Mr. MCHUGH. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. EMERSON). The question is on the motion offered by the gentleman from New York (Mr. MCHUGH) that the House suspend the rules and pass the bill, H.R. 2349.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TELECOMMUNICATIONS COMPETITION AND CONSUMER PROTECTION ACT OF 1998

Mr. BLILEY. Madam Speaker, I move to suspend the rules and pass the (H.R. 3888) to amend the Communications Act of 1934 to improve the protection of consumers against ''slamming'' by telecommunications carriers, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3888

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Telecommunications Competition and Consumer Protection Act of 1998''.

TITLE I—SLAMMING

SEC. 101. IMPROVED PROTECTION FOR CONSUMERS.

(a) CONSUMER PROTECTION PRACTICES.—Section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended to read as follows:

''SEC. 258. ILLEGAL CHANGES IN SUBSCRIBER SELECTIONS OF CARRIERS.

''(a) ALTERNATIVE MODES OF REGULATION.—

''(1) INDUSTRY/COMMISSION CODE.—Within 180 days after the date of enactment of the Telecommunications Competition and Consumer Protection Act of 1998, the Commission, after consulting with the Federal Trade Commission and representatives of telecommunications carriers providing telephone toll service and telephone exchange service, State commissions, and consumers, and considering any proposals developed by such representatives, shall prescribe, after notice and public comment and in accordance with subsection (b), a Code of Subscriber Protection Practices (hereinafter in this section referred as the 'Code') governing changes in a subscriber's selection of a provider of telephone exchange service or telephone toll service.

''(2) OBLIGATION TO COMPLY.—No telecommunications carrier (including a reseller of telecommunications services) shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with—

''(A) the Code, if such carrier elects to comply with the Code in accordance with subsection (b)(2); or

''(B) the requirements of subsection (c), if—

''(i) the carrier does not elect to comply with the Code under subsection (b)(2); or

''(ii) such election is revoked or withdrawn.

''(b) MINIMUM PROVISIONS OF THE CODE.—

''(1) SUBSCRIBER PROTECTION PRACTICES.—The Code required by subsection (a)(1) shall include provisions addressing the following:

''(A) IN GENERAL.—A telecommunications carrier (including a reseller of telecommunications services) electing to comply with the Code shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service only in accordance with the provisions of the Code.

''(B) NEGATIVE OPTION.—A telecommunications carrier shall not use negative option marketing.

''(C) VERIFICATION.—A telecommunications carrier that submits the change to an executing carrier, or that is both a submitting and an executing carrier, shall verify the subscriber's selection of the carrier in accordance with procedures specified in the Code.

''(D) UNFAIR AND DECEPTIVE ACTS AND PRACTICES.—No telecommunications carrier, nor any person acting on behalf of any such carrier, shall engage in any unfair or deceptive acts or practices in connection with the solicitation of a change in a subscriber's selection of a telecommunications carrier.

''(E) NOTIFICATION AND RIGHTS.—A telecommunications carrier shall provide timely and accurate notification to the subscriber in accordance with procedures specified in the Code.

''(F) SLAMMING LIABILITY AND REMEDIES.—

''(i) REQUIRED REIMBURSEMENT AND CREDIT.—A telecommunications carrier that has improperly changed the subscriber's selection of a telecommunications carrier without authorization, shall at a minimum—

''(I) reimburse the subscriber for the fees associated with switching the subscriber back to their original carrier; and

''(II) provide a credit for any telecommunications charges incurred by the subscriber during the period, not to exceed 30 days, while that subscriber was improperly presubscribed.

''(ii) PROCEDURES.—The Code shall prescribe procedures by which—

''(I) a subscriber may make an allegation of a violation under clause (i);

''(II) the telecommunications carrier may rebut such allegation;

''(III) the subscriber may, without undue delay, burden, or expense, challenge the rebuttal; and

''(IV) resolve any administrative review of such an allegation within 75 days after receipt of an appeal.

''(G) RECORDKEEPING.—A telecommunications carrier shall make and maintain a record of the verification process and shall provide a copy to the subscriber immediately upon request.

''(H) QUALITY CONTROL.—A telecommunications carrier shall institute a quality control program to prevent inadvertent changes in a subscriber's selection of a carrier.

''(I) INDEPENDENT AUDITS.—A telecommunications carrier shall provide the Commission with an independent audit regarding its compliance with the Code at intervals prescribed by the Code. The Commission may require a telecommunications carrier to provide an independent audit on a more frequent basis if there is evidence that such telecommunications carrier is violating the Code.

''(2) ELECTION BY CARRIERS.—Each telecommunications carrier electing to comply with the Code shall file with the Commission within 20 days after the adoption of the Code, or within 20 days after commencing operations as a telecommunications carrier, a statement electing the Code to govern such carrier's submission or execution of a change in a customer's selection of a provider of telephone exchange service or telephone toll service. Such election by a carrier may not be revoked or withdrawn unless the Commission finds that there is good cause therefor, including a determination that the carrier has failed to adhere in good faith to the applicable provisions of the Code, and that the revocation or withdrawal is in the public interest. Any telecommunications carrier that fails to elect to comply with the Code shall be deemed to have elected to be governed by the subsection (c) and the Commission's regulations thereunder.

''(c) REGULATIONS OF CARRIERS NOT COMPLYING WITH CODE.—

''(1) IN GENERAL.—A telecommunications carrier (including a reseller of telecommunications services) that has not elected to comply with the Code under subsection (b), or as to which the election has been withdrawn or revoked, shall not submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with this subsection and such verification procedures as the Commission shall prescribe.

''(2) VERIFICATION.—

''(A) IN GENERAL.—In order to verify a subscriber's selection of a telephone exchange service or telephone toll service provider under this subsection, the telecommunications carrier submitting the change to an executing carrier shall, at a minimum, require the subscriber—

''(i) to affirm that the subscriber is authorized to select the provider of that service for the telephone number in question;

''(ii) to acknowledge the type of service to be changed as a result of the selection;

''(iii) to affirm the subscriber's intent to select the provider as the provider of that service;

''(iv) to acknowledge that the selection of the provider will result in a change in providers of that service; and

''(v) to provide such other information as the Commission considers appropriate for the protection of the subscriber.

''(B) ADDITIONAL REQUIREMENTS.—The procedures prescribed by the Commission to verify a subscriber's selection of a provider shall—

''(i) preclude the use of negative option marketing;

''(ii) provide for a complete copy of verification of a change in telephone exchange service or telephone toll service provider in oral, written, or electronic form;

''(iii) require the retention of such verification in such manner and form and for such time as the Commission considers appropriate;

''(iv) mandate that verification occur in the same language as that in which the change was solicited; and

''(v) provide for verification to be made available to a subscriber on request.

''(C) NOTICE TO SUBSCRIBER.—Whenever a telecommunication carrier submits a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, such telecommunications carrier shall clearly notify the subscriber in writing, not more than 15 days after the change is submitted to the executing carrier—

''(i) of the subscriber's new carrier; and

''(ii) that the subscriber may request information regarding the date on which the change was agreed to and the name of the individual who authorized the change.

''(3) LIABILITY FOR VIOLATIONS.—

''(A) NOTIFICATION OF CHANGE.—The first bill issued after the effective date of a change in a subscriber's provider of telephone exchange service or telephone toll service by the executing carrier for such change shall—

''(i) prominently disclose the change in provider and the effective date of such change;

''(ii) contain the name and toll-free number of any telecommunications carrier for such new service; and

''(iii) direct the subscriber to contact the executing carrier if the subscriber believes that such change was not authorized and that the change was made in violation of this subsection, and contain the toll-free number by which to make such contact.

''(B) AUTOMATIC SWITCH-BACK OF SERVICE AND CREDIT TO CONSUMER OF CHARGES.—

''(i) OBLIGATIONS OF EXECUTING CARRIER.—If a subscriber of telephone exchange service or telephone toll service makes an allegation, orally or in writing, to the executing carrier that a violation of this subsection has occurred with respect to such subscriber—

''(I) the executing carrier shall, without charge to the subscriber, execute an immediate change in the provider of the telephone service that is the subject of the allegation to restore the previous provider of such service for the subscriber;

''(II) the executing carrier shall provide an immediate credit to the subscriber's account for any charges for executing the original change of service provider;

''(III) if the executing carrier conducts billing for the carrier that is the subject of the allegation, the executing carrier shall provide an immediate credit to the subscriber's account for such service, in an amount equal to any charges for the telephone service that is the subject of the allegation incurred during the period—

''(aa) beginning upon the date of the change of service that is the subject of the allegation; and

''(bb) ending on the earlier of the date that the subscriber is restored to the previous provider, or 30 days after the date the bill described in subparagraph (A) is issued; and

''(IV) the executing carrier shall recover the costs of executing the change in provider to restore the previous provider, and any credits provided under subclause (II) and (III), by recourse to the provider that is the subject of the allegation.

''(ii) OBLIGATIONS OF CARRIERS NOT BILLING THROUGH EXECUTING CARRIERS.—If a subscriber of telephone exchange service or telephone toll service transmits, orally or in writing, to any carrier that does not use an executing carrier to conduct billing an allegation that a violation of this subsection has occurred with respect to such subscriber, the carrier shall provide an immediate credit to the subscriber's account for such service, and the subscriber shall, except as provided in subparagraph (C)(iii), be discharged from liability, for an amount equal to any charges for the telephone service that is the subject of the allegation incurred during the period—

''(I) beginning upon the date of the change of service that is the subject of the allegation; and

''(II) ending on the earlier of the date that the subscriber is restored to the previous provider, or 30 days after the date the bill described in paragraph (1) is issued.

''(iii) TIME LIMITATION.—This subparagraph shall apply only to allegations made by subscribers before the expiration of the 1-year period that begins on the issuance of the bill described in subparagraph (A).

''(C) PROCEDURE FOR CARRIER REMEDY.—

''(i) IN GENERAL.—The Commission shall, by rule, establish a procedure for rendering determinations with respect to violations of this subsection. Such procedure shall permit such determinations to be made upon the filing of (I) a complaint by a telecommunications carrier that was providing telephone exchange service or telephone toll service to a subscriber before the occurrence of an alleged violation, and seeking damages under clause (ii), or (II) a complaint by a telecommunications carrier that was providing services after the alleged violation, and seeking a reinstatement of charges under clause (iii). Either such complaint shall be filed not later than 6 months after the date on which any subscriber whose allegation is included in the complaint submitted an allegation of the violation to the executing carrier under subparagraph (B)(ii). Either such complaint may seek determinations under this paragraph with respect to multiple alleged violations in accordance with such procedures as the Commission shall establish in the rules prescribed under this subparagraph.

''(ii) DETERMINATION OF VIOLATION AND REMEDIES.—In a proceeding under this subparagraph, if the Commission determines that a violation of this subsection has occurred, other than an inadvertent or unintentional violation, the Commission shall award damages—

''(I) to the telecommunications carrier filing the complaint, in an amount equal to the sum of (aa) the gross amount of charges that the carrier would have received from the subscriber during the violation, and (bb) $500 per violation; and

''(II) to the subscriber that was subjected to the violation, in the amount of $500.

''(iii) DETERMINATION OF NO VIOLATION.—If the Commission determines that a violation of this subsection has not occurred, the Commission shall order that any credit provided to the subscriber under subparagraph (B)(ii) be reversed, or that the carrier may resubmit a bill for the amount of the credit to the subscriber notwithstanding any discharge under subparagraph (B)(ii).

''(iv) SPEEDY RESOLUTION OF COMPLAINTS.—The procedure established under this subparagraph shall provide for a determination of each complaint filed under the procedure not later than 6 months after filing.

''(D) MAINTENANCE OF INFORMATION.—

''(i) IN GENERAL.—The Commission shall, by rule, require each executing carrier to maintain information regarding each alleged violation of this subsection of which the carrier has been notified.

''(ii) CONTENTS.—The information required to be maintained pursuant to this paragraph shall include, for each alleged violation of this subsection, the effective date of the change of service involved in the alleged violation, the name of the provider of the service to which the change was made, the name, address, and telephone number of the subscriber who was subject to the alleged violation, and the amount of any credit provided under subparagraph (B)(ii).

''(iii) FORM.—The Commission shall prescribe one or more computer data formats for the maintenance of information under this paragraph, which shall be designed to facilitate submission and compilation pursuant to this subparagraph.

''(iv) MONTHLY REPORTS.—Each executing carrier shall, on not less than a monthly basis, submit the information maintained pursuant to this subparagraph to the Commission.

''(v) ACCESS TO INFORMATION.—The Commission shall make the information submitted pursuant to clause (iv) available upon request to any telecommunications carrier. Any telecommunications carrier obtaining access to such information shall use such information exclusively for the purposes of investigating, filing, or resolving complaints under this section.

''(4) CIVIL PENALTIES.—Unless the Commission determines that there are mitigating circumstances, violation of this subsection is punishable by a forfeiture of not less than $40,000 for the first offense, and not less than $150,000 for each subsequent offense.

''(5) RECOVERY OF FORFEITURES.—The Commission may take such action as may be necessary—

''(A) to collect any forfeitures it imposes under this subsection; and

''(B) on behalf of any subscriber, to collect any damages awarded the subscriber under this subsection.

''(d) APPLICATION TO WIRELESS.—This section does not apply to a provider of commercial mobile service.

''(e) COMMISSION REQUIREMENTS.—

''(1) SEMIANNUAL REPORTS.—Every 6 months, the Commission shall compile and publish a report ranking telecommunications carriers by the percentage of verified complaints, excluding those generated by the carrier's unaffiliated resellers, compared to the number of the carrier's changes in a subscriber's selection of a provider of telephone exchange service and telephone toll service.

''(2) INVESTIGATION.—If a telecommunications carrier is listed among the 5 worst performers based upon the percentage of verified complaints, excluding those generated by the carrier's unaffiliated resellers, compared to its number of carrier selection changes in the semiannual reports 3 times in succession, the Commission shall investigate the carrier's practices regarding subscribers' selections of providers of telephone exchange service and telephone toll service. If the Commission finds that the carrier is misrepresenting adherence to the Code or is willfully and repeatedly changing subscribers' selections of providers, it shall find such carrier to be in violation of this section and shall fine the carrier up to $1,000,000.

''(3) CODE REVIEW.—Every 2 years, the Commission shall review the Code to ensure its requirements adequately protect subscribers from improper changes in a subscriber's selection of a provider of telephone exchange service and telephone toll service.

''(f) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has violated the Code or subsection (c), or any rule or regulation prescribed by the Commission under subsection (c), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such violation, to enforce compliance with such Code, subsection, rule, or regulation, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (A) to intervene in such action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

''(3) VENUE.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

''(4) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the

production of documentary and other evidence.

''(5) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

''(6) LIMITATION.—Whenever the Commission has instituted a civil action for violation of this section or any rule or regulation thereunder, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

''(7) ACTIONS BY OTHER STATE OFFICIALS.—In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers.

''(g) STATE LAW NOT PREEMPTED.—

''(1) IN GENERAL.—Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes requirements, regulations, damages, costs, or penalties on changes in a subscriber's selection of a provider of telephone exchange service or telephone toll service that—

''(A) are less restrictive than those imposed under this section; or

''(B) are not inconsistent with those imposed under this section, and were enacted prior to the date of enactment of the Telecommunications Competition and Consumer Protection Act of 1998.

''(2) EFFECT ON STATE COURT PROCEEDINGS.—Except as provided in subsection (f)(6), nothing contained in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State or any specific civil or criminal statute of such State not preempted by this section.

''(h) RULES OF CONSTRUCTION.—

''(1) CHANGE INCLUDES INITIAL SELECTION.—For purposes of this section, the initiation of telephone toll service to a subscriber by a telecommunications carrier shall be treated as achange in selection of a provider of telephone toll service.

''(2) ACTION BY UNAFFILIATED RESELLER NOT IMPUTED TO CARRIER.—No telecommunications carrier may be found in violation of this section solely on the basis of a violation of this section by an unaffiliated reseller of that carrier's services or facilities.

''(i) DEFINITIONS.—For purposes of this section:

''(1) SUBSCRIBER.—The term 'subscriber' means the person named on the billing statement or account, or any other person authorized to make changes in the providers of telephone exchange service or telephone toll service.

''(2) EXECUTING CARRIER.—The term 'executing carrier' means, with respect to any change in the provider of local exchange service or telephone toll service, the local exchange carrier that executed such change.

''(3) ATTORNEY GENERAL.—The term 'attorney general' means the chief legal officer of a State.''.

(b) NTIA STUDY OF THIRD-PARTY ADMINISTRATION.—Within 180 days of enactment of this Act, the National Telecommunications and Information Administration shall report to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the feasibility and desirability of establishing a neutral third-party administration system to prevent illegal changes in telephone subscriber carrier selections. The study shall include—

(1) an analysis of the cost of establishing a single national or several independent databases or clearinghouses to verify and submit changes in carrier selections;

(2) the additional cost to carriers, per change in carrier selection, to fund the ongoing operation of any or all such independent databases or clearinghouses; and

(3) the advantages and disadvantages of utilizing independent databases or clearinghouses for verifying and submitting carrier selection changes.

TITLE II—SPAMMING

SEC. 201. SENSE OF THE CONGRESS.

It is the sense of the Congress that—

(1) in order to avoid interference with the rapid development and expansion of commerce over the Internet, the Congress should decline to enact regulatory legislation with respect to unfair or intrusive practices on the Internet that the private sector can, given a sufficient opportunity, deter or prevent; and

(2) it is the responsibility of the private sector to use that opportunity promptly to adopt, implement, and enforce measures to deter and prevent the improper use of unsolicited commercial electronic mail.

TITLE III—GWCS AUCTION DEADLINE

SEC. 301. ELIMINATION OF ARBITRARY AUCTION DEADLINE.

Section 309(j)(9) of the Communications Act of 1934 (47 U.S.C. 309(j)(9)) is amended by striking '', not later than 5 years after the date of enactment of this subsection,''.

TITLE IV—REINSTATEMENT OF CERTAIN APPLICANTS

SEC. 401. REINSTATEMENT OF APPLICANTS AS TENTATIVE SELECTEES.

(a) IN GENERAL.—Notwithstanding the order of the Federal Communications Commission in the proceeding described in subsection (b), the Commission shall—

(1) reinstate each applicant as a tentative selectee under the covered rural service area licensing proceeding; and

(2) permit each applicant to amend its application, to the extent necessary to update factual information and to comply with the rules of the Commission, at any time before the Commission's final licensing action in the covered rural service area licensing proceeding.

(b) EXEMPTION FROM PETITIONS TO DENY.—For purposes of the amended applications filed pursuant to section 501(a)(2), the provisions of section 309(d)(1) of the Communications Act of 1934 (47 U.S.C. 309(d)(1)) shall not apply.

(c) PROCEEDING.—The proceeding described in this subsection is the proceeding of the Commission In re Applications of Cellwave Telephone Services L.P, Futurewave General Partners L.P., and Great Western Cellular Partners, 7 FCC Rcd No. 19 (1992).

SEC. 402. CONTINUATION OF LICENSE PROCEEDING; FEE ASSESSMENT.

(a) AWARD OF LICENSES.—The Commission shall award licenses under the covered rural service area licensing proceeding within 90 days after the date of the enactment of this title.

(b) SERVICE REQUIREMENTS.—The Commission shall provide that, as a condition of an applicant receiving a license pursuant to the covered rural service area licensing proceeding, the applicant shall provide cellular radiotelephone service to subscribers in accordance with sections 22.946 and 22.947 of the Commission's rules (47 CFR 22.946, 22.947); except that the time period applicable under section 22.947 of the Commission's rules (or any successor rule) to the applicants identified in subparagraphs (A) and (B) of section 404(1) shall be 3 years rather than 5 years and the waiver authority of the Commission shall apply to such 3-year period.

(c) CALCULATION OF LICENSE FEE.—

(1) FEE REQUIRED.—The Commission shall establish a fee for each of the licenses under the covered rural service area licensing proceeding. In determining the amount of the fee, the Commission shall consider—

(A) the average price paid per person served in the Commission's Cellular Unserved Auction (Auction No. 12); and

(B) the settlement payments required to be paid by the permittees pursuant to the consent decree set forth in the Commission's order, In re the Tellesis Partners (7 FCC Rcd 3168 (1992)), multiplying such payments by two.

(2) NOTICE OF FEE.—Within 30 days after the date an applicant files the amended application permitted by section 501(a)(2), the Commission shall notify each applicant of the fee established for the license associated with its application.

(d) PAYMENT FOR LICENSES.—No later than May 31, 2000, each applicant shall pay to the Commission the fee established pursuant to subsection (c) of this section for the license granted under subsection (a).

(e) AUCTION AUTHORITY.—If, after the amendment of an application pursuant to section 401(a)(2) of this title, the Commission finds that the applicant is ineligible for grant of a license to provide cellular radiotelephone services for a rural service area or the applicant does not meet the requirements under subsection (b) of this section, the Commission shall grant the license for which the applicant is the tentative selectee (pursuant to section 401(a)(1)) by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

SEC. 403. PROHIBITION OF TRANSFER.

During the 5-year period that begins on the date that an applicant is granted any license pursuant to section 401, the Commission may not authorize the transfer or assignment of that license under section 310 of the Communications Act of 1934 (47 U.S.C. 310). Nothing in this title may be construed to prohibit any applicant granted a license pursuant to section 401 from contracting with other licensees to improve cellular telephone service.

SEC. 404. DEFINITIONS.

For the purposes of this title, the following definitions shall apply:

(1) APPLICANT.—The term ''applicant'' means—

(A) Great Western Cellular Partners, a California general partnership chosen by the Commission as tentative selectee for RSA #492 on May 4, 1989;

(B) Monroe Telephone Services L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #370 on August 24, 1989 (formerly Cellwave Telephone Services L.P.); and

(C) FutureWave General Partners L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #615 on May 25, 1990.

(2) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(3) COVERED RURAL SERVICE AREA LICENSING PROCEEDING.—The term ''covered rural service area licensing proceeding'' means the proceeding of the Commission for the grant of cellular radiotelephone licenses for rural service areas #492 (Minnesota 11), #370 (Florida 11), and #615 (Pennsylvania 4).

(4) TENTATIVE SELECTEE.—The term ''tentative selectee'' means a party that has been selected by the Commission under a licensing proceeding for grant of a license, but has not yet been granted the license because the

Commission has not yet determined whether the party is qualified under the Commission's rules for grant of the license.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BLILEY).

GENERAL LEAVE

Mr. BLILEY. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BLILEY. Madam Speaker, I yield myself 5 minutes.

Madam Speaker, I rise in strong support of H.R. 3888 and against the scourge of ''slamming.'' The practice of slamming will only increase as competition expands into the local telephone and short-haul telephone markets. While I want competition to develop, slamming should not. Indeed, my wife and I were slammed, so I like to think that I bring a little first-hand knowledge to the issue.

In the Telecommunications Act of 1996, we gave the FCC significant authority to eliminate slamming, but for some reason they have decided not to use it. Accordingly, we find it necessary to again address the issue of slamming legislatively. But this time we have removed a significant portion of the flexibility given to the FCC. In its place, we have spelled out a twofold approach to eliminate slamming.

In the first instance, we allow carriers to self-regulate. The carriers have said that they want to eliminate slamming, and we will see if they can live up to their word.

For those carriers that cannot, they will be subject to the heavy hand of FCC regulation. We anticipate that carriers will see the light and stop slamming on their own. In fact, I very recently received a letter from many of the carriers from the telecommunications industry endorsing this legislation. By giving the industry an opportunity to lead on this issue, we are trying to avoid imposing the kind of regulation that would raise the cost of doing business and serve as a barrier to entry for entrepreneurs.

At the same time, we have provided for significant penalties for those companies that choose to violate the law. We have also achieved a balance between the need to give companies the ability to standardize their business practices and keep their costs low and the need to allow State officials to enforce State statutes against consumer fraud.

Let me also point out that the manager's amendment to H.R. 3888 that we are considering today does not include provisions that would resolve the C-block P–C–S auction debacle.

The version reported by the committee included provisions that would have brought an end to the thickening legal and regulatory quagmire that the C-block has become. Unfortunately, though, CBO and OMB allege that the committee's C-block provisions are too costly. This is misguided, as well as shortsighted.

At this rate, the government will end up with very little to show for all of its efforts in trying to resolve the C-block debacle. The taxpayers will be lucky if they get 10 cents on the dollar. Meanwhile, scarce and valuable spectrum sits on the shelf, collecting dust rather than promoting competition for mobile services.

It is a bit like that advertisement from Fram oil filters where the fellow says, ''You can pay me now, or you can pay me later.'' We ought to be facing the inevitable in recycling the C-block mess today, but we are not, and that is regrettable indeed. Mark my words, Congress at some point will have to step in and resolve this mess, and then the cost will be substantially higher than the CBO and OMB allege that it is today.

In closing, Madam Speaker, I want to thank the hard work of our telecommunications chair, the gentleman from Louisiana (Mr. TAUZIN).

Lastly, let me thank my good friends, the gentleman from Michigan (Mr. DINGELL), the ranking member of the committee, and the gentleman from Massachusetts (Mr. MARKEY), the ranking member of the subcommittee, for their valuable input.

While I would have preferred this legislation to include provisions to resolve the C-block matter, it is still a good bill, and it deserves the support of the Members of the House.

Mr. Speaker, the Manager's Amendment to H.R. 3888, which the House is considering today, includes several changes to the version of the bill reported by the Commerce Committee. I therefore would like to supplement the legislative history contained in the Committee's report so as to reflect the changes in the Manager's Amendment.

SLAMMING

I am pleased that, as amended by the Commerce Committee, H.R. 3888 takes a nonregulatory and less bureaucratic approach than the earlier Subcommittee-approved version of this bill. As a consequence, there are associated cost benefits for smaller, entrepreneurial companies. In adopting the Code of Subscriber Protection Practices provisions of H.R. 3888, we seek to provide a two-pronged approach to encourage carriers to adopt pro-consumer practices.

Carriers can accede to the high level of oversight and cooperation required under the Code, including record keeping requirements, instituting a quality control program for inadvertent slamming, and importantly, submitting to independent audits. These carriers are accountable for any questionable behavior, they must refund charges found to be improper, and they may lose their Code status for failure to adhere in good faith to applicable provisions of the Code. Carriers that lose their Code status may be subject to penalties in accordance with the non-Code regulations. The penalties would apply equally to those companies that have either not elected the Code, or who have elected the Code, then lost their Code status. Thus, by adopting the Code provisions of H.R. 3888, Congress intended adherence to the Code to represent a ''safe harbor'' with regard to the fines and punishments reserved for non-Code carriers. Accordingly, the FCC, as it prescribes the Code, is not authorized to impose penalties (beyond reimbursement) on carriers who elect and abide by the Code.

H.R. 3888 further demonstrates Congress' intention that, where a consumer is improperly switched to a new carrier without authorization, the consumer may be reimbursed for fees associated with being switched back to the original carrier and be credited for telecommunications charges incurred for up to 30 days while the consumer was improperly subscribed. The legislation directs that the Code shall prescribe a method for a consumer to make an allegation of a violation, for the carrier to rebut the allegation, and for the consumer to challenge the rebuttal. Thus, a consumer will not receive a credit where the carrier has, by providing proof of verification, successfully rebutted the allegation that the consumer was switched improperly.

The legislation also directs, in cases involving slamming allegations against non-Code carriers, that the local exchange carrier automatically switch consumers back to their previously authorized carrier. The Manager's Amendment now clarifies that the previously authorized carrier is the one that is ''reflected in the records of the executing carrier.'' It is possible that the local exchange carrier's records may not reflect the consumer's true choice of carriers, if that choice was a long distance reseller. Thus, a question arises as to how consumers will be assured they are switched back to their carrier of choice. The Committee intends that an executing carrier will restore a subscriber to the originally authorized carrier, as specified by the subscriber, with a minimum of disruption. The Committee recognizes that there may be difficulty in identifying the subscriber's originally authorized carrier, particularly when the originally authorized carrier is a switchless reseller. For this reason, the Committee intends that the FCC address this issue as it promulgates rules implementing this legislation.

Finally, one of the important compromises we have made in crafting the Manager's Amendment deals with the applicability of existing State law. This provision protects both Federal and State prerogatives. We are mindful of the appropriate prerogatives of State legislatures and State regulatory agencies in this area. At the same time, Congress would be abdicating its responsibilities if it did not ensure that a national framework was in place to guard against balkanization of appropriate policy to protect consumers and to safeguard competition. Consumers will not be protected from nefarious ''slamming'' practices unless we can assure them that a consistent national remedy is in place. Similarly, we cannot guard against excessive costs in the provision of telecommunications services unless we adopt this consensus legislative formula for balancing respective Federal and State interests.

C–BLOCK

As I stated earlier, the Manager's Amendment to H.R. 3888 does not include provisions to address the growing C-block debacle. This

is unfortunate, given that the country now faces a deteriorating spectrum managements crisis.

Five years ago Congress passed legislation, subsequently signed into law as part of the Omnibus Budget Reconciliation Act of 1993, that fundamentally changed how spectrum was to be licensed in this country. Congress recognized the shortcomings of both the comparative hearing process, which was too lengthy and inefficient, and the lottery process, which was inequitable and short-changed the American people, when they were applied in certain instances of licensing.

Congress determined that, in certain very specific instances, where mutually exclusive applications were filed for a license, a system of competitive bidding would be a better solution. Congress found that an auction is faster than a comparative hearing, puts the license presumably in the hands of the person who values it the most, and it recoups for the public ''a portion of the value of the public spectrum resource made available for commercial use.''

The goal of the 1993 spectrum law is wholly consistent with the bedrock principle that is at the very foundation of the Communications Act. That goal is to get licenses in the hands of entities as quickly and efficiently as possible so that they in turn, are able to deliver services to very core of the 1993 law. That is how Congress and the FCC best serve the public interest. And, on balance, the Commission had done a creditable job of instituting the competitive bidding process.

As part of the spectrum law, Congress also intended to create a more competitive landscape in the wireless market by ''avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants.'' The FCC responded to that statutory mandate with the creation of an ''entrepreneurs' block'' (the so-called ''C block'') of licenses that would be made available to small businesses, and would not be available to the incumbents. The auction for those license closed in May 1996.

Since that time, the C block has turned into a nightmare. The Commission's post-auction behavior undermined the goal of the statute—to get licenses in the hands of licensees as quickly and efficiently as possible so that service to the public is forthcoming expeditiously. The statute explicitly contemplates that the end of the auction and subsequent evaluation of the qualifications of a high bidder to hold a spectrum license must be conducted as contemporaneously as possible. By creating an unreasonable and inexplicable delay between these two events for some of the largest bidders with biggest footprints, the FCC exposed these two events for some of the largest bidders with biggest footprints, the FCC exposed these bidders to the risk that market forces might alter the assumptions on which bids were made in ways no one could have anticipated. These bidders were powerless during the unexpected and unjustifiable licensing process that followed the close of the auction and totally exposed to the vagaries of the commercial marketplace.

Many other C-block licensees were, in some measure, waiting for resolution of the licensing process for the largest bidders to develop strategic alliances and to put their own business plans in place. Thus, the Commission's failure to act in a timely and responsible fashion in licensing certain C-block licensees effectively cut the legs out from under the entire C-block. Consequently, less than 10 percent of the C-block licenses are in productive use for American consumers; the rest are in bankruptcy, returned to the FCC, or otherwise still on the sideline. A 10 percent success rate five years after the law was passed is unacceptable.

What is particularly vexing, however, is that, since early 1997, the Commerce Committee has repeatedly reminded the FCC about the importance of deploying spectrum-based services as rapidly as possible. We have devoted significant time and energy offering restructuring solutions that, had they been adopted, might have avoided the mess the C-block has become.

At a recent hearing on the C-block matter before the Commerce Committee, it was clear that the Commission is unable or unwilling to take the steps necessary to resolve these bankruptcy matters as expeditiously as possible in fulfillment of its statutory obligation to help bring service to the public. It is now time for Congress to step in and solve the problem as best it can: the fairest way to all parties is to simply unwind the C-block auction, like any commercial transaction gone wrong, and re-do the deal. That is precisely what H.R. 3888, as reported by the Commerce Committee, would have done—it would have put licensees and those who bid for licenses as close to back to where they were before the auction took place.

To the degree there was concern about the budget impact of this proposal, I would point out that it has been difficult to gauge the real budgetary impact of Congressional action. I have serious questions about the cost estimates provided by both CBO and OMB, given the uncertainty surrounding the C-block reauction, the bankruptcies and related litigation. Neither CBO nor OMB has been able to provide firm data to back up this estimate.

Rather than focusing these fictional accounting estimates, instead, we should recognize that this could have been an opportunity for a real solution to the C-block dilemma. The public policy goal of bringing service to the public is best served by mandating a rescission of the C-block auction and to have all the licenses, including those that are currently in bankruptcy and default, available to be re-auctioned as quickly as possible.

Instead, by not acting today, Congress will proling this debacle. I can assure you that our inaction will only lead to more bankruptcies as more and more C-block licensees who today are still technically ''solvent'' but in reality are teetering on the edge of bankruptcy. Best estimates are that, with these additional bankruptcies, licensees serving 85% or more of the population will be ''under water.''

So Congress should be on notice: one inaction will result in more lawsuits against the government, and thus more taxpayer dollars being spent on costly bankruptcy litigation. Indeed, just last week, a federal appeals court in New Orleans upheld a judgment against the FCC in favor of the third largest C-block licensee, General Wireless Inc. The court reduced the licensee's debt to 16 cents on the dollar. More judgments like this are sure to follow, and all the while the public/taxpayer is denied competitive new wireless service while the FCC pursues this absurd course of costly, pointless litigation.

Congress should step in and stop this folly now. Instead, we're going to follow the lead of CBO and OMB, whose ledger sheets tell us that a rescission is too costly. I look forward to seeing what their ledger sheets have to say in several months, after more court rulings like the Fifth Circuit's. My guess is that Congress will say that H.R. 3888, as reported by the Committee, would have been a bargain, had we only accepted the offer.

RURAL CELLULAR SERVICE

Title IV of the Manager's Amendment to H.R. 3888 better serves the public interest by guaranteeing that the taxpayer will benefit directly. In exchange for removing certain service obligations which exceeded the requirements imposed upon other cellular licensees, the Commission will establish a fee for each of the licenses based on average auction prices for similar markets and prior settlement agreements reached with similarly situated RSA licensees. This provision will ensure that the applicants that are the subject of Title IV of H.R. 3888 are treated in the same manner as other similarly situated RSA licensees who also entered into a settlement agreement with the Commission and made appropriate payments to the U.S. Treasury.

Hon. THOMAS J. BLILEY, JR.,
Chairman, House Committee on Commerce,
Washington, DC, October 10, 1998.

Re: H.R. 3888, the Telecommunications Competition and Consumer Protection Act of 1998

DEAR CHAIRMAN BLILEY: We wish to express our support for H.R. 3888, the Telecommunications Competition and Consumer Protection Act of 1998. Consumers need action now to protect them against the continued problem of slamming. We believe that this anti-slamming legislation provides a market-based incentive for industry to address the slamming problem by self-regulation, backed up by increased FCC regulation for companies that elect not to participate in an industry-driven Code of Subscriber Protection Practices.

We commend you and your colleagues for your bi-partisan efforts in addressing this important issue. The statutory changes set forth in H.R. 3888, together with tough enforcement by the FCC, should serve to rid the industry of the scourge of slamming.

Sincerely,

American carriers Telecommunications Association (ACTA)
AT&T Corp.
Bell Atlantic
BellSouth
Cable & Wireless
Competitive Telecommunications Association (CompTel)
Excel Communications
Frontier Corp.
GTE Corp.
MCI Worldcom
Telecommunications Resellers Association (TRA)
US West

Madam Speaker, I reserve the balance of my time.

Mr. DINGELL. Madam Speaker, I yield myself 5 minutes.

Madam Speaker, I want to commend and thank my colleagues on the committee for the work that they have done. The gentleman from Virginia (Mr. BLILEY) the chairman of the committee; the gentleman from Louisiana (Mr. TAUZIN), the chairman of the subcommittee, and their staffs. I also want to commend my good friend, the gentleman from Massachusetts (Mr. MARKEY), for having worked closely with me.

We have put together a good piece of legislation, and I commend my colleagues whom I have mentioned by name and many others that I have not for their valuable participation in this matter.

□ 1630

I rise in strong support of H.R. 3888, the Telecommunications Competition and Consumer Protection Act of 1988. This legislation is finally going to put an end to the outrageous illegal and insidious practice of slamming innocent consumers.

No longer can Americans innocent of any wrongdoing be swindled by companies who intentionally switch a customer's long distance service without the permission of that customer. For years customers have been at the mercy of slammers. They have been victimized repeatedly, with little or no recourse. Often they have been billed by carriers at exorbitant rates, and then they must face the further frustration of having a dozen phone calls made to get their services switched back in the face of recalcitrant behaviors by people guilty of serious wrongdoing. Rarely, if ever, have consumers seen a dime of the money that was swindled from them under this iniquitous practice.

This bill will now put consumers in the driver's seat. If a consumer believes he or she has been the victim of slamming, then the burden will shift to the carrier to prove that a switch in service was authorized. Otherwise, the consumer will be entitled to a credit for charges incurred. This is a fair approach, and it makes the playing field level and even. It is my belief it will have a strong and effective effect on the iniquitous practice of slamming.

The bill before us is bipartisan. It uses a novel two-pronged approach to the problem. It provides telecommunications companies with an alternative to traditional regulation. The industry, in conjunction with consumer groups and State regulators, will have the opportunity to develop its own ''Code of Subscriber Protection Practices.''

This code is designed to reward good actors with less regulation. However, if companies choose not to adopt the code, or to act in bad faith, they will be subject to a higher and more appropriate regulatory burden. Thus, members of the industry are free to choose their own destiny. Consumers will be the winners, in any event.

I want to make a note that there were some provisions which were dropped which I deeply regret. The ''carrier freeze'' provision would have protected consumers' ability to instruct their local telephone company that no changes could be made in their selection of long-distance provider without their express permission.

This seems to me eminently sensible, and is regrettably missing from this bill. The provision would have been the most effective way to prevent slamming by simply empowering consumers to protect themselves without undue government regulation. I am hopeful that next year this will be addressed.

Finally, I note that I regret that the amendment does not include the text of Title III of H.R. 3888, which concerned the C-block PCS licensees. I would note that our chairman has made a comment which I fully endorse. He has identified the budget problem that is confronted by the committee, and has wisely determined, with his regret and mine, to strip that provision from the bill.

Regrettably, I concur in that decision. I would like to say, however, that CBO's cost estimate of $600 million is the purest of fiction. It is like Peter and the wolf, or perhaps like Peter Pan. The fact is that licensees representing 70 percent of the U.S. population are in bankruptcy. Most of the remaining people in this particular category are teetering on the edge of the bankruptcy that is sure to follow.

It is unlikely that the Federal Government will see most of the revenues that CBO and OMB are projecting. The result is going to be a significant loss to the taxpayers, and something that the Congress will have to address with great vigor during the forthcoming Congress. I would point out that one particular bankruptcy judge has estimated that in certain bankruptcies of this kind, the Federal Government is going to see less than 16 cents on the dollar.

I would hope the Commission is going to reevaluate its policies regarding the C-block, and recognize that its primary goal should be expediting the delivery of service to the public. If the Commissioners do not do so, I am satisfied that we will be back here again next year cleaning up the mess that the Commission is consistently making, and ending the needless litigation and delays that plague the public.

Madam Speaker, this is an excellent bill. I urge my colleagues to vote for it affirmatively and get it passed, so we may proceed to protect the American public and the American consumers.

Madam Speaker, I reserve the balance of my time.

Mr. BLILEY. Madam Speaker, I yield such time as he may consume to the gentleman from Louisiana (Mr. TAUZIN), the chairman of the subcommittee.

Mr. TAUZIN. Madam Speaker, let me first thank the gentleman from Virginia (Chairman BLILEY) and his staff for all the excellent work on this bill, and my cosponsor, the gentleman from Michigan (Mr. DINGELL) for his excellent efforts, and his, as always, great cooperation, as we work toward passage of this anti-slamming legislation.

Again, I would also like to commend and thank my good friend, the gentleman from Massachusetts (Mr. MARKEY), the ranking minority member, for his excellent cooperation and support of this legislation.

The gentleman from Michigan (Mr. DINGELL) and I are here together to offer H.R. 3888, entitled the Telecommunications Competition and Consumer Protection Act of 1998. Why is it called the Consumer Protection Act? Because it is designed to protect consumers against this awful practice where telephone companies switch your service without your permission, often in some fraudulent fashion.

Frankly, we are disappointed that we are here again today having to legislate for the second time on this subject. We thought we gave the Commission 2 years ago enough authority and enough direction to eliminate this practice.

For those who have not heard about it, the volumes of complaints that have come in to the FCC now total some 20,000 just in 1997 alone. It involves this practice where the long distance local or advanced service provider in communications switches the consumer without ever even informing the consumer. Obviously, when you get your telephone bill and find out, if you notice it, you are being served by a different company that you never authorized, and you have just been slammed.

In May of this past year the Senate passed an anti-slamming bill offered by Senator MCCAIN by a vote of 99 to nothing. This should tell us something about how the House and Senate feel about this practice. To me, slamming is very similar to theft. I echo the frustration of the gentleman from Virginia (Chairman BLILEY) that the FCC has failed so far to implement provisions pursuant to the slamming provision that we included in the 1996 telecommunications bill.

Today, after a long, arduous process, we are finally considering a bill aimed at eliminating this awful practice. It reflects changes adopted in both the subcommittee and the full committee. We believe the bill strikes the right balance, it imposes strong anti-slamming provisions, without burdening the industry with costly regulation, or confusing an already wronged and perhaps sometimes confused consumer with a burdensome dispute process.

In short, the way we finally crafted the bill, with great, again, cooperation and support by the chairman and his staff, and the gentleman from Michigan (Mr. DINGELL) and his subcommittee, the ranking minority member, offers a less regulatory approach to solving the very same problem.

It adopts a bifurcated process to the problem. It literally gives telecommunications companies two options. They can either police themselves properly through a voluntary code of subscriber protection practices, a code of conduct, if you will, or if they choose not to, the carrier suffers the consequence of very tough FCC regulation mandated by this bill.

I trust that most, if not all, the carriers will choose to operate under their own code of conduct. The code will prevent slamming, and ensure that consumers are made whole if they have been slammed. If a carrier chooses not

to participate or otherwise fails to live up to these codes, then it is subject automatically to the regulatory and legal penalties of the FCC, as contained in our subcommittee version of the bill.

Although some might argue that this is somewhat of a watered-down version, let me make it clear, this gives the industry a single chance to voluntarily police themselves without the specific pro-consumer guidelines and government participation. But if they fail, then these regulations will go into effect.

In addition, the bill preserves the role for the States to prevent slamming. States have taken an active role to eliminate slamming, and the bill preserves the States' discretion to pursue slammers whenever appropriate. In fact we grandfather the more stringent provisions of eight of our States who have in fact enacted anti-slamming legislation.

The gentleman from Michigan (Mr. DINGELL) and I have titled our bill the Telecommunications Competition and Consumer Protection Act of 1998. It is because the amendment is about more than just slamming. Indeed, there are a number of timely consumer and competition-related issues that require the House's urgent attention.

For example, this legislation directs the private sector to help Congress find a solution to the problem of slamming, and also spamming. Spam, as many know, is bulk unsolicited e-mail. It is a nuisance to consumers and a threat to our telecommunications and information infrastructure. Why? Because spam clogs up the e-mail systems, and in fact can clog up one's personal e-mail box.

Still, we have to recognize that Congress does not have the perfect solution to this problem. Hence, it is the sense of Congress that the private sector must address this issue, and the bill asks the private sector to help us achieve the right solution. It respects free speech, and also respects consumers' rights not to be spammed.

Our bill also addresses a critical spectrum management issue, the FCC's refusal for the last 10 years to issue permanent cellular licenses to three underserved rural areas of America. It is time to issue those permanent licenses so that rural consumers in those areas can have the same benefits from the investment in infrastructure, improved services, and competition that has been available in many other parts of America.

Finally, this legislation will end up addressing a problem of illegal CB radio operators who are transmitting signals significantly above legal levels. We are working on the final language of that. We understand that the Senate bill contains provisions which, when we get to conference, we hope to properly resolve.

The bill in the end would, we hope, make it permissible for local law enforcement officers to help us stop the illegal transmission of these signals that interfere with telephone calls and television reception. Hopefully we can resolve this with the Senate as we go forward.

The bill offered by myself and the gentleman from Michigan (Mr. DINGELL) simply says, enough, already. It is time for Congress to take action, to weigh in, to stop slamming, to help prevent spamming, and to make sure these rural customers get service, just like other parts of America. It is a good bill. It is bipartisan, pro-consumer, and we urge the House, indeed, to approve this bill.

Let me make one final comment, Madam Speaker. That is to join my friend, the gentleman from Michigan (Mr. DINGELL) and the chairman of our committee, the gentleman from Virginia (Mr. BLILEY) in regrettably noting that we had to drop the C-block reforms that our committee adopted. We have dropped them because we simply cannot, we think, include them and get final support of this bill.

Unfortunately, because we are dropping them, the C-block mess will go on just a little longer. For consumers out there who do not know what a C-block is, a C-block was a section of spectrum that was auctioned off for wireless services in America for which now we find ourselves in bankruptcy disputes.

Many of these companies are returning the spectrum unused, with all of these potential wireless services being denied consumers, and the government having to settle for as little as 10 cents on the dollar of the auction fees. It begs for a solution. In our bill we provided a solution, only to learn that it is too late in the session for us to get agreement with the other side in that solution.

However, I want to make a pledge to this House and to the members of the general public out there who have watched this mess develop. We will, at the first chance next year, embark upon a solution of the C-block mess to get the spectrum out so Americans could have the benefit of it, and to make sure that the American taxpayer is properly protected in this mess that has been allowed to go on for too long.

It is time for America to realize revenues from the deployment of this spectrum, and for consumers to realize the benefits of the use of this spectrum. Our committee, under the leadership of the gentleman from Virginia (Chairman BLILEY) and the ranking minority member, the gentleman from Michigan (Mr. DINGELL), are determined to make sure we get a resolution of this matter as soon as we can in the next Congress.

Madam Speaker, again I want to thank the gentleman from Virginia (Mr. BLILEY), and as I said, his great staff, for making this bill possible. It is the hope that before we wrap this session we will make it very clear that spamming will be hopefully resolved in the marketplace, and slamming will soon be illegal, and that folks who live in rural areas will soon get the service the FCC has denied them for 10 years now.

Mr. DINGELL. Madam Speaker, I yield 2 minutes to the distinguished gentleman from Texas (Mr. GREEN).

(Mr. GREEN asked and was given permission to revise and extend his remarks.)

Mr. GREEN. Madam Speaker, I thank my good friend and colleague, the gentleman from Michigan (Mr. DINGELL) for yielding me time and allowing me to speak on this bill.

Madam Speaker, I rise in support of H.R. 3888, the Anti-Slamming Amendments Act. As a member of the Subcommittee on Telecommunications, Trade, and Consumer Protection, Madam Speaker, I am glad this bill will hopefully be passed and the Senate will consider it.

Slamming is a deceptive practice of switching the consumer's long-distance service, either unknowingly or unwillingly. As a victim of slamming this last summer in my own household, like most of us, I asked my grown children, I said, who changed our long-distance carrier? Of course, they denied it. The carrier we were changed to was one who I would never use at all, Madam Speaker, because they have terrible labor relations, particularly in the Hispanic community.

We received lots of calls in our district on the need to fight slamming, and today I believe we have a partial solution in front of us.

□ 1645

It could have been much stronger, and I think the gentleman from Louisiana (Mr. TAUZIN), chairman of the subcommittee, pointed that out. Any time we pass legislation, we have to compromise. But, hopefully, this is a step in the right direction.

H.R. 3888 does two things. First, consumers are automatically switched back to their original carriers and are provided a credit for no more than 30 days worth of charges. Second, this bill weeds out the companies that continue to deceptively slam consumers by making them pay to switch back consumers, by providing a credit for charges, and by paying a $500 fine to both the slammed consumer and the original carrier. And the FCC may impose another $1,000 fine on the slamming company.

Again, this goes a partial way. Hopefully, if this does not work we will come back next session to see if we need to beef it up again. H.R. 3888 protects the consumer and makes switching back to their original carrier easier and imposes no financial burden to them, although when I had to switch back I did not have any financial burden either.

This legislation has wide support among consumer groups and the telecommunications industry and the administration, and the anti-slamming amendment also grandfathers all existing State anti-slamming laws, such as we have in my home district in Texas.

Finally, we could have also done more on the anti-spamming, unsolicited e-mail advertisements. And as a cosponsor of an original bill on anti-spamming, I had hoped to go much further, and this is an issue that the next Congress should address.

Madam Speaker, I rise in support of this legislation, and I urge my colleagues to support it.

Mr. BLILEY. Madam Speaker, I yield 3 minutes to the gentleman from Florida (Mr. STEARNS).

Mr. STEARNS. Madam Speaker, it has been a long process on this bill to refine it and make it acceptable to industry. And for many, like myself, in our State of Florida they have been very successful in stopping slamming. There has been millions of dollars collected in fees. So while an original cosponsor of this bill, I did not want to create an overly regulatory, burdensome bill to address slamming, because I felt in my State we had made a strong effort to combat it.

Congress has already attempted to address the problem of slamming through the Telecommunications Act by codifying a new section in the Communications Act to close the abusive loophole that was created by the breakup of AT&T in 1984. This new section in the act gave the FCC the power, gave the power to the FCC to issue new regulations to prevent slamming.

Unfortunately, the FCC did not act in the direction that Congress had given it, and there was frustration on the part of many of the members on the Subcommittee on Telecommunications, Trade, and Consumer Protection because they had not moved forward.

It appeared the problem of slamming grew worse instead of better after the passage of the act. It was reported that the number of slamming complaints to the FCC rose to approximately 20,000 in 1997. Madam Speaker, this is a 56 percent increase over 1996. So, from 1996 to 1997, there was a 56 percent increase. The situation looked like it was getting worse.

So, Congress had only one option: to create legislation to end this fraudulent, abusive practice. Under the leadership of the gentleman from Louisiana (Chairman TAUZIN), the gentleman from Virginia (Chairman BLILEY), and the gentleman from Michigan (Mr. DINGELL), the ranking member, who have worked diligently to work out an ideal compromise, this legislation will allow the FCC and industry to develop a working code for companies to adhere to proper business practices in soliciting new customers.

The focus now will be to allow the industry to develop industry-wide standards that would dramatically decrease the instances of slamming. If a long-distance company refuses to adhere to adopting these standards, they will face extremely stiff penalties for every instance of slamming.

This legislation also promotes the idea of instituting a third-party verification. The bill would require the National Telecommunications and Information Administration to study the feasibility and desirability of establishing a neutral third-party entity to administer changes to subscribers' carrier selections.

Third-party verification will be the best solution because it would allow for a nonregulatory, nonburdensome approach to guide long-distance providers in acquiring new customers.

I think the leadership, the chairman of the committee, the chairman of the subcommittee, and the ranking member have worked very well together to solve this problem. I am hoping it is an ideal compromise which the industry will, of course, support.

Madam Speaker, I urge my colleagues to support this compromise and will ask the FCC and the industry to develop regulations that will not constrict the States' abilities to regulate the conduct of long-distance carriers.

Mr. DINGELL. Madam Speaker, I yield 3 minutes to the distinguished gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Madam Speaker, I thank the gentleman from Michigan (Mr. DINGELL) for yielding me this time.

Madam Speaker, I strongly support H.R. 3888 today. I have had my personal experience, as a number of people have, in terms of being slammed. I find that I am not unique. The distinguished gentleman from Virginia (Mr. BLILEY), chairman of the Committee on Commerce and the head of the ''Congressional Bow Tie Caucus,'' has similarly been treated, I understand, by the industry.

So I am pleased today with the legislation that is coming forward. But I am concerned that there is one provision that we saw in the Senate that is not included, which I hope that before we are through the legislative process that there will be an opportunity to include. That is the truth in billing provision that was amended into the Senate bill unanimously.

It is very similar to legislation that I have introduced in the House, H.R. 4018, that has over 50 cosponsors. Truth in billing would require that the telephone carriers provide accurate information to customers about both the increases and reductions in consumer charges resulting from regulatory action.

There has been a great deal that has happened as a result of telecommunications deregulation, but I cite just one example: the confusion surrounding the e-rate that speaks to the need for more complete billing information.

Consumers did not understand that the new line items were for all of universal service, including rural telephone service which has been in place for some 60 years. Nor did they understand that the cost to current phone companies had already been reduced by, we think, approximately $3 billion, which is far more than we were talking about with the e-rate, which would have provided access to the Internet for our schools and libraries.

Madam Speaker, I hope that we will be able, as I say, to refer to the provisions of H.R. 4018, the truth in billing, because the FCC does have, although it has initiated rulemaking for truth in billing, it is a step in the right direction. But it is important that the FCC's action be grounded in specific legislative authorization.

I would fear that we not be silent on giving consumers clarity on their phone bill. This Congress has much to be pleased with the progress that has been made. I think giving full disclosure about increases and decreases in the phone rates that are charged by the phone companies will give consumers the information they need to adequately make their assessments.

Madam Speaker, I hope that the House will accept any Senate amendments to include truth in billing.

As one who had my long distance carrier switched without my knowledge, I strongly support efforts to end this unscrupulous practice.

I want to take a minute to talk about a consumer protection that the Senate included in its anti-slamming bill, that is not in the bill before us today, specifically truth in billing.

Truth in billing requires that telephone carriers provide information about *both* increases and reductions in consumer charges resulting from regulatory actions—this is absolutely critical if consumers are to have a clear understanding of how deregulation of the telecommunications marketplace affects their pocketbook.

The recent controversy over line item charges associated with the E-Rate is a perfect example of the confusion that can be caused by incomplete billing information.

Consumers did not understand that most of the new line items were for programs which have been in place for 60 years to provide service to rural areas.

Nor did they understand that costs to phone companies had already been reduced by more than they were being asked to pay the e-rate.

My legislation to provide for some truth in billing currently has 50 cosponsors.

Some might say that this legislation is unnecessary, since the FCC has initiated a rulemaking on truth in billing. I am hopeful that their process will be successful. However, I think this critical proceeding must be grounded in specific legislative authorization.

Congress cannot be silent on giving consumers clarity about their phone bills. Should this bill come back from the Senate with this language, I urge my colleagues to accept it.

Mr. BLILEY. Madam Speaker, I reserve the balance of my time.

Mr. DINGELL. Madam Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Madam Speaker, I thank the distinguished gentleman from Michigan (Mr. DINGELL) for yielding the time to me.

Madam Speaker, I am pleased that the committee has taken action in the area of consumer telephone slamming. I introduced the first bill on this subject on July 9, 1997, with the gentlewoman from Colorado (Ms. DEGETTE), the gentleman from New Jersey (Mr. FRANKS), the gentleman from Massachusetts (Mr. FRANK), the gentleman from Connecticut (Mr. SHAYS), the gentleman from Oregon (Mr. BLUMENAUER), and the gentleman from Oregon (Mr. SMITH). It was a bipartisan approach to a problem created by a little too much deregulation.

Now a number of people listed on my bill were here and voted for the telecommunications deregulation. I did not. I was one of 16. I foresaw many of these anti-consumer problems coming from totally unfettered deregulation, and I am pleased to see that the committee recognizes that either the industry has to adopt a strict code to stop slamming people for profit, or there will be new rules in place to take the profit out of that activity.

Madam Speaker, I think the committee could have gone a bit further. I know the industry objects strongly to having written authorization. I do not believe that would impede the commerce in this industry and believe it would make even one more step toward fully protecting consumers. So we may find that steps taken are not totally adequate, but this is progress.

Sometimes when huge industries get deregulated, consumers get shafted. They have been shafted now for 2 years by unscrupulous members of the industry who are slamming them for profit. This bill will go a long way toward closing that door on the unscrupulous operators. I congratulate the committee on taking the first steps in this area.

Mr. DINGELL. Madam Speaker, I yield back the balance of my time.

Mr. BLILEY. Madam Speaker, I would just say in closing to the gentleman from Oregon (Mr. DEFAZIO), who just spoke, that if this does not work, we will be back with additional legislation.

Mr. MARKEY. Madam Speaker, this legislation deals with the issue of slamming and it attempts to combat the unauthorized switching of a consumer's telephone carrier of choice. I want to thank Chairman BLILEY and Chairman TAUZIN, along with Mr. DINGELL, for their leadership in bringing this bill to the floor.

This legislation will provide consumers with additional protections in an effort to thwart the problem of slamming while and giving further incentives to the industry. Hopefully these additional provisions will bring unauthorized carrier switches down to a minimum.

In addition, the bill offered to the House today ensures that these additional consumer protections are implemented in a way that is streamlined from a regulatory perspective and that treats carriers in a competitively neutral way. There's no question that every carrier and every industry segment is looking for its proper fair advantage to be built into the rules. I believe that the amendment that will be offered today wisely keeps intra-industry squabbles on the sidelines and focuses on the job at hand which is to address slamming in a way that protects the public in a competitively neutral way.

Finally, I want to thank Chairman TAUZIN for including in this bill a provision that I had in my slamming legislation which tasks the NTIA in the Commerce Department with the job of conducting an analysis into third-party verification administration. My feeling is that at the root of the problem with slamming is that the carriers have a financial stake in making unauthorized switches or freezing their customers from switching to others. I believe that ultimately, the long-term solution to this problem is to take away the authority to authorize switches or freezes from those who have a clear financial incentive to authorize such action. The NTIA is asked to explore the feasibility of an independent administrator or a series of independent regional verifying agents to authorize switches and validate switches before consumers have their telephone company changed.

One example of why we may need to go to the implementation of a third party administrator or administrators can be seen by the recent use of something referred to as a ''PIC freeze.'' A PIC freeze is styled as a pro-consumer service offered by local phone companies to their customers whereby the local phone company promises not to change or modify the customer's service without direct instruction from the customer. While this may be quite appealing to some consumers, there is also significant competitive percussions that flow from such a service offering. The local phone companies might also utilize the PIC freeze device to lock up their own customers and impede competition by making it much more difficult for competitors to obtain and effectively and efficiently switch customers.

There has to be a balance. A PIC freeze device aggressively employed by local telephone monopolies could become a significant impediment to competition in local, intraLATA toll, and ultimately long distance. telecommunications markets. This would obviously thwart the longtime goal of the Congress to introduce widespread and effective competition in all telecommunications markets as rapidly as possible. I wonder where long distance competion would be today if AT&T had vigorously employed offering ''PIC freezes'' to customer in the immediate aftermath of the breakup of Ma Bell. I suspect that the introduction of competition, and thus lower prices for consumers, would have been significantly retarded if such action had been undertaken.

It's my view that a competitively neutral administrator or administrators could help solve these difficult consumer protection and competition issues. I look forward to NTIA's analysis of these issues.

I'd also like to comment briefly on a provision that was dropped from this bill as it arrives on the floor. In the House Commerce Committee, Chairman TAUZIN offered and the Committee unanimously adopted an additional provision to address policy issues that urgently need to be dealt with in the so-called ''C–Block'' or ''entrepreneurial block'' of the broadband PCS service. The recent hearing that the Telecommunications Subcommittee had on the C-block issue was very insightful. Virtually an entire class of FCC licensees is either in bankruptcy, returning its licenses, returning half of its spectrum, or on the verge of bankruptcy.

The C–block provision that the Commerce Committee approved at the Full Committee markup remained true to the fundamental goals of both the 1993 spectrum auction law and the 1996 Telecommunications Act—both were designed to expedite the delivery of telecommunications services to the public and to create new competitive opportunities in the telecommunications industry for small and entrepreneurial businesses.

In previous sessions, Members of the Commerce Committee, and indeed the House as a whole, enthusiastically endorsed the licensing of small businesses. As a result, the ''C–Block'' in the broadband Personal Communications Services (PCS) auctions was created. This action was taken by the FCC for the express purpose of achieving these two key congressional policy objectives. Along the way, however, a number of adverse events conspired to thwart congressional intent to create more competition and innovation and lower prices for consumers.

First, the ''budgeteers'' discovered the airwaves. Believing that they had stumbled upon some magical fiscal alchemy that allowed them to literally create billions of dollars out of thin air, those intimately involved with the budget process both here on the Hill and over at OMB set spectrum policy on its head. Taking what was designed to be an efficient and expedited manner of licensing new services, they warped it and turned the FCC into a giant governmental auction house. They then flooded the auction with more and more spectrum to sell. In addition, judicial and regulatory delays encountered in fashioning the rules for small business licensees, as well as dramatic, unpredictable and quite negative changes in the final markets' receptivity to financing these businesses also put the goals of the Commerce Committee at serious risk.

The result today is that a very large percentage of C–Block spectrum lies fallow. This does neither the taxpayer, nor the taxpayer-consumer any good at all. Consumers are daily paying more for wireless service across the country because these new competitors are not in the marketplace competing for their business. Job creation is also put on hold as dozens of licenses for choice markets languish in bankruptcy court.

Unfortunately, the bill before us today does not contain the C–block provision because of the adverse ''scoring'' it was to receive from the Congressional Budget Office (CBO) and OMB in the Administration. The particular rules of budget scoring here on the Hill at CBO prevent us from facing reality. The reality is that these licenses are going to languish in bankruptcy and the Congressional policy of rapidly introducing lower prices, innovation, creating jobs and choices for consumers, through new competition will be seriously undermined. OMB, for its part, continues to live in a fiscal fantasy land with respect to how much money these licenses will raise for the Treasury. Rather than admitting its gross error in utilizing phony frequency money to balance the budget or, of late, to increase the surplus, OMB compounds the error by resisting bipartisan legislation to put sound telecommunications policy back on track. This is unfortunate. It's an anti-consumer, anti-taxpayer, anti-

worker stance. The result will be a public policy morass.

I hope that we can return to this subject next year and hopefully return integrity to telecommunications policy by cleaning up the problems created by placing auction revenue, above all other values, as our highest public policy goal.

Again, I want to commend Chairman BLILEY, Chairman TAUZIN, Mr. DINGELL, and our other colleagues for their work on this measure and urge the House to support it.

Mr. BLILEY. Madam Speaker, I urge the adoption of the bill, and I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. EMERSON). The question is on the motion offered by the gentleman from Virginia (Mr. BLILEY) that the House suspend the rules and pass the bill, H.R. 3888, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

DIGITAL MILLENNIUM COPYRIGHT ACT

Mr. COBLE. Madam Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 2281) to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.

(For conference report, see proceedings of the House of Thursday, October 8, 1998, at page H10048.)

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. COBLE) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Madam Speaker, I yield 10 minutes of my time to the gentleman from Virginia (Mr. BLILEY) and ask unanimous consent that he be permitted to control that time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Ms. JACKSON-LEE of Texas. Madam Speaker, I yield 10 minutes of my time to the gentleman from Michigan (Mr. DINGELL) and ask unanimous consent that he be allowed to control that time.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Texas?

There was no objection.

GENERAL LEAVE

Mr. COBLE. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 2281, the Digital Millennium Copyright Act. It is not uncommon on this Hill for many people to take great pride in authorship and oftentimes refer to legislation that comes from our respective committees as ''landmark legislation,'' but I think that all who are familiar with this piece of legislation will agree that this is truly landmark legislation.

H.R. 2281 represents a monumental improvement to our copyright law and will enable the United States to remain the world leader in the protection of intellectual property.

Madam Speaker, we could not have reached this point without the collective efforts of many. I thank the gentleman from Illinois (Mr. HYDE), chairman of the Committee on the Judiciary, for his constant support and guidance. I am also appreciative to the work of the gentleman from Virginia (Mr. GOODLATTE).

I thank the gentleman from Michigan (Mr. CONYERS), ranking member of the Committee on the Judiciary, and the gentleman from Massachusetts (Mr. FRANK), ranking member on the Subcommittee on Courts and Intellectual Property. I also thank the gentleman from California (Mr. BERMAN) who invested much time and effort in developing this legislation.

The valuable contributions of several members from the Committee on Commerce must also be recognized: the gentleman from Virginia (Chairman BLILEY); and the gentleman from Michigan (Mr. DINGELL), ranking member; the gentleman from Louisiana (Mr. TAUZIN), chairman of the Subcommittee on Telecommunications, Trade and Consumer Protection; and the gentleman from Massachusetts (Mr. MARKEY), ranking member; as well as the gentleman from Washington (Mr. WHITE); and the gentleman from Colorado (Mr. DAN SCHAEFER), who were also instrumental in facilitating agreement on portions of the bill.

I finally must thank several senators for their diligence in drafting and moving H.R. 2281: the chairman of the Senate Committee on the Judiciary, Senator Orrin HATCH; ranking member, Senator Patrick LEAHY of Vermont; as well as my friend from South Carolina, Senator Strom THURMOND; all were instrumental in bringing about this important achievement in the copyright law.

H.R. 2281 is the most comprehensive copyright bill since 1976 and adds substantial value to our copyright law. It will implement two treaties which are extremely important to ensure adequate protection for American works in countries around the world in the digital age. It does this by making it unlawful to defeat technological protections used by copyright owners to protect their works, including preventing unlawful access and targeting devices made to circumvent encrypted material. *****-*****- Payroll No.: -Name: -Folios: -Date: -Subformat:

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It furthermore makes it unlawful to deliberately alter or delete information provided by a copyright owner which identifies a work, its owner and its permissible uses.

H.R. 2281 furthermore addresses a number of other important copyright issues. It clarifies the circumstances under which on-line and Internet access providers could be liable when infringing material is transmitted on-line through their services. It ensures that independent service organizations do not inadvertently become liable for copyright infringement merely because they have activated a machine in order to service its hardware components. It also creates an efficient statutory licensing system for certain performances and reproductions made by webcasters which will benefit both the users of copyrighted works and the copyright owners.

Unfortunately, in arriving at the final agreement on what would be included in H.R. 2281, title V of the House-passed version, which provided for limited protection of databases, was removed. I am pleased, however, that we were able to bring that issue so far this session. It is important legislation that will benefit many industries and businesses in the United States, and I intend to work diligently next session to pass it.

I appreciate and would be remiss if I did not mention at this time statements by Senator HATCH and Senator LEAHY made on the floor of the other body that they pledge to take up a database protection bill early in the next Congress.

Madam Speaker, 2281 is necessary legislation to ensure the protection of copyrighted works as the world moves into the digital environment. This will ensure that American works will flourish as we move further into the new millennium.

I urge my colleagues to vote ''yes'' on H.R. 2281.

Madam Speaker, I reserve the balance of my time.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Madam Speaker, I yield myself such time as I may consume.

I rise today in strong support of H.R. 2281, the Digital Millennium Copyright Act, the passage of which many Members on both sides of the issue doubted was one of the priorities of the gentleman from Michigan (Mr. CONYERS) and our committee this year in the Committee on the Judiciary. And we are glad that the committee on which I serve as a member and the gentleman from Michigan (Mr. CONYERS) serves as a ranking member has worked hard in a bipartisan fashion to get this legislation to the President's desk.

Madam Speaker, this is very important legislation, primarily because we are part of a supertechnological society, and we have got to all get along.