proper introduction at the beginning of the report. This means there should be a simple, brief, and clear statement of the major thrust of the legislation, the need for the legislation, and the major provisions of the legislation *before* the reader reaches any long or detailed discussions.

SHORT MEASURE EXAMPLE

PURPOSE OF THE BILL

The purpose of S. 886, the National Oceanic and Atmospheric Administration (NOAA) Corps Confirmation Correction Legislation, is to ratify the otherwise legal appointments and promotions in the commissioned corps of NOAA that failed to be submitted to the Senate for its advice and consent as required by law.

BACKGROUND AND NEEDS

The NOAA Corps is the smallest of the seven uniformed services of the United States (the others are the four Department of Defense services, the Coast Guard, and the Public Health Service). The NOAA Corps is comprised of slightly over 250 commissioned officers and operates a wide variety of specialized aircraft and ships used to conduct NOAA's environmental and scientific missions. Its commissioned officers provide NOAA with an important blend of operational, management, and technical skills that support the agency's science and surveying programs at sea, in the air, and ashore. Corps officers operate and manage NOAA's ships and aircraft as well as serve in the agency's research laboratories and program offices throughout the nation and in remote locations around the world.

The NOAA Corps officer appointments and promotions are similar to the other uniformed services and, under section 226 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3026) and its antecedent, require nomination by the President and must be submitted to the Senate for its advice and consent. Historically, the Commerce Committee has considered NOAA promotions, along with routine Coast Guard officer promotions, during Full Committee Executive Sessions.

It recently came to the Committee's attention that NOAA has failed since October 1, 1999, to submit any of its NOAA Corps officer appointments and promotions to the President for nomination and subsequently to the Senate for its advice and consent. Since

then, the NOAA Corps has made approximately 251 appointments and promotions, involving approximately 196 officers. An ongoing Department of Commerce investigation indicates these procedural problems may have existed prior to October 1, 1999, and additional officers' appointments and promotions may also be affected. These revelations raise serious questions concerning the validity of these appointments and promotions that could affect each individual officer's pay, entitlements, job status, and the ability to carry out the officer's official actions.

To address this serious situation, the legislation is designed to provide a framework for retroactive appointments and promotions for the affected officers in a manner that will protect the professional and financial aspects of their positions, and that will ensure that all past actions taken in the line of duty by such officers after their appointments and/or promotions are considered to have been official actions. The bill states that all actions performed in the line of duty by these NOAA corps officers are ratified and approved. In addition, the legislation states that all Federal agency actions (with respect to pay, benefits, and retirement) in relation to an unconfirmed NOAA corps officer shall be considered legally binding.

The bill provides that the President, acting alone, can make appointments and promotions for up to 180 days to allow these officers to maintain their status until the full Senate gives its advice and consent for these appointments and promotions going forward. Once this bill is enacted into law, the Administration is expected to submit the list of these officers to the Senate for its advice and consent.

LEGISLATIVE HISTORY

S. 886 was introduced on April 10, 2003, by Senators McCain, Hollings, Snowe, and Kerry, and referred to the Senate Committee on Commerce, Science, and Transportation. On May 1, 2003, the bill was considered by the Committee in an open executive session. The Committee, without objection, ordered S. 886 reported without amendments.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

[Omitted in this example]

REGULATORY IMPACT STATEMENT

Because S. 886 does not create any new programs, the legislation would have no additional regulatory impact, and will result in no additional reporting requirements. The legislation would have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal pri-

vacy of affected individuals, or the paperwork required from such individuals and businesses.

SECTION-BY-SECTION ANALYSIS³

Section 1. Ratification of certain NOAA appointments, promotions, and actions.

This section would ratify otherwise legal appointments and promotions in the commissioned corps of the National Oceanic and Atmospheric Administration that failed to be submitted to the Senate for its advice and consent as required by law.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

CONTROVERSIAL MEASURE EXAMPLE

BACKGROUND AND NEEDS

Since the inception of the Commission, Congress has been concerned with indecent and obscene material broadcast over the airwaves. Both the Radio Act of 1927 and The Communications Act of 1934 (the Act) vested the agency with the authority to regulate obscene, indecent, and profane material. In 1948, Congress codified section 1464 in the criminal code, which states, "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both."

The FCC is charged with enforcing section 1464 and has promulgated rules prohibiting radio and television stations from broadcasting indecent material between 6 a.m. and 10 p.m. For those who violate the rules, the FCC may issue warnings, impose monetary fines (up to \$27,500 for each violation or up to \$275,000 for a continuing violation for a broadcast station licensee and \$11,000 for non-licensees who have received a prior warning, *i.e.* performers), or revoke licenses for the airing of indecent material.

The increase in the number of indecency complaints filed at the Commission demonstrates the public's concern over the recent surge in indecent content on radio and television. The number of complaints increased from 111 in 2000 to 2,240,350 in 2003. The number of complaints filed in 2004 is on pace to exceed the number filed in 2003.

A study conducted by the Parents Television Council (PTC), and published in its report titled, "The Blue Tube: Foul Language on Prime Time Network TV," concluded that "foul language during the Family Hour [8 p.m. to 9 p.m.] increased by 94.8 percent between 1998 and 2002." The pervasiveness of indecent material has fueled competition among broadcasters to push the envelope for more and more questionable content. As described in the PTC report: "Once

³This example could be further shortened by omitting the SECTION-BY-SECTION ANALYSIS, as it essentially repeats the statement of purpose.

the initial taboo is broken and the shock value wears off, more and more curse words fall into the category of 'acceptable' language, and TV must try to up the ante by introducing new words to prime time TV's obscene lexicon."

Due to the increase in complaints, the Commission has indicated recently a willingness to toughen its enforcement against the broadcasting of indecent and obscene material. However, besides a paltry 10 percent increase for inflation, these statutory limits on fines have not been increased since 1991. As a result, the current statutory limits on fines, even if they are enforced more rigorously, appear to be a mere cost of doing business rather than a deterrent to broadcasting obscene, indecent, or profane material. S. 2056 was introduced to enhance the FCC's enforcement capability by increasing these fines.

While the FCC has rules, although deficient, governing the broadcasting of indecent programming, it has not adopted similar regulations to protect children from exposure to violent programming on television. The Telecommunications Act of 1996 (1996 Act) included a provision requiring all television sets manufactured after January 1, 2000, to contain a "V-Chip," a feature that provides parents with the ability to block the display of certain programming based on a program's rating. An April 2000 survey conducted by the Kaiser Family Foundation, found that only 9 percent of parents of children ages 2-17 had a television with a V-Chip, only 3 percent of all parents had ever used the V-Chip to block programming, and 39 percent of parents surveyed had never heard of the V-Chip.

The American Psychological Association (APA) reports that by the time a child who watches 2 to 4 hours of television daily leaves elementary school, he or she will witness at least 8,000 murders and more than 100,000 other assorted acts of violence on television. Psychological research has also shown that children who watch violence on television may become less sensitive to the pain and suffering of others, may be more fearful of the world around them, and may be more likely to behave in aggressive or harmful ways toward others.

I. INDECENT PROGRAMMING ON RADIO AND TELEVISION

A. INDECENCY REGULATION

The FCC defines "indecent speech" as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." In applying the "community standards" criterion, the FCC has stated, "the determination as to whether certain programming is patently offensive is not a local one and does not encompass any particular geographic area. Rather, the standard is that of an average broadcast viewer or listener and not the sensibilities of any individual complainant."¹ Additionally, to be found indecent the material must be

¹ Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. 1464 and Enforcement Policies Regarding Broadcast Indecency, *Policy Statement*, 16 FCC Rcd 7999 (2001).

broadcast at a time of day when children are likely to be in the audience—between the hours of 6 a.m. and 10 p.m.²

The Supreme Court decision establishing the judicial foundation for the FCC's indecency enforcement authority, is *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). In *Pacifica*, the Supreme Court upheld an FCC ruling finding indecent, but not obscene, a twelve-minute routine by comedian George Carlin. Upholding the FCC's actions, the Supreme Court emphasized the fact that the broadcast media pervades society and that once unexpected program content is heard, the damage is done: "To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow." Additionally, the Court noted that "broadcasting is uniquely accessible to children, even those too young to read," and that the government's interest in the well-being of its youth and in supporting parental control in the household justified regulation. As a result, the Court found that under these circumstances, the FCC could sanction those who broadcast indecent—even if not obscene—language.

B. COMMISSION ENFORCEMENT ACTION

Some critics argue that the current process is largely ineffective and puts too many burdens on complainants. In particular, these critics note that in 2003 the FCC received about 240,000 complaints concerning approximately 375 radio and television programs, and issued a total of 3 fines. The indecency complaint process also has been criticized for allowing complaints to languish, which has in some cases resulted in the FCC being forced to dismiss a complaint because the statute of limitations has run. Since 2000, the number of indecency complaints has risen to a record high.

Year	No. of complaints received	No. of programs reflected in such complaints	No. of complaints denied or dismissed by year-end	No. of complaints pending at year-end
2004	530,885	23
2003	2,240,350	318	368	239,982
2002	13,922	345	13,258	664
2001	346	152	242	104
2000	111	101	37	72

Until 2003, the highest indecency fine the FCC had imposed was \$35,000 to WQAM (Miami, FL) for a five-day indecent broadcast. In 1995, the FCC issued Notices of Apparent Liability (NAL) of \$400,000, \$500,000, and \$600,000 against Infinity Broadcasting Corporation, (Infinity, a unit of Viacom, Inc.) involving "The Howard Stern Show," but the forfeitures were never actually recorded because the company entered into a settlement agreement instead for more than \$1.7 million.

Recently, the Commission has imposed the statutory maximum fine of \$27,500 in numerous instances.

²*Action for Children's Television v. FCC*, 58 F.3d 654, (D.C. Cir. 1995), herein after *ACT IV*.

- In April 2003, the FCC proposed the statutory maximum fine of \$27,500 against Infinity for the broadcast of explicit and graphic sexual references, including references to anal and oral sex, as well as explicit and graphic references to sexual practices that involve excretory activities. In addition, the FCC stated that given the egregiousness of this violation, additional serious violations by Infinity might lead to the initiation of a license revocation proceeding. While Infinity challenged the proposed fine, the FCC rejected this challenge and issued a forfeiture order on December 8, 2003.

- In October 2003, Infinity was fined \$357,500 for airing a description of a couple allegedly having sex in St. Patrick's Cathedral in New York City. The broadcast was part of a contest among five couples who were challenged by station personnel to have sex in several places specified by the station, including St. Patrick's Cathedral. The FCC said the forfeiture was the largest amount permitted by the Act based on the legal facts of the case, and therefore fined the thirteen Infinity stations that aired the program \$27,500 each.

- In October 2003, the FCC issued a \$55,000 forfeiture against AM/FM Radio Licensees, which is controlled by Clear Channel Communications, Inc. (Clear Channel), for airing a program in which the hosts questioned two high school girls about the sex lives of students and school administrators.

- In January 2004, the FCC issued its largest forfeiture ever for \$755,000 against Clear Channel for airing indecent material in connection with the "Bubba the Love Sponge" program. The forfeiture assessed the statutory maximum of \$27,500 to each of the 26 Clear Channel stations that aired the indecent material, and the base amount of \$10,000 each for four public file violations (\$40,000).

- During the 2004 Super Bowl, Janet Jackson's breast was exposed during her halftime duet with Justin Timberlake. Viacom's CBS television network, which aired the show, and Viacom's MTV, which produced the halftime show, apologized for what they describe as an "unscripted moment." CBS estimates that some 140 million Americans tuned into the game, which would make it the most-watched Super Bowl in history. FCC Chairman Michael C. Powell issued a statement the following morning, calling the incident a "classless, crass and deplorable stunt" and instructed the Commission to open an immediate investigation on its own motion. The FCC has received more than 500,000 complaints about the Super Bowl halftime show. Chairman Powell's probe could result in fines against CBS's 20 owned and operated stations and the more than 200 affiliate stations that aired the broadcast. If the Commission levies the maximum \$27,500 fine, CBS affiliates would have to pay \$5.5 million, about the cost of two Super Bowl ads, while CBS, through its owned stations, would be fined approximately \$550,000.

Even with the FCC's recent actions on indecency, many critics have suggested that the fines are merely the "cost of doing business" for these large companies. Commissioner Michael J. Copps has declared in a recent statement:

. . . a mere \$27,500 fine for each incident . . . such a fine will be easily absorbed as a “cost of doing business” and fails to send a message that the Commission is serious about enforcing the nation’s indecency laws. “Cost of doing business” fines are never going to stop the media’s slide to the bottom.³

The following chart compares the Commission’s current fines to the various companies’ revenues.

Station owner	2002: Amount of fines (number of fines)	Company revenue for 2002	2003: Amount of fines (number of fines)	Company revenues for 2003
Clear Channel	\$0	\$8,093,000,000	\$1,057,500	\$8,042,000,000
Infinity	21,000	24,600,000,000	412,500	26,600,000,000
Entercom	14,000	391,300,000	0	401,100,000
Emmis	28,000	533,800,000	0	N/A

While the FCC has moved to assess the maximum fine in certain cases, the Commission has not utilized its authority to issue fines for violations on a per utterance basis, to initiate license revocations, or to further develop a consistent and aggressive approach to combating indecency. In October, the FCC’s Enforcement Bureau determined that rock star Bono’s use of the “F” word on a live national broadcast was not indecent because it did not appeal to the “prurient interest” since the term was used as an adjective. Shortly thereafter, the House of Representatives and Senate both passed forth resolutions expressing a sense that there is no support for, “the lowering of standards or weakening of rules by the FCC prohibiting obscene and indecent broadcasts to allow network or other communications to use language that is indecent or vulgar” and requested that the FCC Commissioners reverse the Enforcement Bureau’s decision.⁴ On March, 3, 2004, the FCC reversed the Enforcement Bureau’s decision stating that any use of the “F” word violates the FCC’s indecency rules.⁵

C. POSSIBLE RELATIONSHIP TO MEDIA OWNERSHIP

The number of indecency complaints has risen during a period when the number of owners of media outlets has decreased. As a result, the Committee has become concerned that there may be a possible connection between the increased consolidation of owners in the media industry and the increased number of complaints on indecent programming. For example, Clear Channel, which was assessed the largest fine ever issued by the FCC, went from owning 512 stations in 1999 to over 1,200 stations in 2004. Other radio station group owners also have increased their ownership holdings over the same period. Infinity went from owning 163 stations in 1999 to owning 180 in 2004; Citadel went from 108 stations in 1999 to 213 stations in 2004; Cummlus Media, Inc. went from owning 232 in 1999 to 301 in 2004; and Entercom Communications Corporation went from owning 42 in 1999 to 104 in 2004.

³Notice of Apparent Liability for Forfeiture Clear Channel Broadcasting Licenses, Inc., Separate Statement of Commissioner Michael J. Copps, Dissenting, 19 FCC Rcd 1768, (rel. Jan. 27, 2004).

⁴See H. Res. 482 and H. Res. 500, and S. Res. 283 (2003).

⁵Complaints of various broadcast licensee r.e. airing of “Golden Globe Awards” Program, Memorandum Opinion and Order, FCC 04-43.

Consumers Union and PTC have testified before the Committee on the relationship between increased media consolidation and a coarsening of content on the airwaves. Gene Kimmelman of Consumers Union wrote to the Committee in a letter dated March 8, 2004, "Realistic media ownership rules must be in place to lessen the influence of massive corporations on local broadcast content, as well as to ensure public debate in the local media, including newspapers."⁶ At a July 23, 2003, hearing, Brent Bozell of PTC testified, "There are many reasons not to give these six mega-corporations even more control of our airwaves, one of them being their utter lack of attentiveness to community standards."

II. VIOLENT PROGRAMMING ON TELEVISION

A. IMPACT OF MEDIA VIOLENCE ON CHILDREN

The impact of media violence on children has been studied since motion pictures were created during the 1920s. The primary concern at that time was whether certain scenes containing sexual or violent content undermined moral standards. A few years later, a study suggested that there was a link between delinquency-prone youngsters and motion pictures. Although members of the broadcast industry and specialists in human deviant behavior criticized these conclusions, it elevated the issue to one of public importance.

As television grew in the 1950s, it became the primary focus of media violence researchers. Between the late 1950s and early 1960s, several studies suggested a strong link between television violence and youth aggression. In 1969, the Surgeon General was petitioned by Senator John Pastore, the Chairman of the Senate Committee on Commerce, to conduct a study on television and social behavior. The study, published in 1972, found that: (1) television content is heavily saturated with violence; (2) children and adults are watching more television; and (3) there is some evidence that, on balance, viewing violent television entertainment increases the likelihood of aggressive behavior.

The Surgeon General's report heightened concern over the issue and led to more studies, including a study released in 1975 by the Journal of American Medical Association (JAMA). The study suggested that television violence was having a deforming effect on children, resulting in abnormal child development, and increasing levels of physical aggressiveness. In response, the American Medical Association (AMA) passed a resolution declaring that television violence threatened the welfare of young Americans.

Since the release of the Surgeon General's report and the JAMA study, a number of major medical and public health organizations have studied and affirmed the link between violent programming and violent behavior in children. In 1982, the National Institute of Mental Health (NIMH) produced a report entitled "Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties," concluding that TV violence affects all children, not just those predisposed to aggression. Specifically, the report reaffirmed the conclusions of earlier studies:

⁶ See www.consumerunion.org/pub/core—telecom—and—utilities/000901.html

After 10 more years of research, the consensus among most of the research community is that violence on television does lead to aggressive behavior by children and teenagers who watch the programs. This conclusion is based on laboratory experiments and on field studies. Not all children become aggressive, of course, but the correlations between violence and aggression are positive. In magnitude, television violence is as strongly correlated with aggressive behavior as any other behavioral variable that has been measured. The research question has moved from asking whether or not there is an effect to seeking explanations for the effect.⁷

In 1992, Dr. Brandon Centerwall, a Professor of Epidemiology at the University of Washington, conducted a study on the homicide rates in South Africa, Canada, and the United States in relation to the introduction of television. In all three countries, Dr. Centerwall found that the homicide rate doubled about 10 or 15 years after the introduction of television. According to Dr. Centerwall, the lag time in each country reflects the fact that television exerts its behavior-modifying effects primarily on children, whereas violent activity is primarily an adult activity. Dr. Centerwall concludes that "long-term childhood exposure to television is a causal factor behind approximately one-half of the homicides committed in the United States." This report found that extensive exposure to television violence could lead to chronic effects extending into later adolescence and adulthood.

In June 2000, representatives from 6 of the nation's top public health organizations, including the Academy of Pediatrics, the APA, and the AMA, issued a joint statement noting that:

Well over 1,000 studies—including reports from the Surgeon General's office, the National Institute of Mental Health, and numerous studies conducted by leading figures within our medical and public health organizations—our own members—point overwhelmingly to a causal connection between media violence and aggressive behavior in some children. The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children. Its effects are measurable and long lasting. Moreover, prolonged viewing of media violence can lead to emotional desensitization toward violence in real life.

This conclusion has been further supported by subsequent research. In March 2003, Dr. Rowell Huesmann and Dr. Leonard Eron reviewed the long-term relationship between viewing media violence in childhood and young-adult aggressive behavior. The doctors found that "both males and females from all social strata and all levels of initial aggressiveness are placed at increased risk for the development of adult aggressive and violent behavior when they viewed a high and steady diet of violent television shows in

⁷National Institute of Mental Health, *Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties* (David Pearl et al. eds., 1982) p.6.

early childhood.”⁸ This longitudinal study was started in the 1960s and followed a group of 875 children in upstate New York, examining them at ages 8, 19, and 30.⁹

Finally, in March 2003, the Committee heard testimony from Dr. Michael Rich, Director of the Center on Media and Children’s Health at the Children’s Hospital of Boston, concerning neurobiological research and the impact of media violence on children. At that hearing, Dr. Rich testified that the correlation between violent media and aggressive behavior:

. . . is stronger than that of calcium intake and bone mass, lead ingestion and lower IQ, condom non-use and sexually acquired HIV, and environmental tobacco smoke and lung cancer, all associations that clinicians accept as fact, and on which preventive medicine is based without question.

Given this evidence about the correlation between exposure to violent programming and violent behavior, many organizations have become increasingly alarmed by the increased prevalence of violent programming on broadcast, cable, and satellite television. As noted earlier, the APA estimates that a typical child will watch 8,000 murders and 100,000 acts of violence before finishing elementary school. Similarly, in 1998, a \$3.5 million study, commissioned by the National Cable Television Association (NCTA) and conducted by a panel of leading educators and social scientists (The National Television Violence Report) indicated that from 1994 to 1997 the level of television violence was relatively constant, with about 60 percent of programming containing violent content, averaging about 6 violent acts per hour. During prime time viewing hours, however, the study found that the number of programs with violence increased by 14 percent on the Big Four networks, by 7 percent on independent broadcast stations, and by 10 percent on basic cable channels.

Moreover, the manner in which violence is portrayed on television may be a cause for concern. For example, the NCTA study reported that:

Much of TV violence is still glamorized . . . Most violence on television continues to be sanitized . . . Less than 20 percent of violent programs portray the long-term damage of violence to the victim’s family, friends, and community . . . Much of the serious physical aggression on television is still trivialized . . . Very few programs emphasize an anti-violence theme.

In 2003, the PTC conducted a study on television violence that was published in a report entitled, “TV Bloodbath: Violence on Prime Time Broadcast TV”, which surveyed programming shown during the 1998, 2000, and 2002 November sweeps. The report found that the prevalence of violent programming increased in every time slot between 1998 and 2002, and that in 2002 depictions

⁸See L/ Rowell Huesmann *et al.*, Longitudinal Relations Between Children’s Exposure to TV Violence and Their Aggressive and Violent Behavior in Young Adulthood: 1977–1992, *Development Psychology*, 39 (2003): 201–221.

⁹See L. Rowell Huesmann *et al.*, Stability of Aggression Over Time and Generations, *Developmental Psychology* 20 (1984): 1,120–1,134.

of violence were 41 percent more frequent during the 8 p.m. hour and 134.4 percent more frequent during the 9 p.m. hour than in 1998.

B. PRIOR CONGRESSIONAL ACTION

Congress has expressed concern about the amount of violence on television since the 1950s. Studies conducted in the 1950s showed that violent crime increased significantly early in that decade, and some researchers believed that the spread of television was partly to blame. In response, Congress held hearings concerning violence in radio and television and its impact on children in 1952 and 1954. In 1956, one of the first studies of television violence reported that 4 year-olds who watched the "Woody Woodpecker" cartoon were more likely to display aggressive behavior than children who watched the "Little Red Hen." After the broadcast industry pledged to regulate itself and after the FCC testified against regulatory action, Congress chose not to act.

In the early 1960s, as a follow up to the earlier Senate hearings, President John F. Kennedy and Attorney General Robert Kennedy placed significant pressure on the television networks to reduce violent content in their programming. However, the pressure yielded few results. The urban riots of the 1960s again raised concern about the link between television violence and violent behavior. In response to public concern, President Lyndon B. Johnson established the National Commission on the Causes and Prevention of Violence. The Commission's Mass Media Task Force looked at the impact of violence on television and concluded that television violence (1) has a negative impact on behavior; (2) encourages subsequent violent behavior; and (3) "fosters moral and social values about violence in daily life which are unacceptable in a civilized society."¹⁰

In 1969, Senator John Pastore petitioned the Surgeon General to investigate the effects of TV violence. In 1972, Surgeon General Jessie Steinfeld released a study demonstrating a correlation between television violence and violent and aggressive behavior and called for congressional action.¹¹ The 5 volume report concluded that there is a causal relationship between TV violence and aggressive behavior, but primarily on children presupposed to aggressive behavior.

Several more hearings were held after the release of the Surgeon General's report in the 1970s. In 1975, a report by the JAMA suggested that television violence was having a deforming effect on children, resulting in abnormal child development, and increasing levels of physical aggressiveness. In response, the AMA passed a resolution declaring television violence to be a threat to the welfare of young Americans. Despite the findings, little regulatory or congressional action was taken. However, continued concerns prompted Congress to request the FCC to study possible solutions.

¹⁰ See U.S. National Commission on the Causes and Prevention of Violence, *Final Report of the National Commission on the Causes and Prevention of Violence*, Washington, D.C., U.S. Government Printing Office, December 1969, p. 199.

¹¹ See U.S. Department of Health, Education, and Welfare, The Surgeon General's Scientific Advisory Committee on Television and Social Behavior, *Television and Growing Up: The Impact of Televised Violence. Report to the Surgeon General*, Washington, D.C., United States Government Printing Office, 1972, p. 279.

On February 20, 1975, the FCC issued its "Report on the Broadcast of Violent and Obscene Material." The report recommended statutory clarification regarding the Commission's authority to prohibit certain broadcasts of obscene and indecent materials. However, with regard to the issue of television violence, the FCC did not recommend any congressional action because the industry had recently adopted a voluntary family viewing policy as part of an industry code of conduct. The policy provided that "entertainment programming inappropriate for viewing by a general family audience should not be broadcast during the first hour of network entertainment programming in prime time and in the immediately preceding hour." In 1982, the Department of Justice challenged the code on antitrust grounds wholly unrelated to the family viewing policy. The National Association of Broadcasters (NAB) ultimately eliminated the code and with it went the family viewing policy.

During the 101st Congress, Senator Paul Simon (D—IL) introduced the Television Program Improvement Act. That legislation granted an antitrust exemption to permit television industry representatives to meet, consider, and jointly agree upon implementing voluntary standards that would lead to a reduction in television violence. Subsequent to the bill's enactment, industry discussions led to the release in December 1992 of joint standards regarding the broadcasting of excessive television violence. In June 1993, the networks adopted a policy to warn viewers about programs that might contain excessive violence. That policy required the following statement to be transmitted before and during the broadcasting of violent programs: "Due to some violent content, parental discretion is advised."

Despite these efforts by the industry, many in Congress believed the voluntary standards did not adequately address the concerns over television violence. In October 1993, the Committee held a hearing on television violence to consider a variety of legislative proposals. Attorney General Janet Reno testified that all the legislation pending before the Committee at that time, including S. 1383 (103rd Congress), the Children's Protection From Violent Programming Act of 1993 (Hollings-Inouye), would be constitutional. The major broadcast networks and other industry representatives argued that the amount of violent programming had declined and requested more time to implement proposed warning labels before Congress considered legislation. No further action was taken in the 103rd Congress.

On July 11, 1995, the Committee held a hearing on television violence to consider pending measures, including S. 470 (104th Congress), introduced by Senator Hollings and known as the "safe harbor legislation". S. 470 was identical to S. 1383. The Committee subsequently reported S. 470 without amendment on August 10, 1995 by a recorded vote of 16 to 1, with two Senators not voting. Similar legislation was reported out of Committee in the 105th Congress by a vote of 19 to 1 and in the 106th Congress by a vote of 17 to 1, with one Senator voting present.

As discussed earlier, part of the 1996 Act, Congress adopted legislation which required television manufacturers to include a device, dubbed the V-Chip for violence, capable of blocking programming with certain ratings. In conjunction with the V-Chip, the

1996 Act encouraged the video programming industry to “establish voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children,” and to broadcast voluntarily signals containing these ratings.

On February 29, 1996, all segments of the television industry created the “TV Ratings Implementation Group” headed by Motion Picture Association of America (MPAA) President Jack Valenti. The group submitted its voluntary age-based ratings proposal to the FCC on January 17, 1997. The Implementation Group included the following industry groups: members from the broadcast networks; affiliated, independent, and public television stations; cable programmers; producers and distributors of cable programming; entertainment companies; movie studios; and members of the guilds representing writers, directors, producers, and actors.

These age-based ratings came under intense and immediate criticism because they failed to identify specific content that was violent, sexual in nature, or contained mature dialogue. Thus, the ratings denied parents the ability to block individual programs based on objections to the specific content of the programs. In response to these criticisms, most of the television industry agreed to a “revised ratings system” which added designators indicating whether a program received a particular rating because of sex (S), violence (V), language (L), or suggestive dialogue (D). A designator for fantasy violence (FV) was added for children’s programming in the TV-Y7 category. This revised ratings system was approved by an FCC order on March 12, 1998. In that same order, the FCC required manufacturers to include V-Chip technology to block objectionable programming in at least half of televisions 13 inches or larger by July 1, 1999, and in the remaining half by January 1, 2000.

In 1998, the Kaiser Family Foundation released a report (“An Assessment of the Television Industry’s Use of V-Chip Ratings”) identifying two major implementation problems with the ratings system: (1) program producers or the networks were making the decisions on what ratings to use, and (2) NBC and Black Entertainment Television (BET) were not providing V-Chip compatible content ratings. Specifically, the report found that 79 percent of shows containing violence did not receive a “V” content descriptor. According to the Kaiser study, “the bottom line for parents who want to use the V-Chip ratings to guide their children’s viewing is clear: Parents cannot rely on the content descriptors, as currently employed, to block all shows containing adult language, violence or sexual content.” In addition, with respect to children’s programming, the failure to use the “V” descriptor and the rare use of the “FV” descriptor led the report to conclude that “there is no effective way for parents to block out all children’s shows containing violence.”

In addition to concerns about the application of the ratings system, national surveys conducted by the Kaiser Family Foundation after the ratings system was implemented show that an overwhelming majority of parents do not know the meaning of the content ratings. For example, a survey conducted by the Kaiser Family Foundation in 1999 found that only 3 percent of parents knew that the rating “FV” stood for “fantasy violence” and 2 percent knew

that “D” stood for “suggestive dialog.”¹² An update released in 2001 showed that 14 percent of parents knew the meaning of “FV” and 5 percent knew the meaning of “D.”¹³

Finally, in March 2004, the Ad Council released the result of its nationwide survey of parents with children aged 2 to 17, which found that while most parents are concerned about age-appropriate television content, less than 10 percent of all parents are using the V-Chip. Furthermore, the survey found that approximately 80 percent of parents that own a television set with a V-Chip are unaware that their television has the technology.

C. SAFE HARBOR REGULATION

Some have questioned whether limiting the distribution of violent programming to certain hours of the day would be consistent with the First Amendment of the Constitution. Attorney General Janet Reno responded to some of these questions when she testified in October 1993 that the safe harbor approach in S. 1383 and the other bills before the Committee at that time were constitutional.¹⁴

While no court has ruled specifically on the constitutionality of the approach taken by title II of S. 2056, there appear to be many lines of decisions that would support the constitutionality of the safe harbor approach to television violence. This legislation could fall within the ambit of the clear and present danger exception, the limitations on commercial speech and speech harmful to children, the strict scrutiny test, and a regulation of time, place, and manner. The following discussion focuses on the recent opinions concerning broadcast indecency and the strict scrutiny test as examples of the lines of analysis that appear to support the constitutionality of the safe harbor approach. This discussion is not exhaustive, and there may well be arguments to justify the legislation which do not appear below.

1. SAFE HARBOR UNDER AN *ACT IV* CASE ANALYSIS

The Court of Appeals decision in *ACT IV*¹⁵ to uphold the safe harbor for broadcast indecency provides, perhaps, the best indication that the courts would uphold the safe harbor approach for television violence.

In 1992, Congress enacted legislation sponsored by Senator Robert Byrd to prohibit the broadcast of indecent programming during certain hours of the day. The Byrd amendment allowed indecent broadcasts between the hours of midnight and 6 a.m.; except for public broadcast stations that would go off the air at midnight or before were permitted to air indecent broadcasts as early as 10 p.m.¹⁶

¹² Kaiser Family Foundation, *How Parents feel (and what they know) about tv, the v-chip, and the tv ratings system*, (1999).

¹³ Kaiser Family Foundation, *Parents and the V-Chip 2001: A Kaiser Family Foundations Survey*, (2001).

¹⁴ Testimony of Attorney General Janet Reno, Hearing on S. 1383, the Children’s Protection from Violent Programming Act of 1993, et al., before the Senate Committee on Commerce, Science, and Transportation, October 20, 1993, p. 30, 42.

¹⁵ 58 F. 3rd 654 (D.C. Cir. 1995)

¹⁶ Congress had already prohibited obscene and indecent broadcasts many years earlier. Section 1464 of title 18, United States Code, prohibits the broadcast of any obscene, indecent, or profane language by means of radio communication. This language was enacted first in the Radio Act of 1927, again as part of section 326 of the Communications Act of 1934, and was moved into title 18 in 1948.

On June 30, 1995, the United States Court of Appeals for the District of Columbia, sitting *en banc*, upheld the constitutionality of the Byrd amendment in *ACT IV*. The court found, in a seven to four opinion, that the safe harbor approach, also called “channeling,” satisfied the two-part “strict scrutiny” test.¹⁷

The court found that the government met the first prong of the test by establishing that the government had a “compelling governmental interest” in protecting children from the harm caused by indecency. The court found two compelling governmental interests, and left open the possibility of a third.¹⁸ First, the court found that “the Government has a compelling interest in supporting parental supervision of what children see and hear on the public airwaves.”¹⁹ The court cited *Ginsberg v. New York*, 390 U.S. 629, 638, for the proposition that government has a “fundamental interest in helping parents exercise their ‘primary responsibility for [their] children’s well-being’ with ‘laws designed to aid [in the] discharge of that responsibility.’”²⁰ Second, the court found that “the Government’s own interest in the well-being of minors provides an independent justification for the regulation of broadcast indecency.” It quoted the Supreme Court again in *New York v. Ferber*, 458 U.S. 747, 756–57 (1982) for the proposition that “. . . a State’s interest in safeguarding the physical and psychological well-being of a minor is compelling. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens. Accordingly, we have sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights.”²¹

The court found that the legislation met the second prong of the test because it uses the “least restrictive means” to accomplish that governmental interest. Here, the court noted that, in choosing the hours during which indecency would be banned, the government must balance the interests of protecting children with the interests of adults. “The question, then, is what period will serve the compelling governmental interests without unduly infringing on the adult population’s right to see and hear indecent material.”²²

After reviewing the evidence compiled by the FCC, the court upheld the determination that a ban on indecent programming during the hours of 6:00 a.m. to 10:00 p.m. satisfied the balance and was the least restrictive means. The court noted that, to the extent that such a ban affected the rights of adults to hear such programming, “adults have alternative means of satisfying their interest in indecent material at other hours in ways that pose no risk to minors [such as renting videotapes, computer services, audio tapes,

¹⁷ While the court upheld the safe harbor approach implemented by the Byrd amendment, it found that the different treatment of certain public broadcast stations was unjustified. The court thus directed the FCC to modify its rules to apply a consistent safe harbor of 6 a.m. to 10 p.m. for all broadcast stations.

¹⁸ The court found it unnecessary to address the FCC’s contention that there is also a compelling governmental interest in protecting the home against intrusion by offensive broadcasts. *ACT IV*, 660-661.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*, 665.

etc.]”²³ The court stated further that, “[a]lthough the restrictions burden the rights of many adults, it seems entirely appropriate that the marginal convenience of some adults be made to yield to the imperative needs of the young.”²⁴

The reasoning of the court in *ACT IV* appears to apply equally to title II of S. 2056. As with indecency, the government has a compelling interest in protecting the moral and psychological well-being of children against the harm of viewing television violence. Also as with indecency, restricting television violence to certain hours of the day balances the rights of adults to watch violent programming with the interests of protecting children. Adults have other ways of obtaining access to violent programming just as they have other ways of obtaining indecent materials. Thus, the decision upholding the safe harbor for indecency appears to provide strong support for finding a safe harbor for violence to be constitutional.

2. THE STRICT SCRUTINY TEST

The strict scrutiny test, which was used in the *ACT IV* case, is the most stringent test used to analyze the constitutionality of a First Amendment challenge. The following discussion assesses the violence safe harbor approach under strict scrutiny, not because it is certain that this test will apply, but because, if the violence safe harbor approach passes the strict scrutiny test, it certainly would pass any lesser standard of review. Regulation will pass the strict scrutiny test if the regulation is narrowly tailored to meet a compelling governmental interest.

Congress has developed a long and detailed record to justify the violence safe harbor approach. Congress has held hearings to explore various approaches to television violence in every decade since the 1950s. The Senate Committee on Commerce, Science, and Transportation alone has held 25 hearings over the past 3 decades on this topic, including at least 5 hearings specifically on the safe harbor approach. The Committee has laid extensive groundwork for considering the least restrictive means of protecting children from violence on television. By contrast, the Byrd amendment, the legislation at issue in the *ACT IV* case, was adopted on the Senate floor without any Committee hearings.

a. COMPELLING GOVERNMENTAL INTEREST

The government has several compelling interests in protecting children from the harmful effects of viewing violence which are discussed below: an interest in protecting children from harm, an interest in protecting society in general, an interest in helping parents raise their children, and an interest in the privacy of the home. Each of these are discussed below.

Harm to children.—Government has a compelling interest in protecting children from the harm caused by television violence. As several witnesses have testified before the Committee and numerous studies have concluded, children’s viewing of violence on television encourages violent and anti-social behavior, either as children or later as adults. These studies have demonstrated a causal connection between viewing violence

²³ *Ibid.*, 666.

²⁴ *Ibid.*, 667.

and violent behavior.²⁵ These studies have included field studies of the effect of television on persons in real life and laboratory studies. While the study in 1972 by the Surgeon General concluded that there was a causal relationship between viewing violence and behavior primarily among those children predisposed to violence, more recent research by NIMH and others demonstrates that violent television programming affects almost all children. Over 35 years of laboratory and real-life studies provide evidence that televised violence is a cause of aggression among children, both contemporaneously, and over time. Television violence affects youngsters of all ages, both genders, at all socio-economic levels, and at all levels of intelligence. The effect is not limited to children who are already disposed to being aggressive, and it is not restricted to the United States.²⁶ While it is perhaps axiomatic that children who become violent because of television suffer harm, it is worth noting that such children suffer harm in many ways. For example, children exposed to excessive violence can become anti-social, distant from others, and unproductive members of society, especially if their actions arouse fear in other people. They can suffer from imprisonment or other forms of criminal punishment if their violence leads to illegal behavior. Violent behavior may not be the only harm caused by viewing violent television. According to the APA, viewing violence can cause fearfulness, desensitization, or an increased appetite for more violence.

Harm of Society.—A related compelling governmental interest is the need to protect society as a whole from the harmful results of television-induced violent behavior. A child who views excessive amounts of television violence is not the only person who suffers harm. In his testimony in 1999, Dr. Eron testified that violent programming can adversely affect society because children who watch excessive amounts of television when they are young are more “prone to be convicted for more serious crimes by age 30; more aggressive while under the influence of alcohol; and, harsher in the punishment they administered to their own children.”²⁷

Helping parents supervise their children.—In addition to the governmental interests in protecting children and society from harm, the courts have also recognized a compelling governmental interest in helping parents supervise what their children watch on television. In *Ginsberg*, the Supreme Court upheld a New York statute making it illegal to sell obscene material to children. The Court noted that it was proper for legislation to help parents exercise their “primary responsi-

²⁵ Among these are studies conducted by the American Medical Association, the American Psychological Association, the National Institute of Mental Health, the Center for Disease Control, and numerous studies by individual researchers.

²⁶ Written Testimony of Dr. Leonard Eron, Professor of Psychology and Senior Research Scientist, Institute for Social Research, University of Michigan, before the Senate Committee on Commerce, Science, and Transportation, Communications Subcommittee, May 18, 1999.

²⁷ Written Testimony of Dr. Eron before the Senate Committee on Commerce, Science, and Transportation Communications Subcommittee, July 12, 1995, p. 2. Dr. Eron further warns that “. . . like secondary smoke effects, . . . don’t think that just because you have protected your child from the effects of television violence that your child is not affected. You and your child might be the victims of violence perpetrated by someone who as a youngster, did learn the motivation for and the techniques of violence from television.” *Ibid.*

bility for [their] children's well-being with laws designed to aid [in the] discharge of that responsibility."²⁸

Privacy of the home.—The government's interest in protecting the privacy of the home from intrusion by violent programming may provide another compelling governmental interest. The Supreme Court has recognized that "in the privacy of the home . . . the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder."²⁹ The right to privacy in one's home was recently used to uphold legislation limiting persons from making automated telephone calls to residences and small businesses.³⁰ Just as subscribers to telephones do not give permission to telemarketers to place automated telephone calls, the ownership of a television does not give programmers permission to broadcast material that is an intrusion into the privacy of the home.

b. THE LEAST RESTRICTIVE MEANS

Opponents of the legislation argue that the safe harbor approach to television violence is not the least restrictive means of accomplishing the goals of reducing children's exposure to television violence. Some in the broadcast industry argue that the industry should be trusted to regulate itself. Parents should bear the primary responsibility for protecting their children, according to some observers. Others say that the warnings and advisories that many programmers now add to certain shows are a lesser restrictive means of protecting children. In addition, opponents of legislation assert that the V-chip and the television ratings system provide a less restrictive means of protecting children.

In *United States v. Playboy*, 329 U.S. 803 (2000), the Supreme Court invalidated a provision in the 1996 Act that required cable operators to either scramble sexually explicit channels in full, or limit programming on such channels to hours when children are not likely to be watching. The Court held that the provision was a content based restriction. The Court further held that the requirements of the provision were not the least restrictive means of achieving the government's goal. The Court found that another provision in the 1996 Act, that required cable operators to fully block any channel upon request by a subscriber provided a less restrictive alternative. The Court added that even if this option was not widely used by cable subscribers, the government bears the burden of proving that the available alternative is not effective. Title II of S. 2056 is crafted in part to respond to *Playboy*. The FCC is only directed to implement a safe harbor for violence after it determines that the V-chip and ratings system are ineffective alternative means of protecting children from television violence. Prior to reaching such a determination, the FCC is directed to prohibit violent programming that is not electronically blockable, *i.e.*, that is not encoded specifically with a rating for violent content.

While the Committee cannot predict the outcome of the FCC's analysis of the effectiveness of the V-chip and the ratings system, the Committee does note that parental supervision alone may not sufficiently protect children from violence on television. For exam-

²⁸ *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

²⁹ *FCC v. Pacifica Foundation*, 438 U.S. 726, 748 (1978).

³⁰ *Moser v. FCC*, 46 F.3d 970 (9th Cir. 1995).

ple, the problem of children's exposure to violence on television is especially acute for residents of inner city neighborhoods. According to Gael Davis of the National Council of Negro Women, "Violence is the No. 1 cause of death in the African-American community. . . . [I]n south central [Los Angeles], . . . [t]he environment is permeated with violence. It is unsafe for children to walk to and from school. We have 80 percent latch-key children, where there will be no parent in the home during the afterschool hours when they are viewing the television. The television has truly become our electronic babysitter."³¹

Many children do not have the benefit of parents willing and able to monitor the television programming they watch. According to William Abbott of the Foundation to Improve Television, "millions of children watch television unsupervised, one-fourth of our children have but a single parent (the latch-key kids)."³²

* * * * *

Under the "strict scrutiny" test, a regulation that limits freedom of speech based on the content must use "the least restrictive means to further the articulated interest."³³ As the following discussion demonstrates, in the absence of an effective V-chip and content based ratings system, the safe harbor approach is the only approach that has a significant chance of furthering the compelling governmental interest in protecting American children from the impact of television violence.

Industry self-regulation.—The television industry has been directed to improve its programming by Congress for over 40 years. The first congressional hearings on television violence were held in 1952. Hearings were held in the Senate in 1954 and again in the 1960s, 1970s, 1980s, 1990s, and again, three times since 2000. At many of these hearings, representatives of the television industry testified that they were committed to ensuring that their programming was safe and appropriate for children. In 1972, the Surgeon General called for Congressional action, but this call was ignored after the broadcast industry reached an agreement with the FCC to restrict violent programs and programs unsuitable for children during the family hour. There is substantial evidence, however, that despite the promises of the television industry, the amount of violence on television is far greater than the amount of violence in society and continues to increase. According to one study, "[s]ince 1955, television characters have been murdered at a rate one thousand times higher than real-world victims. Indeed, television violence has far outstripped reality since the 1950s."³⁴ The incentives of the television industry to air vio-

³¹Testimony of Gael T. Davis, President, East Side Section, National Council of Negro Women, Hearing on S. 1383, the Children's Protection from Violent Programming Act of 1993, et al. before the Senate Committee on Commerce, Science, and Transportation, October 20, 1993.

³²Testimony of William Abbott, President, Foundation to Improve Television, before the Committee on Commerce, Science, and Transportation, Hearing on Television Violence, July 12, 1995.

³³*Sable Communications of California, Inc v. FCC*, 492 U.S. 115, 126 (1989).

³⁴S. Robert Lichter, Linda S. Lichter, and Stanley Rothman, *Prime Time: How TV portrays American Culture*, (Regnery Publishing, Inc., Washington, D.C., 1994), p. 275.

lent programming are best illustrated by a quote from a memo giving directions to the writers of the program "Man Against Crime" on CBS in 1953: "It has been found that we retain audience interest best when our stories are concerned with murder. Therefore, although other crimes may be introduced, somebody must be murdered, preferably early, with the threat of more violence to come."³⁵

In December 1992, the 4 broadcast networks released a common code of standards that many criticized for being weaker than the networks' own code of practices. In any case, the code appears to have had little effect on the amount of violence on television.

Recent efforts by the broadcast and cable industries to educate parents about the V-chip and channel blocking can be viewed as another effort to avoid regulation without affecting the amount of violent programming to which children are exposed.

Warning labels.—Some observers argue that a requirement to put warnings or parental advisories before certain violent programs would be a less restrictive means of satisfying the Government's interest in protecting children. The Committee has received no evidence, however, that such warnings accomplish the purpose of protecting children. Despite the industry's efforts to air such advisories on their own initiative, the National Parent-Teacher's Association and the Foundation to Improve Television support a safe harbor approach. Indeed, there is some reason to believe that advisories may increase the amount of violence on television, as some observers believe that programmers may want a warning label to be placed on a program in order to attract viewers.³⁶

Therefore, without parental supervision, such warning labels may have the opposite effect of increasing the number of children who watch violent programming. In addition, warnings that appear once at the very beginning of a program may not be seen by a viewer who does not see the beginning of a program. Furthermore, it is difficult to believe that such warnings would be effective in the age of channel surfing.

Parental responsibility and control technologies.—Some observers believe that parents should bear the primary responsibility for protecting their children from violent programming, and that a variety of technologies are now available to assist parents in controlling the programs that their children watch. For several reasons, these approaches do not appear to be effective.

Even when parents are available and concerned about the television programs that their children watch, they may not be able to monitor their children's television viewing habits at all times. According to one survey, 66 percent of homes have three or more television sets, and 54 percent of children have a TV

³⁵ Quoted in Eric Barnouw, *The Image Empire*, p. 23.

³⁶ For example, Ms. Lindsay Wagner, a television actress, testified in 1993 that film makers sometimes lobby to get an R rating. "We now have a couple of generations that have been reared on violence for fun and many flock to the films with warnings." Testimony of Ms. Lindsay Wagner, Hearing on S. 1383, the Children's Protection from Violent Programming Act of 1993, before the Senate Committee on Commerce, Science, and Transportation.

set in their own bedrooms. Children often watch television unsupervised. In fact, 55 percent of children usually watch television alone or with friends, but not with their families.

The implementation of the safe harbor approach is contingent upon the FCC finding that the content based ratings system, when used in conjunction with the V-chip, provides an ineffective means of protecting children from television violence. If the FCC makes such a determination, it is unlikely that other technology-based solutions will more appropriately address the issue of children and television violence. In addition, technology-based solutions may require parents to spend money to purchase the new technologies. Development of such technologies are also uncertain. There are also questions about the ability of parents to program the technologies effectively. In many households, the children often are more comfortable with the technologies than the parents.

3. DEFINITION OF VIOLENT VIDEO PROGRAMMING

Title II of S. 2056 adopts the same approach toward violent video programming as Congress has previously adopted for indecency. Section 1464 of title 18 prohibits the broadcast of indecency but does not contain a definition of the term. In 1975, the FCC adopted a definition of indecency that the courts have upheld. While it may be difficult to craft a definition of violent video programming, that is not overbroad, that is not vague, and that is consistent with the research of harm caused to children, these are exactly the tasks that the FCC was created to perform. The FCC can hold its own hearings, seek comment from the industry and the public, and review the research in detail in order develop a definition that satisfies constitutional scrutiny.

Some observers cite the case of *Video Software Dealers Association v. Webster* to support the position that legislation to restrict violent video material is unconstitutional.³⁷ That case, however, concerned a statute that neither contained a definition of violent video material nor delegated the definition to an expert regulatory agency. Title II of S. 2056, by contrast, does not take effect until the FCC issues a definition of violent video programming. In *Davis-Kidd Books v. McWherter*, the court overturned a statute that contained a definition that was overly vague.³⁸ While this case demonstrates the difficulty of defining violent video programming, it does not stand for the proposition that such term is incapable of being defined.

4. APPLICABILITY TO MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION SERVICES

Some question the constitutionality of restricting violence on multichannel video programming distribution (MVPD) services, including cable and direct broadcasting satellite (DBS), noting that *Red Lion*,³⁹ *Pacifica*, and the *ACT* cases pertain only to broadcasting, not to cable or any other form of media. However, the strict scrutiny test applies to any content regulation, not just those imposed on broadcast stations. Court cases indicate that a restriction on violent video programming could, potentially, be imposed on

³⁷ 968 F.2d 684 (8th Cir. 1992).

³⁸ 866 S.W.2d 250 (1993).

³⁹ *Red Lion Broadcasting Company v. FCC*, 395 U.S. 367 (1969).

any media if it satisfies the strict scrutiny test.⁴⁰ The court's rationale for subjecting broadcasting to a more restrictive treatment includes, the scarcity of broadcast frequencies, the pervasive presence of broadcast, and accessibility of broadcast to children. In recognizing the special status of broadcasting, the Supreme Court, in the *National Broadcasting Co.* and *Red Lion* cases, concluded that due to spectrum scarcity, broadcast frequencies are not available to all who wish to use them. The Supreme Court in *ACT IV*, addressed the pervasive presence of broadcast and its accessibility to children. The Court stated, "the broadcast media have established a uniquely pervasive presence in the lives of all Americans. Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, . . . Second, broadcasting is uniquely accessible to children . . . The ease with which children may obtain access to broadcast material, . . . amply justifies special treatment of indecent broadcasting."⁴¹ The *ACT IV* court further noted that "broadcast audiences have no choice but to 'subscribe' to the entire output of traditional broadcasters."⁴²

Just as with broadcast television, MVPD services have grown to have a uniquely pervasive presence in the lives of all Americans and are uniquely accessible to children. Over 85 percent of households now receive some form of MVPD service, with 90 percent of such households choosing expanded basic offerings. From the perspective of the viewer, and especially children, there is little if any distinction between broadcast programs and expanded basic programs that are carried on a MVPD system.

Two recent Supreme Court cases indicate that it is permissible to regulate pay-TV platforms. The Supreme Court, in *Denver Area Educational Telecommunications Consortium, Inc. v. FCC*,⁴³ addressed the constitutionality of section 10 of the Cable Television Consumer Protection and Competition Act of 1992. Although the Court struck certain provisions of section 10, it held that section 10(a), which permits cable operators to decide whether or not to broadcast indecent programs on leased access channels, is consistent with the First Amendment.

In *Playboy*, the Supreme Court addressed the constitutionality of section 505 of the 1996 Act. While the court struck down the provisions in question, it did so on the grounds that it was not the least restrictive alternative, not because Congress cannot regulate content on cable.

In fact, the District Court opinion in *Playboy* stated that, ". . . cable television is a means of communication which is pervasive and . . . [t]he Supreme Court has recognized that cable television is as accessible to children as over-the-air broadcasting, if not more so."⁴⁴ Moreover, the Supreme Court in its consideration of freedom of speech under the First Amendment has recognized the need to

⁴⁰The court in *ACT IV* states, "[W]e apply strict scrutiny to regulations of this kind [concerning indecency] regardless of the medium affected by them. . . ." *ACT IV*, at 660.

⁴¹*Ibid.*, 659-660.

⁴²*Ibid.*, 660.

⁴³*Denver Area Educational Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727 (1996).

⁴⁴*Playboy Entertainment Group v. United States*, 945 F. Supp. 722 (1996).

protect children from sexually explicit material, particularly in the context of a pervasive medium.⁴⁵

Title II of S. 2056 is not intended to apply to premium or pay-per-view channels in recognition of the fact that parents have the choice to subscribe to these channels on an individual basis. This distinction between premium channels and pay-per-view programs, on the one hand, and basic or expanded basic packages of cable or DBS programs, on the other, demonstrates the Committee's attempt to balance the rights of children and the legitimate rights of parents to watch the programs that they want to watch. In this way, the legislation avoids unnecessarily interfering with parents' First Amendment rights in order to meet the least restrictive means test.

LEGISLATIVE HISTORY

Senators Brownback (for himself, Mr. Allen, and Mr. L. Graham) introduced S. 2056 on February 9, 2004. The Committee held a hearing on indecent and violent programming and its effect on children on February 11, 2004 where all five FCC Commissioners testified.

On March 9, 2004, the Committee held an executive session at which S. 2056 was considered. The bill was approved unanimously by voice vote and was ordered reported with amendments. The Committee first approved a perfecting amendment by Senators McCain and Brownback that would impose a per-utterance penalty; require the FCC to consider a number of factors when assessing a fine; create a cap on the total amount a broadcast licensee may be fined during a 24-hour period; establish deadlines for the FCC to act on indecency complaints; and compel the FCC to report to Congress annually about its indecency enforcement activities. The perfecting amendment was modified by a second-degree amendment by Senator Stevens that would create an escalating fine structure; double the cap on fines if the FCC finds certain aggravating factors present; and require the FCC to commence a license revocation proceeding against any licensee that has paid, or been ordered by a court to pay, fines arising from three indecency violations during its license term. Additionally, the Committee approved an amendment offered by Senator Stevens that would eliminate any restrictions on broadcasters or associations representing broadcasters from instituting a voluntary industry code of conduct governing a family viewing policy. The Committee also approved an amendment by Senators Stevens and Allen that would "streamline" the process for imposing financial penalties against non-licensees who violate 18 U.S.C. 1464, and increase the cap on fines against non-licensee violators. An amendment by Senators Dorgan, Lott, Snowe, and Cantwell was approved that would require the relationship between media consolidation and indecent broadcasts to be studied by the General Accounting Office (GAO) and would suspend the FCC's June 2, 2003, media ownership rules while the GAO conducts its study.

The Committee also approved an amendment by Senators Hollings and Stevens that would require the FCC to study the effec-

⁴⁵ *Pacifica*, 438 U.S. at 750-51.

tiveness of the V-Chip and prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience, if the V-chip is determined to be ineffective.

The amendment is substantially similar to legislation previously reported favorably by the Committee. In October, 1993, the Committee held a hearing on television violence to consider a variety of legislative proposals. Attorney General Janet Reno testified that the legislation pending before the Committee, including S. 1383, the Hollings-Inouye legislation establishing a safe harbor for violent programming, would be constitutional.

On July 11, 1995, the Committee held its second hearing on television violence to consider pending measures, including S. 470, the Hollings safe harbor legislation. S. 470 (104th Congress) is identical to S. 1383 (103rd Congress). The Committee subsequently reported S. 470, as introduced, on August 10, 1995, by a recorded vote of 16 to 1, with two Senators not voting. No further action was taken during the 104th Congress.

On February 26, 1997, Senator Hollings with Senators Inouye and Dorgan as co-sponsors, introduced S. 363. S. 363 was similar to S. 470 but allowed the Commission to implement a safe harbor if it did not implement a content-based ratings system. On February 27, 1997, the Committee held another hearing on television violence in which S. 363 was addressed. Groups such as the APA expressed their disapproval of the current age based rating system proposed by the industry and noted their preference for a content-based ratings system. Kevin Saunders, Professor of Law at the University of Oklahoma, testified that violent programming could arguably be considered obscene or indecent and the safe harbor approach is constitutional.⁴⁶ On May 1, 1997, the Committee reported S. 363 with one amendment to add findings by a recorded vote of 19 to 1.

On April 26, 1999, Senator Hollings introduced S. 876, safe harbor legislation that was substantially similar to S. 470 and S. 1383. The bill was co-sponsored by Senators Byrd, Durbin, and Inouye. On May 13, 1999, the Committee held its third hearing on television violence and safe harbor legislation. Senator Hollings' bill, S. 876 was discussed at length, and testimony was offered as to the constitutionality of the measure as well as the adverse harm to children affected by exposure to violence on television. On September 20, 2000, the Committee reported S. 876, as amended, by a recorded vote of 17 to 1, with one Senator voting present.

On April 10, 2003, the Committee held its fourth hearing on the impact of violent material on children. Specifically, the witnesses testified on neurobiological research in the field of brain mapping and conclusions reached on the impact of media violence on children. On February 1, 2004, the Committee held its fifth hearing on television violence. Senator Hollings safe harbor legislation, S. 161, which was incorporated with minor changes as an amendment into S. 2056, was discussed by the five FCC Commissioners.

⁴⁶Testimony of Kevin Saunders, J.D., Ph.D. before the Senate Committee on Commerce, Science, and Transportation, February 27, 1997. p. 17 and 7.

REVIEW AND FILING OF REPORT

Before any report is filed by the Committee, it is reviewed by several staff members to ensure that it complies with Committee standards and the Standing Rules of the Senate. The Committee uses a routing slip, which is attached to the draft report as it makes its way through the review and approval process, in order to track the report's progress. The Committee's Legislative Counsel usually generates the routing slip when the initial draft is formatted for printing.

PREPARATION OF INITIAL DRAFT

The first draft of a committee report is usually prepared by the majority staff of the subcommittee that has jurisdiction of the measure. That staff should make sure that the report contains all necessary sections, that the statements made in the draft are accurate, and that the material is presented in a concise, clear, and orderly fashion. When the first draft is complete, it may be sent to the Committee's Legislative Counsel for formatting before being transmitted to the minority staff or it may be transmitted directly to the minority staff of that subcommittee in order to complete a mutually acceptable first draft before it is given to the Committee's Legislative Counsel for its initial formatting. The latter procedure may be more efficient where there is general agreement between the majority and minority staff as to the content or where such extensive revisions to the first draft are anticipated that formatting the first draft would be a waste of time and Committee resources.

REVIEW BY MINORITY STAFF

Once the draft report has been cleared by the majority subcommittee staff, it should be sent to the minority staff of the same subcommittee for review. As noted in the preceding paragraph, this review may occur before or after the draft report is given to the Committee's Legislative Counsel for formatting. The minority staff should carefully review the report and consult with the majority staff on any necessary or desired revisions. When the majority and minority subcommittee staff responsible for the initial draft have agreed on a mutually acceptable version of the report, they should indicate their agreement by initialing and dating the routing slip and giving the draft and any revisions to the Committee's Legislative Counsel.

SUBSEQUENT REVIEW AND APPROVAL

The Committee's Legislative Counsel will revise the draft report as necessary and forward the revised draft, with the routing slip, to the general counsel for the minority, who will indicate any edits requested on the hard copy of the report, initial and date the rout-

ing slip, and return it to the Committee's Legislative Counsel. The Committee's Legislative Counsel will execute the edits and transmit the edited report, together with a copy of the requested edits, to the general counsel for the majority. After review, and possible further editing by the general counsel for the majority, the copy and routing slip are returned to the Legislative Counsel for further revision as necessary before being submitted to the minority staff director and the majority staff director, respectively, for final review and approval. During the review process, edits are often negotiated between the majority and the minority staff, with the goal of making sure the final report reflects as nearly as possible the views of the Committee as a whole.

FILING OF THE REPORT

The majority staff is responsible for filing the bill and report after the report has been approved by the staff directors. The majority staff director will notify the Committee's Legislative Counsel when a report is ready to be filed. The Committee's Legislative Counsel will then prepare a clean copy of the bill and the report for filing, transmit the data files for the bill and the report to the Government Printing Office (GPO), and notify the Bill Clerk's office by e-mail when they are filed (attaching copies of the PDFs and related data files to the e-mail). The chairman's signature is required on the front page of the bill and the report. The bill and report are then delivered to the majority party cloakroom for filing. No accompanying statement or other action by the chairman is required.

TIMING

As a general rule, it is desirable for the report to be drafted as soon as possible after a bill is ordered reported by the Committee. While a good part of the report language may already have been written as part of the briefing memoranda for the markup, it is always better to put together the description of committee consideration of a measure while memories of the markup are fresh.

As noted in the introduction, rule XVII of the Standing Rules of the Senate establishes a minimum period of time between the date on which a bill is reported and the date on which it first can be considered. It is important that the data files for a reported bill and the accompanying report are made available to GPO when the bill and report are filed. Failure to make them available in a timely fashion may result in unnecessary delay in the delivery of the printed report to the Senate and that may adversely affect the Senate's schedule or frustrate the Committee's intentions with respect to moving the legislation. Even if GPO has the files as soon as a report is filed, it may still take up to a week to obtain printed copies of the report, and even longer when other Congressional activity significantly increases the GPO's workload, which is another reason for getting the reports written and filed as expeditiously as possible.

EXTRA COPIES OF REPORTS

The Committee receives 150 copies of a printed report and bill for the use of the Public Information Office and Committee staff.

After internal distribution, approximately 75 copies remain for public distribution. The Senate Document Room will receive additional copies. Usually this is more than sufficient. In rare instances, however, where the demand for copies of the report or the bill is expected to exceed the supply, the Committee can request the printing of additional copies if the request is submitted *before* the report and bill are filed. The request must be made by the Committee clerk through the Public Information Office.

THINGS TO AVOID

The 3 principal mistakes to avoid when preparing any Committee report are the following:

UNVERIFIED STATEMENTS

The staff is responsible for the accuracy of every statement in the report. If a statement cannot be verified, it should be dropped. This requirement applies equally to any material supplied by a government agency or other interested party.

PERSONAL OPINIONS

A committee report is supposed to reflect the consensus of a majority of the full committee and *not* the individual views of a single Senator or of the staff member preparing the report. The staff member must make sure that the report accurately reflects the oral and written views adopted by the Committee at the markup and *does not* contain any embellishments that go beyond an accurate and good-faith description of these views.

The staff member should also insure that the report maintains a professional tone and unbiased perspective befitting the Committee. This does not mean that a staff member cannot be an advocate for a position officially adopted by the Committee, but it does mean that the presentation of any arguments for or against that position in the report should be accurate and unbiased.

EXTRA ARGUMENTS FOR OPPONENTS

The opponents of any controversial bill may scour the report for statements to use in arguments against the bill. As noted in the preceding paragraph, arguments for or against the Committee's position should be fairly and carefully stated. It may be possible in this manner to anticipate and counter an argument that an opponent might use against the bill. In doing so, however, one must be extremely careful not to leave any loopholes or careless statements that may be used against the bill. It is often helpful to have another staffer who is familiar with the bill closely examine critical sections of the draft report to make sure that the other staffer's interpretation of the language is consistent with its intended effect.

A FEW MATTERS OF STYLE

In order to ensure that committee reports are written in a clear, easily read and understood, expository style, it may be useful to consult a work such as “The Elements of Style”⁴ or any other work providing guidance on style, usage, and grammar. The Chicago Manual of Style is available online at <http://webster.senate.gov> under the “News & Research” tab. The Government Printing Office publishes a Style Manual, which primarily addresses technical matters of style for government publications such as capitalization, compound words, punctuation, and abbreviations. There are several special rules observed in Committee reports, some of which are derived from the GPO Style Manual, including the following:

- *The Oxford Comma.* The Committee style in reports and legislation is to include a comma after the penultimate item in a series ending with “and” or “or”. Thus, the name of the Committee is the Committee on Commerce, Science, and Transportation.
- *Abbreviating frequently used terms.* As should be apparent from examples elsewhere in this guide, an abbreviation, in parentheses without quotation marks, should appear immediately after the first usage of a term in a report that will be used multiple times in the report. E.g., . . . the Committee on Commerce, Science, and Transportation (Committee) . . . the Federal Communications Commission (FCC) . . . voice-over-Internet-protocol (VOIP) . . . the Telecommunications Act of 1996 (1996 Act).
- *Capitalizing Federal and State.* Generally the words “Federal” and “State” are capitalized.
- *Not capitalizing section.* The word “section” is not capitalized unless it is the first word in a sentence; neither are the words “chapter” or “title”, as in “. . . would amend chapter 449 of title 49, United States Code, . . .”.
- *Use of subjunctive.* The subjunctive mood is employed to describe what *would happen* if a reported bill *were to be enacted*. Thus, “Section 2 of the bill *would amend* the Communications Act of 1934 to increase the penalty for . . .” rather than “Section 2 of the bill *amends* the Communications Act of 1934 . . .”.
- *References to existing law.* References to provisions of existing law in a committee report should refer to the permanent law rather than the United States Code citation if the law appears in a title of the Code that has not yet been enacted into

⁴*The Elements of Style*, 4th Ed., William Strunk, Jr., E.B. White, Roger Angell, Allyn & Bacon (2000).

permanent law (codified).⁵ See the 4th and 5th examples on pages 4 and 5.

⁵All Federal laws of a general and permanent nature are arranged in a compilation known as the United States Code, where they are organized topically into 50 different titles. As of the end of the 108th Congress, 24 of those titles have been revised, codified, and enacted without substantive change as permanent law. As for the laws that appear in yet “uncodified” titles, the Code is merely prima facie evidence of the law, i.e., an editorial compilation of convenience. The provisions of those titles, which include several subjects within the jurisdiction of the Committee, can be cited by reference to the Code but — because the United States Code title in which they are contained has not yet been enacted as permanent law — they cannot be amended or repealed by reference to the Code citation. Thus, the text of section 254 of the Communications Act of 1934 (relating to universal service) appears as section 254 of title 47, United States Code, but any amendment of that text must be made to the underlying permanent law, i.e., section 254 of the Communications Act of 1934, rather than title 47, United States Code. On the other hand, title 49, United States Code, relating to transportation was “codified” in 1994 and changes in that law are now effected by amending the appropriate provision of title 49. References in a report to such an amendment should refer to the United States Code citation (in no small part because the underlying laws that were “codified” are repealed as part of the process), i.e., “Section — of the bill would amend section 44922 of title 49, United States Code, (title 49) to . . .”.

APPENDIX:

HOW TO INTRODUCE A BILL

[Note: The process and procedures described here are those that are in effect at the time this guide was prepared.]

Committee staff members are often called upon to develop draft legislation for introduction by the chairman or other members of the Committee. This appendix is intended to provide basic guidance to new staff members on how to go about getting a bill to the floor for introduction.

ON YOUR MARK!

When a subcommittee staff has a Staff Working Draft nearing readiness for introduction, it should work with the Staff Director's office on the following steps:

- Resolve any questions of committee jurisdiction. If there is a concern that the Parliamentarian may consider the bill to be in the jurisdiction of another Senate Committee (EPW, HSGAC, Energy, etc.) please discuss ahead of time with the General Counsel and Staff Director. It may also be advisable to write a short memo and seek an opinion from the Parliamentarian prior to introduction. It is much easier to resolve the jurisdictional issue before dropping than after. It may be necessary to have portions of the bill redrafted or omitted to ensure referral to CST.
- Draft any necessary memos to the Staff Director for approval to introduce, particular questions of content, and any other matters deemed necessary by the front office. Submit through normal clearance process.
- Receive definitive approval to proceed with introduction from the Staff Director.
- Draft any supporting documents as necessary, such as summaries, section-by-section description, etc.
- Inform the Communications Director of the impending introduction, alert him or her to any corollary issues, and work with him or her to draft press releases, etc.
- Optional: Obtain letters of support. If not upon introduction, you may wish to collect them for use in markup.

GET SET!

Once the bill and all components have been cleared by Counsel, Staff Director's office, and all corrections and edits made by the Committee's Legislative Counsel, receive final version of the bill. The Legislative Counsel can remove the "Staff Working Draft"

header and dateline for a cleaner copy, although this is not required for introduction. Also, you may wish to update the cosponsor information.

Upon receipt of the final draft from the Legislative Counsel, inform the Legislative Counsel and the assistant as to when the bill will be dropped so that the file can be forwarded electronically to GPO! Failure to do so results in a 2 a.m. telephone call to the Legislative Counsel from the GPO night crew looking for the data file.

Consider your timing. Do not let the Senate adjourn on you by waiting too long! The Senate must be in session for a bill to be introduced!

Be sure to write the staff contact information (name, number, office) on the back of the last page of the bill and any floor statement accompanying the bill.

You need 1 copy of the statement and 2 copies of the bill (if you intend for the bill text to be printed in the Congressional Record) because 1 copy of the bill will be going to the Bill Clerk and another to the Record staff.

The front page of each item should have the Sponsor's original signature (not a copied page) at the top.

All original cosponsors must be listed on the front page of the bill in the order in which they should appear on the GPO printed version. If they have not been printed on the final draft, write the names in the correct order on each copy. If this is not done, it is virtually impossible to correct the next day (and entirely impossible to add original cosponsors once the introduced bill is printed by GPO). If you drop a bill earlier in the day and have a late additional cosponsor, you CAN send down a separate UC request for that Senator's inclusion as an original cosponsor (if done on the same legislative day).

Last minute changes, if absolutely necessary, may be made by hand to the printed document. The general rule is that when hand written conflicts with the electronically filed document, hand written wins. Do not make any change that has not been agreed to by all parties involved.

GO!

Drop off all copies (2 of the bill, 1 intro statement) at the Democratic or Republican Cloakroom depending upon the party affiliation of the sponsor. If you have a complicated package of documents, ask to speak to the Assistant Secretary for the Majority or the Minority, as appropriate, and follow his or her instructions.

In order for the text of a bill to be printed in the Congressional Record, a Unanimous Consent request must be included as the last sentence of the sponsor's statement upon introduction. If you have not done this, it may be possible to add a UC request, signed, to the top of the package, but you will have to work with the Cloakroom staff directly to make sure they will allow it. Always making sure it is in the signed statement to begin with is much easier.

For details on the Statement of Introduction, please see the next section. Requirements vary when the Senator introduces on the floor, however, following these guidelines is the precautionary ap-

proach for ensuring proper publication in the Congressional Record and saving yourself from multiple trips to the Cloakroom.

INTRODUCTION STATEMENTS

Requirements for the inclusion of introduction statements in the Congressional Record:

Unless the sponsor intends to deliver the introductory statement in person on the floor of the Senate, turn in 2 copies of the bill and any statements related thereto to the appropriate Cloakroom. The Cloakroom will forward these to the Parliamentarian, who determines which committee has jurisdiction over the bill. The Parliamentarian informs the Bill Clerk of the referral and the Bill Clerk writes that information on the copy and assigns the bill number.

If the sponsor is not going to deliver the introductory statement in person on the floor of the Senate:

- You need 2 copies of the bill, both with original signatures. You may not copy the top page for the second copy.
- You need 1 copy of the statement of introduction. It must include a UC request to print the full text of the bill in the record if that is desired.
- The UC request **MUST** be the **LAST** sentence of the introductory statement for clerks to read—actually see it.
- The statement must be signed (original signature of Senator on each copy if there is more than 1).
- Staff contact information (name and number) must be on the back of the last page of the bill and any statement.
- E-mail an electronic version of the statement to *record@sec.senate.gov*.

Offices and Contacts

The Official Reporters of Debates are responsible for the stenographic reporting, transcribing, and editing of the Senate floor proceedings for publication in the Congressional Record. Their offices are on the 4th floor of the Capitol building. They will deal with the any introduction statements related to the bill. There is an individual who serves as the Coordinator of the Record. The Morning Business Editor (224-3079) compiles the introductions and statements for the Record. Since only a Standing Order under Senate Rules allows bills to be introduced at times other than during morning business, all introduced measures appear in the morning business section of the Record.

The Bill Clerk (224-2118 or 224-2120) is responsible for preparing for print all measures introduced, received, submitted, and reported in the Senate. The Bill Clerk also assigns numbers to all Senate bills and resolutions. All the information received by the Bill Clerk comes directly from the Senate floor in written form within moments of the action involved.

Format for the Congressional Record

To assist the Congressional Record staff in preparing the sponsor's statement, or the sponsors' colloquy, for printing in the Congressional Record, it is requested that:

- You attach the document file to an e-mail and send it to Record at Secretary (in the address book, type Secretary, Record) OR type *record@sec.senate.gov*.
- You use Word or WordPerfect.
- You deliver the hard copy of the statement, signed by the sponsor, to the appropriate Cloakroom.
- The responsible staff person (the person to call if there is a question about the document) sign the back of the statement, including his or her phone number.
- The document be formatted as follows:

1

HEALTH CARE

2

Mr. SMITH. Mr. President, as our Nation wrestles

3

with rising health care costs, the Senate will focus this

4

year on legislation to address many complex problems.

[Notice that the title is in all caps and indented 15 spaces.]

- Senators are identified as Mr., Ms., or Mrs. Only the “M” is capped.
- Senator’s last name is in all caps.
- Always address the Senator’s remarks to Mr. President, but never to “Mr. Chairman” or “Senator Smith.”
- Indent all paragraphs 5 spaces.
- **Note:** Please indicate “LIVE” or the statement will be bulleted.

Editing floor remarks (Room S410-A)

If the sponsor intends to deliver the introductory statement in person on the floor of the Senate, you should be aware that:

- Transcripts of remarks will be available to edit within 60 to 90 minutes after the Senator speaks on the floor.
- All copy is sent to GPO for printing every 3 hours; so the window for editing is between 1 and 3 hours after the Senator speaks.
- At adjournment, remarks generally are available sooner than in the 60-90 minute range and are delivered to GPO in less than 3 hours.

If there are questions about this procedure, call 224-3152.

GPO preferred spellings and capitalizations for the Congressional Record

act (but Trade Act)
administration (as in Obama administration)
al-Qaida
amendment
bill (as in the GI bill)
chairman (but Chairman Leahy, the chairman)
cochair
cold war
committee (but Judiciary Committee)
cosponsor (not co-sponsor)

dialog
Governor
Ground Zero (New York site)
Federal (but federally)
Federal Government
fiscal year 2003 (not FY02)
majority, minority leader
Member (of Congress)
member (of the committee)
Nation (but a nation)
percent (not %)
President Obama (not the president of a company or organization)
rollcall (not roll call)
September 11 (not 11th)
State (but statehood)
Supreme Court (and the Court)
trust fund (always lower case, even after Social Security)
Web site
When referring to a city AND State, please abbreviate the State (as in St. Louis, MO)
DO NOT use parentheses, Italics, underlining, or bold type
Money should be carried as \$3 million, billion, or trillion

○