and shape our lives in this age of ever-changing technology.

Many of us in this chamber can remember a time when the words ''Internet'' and ''intellectual property'' had no meaning in our day-to-day activities. That is changing. Rapidly changing. New, competitive markets are emerging, and exploding, thanks to continuing technological advancements and innovations.

The potential benefits of such unprecedented growth is exciting. Besides transforming the structure of the communications industry, high technology is literally changing the way millions of us live and do business.

I would like to share a good Samaritan story about how wireless technology does impact, and possibly save, lives.

Mrs. Debbie Sanders, one of my constituents from the small town of Enid, Mississippi, is the 1998 recipient of the VITA Wireless Samaritan Award for her act of heroism. On her way home from a long day at work as a store's assistant manager, Debbie saw a car flipped upside down in a water-filled ditch. She used her wireless phone to call for help and pulled the victim from the vehicle. Not sure of her exact location on this lonely stretch of deserted, rural road, Debbie had to remain on the phone for over one hour with emergency personnel until she and the victim could be reached.

Mr. President, this is only one example of how high technology can enhance our world.

There will be boundless opportunity in the next century for new technological applications to evolve. With that opportunity will come an absolute necessity for a highly skilled labor work force to ensure America's competitive standing and high-technology leadership. Our vibrant economy is directly tied to this cutting-edge technology. Bills that advance our country's ability to compete will strengthen our future and our children's future.

Several measures will be considered, but I want to particularly mention the Consumer Anti-Slamming Protection Act. We need a public policy to crack down on slamming. We need to protect the telephone consumer. The world indeed is shrinking, and we all have come to depend upon long distance service, not as a luxury but as a necessity. We want to talk to those closest to our hearts, wherever they may be.

The practice of ''slamming''—unauthorized switching of long distance telephone service carriers by competing service providers—must stop. It is abusive to the consumer, and has become much too frequent and too disruptive. Our colleagues have told us horror stories in the past, and today we will hear even more illustrations of slamming abuses. With this statute, I join my colleagues in urging the FCC to strengthen its enforcement program to stop this unscrupulous practice. Tougher penalties against companies that intentionally slam will be an effective solution.

I want to thank my Senate colleagues for their diligent leadership and keen focus on tackling these legislative challenges. Their willingness and commitment to work in a bipartisan manner is the reason we are here today. Although some of the issues may be fundamentally noncontroversial, I know the issues are complex, and I appreciate their efforts.

Mr. President, I look forward to the debate. It is also my hope that progress will be continued, and consensus achieved, on other critical pieces of legislation to address a variety of high-technology related concerns shared by many in this Chamber.

CONSUMER ANTI-SCAMMING ACT OF 1998

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1618. I ask further consent there be 2 hours of general debate on the bill, equally divided in the usual form.

I further ask consent that the only first-degree amendments, other than committee amendments, be the following, and that the first-degree amendments be subject to relevant second-degree amendments: Manager's amendment; Collins-Durbin amendment—No. 1, liability, No. 2, penalties, No. 3, report slamming complaints; a Rockefeller amendment on Telecom; a Reed amendment on slamming; Levin amendment on billing information, surety bonds switchless; Feingold amendment on CB interference; Feinstein amendment on telephone privacy; McCain amendment that is relevant; a Harkin amendment on telemarketing fraud; and a Hollings amendment that is relevant.

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

Mr. MCCAIN. Upon disposition of all amendments, the bill be read a third time and the Senate then proceed to vote on passage of S. 1618 with no intervening action or debate; provided further that Senator BRYAN be recognized further to speak on the bill.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Reserving the right to object, did the Senator from Arizona note Senator MURRAY in his list of amendments?

Mr. MCCAIN. I say to my friend that Senator MURRAY and Senator COATS both agreed to drop their amendments on the assurance that these respective pieces of legislation will be brought up at a later date.

Mr. DORGAN. I have no objection.

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

The clerk will report.

The bill clerk read as follows:

A bill (S. 1618) to amend the Communications Act of 1934 to improve the protection of consumers against ''slamming'' by telecommunications carriers, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

S. 1618

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

SECTION 1. IMPROVED PROTECTION FOR [CONSUMERS AGAINST "SLAMMING" BY TELECOMMUNICATIONS CARRIERS.] *CONSUMERS.*

(a) VERIFICATION OF AUTHORIZATION.—Subsection (a) of section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended to read as follows:

''(a) PROHIBITION.—

''(1) IN GENERAL.—No telecommunications [carrier shall] *carrier or 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 this section 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 section, the telecommunications carrier *or reseller* shall, at a minimum, require the subscriber—

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

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

''(iii) to affirm that [the subscriber] *the consumer is the subscriber or* is authorized to select the provider of that service for the telephone number in question;

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

[''(v) to acknowledge that the individual making the oral communication is the subscriber; and]

''[(vi)] *(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 verification of a change in telephone exchange service or telephone toll service provider in oral, written, or electronic form; and

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

''(3) INTRASTATE SERVICES.—Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

''(4) SECTION NOT TO APPLY TO WIRELESS.—This section does not apply to a provider of commercial mobile service, as that term is defined in section 332(d)(1) of this Act.''.

(b) RESOLUTION OF COMPLAINTS.—Section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended by adding at the end thereof the following:

''(c) NOTICE TO SUBSCRIBER.—Whenever there is a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, the telecommunications carrier *or reseller* selected shall notify the subscriber in writing, not more than

15 days after the change is [executed, of the change, the date on which the change was effected, and the name of the individual who authorized the change.] *processed by the telecommunications carrier or the reseller—*

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

(2) 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.

''(d) RESOLUTION OF COMPLAINTS.—

''(1) PROMPT RESOLUTION.—

''(A) IN GENERAL.—The Commission shall prescribe a period of time, not in excess of 120 [days, for a] *days after a telecommunications carrier or reseller receives notice, for the* telecommunications carrier *or reseller* to resolve a complaint by a subscriber concerning an unauthorized change in the subscriber's selection of a provider of telephone exchange service or telephone toll service.

''(B) UNRESOLVED COMPLAINTS.—If a telecommunications carrier *or reseller* fails to resolve a complaint within the time period prescribed by the Commission, then, within 10 days after the end of that period, the telecommunications carrier *or reseller* shall—

''(i) notify the subscriber in writing of the subscriber's right to file a complaint with the Commission concerning the unresolved complaint, the subscriber's rights under this section, and all other remedies available to the subscriber concerning unauthorized changes;

''(ii) inform the subscriber in writing of the procedures prescribed by the Commission for filing such a complaint; and

''(iii) provide the subscriber a copy of any evidence in the carrier's *or reseller's* possession showing that the change in the subscriber's provider of telephone exchange service or telephone toll service was submitted or executed in accordance with the verification procedures prescribed under subsection (a).

''(2) RESOLUTION BY COMMISSION.—The Commission shall provide a simplified process for resolving complaints under paragraph (1)(B). The simplified procedure shall preclude the use of interrogatories, depositions, discovery, or other procedural techniques that might unduly increase the expense, formality, and time involved in the process. The Commission shall issue an order resolving any such complaint at the earliest date practicable, but in no event later than—

''(A) 150 days after the date on which it received the complaint, with respect to liability issues; and

''(B) 90 days after the date on which it resolves a complaint, with respect to damages issues, if such additional time is necessary.

''(3) DAMAGES AWARDED BY COMMISSION.—In resolving a complaint under paragraph (1)(B), the Commission may award damages equal to the greater of $500 or the amount of actual damages. The Commission may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

''(e) PENALTY.—

''(1) IN GENERAL.—Unless the Commission determines that there are mitigating circumstances, violation of subsection (a) is punishable by a fine of not less than $40,000 for the first offense, and not less than $150,000 for each subsequent offense.

''(2) FAILURE TO NOTIFY TREATED AS VIOLATION OF SUBSECTION (a).—If a telecommunications carrier *or reseller* fails to comply with the requirements of subsection (d)(1)(B), then that failure shall be treated as a violation of subsection (a).

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

''(1) to collect any fines it imposes under this section; and

''(2) on behalf of any subscriber, any damages awarded the subscriber under this [section.''.] *section*.

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

(c) STATE RIGHT-OF-ACTION.—Section 258 of the Communications Act of 1934 (47 U.S.C. 258), as amended by subsection (b), is amended by adding at the end thereof the following:

''[(g)] *(h)* ACTIONS BY STATES.—

''(1) AUTHORITY OF STATES.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that a telecommunications carrier *or reseller* has engaged or is engaging in a pattern or practice of changing telephone exchange service or telephone toll service provider without authority from subscribers in that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such unauthorized changes, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

''(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

''(3) RIGHTS OF COMMISSION.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right—

''(A) to intervene in the action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under this subsection 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 where the defendant may be found.

''(5) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official 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.

''(6) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection 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.

''(7) LIMITATION.—Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, 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 any violation as alleged in the Commission's complaint.

''(8) DEFINITION.—As used in this subsection, the term 'attorney general' means the chief legal officer of a State.

''[(h)] *(i)* STATE LAW NOT PREEMPTED.—Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits unauthorized changes in, a subscriber's selection of a provider of telephone exchange service or telephone toll service.''.

(d) REPORT ON CARRIERS EXECUTING UNAUTHORIZED CHANGES OF TELEPHONE SERVICE.—

(1) REPORT.—Not later than October 31, 1998, the Federal Communications Commission shall submit to Congress a report on unauthorized changes of subscribers' selections of providers of telephone exchange service or telephone toll service.

(2) ELEMENTS.—The report shall include the following:

(A) A list of the 10 telecommunications carriers that, during the 1-year period ending on the date of the report, were subject to the highest number of complaints of having executed unauthorized changes of subscribers from their selected providers of telephone exchange service or telephone toll service when compared with the total number of subscribers served by such carriers.

(B) The telecommunications carriers, if any, assessed fines under section 258(e) of the Communications Act of 1934 (as added by subsection (c)), during that period, including the amount of each such fine and whether the fine was assessed as a result of a court judgment or an order of the Commission or was secured pursuant to a consent decree.

SEC. 2. REPORT ON TELEMARKETING PRACTICES.

(a) IN GENERAL.—The Federal Communications Commission shall issue a report within 180 days after the date of enactment of this Act on the telemarketing practices used by telecommunications carriers *or resellers* or their agents or employees for the purpose of soliciting changes by subscribers of their telephone exchange service or telephone toll service provider.

(b) SPECIFIC ISSUES.—As part of the report required under subsection (a), the Commission shall include findings on—

(1) the extent to which imposing penalties on telemarketers would deter unauthorized changes in a subscriber's selection of a provider of telephone exchange service or telephone toll service;

(2) the need for rules requiring third-party verification of changes in a subscriber's selection of such a provider; and

(3) whether wireless carriers should continue to be exempt from the verification and retention requirements imposed by section 258(a)(2)(B)(iii) of the Communications Act of 1934 (47 U.S.C. 258(a)(2)(B)(iii)).

(c) RULEMAKING.—If the Commission determines that particular telemarketing practices are being used with the intention to mislead, deceive, or confuse subscribers and that they are likely to mislead, deceive, or confuse subscribers, then the Commission

shall initiate a rulemaking to prohibit the use of such practices within 120 days after the completion of its report.

Mr. MCCAIN addressed the chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, today the Senate begins consideration of a series of bills dealing with critical issues raised by the transformation and rapid growth of the telecommunications industry.

This transformation in telecommunications is being driven by constant changes in telecommunications technology. The small mass media universe of fifty years ago, occupied by a few large AM radio stations, has given way to an electronic marketplace teeming with alternative sources of information and entertainment. FM radio, TV, cable and satellite television, and the Internet have become sometimes competing, and sometimes complementary, mass media outlets. In the world of telecommunications, the days of Ma Bell were numbered by the advent of microwave radio and satellite technology. First there was competition for long-distance service; then wireless services appeared and exploded. Cellular radio, paging, and now personal communications services—all are now an indispensable part of everyday American life.

For those of you old enough to remember back twenty years—and I think the Presiding Officer can do that—think of how different your life is today than it was then. Most of these changes were due to the growth of telecommunications. For those of you too young to remember that far back, I can assure you that twenty years from now, you will look back on today and marvel at the changes you will have seen.

Today the driving force in telecommunications is digital technology. Digital technology has not only made some of today's new services possible—it is also causing formerly different services to converge, and it is promising Americans new and exciting services in the future. The convergence of your television and your computer is on the horizon. So also is a telephone that can simultaneously translate conversations held in different languages.

We need no longer talk about the Information Age in the future tense. It's here and now, and it's reshaping our world.

As telecommunications technology changes the way we live, our laws must change to keep pace. The growth of competition in the long-distance industry now gives consumers over 500 companies to choose from. Because of that competition, the consumer is better off. But the growth in long-distance competition has also given rise to cutthroat marketing practices.

The first bill we will consider and debate today is S. 1618, the Consumer Anti-Slamming Act of 1998. It is offered by myself and my good friend and distinguished colleague Senator FRITZ HOLLINGS of South Carolina, the distinguished Ranking Democrat on the Commerce Committee. Joining us as cosponsors are the distinguished Majority Leader, Senator LOTT, and Senators FRIST, BRYAN, JOHNSON, KERRY, ABRAHAM, SHELBY, SNOWE, FEINGOLD, and BOB SMITH.

The Consumer Anti-Slamming Act is designed to put a stop, once and for all, to inexcusable marketing tactics that lead to a consumers' long-distance telephone company being switched without consent. Right now two consumers are ''slammed'' every minute of every day, which makes slamming far and away the most pervasive consumer problem in telecommunications today.

We will then shift our focus to Internet-related issues. The information technology industry is estimated to account for one-third of our real economic growth. Currently, electronic commerce is in the neighborhood of several billion dollars per year, but that figure is expected to skyrocket into hundreds of billions in only a few years more.

The growth and continued expansion of the information technology industry has vastly increased the need for highly-skilled individuals to work in this industry. We need these workers, and their skills, to retain our nation's leadership in Information Age technology. Unfortunately, however, our country isn't producing them in the numbers needed. Therefore, temporary solutions must be found to enable our high-tech industries to remain competitive, while we address problems in the educational system that have led to our inability to produce the needed workforce in this country.

S. 1723, The American Competitiveness Act of 1998, will increase the yearly cap on H–1B immigration visas for skilled workers, while creating new educational opportunities for Americans to join the information technology workforce that is now so critically short of the skilled personnel we need.

Mr. President, I am proud to be a cosponsor of this measure. I commend my colleague, Senator ABRAHAM, for his leadership on this issue, and I am proud to be a cosponsor of this bill in company with Senators HATCH, DEWINE, SPECTER, GRAMS, BROWNBACK, ASHCROFT, HAGEL, BENNETT, MACK, COVERDELL, LIEBERMAN, BURNS, Senator BOB GRAHAM of Florida, and Senator GORDON SMITH of Oregon. I would also like to compliment Senator FEINSTEIN for her efforts at reaching a consensus on this issue with her fellow members of the Judiciary Committee.

Should we fail to pass this measure, our industry will not be able to access the wealth of talent not currently available here at home. This reality will have a quantifiable negative impact on American jobs and American industry. Without passage of this bill, we are forcing companies to shift jobs overseas.

A letter signed by the CEOs of fourteen leading companies, including Microsoft's Bill Gates, Netscape's James Barksdale, and Texas Instruments' Thomas Engibous, put this point well:

> Failure to increase the H–1B cap and the limits that will place on the ability of American companies to grow and innovate will also limit the growth of jobs available to American workers * * * Failure to raise the H–1B cap will aid our foreign competitors by limiting the growth and innovation potential of U.S. companies while pushing talented people away from our shores * * * [this] could mean a loss of America's high technology leadership in the world.

Mr. President, our competitors abroad are waiting for the opportunity to surpass us. They can only do this if we allow them to. We cannot allow our high-tech industries to be hamstrung by an arbitrary cap on immigration of skilled workers.

The Internet has provided widespread access to enormous quantities of information. This in turn has made it necessary to update our copyright laws to protect the rights of copyright holders in the Information Age.

S. 2037, The Digital Millennium Copyright Act, is aptly named. As digitization of commerce, education, entertainment, and a host of other online applications proceeds, international copyright agreements have to be maintained and updated. In addition, the rights of copyright owners need to be assured as technology progresses. That not only safeguards the copyright holder's rights, but also assures that new material will be freely produced and made available to all Internet users.

Finally, Mr. President, while information technology has opened up whole new avenues for commerce, learning, and education, it has also opened up whole new approaches to shady dealings and unfair business practices, and the public should be protected from these. And while we continue to work to prevent these occurrences, we must also work to ensure that existing consumer protection laws function as they were intended, and do not produce unintended or unfair results against either consumers or companies.

My colleague, Senator GRAMM, has taken a keen interest in these issues as they are embodied in the Private Security Litigation Reform Act signed into law during the 104th Congress. Senator GRAMM has led the Securities Subcommittee in reviewing the effectiveness of this law, and he and his fellow Subcommittee members have found it to be insufficient in some areas dealing with class-action suits, particularly those brought in state rather than federal courts, and those in which a valid cause of action has been fraudulently or inadequately presented.

Although frivolous security class actions are a particular problem for the high-tech industry, to the extent consumers have been harmed the industry must be held accountable. Therefore, the issue of securities reform is deserving of debate in the Senate.

Mr. President, these four bills, although apparently so different, do have a unifying thread just as old and new methods of communicating are united by a common concern. Whether we are talking about telephones or advanced computer technology, analog or digital, data or video, our laws must be sure that all segments of the telecommunications industry respond to the consumers' needs, respect consumers' rights, and provide the services America needs to take us into the unimaginably exciting and challenging future that lies before us.

These bills are the first of a series of legislative initiatives the Senate will consider this session that together are intended to achieve these goals.

Mr. President, with that, I conclude the overview of these four bills.

Mr. President, concerning S. 1618, the Consumer Anti-Slamming Act, consumers across the country are unfortunately all too familiar with a practice known as ''slamming.'' Slamming is the unauthorized changing of a consumer's long-distance telephone company. It is a problem that continues to harm consumers despite efforts at the Federal and State level to fight it. That is why we need to ensure the passage of the slamming legislation that I have introduced. The distinguished Senator from South Carolina, Senator HOLLINGS, who serves as the ranking member of the Senate Commerce Committee, joins me in cosponsoring this bill. I thank him for his invaluable assistance in developing this important piece of legislation to restore and safeguard consumer rights. I also thank the other cosponsors of this bill: Senators LOTT, SNOWE, REED, FRIST, BRYAN, DORGAN, JOHNSON, HARKIN, KERRY, INOUYE, ABRAHAM, BAUCUS, SMITH, and Bob SMITH, for joining me in this effort.

Mr. President, slamming isn't just persisting, it is increasing. Slamming complaints are the fastest growing category of complaints reported to the Federal Communications Commission, having more than tripled in numbers since 1994. Last year, 44,000 consumers filed slamming complaints with the FCC. That is a 175 percent increase from the 16,000 complaints the FCC received in 1996.

The extent of the slamming problem is even worse than indicated by the number of complaints filed at the FCC. According to the National Association of State Utility Consumer Advocates, slamming is now the most common consumer complaint received by many State consumer advocates. It has been estimated that as many as 1 million consumers are switched annually to a different long-distance telephone company without their consent. The severity of the slamming problem was exemplified just days ago by a new report that 4,800 residents of one small town in Washington State, about 70 percent of the town, were slammed at one time.

For several years, the FCC has attempted unsuccessfully to deter slamming, yet aggressive long-distance telemarketers continue to mislead consumers.

On April 21st, the Federal Communications Commission imposed a $5.7 million fine on a small long-distance company that had been slamming consumers for years. While this is by far the largest fine the FCC has ever levied for this offense, the FCC took action only after receiving over 1,400 complaints about this company over the course of 2 years, and by now the slammer has disappeared. This instance shows yet again that the FCC's current rules are completely ineffective in preventing slamming.

S. 1618 is a bill designed to stop slamming once and for all. This legislation establishes stringent antislamming safeguards as well as stringent civil and criminal penalties that will discourage this practice. It prescribes definitive procedures for carriers to follow when making carrier changes, provides a menu of remedies for consumers that have been slammed and gives Federal and State authorities the power to impose tough sanctions, including high fines and compensatory punitive damages.

Mr. President, these measures, in addition to those that the States may develop, will ensure that consumers are afforded adequate protection against slamming. In light of the seriousness and scope of the slamming problem, I urge my colleagues to support this legislation.

Mr. President, I ask unanimous consent that a letter from the AARP, along with a Monday, May 11 article in USA Today be printed in the RECORD.

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

AARP,
Washington, DC, May 11, 1998.

Hon. JOHN MCCAIN,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: The American Association of Retired Persons (AARP) commends you for introducing S. 1618, a bill to improve the protection of consumers against the unauthorized switching of long distance telephone service providers. According to the FCC, this practice known as ''slamming,'' is the fastest growing consumer complaint in telecommunications. We believe that the provisions in your bill to amend the Communications Act of 1934 to curtail ''slamming'' are good for consumers.

S. 1618 includes most of the elements necessary to close off loopholes in the existing law that make telephone subscribers vulnerable to fraudulent or deceptive practices. Key provisions would:

Define switching verification procedures—requiring the telecommunications carrier to receive a series of affirmations from the subscriber prior to verifying the switch;

Preclude the use of negative option marketing—ending this onerous practice of switching subscribers for failure to tell the carrier that they are not interested;

Require a detailed, written notice of change to subscriber—notify the subscriber in writing, within 15 days after the change, of the change, the date on which the change was effected and the name of the individual who authorized the change;

Award treble damages to wronged parties—providing the FCC with authority in resolving a complaint to increase the amount of the original award times three; and

Punish violating carriers with severe first and second offense fines—imposing fines of not less than $40,000 for the first offense and not less than $150,000 for each subsequent offense, a substantial deterrent to violating carriers.

AARP believes that, as competition develops throughout the telecommunications industry, all telephone carriers should be subject to provisions similar to these. We also believe that the issues attendant to the practice of ''cramming'' need to be addressed in the near future. We look forward to working with you toward that goal. In the meantime, the provisions of this bill move consumer protections in the right direction. The Association stands ready to work with you as you seek final passage of this important piece of legislation.

Sincerely,

HORACE B. DEETS,
Executive Director.

[From USA TODAY, May 11, 1998]

CALLERS FALL VICTIM TO TELCOM WAR

COMPLAINTS OF SLAMMING, PHONY CHARGES SKYROCKET

(By Steve Rosenbush)

NEW YORK.—Jean Franklin, a Salem, Ore., homemaker, was billed last year for several hundred dollars worth of adult-chat phone calls.

American Billing & Collection sent the invoices to her home, but the calls—which eventually totaled $1,100—were billed to a telephone number she and her husband, Kenneth, canceled years earlier when they moved.

She'd been ''crammed''—billed for a phone service she never bought.

''I was surprised, but I thought it was a mistake that could be easily corrected,'' Franklin says. Instead, American Billing, which declined to comment for this story, eventually turned the matter over to a collection agency.

Her credit report marred by reported bad debt, Franklin complained to the California attorney general's office and the Federal Trade Commission. Last month, regulators filed charges in U.S. District Court in Los Angeles accusing American Billing and two other phone companies of using deceptive and unfair practices to bill people for adult-chat services. But the bad debt is still on Franklin's record.

It's a tale from the trenches of the telecom wars, where millions of consumers like Franklin are suffering the collateral damage. Armies of companies have poured into the increasingly deregulated $200 billion U.S. market, overwhelming the limited resources of regulators with aggressive and sometimes illegal practices.

Desperate for a tactical advantage, other companies are rushing to market with innovative products and services that sometimes don't work. Make an evening phone call on a congested network, such as the one in Los Angeles, and seven times out of 100 it won't go through on the first attempt, says Bellcore, a telecommunications research company. AT&T says users of its directory assistance get the number they ask for only nine out of 10 times. Buy a prepaid calling card, and there's a good chance the call won't go through. Many of the basic services and products that people took for granted in the monopoly era simply don't work—or don't work well—today. Annual telephone-related complaints and inquiries have soared more than tenfold since 1990; the Federal Communications Commission logged 44,035 in 1997 alone.

''Here is the dark side of competition and choice,'' says FCC Chairman William Kennard. ''Sure, life was easier when they had no choice,'' Kennard says. ''But that is not what consumers want.''

Or is it?

Long-distance rates have fallen 60% since the 1984 dismantling of AT&T, and consumers can choose from hundreds of new carriers. ''But it was a lot easier to use the phone before they broke up AT&T. And I don't think you really save that much money now because companies charge you for other things,'' says Alan Kohn of Woodbridge, N.J., who was dismayed when he couldn't find a pay phone that accepted his calling card.

Statistics from phone companies, consumer advocates and state and federal regulators don't begin to capture the depth of consumer frustration with phone services.

HEADACHES EVERYWHERE

Directory assistance costs more, often requires a wait, and increasingly provides wrong numbers. The toll on callers is more than $50 million a year if just 5% of the 1.5 billion long-distance information calls are inaccurate. Not to mention the frustration of dealing with computer-generated voices instead of operators. Carriers like AT&T blame local phone companies that won't share their databases of names and phone numbers.

Prepaid calling cards, ''On the whole, they are worth it,'' says Dan Singhani, 45, a newsstand owner in Manhattan who uses them several times a week to call relatives in India and Hong Kong. ''But some cards don't work. . . . Or you are talking and the line is disconnected.''

Pay phone charges. Muriel Flore thought she was using her calling card when she stopped during an interstate trip to call her vet and check on her sick cat. She was stunned several weeks later when Oncor Communications billed her more than $12 for the five-minute call. Oncor agreed to cancel the bill after Flore complained to the FCC. The company did not return phone calls for this story.

Fragile phones. A micro-processor-driven telephone ruined by just a drop of water that seeps through the keypad.

''SLAMMED''

By far, the bulk of consumer complaints to the FCC are about slamming: switching a customer's long-distance service without permission. Last year, the FCC received more than 20,000 complaints. But the actual incidence of slamming is much higher. AT&T alone says 500,000 of its 80 million residential customers were slammed last year.

''I resented the fact that I had been changed without notice,'' says Jim Pringle of Pittsboro, N.C. ''But what I resented almost more was that somebody benefited from the lag between when it occurred and when I realized it.''

Ronald J. Carboni thinks a disgruntled neighbor, playing a prank, switched his phone service from Sprint to National Telephone & Communications. Carboni, 52, was charged $8.92, a fee National immediately dropped once notified of the problem. Records show someone had forged Carboni's name as ''Batboni.'' National never confirmed the order.

Lawmakers and regulators are cracking down, though slamming complaints represent only a fraction of the 50 million changes that consumers made in their long-distance service last year. Last month the FCC levied the biggest slamming fine in history, a $5.7 million penalty against the Fletcher Cos., run by a 30-year-old fugitive named Daniel Fletcher. The FCC has vowed to increase penalties and force companies to return money they collect from slamming victims. In California, a new law requires long-distance carriers to hire a third party to authenticate every request for service changes.

The phone companies are policing themselves, too. AT&T filed lawsuits in March against three independent sales agents it suspected of the problem. AT&T says agents who account for less than 5% of the company's consumer long-distance sales were responsible for about two-thirds of slamming complaints against AT&T.

BILLED AND BILKED

Scams are multiplying as deregulation spreads. Complaints of cramming—cases like that of Jean Franklin—are the newest twists, and they are soaring.

A host of small, independent companies are billing customers—sometimes on their local phone bills—for information services, such as horoscopes and sports scores, that they didn't order. Some people are billed at random; others are the victims of carelessness and error by carriers and billing companies.

The FCC has processed 1,123 complaints of cramming since it began tracking them last December. And last week, Bell Atlantic cracked down on cramming, in effect saying that it would no longer allow 20 smaller companies to place their charges on Bell Atlantic bills.

The company, which serves more than 41 million customers from Virginia to Maine, said it is receiving hundreds of complaints a day and that more than 80% are legitimate.

Floyd Brown's cramming case is typical. Brown, 76, of Carlsbad, Calif., said American billing charged his mother earlier this year for $44.55 worth of information services it said she had purchased over the phone. ''She had been dead for a year and a half,'' Brown says.

And Franklin and her husband are still struggling to resolve their dispute with the company. The bad debt remains on their credit reports, and shame has kept them from applying for loans to buy a new car and a new house. ''It's not going to be over until that item is removed from our credit report,'' Franklin says.

Mr. McCAIN. The AARP writes:

The American Association of Retired Persons (AARP) commends you for introducing S. 1618, a bill to improve the protection of consumers against the unauthorized switching of long distance telephone service providers. According to the FCC, this practice, known as ''slamming'' is the fastest growing consumer complaint in telecommunications. We believe that the provisions in your bill to amend the Communications Act of 1934 to curtail ''slamming'' are good for consumers.

* * * * *

AARP believes that, as competition develops throughout the telecommunications industry, all telephone carriers should be subject to provisions similar to these. We also believe that the issues attendant the practice of ''cramming'' need to be addressed in the near future. We look forward to working with you toward that goal. In the meantime, the provisions of this bill move consumer protections in the right direction. The Association stands ready to work with you as you seek final passage of this important piece of legislation.

Mr. President, yesterday there was an article in the USA Today which is included in the RECORD, and it says: ''Callers fall victim to telecom war, complaints of slamming, phony charges skyrocket.''

Jean Franklin, a Salem, Ore., homemaker, was billed last year for several hundred dollars worth of adult-chat phone calls.

American Billing & Collection sent the invoices to her home, but the calls—which eventually totaled $1,100—were billed to a telephone number she and her husband, Kenneth, canceled years earlier when they moved.

She'd been ''crammed''—billed for a phone service she never bought.

* * * * *

Long-distance rates have fallen 60% since the 1984 dismantling of AT&T, and consumers can choose from hundreds of new carriers. ''But it was a lot easier to use the phone before they broke up AT&T . . .,'' says Allan Kohn . . . who was dismayed when he couldn't find a pay phone that accepted his calling card.

Mr. President, by far the bulk of consumer complaints at the FCC are about slamming, switching consumers long-distance service without permission. And it goes on to talk about the 20,000 complaints.

AT&T alone says 500,000 of its 80 million residential customers were slammed last year.

''I resented the fact that I had been changed without notice,'' says Jim Pringle of Pittsboro, N.C. ''But what I resented almost more was that somebody benefited from the lag between when it occurred and when I realized it.''

Mr. President, I recognize on the floor Senator COLLINS who has been heavily involved in this issue. And after Senator DORGAN speaks, I think she will seek to address her amendment. But I want to thank her for her involvement in this issue, the hearings that she held in her subcommittee and the enormous contributions she has made in causing this bill to progress.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from North Dakota.

Mr. DORGAN. Mr. President, let me add my congratulations to Senator COLLINS on the work that she has done, and certainly to the Senator from Arizona, Senator MCCAIN, and Senator HOLLINGS. Senator HOLLINGS has asked me to be present for him. He is tending to other Senate business at the moment.

This is an important piece of legislation. We appreciate very much the bipartisan work that was done to bring it to the floor of the Senate.

I would like to just, for a couple of moments, give an overview of where we are and then bring it to this piece of legislation—and I will be rather brief—after which I will be interested in hearing from the Senator from Maine as well.

The breathtaking changes in telecommunications and in the telecommunications industry in recent years have been quite remarkable. No one could have anticipated what we would see in technology and in opportunities that exist from the changing technology.

I, in a speech some while ago, held up a vacuum tube, a small vacuum tube that we are all familiar with, and then I held up next to it a little computer

chip that was about one-half the size of my little fingernail, and I said, ''The little computer chip equals 5 million vacuum tubes.'' Sometimes we forget to equate what is happening in these little chips and in their power and in their capability, but it is really quite remarkable what has happened to speed, storage density, memory and all the other things that relate to these breakthroughs.

The CEO of one of the large companies, IBM as a matter of fact, in a report to the annual meeting that I had read, I guess, about 6 or 8 months ago, talked about the research they are doing in the area of storage density, which kind of relates to all this technology. And I was struck by what he said. He said we were on the verge of a breakthrough with respect to storage density, such that the time was near, he thought, when we would be able to store all of the volumes of work at the Library of Congress, which represents the largest volume of recorded human history anywhere on Earth—we would be able to store all of that, 14 million volumes of work, on a wafer the size of a penny.

Think of that—carrying around in your pocket to slip into a laptop a wafer the size of a penny that contains 14 million volumes of work. Unthinkable? No. It is where technology is heading.

In my little high school, where I graduated in a class of nine, we had a library the size of a coat closet. That high school now has access to the largest libraries in the world through the Internet. All of this is made possible by the breakthroughs in technology and the telecommunications industry and the development of the information superhighway. Many of us are very concerned, as public policy develops in all of these areas, that we make certain that the benefits of all of this are available to all Americans, that the on-ramps and off-ramps for the information superhighway, yes, stop even in my hometown, in my small county.

So as we develop legislation such as the Telecommunications Act, which Congress passed a couple years ago, and try to evaluate what kinds of policy guidance we can give as this industry grows, it is very important that we do this right.

I might say, as I begin, that I am concerned about universal service, about the availability of universal service—especially in telephone service—in the years ahead, in the high-cost areas and rural areas of our country. I hope very much that the Federal Communications Commission will make a U-turn with respect to some of the policy decisions they have made which I think threaten universal service in the future. There is still time for them to make some recalculations and some different policy judgments. I have met with Chairman Kennard and others, and I hope very much that they will make some different judgments than what we saw from the previous Chairman of the FCC, which I think will implement the Telecommunications Act, which is very detrimental to high-cost areas and rural areas of the country. We are going to debate that more in the months and years ahead.

Let me talk specifically about the telecommunications area that does work and works well. One of the areas that works and provides the fruits and benefits of competition to virtually every American is the competition in long-distance telephone service. This is an area—long-distance telephone service—in which there is robust, aggressive competition. Anywhere you look, you will find a telephone company engaged in selling long-distance service. If you don't think so, just sit down for dinner some night, and somebody will give you a cold call from an office somewhere in a State far away, and they will be trying to sell you their long-distance service. They apparently only dial at mealtime—at least into our home. But I think every American is familiar with these telephone calls—''Won't you take our long-distance service?'' As I indicated, up to 500 companies are robustly competing for the consumer dollar. What has happened to the cost of long-distance service? It has gone down, down, down. That represents the fruit and the benefit of good competition.

But one other thing has happened with respect to this competition. As is the case where there is robust competition, there are also some bad actors. In this case, ''bad actors'' means that people get involved in this business of trying to sell a long-distance service to a customer that already has a long-distance provider but decides they are going to sell it the shortcut way—they are not even going to ask the consumer whether they want to change providers. Through sleight of hand, they are going to engage in a technological stealing of sorts; they are going to switch someone's long-distance service and not tell them about it. That is, in fact, stealing; that is, in fact, a criminal act. One might ask, is that happening a lot? Yes, it is happening a lot.

Here is a story about the king of slammers. I was trying to evaluate where this word ''slammer'' came from. Frankly, nobody knows where the word ''slammer'' came from. But the definition of ''slammer,'' as it is used in this context, is someone who goes in and changes someone else's long-distance carrier without telling them and without authorization. It is stealing. It is criminal.

The king of slammers is Daniel Fletcher. Let me cite him as an example. The head of the FCC, William Kennard, said, ''This is truly a bad actor. He is a felon who clearly had intent to violate the FCC's rules, and we're hitting him hard.'' But not too hard, because they haven't found him. He changed a half-million people's long-distance carrier, and he, apparently, made $20 million. Is that stealing? Yes. Is that petty cash? No; that is grand theft. The fact is, that goes on across the country all too often.

Yesterday, Mr. President, on the floor, I held a clipping from the newspaper in North Dakota. It just so happened that, coincidentally, the North Dakota papers had a story that said that the North Dakota Attorney General had been the victim of slamming. Someone had decided to change the attorney general's long-distance carrier without asking her.

Now, am I suggesting that slammers are stupid? Well, not always. They certainly seem to steal a lot of money. But is it a stupid slammer that decides they are going to change the long-distance service of an attorney general of a State without telling them? Yes, that is pretty stupid. But this is not about being stupid or funny, it is about stealing. The hearings that were held by Senator COLLINS, and others, and the work done has been to respond to a very real problem that is significant.

Now, the FCC complaints about this slamming—the unauthorized change of a long-distance service—increased from 2,000 five years ago, to 20,000 last year. The FCC indicates that there is a substantial amount of slamming going on, evidenced by the complaints to the FCC. The GAO did a report that, in fact, was rather critical of the FCC's enforcement on these slamming issues, saying that the antislamming measures ''do little to protect the consumers from slamming.''

We have a problem; yet, we are not able to solve that problem with the regulatory agency, either because it is not doing what it ought to do, it doesn't exert enough energy, or perhaps it doesn't have enough authority. But whatever the reason—and it might be a combination of all of those reasons—this problem is not going away; it is growing much, much worse.

In 1997, with 20,000 complaints, the FCC obtained only 9 consent decrees from companies nationwide that paid a total of $1.2 million in fines because of slamming. In the same year, California, by comparison, suspended one firm for 3 years because of slamming, and fined it $2 million, and ordered it to repay another $2 million to its customers. One State, the State of California, did far more than the FCC. I hope that this piece of legislation we will pass will give the FCC the authority, energy, and resources to join us and do what we must do to respond to this slamming.

Now, let me read what the legislation does. It strengthens the antislamming laws and requires the FCC to establish the following consumer protections:

One, it prohibits a carrier from changing a local subscriber's long-distance service, unless the carrier follows the minimum verification procedures prescribed by the FCC—sets up specific procedures that must be followed.

Two, it requires carriers to keep an oral, written, or electronic record of a subscriber authorizing a change in their carrier.

Three, it requires a carrier to send a written notification to the consumer informing them of the changed service within 15 days of the change in service.

Four, it requires carriers to provide consumers with the information and procedures necessary to file a complaint at the FCC.

Five, it requires carriers to provide slammed customers with any evidence that authorized that change.

It allows the complaint process to impose stiff penalties, up to $150,000, and a range of other important issues that I think will give us much more enforcement against this slamming process and the slamming practice across the country.

Once again, let me conclude by saying that this is not some minor nuisance issue; this is an issue in which some have taken advantage of consumers who are the victims. It is true that the company that has been changed is also a victim, a company that was serving a customer and is now not serving the customer.

But the ultimate victim here are the consumers who only understand later after they have taken a look at a bill somewhere and discover they are the ones that have been victimized.

This bill also, incidentally, would prohibit some other practices that are deceptive. There are a whole range of practices that have allowed people or persuaded people to sign a coupon in exchange for having an opportunity or a chance to get something, or get a free door prize, or get some sort of free gift. So you sign this little coupon. On the bottom in tiny little script it tells you that despite the fact that you have never read it, you have just signed away and changed your long-distance carrier. That is cheating. Where I come from, and I think where all of us come from, when you cheat and steal, somebody ought to be after you to get you.

That is exactly what we want to have happen with respect to the enforcement against this kind of behavior and practice that is making victims of millions of Americans all across the country.

This one fellow took one-half million households, changed their long-distance carrier, got $20 million into an income stream into shell corporations that he set up, and now he is gone. What does this mean? It means that one-half million Americans were cheated. This fellow stole from not only the companies but especially the Americans who expected to have a long-distance service they had contracted for and discovered someone else changed it.

Let me again, as I began, say thank you to Senator COLLINS to Senator MCCAIN, and to Senator HOLLINGS and so many other. I am a cosponsor of this, as are a good number of our colleagues in the Senate, because it is good legislation and will do the right thing for consumers in this country.

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I thank Senator DORGAN for his kind remarks but also for his very clear and concise depiction of the issue that we are addressing. I think it is important that the record reflect the entirety of his remarks.

Mr. President, I ask unanimous consent that the pending committee amendments be agreed to and considered as original text for purpose of further amendments.

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

The committee amendments were agreed to.

Mr. MCCAIN. Mr. President, I yield the floor.

Mr. HOLLINGS. Mr. President, I rise today in support of legislation that is necessary to stem the tide of one of the most annoying anti-consumer practices, known as slamming. Slamming occurs when a preferred telecommunications service provider of the consumer is changed without the consent of the consumer. This legislation enhances the verification and other procedures that carriers must use to ensure that the consumer consents to the change in its service provider. It also enhances the enforcement authority of the FCC, the Department of Justice, and the State attorneys general and imposes greater penalties and fines to address the problem of slamming.

Slamming is not a new problem. Many consumers have been victims of slamming, suddenly discovering that their phone service is no longer being provided by their carrier of choice. Instead, it is being provided by an unauthorized carrier. We've all had the sales calls interrupt us at the dinner table. Regardless of what the FCC does, the problem persists.

In a recent USA TODAY article, the FCC said it received 12,000 consumer complaints about slamming during the first half of 1997. In 1996, it received more than 16,000 total slamming complaints. In its Fall 1996 Common Carrier Scorecard, the FCC stated that slamming was the top consumer complaint category handled by the Enforcement Division's Consumer Protection Branch. It also stated that slamming complaints were the fastest-growing category of complaints, increasing more than six-fold between 1993 and 1995. In its 1997 Common Carrier Scorecard, the FCC indicated that nine companies accused of slamming have entered into consent decrees and have agreed to make payments to the United States Treasury totaling $1,245,000. The FCC has also issued two Notices of Forfeitures with combined forfeiture penalties of $160,000. Nonetheless, slamming continues to be a significant problem.

The provisions we introduce today will hopefully stop this practice of slamming once and for all. The legislation places new responsibilities on carriers for the benefit of consumers. For example, often times, a consumer is slammed and does not know it until the next telephone bill arrives. Sometimes, unscrupulous carriers provide service to slammed customers for a considerable time before the customer becomes aware of the unauthorized switch. To prevent this, the legislation requires that whenever there is a change in the subscriber's carrier, the carrier must notify the subscriber of the change within 15 days. A carrier has 120 days to resolve a slamming complaint. If the carrier is unable to resolve the complaint within the required timeframe, then the carrier must notify the consumer of his or her right to file a complaint with the FCC. The FCC is required to resolve a slamming complaint it receives within 150 days.

The bill also requires a carrier to retain evidence of the consumer's authorization to switch carriers and to inform the consumer of their rights to pursue a resolution of the matter with the Federal Communications Commission and with State authorities. Requiring carriers to store information will make it easier to resolve slamming disputes that arise between the consumer and the carrier. Armed with information on how to resolve slamming disputes, we hope that consumers will pursue their available recourse and help us hold carriers accountable for their illegal actions.

In addition, the bill creates a variety of causes of actions and imposes still penalties on carriers. If a carrier violates FCC rules, the FCC can award the greater of actual damages or $500 and has the discretion to award treble damages. If there are no mitigating circumstances, the FCC is required to impose on the carrier a forfeiture of $40,000 or more for the first offense and not less than $150,000 for each subsequent offense. If a company fails to pay a forfeiture, the FCC can limit, deny, or revoke the company's operating authority. Where the slammer's actions have been willful, the Department of Justice can bring an action to impose fines in accordance with Title 18, United States Code and imprison the person who submits or executes a change in willful violation of Section 258. In addition, State attorneys general can bring actions in federal court to: impose criminal sanctions and penalties under Title 18 U.S. Code; recover actual damages or $500 in damages; and recover fines of $40,000 or more for first offenses and not less than $150,000 for subsequent offenses unless there are mitigating circumstances. Finally, this bill gives the FCC authority to pursue billing agents when they place charges on a consumers bill that they know the consumer has not authorized.

Slamming is a troublesome problem. Slamming eliminates a consumer's ability to chose his or her service provider. It distorts telecommunications markets by enabling companies engaged in misleading practices to increase their customer base, revenues,

and profitability through illegal means. Today hundreds of long distance carriers compete for a consumer's business. If slamming is not addressed effectively today, it could become much more worrisome. The changes in the telecommunications industry will probably result in a future in which local and long distance phone services are provided by an even greater number of carriers.

It is therefore important that we eliminate the practice of slamming. Consumers have the right to choose their own phone companies when they choose. A consumer's choice should not be curtailed by the illegal actions of bad industry actors and a consumer should not have to spend a significant amount of time addressing issues of slamming. I expect that requirements placed by this bill will help to eliminate slamming. My actions with respect to slamming reflect my continued efforts to protect consumers as I have in the past supported legislation which successfully addressed the problem of junk fax and ensure that companies engage in proper telemarketing practices.

I welcome my colleagues in joining Senator MCCAIN and I as we address the problem of slamming and ensure that no one is allowed to curtail a consumer's choice of phone service provider.

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. I yield such time to the Senator from Maine as she may consume.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I want to start by complimenting the chairman of the Commerce Committee for his outstanding leadership in dealing with a very important consumer issue, and that is telephone slamming.

I also want to commend the Senator from North Dakota for his very eloquent explanation of the problem and the solutions.

Mr. President, I rise to express my strong support for S. 1618, legislation that will provide America's consumers with much needed protection against a fraudulent practice known as slamming—the unauthorized switching of a customer's telephone service provider. I want to commend Senator MCCAIN and HOLLINGS for taking steps to attack this rapidly growing problem.

Telephone slamming is spreading like wildfire. In Maine, complaints increased by 100 percent from 1996 to 1997. Nationwide, slamming is the number one telephone-related complaint. While the FCC received more than 20,000 slamming complaints in 1997, a significant increase over the previous year, estimates from phone companies indicate that as many as one million people were slammed during that 12-month period.

Last fall, the Permanent Subcommittee on Investigations, which I chair, undertook an extensive investigation of this problem. At a field hearing this past February in Portland, Maine, at which I was joined by Senator DURBIN, one of the leaders in the fight against slamming, we heard from several consumers who were victimized by this practice. Their words reflect the public attitude toward the intentional slammer, as they described what happened to them as ''stealing,'' ''criminal,'' and ''break-in.''

My Subcommittee recently held a second hearing, which revealed that a number of what are known as switchless resellers were responsible for a large percentage of the intentional slamming incidents. These operations use deceptive marketing practices and outright fraud to switch consumers' long distance service without their consent.

One recent victim was a hospital in western Maine. This demonstrates that no one is immune from this despicable practice.

Mr. President, our hearings presented a case that dramatically shows the need for tougher sanctions to deal with this problem. I refer to an individual by the name of Daniel Fletcher, who fraudulently operated as a long distance reseller under at least eight different company names, slamming thousands of consumers, and billing them for at least $20 million in long distance charges. While we were struck by the ease with which Mr. Fletcher carried out his activities and evaded detection, we were shocked to learn about the absence of adequate criminal sanctions to deal with his activities.

Mr. Fletcher bilked America's telephone customers out of millions of dollars by charging them for services they did not authorize and obtaining from them money to which he was not entitled. Yet, we lack a statute that expressly makes intentional slamming a crime, and unless that is corrected, we can expect many more Fletchers. Mr. President, the time has come for the United States Congress to disconnect the telephone slammers.

Given our concern about this problem, Senator DURBIN and I introduced slamming legislation, and I want to thank Senators MCCAIN and HOLLINGS for agreeing to incorporate its three main provisions into a Manager's Amendment to their bill. These additions will help make a good bill even better.

The first of these provisions will get tough with the outright scam artists by establishing new criminal penalties for intentional slamming. I should emphasize that these penalties will apply only to those who know that they are acting without the customer's authorization and not to those who make an honest mistake or even act carelessly. It's time we sent the deliberate slammer to the slammer. In addition, anyone convicted of intentional slamming will be disqualified from being a telecommunications service provider, thereby enabling us not only to punish past conduct but also to prevent future violations.

The second provision is designed to remove the financial incentive for companies to engage in slamming by giving slammed customers the option to pay their original carrier at their previous rate. Under current law, it appears that customers are obligated to pay the slammer even after they discover they have been switched without their consent. That hardly acts as a deterrent, something that must be changed.

The third provision will improve enforcement by requiring all telecommunications carriers to report slamming violations on a quarterly basis to the FCC. To avoid putting a burden on the carriers, the report need only be summary in nature, but it will enable the FCC to identify and move against the frequent slammer.

Deregulation of the telephone industry may produce many benefits for consumers but it also has given rise to fraud where it did not previously exist. It was Congress who decided to deregulate the industry, and it is Congress that must act to stop this fraud. Senate bill 1618 will move us in that direction by putting a big dent in telephone slamming and by protecting the right of the American people to choose with whom they wish to do business.

Again, I very much appreciate the cooperation of the distinguished chairman of the Commerce Committee and his willingness to accept the Collins-Durbin amendments.

I thank the Senator, and I yield the floor.

Mr. MCCAIN. Mr. President, I thank Senator COLLINS again. We look forward to working with her on other issues that are as noncontroversial as these, as opposed to campaign finance reform which generated much more concern. But I seriously want to note the hard work that Senator COLLINS devoted in her subcommittee to this issue. It was very important. I thank the Senator.

AMENDMENT NO. 2389

(Purpose: To provide a substitute that incorporates the Committee amendments and additional changes in the bill as reported by the committee)

Mr. MCCAIN. Mr. President, I ask for the incorporation at this time of the managers' amendment to S. 1618. I ask unanimous consent that it be adopted.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. HOLLINGS, proposes an amendment numbered 2389.

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

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

(The amendment (No. 2389) is printed in today's RECORD under ''Amendments Submitted.'')

Mr. MCCAIN. Mr President, this amendment defines ''subscriber'' in a way that allows the person named on the billing statement or account, or

those authorized by such a person, to consent to carrier changes.

It clarifies that the time period the FCC prescribes for a carrier to resolve a slamming complaint, which is not to exceed 120 days, applies when a carrier receives notice directly from the subscriber of the complaint.

It makes clear that if a carrier does not resolve a complaint within the period prescribed by the Commission, it must notify the subscriber in writing of the subscriber's rights and remedies only under Section 258 of the Communications Act, not under any other law.

It clarifies that the FCC may dispose of a slamming complaint within the 150-day period established in the bill by issuing a ''decision or ruling.'' The FCC will not be required to issue a formal ''order'' each time it resolves a complaint. It also clarifies that the 150-day period in the bill is intended to be used by the FCC to determine if slamming has occurred, and if slamming has occurred, the FCC has another 90 days, if such additional time is necessary, to determine what damages and penalties should be assessed.

In discussing the amount of damages that may be awarded by the FCC, the original bill referred to the FCC as ''resolving a complaint.'' This change removes that language and the implication that ''resolving a complaint'' requires a finding of a violation of the slamming rules. It states that the FCC may award damages only if slamming has occurred.

It allows state Attorneys General to bring an action for each alleged slamming violation to enjoin unauthorized changes and to recover damages, to bring an action to seek criminal sanctions for willful violations, and to bring an action to seek a penalty of not less than $40,000 for the first slamming offense and not less than $150,000 for each subsequent offense. A court may reduce the amount of these penalties if it determines that there are mitigating circumstances involved. The district courts shall have exclusive jurisdiction over all of these actions.

It clarifies that states are not preempted from imposing more restrictive requirements, regulations, damages, and penalties on unauthorized changes in a subscriber's telephone exchange service or telephone toll service provider than are imposed under Section 258 of the Communication Act, as amended by this bill.

It clarifies that when the FCC is resolving slamming complaints, it is not instituting a ''civil action.'' In addition, while a particular slamming compliant involving a particular carrier is pending before the FCC, no state may institute a civil action against the same carrier for the same alleged violation.

It allows the FCC to use the fact of a carrier's nonpayment of a forfeiture for a slamming or billing violation as a basis for revoking, denying or limiting that carrier's operating authority.

It imposes duties on all billing agents, both those that are telecommunications carriers that render bills to consumers and those that operate as billing clearinghouses for carriers. It requires any billing agent that issues telephone bills to follow a certain format for the bill. The bill must list telecommunications services separately from other services and must identify the names of each provider and the services they have provided. Billing agents also must provide information to enable a consumer to contact a service provider about a billing dispute. This provision also prohibits billing agents from submitting charges for a consumer's bill if they know or should know that the consumer did not authorize such charges or if the charges are otherwise improper.

It given the Commission jurisdiction over billing agents that are not telecommunications carriers but provide billing services for such carriers or for other companies whose charges appear on telephone bills.

It instructs the FCC to include in the report required by Section 6 of the bill an examination of telemarketing and other solicitation practices, such as contests and sweepstakes, used by carriers to obtain carrier changes. The FCC also is required to study whether a third party should verify carrier changes and whether an independent third party should administer carrier changes. This provision will address concerns about the possibility of anti-competitive behavior by the local phone companies once they start to provide long-distance service. Enforcement of slamming rules will remain the responsibility of the FCC.

Mr. MCCAIN. Mr. President, I send, on behalf of Senator FEINGOLD, an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is the amendment to the substitute amendment?

Mr. MCCAIN. Mr. President, before asking for the reading of the amendment, I ask unanimous consent that the managers' amendment be considered as original text.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is agreed to.

The amendment (No. 2389) was agreed to.

AMENDMENT NO. 2390

(Purpose: To authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment)

Mr. MCCAIN. I ask now for consideration of the amendment by Senator FEINGOLD.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. FEINGOLD, proposes an amendment numbered 2390.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ___. ENFORCEMENT OF REGULATIONS REGARDING CITIZENS BAND RADIO EQUIPMENT.

Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding at the end the following:

''(f)(1) Except as provided in paragraph (2), a State or local government may enforce the following regulations of the Commission under this section:

''(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

''(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

''(2) Possession of a station license issued by the Commission pursuant to section 301 in any radio service for the operation at issue shall preclude action by a State or local government under this subsection.

''(3) The Commission shall provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

''(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government enforcing a regulation under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, acted outside the authority provided in this subsection.

''(B) A person shall submit an appeal on a decision of a State or local government to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government becomes final.

''(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

''(D) If the Commission determines under subparagraph (C) that a State or local government has acted outside its authority in enforcing a regulation, the Commission shall reverse the decision enforcing the regulation.

''(5) The enforcement of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

''(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.''.

Mr. MCCAIN. Mr. President, I have reviewed the amendment with Senator DORGAN, and it is acceptable on both sides. I encourage its adoption.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 2390) was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FEINGOLD. Mr. President, as we take up this important anti-slamming bill, which of course deals with consumer problems with telephone service,

I am pleased that the Senate has agreed to this amendment to provide a practical solution to the all too common problem of interference with residential home electronic equipment caused by unlawful use of citizens band [CB] radios. I want to thank the Chairman of the Committee, Senator MCCAIN, and the ranking member, Senator HOLLINGS, for agreeing to include this amendment in the slamming bill.

The problem of CB radio interference can be extremely distressing for residents who cannot have a telephone conversation, watch television, or listen to the radio without being interrupted by a neighbor's illegal use of a CB radio. Unfortunately, under the current law, those residents have little recourse. The amendment I offered today will provide those residents with a practical solution to this problem.

Up until recently, the FCC has enforced its rules outlining what equipment may or may not be used for CB radio transmissions, how long transmissions may be broadcast, what channels may be used, as well as many other technical requirements. FCC also investigated complaints that a CB radio enthusiast's transmissions interfered with a neighbor's use of home electronic and telephone equipment. FCC receives thousands of such complaints annually.

For the past 3 years, I have worked with constituents who have been bothered by persistent interference of nearby CB radio transmissions in some cases caused by unlawful use of radio equipment. In each case, the constituents have sought my help in securing an FCC investigation of the complaint. And in each case, the FCC indicated that due to a lack of resources, the Commission no longer investigates radio frequency interference complaints. Instead of investigation and enforcement, the FCC is able to provide only self-help information which the consumer may use to limit the interference on their own.

I suppose this situation is understandable given the rising number of complaints for things like slamming. The resources of the FCC are limited, and there is only so much they can do to address complaints of radio interference.

Nonetheless, this problem is extremely annoying and frustrating to those who experience it. In many cases, residents implement the self-help measures recommended by FCC such as installing filtering devices to prevent the unwanted interference, working with their telephone company, or attempting to work with the neighbor they believe is causing the interference. In many cases these self-help measures are effective.

However, in some cases filters and other technical solutions fail to solve the problem because the interference is caused by unlawful use of CB radio equipment such as unauthorized linear amplifiers.

Municipal residents, after being denied investigative or enforcement assistance from the FCC, frequently contact their city or town government and ask them to police the interference. However, the Communications Act of 1934 provides exclusive authority to the Federal Government for the regulation of radio, preempting municipal ordinances or State laws to regulate radio frequency interference caused by unlawful use of CB radio equipment. This has created an interesting dilemma for municipal governments. They can neither pass their own ordinances to control CB radio interference, nor can they rely on the agency with exclusive jurisdiction over interference to enforce the very Federal law which preempts them.

Let me give an example of the kind of frustrations people have experienced in attempting to deal with these problems. Shannon Ladwig, a resident of Beloit, WI has been fighting to end CB interference with her home electronic equipment that has been plaguing her family for over a year. Shannon worked within the existing system, asking for an FCC investigation, installing filtering equipment on her telephone, attempting to work with the neighbor causing the interference, and so on. Nothing has been effective.

Here are some of the annoyances Shannon has experienced. Her answering machine picks up calls for which there is no audible ring, and at times records ghost messages. Often, she cannot get a dial tone when she or her family members wish to place an outgoing call. During telephone conversations, the content of the nearby CB transmission can frequently be heard and on occasion, her phone conversations are inexplicably cut off. Ms. Ladwig's TV transmits audio from the CB transmission rather than the television program her family is watching. Shannon never knows if the TV program she taped with her VCR will actually record the intended program or whether it will contain profanity from a nearby CB radio conversation.

Shannon did everything she could to solve the problem and a year later she still feels like a prisoner in her home, unable to escape the broadcasting whims of a CB operator using illegal equipment with impunity. Shannon even went to her city council to demand action. The Beloit City Council responded by passing an ordinance allowing local law enforcement to enforce FCC regulations—an ordinance the council knows is preempted by Federal law. Last year, the Beloit City Council passed a resolution supporting legislation I introduced, S. 608, on which my amendment is modeled, which will allow at least part of that ordinance to stand.

The problems experienced by Beloit residents are by no means isolated incidents. I have received very similar complaints from at least 10 other Wisconsin communities in the last several years in which whole neighborhoods are experiencing persistent radio frequency interference. Since I have begun working on this issue, my staff has also been contacted by a number of other congressional offices who are also looking for a solution to the problem of radio frequency interference in their States or districts caused by unlawful CB use. The city of Grand Rapids, MI, in particular, has contacted me about this legislation because they face a persistent interference problem very similar to that in Beloit. In all, FCC receives more than 30,000 radio frequency interference complaints annually—most of which are caused by CB radios. Unfortunately, FCC no longer has the staff, resources, or the field capability to investigate these complaints and localities are blocked from exercising any jurisdiction to provide relief to their residents.

My amendment attempts to resolve this Catch-22, by allowing States and localities to enforce existing FCC regulations regarding authorized CB equipment and frequencies while maintaining exclusive Federal jurisdiction over the regulation of radio services. It is a commonsense solution to a very frustrating and real problem which cannot be addressed under existing law. Residents should not be held hostage to a Federal law which purports to protect them but which cannot be enforced.

Now this amendment is by no means a panacea for the problem of radio frequency interference. It is intended only to help localities solve the most egregious and persistent problems of interference—those caused by unauthorized use of CB radio equipment and frequencies. In cases where interference is caused by the legal and licensed operation of any radio service, residents will need to resolve the interference using FCC self-help measures that I mentioned earlier.

In many cases, interference can result from inadequate home electronic equipment immunity from radio frequency interference. Those problems can only be resolved by installing filtering equipment and by improving the manufacturing standards of home telecommunications equipment.

The electronic equipment manufacturing industry, represented by the Telecommunications Industry Association and the Electronics Industry Association, working with the Federal Communications Commission, has adopted voluntary standards to improve the immunity of telephones from interference. Those standards were adopted by the American National Standards Institute last year. Manufacturers of electronic equipment should be encouraged to adopt these new ANSI standards. Consumers have a right to expect that the telephones they purchase will operate as expected without excessive levels of interference from legal radio transmissions. Of course, Mr. President, these standards assume legal operation of radio equipment and cannot protect residents from interference from illegal operation of CB equipment.

This amendment also does not address interference caused by other

radio services, such as commercial stations or amateur stations. Mr. President, last year, I introduced S. 2025, a bill with intent similar to that of the amendment I am offering today. The American Radio Relay League [ARRL], an organization representing amateur radio operators, frequently referred to as ''ham'' operators, raised a number of concerns about that legislation. ARRL was concerned that while the bill was intended to cover only illegal use of CB equipment, FCC-licensed amateur radio operators might inadvertently be targeted and prosecuted by local law enforcement. ARRL also expressed concern that local law enforcement might not have the technical abilities to distinguish between ham stations and CB stations and might not be able to determine what CB equipment was FCC-authorized and what equipment is illegal.

I have worked with the ARRL and amateur operators from Wisconsin to address these concerns. As a result of those discussions, this amendment incorporates a number of provisions suggested by the league. First, the amendment makes clear that the limited enforcement authority provided to localities in no way diminishes or affects FCC's exclusive jurisdiction over the regulation of radio. Second, the amendment clarifies that possession of an FCC license to operate a radio service for the operation at issue, such as an amateur station, is a complete protection against any local law enforcement action authorized by this amendment. Amateur radio enthusiasts are not only individually licensed by FCC, unlike CB operators, but they also self-regulate. The ARRL is very involved in resolving interference concerns both among their own members and between ham operators and residents experiencing problems.

Third, the amendment also provides for an FCC appeal process by any radio operator who is adversely affected by a local law enforcement action under this amendment. FCC will make determinations as to whether the locality acted properly within the limited jurisdiction this legislation provides. The FCC will have the power to reverse the action of the locality if local law enforcement acted improperly. And fourth, my legislation requires FCC to provide States and localities with technical guidance on how to determine whether a CB operator is acting within the law.

Again, Mr. President, my amendment is narrowly targeted to resolve persistent interference with home electronic equipment caused by illegal CB operation. Under my amendment, localities cannot establish their own regulations on CB use. They may only enforce existing FCC regulations on authorized CB equipment and frequencies. This amendment will not resolve all interference problems and it is not intended to do so. Some interference problems need to continue to be addressed by the FCC, the telecommunications manufacturing industry, and radio service operators. This amendment merely provides localities with the tools they need to protect their residents while preserving FCC's exclusive regulatory jurisdiction over the regulation of radio services.

I am very pleased that this amendment has been accepted, and I hope it will become law along with the anti-slamming bill.

Mr. MCCAIN. Mr. President, we have, according to my understanding, an amendment by Senator FEINSTEIN, that Senator DORGAN has not had a chance to look at but I will ask that he review, which is acceptable. And I understand we have an amendment by Senator ROCKEFELLER. I do not believe that there are any other amendments that we need to consider because we have dispensed with, according to the unanimous consent agreement, the Collins-Durbin amendment. We have dispensed with the Reed amendment, the Levin amendments, Feingold amendment, and McCain amendment, a Hollings amendment, a Harkin amendment, which leaves us with the Rockefeller amendment after we dispense with the Feinstein amendment.

So I yield the floor.

Mr. DORGAN. Mr. President, I yield 10 minutes to the Senator from Rhode Island, Mr. REED.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. I thank the Chair.

I rise in strong support of S. 1618, the Consumer Anti-Slamming Act of 1998, and I particularly commend Chairman MCCAIN and ranking member HOLLINGS for the bipartisan and professional manner in which they have considered this legislation. I am pleased to have been part of this process, and I thank them very much for considering my suggestions to improve this legislation.

Last July 24, again with the assistance of Senators MCCAIN and HOLLINGS, I offered a sense-of-the-Senate resolution which outlined the issue involving slamming and proposed several suggested solutions. That resolution passed unanimously. Today, I support S. 1681 because it goes forward from that resolution to incorporate very pragmatic resolutions to the problem of slamming that is confronting so many consumers across this country.

I would also like to thank the National Association of Attorneys General as well as the National Association of Regulatory Utilities Commissioners for their assistance. These organizations and their members are fighting this epidemic of slamming at the State level. They are doing a remarkable job, and they were very helpful to me in preparing my legislation and helping me understand the scope of this problem.

We have taken great strides in our economy by deregulating many of our formerly regulated utilities, particularly the telephone companies, but all of that deregulation is for naught if we cannot give consumers real valid choice. And the problem with slamming is it denies consumers real choice. In effect, it tricks them into making choices that are not beneficial to them or collectively to our society and our economy. We have to do something about it.

I am very pleased that this legislation takes very pragmatic and effective steps to stop this curse of slamming, the illegal switching of telephone services. And this is an enormous problem throughout our economy. It threatens to rob many, many consumers of the benefits of deregulation and of a free market for services like telephone service. The Federal Communications Commission indicates that slamming is their No. 1 reported fraud. In my home State of Rhode Island, it is the top consumer issue in terms of telephone service and other consumer issues.

Yet all of these very impressive statistics may be just the tip of the iceberg, because press reports indicate that many, many more people are victims of slamming, but they do not have either the knowledge or the inclination under present rules and regulations to report these cases of slamming. Indeed, one regional telephone carrier estimated that 1 in 20 changes of telephone service is a result of fraud. Slamming is a multimillion-dollar fraud problem, and today, under the leadership of Senator MCCAIN and Senator HOLLINGS, we are addressing this problem head on.

One of the aspects of the issue is that there are numerous consumers who are unaware of the fact that they are victims. Forty-one percent of these individuals, of those who have been affected by slamming, do not report the incidents to regulatory authorities or anyone. When a complaint is logged, it is usually logged with a local telephone carrier; in my case, in upper Rhode Island, it is Bell Atlantic. Now, these local carriers do try to resolve the problem, but often they do not have the tools or the ability to do so, and as a result, the consumer is left a victim of the slammer.

When consumers do report these problems and try to take action, under the present regime it is usually a long and frustrating process to get any relief, if you get any relief at all.

Now, State attorneys general and public utility commissions throughout this country are annually receiving hundreds of thousands of complaints. More than half the State attorneys general have tried to take steps to go to court to bring to justice these slammers using the fraud laws of their State. Unfortunately, these legal actions are cumbersome, lengthy, and often do not really reach the heart of the matter and bring the culprits to justice.

A smaller percentage of victims of slamming will seek relief not at the State level but they will go to the Federal Communications Commission. Last year, 44,000 individuals brought slamming complaints to the FCC. That is a 175 percent increase over complaints in 1996. You can see this is an

epidemic that needs to be dealt with decisively, and I am pleased that we are doing that.

Now, the FCC does investigate these complaints, but they are hampered by a lack of proof concerning slamming. They are hampered by not having the kind of record that is necessary to prove definitively that an individual has been a victim of slamming. This legislation goes a long way to ensure that all of our regulatory authorities at every level of Government have the tools to ensure that they can root out slamming in our economy.

First, this legislation places a more stringent requirement on phone companies before they can switch a consumer's service. The bill requires verification that the consumer, first, understands service will be changed; second, the consumer affirms his or her intent to change service and also indicates that he or she is authorized to switch service.

We have heard lots of evidence of phone companies—slammers, really—calling up, finding a 12- or 13-year-old child in the house, and talking to that child and using that as what they claim is appropriate authorization to switch service. Under this legislation, those types of practices will not be allowed. Also, the legislation requires that the entire verification process must be recorded and also provided to the consumer upon request, so that if it is a 12-year-old in the house that is giving the OK to switch, the parent can quickly determine that from the recorded record and make a correction.

Now, the other protection that is provided here is that the bill requires that carriers inform a consumer in clear and unambiguous language within 15 days that a switch has been authorized. Many times, consumers do not realize their phone service has been switched until they get, 30 days later, a bill from a company that they have never heard of claiming that they are now their primary telephone carrier.

Now, this whole verification process will go a very long way in preventing the abuses that we have seen. No longer can slammers use ambiguous or fraudulent verification scripts, essentially tricking consumers into agreeing. Additionally, slammers can't go ahead and conjure up and splice together different bits of pieces of an authorization or conversation to say, ''That is the proof you agreed to switch your service.'' Because of the requirement for a recorded record, that will not be possible.

This bill clearly says and makes as a clear standard that without proper verification, without a record, the carrier is in violation of law if they switch services and there cannot be any more assertions by these carriers that, ''Well, someone told us it was OK in the house, but we don't have the record. Someone authorized it, but we don't know who it was.'' They are now in a position where they have to show clearly that they have the verification.

Also, this legislation provides for avenues of redress for consumers. First, the consumer can take the issue up with the unauthorized carrier, and they are required to respond appropriately, within at least 4 months, in terms of justifying the switch or making some type of amends to the consumer. Second, a slamming victim can take their case to the Federal Communications Commission. Now, the FCC has additional authority to fine and to penalize slamming. Finally, a consumer who is frustrated can, once again, take his petition under State law to State commissions. Indeed, one aspect of the legislation that is very positive is, there is no preemption of State laws. We recognize that attorneys general and utility commissioners can and must have the ability to work hand and hand with the Federal Government to root out this problem of slamming.

Altogether, this is very important legislation that provides the necessary consumer protections, that makes the goal and objective of deregulation in a market where consumers choose a reality, and puts up strong barriers against those who would trick consumers and rob them of the choice that deregulation offers, the choice of the best service for them, their free choice.

Once again, let me commend Chairman MCCAIN and ranking member HOLLINGS for their work on this. I am hopeful that we can move expeditiously to passage and that this bill will shortly be law and we can protect the American consumer against slamming.

I yield my time.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I yield myself 1 minute.

Senator HOLLINGS and I incorporated an amendment in the managers' amendment on behalf of Senator SNOWE.

This amendment prevents the FCC from taking any actions that would jeopardize the current ability of consumers to ''freeze'' their long-distance carrier in place. Once the consumer elects to use a freeze, the long-distance carrier of choice can only be changed by the express authorization of the consumer to the local phone company.

Long-distance carriers are concerned about how this amendment might affect their marketing efforts. But reports now show that two consumers are slammed every minute. Given the severity of the slamming problem, the interest we have in preserving safeguards that will project consumers against any unauthorized carrier changes certainly overrides any concerns the industry may have about their marketing efforts.

I thank Senator SNOWE for her amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 2391

(Purpose: To modify the exception to the prohibition on the interception of wire, oral or electronic communications to require that all parties to communications with health insurance providers consent to their interception)

Mr. DORGAN. Mr. President, on behalf of Senator FEINSTEIN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for Mrs. FEINSTEIN proposes an amendment numbered 2391.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATION OF EXCEPTION TO PROHIBITION ON INTERCEPTION OF COMMUNICATIONS.

(a) MODIFICATION.—Section 2511(2)(d) of title 18, United States Code, is amended by adding at the end the following: ''Notwithstanding the previous sentence, it shall not be unlawful under this chapter for a person not acting under the color of law to intercept a wire, oral, or electronic communication between a health insurance issuer or health plan and a subscriber of such issuer or plan, or between a health care provider and a patient, only if all of the parties to the communication have given prior express consent to such interception. For purposes of the preceding sentence, the term 'health insurance issuer' has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), the term 'health plan' means a group health plan, as defined in such section of such Act, an individual or self-insured health plan, the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.), the State children's health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.), and the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, and the term 'health care provider' means a physician or other health care professional.''.

(b) RECORDING AND MONITORING OF COMMUNICATIONS WITH HEALTH INSURERS.—

(1) COMMUNICATION WITHOUT RECORDING OR MONITORING.—Notwithstanding any other provision of law, a health insurance issuer, health plan, or health care provider that notifies any customer of its intent to record or monitor any communication with such customer shall provide the customer the option to conduct the communication without being recorded or monitored by the health insurance issuer, health plan, or health care provider.

(2) DEFINITIONS.—In this subsection:

(A) HEALTH CARE PROVIDER.—The term ''health care provider'' means a physician or other health care professional.

(B) HEALTH INSURANCE ISSUER.—The term ''health insurance issuer'' has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b).

(C) HEALTH PLAN.—The term ''health plan'' means—

(i) a group health plan, as defined in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b);

(ii) an individual or self-insured health plan;

(iii) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(iv) the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.);

(v) the State children's health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.); and

(vi) the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, United States Code.

Mrs. FEINSTEIN. Mr. President, I offer a very simple amendment to S. 1618 that will protect the critical area of consumer health care privacy. This amendment provides that in communications with health care insurers or providers, patients have the right not to have their confidential conversations recorded or monitored.

This amendment fills a loophole in existing law. Federal law currently provides that at least one party must consent to the taping or monitoring of a private conversation. The federal law allows states to provide even more stringent restrictions, and require that all parties to a conversation must consent to their taping or monitoring.

However, this law provides no protection to patients against unauthorized taping or monitoring. Even when, as in my State of California, the state law requires all parties to consent for taping or monitoring, the law fails to protect them. Patients are construed to consent to taping or monitoring, whether they expressly consent or not, if they are informed of the taping or monitoring. This is most often accomplished by a recording at the beginning of the telephone call. If patients refuse to have their calls monitored, they are told to simply take their business elsewhere. But there is nowhere else to go.

The confidentiality of details about our health is one of the most sensitive topics imaginable. Physician-patient confidentiality is a bedrock principle that goes back literally thousands of years.

Not only is this an ethical issue, it is a health imperative. In fact, it can be a matter of life and death. Anything less than full confidentiality compromises the willingness of patients to provide the full information that treating physicians need to treat them properly. It can literally jeopardize their health and their life.

We naturally assume that intimate details that we share with our doctor and health care professionals are strictly confidential. But they are not. Today, any communication we have with a health care professional may be taped and monitored.

This problem is exacerbated by the rising role of health insurance companies in treatment. Oftentimes, it is a health insurance company, rather than a trusted doctor, with whom the patient must share intimate personal health details. That health insurance company may not have the same ethical and legal confidentiality obligations as the patient's treating physician.

When my office contacted the top 100 health insurance providers in this country, we learned that most health insurance companies who responded tape or monitor calls from patients.

I want to share briefly some of the responses we received. Kaiser Permanente is a health insurance provider that operates in 19 states and the District of Columbia, and provides care to more than 9 million members. Its practices vary from state to state, depending on applicable state laws.

Among other things, Kaiser Permanente may: Monitor randomly selected calls, in which case it may or may not notify patients in advance; or tape record all or randomly selected calls, in which case it may or may not notify patients in advance.

United HealthCare wrote that they did not believe that recording or monitoring calls presented a privacy issue. Their rationale was that they only randomly record calls and only after advising the caller that the call may be recorded.

Great-West responded that a patient has the option of communicating in writing if the patient does not want to be recorded. Well, let me say simply—that's not good enough for me.

Despite the two-party consent rule in my own State of California, NYL Care Health Plans, Inc., responded that no violation of California law occurs in the absence of a ''confidential communication.'' Under California law, the definition of a ''confidential communication'' does not include communications where the parties may reasonably expect that the call may be recorded. NYL Care asserted that, since patients were told that their call could be monitored, their calls were not confidential calls.

In my view, NYL Care's interpretation of ''confidentiality'' turns its commonly understood meaning on its head. In fact, I doubt whether any of my colleagues would agree that communications about one's own health problems are not confidential.

Finger Lakes Blue Cross-Blue Shield of Upstate New York randomly tapes records calls from patients and is in the process of implementing a front-end message to patients.

In the case of Blue Cross Blue Shield of the National Capital Area, a patient receives no notice that the call may be monitored. Their Associate General Counsel stated that in both Maryland and the District of Columbia, no consent was required.

Not only is unauthorized taping or monitoring of telephone calls just plain wrong, it is simply unnecessary. None of the health insurers who responded to my office could provide a valid reason for monitoring or taping incoming calls from patients.

The standard response I received from health insurers was that they monitored or tape recorded calls for ''quality control.'' Yet no one could explain how the health insurer's record of the information discussed protects the patient. It's easy to see, I think, how the industry's practice leaves the patient disadvantaged.

My amendment is simple. First, it requires express consent from patients in order to be taped or monitored by health insurance companies or health care providers.

Second, it requires health insurance companies or health care providers to give patients the option not to be taped or monitored.

Third, it applies only to health insurance companies or health care providers. It does not affect the remaining companies that tape or monitor customer communications.

Mr. President, this amendment simply ensures a basic right that most patients believe they already enjoy. I urge its adoption.

Mr. DORGAN. Mr. President, my understanding is the amendment has been cleared on both sides. I urge the amendment be agreed to.

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

The amendment (No. 2391) was agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DORGAN. I yield 5 minutes to the Senator from Illinois, Senator DURBIN.

Mr. DURBIN. I thank the Senator from North Dakota. I thank my colleague, the Senator from Arizona, for cosponsoring this bill with Senator HOLLINGS.

A little over a year ago, I received a letter in my Senatorial office in Illinois from a young woman who owned a business right outside the City of Chicago. She told a story of having her long-distance carrier changed without her permission, how it ended up costing her over $1,000, and she came to learn there was virtually nothing she could do about it. The recourse under the law currently available was not practical—that she would somehow hire an attorney and go to Federal court over $1,000. That wasn't going to happen. She asked me what could we do about it, so I prepared a piece of legislation, and a large part of it has been incorporated in this good bill, and I am happy to support this bill.

Since then, I have come to learn that hers was not an isolated example. Any group of people you talk to, regardless of their walk of life, who have a telephone at home, will generally tell you that they know somebody or they personally have been victims of slamming. How do they end up having their long-distance carrier changed? Some of them might have been unsuspecting. They went to a carnival or county fair or neighborhood picnic, and they had a little thing handed to them. It said, ''Win a free trip to Hawaii. Fill in your name and address and check the box in

the bottom.'' They didn't flip it over to see the other side that said, ''You just changed your long-distance carrier.''

It would happen time and time again. Folks would get these interminable telephone calls at night saying, ''Would you consider moving to this new service?'' They say, ''No, no, there is no way.'' It turns out they were being taped. People were splicing together the tapes. When it was all said and done, they took the spliced tapes, and said the person said ''yes'' when they asked about the long-distance service, but the person said ''yes'' when they asked about the name.

It turns out a lot of people were being defrauded, and it cost a lot of money, not just for the lady who came to see me and her business, but many others. This is theft. This is stealing. This is not gaming we are dealing with here; it is a situation where a lot of people are making money without the permission of those whose long-distance service is being changed.

I went up to the State of Maine with my colleague, Senator COLLINS, who spoke earlier on the floor, for a hearing on the subject and found it was literally a national problem. From the coast of Maine to California and everything in between, people were going through this and we didn't have the laws in place to protect the consumers. That is why this bill is so important—because this bill finally gives to the consumer an opportunity to say to the person who is slamming them, ''You are not going to get away with it.''

One of the amendments which Senator MCCAIN was nice enough to adopt and make part of the bill was offered by Senator COLLINS and myself. It said you will never be charged more than what your original long distance carrier would have charged you. So if somebody comes along and doubles your rate without your permission, you still don't have to pay anything more than what was in the original rate structure with your original long-distance carrier. I think that makes sense. I think it is only fair.

The other amendment which we pushed for, the second amendment, creates criminal penalties which are necessary for the most egregious slammers. These are not little companies with little ideas; these are devious groups with a network of information which are trying to set up a network of people across the United States who will be changed to their long-distance service just long enough for them to make some money.

You should have seen the hearing that Senator COLLINS had before the Government Affairs Committee, where she presented a bill from one of these companies to the Chairman of the Federal Communications Commission. She posted it up on the board, and she said to the Chairman: ''Take a look at this long-distance bill from a slamming company and tell me one thing. What is the name of the company?''

The Chairman took a look at it, and he said, ''I don't see any name of the company up there.'' You know what? The name of the company was Long Distance Charges. So, when you are going through your telephone bill and you are looking at your local carrier who sent it to you, and you get to a page which reads ''Long Distance Charges,'' it never dawns on you that you are no longer receiving long-distance service from your old carrier. You have a new carrier called Long Distance Charges, and you didn't notice that your long-distance bill just went up. That is the kind of chicanery and trickery these people are guilty of. They make millions of dollars at it. As a consequence, we have to treat them with the criminal penalty which is included in this bill.

I want to make an additional point about the criminal penalties amendment. Creating a criminal statute for slamming in no way lessens the applicability of existing laws such as wire fraud or mail fraud that can help combat slamming, too. Rather, this criminal statute for slamming will make it easier for prosecutors, because it applies specifically to this crime.

Finally, a third amendment agreed to by Senator MCCAIN will require telecommunications carriers to report the number of slamming complaints they receive about each company to the FCC. We know the incidence of slamming is on the rise. We have no way of tracking them. This will establish it. Slamming has already caused telephone customers to become angry and disillusioned with the entire telecommunications industry. These consumers have voiced their concerns to their local phone companies, to their State regulatory bodies, to the FCC. But they feel their complaints have not been heard.

With this legislation, we can begin to restore confidence in the industry and assure consumers that the deceptive practice of slamming will be stopped. Long-distance telephone consumers should be able to stand up for themselves and fight back against slammers, to let them know their actions will not pay.

You have heard, during the course of this debate, lengthy statistics about the nature of the problem. I will not repeat them, only to tell you that it is a serious problem addressed in a serious way by this legislation.

In closing, one small footnote: The outrage of slamming has now been replaced in complaints to my office by the outrage of cramming. It turns out in the lengthy telephone bill you received there may be an item which looks innocent enough for two or three dollars for something you never ordered. Who is going to go through the telephone bill and analyze every line? But unless you do, you may find yourself in a predicament where they are cramming in charges you never asked for.

You are paying three bucks a month every month of the year for something you didn't ask for. How are you going to find it? You have to take the time to read through it. We want to make sure we address that abuse as well.

Today, though, we are addressing in a responsible way a very serious problem that affects consumers across America. I salute Senator MCCAIN, as well as Senator HOLLINGS, who have joined me in this effort through investigations, as well as in preparation of amendments to this very good bill. I am happy to support it. I yield back the remainder of my time.

Mr. CAMPBELL. Mr. President, today I want to express my support for the Consumer Anti-Slamming Act, S. 1618, which addresses the unauthorized switching of telephone service carriers by competing service providers. This abusive practice has become an increasing problem in my home state of Colorado where slamming has grown at an alarming rate. Last October, Chairman BURNS of the Communications Subcommittee of the Commerce, Science, and Transportation Committee held a field hearing in Denver on this issue. In addition to this hearing, anti-slamming legislation has recently passed the Colorado State Legislature. With Colorado as one of the nation's top five states in complaints-per-million customers, I intend to vote for this anti-slamming legislation.

I also am pleased that S. 1618 incorporates provisions from my Anti-Slamming Bill, S. 1051 which I introduced on July 22, 1997. This language requires that the FCC annually report to Congress the ''Top Ten'' slammers for each year, as well as carriers assessed fines or penalties during the same period. The ''Top Ten'' list identifies those carriers subject to the highest number of subscriber slamming complaints compared to the total number of subscribers they serve. This ratio approach ensures that large companies are not automatically singled out by virtue of having a large customer base. The focus of my ''Top Ten'' amendment is on those companies with the highest percentage of slamming complaints relative to their total customer base.

This ''Top Ten'' list will give Congress an annual opportunity to review and publicly comment on this serious problem known as ''slamming''. I am convinced that this approach coupled with the language in S. 1618, will prove valuable in deterring carriers from engaging in illegal tactics.

Ms. SNOWE. Mr. President, I rise today to speak in favor of the legislation now before the Senate—S. 1618, the Consumer Anti-Slamming Act—and to urge for its adoption and enactment.

This legislation—which was crafted by the distinguished Chairman of the Commerce Committee, JOHN MCCAIN, and the Ranking Member of the Committee, ERNEST HOLLINGS—will help eliminate a reprehensible practice of unscrupulous telephone companies, and I congratulate them for their leadership on this issue. As a member of the Senate Commerce Committee, I am pleased that my friend and colleague,

Chairman MCCAIN, has moved rapidly to address the slamming epidemic that is occurring in Maine by bringing this legislation to the floor of the Senate.

In addition, I would also like to thank my colleague from Maine, Senator COLLINS, for highlighting this issue by holding oversight hearings in her capacity as Chair of the Governmental Affairs Subcommittee on Permanent Investigations, including a recent hearing in the State of Maine—and she has also offered legislation that is designed to combat slamming. In case there is any doubt about the importance of this issue in Maine, the involvement of both Senators should put that to rest!

Mr. President, as many of my colleagues are aware, ''slamming'' is a term that has been used to describe any practice that changes a consumer's long-distance carrier without the consumer's knowledge or consent. A variety of tactics and techniques can be used to accomplish this goal, including vague or inaccurate phone solicitations; unsolicited ''welcome packages'' that look like an advertisement but automatically lead to a consumer changing phone companies unless the individual returns a rejection card; and ''drawings'' for giveaways that also serve as a means of unwittingly changing services.

Regardless of the tactic used to slam a customer, the bottom line is that it's an unfair and illegal practice—and it's one that must be brought to a halt.

Mr. President, phone customers expect high-quality phone service for a fair price. If a phone company is going to ''reach out and touch someone,'' it must be done legally and with fairness to the customer. Consumers who are slammed often receive lower-quality service or higher rates, and sometimes they are not even aware that they have been slammed until they get their bills. This is an outrageous practice and I think we can all agree that its demise is long overdue.

Last year, in my home state of Maine, the number of slamming complaints doubled to a total of 1,000 between 1996 and 1997. Nationwide, more than 20,000 consumers filed slamming complaints with the FCC, the largest category of complaints the agency received. In 1996, it received more than 16,000 total slamming complaints. As a result of these complaints, the FCC has taken enforcement action against 15 companies for slamming violations over the past two years, while assessing more than $1 million in forfeitures and consent decrees with another $500,000 in additional penalties pending.

Mr. President, as these numbers clearly indicate, this is a serious problem that is only going to get worse. In particular, the threat exists that—as competition develops in other communications markets—slamming could extend into new services and become an even more onerous consumer problem if it is left unchecked.

As has been indicated, the Federal Communications Commission (FCC) already has the authority to combat this practice by assessing fines against telephone carriers that slam. But with a 25 percent increase in the number of slamming complaints that were filed in just the past year—and even with the level of fines and penalties that have already been imposed on companies—it is obvious that the FCC's current approach is not working. And it is for this reason that the legislation before this body is so critical.

Mr. President, S. 1618 will put this reprehensible practice to an end by providing definitive procedures for telephone companies to follow in changing a customers's telephone service; giving federal and non-federal authorities the power to impose tough sanctions on companies that are guilty of slamming; and providing measures to ensure that slamming victims are fully-compensated.

Specifically, to ensure that changes in phone service are made in a verifiable manner, the bill requires phone companies to obtain written, verbal, or electronic verification from a consumer who is changing providers.

To ensure that customer complaints are dealt with in a timely manner, carriers accused of slamming will be required to defend their actions in no more than 120 days, and the FCC will have no more than 150 days to resolve any outstanding disputes.

If slamming has occurred, the bill gives the FCC the authority to provide compensatory or punitive damages to consumers that companies would be required to pay within 90 days. In addition, provide a strong disincentive to potential slammers, the FCC would be required to impose fines on phone companies that are guilty of slamming of at least $40,000 for a first-time offense and $150,000 for repeat offenses. And If a company refuses to pay these fines, the bill provides that the FCC will also have the authority to prosecute slammers.

Finally, if a consumer wishes to pursue redress through means other than the FCC, this bill allows consumers to pursue their grievances in court through state class-action lawsuits instead of through the FCC. And in the event a specific state does not believe these penalties are strong enough, the bill specifically retains the rights of each state to impose stiffer sanctions.

This bill and the provisions it contains are based on common sense and good policy, and I urge my colleagues to join me in supporting it.

Mr. President, while this bill is a very sound approach to addressing the slamming epidemic, there is one additional technique that consumers already have at their disposal to prevent slamming from occurring, and I believe we should seek to fully-protect this consumer option in this bill.

Specifically, if customers are concerned that they will be unwittingly tricked—or unknowingly forced—into changing their phone company, they can now ''freeze'' into place the long distance carrier of their choice at the local phone company. As a result, no order to change phone companies can be completed without the express, direct authorization of the customer to the local phone company.

To ensure that this option is in no way impeded in the future, I have prepared an amendment that would ensure that no subsequent action by the FCC can be undertaken to restrict or impede the customer's ability to ''freeze'' in place the carrier of their choice. I understand that this amendment is acceptable to the manager's of the bill, and has now been included in the manager's amendment. Therefore, I would like to thank the Chairman and Ranking member for addressing this issue and accepting my provision.

Mr. President, the bottom line is, slamming is a serious crime, and this is a serious solution. Companies engaged in slamming will no longer be able to hide behind the anonymity of the phone lines. Phone companies and their customers should reach agreements on phone services, but slamming destroys that relationship. Therefore, this bill will restore an element of trust that has been lost through this abhorrent practice.

Mr. President, slamming is nothing less than high-tech extortion, and the law must be changed to deal with this new criminal threat, and I hope my colleagues will join me in supporting this important legislation.

Mr. HARKIN. Mr. President, every year thousands of Americans are victimized by fraudulent telemarketing promotions. And, unfortunately, these scam artists prey most often on our senior citizens. The losses every year are estimated to be in the billions of dollars. My amendment will help law enforcement to more effectively combat these abuses.

Today, its all too easy for telemarketing rip-off artists to profit from the current system. How do these rip-offs occur? Advertisements regarding sweepstakes, contests, loans, credit reports and other promotions appear in newspapers, magazines, and other direct mail and telephone solicitations. The operators of many of these phoney promotions set up a telephone boiler room for a few months in which a number of phones are operated to receive calls responding to their ads. They steal thousands—even millions—of dollars from innocent victims and then they simply disappear. They take the money and run—moving on to another location to start all over again.

Here's just one example. Not too long ago, 30,000 Iowans received postcards from an organization calling itself Sweepstakes International, Inc. The postcard enticed recipients to call a 900-number and they were charged $9.95 on their phone bill.

Based on a Postal Service investigation, civil action was initiated in U.S. District Court in Iowa. As a result, the promotion was halted and $1.7 million was frozen. This represented just one

and a half month's revenue from the scam!

My amendment will protect telemarketing victims by providing law enforcement the authority to more quickly obtain the name, address, and physical location of businesses suspected of telemarketing fraud. Phone companies would have to provide law enforcement officials only the name, address and physical location of a telemarketing business holding a phone number if the officials submitted a formal written request for this information relevant to a legitimate law enforcement investigation. It will make it easier for officers to identify and locate these operations. This is similar to the procedure that is already in place for post office box investigations.

Mr. President, it is necessary to crack down on serious consumer fraud. With this change, we will have many more successful efforts to shut down these rip-offs artists like several recent cases in my home state of Iowa.

Mr. FEINGOLD. Mr. President, today I rise to speak in support of the anti-slamming bill, S. 1618. I want to commend Senator MCCAIN, Senator HOLLINGS, and the rest of the Commerce Committee for bringing this bill to the floor, and I am proud to be a cosponsor of the bill.

Slamming is an important and widespread consumer problem, and it is high time that the Congress takes action to stop it. Slamming, as most people now know, is a practice carried out by some telecommunications companies to switch a consumer's long distance or local exchange carrier without the consumer's knowledge or consent. Only a few years ago this practice, while persistent and frustrating for some consumers, appeared limited in scope. However, in more recent years this type of consumer fraud appears to have grown into a common profit-making scheme of some telecommunications companies carried out at the consumer's expense.

The rise in slamming complaints has been absolutely astonishing. The Federal Communications Commission reports that the 11,000 slamming complaints they received in 1995 represented a sixfold increase in the number of complaints received in 1993. By 1996, slamming complaints rose by an additional 42 percent over 1995, with the FCC receiving more than 16,000 complaints. And in 1997, the FCC received 44,000 complaints from consumers, nearly triple the 1996 total.

But these numbers only begin to tell the story. In Wisconsin, slamming is the number one telecommunications complaint, and telecommunications is the single largest category of consumer complaints that the Wisconsin Department of Agriculture, Trade and Consumer Protection received last year. That agency reports that slamming complaints were up 400 percent in 1997. The National Association of State Utility Consumer Advocates estimates that as many as one million consumers each year have their long distance carrier or local provider switched without consent.

In September of 1997, the National Consumers League polled telecommunications consumers in Milwaukee, Wisconsin, Chicago, Illinois, and Detroit/Grand Rapids, Michigan. The poll showed that of the 1500 individuals surveyed, three out of 10 reported that they, or someone they know, had been slammed. In Milwaukee, of those who said they had experience with slamming, 41% said their own telephone carrier had been changed without their consent. Even more disturbing, the survey provided evidence that slammers appear to be targeting consumers who have high long distance bills, raising privacy concerns regarding billing information.

Mr. President, this is consumer fraud of monstrous proportions. It causes extra cost and inconvenience to consumers, and it also distorts telecommunications markets and discourages legitimate competitive practices. The prevalence of slamming and the lack of any strong disincentives against it rewards companies that use this fraudulent practice and penalizes those that seek new customers through legitimate and honest means.

The 1996 Telecommunications Act recognized the slamming problem and broadened the scope of FCC's regulatory authority over slamming to cover all telecommunications carriers rather than just long distance service providers. The Act also provided that a carrier that violates the FCC's verification requirements is liable to the customer's original carrier for all charges paid by the customer after he or she had been slammed.

The FCC now has rules prohibiting slamming and requires companies to verify the customer's authorization of any switch in carriers, but these rules obviously haven't done the trick. For one thing, the penalties for slamming just aren't tough enough. While the FCC has taken enforcement action against a number of telecommunications companies, the tremendous profit opportunities from slamming overwhelm the threat of FCC enforcement.

The Consumer Anti-Slamming Act should be an effective antidote to this problem. It establishes minimum verification requirements for submitting changes in local or long distance telephone service. The requirements apply when service is first requested as well. The bill also bans so-called ''negative option'' marketing—this is where a company sends you a letter that says your service will be switched unless you send back a reply card to say no. With all the junk mail that people now receive, this is a particularly reprehensible business practice, and I am pleased that this bill outlaws it.

The bill also addresses the problem that many people do not even know that when they have been slammed by requiring the new telecommunications company to notify a consumer within 15 days of a change in service. The notification must indicate the name of the person who requested the change and inform the consumer that he or she may request further information about when and how the change was authorized. It must also contain information about how to pursue a complaint if the customer believes he or she has been slammed.

Penalties are also significantly increased in this bill. The FCC may award damages of $500 or the actual damages incurred, whichever is greater, directly to the consumer. And the FCC can fine carriers who violate the anti-slamming regulations $40,000 for a first offence and $150,000 for additional offences. These significant penalties should eliminate the economic incentives to engage in these illegal practices.

Mr. President, the information age has now arrived. Technological advances hold out great promise for making our daily lives easier and more enjoyable. Competition is the driving force in bringing those advances to the consumer at ever more affordable prices. Allowing consumers to choose between competing long distance and local service providers should improve service and lower prices. But when irresponsible or even criminal elements seek to take advantage of unsuspecting consumers through activities like slamming, forceful regulation is necessary.

The unethical and illegal practices of companies who seek to victimize consumers to enhance their own profits must not be tolerated. Protecting consumers from those who engage in these practices is one of my most important responsibilities as a United States Senator. I believe that this bill gives the FCC the tools it needs to crack down on the slamming problem once and for all. I am proud to vote for it.

Ms. SNOWE. Mr. President, S. 1618 is a well-crafted bill that is designed to prevent the unauthorized transferring of a customer's phone carrier. This is accomplished through a variety of provisions, including the threat of strong penalties on telephone companies that engage in slamming.

While I strongly believe that the penalties established in this legislation should be fully-enforced, I would like to clarify the type of conduct that these penalties are being targeted to address. Specifically, is it the Chairman's intent that the significant financial penalties contained in Section 1(f) be imposed for all cases of unauthorized carrier changes, including changes that are accidental or innocent mistakes, such as when an order to change service providers in improperly keyed-in by a customer service agent? Or are these penalties designed to address cases of slamming that involve willful or intentional misconduct on the part of companies?

Mr. MCCAIN. I appreciate the questions of the Senator from Maine, and

believe it is important that the intent of this legislation be fully understood. This bill is designed to ensure that companies are deterred from the reprehensible practice of slamming, and that harsh penalties are imposed as a form of punishment if the practice is undertaken by an unscrupulous company. However, the penalties in this bill are not intended to be used for cases of innocent or accidental changes of carriers, such as the situation described by my colleague, Senator SNOWE—and the language of this bill has been crafted accordingly. Specifically, the bill provides that the Commission can waive the minimum penalties if they determine that there are mitigating circumstances, which would include cases of innocent or accidental changes of carriers.

Ms. SNOWE. I thank the Chairman for clarifying this important issue and for crafting language that reflects this intent. I am very appreciative for your leadership and efforts to curb the practice of slamming, and commend the Senator for crafting legislation that will forcefully attack this growing problem.

Mr. BURNS. Mr. President, I rise to support the Consumer Anti-Slamming Act, as it addresses a severe problem that has arisen as an unintended consequence of additional competition in the telecommunications marketplace: the unauthorized switching of customers' telephone service providers. I also understand that the managers' amendment of the bill includes language that addresses another serious, unintended problem posed by the growth of information technology: the explosion of junk e-mail, or ''spamming.''

I congratulate Senators MURKOWSKI and TORRICELLI for their hard work on dealing with the issue of spamming. S. 1618 as amended includes language that would require commercial e-mailers to identify themselves. This language is simply a ''Truth in Advertising Amendment.'' As any of us who use e-mail are finding out, millions of junk e-mails are sent out with fake e-mail addresses which prevent citizens from requesting that they not be sent any further clutter from the same sources. The amendment also requires that a junk e-mailer must honor requests from individuals to be deleted from mailing lists.

I should add that the problem of junk e-mail is particularly important to customers in rural areas such as Montana. Often, rural residents must pay long distance charges to receive these unwanted solicitations, many of which contain fraudulent messages. ''Spamming'' is truly the bane of the information age. This problem has become so pervasive that entire new networks have had to be constructed to deal with it, when resources would be far better spent on educational or commercial needs. I welcome the inclusion of this language as a much-needed step forward in dealing with this increasingly serious problem.

I would now like to speak on an issue involving more traditional communications, that of slamming. I have held two field hearings in the Communications Subcommittee on this important topic, one in Billings last August and one in Denver last October.

During the field hearing in Billings, I heard from consumers, industry representatives and regulators on a variety of slamming issues. I learned in Billings that slamming is not confined to big cities. It is reaching every part of our country. Consumers are falling prey every day to companies that intentionally mislead and deceive. Today, I look forward to building on the record we started in Montana.

I should also recognize that Senator BEN NIGHTHORSE CAMPBELL has shown real leadership on this issue through his introduction of an anti-slamming bill, particularly at the field hearing in Denver, which he attended. The bill before the Chamber today, S. 1618, incorporates language from S. 1051, Senator CAMPBELL's slamming bill. The amendment including Senator CAMPBELL's language was passed unanimously out of the Commerce Committee on March 12 of this year.

This language requires that the FCC will annually report to Congress the ''Top Ten'' slammers for that year, as well as carriers assessed fines or penalties during the same period. The ''Top Ten'' list would identify those carriers subject to the highest number of subscriber slamming complaints compared to the total number of subscribers they serve. This ratio approach ensures that large companies are not automatically singled out by virtue of having a large customer base. The focus is on those companies with the highest percentage of slamming complaints relative to their total customer base.

This ''Top Ten'' list represents the core of Senator CAMPBELL's anti-slamming bill. Having held two field hearings in the Communications Subcommittee on this important topic, I am convinced that Senator CAMPBELL's approach will prove very valuable in deterring carriers from engaging in illegal tactics.

As competition develops in new communications markets, we could see slamming migrate to new areas and become an even bigger problem. Clearly, something must be done soon to protect consumers and to protect good, clean competition.

I am confident that the Consumer Anti-Slamming Act as amended will accomplish this goal and I urge my colleagues to support it.

Mr. LEVIN. Mr. President, the mangers' amendment included two amendments to S. 1618 which I authored and which I appreciate the managers of the bill accepting. I am joined in offering these amendments by cosponsors Senator GLENN and Senator DURBIN.

These amendments are the product of hearings held on slamming in the Permanent Subcommittee on Investigations (PSI), chaired by Senator COLLINS. Slamming, the practice of changing a consumer's long distance carrier without the consumer's knowledge and express consent, is the number one complaint received by the Federal Communications Commission (FCC). And those FCC slamming complaints are on the rise—increasing almost 50% from 1995 through 1997. Slamming is also the number one complaint received by the Michigan Public Service Commission. And, Michigan has the unfortunate distinction of being in the top ten states, nationwide, for the number of consumers who have been slammed. A Louis Harris survey taken in September 1997 ranked Detroit and Grand Rapids among the hardest hit cities in the country. About 25% of telephone customers in Detroit and Grand Rapids have either had their telephone carrier switched without their permission or know someone who was illegally switched.

Slamming leaves consumers feeling vulnerable and angry. Consumers have the right to use any long distance carrier they choose and to change carriers whenever they wish. But they want to be in control. Slamming takes choices away from consumers without their knowledge, and rewards companies that engage in deceptive and misleading marketing practices.

Slammers use deceptive marketing practices such as getting subscribers to sign a misleading authorization form, falsifying tape recordings to make it appear that the consumer has verbally agreed to the change, or posing as the subscriber's currently authorized carrier. Unscrupulous carriers have been known to forge letters of authorization or even pull subscribers' numbers from a telephone book and submit them to the local exchange carrier for a long distance carrier change. Unscrupulous resellers generally bill higher rates once the subscriber is switched.

In one case in Michigan, the slammer used the device of a contest—the opportunity to win a trip or a car—to get consumers to sign a card that would then be used to change the long distance service. The Michigan consumer who filed a complaint with the Michigan Attorney General reported that her 14 year old daughter was approached several times in a shopping mall to sign the card under the auspices of participating in the contest. The daughter kept trying to resist—telling the slammer that she was underage for the contest. The slammer finally prevailed, and the 14 year old daughter entered what she thought to be a contest or drawing. However, a week or so later, this constituent was notified that her long distance carrier had been changed—unbeknownst to her. She wrote in her letter to the Attorney General: ''I am very upset that this is happening not only to me but to others as well. It's a scam and it needs to stop now!''

Although the large telecommunications companies, called facilities

based carriers because they own extensive telephone lines and equipment, have engaged in slamming, according to a recent GAO report, most intentional slamming is perpetrated by switchless resellers. Switchless resellers have no equipment; they purchase network facilities from large long distance companies at a bulk rate and resell the service either to consumers or to other resellers. Currently a switchless reseller can enter into the telecommunications business without any proof of financial capability. All a person has to do is strike a deal with a long distance carrier to use that carrier's lines and facilities, get a billing company to provide billing services and develop a customer base. The switchless reseller is then in business and can use unscrupulous practices to switch the long distance providers of innocent consumers from the carrier the consumer has been using to the switchless reseller. The reseller then charges higher long distance rates.

Many switchless resellers operate legitimately; but there are a surprising number who don't. Currently there is nothing in the law that screens out the scam artists from the legitimate resellers. S. 1618 increases civil penalties, creates new criminal penalties and includes disincentives to eliminate the profit for slammers. I am supportive of those provisions and ask unanimous consent that I be added as a cosponsor.

But, Mr. President, we also need to try to keep the scam artists out of the system—to keep consumers from being slammed in the first place. My amendment would require switchless resellers—those resellers who have no switching facilities under their ownership or control—to post a bond with the FCC before they can engage in the business of selling long distance service. The bond would be in an amount set by the FCC, and the amendment would prohibit a billing agent of a switchless reseller from billing subscribers of long distances services on behalf of the switchless reseller unless the billing agent has confirmed that the reseller has furnished the bond. In this way, a switchless reseller cannot get someone to bill on its behalf unless it has posted a bond with the FCC. The proceeds of that bond can be used to pay for any damages to a consumer awarded by the Commission to reimburse the consumer for excess charges incurred as a result of slamming. The requirement for a bond should keep the unscrupulous resellers out of the business. Take for example, David Fletcher, possibly the most notorious slammer. He started his slamming business, apparently, with no resources and managed to bill up to $20 million in long distance services. He couldn't start his business and no billing agent or phone company could have contracted with him to do his billing unless he had posted a bond with the FCC, under my amendment.

The other amendment which the Managers have incorporated in their substitute requires full disclosure of the long distance services and providers on the local phone bill. We learned, Mr. President, in the hearing on slamming that some switchless resellers go to great lengths to disguise the fact that they have taken over a consumer's long distance service. One reseller, for example, incorporated under the name ''Phone Calls.'' Another used the name, ''Long Distance Services.'' Those names, then, appeared on the consumers' phone bills, and no one would have paid attention to those names. Anyone looking at such a phone bill would have assumed those were not the names of the unexpectedly new long distance carriers, but the identification of the item being listed below—the phone calls. The consumer would continue to assume that his or her long distance carrier had not been switched.

To make it perfectly clear to consumers who their long distance provider is, the provision requires that the local telephone bill explicitly state the name, address and toll-free number of the long distance telephone provider and the specific services provided. This hopefully will address the problem of hidden or disguised switching—where a consumer gets a bill and can't tell that his or her long distance carrier has been switched. This provision gives the FCC the authority to make telephone bills absolutely clear so slammers can't hide behind vague or confusing phone bills.

Mr. President, I want to commend Senator MCCAIN and Senator HOLLINGS for their good work in getting this important piece of consumer legislation to the floor so quickly. I also want to commend Senator COLLINS and Senator DURBIN from the PSI subcommittee for their energy and commitment to publicizing and helping to solve this problem.

S. 1618, with my amendments, will provide important consumer safeguards, Mr. President, to help keep slammers out of the system. Legitimate resellers will be able to conduct their businesses without ruthless slammers tarnishing the reseller business.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume.

We have one amendment remaining of Senator ROCKEFELLER. We are awaiting his arrival on the floor. I hope that Senator ROCKEFELLER will arrive pretty quickly, because we have another bill to do tonight. In the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ABRAHAM. Thank you, Mr. President. I rise today to address the antislamming legislation before us. I believe that this bill, S. 1618, is a bill that we must act on quickly and decisively. I am happy that when the Senate concludes its business today, we will have passed the legislation and for good reason. The problem which this legislation seeks to address described, I guess, by the euphemism ''slamming,'' is one that is a growing concern to people in my State and, I suspect, to almost all the other States represented in this body.

In Michigan, during the last year, complaints about this practice, which is the changing of an individual's or customer's long-distance service without their knowledge and approval, has risen from relative obscurity to becoming, next to billing problems, the second largest source of complaints received by Michigan's Public Service Commission.

The nature of the complaints are, of course, pretty obvious and have been depicted very well by Chairman MCCAIN and others in the discussion so far today. People find that through no act of their own, or certainly no intentional act of their own, they have had their long-distance service changed usually with negative consequences. In our State, the negative consequences usually fall into two categories, often both happen simultaneously: On the one hand, people find that their service level and quality is diminished; on the other hand, they find that their bills are getting higher.

The latter happens for a variety of reasons. First, because frequently the new company, in fact, just simply has higher bills and charges higher rates. In addition, they find it happens because they have found themselves the victim of slamming on several separate occasions during a billing period. They have moved from one company to a second and sometimes to even a third and fourth. Many of the current rate practices engaged in with respect to long-distance rates give people a reduced rate if they stay with a service a certain period of time.

However, as a result of slamming, people change from one to a second to a third to even a fourth company during a billing period or a period during which a rate is being determined based on continuity of service. Individuals discover that their long-distance calls that they expect to have been charged at a very low rate are, in fact, being billed at very high rates.

For all of these reasons, we need to take action now. I mentioned that in our State, the slamming practice has become the second most widely voiced complaint heard by our Public Service Commission. Our local telephone service carrier, Ameritech, the principal carrier in Michigan, reports that they are receiving complaints. People think somehow they are responsible. Last year alone they received 37,000 such complaints of slamming practices occurring.

In order to find out more about this, I went back to Michigan during a recent recess and began meeting with individuals who were themselves the victims of slamming. What I discovered was that, in fact, the practices used by these long-distance companies border on outright fraud, and in some cases, go over the line to actual fraud.

People have been called up and asked if they want ''direct billing'' for their long-distance service. They answer yes and find the ''Direct Billing'' is, in fact, the name of a new long-distance service company and that their answer is being used as a basis for the changing of their service.

In other cases, people engage in a conversation of someone calling over the telephone, an innocuous conversation, but find the information has been rescripted in such a fashion as to give a basis for changing the long-distance service.

The bottom line, Mr. President, is that this practice is wrong. It is hurting consumers across America, and we have an obligation to stop it. I believe the legislation before us now does so.

I am glad we were able to pass it so quickly and so overwhelmingly through the Commerce Committee, and I look forward to the vote today where I am confident we will, once again, send a signal that we are not going to tolerate these practices any longer. The additional penalties that are part of this legislation, in my judgment, set us in the right direction. Not only will they send a strong message, but I believe they dramatically deter anyone from engaging in these practices. The procedures in this legislation should hopefully provide those who are victims with a relatively quick resolution of their problems.

For these reasons, I rise in support of the legislation. I am a cosponsor and am pleased to be part of it. I thank Senator MCCAIN and his staff for working not only on this legislation but other technology bills that we will be addressing over the next day or so. I close by expressing my support, once again, for S. 1618. I look forward to its passage today and ultimately for its passage through the Congress in general and it being signed into law by the President.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BROWNBACK). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, as I mentioned earlier, we are still waiting for the final amendment. I hope we can get it done very quickly. We have another bill to address tonight, and we are still working on that.

So I again suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. I ask unanimous consent that I may be allowed to speak for about 2½ minutes.

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

Mr. MURKOWSKI. I thank the chair.

JUNK E-MAIL

Mr. MURKOWSKI. Mr. President, I am pleased that the chairman is including in the manager's amendment language that I offered along with my colleague, Senator TORRICELLI.

Mr. President, one of the downsides of the technological revolution that is symbolized by communications today on the Internet is the growing multitude of junk e-mail. Junk e-mail has quickly become the scourge of the Internet. It clogs America's inboxes and raises costs to all Internet users. Among those who are regular e-mail users, junk e-mail is known as ''spam,'' which many suggest is an insult to the Hormel Corporation. I originally recognized spam as a spinoff of the Second World War where food was given to soldiers, commonly referred to as C rations, that implied a mixture of food products. In any event, it is the name that has been adopted for junk e-mail.

Rural residents of our Nation and my State of Alaska are forced to pay long-distance charges to receive these unwanted solicitations, the majority of which contain fraudulent or pornographic messages. Not only are these junk e-mails objectionable, but they so clog the transmission network that Internet service providers are forced to spend tens of millions of dollars to expand their networks to handle all of these messages.

America Online reports that up to 30 percent of daily incoming e-mail is junk e-mail. This volume has forced it and other Internet service providers, the ISPs, to buy more equipment and divert staff to handle users' complaints. These resources could be better spent by ISPs on improving service or even reducing monthly fees.

My provision, Mr. President, is a modified version of legislation that I introduced last year—S. 771. When I introduced the bill, I put it up on the Web and asked for e-mail comments on the bill. So far, I have received over 1,500—the vast majority of which have been supportive of my efforts.

So this provision is really a Truth in Advertising provision. It will simply require commercial e-mailers to identify who they are, their addresses, and their telephone numbers. The reason we have included this provision is that millions of junk e-mails are sent out with phony e-mail addresses which make it impossible for citizens to request that the sender stop cluttering their e-mail boxes. Under this provision, citizens will know exactly who the sender is and have the option of turning that sender away from their inbox.

The provision further requires that a junk e-mailer must honor the request of an individual who asks that his or her name be deleted from the mailing list permanently. It's as simple as that. I doubt if there is anyone among us here today who would argue against someone's wish to simply be left alone by junk e-mailers.

The amendment permits the Federal Trade Commission, the State Attorneys General, and Internet service providers to protect consumers from Internet junk e-mail by allowing them to sue those junk e-mailers who fail to identify themselves properly or refuse to remove a person's name from a mailing list.

Mr. President, junk e-mail has become so pervasive that some have suggested a complete ban on such unsolicited advertisements. I believe that Internet users should control what comes into their electronic mailboxes, not the government. And I wish to emphasize that. This debate should not be about the government controlling the content of individual electronic mailboxes, but about individual users taking control of their own mailboxes. I think my provision will sufficiently reduce the problems of junk e-mail, and thus show that banning is unnecessary.

Finally, I thank the floor managers for their attention to this issue, as well as the efforts of America Online and the Center for Democracy and Technology.

Mr. TORRICELLI. Mr. President, I want to thank Senator MCCAIN and Senator HOLLINGS for agreeing to include the Murkowski-Torricelli junk E-mail amendment to this bill. And I want to thank my distinguished colleague from Alaska for join with me in this effort.

Last year, Senator MURKOWSKI and I each recognized the growing threat to Internet commerce posed by the proliferation of unsolicited commercial e-mail, known by its Internet slang as ''Spam.'' Although we initially had somewhat different approaches to this problem, we recognized that something had to be done.

The amendment we have today is the product of a good faith effort involving privacy groups, marketers, online service providers, and others to achieve a result that will rein in these destructive e-mail practices, while protecting the first amendment rights of all who wish to send and receive legitimate e-mail. Before I address what our amendments does, I want to briefly discuss the problem of unsolicited commercial junk e-mail.

Junk E-mail, or so called spamming, is an unfortunate side effect of the burgeoning world of Internet communication and commerce. Like many other Americans, I have an account on America Online and am inundated with unsolicited messages, peddling every item

under the sun. Similarly, I receive junk e-mail daily at my official Senate e-mail address, as well as the complaints of dozens of constituents who forward me the Spam that they are sent.

The incentive to abuse the Internet is obvious, E-mailing ten million people can cost as little as a couple of hundred dollars. And because the senders of these e-mails are generally unknown, they avoid any possible retribution for consumers.

Today, unsolicited commerical e-mailers are hiding their identities, falsifying their return addresses and refusing to accept complaints or removal requests. Their actions approach fraud, but our current law doesn't seem strong enough to stop them.

I have long been concerned about excessive—indeed any—government regulation of the Internet. Many of the best qualities of American life are represented and enhanced by the Internet, and I fear government regulation has the possibility to stifle the creativity and development of cyberspace.

However, a failure to address this problem now poses a greater threat to the Internet than do these minimal requirements. Junk e-mail is estimated to take up 30 percent of all Internet traffic and is increasingly responsible for slowdowns, and even breakdowns, of Internet services. Let me be clear, this legislation is not a de facto regulation of the Internet. In fact, it does not go as far as some have suggested. It does not ban all unsolicited e-mail because we wanted to avoid any inference of government interference. However, it is a first and needed step in making cyberspace saner.

The Murkowski-Torricelli amendment takes some important and necessary steps. First, it requires senders of unsolicited commercial e-mail to identify themselves and provide a valid return e-mail address. Second, it requires senders to inform recipients that they have the right to reply and stop any future messages by typing ''remove'' on the subject line. Third, it requires junk e-mail to honor any request to remove someone from their mailing list. Fourth, it authorizes the FTC to enforce these requirements with civil fines and injunctive relief. And finally, it requires the FTC to establish a web site to accept consumer complaints and list its enforcement actions.

Put simply, our amendment strikes a balance that will help consumers prevent unwanted and unsolicited electronic mail, without creating a burdensome regulatory system or unnecessarily restricting free speech. It recognizes that the government should not hastily and haphazardly regulate pass legislation to regulate the Internet. However, it also recognizes that some practices are simply too destructive to ignore.

Mr. President, I urge my colleagues to support this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2392

(Purpose: Require truth in billing procedures for telecommunications carriers)

Mr. DORGAN. Mr. President, on behalf of Senator ROCKEFELLER, Senator SNOWE, Senator KERREY, and myself, Senator DORGAN, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for Mr. ROCKEFELLER, for himself, Ms. SNOWE, Mr. KERREY and himself, proposes an amendment numbered 2392.

Mr. MCCAIN. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . CONSUMER TRUTH IN BILLING DISCLOSURE ACT.

(a) FINDINGS.—Congress makes the following findings—

(1) Billing practices by telecommunications carriers may not reflect accurately the cost or basis of the additional telecommunications services and benefits that consumers receive as a result of the enactment the Telecommunications Act of 1996 (Public Law 104–104) and other Federal regulatory actions taken since the enactment of that Act.

(2) The Telecommunications Act of 1996 was not intended to allow providers of telecommunications services to misrepresent to customers the costs of providing services or the services provided.

(3) Certain providers of telecommunications services have established new, specific charges on customer bills commonly known as ''line-item charges''.

(4) Certain providers of telecommunications services have described such charges as ''Federal Universal Service Fees'' or similar fees.

(5) Such charges have generated significant confusion among customers regarding the nature of and scope of universal service and of the fees associated with universal service.

(6) The State of New York is considering action to protect consumers by requiring telecommunications carriers to disclose fully in the bills of all classes of customers the fee increases and fee reductions resulting from the enactment of the Telecommunications Act of 1996 and other regulatory actions taken since the enactment of that Act.

(7) The National Association of Regulatory Utility Commissioners adopted a resolution in February 1998 supporting action by the Federal Communications Commission and the Federal Trade Commission to protect consumers of telecommunications services by assuring accurate cost reporting and billing practices by telecommunications carriers nationwide.

(b) REQUIREMENTS.—Any telecommunications carrier that includes any change resulting from Federal regulatory action shall specify in such bill—

(1) the reduction in charges or fees for each class of customers (including customers of residential basic service, customers of other residential services, small business customers, and other business customers) resulting from any regulatory action of the Federal Communications Commission;

(2) total monthly charges, usage charges, percentage charges, and premiums for each class of customers (including customers of residential basic service, customers of other residential services, small business customers, and other business customers);

(3) notify consumers one billing cycle in advance of any charges in existing charges or imposition of new charges; and

(4) disclose, upon subscription, total monthly charges, usage charges, percentage charges, and premiums for each class of customers (including residential basic service, customers of other residential service, small business customers, and other business customers).

Ms. SNOWE. Mr. President, I rise today to join my good friend and colleague from West Virginia JAY ROCKEFELLER, in offering the Consumer Protection Act as an amendment to the Consumer Anti-Slamming bill.

Just as the slamming bill is designed to protect consumers from unscrupulous phone companies that change a customer's phone service without consent, this amendment will protect consumers from misleading or inaccurate billing practices by phone companies. Therefore, I urge that my colleges support this pro-consumer amendment that complements the underlying pro-consumer Anti-Slamming Act.

Mr. President, our nation's $260 billion telecommunications industry is undergoing a period of rapid growth and change. This change is being driven by the enactment and progressive implementation of the Telecommunications Act of 1996—a law that is gradually shifting the industry from being one that is heavily-regulated to one that is open and competitive.

As would be expected for an industry of this size, the transition from a regulated environment to a competitive environment has not been entirely smooth, nor has it been as rapid as many of us would prefer.

To date, there have been countless proceeding at the FCC to restructure the way that services are delivered to consumers and the way that telecommunications companies pay each other for these services. In response to these restructuring efforts, there have been a variety lawsuits filed in court by telecommunications companies, and members of Congress have weighed-in when they believe the new rules do not accurately reflect the intent of the law.

And—as would be expected in an emerging competitive market—there is non-stop haggling between the telecommunications companies that are now able to tread on each other's turf after years of being statutorily limited to their own market niche. But don't get me wrong . . . that's not a bad thing—that's what competition is all about.

Mr. President, during this time of rapid transition and daunting change,

it is critical that we not forget the individuals for whom the Telecommunications Act of 1996 was crafted in the first place: the American consumers. Afterall, this landmark law was not passed because Congress simply wanted to deregulate an industry—rather, it was passed because competition will bring consumers a wide array of new and advanced telecommunications services at lower prices.

The amendment we are offering today is specifically designed to protect consumers during this time of transition in the telecommunications industry. Specifically, the Consumer Protection Act will require ''truth-in-billing''—a guarantee to consumers that what they see on their phone bills is thorough and accurate.

Mr. President, as my colleagues have undoubtedly heard from their constituents—and may be experiencing themselves—there is a great deal of confusion being generated by new line-item charges that have been added to phone bills in recent months. Since January, many telephone companies have started to place new line-item charges on customer phone bills for a variety of purposes and under a variety of names, including ''national access charges,'' ''universal service charges,'' or both. While the descriptions for these charges vary, the central theme is that these new fees are being imposed because of recent federal actions stemming from the Telecommunications Act of 1996.

In response to these new charges, telephone customers are understandably confused and angry, and want to know why Congress would pass a law—and the President would sign a law—that imposed a host of new costs on them with no apparent benefits. They were told that this legislation would bring competition and lower prices, but all they see is new charges on their phone bills. They want to know what happened to the benefits of deregulation!

Mr. President, customers deserve an answer to these questions and they deserve to know that what they see on their phone bills is accurate. And the simple fact is that the implementation of the Telecommunications Act has brought—and will continue to bring—countless benefits to consumers, and they deserve to know about them.

For instance, in July 1997, access charges—which are the fees paid by long distance companies to local phone companies for use of their networks—were reduced by $1.7 billion. The long distance companies state that these reductions have been passed on to consumers in the form of reduced rates, and I won't dispute their contention. The problem is that their customers don't know the first thing about this federal action to benefit customers—all they know is that new line-items for various charges prescribed to the federal government have been added to their bills!

By the same token, consumers have no idea that the phone companies stand to reap substantial benefits as new markets are opened for competition. As companies are allowed to enter the markets that were previously closed to them, those that are competitive will reap substantial profits that can greatly benefit their customers—but you'd never know this from reading a company's bill.

To remove the confusion that these line-items have generated—and to ensure that companies exercise full disclosure on the impact of deregulation—the amendment we are offering does three things.

First, it directs the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) to investigate the billing practices of the telecommunications industry to ensure that all fees are being fairly described on bills. If any company is found to be using misleading billing practices, these agencies would be directed to consider disciplinary actions against that company.

Second, the bill ensures that if a company puts a new line-item charge on a phone bill that are attributed to federal actions, it must also include line-items that delineate the benefits of federal actions as well. Customers deserve to know the whole story when it comes to federal regulatory actions—not just the side of the story that is in the company's best interests.

Third, to ensure that the federal regulator of telephone service has all relevant documents available for review, the bill requires that companies submit the same financial disclosure forms to the FCC that they now submit to the Securities and Exchange Commission (SEC). This requirement won't impose a new, excessive burden on phone companies—rather, it simply requires that they make a photocopy of the forms that are already being sent to the SEC and mail them to the FCC.

Overall, this bill ensures that accurate information is being depicted on phone bills—and that customers are told the whole story about federal actions, not just the side that companies would like to tell.

The bottom line is that changes are occurring as part of the transition to a more competitive telecommunications market that will bring substantial benefits to consumers and phone companies alike—but some companies would only like to tell their customers half of the story. That's simply not fair.

The amendment that we are offering is fair. It is a fair for companies, and fair for consumers.

Of critical importance, our amendment does not re-regulate the telecommunications industry—the companies will still decide for themselves if they want to use line items. Our amendment simply ensures that if a company does want to use a line-item for costs, it also will include line-items for benefits. In addition, it ensures that the billing practices of companies are properly examined and improper practices are eliminated.

I would like to thank my friend from West Virginia for offering this amendment today, and urge that my colleagues support this bipartisan, pro-consumer amendment.

Mr. KERREY. Mr. President, the Telecommunications Act of 1996 was clear; competition and consumer choice are to be the hallmarks of the new telecommunication's market. However, the transition to competition has been anything but clear to consumers. The growing pains of the telecommunications industry have proved to be very confusing to customers who lack full information about the various costs associated with telecommunications services.

This lack of information is very troublesome for customers who are trying to make sense of the telecommunications market. In order to help consumers through this confusing morass of information, I recently joined Senators ROCKEFELLER and SNOWE to introduce S. 1897 the Consumer Protection Act. Today, Senator DORGAN joins us as cosponsor of this legislation in the form of an amendment to S. 1618 the Consumer Anti-Slamming Protection Act.

Under the provisions of this amendment, if a company chooses to depict charges that are linked to federal policy on their bills, then the company will be required to depict the benefits of that action on the same bill. This requirement allows customers to see what they are paying for so that they can gain a better understanding of the costs associated with a national telecommunications network.

As we transition from the rigid world of monopoly to a competitive market where consumers have choice, we must make sure that customers have all of the facts. Competition depends upon free flowing information and the Consumer Protection Act gives consumers the facts they need to make good choices in a competitive market.

I strongly urge my colleagues to support this amendment.

Mr. MCCAIN. Mr. President, I must respectfully oppose the amendment offered by my good friend and colleague, Senator ROCKEFELLER.

Let me explain why I am opposed. I take no issue with the Senator's commitment to the principles of universal telephone service. And I most certainly take no issue with the principle that consumers have a right to clear and correct information about material adjustments to their bills. I also believe that companies have an absolute right to inform consumers about increases to their bills that companies have made in response to federal and nonfederal requirements.

But, with all due respect, that's not what's really at issue here.

Mr. President, what's really at issue here is an attempt to rationalize the rate adjustments imposed by the Telecommunications Act of 1996. Unlike Senator ROCKEFELLER, I didn't vote for that act, in part because I thought it

would produce precisely the result it is producing—little competition, lots of consolidation, and lots of bill adjustments—mostly increases.

If my colleague's amendment wants to give consumers facts, let's talk about those facts. The telephone industry is built on a very complex system of implicit internal subsidies. Making them explicit, while at the same time adjusting them for the advent of competition, makes adjustments in consumer bills inevitable. Now add these further facts: the Telecom Act creates a whole new multibillion-dollar subsidy, and it requires local telephone companies and interexchange companies to expend billions of dollars to implement the Act's supposedly pro-competitive provisions.

So here are the bottom-line facts. First of all, given this hideously convoluted situation, complete ''truthful'' disclosure of all the adjustments inherent in a consumer's monthly phone bill would add pages and pages to a bill without necessarily doing much to enlighten the consumer. For example, if a requirement like this were currently in effect, a consumer might today be reading something like this:

Your long-distance bill might have been lower if your long-distance carrier's reduction in access charge payments to your local carrier had been reflected in your long-distance bill instead of being used to help pay for the schools' and libraries' wiring subsidy. Then again, of course, the FCC, your long-distance carrier, and your local carrier disagree on whether your long-distance carrier is really lowering your bills as much as it might, and maybe someday we'll know the answer—or maybe not. In the meantime, you're being assessed a per-subscriber line charge which may or may not reflect the real cost of your service, but the FCC's working on it. Of course, if you live in the suburbs you should also know that a portion of your bill goes to subsidize rural areas and another portion subsidizes low-income subscribers. And be aware that starting next year there's going to be another substantial increase in some local phone bills as local phone companies start passing along the costs of implementing local number portability, which may or may not accurately reflect all their true costs, which will otherwise be recovered by * * *.

And on and on and on.

I would also note that the Senator's bill would require the FCC to examine the bills of all telecommunications carriers. This would not only require the FCC to investigate the bills of the over 500 long-distance telephone companies that currently exist; it would also require them to investigate the bills rendered by the thousands upon thousands of wireless paging, cellular telephone, and PCS companies too. This would require an enormous expansion of the current FCC bureaucracy.

Mr. President, you get the picture: given the complexities of pricing offsets in changing telephone industry economics, this attempt at so-called truthful disclosure won't work. It will only confuse the consumer to no useful purpose and wind up involving the FCC and the FTC in neverending regulatory micromanagement in an effort to ascertain the unascertainable.

If those who voted for the 1996 Telecom Act are now concerned that the act is unexpectedly driving prices upward, the way to solve the problem is to change the Act—not to present attempted excuses in the form of confusing additions to consumers' bills.

Having said why it's unrealistic to try and explain every single thing that has an impact on every single consumer telecom bill, I emphatically endorse the proposition that consumers have a right to be told why their bills have gone up—especially when an increase is results from a federal or State levy. I would like to offer my own amendment to assure consumers have access to that information.

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

The amendment (No. 2392) was agreed to.

Mr. ROCKEFELLER. Mr. President, first of all, I want to thank the chairman of the Commerce Committee for accepting this amendment which I was rushing to the floor to eloquently and brilliantly explain, and it has been accepted. That is really what one prays for in this institution. I hope it survives the conference. I am sure that it will.

Basically, the theory of it was—and I think that the chairman understood it as well as the Senator from North Dakota—that we should be honest with consumers. A lot of people don't know what a lot of the prices are on the telephone long-distance bill. Charges have gone down from an average of 34 cents per minute since deregulation of AT&T to about 16 cents per minute now. We should tell them when we bill them, if the prices go up on certain items, they also go down on others.

As an example, recently there was a $1.5 billion access charge reduction, so actually the cost to the consumer on their residential rate bill was going to go down, but the companies only wanted to show the part that had a $675 million increase—$675 million increase, $1.5 billion decrease; obviously, the net of the decrease wins big time, but they are not going to be told that.

I think this is a very useful amendment that the chairman of the Commerce Committee has accepted. It isn't about reregulation, it is about treating consumers fairly. It is also, frankly, about something which is very complicated that consumers don't understand, nor should they be expected to understand, nor do many of us understand as we should—things like prescribed interchange carrier charge, called PICC. That is a very big thing in all of this.

Even where universal service protects high-cost areas, the whole concept of universal service is not understood by most voters or many in the Congress itself.

We have to be fair. We have to level with them. We have to be straight and honest. That is what this amendment attempts to do. That is one of the reasons I am so glad this amendment has been accepted.

I thank, once again, the chairman of the Commerce Committee, the Senator from Arizona, and also my friend from North Dakota, Senator DORGAN.

I yield the floor.

Mr. McCAIN. That completes our amendments. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass? On this question, the yeas and nays have been ordered.

The clerk will call the roll.

Mr. FORD. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

The result was announced—yeas 99, nays 0, as follows:

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 130 Leg.]

YEAS—99

Abraham	Feingold	Lott
Akaka	Feinstein	Lugar
Allard	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Bingaman	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grams	Murkowski
Breaux	Grassley	Murray
Brownback	Gregg	Nickles
Bryan	Hagel	Reed
Bumpers	Harkin	Reid
Burns	Hatch	Robb
Byrd	Helms	Roberts
Campbell	Hollings	Rockefeller
Chafee	Hutchinson	Roth
Cleland	Hutchison	Santorum
Coats	Inhofe	Sarbanes
Cochran	Inouye	Sessions
Collins	Jeffords	Shelby
Conrad	Johnson	Smith (NH)
Coverdell	Kempthorne	Smith (OR)
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Domenici	Landrieu	Thurmond
Dorgan	Lautenberg	Torricelli
Durbin	Leahy	Warner
Enzi	Levin	Wellstone
Faircloth	Lieberman	Wyden

NOT VOTING—1

Biden

The bill (S. 1618), as amended, was passed, as follows:

S. 1618

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 ''Anti-slamming Amendments Act''.

TITLE I—SLAMMING

SEC. 101. IMPROVED PROTECTION FOR CONSUMERS.

(a) VERIFICATION OF AUTHORIZATION.—Subsection (a) of section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended to read as follows:

''(a) PROHIBITION.—

''(1) IN GENERAL.—No telecommunications carrier or 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 this section 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 section, the telecommunications carrier or reseller 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.

''(3) ACTION BY UNAFFILIATED RESELLER NOT IMPUTED TO CARRIER.—No telecommunications carrier may be found to be 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.

''(4) FREEZE OPTION PROTECTED.—The Commission may not take action under this section to limit or inhibit a subscriber's ability to require that any change in the subscriber's choice of a provider of interexchange service not be effected unless the change is expressly and directly communicated by the subscriber to the subscriber's existing telephone exchange service provider.

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

(b) LIABILITY FOR CHARGES.—Subsection (b) of such section is amended—

(1) by striking ''(b) LIABILITY FOR CHARGES.—Any telecommunications carrier'' and inserting the following:

''(b) LIABILITY FOR CHARGES.—

''(1) IN GENERAL.—Any telecommunications carrier or reseller of telecommunications services'';

(2) by designating the second sentence as paragraph (3) and inserting at the beginning of such paragraph, as so designated, the following:

''(3) CONSTRUCTION OF REMEDIES.—''; and

(3) by inserting after paragraph (1), as designated by paragraph (1) of this subsection, the following:

''(2) SUBSCRIBER PAYMENT OPTION.—

''(A) IN GENERAL.—A subscriber whose telephone exchange service or telephone toll service is changed in violation of the provisions of this section, or the procedures prescribed under subsection (a), may elect to pay the carrier or reseller previously selected by the subscriber for any such service received after the change in full satisfaction of amounts due from the subscriber to the carrier or reseller providing such service after the change.

''(B) PAYMENT RATE.—Payment for service under subparagraph (A) shall be at the rate for such service charged by the carrier or reseller previously selected by the subscriber concerned.''.

(c) RESOLUTION OF COMPLAINTS.—Section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended by adding at the end thereof the following:

''(c) NOTICE TO SUBSCRIBER.—Whenever there is a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, the telecommunications carrier or reseller selected shall notify the subscriber in a specific and unambiguous writing, not more than 15 days after the change is processed by the telecommunications carrier or the reseller—

''(1) of the subscriber's new carrier or reseller; and

''(2) 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.

''(d) RESOLUTION OF COMPLAINTS.—

''(1) PROMPT RESOLUTION.—

''(A) IN GENERAL.—The Commission shall prescribe a period of time for a telecommunications carrier or reseller to resolve a complaint by a subscriber concerning an unauthorized change in the subscriber's selection of a provider of telephone exchange service or telephone toll service not in excess of 120 days after the telecommunications carrier or reseller receives notice from the subscriber of the complaint. A subscriber may at any time pursue such a complaint with the Commission, in a State or local administrative or judicial body, or elsewhere.

''(B) UNRESOLVED COMPLAINTS.—If a telecommunications carrier or reseller fails to resolve a complaint within the time period prescribed by the Commission, then, within 10 days after the end of that period, the telecommunications carrier or reseller shall—

''(i) notify the subscriber in writing of the subscriber's right to file a complaint with the Commission and of the subscriber's rights and remedies under this section;

''(ii) inform the subscriber in writing of the procedures prescribed by the Commission for filing such a complaint; and

''(iii) provide the subscriber a copy of any evidence in the carrier's or reseller's possession showing that the change in the subscriber's provider of telephone exchange service or telephone toll service was submitted or executed in accordance with the verification procedures prescribed under subsection (a).

''(2) RESOLUTION BY COMMISSION.—

''(A) DETERMINATION OF VIOLATION.—The Commission shall provide a simplified process for resolving complaints under paragraph (1)(B). The simplified procedure shall preclude the use of interrogatories, depositions, discovery, or other procedural techniques that might unduly increase the expense, formality, and time involved in the process. The Commission shall determine whether there has been a violation of subsection (a) and shall issue a decision or ruling at the earliest date practicable, but in no event later than 150 days after the date on which it received the complaint.

''(B) DETERMINATION OF DAMAGES AND PENALTIES.—If the Commission determines that there has been a violation of subsection (a), it shall issue a decision or ruling determining the amount of the damages and penalties at the earliest practicable date, but in no event later than 90 days after the date on which it issued its decision or ruling under subparagraph (A).

''(3) DAMAGES AWARDED BY COMMISSION.—If a violation of subsection (a) is found by the Commission, the Commission may award damages equal to the greater of $500 or the amount of actual damages for each violation. The Commission may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

''(e) DISQUALIFICATION AND REINSTATEMENT.—

''(1) DISQUALIFICATION FROM CERTAIN ACTIVITIES BASED ON CONVICTION.—

''(A) DISQUALIFICATION OF PERSONS.—Subject to subparagraph (C), any person convicted under section 2328 of title 18, United States Code, in addition to any fines or imprisonment under that section, may not carry out any activities covered by section 214.

''(B) DISQUALIFICATION OF COMPANIES.—Subject to subparagraph (C), any company substantially controlled by a person convicted under section 2328 of title 18, United States Code, in addition to any fines or imprisonment under that section, may not carry out any activities covered by section 214.

''(C) REINSTATEMENT.—

''(i) IN GENERAL.—The Commission may terminate the application of subparagraph (A) to a person, or subparagraph (B) to a company, if the Commission determines that the termination would be in the public interest.

''(ii) EFFECTIVE DATE.—The termination of the applicability of subparagraph (A) to a person, or subparagraph (B) to a company, under clause (i) may not take effect earlier than 5 years after the date on which the applicable subparagraph applied to the person or company concerned.

''(2) CERTIFICATION REQUIREMENT.—Any person described in subparagraph (A) of paragraph (1), or company described in subparagraph (B) of that paragraph, not reinstated under subparagraph (C) of that paragraph shall include with any application to the Commission under section 214 a certification that the person or company, as the case may be, is described in paragraph (1)(A) or (B), as the case may be.

''(f) CIVIL PENALTIES.—

''(1) IN GENERAL.—Unless the Commission determines that there are mitigating circumstances, violation of subsection (a) 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.

''(2) FAILURE TO NOTIFY TREATED AS VIOLATION OF SUBSECTION (a).—If a telecommunications carrier or reseller fails to comply with the requirements of subsection (d)(1)(B), then that failure shall be treated as a violation of subsection (a).

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

''(1) to collect any forfeitures it imposes under this section; and

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

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

(d) CRIMINAL PENALTY.—

(1) IN GENERAL.—Chapter 113A of title 18, United States Code, is amended by adding at the end thereof the following:

''§ 2328. Slamming

''Any person who submits or executes a change in a provider of telephone exchange service or telephone toll service not authorized by the subscriber in willful violation of the provisions of section 258 of the Communications Act of 1934 (47 U.S.C. 258), or the procedures prescribed under section 258(a) of that Act—

''(A) shall be fined in accordance with this title, imprisoned not more than 1 year, or both; but

''(B) if previously convicted under this paragraph at the time of a subsequent offense, shall be fined in accordance with this title, imprisoned not more than 5 years, or both, for such subsequent offense.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 113A of title 18, United States Code, is amended by adding at the end thereof the following:

''2328. Slamming''.

(e) STATE RIGHT-OF-ACTION.—Section 258 of the Communications Act of 1934 (47 U.S.C. 258), as amended by subsection (c), is amended by adding at the end thereof the following:

''(i) ACTIONS BY STATES.—

''(1) IN GENERAL.—The attorney general of a State, or an official or agency designated by a State—

''(A) may bring an action on behalf of its residents to recover damages on their behalf under subsection (d)(3);

''(B) may bring a criminal action to enforce this section under section 2328 of title 18, United States Code; and

''(C) may bring an action for the assessment of civil penalties under subsection (f), and for purposes of such an action, subsections (d)(3) and (f)(1) shall be applied by substituting 'the court' for 'the Commission'.

''(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all actions brought under this section. When a State brings an action under this section, the court in which the action is brought has pendant jurisdiction of any claim brought under the law of that State. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

''(3) RIGHTS OF COMMISSION.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right—

''(A) to intervene in the action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the subscriber or 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 where the defendant may be found.

''(5) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official 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.

''(j) 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 more restrictive requirements, regulations, damages, costs, or penalties on changes in a subscriber's service or selection of a provider of telephone exchange service or telephone toll services than are imposed under this section.

''(2) EFFECT ON STATE COURT PROCEEDINGS.—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.

''(3) LIMITATIONS.—Whenever a complaint is pending before the Commission involving a violation of regulations prescribed under this section, no State may, during the pendency of such complaint, institute a civil action against any defendant party to the complaint for any violation affecting the same subscriber alleged in the complaint.

''(k) REPORTS ON COMPLAINTS.—

''(1) REPORTS REQUIRED.—Each telecommunications carrier or reseller shall submit to the Commission, quarterly, a report on the number of complaints of unauthorized changes in providers of telephone exchange service or telephone toll service that are submitted to the carrier or reseller by its subscribers. Each report shall specify each provider of service complained of and the number of complaints relating to such provider.

''(2) LIMITATION ON SCOPE.—The Commission may not require any information in a report under paragraph (1) other than the information specified in the second sentence of that paragraph.

''(3) UTILIZATION.—The Commission shall use the information submitted in reports under paragraph (1) to identify telecommunications carriers or resellers that engage in patterns and practices of unauthorized changes in providers of telephone exchange service or telephone toll service.

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

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

''(2) 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.''.

(f) REPORT ON CARRIERS EXECUTING UNAUTHORIZED CHANGES OF TELEPHONE SERVICE.—

(1) REPORT.—Not later than October 31, 1998, the Federal Communications Commission shall submit to Congress a report on unauthorized changes of subscribers' selections of providers of telephone exchange service or telephone toll service.

(2) ELEMENTS.—The report shall include the following:

(A) A list of the 10 telecommunications carriers or resellers that, during the 1-year period ending on the date of the report, were subject to the highest number of complaints of having executed unauthorized changes of subscribers from their selected providers of telephone exchange service or telephone toll service when compared with the total number of subscribers served by such carriers or resellers.

(B) The telecommunications carriers or resellers, if any, assessed forfeitures under section 258(f) of the Communications Act of 1934 (as added by subsection (d)), during that period, including the amount of each such forfeiture and whether the forfeiture was assessed as a result of a court judgment or an order of the Commission or was secured pursuant to a consent decree.

SEC. 102. ADDITIONAL ENFORCEMENT AUTHORITY.

Section 504 of the Communications Act of 1934 (47 U.S.C. 504) is amended by adding at the end thereof the following: ''Notwithstanding the preceding sentence, the failure of a person to pay a forfeiture imposed for violation of section 258(a) may be used as a basis for revoking, denying, or limiting that person's operating authority under section 214 or 312.''.

SEC. 103. OBLIGATIONS OF BILLING AGENTS.

(a) IN GENERAL.—Part I of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following:

''SEC. 231. OBLIGATIONS OF TELEPHONE BILLING AGENTS.

''(a) IN GENERAL.—A billing agent, including a telecommunications carrier or reseller, who issues a bill for telephone exchange service or telephone toll service to a subscriber shall—

''(1) state on the bill—

''(A) the name and toll-free telephone number of any telecommunications carrier or reseller for the subscriber's telephone exchange service and telephone toll service;

''(B) the identity of the presubscribed carrier or reseller; and

''(C) the charges associated with each carrier's or reseller's provision of telecommunications service during the billing period;

''(2) for services other than those described in paragraph (1), state on a separate page—

''(A) the name of any company whose charges are reflected on the subscriber's bill;

''(B) the services for which the subscriber is being charged by that company;

''(C) the charges associated with that company's provision of service during the billing period;

''(D) the toll-free telephone number that the subscriber may call to dispute that company's charges; and

''(E) that disputes about that company's charges will not result in disruption of telephone exchange service or telephone toll service; and

''(3) show the mailing address of any telecommunications carrier or reseller or other company whose charges are reflected on the bill.

''(b) KNOWING INCLUSION OF UNAUTHORIZED OR IMPROPER CHARGES PROHIBITED.—A billing agent may not submit charges for telecommunications services or other services to a subscriber if the billing agent knows, or should know, that the subscriber did not authorize the charges or that the charges are otherwise improper.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to bills to subscribers for telecommunications services sent to subscribers more than 60 days after the date of enactment of this Act.

SEC. 104. FCC JURISDICTION OVER BILLING SERVICE PROVIDERS.

Part III of title II of the Communications Act of 1934 (47 U.S.C. 271 et seq.) is amended by adding at the end thereof the following:

"SEC. 277. JURISDICTION OVER BILLING SERVICE PROVIDERS.

''The Commission has jurisdiction to assess and recover any penalty imposed under title V of this Act against an entity not a telecommunications carrier or reseller to the extent that entity provides billing services for the provision of telecommunications services, or for services other than telecommunications services that appear on a subscriber's telephone bill for telecommunications services, but the Commission may assess and recover such penalties only if that entity knowingly or willfully violates the provisions of this Act or any rule or order of the Commission.''.

SEC. 105. REPORT; STUDY.

(a) IN GENERAL.—The Federal Communications Commission shall issue a report within 180 days after the date of enactment of this Act on the telemarketing and other solicitation practices used by telecommunications carriers or resellers or their agents or employees for the purpose of changing the telephone exchange service or telephone toll service provider of a subscriber.

(b) SPECIFIC ISSUES.—As part of the report required under subsection (a), the Commission shall include findings on—

(1) the extent to which imposing penalties on telemarketers would deter unauthorized changes in a subscriber's selection of a provider of telephone exchange service or telephone toll service;

(2) the need for rules requiring third-party verification of changes in a subscriber's selection of such a provider and independent third party administration of presubscribed interexchange carrier changes; and

(3) whether wireless carriers should continue to be exempt from the requirements imposed by section 258 of the Communications Act of 1934 (47 U.S.C. 258).

(c) RULEMAKING.—If the Commission determines that particular telemarketing or other solicitation practices are being used with the intention to mislead, deceive, or confuse subscribers and that they are likely to mislead, deceive, or confuse subscribers, then the Commission shall initiate a rulemaking to prohibit the use of such practices within 120 days after the completion of its report.

SEC. 106. DISCLOSURE OF CERTAIN RECORDS FOR INVESTIGATIONS OF TELEMARKETING FRAUD.

Section 2703(c)(1)(B) of title 18, United States Code, is amended by—

(1) striking ''or'' at the end of clause (ii);

(2) striking the period at the end of clause (iii) and inserting ''; or''; and

(3) adding at the end the following:

''(iv) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is in section 2325 of this title).''.

TITLE II—SWITCHLESS RESELLERS

SEC. 201. REQUIREMENT FOR SURETY BONDS FROM TELECOMMUNICATIONS CARRIERS OPERATING AS SWITCHLESS RESELLERS.

Part I of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by section 103 of this Act, is amended by adding at the end the following:

"SEC. 232. SURETY BONDS FROM TELECOMMUNICATIONS CARRIERS OPERATING AS SWITCHLESS RESELLERS.

''(a) REQUIREMENT.—Under such regulations as the Commission shall prescribe, any telecommunications carrier operating or seeking to operate as a switchless reseller shall furnish to the Commission a surety bond in a form and an amount determined by the Commission to be satisfactory for purposes of this section.

''(b) SURETY.—A surety bond furnished pursuant to this section shall be issued by a surety corporation that meets the requirements of section 9304 of title 31, United States Code.

''(c) CLAIMS AGAINST BOND.—A surety bond furnished under this section shall be available to pay the following:

''(1) Any fine or penalty imposed against the carrier concerned while operating as a switchless reseller as a result of a violation of the provisions of section 258 (relating to unauthorized changes in subscriber selections to telecommunications carriers).

''(2) Any penalty imposed against the carrier under this section.

''(3) Any other fine or penalty, including a forfeiture penalty, imposed against the carrier under this Act.

''(d) RESIDENT AGENT.—A telecommunications carrier operating as a switchless reseller that is not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

''(e) PENALTIES.—

''(1) SUSPENSION.—The Commission may suspend the right of any telecommunications carrier to operate as a switchless reseller—

''(A) for failure to furnish or maintain the surety bond required by subsection (a);

''(B) for failure to designate an agent as required by subsection (d); or

''(C) for a violation of section 258 while operating as a switchless reseller.

''(2) ADDITIONAL PENALTIES.—In addition to suspension under paragraph (1), any telecommunications carrier operating as a switchless reseller that fails to furnish or maintain a surety bond under this section shall be subject to any forfeiture provided for under sections 503 and 504.

''(f) BILLING SERVICES FOR UNBONDED SWITCHLESS RESELLERS.—

''(1) PROHIBITION.—No common carrier or billing agent may provide billing services for any services provided by a switchless reseller unless the switchless reseller—

''(A) has furnished the bond required by subsection (a); and

''(B) in the case of a switchless reseller not domiciled in the United States, has designated an agent under subsection (d).

''(2) PENALTY.—

''(A) PENALTY.—Any common carrier or billing agent that knowingly and willfully provides billing services to a switchless reseller in violation of paragraph (1) shall be liable to the United States for a civil penalty not to exceed $50,000.

''(B) APPLICABILITY.—For purposes of subparagraph (A), the provision of services to any particular reseller in violation of paragraph (1) shall constitute a separate violation of that paragraph.

''(3) COMMISSION AUTHORITY TO ASSESS AND COLLECT PENALTIES.—The Commission shall have the authority to assess and collect any penalty provided for under this subsection upon a finding by the Commission of a violation of paragraph (1).

''(g) RETURN OF BONDS.—

''(1) REVIEW.—

''(A) IN GENERAL.—The Commission may from time to time review the activities of a telecommunications carrier that has furnished a surety bond under this section for purposes of determining whether or not to retain the bond under this section.

''(B) STANDARDS OF REVIEW.—The Commission shall prescribe any standards applicable to its review of activities under this paragraph.

''(C) FIRST REVIEW.—The Commission may not first review the activities of a carrier under subparagraph (A) before the date that is 3 years after the date on which the carrier furnishes the bond concerned under this section.

''(2) RETURN.—The Commission may return a surety bond as a result of a review under this subsection.

''(h) DEFINITIONS.—In this section:

''(1) BILLING AGENT.—The term 'billing agent' means any entity (other than a telecommunications carrier) that provides billing services for services provided by a telecommunications carrier, or other services, if charges for such services appear on the bill of a subscriber for telecommunications services.

''(2) SWITCHLESS RESELLER.—The term 'switchless reseller' means a telecommunications carrier that resells the switched telecommunications service of another telecommunications carrier without the use of any switching facilities under its own ownership or control.

''(i) DETARIFFING AUTHORITY NOT IMPAIRED.—Nothing in this section is intended to prohibit the Commission from adopting rules providing for the permissive detariffing of long-distance telephone companies, if the Commission determines that such permissive detariffing would otherwise serve the public interest, convenience, and necessity.''.

TITLE III—SPAMMING

SEC. 301. REQUIREMENTS RELATING TO TRANSMISSIONS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) INFORMATION TO BE INCLUDED IN TRANSMISSIONS.—

(1) IN GENERAL.—A person who transmits an unsolicited commercial electronic mail message shall cause to appear in each such electronic mail message the information specified in paragraph (2).

(2) COVERED INFORMATION.—The following information shall appear at the beginning of the body of an unsolicited commercial electronic mail message under paragraph (1):

(A) The name, physical address, electronic mail address, and telephone number of the person who initiates transmission of the message.

(B) The name, physical address, electronic mail address, and telephone number of the person who created the content of the message, if different from the information under subparagraph (A).

(C) A statement that further transmissions of unsolicited commercial electronic mail to the recipient by the person who initiates transmission of the message may be stopped at no cost to the recipient by sending a reply to the originating electronic mail address with the word ''remove'' in the subject line.

(b) ROUTING INFORMATION.—All Internet routing information contained within or accompanying an electronic mail message described in subsection (a) must be accurate, valid according to the prevailing standards for Internet protocols, and accurately reflect message routing.

(c) EFFECTIVE DATE.—The requirements in this section shall take effect 30 days after the date of enactment of this Act.

SEC. 302. FEDERAL OVERSIGHT OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) TRANSMISSIONS.—

(1) IN GENERAL.—Upon notice from a person of the person's receipt of electronic mail in violation of a provision of section 301 or 305, the Commission—

(A) may conduct an investigation to determine whether or not the electronic mail was transmitted in violation of such provision; and

(B) if the Commission determines that the electronic mail was transmitted in violation of such provision, may—

(i) impose upon the person initiating the transmission a civil fine in an amount not to exceed $15,000;

(ii) commence in a district court of the United States a civil action to recover a civil penalty in an amount not to exceed $15,000 against the person initiating the transmission;

(iii) commence an action in a district court of the United States a civil action to seek injunctive relief; or

(iv) proceed under any combination of the authorities set forth in clauses (i), (ii), and (iii).

(2) DEADLINE.—The Commission may not take action under paragraph (1)(B) with respect to a transmission of electronic mail more than 2 years after the date of the transmission.

(b) ADMINISTRATION.—

(1) NOTICE BY ELECTRONIC MEANS.—The Commission shall establish an Internet web site with an electronic mail address for the receipt of notices under subsection (a).

(2) INFORMATION ON ENFORCEMENT.—The Commission shall make available through the Internet web site established under paragraph (1) information on the actions taken by the Commission under subsection (a)(1)(B).

(3) ASSISTANCE OF OTHER FEDERAL AGENCIES.—Other Federal agencies may assist the Commission in carrying out its duties under this section.

SEC. 303. ACTIONS BY STATES.

(a) IN GENERAL.—Whenever the attorney general of a State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected because any person is engaging in a pattern or practice of the transmission of electronic mail in violation of a provision of section 301 or 305, the State, as parens patriae, may bring a civil action on behalf of its residents to enjoin such transmission, to enforce compliance with such provision, to obtain damages or other compensation on behalf of its residents, or to obtain such further and other relief as the court considers appropriate.

(b) NOTICE TO COMMISSION.—

(1) NOTICE.—The State shall serve prior written notice of any civil action under this section on 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 written notice immediately on instituting such action.

(2) RIGHTS OF COMMISSION.—On receiving a notice with respect to a civil action under paragraph (1), the Commission shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard in all matters arising therein; and

(C) to file petitions for appeal.

(c) ACTIONS BY COMMISSION.—Whenever a civil action has been instituted by or on behalf of the Commission for violation of a provision of section 301 or 305, no State may, during the pendency of such action, institute a civil action under this section against any defendant named in the complaint in such action for violation of any provision as alleged in the complaint.

(d) CONSTRUCTION.—For purposes of bringing a civil action under subsection (a), nothing in this section shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of the State concerned to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary or other evidence.

(e) VENUE; SERVICE OF PROCESS.—Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(f) ACTIONS BY OTHER STATE OFFICIALS.—Nothing in this section may be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of the State concerned.

(g) DEFINITIONS.—In this section:

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

(2) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and any possession of the United States.

SEC. 304. INTERACTIVE COMPUTER SERVICE PROVIDERS.

(a) EXEMPTION FOR CERTAIN TRANSMISSIONS.—

(1) EXEMPTION.—Section 301 or 305 shall not apply to a transmission of electronic mail by an interactive computer service provider unless—

(A) the provider initiates the transmission; or

(B) the transmission is not made to its own customers.

(2) CONSTRUCTION.—Nothing in this subsection may be construed to require an interactive computer service provider to transmit or otherwise deliver any electronic mail message.

(b) ACTIONS BY INTERACTIVE COMPUTER SERVICE PROVIDERS.—

(1) IN GENERAL.—In addition to any other remedies available under any other provision of law, any interactive computer service provider adversely affected by a violation of a provision of section 301 or 305 may, within 1 year after discovery of the violation, bring a civil action in a district court of the United States against a person who violates such provision. Such an action may be brought to enjoin the violation, to enforce compliance with such provision, to obtain damages, or to obtain such further and other relief as the court considers appropriate.

(2) DAMAGES.—

(A) IN GENERAL.—The amount of damages in an action under this subsection for a violation specified in paragraph (1) may not exceed $15,000 per violation.

(B) RELATIONSHIP TO OTHER DAMAGES.—Damages awarded for a violation under this subsection are in addition to any other damages awardable for the violation under any other provision of law.

(C) COST AND FEES.—The court may, in issuing any final order in any action brought under paragraph (1), award costs of suit, reasonable costs of obtaining service of process, reasonable attorney fees, and expert witness fees for the prevailing party.

(3) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant or in which the interactive computer service provider is located, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(c) INTERACTIVE COMPUTER SERVICE PROVIDER DEFINED.—In this section, the term ''interactive computer service provider'' has the meaning given the term ''interactive computer service'' in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(e)(2)).

SEC. 305. RECEIPT OF TRANSMISSIONS BY PRIVATE PERSONS.

(a) TERMINATION OF TRANSMISSIONS.—A person who receives from any other person an electronic mail message requesting the termination of further transmission of commercial electronic mail shall cease the initiation of further transmissions of such mail to the person making the request.

(b) AFFIRMATIVE AUTHORIZATION OF TRANSMISSIONS.—

(1) IN GENERAL.—Subject to paragraph (2), a person may authorize another person to initiate transmissions of unsolicited commercial electronic mail to the person.

(2) AVAILABILITY OF TERMINATION.—A person initiating transmissions of electronic mail under paragraph (1) shall include, with each transmission of such mail to a person authorizing the transmission under that paragraph, the information specified in section 301(a)(2)(C).

(c) CONSTRUCTIVE AUTHORIZATION OF TRANSMISSIONS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), a person who secures a good or service from, or otherwise responds electronically to, an offer in a transmission of unsolicited commercial electronic mail shall be deemed to have authorized the initiation of transmissions of unsolicited commercial electronic mail from the person who initiated the transmission.

(2) NO AUTHORIZATION FOR REQUESTS FOR TERMINATION.—An electronic mail request to cease the initiation of further transmissions of electronic mail under subsection (a) shall not constitute authorization for the initiation of further electronic mail under this subsection.

(3) AVAILABILITY OF TERMINATION.—A person initiating transmissions of electronic mail under paragraph (1) shall include, with each transmission of such mail to a person deemed to have authorized the transmission under that paragraph, the information specified in section 301(a)(2)(C).

(d) EFFECTIVE DATE OF TERMINATION REQUIREMENTS.—Subsections (a), (b)(2), and (c)(3) shall take effect 30 days after the date of enactment of this Act.

SEC. 306. DEFINITIONS.

In this title:

(1) COMMERCIAL ELECTRONIC MAIL.—The term ''commercial electronic mail'' means any electronic mail that—

(A) contains an advertisement for the sale of a product or service;

(B) contains a solicitation for the use of a telephone number, the use of which connects the user to a person or service that advertises the sale of or sells a product or service; or

(C) promotes the use of or contains a list of one or more Internet sites that contain an advertisement referred to in subparagraph (A) or a solicitation referred to in subparagraph (B).

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

(3) the term ''initiate the transmission'' in the case of an electronic mail message means to originate the electronic mail message, and does not encompass any intervening interactive computer service whose facilities may have been used to relay, handle, or otherwise retransmit the electronic mail message, unless the intervening interactive computer service provider knowingly and intentionally retransmits any electronic mail in violation of section 301 or 305.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. ENFORCEMENT OF REGULATIONS REGARDING CITIZENS BAND RADIO EQUIPMENT.

Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding at the end the following:

''(f)(1) Except as provided in paragraph (2), a State or local government may enforce the following regulations of the Commission under this section:

''(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

''(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

''(2) Possession of a station license issued by the Commission pursuant to section 301 in any radio service for the operation at issue shall preclude action by a State or local government under this subsection.

''(3) The Commission shall provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

''(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government enforcing a regulation under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, acted outside the authority provided in this subsection.

''(B) A person shall submit an appeal on a decision of a State or local government to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government becomes final.

''(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

''(D) If the Commission determines under subparagraph (C) that a State or local government has acted outside its authority in enforcing a regulation, the Commission shall reverse the decision enforcing the regulation.

''(5) The enforcement of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

''(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.''.

SEC. 402. MODIFICATION OF EXCEPTION TO PROHIBITION ON INTERCEPTION OF COMMUNICATIONS.

(a) MODIFICATION.—Section 2511(2)(d) of title 18, United States Code, is amended by adding at the end the following: ''Notwithstanding the previous sentence, it shall not be unlawful under this chapter for a person not acting under the color of law to intercept a wire, oral, or electronic communication between a health insurance issuer or health plan and a subscriber of such issuer or plan, or between a health care provider and a patient, only if all of the parties to the communication have given prior express consent to such interception. For purposes of the preceding sentence, the term 'health insurance issuer' has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), the term 'health plan' means a group health plan, as defined in such section of such Act, an individual or self-insured health plan, the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.), the State children's health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.), and the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, and the term 'health care provider' means a physician or other health care professional.''.

(b) RECORDING AND MONITORING OF COMMUNICATIONS WITH HEALTH INSURERS.—

(1) COMMUNICATION WITHOUT RECORDING OR MONITORING.—Notwithstanding any other provision of law, a health insurance issuer, health plan, or health care provider that notifies any customer of its intent to record or monitor any communication with such customer shall provide the customer the option to conduct the communication without being recorded or monitored by the health insurance issuer, health plan, or health care provider.

(2) DEFINITIONS.—In this subsection:

(A) HEALTH CARE PROVIDER.—The term ''health care provider'' means a physician or other health care professional.

(B) HEALTH INSURANCE ISSUER.—The term ''health insurance issuer'' has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b).

(C) HEALTH PLAN.—The term ''health plan'' means—

(i) a group health plan, as defined in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b);

(ii) an individual or self-insured health plan;

(iii) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(iv) the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.);

(v) the State children's health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.); and

(vi) the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, United States Code.

SEC. 403. CONSUMER TRUTH IN BILLING DISCLOSURE ACT.

(a) FINDINGS.—Congress makes the following findings:

(1) Billing practices by telecommunications carriers may not reflect accurately the cost or basis of the additional telecommunications services and benefits that consumers receive as a result of the enactment of the Telecommunications Act of 1996 (Public Law 104–104) and other Federal regulatory actions taken since the enactment of that Act.

(2) The Telecommunications Act of 1996 was not intended to allow providers of telecommunications services to misrepresent to customers the costs of providing services or the services provided.

(3) Certain providers of telecommunications services have established new, specific charges on customer bills commonly known as ''line-item charges''.

(4) Certain providers of telecommunications services have described such charges as ''Federal Universal Service Fees'' or similar fees.

(5) Such charges have generated significant confusion among customers regarding the nature of and scope of universal service and of the fees associated with universal service.

(6) The State of New York is considering action to protect consumers by requiring telecommunications carriers to disclose fully in the bills of all classes of customers the fee increases and fee reductions resulting from the enactment of the Telecommunications Act of 1996 and other regulatory actions taken since the enactment of that Act.

(7) The National Association of Regulatory Utility Commissioners adopted a resolution in February 1998 supporting action by the Federal Communications Commission and the Federal Trade Commission to protect consumers of telecommunications services by assuring accurate cost reporting and billing practices by telecommunications carriers nationwide.

(b) REQUIREMENTS.—Any telecommunications carrier that includes any change resulting from Federal regulatory action shall specify in such bill—

(1) the reduction in charges or fees for each class of customers (including customers of residential basic service, customers of other residential services, small business customers, and other business customers) resulting from any regulatory action of the Federal Communications Commission;

(2) total monthly charges, usage charges, percentage charges, and premiums for each class of customers (including customers of residential basic service, customers of other residential services, small business customers, and other business customers);

(3) notify consumers one billing cycle in advance of any changes in existing charges or imposition of new charges; and

(4) disclose, upon subscription, total monthly charges, usage charges, percentage charges, and premiums for each class of customers (including residential basic service, customers of other residential service, small business customers, and other business customers).

The PRESIDING OFFICER. Who seeks recognition?

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

THE EXECUTIVE CALENDAR

Mr. LEAHY. Mr. President, I was just thinking, while we are all here, I know we continue to have a number of names on the Executive Calendar on nominations, and we have, let's see, nine judges, all of whom have been voted out of the Judiciary Committee, I think in most cases unanimously. We have close to 100 vacancies in the Federal judiciary. Among those who are on here is Sonia Sotomayor of the second circuit. This has been out for some time now. She has been before the Senate for a couple of years now, I believe. This is a circuit where the Chief Judge has declared a judicial emergency. I believe it is the first time a circuit court has declared a judicial emergency, I think maybe the first time in history that they have done that.

But what that means is that if you go before the second circuit, you don't even have a panel made up of second circuit judges. You have one second circuit court of appeals judge and two visiting judges. And yet we have two nominees for the second circuit on the Executive Calendar, both of whom could be voted on in the next 5 minutes—they went out of the Judiciary Committee very easily—and it would stop this judicial emergency.

The reason I mention this, Mr. President, is that with 100 vacancies in the Federal judiciary, nearly 100 vacancies, we are finding around the country that prosecutors have to lower charges; they have to nol-pros cases; they have