

added to the federal criminal code a definition of scanning receivers to mean devices used to intercept illegally wire or electronic communications.

"Clone" telephones are used illegally to allow free riding on the cellular phone system and result in theft of that service. The cellular telephone industry estimates that it loses \$650 million per year due to clone phones. I recall testimony at hearings I chaired jointly with Representative Don Edwards on CALEA about the need to address this problem in CALEA. Tom Wheeler, President of the Cellular Telecommunications Industry Association, testified in 1994 about:

... people being surprised by "humongous" cellular bills because somebody had snatched their electronic code out of the air, cloned that into another phone, and was charging phone calls to Colombia or wherever onto their phone.

S. Hrg. 103-1022, at p. 148 (August 11, 1994).

In short, the theft of cellular telephone services amounts to millions of dollars of losses to wireless service providers and to consumers.

Just as disturbing, clone phones are used by drug dealers and other criminals trying to evade police surveillance of their phone conversations. The fraudulent use of electronic serial numbers, which are critical in identifying the cellular phone subject to wiretap orders, represented a real threat to privacy. Mr. Wheeler explained in 1994, "If you have a situation where there is floating around out there multiple users of the same electronic serial numbers, you don't know who you are tapping." S. Hrg. 103-1022, at p. 148 (August 11, 1994).

Given the financial losses and the threats to privacy posed by clone phones, I urge the cellular telephone industry to consider the technical means available to better protect cellular phone service. In particular, if strong encryption were used to encrypt the radio waves transmitted from cellular phones to the nearest cell tower, stealing those signals for use in a clone phone would be much more difficult, if not impossible.

I have long been a proponent of more widespread use of strong encryption. Clone phones are a perfect example of where the use of strong encryption would be far more effective to prevent this crime from occurring than all the criminal laws we could consider passing.

This bill, as modified by the House, builds upon the work we accomplished in CALEA.

Current law contains an "intent to defraud" requirement that has apparently posed a stumbling block for law enforcement to crack down on the cloning of cellular phones. This bill would remove this intent requirement and make it illegal to use, sell or possess hardware or software knowing it has been configured for the purpose of altering a telephone to steal service.

The House of Representatives made a number of significant improvements to S. 493 to ensure that, upon removal of the "intent to defraud" requirement, the bill did not sweep too broadly. Indeed, I understand that even some cellular companies were concerned that the original bill introduced by Senator KYL might inadvertently have applied to machinery used by legitimate companies to test or reprogram their equipment.

Removal of the "intent to defraud" scienter requirement may still pose problems for those legitimate companies that wish to offer "extension" telephones for cellular telephones. In fact, the Federal Communications Commission has a proceeding underway to determine whether companies may be allowed to alter the electronic serial number of a cellular telephone to allow more than one phone to have the same contact number.

Passage of this law may be interpreted as prejudging the outcome of that proceeding by making illegal the use of clone phones, even by legitimate subscribers who pay their bills. That would be regrettable. This bill should not affect the outcome of the FCC proceeding, since the public interest may be well served by allowing competition into the extension cellular telephone business. Depending on the outcome of the FCC proceeding, we may be revisiting this legislation.

This bill, as modified by the House, is supported by the FBI, Secret Service and the Cellular Telephone Industry Association (CTIA). We made important progress in this area when we passed CALEA, and I am glad to support legislation that will further help law enforcement combat cellular telephone fraud by those who steal cellular service.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate concur in the amendments of the House.

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

#### LAND CONVEYANCE ACT

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 321, H.R. 1116.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1116) to provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District.

There being no objections, the Senate proceeded to consider the bill.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the bill be considered read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at the appropriate place in the RECORD.

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

The bill (H.R. 1116) was considered read the third time and passed.

#### MEASURE PLACED ON THE CALENDAR—S. 1889

Mr. DOMENICI. Mr. President, I understand that there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1889) to reduce tobacco use by children and others through an increase in the cost of tobacco products, the imposition of advertising and marketing limitations, assuring appropriate tobacco industry oversight, expanding the availability of tobacco use cessation programs, and implementing a strong public health prevention and education strategy that involves the private sector, schools, States and local communities.

Mr. DOMENICI. Mr. President, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. The bill will be placed on the calendar.

#### ORDERS FOR THURSDAY, APRIL 2, 1998

Mr. DOMENICI. Mr. President, on behalf of the leader, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 8:30 a.m. on Thursday, April 2; that immediately following the prayer, the routine requests through the morning hour be granted and the Senate resume consideration of S. Con. Res. 86, with the pending business being the Bumpers amendment No. 2228.

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

Mr. DOMENICI. I further ask unanimous consent that immediately following the previously ordered two votes which will occur at 9 a.m., the Senate then proceed to consecutive votes on or in relation to the following amendments in the following order:

Dorgan amendment No. 2218, relating to the Tax Code;

Allard amendment No. 2170, regarding the Federal debt;

Lautenberg amendment No. 2195, environment programs;

Bond amendment No. 2213, income housing;

Bumpers amendment No. 2228, relating to mines.

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

#### PROGRAM

Mr. DOMENICI. Mr. President, tomorrow the Senate will resume consideration of the budget resolution. At 9 a.m., the Senate will proceed to a series of consecutive rollcall votes, with the first two votes in relation to two judicial nominations and the remaining votes in relation to pending amendments to the budget resolution.

It is hoped that during these votes, all Senators will contact the managers

of this resolution to see if their respective amendments which are still pending may be accepted or they require a vote on their amendments or perhaps indicate that they have decided to withdraw their amendments. It is the intention of the majority leader to complete action on this measure as soon as possible. Therefore, the cooperation of all Senators is appreciated. Senators should be aware that Thursday will be a busy session with rollcall votes occurring throughout the day and into the evening, as necessary.

#### ADJOURNMENT UNTIL 8:30 A.M. TOMMORROW

Mr. DOMENICI. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:33 p.m., adjourned until Thursday, April 2, 1998, at 8:30 a.m.

#### NOMINATIONS

Executive nominations received by the Senate April 1, 1998:

##### IN THE ARMY

THE FOLLOWING-NAMED RESERVE OFFICER FOR APPOINTMENT AS CHIEF OF ARMY RESERVE UNDER TITLE 10, U.S.C., SECTION 3038:

*To be Chief, Army Reserve, United States Army*

MAJ. GEN. THOMAS J. PLEWES, 0000

##### IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624, 628, AND 531:

*To be Major*

CHRISTIANNE L. COLLINS, 0000

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (\*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 628, AND 531:

*To be Lieutenant Colonel*

ALTON G. CHERNEY, 0000  
GREGORY M. GILLUM, 0000  
STEPHEN J. MILONE, 0000

*To be Major*

\*DAVID E. HARRIS, 0000  
RENEE M. JOHNSON, 0000  
NICOLE S. STERMER, 0000  
KEVIN L. TOY, 0000

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (\*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be Colonel*

ALMA J. ABALOS, 0000  
DAVID V. ADAMS, 0000  
DORIS J. ALLSUP, 0000  
LAURA V. ALVARADO, 0000  
REGINA C. AUNE, 0000  
PATRICIA E. BOYLE, 0000  
LINDA L. BRICKLEY, 0000  
RHONDA L. BRIDGE, 0000  
JOHN A. BUTLER, 0000  
JOSEPH P. CARDONA, JR., 0000  
JOHN B. CARLETON, 0000  
JAMES C. CHAPMAN, 0000  
MATTHEW W. COGDELL, 0000

VIRGINIA F. CONNELLY, 0000  
PATRICIA L. DAVIS, 0000  
JAMES W. DOOLEY, 0000  
CONNIE E. FESSLER, 0000  
JOHN G. GARLAND III, 0000  
SUZANNE R. HANSEN, 0000  
RANDALL W. HARTLEY, 0000  
RUSSELL W. HEATH, 0000  
DAVID L. HERRES, 0000  
GWENDOLYN F. HOLLAND, 0000  
DEBRA S. HUGHES, 0000  
JEANIE M. KEARNEY, 0000  
JAY K. KIDNEY, 0000  
GENE A. KILLAN, 0000  
PATRICIA A. LAND, 0000  
PATRICIA C. LEWIS, 0000  
THOMAS H. LILLIE, 0000  
DONNA J. MCCLOSKEY, 0000  
MARGARET M. MCGUIRE, 0000  
WILLIAM J. MEHM, 0000  
ARDIS J. MEIER, 0000  
BONNIE A. MERTELY, 0000  
KENNETH L. MEYER, 0000  
TIMOTHY R. MIDDLETON, 0000  
ROSS N. MILLER, 0000  
SHEILA A. W. MILLETTE, 0000  
JAMES P. MORELAND, 0000  
LAURENCE P. PAZYRA, 0000  
MELISSA A. RANK, 0000  
KATHLEEN A. ROBERTS, 0000  
TED JIM WILLIAM ROGERS, 0000  
GLORIA J. ROSEBORO, 0000  
REBECCA A. RUSSELL, 0000  
GREGORY E. SEELY, 0000  
JOHN A. SEIMETZ, 0000  
JANE E. SERIE, 0000  
LORETA S. SEWALL, 0000  
ANDREW J. STOEHR, 0000  
JEFFREY C. SVENTEK, 0000  
ROBIN L. TAYLOR, 0000  
THOMAS J. TEGELER, 0000  
LUCAS J. WALTER, JR., 0000  
DARNELL M. WAUN, 0000  
MARK P. WISNIEWSKI, 0000  
WILLIAM J. WISNIEWSKI, 0000

*To be Lieutenant Colonel*

JANICE L. ABLES, 0000  
BRIAN J. ACKER, 0000  
LOREN A. AHNBERG, 0000  
GARNEL E. ALFORD, 0000  
PATRICIA E. ALVOET, 0000  
SUANNE R. BARLOW, 0000  
LYNETTE M. BELL, 0000  
TONI L. BEUMER, 0000  
JOHN L. BINDER, 0000  
CHERYL M. BOSCO, 0000  
NAOMI M. BOSS, 0000  
DONNA M. BROWN, 0000  
RICHARD E. BURROW III, 0000  
DONALD W. BUTTERWORTH, 0000  
CHARLES M. CAMPBELL, 0000  
SHARON M. CARDONA, 0000  
\*DOROTHY L. CARTER, 0000  
RANDY L. CLABAUGH, 0000  
RITA A. CLARK, 0000  
\*MARGARET M. COLE, 0000  
PERRY R. COOPER, 0000  
ANNE T. COYNE, 0000  
JOANN H. DAWSON, 0000  
THOMAS S. DELANEY, 0000  
RONALD S. DORNIN, 0000  
JOANNA S. EASTMAN, 0000  
MELYDIA J. EDGE, 0000  
HELEN F. EDWARDS, 0000  
CATHERINE M. ERICKSON, 0000  
DEBRA K. EVERS, 0000  
JOHN F. FELINS, 0000  
GORDON FLINT, 0000  
ANGELA D. FOWLER, 0000  
DENNIS E. FRANKS, 0000  
DEBRA L. GAGNON, 0000  
JOAN L. GONZALEZ, 0000  
CHARLES S. GRANTONIC, 0000  
BRIAN W. GRASSI, 0000  
JANE A. HEBERT, 0000  
RONALD B. HENKE, 0000  
HARVEY K. HILLIARD, 0000  
TYANN A. HINDELANG, 0000  
DIANE L. HOBBS, 0000  
DAVID T. HOCKING, 0000  
EVA J. HOLSTINE, 0000  
ANNIE B. JACKSON, 0000  
LEONARD W. JACKSON, 0000  
PAULA R. JAMESON, 0000  
\*MARY A. JASINSKI, 0000  
EDWARD M. JENKINS, 0000  
VICKI L. JONES, 0000  
MICHAEL JOSEPH III, 0000  
PHILIP W. JULIAN, 0000  
LYNN J. KANWISCHER, 0000  
KELLEY J. KASH, 0000  
GRANT D. KOTOVSKY, 0000

KIM A. KUBELICK, 0000  
THOMAS F. LANGSTON, 0000  
DAVID J. LANNEN, 0000  
DENISE K. LEW, 0000  
DIXIE L. LYON, 0000  
VICTORIA M. MARINO, 0000  
SHERRY L. MAXWELL, 0000  
LORI L. MONTGOMERY, 0000  
DANNY L. MOORE, 0000  
JOAN E. MORRISSEY, 0000  
JOHN S. MURRAY, 0000  
LAMAR ODOM, 0000  
RONALD E. PALMER, 0000  
TERRY L. B. PARKER, 0000  
MONTGOMERY C. PATE, 0000  
ARLENE A. PERRY, 0000  
MICHAEL J. POULSEN, 0000  
SUZANNE M. PRILESZKY, 0000  
KARRIN W. SAX, 0000  
MICHAELA R. SHAFER, 0000  
WILLIAM J. H. SLAUSON, 0000  
PAMELA H. SMITH, 0000  
\*CHRISTINE C. STUART, 0000  
MARGARET A. STULTZLALK, 0000  
SUSAN R. SULLIVAN, 0000  
DONNALEE SYKES, 0000  
JAMES F. TITCH, 0000  
GLORIA J. TWILLEY, 0000  
CAROL L. UMSTEADRASCHMANN, 0000  
THOMAS E. VEZIE JR., 0000  
FRANK W. WILLIAMS, 0000  
ELAINE S. WILSON, 0000  
JOHN G. WISEMAN, 0000  
BARBARA L. WOLFE, 0000  
THOMAS E. YINGST, 0000  
M. JEANNE YODER, 0000  
VICTORIA G. ZAMARRIPA, 0000

##### IN THE ARMY

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (\*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 628, 531, AND 3064:

*To be Colonel*

RICHARD A. CLINE, 0000

*To be Lieutenant Colonel*

\*CORNEL L. KITTELL, 0000  
\*STANLEY E. SMITH, 0000

*To be Major*

\*SONJA S. THOMPSON, 0000

##### IN THE NAVY

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

*To be Captain*

WILLIAM T. D'AMICO, 0000

*To be Commander*

JOHN S. ARBTER, 0000  
STEVEN A. DREISS, 0000  
ROBIN P. MOUTON, 0000  
JOSE PUBILLONES, 0000

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be Captain*

ROBERT A. WULFF, 0000

THE FOLLOWING-NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5589(A):

LYNNEANN PINE, 0000

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

*To be Commander*

BRIAN W. DAUGHERTY, 0000  
PAUL J. DOUR, 0000  
CHARLES S. HAMES, 0000  
HOWARD L. MARSHALL, 0000  
EDWARD C. SIMMONS, JR., 0000

*To be Lieutenant Commander*

MICHAEL CRICCHIO, 0000

##### THE JUDICIARY

TIMOTHY B. DYK, OF THE DISTRICT OF COLUMBIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT, VICE GLENN L. ARCHER, JR., RETIRED.