EC–9177. A communication from the Secretary of the Interior, transmitting, a draft of proposed legislation entitled ''The Hardrock Mining Production Payments Act''; to the Committee on Energy and Natural Resources.

EC–9178. A communication from the Assistant Secretary of the Interior for Policy, Management, and Budget and the Under Secretary for Natural Resources and Environment, Department of Agriculture, transmitting jointly, a draft of proposed legislation entitled ''The Recreational Fee Authority Act of 2000''; to the Committee on Energy and Natural Resources.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. 2406: A bill to amend the Immigration and Nationality Act to provide permanent authority for entry into the United States of certain religious workers.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. MURKOWSKI (for himself and Mrs. STEVENS):

S. 2693. A bill to amend title XIX of the Social Security Act to provide a more equitable Federal medical assistance percentage for Alaska; to the Committee on Finance.

By Mr. MURKOWSKI:

S. 2694. A bill to amend section 313 of the Tariff Act of 1930 to make certain products eligible for drawback and to simplify and clarify certain drawback provisions; to the Committee on Finance.

By Mr. BOND:

S. 2695. A bill to convert a temporary Federal judgeship in the eastern district of Missouri to a permanent judgeship, and for other purposes; to the Committee on the Judiciary.

By Mr. CONRAD (for himself, Ms. COLLINS, and Mr. ROBB):

S. 2696. A bill to prevent evasion of United States excise taxes on cigarettes, and for other purposes; to the Committee on Finance.

By Mr. LUGAR (for himself, Mr. GRAMM, and Mr. FITZGERALD):

S. 2697. A bill to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MOYNIHAN (for himself, Mr. KERRY, Mr. ROCKEFELLER, Ms. SNOWE, Mr. ALLARD, Mr. BAUCUS, Mr. BREAUX, Mr. BROWNBACK, Mr. BRYAN, Mr. BUNNING, Mr. BURNS, Mr. DASCHLE, Mr. DURBIN, Mr. HOLLINGS, Mr. HUTCHINSON, Mr. JOHNSON, Mr. KENNEDY, Mr. KERREY, Ms. LANDRIEU, Mrs. LINCOLN, Ms. MIKULSKI, Mr. REID, Mr. ROBB, Mr. ROBERTS, Mr. SCHUMER, Mr. THURMOND, Mr. ENZI, Mrs. BOXER, and Mr. DEWINE):

S. 2698. A bill to amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 2699. A bill to strengthen the authority of the Federal Government to protect individuals from certain acts and practices in the sale and purchase of social security numbers and social security account numbers, and for other purposes; to the Committee on Finance.

By Mr. L. CHAFEE (for himself, Mr. LAUTENBERG, Mr. SMITH of New Hampshire, and Mr. BAUCUS):

S. 2700. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes; to the Committee on Environment and Public Works.

By Mr. WYDEN (for himself, Mr. DEWINE, and Mr. ROCKEFELLER):

S. 2701. A bill to amend the Internal Revenue Code of 1986 to allow a tax credit for donations of computers to senior centers, to require a pilot program to enhance the availability of Internet access for older Americans, and for other purposes; to the Committee on Finance.

By Mr. BENNETT (for himself and Mr. SCHUMER):

S. 2702. A bill to require reports on the progress of the Federal Government in implementing Presidential Decision Directive No. 63 (PDD–63); to the Committee on Armed Services.

By Mr. AKAKA (for himself, Mr. DURBIN, Mr. SARBANES, Ms. MIKULSKI, Mr. EDWARDS, and Mr. BAUCUS):

S. 2703. A bill to amend the provisions of title 39, United States Code, relating to the manner in which pay policies and schedules and fringe benefit programs for postmasters are established; to the Committee on Governmental Affairs.

By Mr. KERREY (for himself, Mr BOND, Mr. DASCHLE, Mr. JOHNSON, Mr. BROWNBACK, and Mr. ROBERTS):

S. 2704. A bill to provide additional authority to the Army Corps of Engineers to protect, enhance, and restore fish and wildlife habitat on the Missouri River and to improve the environmental quality and public use and appreciation of the Missouri River; to the Committee on Environment and Public Works.

By Mr. THOMPSON (for himself, Mr. LIEBERMAN, Mr. AKAKA, Ms. COLLINS, Mr. DURBIN, Mr. LEVIN, and Mr. VOINOVICH):

S. 2705. A bill to provide for the training of individuals, during a Presidential transition, who the President intends to appoint to certain key positions, to provide for a study and report on improving the financial disclosure process for certain Presidential nominees, and for other purposes; to the Committee on Governmental Affairs.

By Mr. SANTORUM (for himself and Mr. KOHL):

S. 2706. A bill to amend the Agricultural Market Transition Act to establish a program to provide dairy farmers a price safety net for small- and medium-sized dairy producers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CRAPO (for himself, Mr. CRAIG, and Mr. BURNS):

S. 2707. A bill to help ensure general aviation aircraft access to Federal land and the airspace over that land; to the Committee on Energy and Natural Resources.

By Mr. ASHCROFT:

S. 2708. A bill to establish a Patients Before Paperwork Medicare Red Tape Reduction Commission to study the proliferation of paperwork under the Medicare program; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. BOND, Mr. BINGAMAN, Mr. DORGAN, Mr. DASCHLE, and Mr. KERREY):

S. 2709. To establish a Beef Industry Compensation Trust Fund with the duties imposed on products of countries that fail to comply with certain WTO dispute resolution decisions; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CAMPBELL (for himself, Mrs. HUTCHISON, Mr. LAUTENBERG, Mr. ABRAHAM, Mr. BROWNBACK, Mr. HUTCHINSON, Mr. GRAHAM, Mr. DODD, and Mr. FEINGOLD):

S.J. Res. 48. A joint resolution calling upon the President to issue a proclamation recognizing the 25th anniversary of the Helsinki Final Act; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 2693. A bill to amend title XIX of the Social Security Act to provide a more equitable Federal medical assistance percentage for Alaska; to the Committee on Finance.

THE ALASKA MEDICAID EQUITY ACT OF 2000

● Mr. MURKOWSKI. Mr. President, for more than 30 years, the State of Alaska was subjected to an economic inequity in the administration of the national Medicaid program.

With a poverty level 25 percent above the national average, and over one-sixth of the state's population Medicaid-eligible, Alaska delivers health care to many needy children, pregnant women, disabled and elderly poor Americans. These people deserve quality medical care, and Alaska delivers.

But three years ago, Congress recognized that the federal government was not paying its fair share of Alaska's Medicaid program. The one-size-fits-all formula that is used to calculate the federal Medicaid match is based upon the per capita income of individual states as it relates to the national per capita income. Simply put, states with higher per capita income pay a higher percentage of Medicaid costs. This formula works well for states that are near national norms for most economic indicators. But it certainly doesn't work in the State of Alaska, where most economic measurements are atypical compared with national averages.

The reason is fairly simple. It just costs more to live and do business in Alaska. Per capita income isn't a fair indicator unless it takes into account the cost of delivering care in that area. Somehow, however, the Medicaid formula forgot this.

In 1997, when Congress recognized this issue, it adopted legislation that reflected the state's higher costs and increased the federal Medicaid match. Instead of receiving a 50–50 match rate, as the formula would dictate, a 59.8–40.2 percent match rate was established.

Unfortunately, this legislation was a short term fix. It only allowed the formula change to remain in effect for

three years. As a result, unless we change the law, the formula will revert to the same inequitable standard that was used previously. And unless we extend the formula change, vital health care services to Alaska's neediest patients will be compromised.

For this reason, I am introducing legislation that will extend the federal government's commitment to the health and well-being of Alaska's Medicaid beneficiaries. The ''Alaska Medicaid Equity Act of 2000,'' which is cosponsored by Senator STEVENS, simply continues the spirit and intent of Congress by adjusting federal medical assistance percentage calculations to account for Alaska's unusually high delivery costs.

Three years after we first passed this legislation, the reasons and justifications for the adjustment still exist. The formula is still fundamentally unfair to Alaska.

Let me explain why. Alaska's per capita income is $28,523, the 17th highest in the country. In fact, it's right near the national average, which is $28,518. Although Alaska's per capita income suggests it is one of the richer states, it fails to take into account the high cost of living and the high cost of delivering health care.

Some studies show that it costs 71 percent more to deliver health care in Alaska. But let's look at some real numbers. From coast to coast, the U.S. dollar buys more goods and services than it does in Alaska.

In Portland, Oregon, it costs $66.00 to feed a family of four for one week. In Anchorage it costs $84.15. In Kodiak, that number jumps to $105.88. And out in Dillingham, that number rises to $144.57! We're comparing apples and oranges when we compare Alaska's per capita income to another state's average.

And how about electricity? In Portland, 1000 kilowatt hours costs $60.88. Anchorage residents are paying $92.83. Out in Bethel, Alaska, residents are paying $202.68.

When focusing solely on the delivery of health care services, the differences stand out even more. In Florida, a hospital room for one day costs, on average, $361. This is in line with lower 48 costs, which run between $350 and $450. In Alaska, that same room costs $748—more than twice as much! A physician office visit is $53 in Florida. That visit costs $80 in Alaska—an increase of 66%!

You can look at virtually any good or service and see a comparable difference. A dollar simply doesn't buy the same thing in Alaska that it does in the lower 48. The numbers prove this. The federal government has admitted this. Federal government employees receive a salary adjustment in Alaska—a 25% cost of living adjustment. Military personnel receive a similar increase. Medicare pays higher as well. Even the Federal Poverty Level is adjusted to reflect the unique costs in Alaska. So why doesn't Medicaid?

Our bill merely continues the commitment Congress made to Alaska's Medicaid population three years ago. It's fair, and it makes sense. I ask my colleagues to assist me in rectifying this clear inequity for the state of Alaska; I ask my colleagues to support this bill.

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

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

S. 2693

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Alaska Medicaid Equity Act of 2000''.

**SEC. 2. AMENDMENT TO THE SOCIAL SECURITY ACT.**

(a) IN GENERAL.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended—

(1) by striking ''and (3)'' and inserting ''(3)''; and

(2) by striking the period and inserting '', and (4) for purposes of this title and title XXI, with respect to Alaska, the State percentage used to determine the Federal medical assistance percentage shall be that percentage which bears the same ratio to 45 percent as the square of the adjusted per capita income of Alaska (determined by dividing the State's 3-year average per capita income by 1.25) bears to the square of the per capita income of the 50 States.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect October 1, 2000.●

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By Mr. CONRAD (for himself, Ms. COLLINS, and Mr. ROBB):

S. 2696. A bill to prevent evasion of United States excise taxes on cigarettes, and for other purposes; to the Committee on Finance.

GRAY MARKET CIGARETTE COMPLIANCE ACT OF 2000

Mr. CONRAD. Mr. President, I am pleased today to join my good friends from Maine and Virginia, Ms. COLLINS and Mr. ROBB, in introducing the Gray Market Cigarette Compliance Act of 2000. The growth in this gray market in cigarettes represents not only an economic threat, but a significant public health menace as well. This legislation will provide law enforcement with better and more effective tools to fight this dangerous intrusion into our marketplace.

This bill concerns itself with cigarettes manufactured for overseas markets that nevertheless find their way into our domestic stream of commerce. Even if they have been manufactured in the United States, they are not required to comply with U.S. content disclosure and health labeling requirements. Thus, when they are brought back into the U.S. by gray market profiteers, they represent a serious public health concern. And because they are often sold at prices below those of products manufactured to comply with our tough cigarette marketing laws, they become more attractive and available to children.

The gray market is unfair competition, plain and simple. Consumers often purchase gray market products thinking they are the same as the legitimate products manufactured for sale in the U.S. When gray marketers bring in cigarettes that are not manufactured in full compliance with U.S. law, they mislead unwitting consumers.

Consumers are not the only ones affected. Gray marketers also harm the legitimate wholesalers and retailers who work hard and play by the rules by exploiting gray areas in the law in order to gain this unfair competitive advantage.

It is important to stress as well the implications of the gray market in cigarettes for states under the tobacco Master Settlement Agreement (MSA). One of the major components of the MSA provides that payments to states are based on a formula that takes into account the annual volume of tobacco sold in each state. Gray market cigarettes are not counted under that volume adjustment formula. Therefore, to the extent that gray market sales displace sales of cigarettes that are counted in the volume adjustment, states could lose a portion of the amounts they would otherwise receive under the MSA.

The Gray Market Cigarette Compliance Act will help consumers, retailers, wholesalers, and federal and state governments. It will strengthen the hand of law enforcement to combat the sale of gray market cigarettes and close loopholes that gray markets have been able to exploit. But most importantly, it will help keep cheap cigarettes out of the hands of children.

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

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

S. 2696

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Gray Market Cigarette Compliance Act of 2000''.

**SEC. 2. FINDINGS.**

Congress finds that additional legislation is necessary to prevent evasion of United States taxes on cigarettes, to ensure that the packages of all cigarettes sold or distributed in the United States bear the health warnings required by Federal law, to ensure compliance with applicable Federal ingredient reporting requirements, and to improve the enforcement of existing United States trademark laws so as to prevent consumer confusion and deception. In support of this finding, Congress has determined that:

(1) PREVENTION OF FEDERAL TAX EVASION.—

(A) Cigarettes manufactured in the United States that are labeled and shipped for export are not subject to the excise taxes that otherwise would be payable with respect to such products when removed from the premises of the manufacturer.

(B) Enforcement difficulties are created for the authorities charged with ensuring that proper taxes are paid whenever export-labeled cigarettes are sold or distributed in the United States.

(C) The Balanced Budget Act of 1997 imposed restrictions on the domestic sale or distribution of export-labeled cigarettes, but such provisions have not been adequate to prevent continued evasion of United States taxes on cigarettes.

(D) Enforcement of Federal cigarette tax laws will be enhanced substantially if cigarettes manufactured in the United States and labeled for export are not sold or distributed in the United States.

(2) ENSURING COMPLIANCE WITH FEDERAL HEALTH WARNINGS AND INGREDIENT REPORTING REQUIREMENTS.—

(A) Congress has required that specified warnings appear on the packages of all cigarettes manufactured, packaged, or imported for sale or distribution in the United States.

(B) Congress has required that each person who manufactures, packages, or imports cigarettes for sale or distribution in the United States annually provide the Secretary of Health and Human Services with a list of the ingredients added to tobacco in the manufacture of such cigarettes.

(C) The public health objectives of the foregoing requirements will be advanced by adopting additional mechanisms for ensuring that these requirements are met with respect to all cigarettes for sale or distribution in the United States.

(3) ENFORCEMENT OF FEDERAL TRADEMARK LAWS.—

(A) Cigarettes manufactured for sale abroad have characteristics that differentiate them in material respects from cigarettes that bear the same trademarks but that are manufactured for sale in the United States.

(B) Such material differences may include tar and nicotine yields, incentive programs, and quality assurances with respect to distribution and storage.

(C) When cigarettes bearing trademarks registered in the United States are manufactured for sale or distribution outside the United States but are diverted or reimported for sale or distribution in the United States, there is a substantial risk of consumer confusion and deception. Stickers and other similar devices are inadequate to prevent such confusion and deception.

(D) In order to effectuate the purposes of the United States trademark laws, including the prevention of consumer confusion and deception, additional legislation is necessary to allow United States trademark holders to enforce fully their rights against infringing cigarettes whether such cigarettes were manufactured in the United States or abroad.

**SEC. 3. RESTRICTIONS ON TOBACCO PRODUCTS INTENDED FOR EXPORT.**

(a) RESTRICTIONS ON TOBACCO PRODUCTS INTENDED FOR EXPORT.—Section 5754 of the Internal Revenue Code of 1986 is amended to read as follows:

**"SEC. 5754. RESTRICTIONS ON TOBACCO PRODUCTS INTENDED FOR EXPORT.**

''(a) EXPORT-LABELED TOBACCO PRODUCTS.—Tobacco products and cigarette papers and tubes manufactured in the United States and labeled or shipped for exportation under this chapter—

''(1) may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax in accordance with section 5704;

''(2) except as provided in subsection (b), may be imported or brought into the United States, after their exportation, only if—

''(A) the requirements of section 4 of the Gray Market Cigarette Compliance Act of 2000 are satisfied; and

''(B) such articles either are eligible to be released from customs custody with the partial duty exemption provided in section 5704(d) or are returned to the original manufacturer of such article as provided in section 5704(c); and

''(3) may be sold or held for sale for domestic consumption in the United States only if such articles are removed from their export packaging and repackaged by the original manufacturer or its authorized agent into new packaging that does not contain the mark, label, or notice required by section 5704(b) and complies with all other domestic law applicable to such article.

This section shall apply to articles labeled for export by the original manufacturer even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer or its authorized agent so as to remove or conceal or attempt to remove or conceal (including by the placement of a sticker over) any mark, label, or notice required by section 5704(b). For purposes of this section, sections 5704(d) and 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

''(b) EXCEPTIONS FOR EXPORT-LABELED TOBACCO PRODUCTS FOR PERSONAL USE.—The restrictions of subsection (a)(2) and the penalty and forfeiture provisions in section 5761(c) shall not apply to personal use quantities of tobacco products and cigarette papers and tubes, as defined in section 555(b)(8)(G) of the Tariff Act of 1930 (19 U.S.C 1555(b)(8)(G)).

''(c) CROSS REFERENCE.—Section 5761(c) contains civil penalties related to violations of this section. Section 5762(b) contains a criminal penalty applicable to any violation of this section. Section 5763(a)(3) contains forfeiture provisions related to violations of this section.''.

(b) CLARIFICATION OF REIMPORTATION RULES.—Section 5704(d) of the Internal Revenue Code of 1986 (relating to tobacco products and cigarette papers and tubes exported and returned) is amended by—

(1) striking ''a manufacturer of'' and inserting ''the original manufacturer, or its authorized agent, of such''; and

(2) inserting ''authorized by such manufacturer to receive such articles'' after ''proprietor of an export warehouse''.

(c) CONFORMING AMENDMENTS.—

(1) Section 5761(e) is amended by adding at the end the following: ''For an exception to the application of the penalty under subsection (c), see section 5754(b).''.

(2) Section 5763(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(3) EXPORT-LABELED TOBACCO PRODUCTS OR CIGARETTE PAPERS OR TUBES.—Any tobacco product, cigarette paper, or tube that was imported or brought into the United States, or is sought to be imported or brought into the United States in violation of section 5754(a)(2), or that is sold or being held for sale in violation of section 5754(a)(3), shall be forfeited to the United States. Notwithstanding any other provision of law, any product forfeited to the United States pursuant to this section shall be destroyed.''.

(d) CLERICAL AMENDMENT.—The item relating to section 5754 in the table of sections for subchapter F of chapter 52 of the Internal Revenue Code of 1986 is amended to read as follows:

Sec. 5754. Restrictions on tobacco products intended for export.

**SEC. 4. REQUIREMENTS APPLICABLE TO CIGARETTE IMPORTS.**

(a) DEFINITIONS.—As used in this section:

(1) SECRETARY.—Except as otherwise indicated, the term ''Secretary'' means the Secretary of the Treasury.

(2) PRIMARY PACKAGING.—The term ''primary packaging'' refers to the permanent packaging inside of the innermost cellophane or other transparent wrapping and labels, if any. Warnings or other statements shall be deemed ''permanently imprinted'' only if printed directly on such primary packaging and not by way of stickers or other similar devices.

(b) REQUIREMENTS FOR ENTRY OF CIGARETTES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), cigarettes (whether originally manufactured in the United States or in a foreign country) may be imported or brought into the United States only if—

(A) the manufacturer of those cigarettes has timely submitted, or has certified that it will timely submit to the Secretary of Health and Human Services the lists of the ingredients added to the tobacco in the manufacture of such cigarettes as described in section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a);

(B) the precise warning statements in the precise format specified in section 4 of such Act (15 U.S.C. 1333) are permanently imprinted on both—

(i) the primary packaging of all those cigarettes; and

(ii) any other pack, box, carton, or container of any kind in which those cigarettes are to be offered for sale or otherwise distributed to consumers;

(C) the manufacturer or importer of those cigarettes is in compliance as to those cigarettes being imported or brought into the United States with a rotation plan approved by the Federal Trade Commission pursuant to section 4(c) of such Act (15 U.S.C. 1333(c));

(D) those cigarettes do not bear a trademark registered in the United States for cigarettes, or if those cigarettes do bear a trademark registered in the United States for cigarettes, the owner of such United States trademark registration for cigarettes (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes into the United States; and

(E) the importer has submitted at the time of entry all of the certificates described in paragraph (3).

(2) EXEMPTIONS.—Cigarettes satisfying the conditions of any of the following subparagraphs shall not be subject to the requirements of paragraph (1):

(A) PERSONAL-USE CIGARETTES.—Cigarettes that are imported or brought into the United States in personal use quantities as defined in section 555(b)(8)(G) of the Tariff Act of 1930 (19 U.S.C 1555(b)(8)(G)).

(B) CIGARETTES BROUGHT INTO THE UNITED STATES FOR ANALYSIS.—Cigarettes that are imported or brought into the United States solely for the purpose of analysis in quantities suitable for such purpose, but only if the importer submits at the time of entry a certificate signed, under penalties of perjury, by the consignee (or a person authorized by such consignee) providing such facts as may be required by the Secretary to establish that such consignee is a manufacturer of cigarettes, a Federal or State government agency, a university, or is otherwise engaged in bona fide research and stating that such cigarettes will be used solely for analysis and will not be sold in domestic commerce in the United States.

(C) CIGARETTES INTENDED FOR NONCOMMERCIAL USE, REEXPORT, OR REPACKAGING.—Cigarettes—

(i) that are being imported or brought into the United States for delivery to the original

manufacturer of such cigarettes, or to a cigarette manufacturer or an export warehouse authorized by such original manufacturer;

(ii) that do not bear a trademark registered in the United States for cigarettes, or if those cigarettes do bear a trademark registered in the United States for cigarettes, cigarettes for which the owner of such United States trademark registration for cigarettes (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes into the United States; and

(iii) for which the importer submits a certificate signed by the manufacturer or export warehouse (or a person authorized by such manufacturer or export warehouse) to which such cigarettes are to be delivered (as provided in clause (i)) stating, under penalties of perjury, with respect to those cigarettes, that it will not distribute those cigarettes into domestic commerce unless prior to such distribution all steps have been taken to comply with subparagraphs (A), (B), and (C) of paragraph (1), and, to the extent applicable, section 5754(a)(3) of the Internal Revenue Code of 1986.

For purposes of this subsection, a trademark is registered in the United States if it is registered in the Patent and Trademark Office under the provisions of title I of the Act of July 5, 1946 (popularly known as the Trademark Act of 1946), and a copy of the certificate of registration of such mark has been filed with the Secretary. The Secretary shall make available to interested parties a current list of the marks so filed.

(3) CUSTOMS CERTIFICATIONS REQUIRED FOR CIGARETTE IMPORTS.—The certificates that must be submitted by the importer of cigarettes at the time of entry in order to comply with paragraph (1)(E) are—

(A) a certificate signed by the manufacturer of such cigarettes or an authorized official of such manufacturer stating under penalties of perjury with respect to those cigarettes, that such manufacturer has timely submitted, and will continue to submit timely, to the Secretary of Health and Human Services the ingredient reporting information required by section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a);

(B) a certificate signed by such importer or an authorized official of such importer stating under penalties of perjury that—

(i) the precise warning statements in the precise format required by section 4 of the such Act (15 U.S.C. 1333) are permanently imprinted on both—

(I) the primary packaging of all those cigarettes; and

(II) any other pack, box, carton, or container of any kind in which those cigarettes are to be offered for sale or otherwise distributed to consumers; and

(ii) with respect to those cigarettes being imported or brought into the United States, such importer has complied, and will continue to comply, with a rotation plan approved by the Federal Trade Commission pursuant to section 4(c) of such Act (15 U.S.C. 1333(c)); and

(C) either—

(i) a certificate signed by such importer or an authorized official of such importer stating under penalties of perjury that those cigarettes and the packages containing those cigarettes do not bear a trademark registered in the United States for cigarettes; or

(ii) if those cigarettes do bear a trademark registered in the United States for cigarettes—

(I) a certificate signed by the owner of such United States trademark registration for cigarettes (or a person authorized to act on behalf of such owner) stating under penalties of perjury that such owner (or authorized person) consents to the importation of such cigarettes into the United States; and

(II) a certificate signed by such importer or an authorized official of such importer stating under penalties of perjury that the consent referred to in clause (i) is accurate, remains in effect, and has not been withdrawn. The Secretary may provide by regulation for the submission of certifications under this subsection in electronic form if prior to the entry of any cigarettes into the United States, the person required to provide such certifications submits to the Secretary a written statement, signed under penalties of perjury, verifying the accuracy and completeness of all information contained in such electronic submissions.

(c) ENFORCEMENT.—

(1) CIVIL PENALTY.—Any person who violates a provision of subsection (b) shall, in addition to the tax and any other penalty provided by law, be liable for a civil penalty for each violation equal to the greater of $1,000 or 5 times the amount of the tax imposed by chapter 52 of the Internal Revenue Code of 1986 on all cigarettes that are the subject of such violation.

(2) FORFEITURES.—Any tobacco product, cigarette papers, or tube that was imported or brought into the United States or is sought to be imported or brought into the United States in violation of, or without meeting the requirements of, subsection (b) shall be forfeited to the United States. Notwithstanding any other provision of law, any product forfeited to the United States pursuant to this section shall be destroyed.

(3) CROSS REFERENCE.—Section 1621 of title 18, United States Code, contains criminal penalties applicable to the commission of perjury under this section.

**SEC. 5. PENALTIES APPLICABLE TO THE SALE OF CIGARETTES NOT IN COMPLIANCE WITH LABELING REQUIREMENTS.**

(a) CIVIL PENALTY.—Any person who sells or holds for sale for domestic consumption any cigarettes for which the precise warning statements in the precise format required by section 4 of the Cigarette Labeling and Advertising Act (15 U.S.C. 1333) are not permanently imprinted on both—

(1) the primary packaging of all those cigarettes; and

(2) any other pack, box, carton, or container of any kind in which those cigarettes are offered for sale, sold, or otherwise distributed to consumers,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty for each violation equal to the greater of $1,000 or 5 times the amount of the tax imposed by chapter 52 of the Internal Revenue Code of 1986 on all cigarettes that are the subject of such violation.

(b) FORFEITURES.—Cigarettes that are sold, or are being held for domestic sale, in the United States (and not for export or duty-free sale) shall be forfeited to the United States if the precise warning statements in the precise format required by section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) are not permanently imprinted on both—

(1) the primary packaging of all those cigarettes; and

(2) any other pack, box, carton, or container of any kind in which those cigarettes are offered for sale, sold, or otherwise distributed to consumers.

(c) ENFORCEMENT.—The provisions of this section shall be enforced by the Secretary of the Treasury through the Bureau of Alcohol, Tobacco, and Firearms and such other agencies within the Department of the Treasury as the Secretary may determine.

(d) TREATMENT OF TRANSFERS.—Transfers of cigarettes that meet the requirements for transfer or removal free of tax under section 5704 of the Internal Revenue Code of 1986 and transfers of cigarettes pursuant to section 4(b) of this Act shall not be treated as sales for domestic consumption under this section.

(e) DESTRUCTION OF FORFEITED ARTICLES.—Notwithstanding any other provision of law, any article forfeited to the United States pursuant to this section shall be destroyed.

(f) DEFINITIONS.—For purposes of this section, the term ''primary packaging'' shall refer to the permanent packaging inside of the innermost cellophane or other transparent wrapping and labels, if any. Warnings or other statements shall be deemed ''permanently imprinted'' only if printed directly on such primary packaging and not by way of stickers or other similar devices.

**SEC. 6. EFFECTIVE DATES.**

(a) IN GENERAL.—Except as provided in subsection (b), this Act, and the amendments made by this Act, shall take effect upon the date of enactment of this Act. Nothing in this subsection shall be construed to affect the effective date of the provisions of section 9302 of the Balanced Budget Act of 1997 (Public Law 105–33).

(b) EXCEPTIONS.—The amendments to sections 5754(a)(3) and 5763(a)(3) of the Internal Revenue Code of 1986, and the provisions of sections 4 and 5 of this Act shall take effect after the date which is 60 days after the date of enactment of this Act.

**SEC. 7. STUDY.**

The Director of the Bureau of Alcohol, Tobacco, and Firearms shall study whether the penalties imposed under sections 5761, 5762, and 5763 of the Internal Revenue Code of 1986 are adequate to enforce the provisions of sections 5704(d) and 5754 of such Code and report the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate within 1 year of the date of enactment of this Act.

**SEC. 8. SEVERABILITY.**

If any provision of this section is held to be invalid as it relates to any particular circumstance, such provision shall remain valid under all other circumstances, and all other provisions of this section shall remain in full force and effect. If any provision of this section is held to be invalid in its entirety, all other provisions of this section shall remain in full force and effect.

**SEC. 9. SAVINGS.**

The civil or criminal penalties and remedies provided by this Act and any other civil or criminal penalty and remedy provided by chapter 52 of the Internal Revenue Code of 1986 and section 4 of this Act that are applicable to any violation shall not be exclusive, but shall be in addition to any other remedy provided by law.

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By Mr. LUGAR (for himself, Mr. GRAMM, and Mr. FITZGERALD):

S. 2697. A bill to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE COMMODITY FUTURES MODERNIZATION ACT OF 2000

● Mr. LUGAR. Mr. President, I rise today with Senator GRAMM, distinguished Chairman of the Senate Banking Committee, and Senator FITZGERALD, distinguished Chairman of the Subcommittee on Research, Nutrition and General Legislation of the Senate Agriculture Committee, to introduce

legislation to reauthorize the Commodity Exchange Act (CEA), which lapses on September 30th of this year. The Commodity Futures Modernization Act of 2000 would reauthorize the Commodity Exchange Act (CEA) for five additional years and would reform the Commodity Exchange Act in three primary ways. First, it would incorporate the unanimous recommendations of the President's Working Group (PWG) on the proper legal and regulatory treatment of over-the-counter (OTC) derivatives. Second, it would codify the regulatory relief proposal of the Commodity Futures Trading Commission (CFTC) to ensure that futures exchanges are appropriately regulated and remain competitive. Lastly, this legislation would reform the Shad-Johnson jurisdictional accord, which banned single stock futures 18 years ago.

Derivative instruments, both exchange-traded and over-the-counter (OTC), have played a significant role in our economy's current expansion due to their innovative nature and their risk-transferring attributes. According to the International Swaps and Derivatives Association, the global derivatives market has a notional value that exceeds $58 trillion and it has grown at a rate exceeding 20 percent since 1990. Identified by Alan Greenspan as the ''most significant event in finance of the past decade,'' the development of the derivatives market has substantially added to the productivity and wealth of our nation.

Derivatives enable companies to unbundle and transfer risk to those entities who are willing and able to accept it. By doing so, efficiency is enhanced as firms are able to concentrate on their core business objective. A farmer can purchase a futures contract, one type of derivative, in order to lock in a price for his crop at harvest. Automobile manufacturers, whose profits earned overseas can fluctuate with changes in currency values, can minimize this uncertainty through derivatives, allowing them to focus on the business of building cars. Banks significantly lessen their exposure to interest rate movements by entering into derivatives contracts known as swaps, which enable these institutions to hedge their risk by exchanging variable and fixed rates of interests.

Signed into law in 1974, the Commodity Exchange Act requires that futures contracts be traded on a regulated exchange. As a result, a futures contract that is traded off an exchange is illegal and unenforceable. When Congress enacted the CEA and the Commodity Futures Trading Commission (CFTC) to enforce it, this was not a concern. The meanings of 'futures' and 'exchange' were relatively apparent. Furthermore, the over-the-counter derivatives business was in its infancy. However, in the 26 years since the statute's creation, the OTC swaps and derivatives market, sparked by innovation and technology, has significantly outpaced the exchange-traded futures markets. And along with this expansion, the definitions of a swap and a future began to blur.

In 1998, the CFTC released a concept release on OTC derivatives, which was perceived by many as a precursor to regulating these instruments as futures. Just the threat of reaching this conclusion could have had considerable ramifications, given the size and importance of the OTC market. The legal uncertainty interjected by this dispute jeopardized the entirety of the OTC market and threatened to move significant portions of the business overseas. If we were to lose this market, most likely to London, it would take years to bring it back to U.S. soil. The resulting loss of business and jobs would be immeasurable.

This threat led the Treasury Department, the Federal Reserve, and the SEC to oppose the concept release and request that Congress enact a moratorium on the CFTC's ability to regulate these instruments until after the President's Working Group (PWG) could complete a study on the issue. As a result, Congress passed a six-month moratorium on the CFTC's ability to regulate over-the-counter derivatives. Despite reservations, I supported this moratorium because it brought legal assurance to this skittish market and it allowed the President's Working Group time to develop recommendations on the most appropriate legal treatment of OTC derivatives. In November 1999, the President's Working Group completed its unanimous recommendations on OTC derivatives and presented Congress with these findings.

This legislation adopts much of the recommendations of the PWG report. Our bill contains three mechanisms for ensuring that legal certainty is attained and that certain transactions remain outside the Commodity Exchange Act. The first, the electronic trading facility exclusion, would exclude transactions in financial and energy commodities from the Act if conducted: (1) on a principal to principal basis; (2) between institutions or sophisticated persons with high net worth; and (3) on an electronic trading facility. The second would exclude these transactions if (1) they are conducted between institutions or sophisticated persons with high net worth; and (2) they are not on a trading facility. The third exclusion clarifies the Treasury Amendment language already contained in the CEA. It would exclude all transactions in foreign currency and government securities from the Act unless those transactions are futures contracts and traded on an organized exchange. As recommended by the PWG, the bill would give the CFTC jurisdiction over non-regulated off-exchange retail futures transactions in foreign currency. Another important recommendation of the PWG was to authorize futures clearing facilities to clear OTC derivatives in an effort to lessen systemic risk and this bill incorporates this finding.

As part of this legal certainty section, our legislation also addresses the concern that excluding OTC derivatives from the futures laws will invite the SEC to regulate these products as securities. With Senator GRAMM's leadership, this legislation would adopt language that would ensure that these products maintain their current regulatory status and remain healthy and competitive.

The second major section of this legislation addresses regulatory relief. In February of this year, the CFTC issued a regulatory relief proposal that would provide relief to futures exchanges and their customers. Instead of listing specific requirements for complying with the CEA, the proposal would require exchanges to meet internationally agreed-upon core principals. The CFTC proposal creates tiers of regulation for exchanges based on whether the underlying commodities being traded are susceptible to manipulation or whether the users of the exchange are limited to institutional customers.

The legislation incorporates this framework. A board of trade that is designated as a contract market would receive the highest level of regulation due to the fact that these products are susceptible to manipulation or are offered to retail customers. Futures on agricultural commodities would fall into this category. This bill also sets out that in lieu of contract market designation, a board of trade may register as a Derivatives Transaction Execution Facility (DTEF) if the products being offered are not susceptible to manipulation and are traded among institutional customers or retail customers who use large Futures Commission Merchants (FCMs) who are members of a clearing facility. Lastly, a board of trade may choose to be an Exempt Board of Trade (XBOT) and not be subject to the Act (except for the CFTC's anti-manipulation authority) if the products being offered are traded among institutional customers only (absolutely no retail) and the instruments are not susceptible to manipulation. Our bill would allow a board of trade that is a DTEF or an XBOT to opt to trade derivatives that are otherwise excluded from the Act on these facilities and to the extent that these products are traded on these facilities, the CFTC would have exclusive jurisdiction over them. With this provision, the intent is to provide these facilities that trade derivatives with a choice—if regulation is beneficial, the facility may choose to be regulated. If not, the facility may choose to be excluded or exempted from the Act.

The bill's last section addresses the Shad-Johnson jurisdictional accord. In 1982, SEC Chairman John Shad and CFTC Chairman Phil Johnson reached an agreement on dividing jurisdiction between the agencies for those products that had characteristics of both securities and futures. Known as the Shad-Johnson Accord, this agreement prohibited single stock futures and delineated jurisdiction between the SEC

and the CFTC on stock index futures and other options.

Meant as a temporary agreement, many have suggested that the Shad-Johnson accord should be repealed. The President's Working Group unanimously agreed that the Accord can be repealed if regulatory disparities are resolved between the regulation of futures and securities. Recently, the General Accounting Office (GAO) released a report that found that there is no legitimate policy reasons for maintaining the ban on single stock futures since they are being traded in foreign markets, in the OTC market, and synthetically in the options markets. Senator GRAMM, chairman of the Senate Banking Committee, and I sent a letter in December requesting the CFTC and the SEC to make recommendations on reforming the Shad-Johnson. On March 2, the SEC and CFTC responded that, although progress had been made, the agencies could not resolve these issues before October. Disappointment with this answer led Senator GRAMM and I to once again ask SEC Chairman Arthur Levitt and CFTC Chairman Bill Rainer to attempt to resolve the problems surrounding lifting the ban. Unfortunately, the agencies were not able to reach an agreement within our timeframe.

This legislation would repeal the prohibition on single stock futures and narrow-based stock index futures. It would allow these products, termed designated futures on securities, to trade on either a CFTC-regulated contract market or a SEC-regulated national securities exchange or association. The SEC would maintain its insider trading and antifraud enforcement authority over these products traded on a contract market and the CFTC would maintain its anti-manipulation authority, including large trader reporting, over these products traded on a national securities exchange or association. Margin levels on these products would be harmonized with the options markets. The bill would provide the regulators with one year after enactment to resolve any remaining issues.

The goal of this legislation is to ensure that the United States remains a global leader in the derivatives marketplace and that these markets are appropriately and effectively regulated. Due to the shortened legislative calendar in this election year, it will be difficult to pass this bill without momentum and a strong base of support. If Congress fails to enact a bill, we will begin the debate again next year. However, in this technology-driven economy, a one year delay is an eternity. Legal uncertainty for OTC derivatives will remain and our futures markets will continue to lose market share due in part to an outdated regulatory structure. For this reason, it is imperative that Congress enact thoughtful legislation this year when it has a golden opportunity to do so.

I ask unanimous consent that a section by section analysis of this bill be included in the RECORD immediately after my statement.

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

SECTION-BY-SECTION ANALYSIS—COMMODITY FUTURES MODERNIZATION ACT OF 2000

SEC. 1. SHORT TITLE AND TABLE OF CONTENTS. The Act is entitled the Commodity Futures Modernization Act of 2000

SEC. 2. PURPOSES. The section lists 8 purposes for the bill including reauthorizing and streamlining the Commodity Exchange Act (CEA); eliminating unnecessary regulation for the futures exchanges; clarifying the jurisdiction of the CFTC over certain retail foreign currency transactions; transforming the role of the Commodities Futures Trading Commission (CFTC); providing a legislative and regulatory framework for the trading of futures on securities; promoting innovation and reducing systemic risk for futures and over-the-counter (OTC) derivatives; allowing clearing of OTC derivatives and enhancing the competitive position of the U.S. financial institutions and markets.

SEC. 3. DEFINITIONS. Adds definitions to section 1(a) of the CEA for the following terms: derivatives clearing organizations; designated future on a security; electronic trading facility; eligible contract participant; energy commodity; exclusion-eligible commodity; exempted security; financial commodity; financial institution, hybrid instrument; national securities exchange; option organized exchange; registered entity; security and trading facility.

SEC. 4. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES AND CERTAIN OTHER COMMODITIES. Strikes 2(a)(1)(A)(ii) (the current law Treasury Amendment) and replaces it with a new subsection 2(c), which states that nothing in the CEA applies to transactions in foreign currency, government securities and other similar instruments unless these instruments are futures traded on an organized exchange. The bill defines ''organized exchange'' as a trading facility that either allows retail customers, permits agency trades, or has a self regulatory role. Subparagraph (2)(B) provides the CFTC with jurisdiction over retail foreign currency transactions that are not traded on an organized exchange and that are not regulated by another federal regulator.

SEC. 5. LEGAL CERTAINTY FOR OVER-THE-COUNTER TRANSACTIONS. Amends section 2 of the CEA to create a new subsection 2(d), which provides two exclusions from the CEA for over-the-counter derivatives. Section 2(d)(1) provides that nothing in the CEA applies to transactions in an exclusive-eligible commodity if the transaction: (1) is between eligible contract participants (large, institutional entities) and (2) is not executed on a trading facility. The second exclusion in paragraph (d)(2) provides that nothing in the CEA shall apply to a transaction in exclusion-eligible commodity if the transaction: (1) is entered into on a principal to principal basis between parties trading for their own accounts; (2) is between eligible contract participants (large, institutional entities) and (3) is executed on an electronic trading facility. Paragraph (d)(3) provides that derivatives on energy commodities (i.e., energy swaps) that have been excluded from the CEA would be subject to anti-manipulation provisions of the CEA.

SEC. 6. EXCLUDED ELECTRONIC TRADING FACILITIES. Amends section 2 of the CEA to create a new subsection 2(e) that provides that trading instruments that are otherwise excluded from the CEA on an electronic trading facility does not subject the transactions to the CEA. Paragraph (c)(2) states that nothing in the DEA shall prohibit a contract market or derivatives transaction execution facility from establishing and operating an excluded electronic trading facility.

SEC. 7. HYBRID INSTRUMENTS. Amends section 2 of the CEA to create a new subsection 2(f) that provides that nothing in the CEA applies to a hybrid instrument that is predominantly a security to mean any hybrid instrument in which (1) the issuer of the instrument receives payment in full of the purchase price at the time the instrument is delivered; (2) the purchaser is not required to make additional payments; (3) the issuer of the instrument is not subject to mark-to-market margining requirements; and (4) the instrument is not marketed as a futures contract. Paragraph (f)(3) clarifies that mark-to-market requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral for the instrument.

SEC. 8. FUTURES ON SECURITIES. Amends section 2 of the CEA by adding a new subsection 2(g) that repeals the Shad Johnson jurisdictional accord. The new section 2(g)(1) is a savings clause to ensure that excluded OTC equity derivatives remain outside the CEA and the jurisdiction of the CFTC. This paragraph also prohibits the CFTC from designating a board of trade as a contract market in options on securities (as in current law).

Paragraph (2) allows the trading of futures on security indexes on contract markets. Gives the CETC exclusive jurisdiction in regulating these futures. In order for these products to be designated as a contract market, the contracts must be cash settled and must not be susceptible to manipulation (applies to both the price of the contract or the underlying securities (or an option on such securities)).

Paragraph (3) allows the trading of designated futures on securities (defined in the bill as a contract for future delivery on a single non-exempted security, an index based on fewer than 5 non-exempted securities or an index in which a single stock predominates by its value accounting for more than 30 percent of the index's total value). The Act authorizes these products to be traded on designated contract markets and national securities exchanges or associations.

Paragraph (4) provides criteria for contract market designation of these products including: cash settlement; real-time audit trails; insusceptibility to price manipulation (both of the contract and the underlying stock or an option on that stock); eligibility for listing on a national securities exchange; margin requirements; conflict of interest rules; and making information available to the regulators.

Paragraph (5) authorizes the SEC to enforce the securities laws related to insider trading and fraud with respect to designated futures on securities listed on a contract market. This paragraph also requires the SEC and the CFTC, beginning three years from the date of enactment, to jointly compile a report on the implementation of this new authority and, four years after the date of enactment, to submit the report to Congress.

Paragraph (6) authorizes the CFTC to enforce its large trader reporting and other antifraud and antimanipulation authorities for designated futures on securities listed on a national securities exchange. It requires national securities exchanges to provide the CFTC information to enforce these provisions.

Paragraph (7) provides the process for listing a designated future on security on either a futures exchange or national securities exchange.

As in current law, paragraph (8) provides the Federal Reserve with the authority to

set margin and delegate this authority. The paragraph would allow the Federal Reserve to create a three member board consisting of members of the CFTC, SEC and the Federal Reserve to set and maintain margin levels on designated futures on securities.

SEC. 9. PROTECTION OF THE PUBLIC INTEREST. Replaces section 3 of the CEA with a new section listing the responsibilities of the CFTC in protecting the public interest. These include: ensuring the financial integrity of all transactions subject to the Act; protecting market participants from fraud and manipulation; preventing market manipulation and minimizing the risk of systemic failure; and promoting financial innovation and fair competition.

SEC. 10. PROHIBITED TRANSACTIONS. Rewrites the current section 4c for clarity and adds a new provision (sec. 4c(a)(3)(B)) to allow futures commission merchants to trade futures off the floor of a futures exchange as long as the board of trade allows such transactions and the FCMs report, record and clear the transactions in accordance with the rules of the contract market or derivatives trading execution facility.

SEC. 11. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS. Strikes current law sections 5 and 5a and adds a new section 5 providing for the designation of boards of trade as contract markets. Subsection (b) contains criteria that boards of trade must meet in order to be designated as a contract market. These include establishing and enforcing rules preventing market manipulation; ensuring fair and equitable trading; specifying how the trade execution facility operates—including any electronic matching systems; ensuring the financial integrity of transactions; disciplining members or market participants who violate the rules; allowing for public access to the board of trade rules and enabling the board of trade to obtain information in order to enforce its rules. Existing contract markets are grand fathered in.

The 17 core principles that must be met to maintain designation as a contract market are contained in (d) and provide that the board of trade must: monitor and enforce compliance with the contract market rules; list only contracts that are not susceptible to manipulation; monitor trading to prevent manipulation, price distortion and delivery or settlement disruptions; adopt position limits for speculators; adopt rules to provide for the exercise of emergency authority, including the authority to liquidate or transfer open positions, suspend trading and make margin calls; make available the terms and conditions of the contracts and the mechanisms for executing transactions; publish daily information on prices, bids, offers, volume, open interest, and opening and closing ranges; provide a competitive, open and efficient market and mechanism for executing transactions; provide for the safe storage of all trade information in a readily usable manner to assist in fraud prevention; provide for the financial integrity of the contracts, the futures commission merchants and customer funds; protect market participants from abusive practices; provide for alternative dispute resolutions for market participants and intermediaries; establish and enforce rules regarding fitness standards for those involved in market governance; ensure that the governing board reflects the composition of the market participants (in the case of mutually owned exchanges); maintain records and make them available at any time for inspection by the Attorney General; and avoid taking any action that restrains trade or imposes anticompetitive burdens on the markets.

SEC. 12. DERIVATIVES TRANSACTION EXECUTION FACILITIES. Amends the CEA by adding a new section 5a authorizing a new trading designation, derivatives transaction execution facility (DTEF). Under (b), a board of trade may elect to operate as a DTEF rather than a contract market if they meet the DTEF designation requirements. A registered DTEF may trade any non-designated futures contract if the commodity underlying the contract has a nearly inexhaustible supply, is not susceptible to manipulation and does not have a cash market in commercial practice. Eligible DTEF traders include authorized contract market participants and persons trading through registered futures commission merchants with capital of at least $20,000,000 that are members of a futures self-regulatory organization (SRO) and a clearing organization. Boards of trade that have been designated as contract markets may operate as DTEFs if they provide a separate location for DTEF trading or, in the case of an electronic system, identify whether the trading is on a DTEF or contract market.

Subsection (c) provides requirements for boards of trade that wish to register as DTEFs, including: establishing and enforcing trading rules that will deter abuses and provide market participants impartial access to the markets and capture information that may be used in rule enforcement; define trading procedures to be used; and provide for the financial integrity of DTEF transactions.

To maintain registration as a DTEF, the board of trade must comply with 8 core principles listed in (d): maintain and enforce rules; ensure orderly trading and provide trading information to the CFTC; publicly disclose information regarding contract terms, trading practices, and financial integrity protections; provide information on prices, bids and offers to market participants as well as daily information in volume and open interest for the actively traded contracts; establish and enforce rules regarding fitness standards for those involved in DTEF governance; maintain records and make them available at any time for inspection by the Attorney General; and avoid taking any action that restrains trade or imposes anticompetitive burdens on the markets.

Subsection (e) allows a broker-dealer or a bank in good standing to act as an intermediary on behalf of its customers and to receive customer funds serving as margin or security for the customer's transactions. If the broker-dealer holds the DTEF customer funds or accounts for more than 1 business day, the broker-dealer must be a registered FCM and a member of a registered futures association. The CFTC and SEC are to coordinate in adopting rules to implement this subsection.

Under (f), the CFTC may adopt regulations to allow FCMs to give their customers the right to not segregate customer funds for purposes of trading on the DTEF.

Subsection (g) clarifies that a DTEF may trade derivatives that otherwise would be excluded from the CEA and the CFTC has exclusive jurisdiction only when these instruments are traded on a DTEF.

SEC. 13. DERIVATIVES CLEARING ORGANIZATIONS. Amends the CEA to create a new section 5b regarding derivatives clearing organizations. Under subsection (a), these clearing entities, which are allowed to clear derivatives (that are not a security), must register with the CFTC and meet a set of 14 core principals set out in subsection (d), including principals on financial resources of the clearing facility, participant eligibility, risk management systems, settlement procedures, treatment of client funds, default rules, rule enforcement, system safeguards, reporting, record keeping, public information disclosure, information sharing, and minimizing competitive restraints.

Under subsection (b), a derivatives clearing organization will not have to register with the CFTC if it is registered with another federal financial regulator and it does not clear futures. Under subsection (c), a derivatives clearing organization that is exempt from registration may opt to register with the CFTC. Subsection (e) provides that existing clearing entities that clear futures contracts on a designated contract market will be grand fathered in as a derivatives clearing organization.

Sec. 14. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. Amends the CEA to create a new section 5c that contains provisions affecting all registered entities (contract markets, derivatives transaction execution facilities and derivatives clearing organizations).

Subsection (a) would allow the CFTC to issue or approve interpretations to describe what would constitute an acceptable business practice under the core principals for registered entities.

Subsection (b) would allow a registered entity to delegate its self regulatory functions to a registered futures association, while specifying that responsibility for carrying out these functions remain with the registered entity.

Subsection (c) would enable the registered entity to trade new products or adopt or amend rules by providing the CFTC a written certification that the new contract or new rule or amendment complies with the CEA. This subsection would allow a registered entity to request that the CFTC grant prior approval of a new contract, new rule or rule amendment. This subsection would require the CFTC to pre-approve rule changes to open agricultural contracts.

Subsection (d) grants the CFTC the authority to informally resolve potential violations of the core principals for registered entities.

SEC. 15. EXEMPT BOARDS OF TRADE. Amends the CEA to create a new section 5d regarding exempt boards of trade. Under subsections (a) and (b), futures contracts traded on an exempt board of trade would be exempt from the CEA (except section 2(g) regarding equity futures) if (1) participants are eligible contract participants (large institutional investors) and (2) the commodity underlying the futures contract has an inexhaustible deliverable supply, is not subject to manipulation, or has no cash market. Subsection (c) subjects futures contracts traded on an exempt board of trade to the anti-fraud and anti-manipulation provisions of the CEA. Under subsection (d), if the CFTC finds that an exempt board of trade is a significant source of price discovery for the underlying commodity, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

SEC. 16. SUSPENSION OR REVOCATION OF DESIGNATION AS CONTRACT MARKET. Designates current section 5b as 5d and amends it to authorize the CFTC to suspend the registration of a registered entity for 180 days for any violation of the CEA.

SEC. 17. AUTHORIZATION OF APPROPRIATIONS. Amends section 12(d) of the CEA by striking 2000 and reauthorizing appropriations through fiscal year 2005.

SEC. 18. PREEMPTION. Rewrites paragraph 12(e)(2) of the CEA for clarity and to conform with changes made in the bill. Re-states the current provisions that the CEA supercedes and preempts other laws in the case of transactions conducted on a registered entity or subject to regulation by the CFTC (even if outside the United States), and adds that in the case of excluded electronic trading facilities, and any agreements, contracts or transactions that are excluded or covered by a 4(c)

exemption, the CEA supercedes and preempts state gaming and bucket shop laws (except for the anti-fraud provisions of those laws that are generally applicable).

SEC. 19. PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS. Amends section 14 of the CEA to clarify that futures commission merchants, as a condition of doing business, may require customers, that are eligible contract participants, to waive their right to file a reparations claim with the CFTC.

SEC. 20. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS. Amends section 15 of the CEA to add a new subsection (a) requiring the CFTC, before promulgating regulations and issuing orders, to consider the costs and benefits of their action. This does not apply to orders associated with an adjudicatory or investigative process, emergency actions or findings of fact regarding compliance with CFTC rules.

SEC. 21. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES. Amends section 22 of the CEA to provide a safe harbor so that transactions will not be voidable based solely on the failure of the transaction to comply with the terms or conditions of an exclusion or exemption from the Act or CFTC regulations.

SEC. 22. LEGAL CERTAINTY FOR SWAPS. Provides that the SEC does not have jurisdiction over swap agreements. Places a one year moratorium on banks being able to market swaps to the retail public. Requests the President's Working Group to conduct a study on the regulatory treatment of swaps offered to retail customers.

SEC. 23. TECHNICAL AND CONFORMING AMENDMENTS. Makes technical and conforming amendments throughout the CEA to reflect changes made by the bill.

SEC. 24. EFFECTIVE DATE. The Act takes effect on the date of enactment, except section 8 (dealing with futures on securities), which takes effect one year after enactment.●

Mr. GRAMM. Mr. President, today I join with Senator LUGAR, chairman of the Senate Agriculture Committee, to introduce the Commodity Futures Modernization Act of 2000. The formal purpose of this legislation is to reauthorize the Commodity Exchange Act, the legal authority for the Commodity Futures Trading Commission. As important as that is, this legislation does far more.

This is a landmark bill, that addresses four chief goals that Senator LUGAR and I set out to achieve when we first began discussing this legislation. First of all, this bill would repeal the so-called Shad-Johnson Accord, the 18-year-old temporary prohibition on the trading of futures based on individual stocks. Second, the bill eliminates the legal uncertainly that today hangs as an ominous cloud over the $7 trillion financial swaps markets. Third, the bill addresses the need to harmonize the treatment of margins among the futures, stock, and options markets. Fourth, the bill provides important and necessary regulatory relief to the futures and securities markets.

One of the most notable aspects of this bill is that it brings together the chairmen of the two committees with jurisdiction over these issues, the Agriculture Committee and the Banking Committee. To start out with such cooperation speaks well, I believe, for the prospects for this legislation. While the Commodity Exchange Act is clearly within the jurisdiction of the Agriculture Committee, stocks, options, and swaps are within the jurisdiction of the Banking Committee.

The next step for this bill will be joint hearings of our two committees to consider it. Few bills are in a perfected form when first introduced, and I fully expect that additional changes will be made to this one before it becomes law. For example, I hope to see additional measures of regulatory relief for the securities markets included.

But this bill is a fine beginning, introduced in the best way. We bring together two committees that could choose to argue over turf but instead are choosing to cooperate to make changes in law that are needed to ensure that our financial market places continue to lead the world. At the same time, we will be providing the widest choice of investment opportunities for American businesses and families.

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By Mr. MOYNIHAN (for himself, Mr. KERRY, Mr. ROCKEFELLER, Ms. SNOWE, Mr. ALLARD, Mr. BAUCUS, Mr. BREAUX, Mr. BROWNBACK, Mr. BRYAN, Mr. BUNNING, Mr. BURNS, Mr. DASCHLE, Mr. HOLLINGS, Mr. HUTCHINSON, Mr. JOHNSON, Mr. KENNEDY, Mr. KERREY, Ms. LANDRIEU, Mrs. LINCOLN, Ms. MIKULSKI, Mr. REID, Mr. ROBB, Mr. ROBERTS, Mr. SCHUMER, Mr. THURMOND, Mr. ENZI, Mrs. BOXER, and Mr. DEWINE):

S. 2698. A bill to amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability; to the Committee on Finance.

BROADBAND INTERNET ACCESS ACT OF 2000

Mr. MOYNIHAN. Mr. President, today, joined by my colleagues Senators KERRY, ROCKEFELLER, SNOWE, ALLARD, BAUCUS, BREAUX, BROWNBACK, BRYAN, BUNNING, BURNS, DASCHLE, DURBIN, ENZI, HOLLINGS, HUTCHINSON, JOHNSON, KENNEDY, KERREY, LANDRIEU, LINCOLN, MIKULSKI, REID, ROBB, ROBERTS, SCHUMER, and THURMOND, I am introducing the Broadband Internet Access Act of 2000. This legislation provides a tax incentive to stimulate rapid deployment of high-speed communication services to residential, rural, and low-income areas.

A term of art often used for high-speed communication service is ''broadband.'' The term is a remnant from the era of analog systems. It refers to the size of spectral bandwidth over which signals can be transmitted. Even though it is not essential to have wide spectra in the digital world to transmit vast amounts of data, ''broadband'' remains in our digital society's lexicon for high-speed communication or throughput.

In common use, broadband connotes fast Internet access, and that is certainly part of the goal of this legislation. The grander goal, however, extends beyond simply expediting traditional Internet use. It is to deliver, in the near future, a wide array of voice, video, and data communication services, at extremely fast speeds, to all Americans.

The Broadband Internet Access Act of 2000 provides graduated tax credits for deployment of high-speed communications to residential and rural communities. It gives a 10-percent credit for the deployment of at least 1.5 million bits per second downstream and 200,000 bits per second upstream to all subscribers—residential, business, and institutions—in rural and low income areas. This is essentially ''current generation'' broadband. The bill gives a 20-percent credit for the deployment of at least 22 million bits per second downstream and 10 million bits per second upstream to all subscribers in rural and low income areas, and to all residential customers in other areas. This is what we are calling ''next generation'' broadband.

The bill does not dictate the technological means by which these broadband services are to be delivered. Today, the possibilities include telephone lines, cable modems, fiber optics, terrestrial wireless, and satellite wireless. In the future there may be others. Whether high-speed communications are delivered by electrons or by photons, with wires or without wires, by copper or by glass, by terrestrial or by extraterrestrial means, is immaterial. With a temporary tax credit, it is economically feasible to push national communication capabilities forward by ten or perhaps twenty years. The bill permits a variety of technological approaches to make under-served areas more economically attractive to broadband providers. Yesterday we had electronics. Today we have photonics. Tomorrow we will have some ''future-onics.''

Mr. President, as I stand before you today, the streets of Washington, D.C. and of many other major cities in this country are being torn-up to lay cables for high-speed communication. Line-of-sight communication ''dishes'' are being installed on office buildings permitting business-to-business voice, video, and data transmissions. The problem is, market forces are driving deployment of high-speed communication capabilities almost exclusively to urban businesses and wealthy households. Low-income families, exurban communities, rural businesses, and rural families are relegated to the back of the queue. The bill gives private industry economic incentives to accelerate high-speed communication capabilities to Americans who are at the end-of-the-line.

Why is this important? Let me offer examples of this technology's power and importance. I start with two historical cases.

During the 1950's the National Institute of Mental Health funded a 1,278-

mile closed-circuit telephone system between seven state hospitals in Nebraska, Iowa, North Dakota, and South Dakota. Health care providers at the hospitals held weekly teleconferencing lectures via this system. By 1961, the system included both audio and video, and psychiatrists successfully used it to care for patients under a program called ''telepsychiatry.''

At about the same time, radiologists in Montreal had a coaxial cable laid between two hospitals three miles apart, thus connecting them for audio and video communications. Doctors were regularly transmitting radiographic images to each other to consult on difficult cases and to conduct educational conferences.

As a result of these two projects, patients were treated by physicians who were, in some cases, hundreds of miles away. The medical profession was able to share information and ideas, which improved healthcare in this country and Canada.

Unfortunately, such ''telemedicine'' links are very few, even though our ability to transmit data has increased. Why? Because there is no nationwide high-speed data-transfer infrastructure. Instead, the standard business Internet speed in rural areas is 56,000 bits per second. What can be done at that speed? Printed matter can be sent and received reasonably quickly. But photographs or graphics, require long waits, and then often with poor image quality. More advanced uses, such as video conferencing, are out of the question. At faster Internet speeds of, say, 200,000 to 300,000 bits per second, information can be sent much faster. Photographs and graphics leap to the screen, instead of crawling. Video conferencing also is possible, although jittery images and low image resolution make it impractical. Music and movies can be downloaded slowly to a compact disk.

At higher data transfer speeds—about 1.5 million bits per second—the amount and quality of information that can be transmitted becomes quite good. Very good video conferencing is possible. Two or more people in different places can see and talk to each other as if in the same room, at a crisp image resolution and without image jitter.

And at even higher speeds, extraordinarily rich images of movement, color, and detail can be transmitted as if one were looking at them in person. Complex medical images can be sent and received. At twenty million bits per second, a digitized mammography image can be transmitted in about fifteen seconds, and a standard chest x-ray in about four seconds.

Twenty million bits per second is about 360 times faster than the fastest speeds available on a conventional modem attached to a Plain Old Telephone Service, or, as I am told, POTS. Is it really possible to do this? Indeed, it is. The technology exists now. Over ordinary copper wire, some of our communication companies are now offering data speeds of 26 million bits per second.

Imagine the tremendous personal and economic benefits our nation will reap with universal high-speed communication access, including telemedicine; telecommuting; distance learning at all education levels; electronic commerce in low-income and rural communities; digital photography; and entertainment video. As a result, we will enjoy greater educational opportunities, greater geographic freedom, increased wealth in low-income areas, and even decreased urban congestion.

So if the benefits are so great and the capability exists, why are these technologies not widely available? Simple economics. It is much more lucrative to provide services to business customers. Although a few affluent individuals in urban areas have high speed Internet access, the great majority of Americans are limited to extremely slow communication or to none at all.

That is why it is appropriate for government to step in at this time and provide an incentive to stimulate deployment of high-speed communication service to residential areas and small businesses, especially in rural and low-income areas of the country. Our country has a proud history of supporting critical services in rural and underserved communities.

Three major examples are utilities, interstate highways, and the airline industries.

The Rural Utilities Service is a federal credit agency within the Department of Agriculture that helps rural areas finance electric, telecommunications, water, and waste water projects. Its lending creates public-private partnerships to finance the construction of infrastructure in rural areas. Working in partnership with rural telephone cooperatives and companies, the Department of Agriculture helped boost the number of rural Americans with telephone service from 38 percent in 1950 to more than 95 percent in 1999.

The federal government funded 90 to 100 percent of the cost of building the interstate highway system. The Federal Aid Highway Act of 1956 initiated a nationwide program that aimed to be completed within 20 years. The bulk of the program was completed within this time period, although full implementation was not achieved until the early 1990s.

In the 1930s, the airline industry—much like today's Internet start-ups—was operating at a loss. Believing airline service to be both unique and necessary, the federal government stepped-in with an airmail subsidy in 1938, and this federal funding made the industry instantly profitable. The airline industry then flourished, and the subsidy was removed in the mid 1950s.

In a 1979 speech titled, ''Technology and Human Freedom,'' I stated, ''I believe that government can and should seek to advance technology—as a condition of social progress.'' I still believe that. In 1979, I went on to say, ''In my view, only a person of what St. Augustine would have termed 'indomitable ignorance' could deny that technology has greatly enhanced human freedom. . . . Freedom is choice, and technology vastly enhances choice. . . . The relation between technology and democracy is intimate. . . . Experimentation, variety, optimism: these are the ingredients of both technology and democracy.''

In 1978, the late Mancur Olson, an esteemed economist, cautioned that the very liberty of societies such as ours may be the source of developments that make innovation considerably more difficult. We should guard against the prospect of our government retarding technology as Professor Olson hypothesized. The bill I introduce today encourages technology, and extends its range to those residential and business areas it otherwise would not reach until much later.

We need this legislation now to maintain our technological leadership. As the press has recently reported, Sweden, Japan, Singapore, and Canada are deploying broadband at levels higher than those called for in this bill. We cannot afford to fall behind in this critical area. History indicates that, if we do not act aggressively, it will take a very long time to deploy broadband services on a widespread basis. The first regular, sustained commercial telephone services were offered in 1876, but it took more than 90 years to make the service available to 90 percent of residences in the United States. It would be deplorable if it takes even half as long to bring existing broadband technology to the same number of Americans.

If the Internet is the information superhighway, broadband communication is the information super sonic transport. I want to encourage the communications industry to accelerate deployment of the this super sonic transport to every community in the country.

I want to thank my colleagues for their support and collaboration on this bill. Senator JOHN KERRY and his staff have been involved in every aspect of this legislation, and we could not have formulated the bill without their detailed knowledge of the communications industry. And Senators ROCKEFELLER and SNOWE recently introduced a similar bill focusing on the deployment of broadband in rural areas, and the legislation we introduce today incorporates and expands upon their work.

This bill is meant to be a proposal. As we consider this measure, Congress may decide to modify it. Moreover, we have not yet received a revenue estimate on the bill, and if it proves to be too expensive, we will have to scale it back. It is time, however, to focus on this issue. Let us begin the discussion of how we can provide the stimulus necessary to ensure the availability of high-speed communication to every

American. I urge the Senate to support this important legislation.

Mr. President, I ask unanimous consent that a copy of the bill and letters of support from a number of organizations appear in the RECORD. ●

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

S. 2698

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Broadband Internet Access Act of 2000''.

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—The Congress finds the following:

(1) The Internet has been the single greatest contributor to the unprecedented economic expansion experienced by the United States over the last 8 years.

(2) Increasing the speed that Americans can access the Internet is necessary to ensure the continued expansion.

(3) Today, most residential Internet users, especially those located in low income and rural areas, are extremely limited in the type of information they can send and receive over the Internet because their means of access is limited to ''narrowband'' communications media, typically conventional phone lines at a maximum speed of 56,000 bits per second.

(4) Similarly, small businesses in low income and rural areas are also deprived of full information access because of their dependence on narrowband facilities.

(5) By contrast, many residential users located in higher income urban and suburban areas and urban business users can access the Internet from a variety of carriers at current generation broadband speeds in excess of 1,500,000 bits per second, giving them a choice among carriers and high-speed access to a wide array of audio and data applications.

(6) The result is a growing disparity in the speed of access to the Internet and the opportunities it creates between subscribers located in low income and rural areas and subscribers located in higher income urban and suburban areas.

(7) At the same time, experts project that, under current financial and regulatory conditions, the facilities needed to transmit next generation broadband services over the Internet to residential users at speeds in excess of 10,000,000 bits per second will not be as ubiquitously available as is telephone service until sometime between the years 2030 and 2040.

(8) Experts also believe that, under current financial and regulatory conditions, the disparity in access will be exacerbated with the deployment of next generation broadband capability.

(9) The disparity in current broadband access to the Internet, the slow pace of deployment of next generation broadband capability, and the projected disparity in access to such capability will likely prove detrimental to the on-going economic expansion.

(10) It is, therefore, appropriate for Congress to take action to narrow the current and future disparity in the level of broadband access to the Internet, and to accelerate deployment of next generation broadband capability.

(b) PURPOSE.—The purpose of this Act is to accelerate deployment of current generation broadband access to the Internet for users located in certain low income and rural areas and to accelerate deployment of next generation broadband access for all Americans.

**SEC. 3. BROADBAND CREDIT.**

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

**''SEC. 48A. BROADBAND CREDIT.**

''(a) GENERAL RULE.—For purposes of section 46, the broadband credit for any taxable year is the sum of—

''(1) the current generation broadband credit, plus

''(2) the next generation broadband credit.

''(b) CURRENT GENERATION BROADBAND CREDIT; NEXT GENERATION BROADBAND CREDIT.—For purposes of this section—

''(1) CURRENT GENERATION BROADBAND CREDIT.—The current generation broadband credit for any taxable year is equal to 10 percent of the qualified expenditures incurred with respect to qualified equipment offering current generation broadband services to rural subscribers or underserved subscribers and taken into account with respect to such taxable year.

''(2) NEXT GENERATION BROADBAND CREDIT.—The next generation broadband credit for any taxable year is equal to 20 percent of the qualified expenditures incurred with respect to qualified equipment offering next generation broadband services to all rural subscribers, all underserved subscribers, or any other residential subscribers and taken into account with respect to such taxable year.

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which current generation broadband services or next generation broadband services are offered by the taxpayer through such equipment to subscribers.

''(2) OFFER OF SERVICES.—For purposes of paragraph (1), the offer of current generation broadband services or next generation broadband services through qualified equipment occurs when such class of service is purchased by and provided to at least 10 percent of the subscribers described in subsection (b) which such equipment is capable of serving through the legal or contractual area access rights or obligations of the taxpayer.

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the current generation broadband credit under subsection (a)(1), if the qualified equipment is capable of serving both the subscribers described under subsection (b)(1) and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the total potential subscriber populations within the rural areas and the underserved areas which the equipment is capable of serving, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the next generation broadband credit under subsection (a)(2), if the qualified equipment is capable of serving both the subscribers described under subsection (b)(2) and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the total potential subscriber populations within the rural areas and underserved areas, plus

''(ii) the total potential subscriber population of the area consisting only of residential subscribers not described in clause (i), which the equipment is capable of serving, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,500,000 bits per second to the subscriber and at least 200,000 bits per second from the subscriber.

''(5) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 10,000,000 bits per second from the subscriber.

''(6) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means a person or entity who purchases broadband services which are delivered to the permanent place of business of such person or entity.

''(7) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(8) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

''(9) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of a digitized transmission signal which is assembled into packets or cells.

''(10) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment capable of providing current generation broadband services or next generation broadband services at any time to each subscriber who is utilizing such services.

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from

multiple subscribers to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and it is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(11) QUALIFIED EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified expenditure' means any amount chargeable to capital account with respect to the purchase and installation of qualified equipment (including any upgrades thereto) for which depreciation is allowable under section 168.

''(B) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any expenditure with respect to the launching of any satellite equipment.

''(12) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means an individual who purchases broadband services which are delivered to such individual's dwelling.

''(13) RURAL SUBSCRIBER.—

''(A) IN GENERAL.—The term 'rural subscriber' means a residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(B) RURAL AREA.—The term 'rural area' means any census tract which—

''(i) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(ii) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(14) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for point-to-multipoint distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

''(15) SUBSCRIBER.—The term 'subscriber' means a person who purchases current generation broadband services or next generation broadband services.

''(16) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153 (44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(17) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(18) UNDERSERVED SUBSCRIBER.—

''(A) IN GENERAL.—The term 'underserved subscriber' means a residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

''(B) UNDERSERVED AREA.—The term 'underserved area' means any census tract—

''(i) the poverty level of which is at least 30 percent (based on the most recent census data),

''(ii) the median family income of which does not exceed—

''(I) in the case of a census tract located in a metropolitan statistical area, 70 percent of the greater of the metropolitan area median family income or the statewide median family income, and

''(II) in the case of a census tract located in a nonmetropolitan statistical area, 70 percent of the nonmetropolitan statewide median family income, or

''(iii) which is located in an empowerment zone or enterprise community designated under section 1391.

''(f) DESIGNATION OF CENSUS TRACTS.—The Secretary shall, not later than 90 days after the date of the enactment of this section, designate and publish those census tracts meeting the criteria described in paragraphs (13)(B) and (18)(B) of subsection (e), and such tracts shall remain so designated for the period ending with the termination date described in subsection (g).

''(g) TERMINATION.—This section shall not apply to expenditures incurred after December 31, 2005.''

(b) CREDIT TO BE PART OF INVESTMENT CREDIT.—Section 46 of the Internal Revenue Code of 1986 (relating to the amount of investment credit) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the broadband credit.''

(c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) of the Internal Revenue Code of 1986 (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) from sources not described in subparagraph (A), but only to the extent such income does not in any year exceed an amount equal to the credit for qualified expenditures which would be determined under section 48A for such year if the mutual or cooperative telephone company was not exempt from taxation.''

(d) CONFORMING AMENDMENT.—The table of sections for subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 48 the following new item:

''Sec. 48A. Broadband credit.''

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures incurred after December 31, 2000.

(2) SPECIAL RULE.—The amendments made by subsection (c) shall apply to amounts received after December 31, 2000.

**SEC. 4. REGULATORY MATTERS.**

No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of confiscating any credit or portion thereof allowed under section 48A of the Internal Revenue Code of 1986 (as added by section 3) or otherwise subverting the purpose of this Act.

**SEC. 5. STUDY AND REPORT.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that in order to maintain competitive neutrality, the credit allowed under section 48A of the Internal Revenue Code of 1986 (as added by section 3) should be administered in such a manner so as to ensure that each class of carrier receives the same level of financial incentive to deploy current generation broadband services and next generation broadband services.

(b) STUDY AND REPORT.—The Secretary of the Treasury shall, within 180 days after the effective date of section 3, study the impact of the credit allowed under section 48A of the Internal Revenue Code of 1986 (as added by section 3) on the relative competitiveness of potential classes of carriers of current generation broadband services and next generation broadband services, and shall report to Congress the findings of such study, together with any legislative or regulatory proposals determined to be necessary to ensure that the purposes of such credit can be furthered without impacting competitive neutrality among such classes of carriers.

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MCI WORLDCOM,
*Washington, DC, June 8, 2000.*

Hon. DANIEL PATRICK MOYNIHAN,
*Senate Finance Committee,*
*Washington, DC.*

DEAR SENATOR MOYNIHAN: Thank you for your leadership in advancing the deployment of broadband technology to rural and underserved areas of the country. WorldCom, a leading Internet backbone provider, believes broadband technology will improve the quality of life for millions of Americans and assist in maintaining this country's leadership in the worldwide information technology marketplace. Your support of our efforts to modernize communications infrastructure dates at least to the Tax Reform Act of 1986, when you supported legislation designed to enhance advanced telecommunications investment.

Electronic commerce and its Internet medium is a thriving environment. More jobs, more gross domestic product, and more wealth have been created by the Internet than any other single innovation in recent memory. Electronic commerce continues to grow apace, creating increased need for continuing development and deployment of communications technology.

Your proposal, Senator Moynihan, is designed to support that deployment and development at an advanced level. It is designed not only to accelerate deployment of existing technology, but also to encourage development and deployment of next generation broadband technologies as well. Acceleration is important. Persons needing distance education cannot wait while job opportunities pass them by; businesses facing competitive pressure cannot wait to engage in the latest Internet based inventory planning; rural residents with a great idea for a new dot.com need high speed connectivity now; and persons suffering from serious disease far from the right medical experts cannot wait for a telemedicine connection.

WorldCom appreciates your effort to support this critical technology and supports your efforts through the Broadband Internet Access Act of 2000. While we would like to see a proposal broader than the ''last mile'', your bill initiates this all-important process.

Sincerely,

CATHERINE R. SLOAN,
*Chief Legislative Counsel.*

BELL ATLANTIC,
*Washington, DC, June 5, 2000.*

Re: Broadband Internet Access Act of 2000

Hon. DANIEL PATRICK MOYNIHAN,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR MOYNIHAN: Congratulations on your leadership in developing and introducing the ''Broadband Internet Access Act of 2000.'' I am writing to provide you with Bell Atlantic's support and views regarding this important tax legislation.

As you know, Bell Atlantic is a leader in the deployment of broadband capability, particularly in the state of New York. As such, we are extremely familiar with the regulatory and financial hurdles associated with deploying broadband to all our business and residential customers. We believe that rapid deployment of this capability will provide the basis for sustained long-run economic growth in the economy. Our experience with the Internet has taught us that the convergence of communications and computing yields tremendous benefits for the economy in terms of productivity growth.

Unfortunately, other carriers and we face tremendous government hurdles as we roll out this capability. These hurdles arise from the unintended adverse effects of regulation on investment that, in turn, increase the degree of financial uncertainty associated with such investments. In other words, we face a regulatory problem and a financial problem in deploying broadband capability to our customers. The Broadband Internet Access Act helps to overcome these problems by encouraging Bell Atlantic and other carriers through financial incentives to proceed with these investments. More importantly, the targeted nature of the incentives will help us reach customers in rural areas and low-income areas that are otherwise difficult to serve because of the high cost of deployment and other factors.

The bill does not address the overwhelming regulatory issues, which Bell Atlantic continues to face. We encourage you to support legislation to address these problems as well as the financial issues that are addressed in the Broadband Act.

We encourage you to enact the Broadband Internet Access Act this year. We appreciate your leadership on this important issue.

Sincerely,

THOMAS J. TAUKE,
*Senior Vice President—*
*Government Relations.*

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NTCA,
*Arlington, VA, June 5, 2000.*

Re Broadband Internet Access Act of 2000.

Hon. DANIEL PATRICK MOYNIHAN,
*Ranking Minority Member, Senate Committee on Finance, Washington, DC.*

DEAR SENATOR MOYNIHAN: During the course of the past year, the term ''digital divide'' has quickly become the buzzword of choice among policymakers. Coined ostensibly to describe the absence of communications availability to certain segments of the nation's population, the term has been twisted to imply the issue of communications ''haves'' and ''have-nots'' is merely a rural vs. urban matter.

NTCA has vigorously moved to redirect the discussion to fully recognize the achievements of small rural incumbent local exchange carriers (ILECs) in deploying advanced communications infrastructure and services. The facts bear witness to the success of small rural ILECs in stepping up to what we feel is better described as the ''Digital Challenge.'' Recent surveys show that in many cases, markets served by such entities are more technologically advanced than their larger, urban counterparts. Likewise, they are significantly more advanced than the rural markets served by the nation's large ILECs. Other reports show that urban areas in general are not the ''digital Mecca'' many would have us believe. The reality is that the markets of the nation's small rural ILECs are anything but communications technology wastelands as many are portraying them to be.

Nevertheless, there remains a substantial amount of costly work to be done for all markets to be fully advanced service-capable. For this reason, we commend your effort, vis-a-vis the Broadband Internet Access Act of 2000, to further stimulate deployment of broadband services by granting tax credits to telecommunications providers deploying advanced technologies. Furthermore, we sincerely appreciate your effort to recognize the special circumstances, with regard to tax credits, of the nation's rural telecommunications cooperatives by the inclusion of the Special Rule for Mutual or Cooperative Telephone Companies.

In addition, there are several existing tools such as the universal service support program that, if allowed to function appropriately, could help offset the tremendous costs associated with the deployment of advanced services. We continue to work with several of your colleagues to advance legislation that will ensure the universal service program is allowed to function as the Congress envisioned in helping lead the deployment of new communications technologies and services.

It must be reiterated that small rural ILECs have long led the way in meeting the Digitial Challenge by deploying new technologies—not just to their most profitable customers, but to every individual within their market that wishes to receive service. With your assistance, the rural ILEC industry will continue to maintain its unparalleled record of service.

Sincerely,

SHIRLEY BLOOMFIELD,
*Vice President, Government*
*Affairs & Association Services.*

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BRISTOL BAY AREA
HEALTH CORPORATION,
*Dillingham, AK, May 31, 2000.*

Re Broadband Internet Access Act of 2000.

Hon. PATRICK DANIEL MOYNIHAN,
*Ranking Minority Member, Committee on Finance, U.S. Senate, Washington, DC.*

DEAR SENATOR MOYNIHAN: We are writing to indicate our support for your continued effort to pass the Broadband Internet Access Act of 2000. If passed, this legislation could significantly improve access of millions of Americans to the Internet and its valuable resources, including residents of rural Alaska communities.

We provide health care services to 34 remote Alaska communities, most of which can only be reached by small airplane. The availability of affordable advanced telecommunications including telemedicine and improved Internet access would be beneficial in providing health education to villagers; would help reduce feelings of isolation of health care providers, teachers and other professionals; and provide access to health care resources for everyone. It would also provide faster and less expensive access to all communication mediums.

We believe that remote, rural areas such as those that make up a large part of Alaska need and deserve the availability of affordable high-speed Internet services like urban communities currently enjoy. Without this availability, rural communities will continue to be left behind and technologically outdated as the rest of the U.S. moves forward.

Thank you for the opportunity to comment on this important legislation. Please contact me at (907) 842–5201 if I can be of further assistance.

Sincerely,

ROBERT J. CLARK,
*President/CEO.*

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GEORGETOWN UNIVERSITY
MEDICAL CENTER,
*May 25, 2000.*

Re Broadband Internet Access Act of 2000.

Hon. PATRICK DANIEL MOYNIHAN,
*Ranking Minority Member, Committee on Finance, U.S. Senate, Washington, DC.*

DEAR SENATOR MOYNIHAN: We are writing to encourage you in your effort to pass the Broadband Internet Access Act of 2000. If passed, this important legislation could significantly improve the way millions of Americans gain access to health information and receive health care.

For many years the Imaging Sciences and Information Systems (ISIS) Center at Georgetown University has been a successful innovator of technologies that are used to improve the quality and lower the cost of health care. This contribution, however, accounts for only two-thirds of the receipt for successful health care reform in America. The third element, improved access to health services, has been one of the most challenging, especially to health care providers and consumers in rural America.

Access to quality health care cannot be improved through development of more efficient technologies, alone. We, and with us many of our colleagues throughout America, believe financial incentives are necessary to correct current regulatory and market insufficiencies that inhibit assess to emerging health services that increasingly rely on telecommunications and Internet connectivity to reach consumers. The creation of these incentives is outside the purview of the health sector and that is why we look to you and your Senate colleagues. You can help remedy the economic conditions that contribute to the growing ''digital divide'', that made second class citizens out of underserved people throughout the country.

Specifically, we look to you for a remedy that will improve access and availability of telephone, cable, fiber optic, terrestrial, wireless, and satellite telecommunications services at bandwidth capacities sufficient to carry high resolution images, video and voice over the Internet, increasingly the preferred mode of delivery. We believe your proposed legislation addressed these problems through its 10% tax credit for deployment of ''last-mile'' current generation broadband capability to rural and underserved areas, and its 20% credit for ''next generation'' service.

Therefore we applaud your sponsorship of the Broadband Internet Access Act of 2000. We appreciate your vision and look to you and your colleagues in the Senate to rapidly pass this important legislation so that we can move on to a next generation of health care with improved quality, cost and access.

Thank you for an opportunity to express our support for your initiative. If you need any additional information, please call us at 202–687–7955 or at *Mun@isis.imac.georgetown.edu.*

Sincerely,

DUKWOO RO, PHD,
*Associate Professor.*
SEONG K. MUN, PHD,
*Professor, Director of*
*ISIS Center.*

UNITED STATES DISTANCE
LEARNING ASSOCIATION,
*Watertown, MA, May 19, 2000.*

Re Broadband Internet Access Act of 2000.

Hon. DANIEL PATRICK MOYNIHAN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR MOYNIHAN:

The United States Distance Learning Association supports the Broadband Internet Access Act of 2000 to be introduced by you.

As Executive Director of the association I want to assure you that our association applauds the initiative. The Congress of the United States has the opportunity to help deliver long needed Telecommunication Services to all Americans. This act will serve two purposes—increasing bandwidth availability and decreasing the well-documented Digital Divide.

Sincerely,

DR. JOHN G. FLORES,
*Executive Director.*

CORNING INCORPORATED,
*Corning, NY, May 19, 2000.*

Hon. DANIEL PATRICK MOYNIHAN,
*Ranking Minority Member, Committee on Finance, U.S. Senate, Washington, DC.*

DEAR SENATOR MOYNIHAN: I am writing to endorse with enthusiasm the Broadband Internet Access Act of 2000 and to congratulate you for your leadership for introducing this important legislation.

As you may know, Corning is a leader in optical communications systems. As such, we have great confidence in the benefits that deployment of broadband to all Americans can confer on the economy and society as a whole. As Alan Greenspan has said many times, the Internet has contributed significantly to the on-going economic expansion. The rapid deployment of broadband access can extend the benefits of the Internet well into the future.

Unfortunately, broadband is being deployed very slowly in this country. Two specific problems have arisen. First, subscribers in rural and underserved low-income areas are unlikely to gain access to the current generation broadband capability any time soon, giving rise to a ''digital divide'' between information haves and have-nots. Secondly, the deployment of next generation broadband capability will take 30 to 40 years in the current regulatory and financial environment. We think America can do better for its citizens by immediate enactment of the Broadband Internet Access Act of 2000.

We believe your legislation addresses these problems through its 10% tax credit for deployment of last-mile current generation broadband capability to rural and underserved areas, and its 20% credit of next generation technology more generally. These incentives will correct current regulatory and market failures that are inhibiting the investment. Moreover, the credits are temporary, lasting only five years, a sufficient time to kick-start the deployment of the technology and to reduce costs in this very dynamic sector.

It is important to note that broadband infrastructure is a common good. As such, we believe that a well-designed initiative such as the Broadband Internet Access Act can cost effectively enhance the national welfare.

Again, I congratulate you for taking the leadership and for developing a creative initiative that will benefit the country for decades to come.

All the best,

ROGER ACKERMAN.

ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES,
*Washington, DC, June 7, 2000.*

Senator DANIEL PATRICK MOYNIHAN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR MOYNIHAN: The Association for Local Telecommunications Services (ALTS) thanks you for your leadership in drafting legislation to create financial incentives for telecommunications companies to offer high-speed Internet broadband services. The legislation that you introduce today will help companies expand their businesses into rural and urban communities and will also provide them with incentives to offer broadband service at even higher speeds.

We are especially grateful of your continuing efforts to support competitive telecommunications companies in local markets. While competitors have made enormous progress in rolling out advanced telecommunications services to consumers across the country, many markets remain uneconomic to serve. Your legislation will help to accelerate the deployment of these broadband services in rural, inner city and other underserved areas. We have seen that the best way to encourage deployment of advanced broadband technologies is to encourage competition for local telecommunications services. ALTS believes your legislation will provide significant financial incentives to competitive companies to roll out high speed broadband services for every consumer who wants to receive the service.

Your legislation is a realistic effort to close the ''digital divide'' between rural and urban communities and to ensure that all Americans have the fastest and best telecommunications service in the world. We look forward to continuing to work with you on this legislation in the coming weeks.

Thank you again for your support of competition and the rapid deployment of advanced, broadband services to all Americans.

Sincerely yours,

JOHN WINDHAUSEN, Jr.,
*President.*

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QUEENS COLLEGE,
DEPARTMENT OF ECONOMICS,
*New York, NY, June 1, 2000.*

Re The Broadband Internet Access Act of 2000.

Hon. DANIEL PATRICK MOYNIHAN,
*Ranking Minority Leader, Committee on Finance, U.S. Senate, Washington, DC.*

DEAR SENATOR MOYNIHAN: I am aware that you and other Senators are co-sponsors of ''The Broadband Internet Access Act of 2000,'' a bill that is intended to alleviate the disparity in high-speed access to the Internet. Preliminary research undertaken by Florence Kwan and myself shows that discrepancies in high-speed access do exist at this time. Further, the study demonstrates the need for policy-makers to examine the degree to which all members of society have high-speed access to the Internet.

The study was based upon a sampling of residential lines in the United States. The results suggest that income and population density are significant predictors of access to cable-modem or DSL service. High-speed access is less likely to be available to Americans in rural and low-income neighborhoods. As preliminary research, the study underscores the need for further research that is comprehensive in scope and that can serve as the basis for regulatory policy.

I commend your efforts to address an issue that is critical to the ability of all Americans to be part of the Information Society and to participate in our system of democracy.

Very truly yours,

DAVID GABEL,
*Professor.*

Mr. KERRY. Mr. President, I am very pleased to join Senator MOYNIHAN in introducing the Broadband Internet Access Act of 2000. I commend the Senator from New York for his leadership on this issue, and I look forward to working with Senator MOYNIHAN, Senator ROCKEFELLER and others in this critical effort to ensure the rapid deployment of high-speed telecommunications services to all Americans.

Mr. President, throughout the course of history, prosperity has flowed to those economies that had ready access to avenues of commerce. Throughout the middle ages and up until the mid-19th century, that meant ready proximity to a waterway. The great cities of Italy, England and France all lay on oceans or rivers. In North America, the early trading points on or near the Atlantic thrived and became New York, Boston, Philadelphia and Baltimore. Throughout this time, the primary way to ship goods was over water, and economies prospered along oceans or major inland waterways because of the paramount importance of access to commerce. With the industrial revolution came the advent of the railroad and this new way of getting goods to market. If your town was fortunate to be along one of many rail lines, then good economic times often lay ahead. If your town was not along the railroad, then you were at a serious economic disadvantage. We read today about the ''ghost towns'' of the old West—these were the towns left behind because the railroad passed them by. And even then, one hundred seventy years ago, we know that Americans did all they could to connect themselves to the networks—waterways, railroads—that delivered goods to market: along the Panhandle, the entire town of Ivanhoe, Oklahoma literally uprooted itself—picked up the church, the school, the buildings—and moved across the Texas border to be closer to the railroad lines.

In many ways, that is precisely the challenge facing thousands of communities across the nation today: communities are rushing and hurrying—and too many are struggling and finding it enormously difficult—to get connected to the networks on which we conduct business in the New Economy. And, Mr. President, unless we are willing to countenance thousands of ghost towns across the landscape of the 21st century—ghost towns of inner city and rural America—we must work together to empower every community to meet that challenge.

Mr. President, today, the major product in the United States is information. The ability to send and receive vast amounts of information, quickly and efficiently, often determines the success or failure of a company in our new information age. For this reason, companies are locating where they have high-speed access to this new avenue of commerce, and they are shying away from areas where such excess is either prohibitively expensive or unavailable. High-speed access is also

providing new opportunities in terms of educating our children and caring for the sick. However, those opportunities are available only to those communities with efficient and affordable access to high-speed lines.

Herein lies the problem. As would be expected, telecommunications companies are deploying advanced networks initially in areas where there are lots of attractive consumers, but are often taking their time to build-out elsewhere, such as in low-income urban and rural areas. That's why a downtown business consumer has a myriad of choices for high-speed access. And most residential consumers living in reasonable well-off urban and suburban areas also have a choice. However, many, many regions of our country still have little or no ability to obtain high-speed access to the Internet.

According to the Massachusetts Technology Collaborative, of the 351 towns in Massachusetts, only 164 are wired to receive high-speed DSL Internet service, and only 145 are wired to receive high-speed cable modem service. Significantly, 151 towns have no DSL or cable modem option, only 56 kilobit dial-up Internet service. Moreover, this situation is not expected to change anytime soon. The Legg Mason Precursor groups estimates that even three or fours years down the road, half of America will have either one or zero broadband providers to choose from.

We need to address this problem in order to ensure that no area is left behind—to ensure that all Americans are able to benefit from our new high-tech economy. Many telecommunications companies legitimately argue that deploying in certain areas makes little sense because the opportunity to recoup the investment is so small. It's time we listened and offered an economic incentive to change the equation. To this end, our bill establishes a generous 10 percent tax credit to all companies willing to deploy and offer 1.5 megabit high-speed Internet service in rural and low-income urban areas. We are advocating such an approach because we have heard from industry that this will provide a needed incentive to deploy in areas that are presently neglected. Significantly, this credit is open to all companies be they telephone or cable, wireline or wireless, MMDS or satellite. The bill is concerned only with encouraging widespread deployment, and is absolutely technology neutral.

Mr. President, our legislation addresses not only the digital divide that exists today, but also looks to the future and to the next generation of high-speed services. The next generation of advanced services will require substantially higher transmission speeds like 4 megabits for one channel of standard television, 20 megabits for one channel of HDTV, and 10 to 100 megabits for Ethernet data. These transmission speeds can only be achieved with more advanced technology such as fiber optics, very high speed digital subscriber line, 50-home-node cable modems, and next-generation wireless.

The services available at such speeds will truly revolutionize and improve our daily lives. However, according to economists from the American Enterprise Institute, at the current rate of deployment, such advanced technology will not achieve universal penetration until somewhere between 2030 and 2040. Furthermore, such delay may seriously undermine our global leadership in technology. Indeed, according to a recent report in the Wall Street Journal, the Japanese company NTT will start bringing optical fiber lines directly to homes in Tokyo and Osaka by the end of this year. Such networks will have capabilities of up to 10 megabits downstream—several times faster than most of the high-speed services offered today in America.

Such Internet capability will transform American life in ways we can only imagine today. Children can download educational video in real time on nearly any subject. Adults can train for new jobs from their homes. Complex medical images such as MRIs and x-rays that today take several minutes to download can be transmitted in a matter of seconds. Telecommuting, business teleconferencing and personal communication will all rise to new levels.

To accelerate the roll-out of such next-generation systems in the US, we propose to establish a 20 percent tax credit for companies that deploy systems capable of providing 22 megabit downstream/10 megabit upstream service to residential consumers everywhere and business consumers in low-income urban and rural areas. Such bits speeds will allow for different users in a home to simultaneously watch 3 different channels of digital television and utilize high-speed Ethernet-comparable Internet access.

Mr. President, this measure is intended to begin the debate in the Senate on how best to address the growing digital divide and to accelerate the deployment of next-generation technologies across our nation. I want to thank Senator MOYNIHAN for his extraordinary leadership on this issue and his staff for their continued hard work in crafting this bill. I also wish to commend Senators ROCKEFELLER and SNOWE for their work on tax credit legislation which we incorporate and expand on in this bill. Finally, I wish to extend my gratitude to all the members of industry who worked with us over these past few months in crafting this bill. Clearly, this is a very complex topic and we are continuing to work to find the right solution. I look forward to continuing our partnership and to passing meaningful legislation this year.

The challenge today is extraordinary—its implications absolutely unmistakable for our country. Too often we talk about a digital divide in the United States as if it were unchangeable, as if it were a simple fact of life in this nation that some communities will be empowered by technology while others will be left behind. But this is a false choice—and we ought to be doing everything in our power as policy makers, working harmoniously with industry, to offer a new choice: every community connected to the new technology, every citizen provided with the tools to make the most of their own talents in the New Economy.

Mr. President, The Broadband Internet Access Act of 2000 is not a panacea for every challenge before us in the New Economy; significant questions of education reform workforce development, and technology training must be resolved and reinvented before mere access to technology will allow full participation for every citizen in the Information Age. But Mr. President, I ask that—as we work in a bipartisan way to address those other vital areas of public policy— we remember the lessons of our nation's economic history and take this absolutely critical first step towards meeting the most basic needs of any community—a connection to the New Economy.

Mr. BAUCUS. Mr. President, I am very pleased today to join with Senator MOYNIHAN in introducing the Broadband Internet Access Act of 2000. This legislation provides a tax incentive to stimulate rapid deployment of high-speed communication services to residential, rural, and low-income areas.

Although our nation continues to experience a period of unprecedented economic growth, it is important to remember that this growth is not shared evenly throughout the country. My State, Montana, is unfortunately an example of areas in which the economy continues to lag behind the rest of the nation. Montana is ranked last in per-capita earned income and first in the number of people holding multiple jobs. Our children and grandchildren are constantly faced with a difficult dilemma—will they be able to find jobs in Montana, where they can continue to enjoy living in ''the last great place'', or will they be forced to move elsewhere just to be able to earn a decent wage. More and more of them are choosing to leave, costing Montana some of her best and brightest young people, and along with them much of our hope for the future.

One of the keys to turning our State's economy around is to make sure the appropriate infrastructure is in place so that we can attract the kinds of businesses that will provide jobs for ourselves and our children. I have worked for years as ranking Member of the Environment and Public Works Committee to ensure that Montana and other rural states receive our fair share of highway construction funds, so that the transportation infrastructure of our great State can support economic growth.

But today's economy is not just about bricks and mortar. Technology is

transforming traditional ways of doing business, as it is creating entirely new forms of business that never existed before. And high-speed Internet access is the key to advancing technological growth.

The Broadband Internet Access Act of 2000 provides graduated tax credits for deployment of high-speed communications to residential and rural communities. It gives a 10 percent credit for the deployment of at least 1.5 million bits per second downstream and 200,000 bits per second upstream to all subscribers—residential, business, and institutions—in rural and low income areas. This is what we call the ''current generation'' broadband. The bill also gives a 20 percent credit for the deployment of at least 22 million bits per second downstream and 10 million bits per second upstream to all subscribers in rural and low income areas, and to all residential customers in other areas. This is what we are calling ''next generation'' broadband.

Mr. President, as we look around us today and see the many streets that are being torn-up to lay cables for high-speed communication, and the communication dishes that are constantly ''sprouting'' from our buildings, we may wonder why we need a tax credit to advance an industry that is already growing by leaps and bounds. The reason, again, is that this growth is most extensive in selected areas. Market forces are driving deployment of high-speed communication capabilities almost exclusively to urban businesses and wealthy households. Rural businesses and rural families like those in Montana again find themselves at the back of the line. And by the time our turn comes for this technology, the rest of the country will already be well into the next technological generation. The Digital Divide, which is already a wedge between our citizens, will be perpetuated and grow into a chasm.

This bill is designed to even the playing field. By giving private industry economic incentives to accelerate high-speed communication capabilities to Americans who are at the end of the line, we will help people like my constituents in Montana share in our nation's economic growth.

As a member of the Senate Broadband Caucus, which was established to develop solutions to the problem of bringing high-speed Internet access to rural and underserved areas, I have worked hard on initiatives which would help rural areas bridge the Digital Divide. These initiatives include: the Rural Broadband Enhancement Act, which provides $5 billion in low interest loans for broadband development; the Rural Telework Act of 2000, to provide grants to develop National Centers for Distance Working which would provide access to technology and training for rural residents; the Universal Service Support Act, which lifts the cap on the universal service support fund for rural telecommunications providers; and the amendment I offered to the Rural Television Bill, to give consideration to projects which offer high speed Internet access in addition to television programming.

I believe these initiatives, along with the Broadband Internet Access Act we are introducing today, will go a long way toward finally bridging the growing Digital Divide and help rural areas grow and flourish. With this legislation, I hope to create an economic environment that will make sure Montana's children and grandchildren will no longer have to sacrifice enjoying the beauty of the ''last great place'' in order to earn a living wage.

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By Mrs. FEINSTEIN:

S. 2699. A bill to strengthen the authority of the Federal Government to protect individuals from certain acts and practices in the sale and purchase of social security numbers and social security account numbers, and for other purposes; to the Committee on Finance.

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SOCIAL SECURITY NUMBER PROTECTION ACT OF 2000

Mrs. FEINSTEIN. Mr. President, I am pleased today to join the administration and, particularly the Vice President, in introducing the Social Security Number Protection Act of 2000.

This legislation is designed to curb the unregulated sale and purchase of Social Security numbers, which have contributed significantly to a growing range of illegal activities, including fraud, identity theft, and, in some cases, stalking and other violent crimes.

Mr. President, in 1997, I introduced S. 600, the Personal Privacy Information Act, with Senator GRASSLEY after watching in dismay as one of my staff downloaded my own Social Security number off of the Internet in less than three minutes.

Nothing much has changed. For a mere $45, one can go online and purchase a person's Social Security number from a whole host of web businesses—no questions asked.

Why is it so important to stop the commercial sale of individuals' personal Social Security numbers? Once a criminal has a potential victim's Social Security number, that person becomes extremely vulnerable to having his or her whereabouts tracked and his or her identity stolen.

The Social Security number is the Nation's de facto national identifier. It is a key to one's public identity. The Federal Government uses it as a taxpayer identification number, the Medicare number, and as a soldier's serial number. States use the Social Security number as the identification number on drivers' licenses, fishing licenses, and other official records. Banks use it to establish personal identification for credit. The number is requested by telephone companies, gas companies, and even by brokerages when consumers set-up personal accounts.

Thus, a criminal who purchases a Social Security number is well on his way to fraudulently obtaining numerous services in the name of an unsuspecting American.

Partly due to this unrestricted traffic in Social Security numbers, our country is facing an explosion in identity theft crimes. The Social Security Administration recently reported that it had received more than 30,000 complaints about the misuse of Social Security numbers, last year, most of which had to do with identity theft. This is an increase of 350% from 1997, when there were 7,868 complaints. In total, Treasury Department officials estimate that identity theft causes between $2 and $3 billion in losses each year—just from credit cards.

According to a recent survey of identity theft victims published jointly by the Privacy Rights Clearinghouse and CALPIRG, the average identity theft victim has fraudulent charges of $18,000 made in his name. Typically, an identity theft victim spends approximately 175 hours of personal time over a two-year period to clean-up his credit record.

Sometimes, this unrestricted sale of personal information can have tragic results. Amy Boyer, a twenty-year old dental assistant in New Hampshire, was killed last year by a stalker who bought her Social Security number off an Internet web site for $45. Armed with this critical information, he tracked her down to her work address.

Here are some other examples of Social Security number misuse. Kim Brady, a constituent from Castro Valley, California, wrote to me that an identity thief obtained a credit card in her name on the Internet. The application ''was approved in 10 seconds even though the application only had [her] name, Social Security number, and birth date correct.'' When Ms. Bradbury contacted credit card companies and asked how a credit card was issued in her name despite false information on the application, the companies said they only look to ''see that the name and the Social Security number match.''

Another California constituent, Michelle Brown of Hermosa Beach, informed me that a criminal used her Social Security number to fraudulently assume her identity. The perpetrator rang up a total of $50,000 in charges including a $32,000 truck and $5,000 worth of liposuction. In addition, the perpetrator used Michelle's identity to establish wireless and residential telephone service, utilities service, and to obtain a year-long residential lease.

Michelle notes that she has spent hundreds of hours trying to restore her good name and has endured ''weeks of sleepless nights, suffering from nearly no appetite, and nerve-shattering moments of my life spinning out of control.''

In another case, a retired air force officer was falsely billed for $113,000 on 33 different credit accounts after identity