Forge; New Orleans; Mexico City; Gettysburg; Havana; the Philippines; Verdun; Bataan; North Africa; Monte Cassino; Normandy; Arnhem; the ''Bulge''; Pusan; Seoul; the Ia Drang Valley; Grenada, Panama; Kuwait, and, Iraq represent just a partial list of the places where ordinary men brought distinction to themselves, the Army, and the United States by their actions.

We must also not forget the many other campaigns and operations the Army has undertaken in its history, which have included: surveying the uncharted west coast; protecting western settlers; guarding our borders; assisting in disaster relief; providing humanitarian aid to other nations; and conducting medical research that benefits soldiers and civilians alike. There is simply no question that the U.S. Army has had a tremendous impact, in many different ways, on the history of our Nation and the world.

Soon we on the Senate Armed Services Committee will begin our mark up of the fiscal year 1996 defense authorization budget, including the money needed to support the Army. Often our focus is on what weapon systems we need to fund, how many new tanks, field guns, or rifles we should purchase, but our chief concern is always providing for the soldier. We work to ensure that the young E–3 has a quality of life that is not beneath him, and that the soldier who dedicated his or her career to the Army and Nation is not forgotten. Each of us on the committee, and I am sure in the Senate as well, understands that it is the people—the newest recruit and the most senior general—who make up the Army and guarantee the security and defense of the United States. We may have an arsenal of smart bombs at our disposal, but it is the soldier who must face and defeat our enemies. Ensuring they have the best equipment, training, and quality of life possible are our highest priorities.

This investment in our men and women in uniform pays a handsome dividend beyond the security of the United States. Countless numbers of people who have served in the Army have gone on to hold important positions in both the public and private sectors. Our first President, George Washington, was a general in the Army, as were Ulysses Grant, Zachary Taylor, and Dwight Eisenhower. Additionally, many former soldiers have gone on to serve in the Halls of Congress. In the House, there are some 87 individuals who served in the Army and in the Senate, 27 of our colleagues have worn the Army green. I know that each of us is proud of our association with the Army and that we have been able to serve our Nation as both soldiers and statesmen.

Madam President, over the past 220 years, more than 42 million of our fellow citizens have raised their right hand and sworn to defend our Nation as soldiers. In each instance we have asked our soldiers to carry out a mission, they have done so with a sense of purpose, professionalism, and patriotism. We are grateful for the sacrifices these individuals have made and the example they have set for future soldiers. With a heritage as proud as the one established by our Nation's soldiers over the past 220 years, we know that the U.S. Army will always remain the finest fighting force that history has ever known.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time having expired, morning business is now closed.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 652, which the clerk will report.

The bill clerk read as follows:

A bill (S. 652) to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies, and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Feinstein/Kempthorne amendment No. 1270, to strike the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services.

Gorton amendment No. 1277 (to the language proposed to be stricken by amendment No. 1270), to limit, rather than strike, the preemption language.

The PRESIDING OFFICER. There will now be 20 minutes debate on the Feinstein amendment No. 1270, to be equally divided in the usual form, with the vote on or in relation to the amendment to follow immediately.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, the amendment that is the subject of discussion is one presented by Senator KEMPTHORNE and me. There is a section in this bill entitled ''Removal of Entry to Barriers.'' It is a section about which the cities, the counties and the States are very concerned because it is a section that giveth and a section that taketh away.

Why do I say that? I say it because in section 254, the States and local governments are given certain authority to maintain their jurisdiction and their control over what are called rights-of-way.

Rights-of-way are streets and roads under which cable television companies put lines. How they do it, where they do it and with what they do it is all a matter for local jurisdiction. Both subsections (b) and (c) maintain this regulatory authority of local jurisdictions, but subsection (d) preempts that authority, and this is what is of vital concern to the cities, the counties and the States.

Senator KEMPTHORNE and I have a simple amendment. That amendment, quite simply stated, strikes the preemption and takes away the part of this bill that takes away local government and State governments' jurisdiction and authority over the rights-of-way.

We are very grateful to Senator GORTON who has presented a substitute, which will be voted on following our amendment. However, we must, quite frankly, say this substitute is inadequate.

Why is it inadequate? It is inadequate because cities and counties will continue to face preemption if they take actions which a cable operator asserts constitutes a barrier to entry and is prohibited under section (a) of the bill. As city attorneys state, is a city insurance or bonding requirement a barrier to entry? Is a city requirement that a company pay fees prior to installing any facilities to cover the costs of reviewing plans and inspecting excavation work a barrier to entry? Is the city requirement that a company use a particular type of excavation equipment or a different and specific technique suited to certain local circumstances to minimize the risk of major public health and safety hazards a barrier to entry? Is a city requirement that a cable operator move a cable trunk line away from a public park or place cables underground rather than overhead in order to protect public health a barrier to entry?

These are, we contend, intensely local decisions which could be brought before the FCC in Washington. The Gorton substitute continues to permit cable operators to challenge local government decisions before the FCC.

Why is this objectionable to local jurisdictions? It is objectionable to local jurisdictions because they believe if they are a small city, for example, they would be faced with bringing a team back to Washington, going before a highly specialized telecommunications-oriented Federal Communications Commission and plighting their troth. Then they would be forced to go to court in Washington, DC, rather than Federal district court back where they live.

This constitutes a major financial impediment for small cities. For big cities also, they would much prefer to have the issue settled in their district court rather than having to come back to Washington.

The cable operators are big time in this country. They maintain Washington offices, they maintain special staff, they maintain a bevy of skilled telecommunications attorneys. Cities do not. Cities have a city attorney, period. It is a very different subject.

Suppose a city makes a determination in the case that they wish to have

wiring done evenly throughout their city—I know, and I said this on the floor before, when I was mayor, the local cable operator wanted only to wire the affluent areas of our city.

We wanted some of the less affluent areas wired; we demanded it, and we were able to achieve it. Is this a barrier to entry? Could the cable company then appeal this and bring it back to Washington, meaning that a bevy of attorneys would have to come back, appear before the FCC, go to Federal court here or with the local jurisdiction, and maintain its authority, as it would under the Kempthorne-Feinstein amendment. And then the cable operators, if they did not like it, could take the item to Federal court.

We believe to leave in the preemption is, in effect, to create a Federal mandate without funding. So we ask that subsection (d) be struck and have put forward this amendment to do so.

I yield now to the Senator from Idaho.

Mr. KEMPTHORNE. Madam President, how much time do we have remaining?

The PRESIDING OFFICER. There are 3 minutes 21 seconds remaining.

Mr. KEMPTHORNE. Madam President, I will reserve my time and ask if the Senator from Washington would like to speak at this point.

I yield the floor and reserve the remainder of my time.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Madam President, the section at issue here is a section entitled ''Removal of Barriers to Entry.'' And the substance of that section is that ''No State or local statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.''

Madam President, this is not about cable companies, although cable companies are one of the subjects of the section. This is about all of the telecommunications providers that are the subject of this bill. And it is the goal of this bill to see to it that the maximum degree of competition is available. And in doing so, these fundamental decisions about whether or not an action of the State or local government is an inhibition or a barrier to entry almost certainly must be decided in one central place.

The amendment to strike the preemption section does not change the substance. What it does change is the forum in which any disputes will be conducted. And if this amendment—the Feinstein amendment—in its original form is adopted, that will be some 150 or 160 different district courts with different attitudes. We will have no national uniformity with respect to the very goals of this bill, what constitutes a serious barrier to entry.

This will say that if a State or some local community decides that it does not like the bill and that there should be only one telephone company in its jurisdiction or one cable television provider in its jurisdiction, no national organization, no Federal Communications Commission will have the right to preempt and to frustrate that monopolistic purpose. It will have to be done in a local district court. And then if another community in another part of the country does the same thing, that will be decided in that district court.

So, Madam President, this amendment—the Feinstein amendment—goes far beyond its legitimate scope. But it does have a legitimate scope. I join with the two sponsors of the Feinstein amendment in agreeing that the rules that a city or a county imposes on how its street rights of way are going to be utilized, whether there are aboveground wires or underground wires, what kind of equipment ought to be used in excavations, what hours the excavations should take place, are a matter of primarily local concern and, of course, they are exempted by subsection (c) of this section.

So my modification to the Feinstein amendment says that in the case of these purely local matters dealing with rights of way, there will not be a jurisdiction on the part of the FCC immediately to enjoin the enforcement of those local ordinances. But if, under section (b), a city or county makes quite different rules relating to universal service or the quality of telecommunications services—the very heart of this bill—then there should be a central agency at Washington, DC, which determines whether or not that inhibits the competition and the very goals of this bill.

So, Madam President, I am convinced that Senators FEINSTEIN and KEMPTHORNE are right in the examples that they give, the examples that have to do with local rights of way. And the amendment that I propose to substitute for their amendment will leave that where it is at the present time and will leave disputes in Federal courts in the jurisdictions which are affected.

But if we adopt their amendment, we have destroyed the ability of the very commission which has been in existence for decades to seek uniformity, to promote competition, effectively to do so; and we will have a balkanized situation in every Federal judicial district in the United States. So their amendment simply goes too far.

Now, Madam President, I can see some, including some of the sponsors of the bill, who feel that this preemption ought to be total. And those who feel it ought to be total should vote ''no'' on the Feinstein amendment and ''no'' on mine as well. Those who feel that there should be no national policy, that local control and State control of telecommunications is so important that the national policy should not be enforced by any central agency, should vote for the Feinstein amendment. But those who believe in balance, those who believe that there should be one central entity to make these decisions, subject to judicial review when they have to do with whether or not there is going to be competition, when they have to do with the nature of universal service, when they have to do with the quality of telecommunications service or the protection of consumers, but believe that local government should retain their traditional local control over their rights of way, should vote against the Feinstein amendment and should vote for mine. It is the balance. It meets the goals that they propose their amendment to meet without being overly broad and without destroying the national system of telecommunications competition, which is the goal of this bill.

Mr. KEMPTHORNE. Madam President, I am proud to join Senator FEINSTEIN in this amendment. I also wish to acknowledge the efforts of the Senator from Washington, Senator GORTON, because all of us are trying to correct what is a flaw in this bill. I find it ironic that the title of this bill, the Telecommunications Competition and Deregulation Act of 1995, this flaw that is in this bill smacks right at this whole aspect of deregulation, which this Congress has been very good about reestablishing the rights of States and local units of government.

Madam President, this amendment is not about guaranteeing access to the public right of way. As the Senator from Washington just pointed out, that language is in there. That is section (a). This amendment is not about preserving the ability of a State to advance universal service and to ensure quality in telecommunications services, because, Madam President, that is right here in section (b) of the bill. This amendment is not about ensuring that local governments manage their rights of way in a competitively neutral and nondiscriminatory basis, because that is in section (c) of this bill.

In fact, the Senator from Texas, the Presiding Officer, was instrumental in having section (c) put into this act. It was very helpful. The whole problem is, Madam President, section (d) then preempts all of that. In section (d), it states—and I will summarize—that the commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

I think it is a shame that your good, hard work, Madam President, now has section (d) that preempts it and pulls the plug on that. There are those that would say the reason you have to have that particular section is because there may be instances in local government that may compel a cable company to give what they call extractions. We asked our cable company in Idaho: Can you give us some examples of where a local community has sought extractions, where you might have to go in trees and do something special? We do not have any examples. I find it ironic

that because there are some who believe that these extractions could take place, the remedy is to say that we will now have a Federal commission of nonelected people preempt what local or State governments do. That is backsliding from what we have been trying to do with this Congress.

The Senator from Washington said that we must decide these cases in one place. That message is very clear, Madam President. If there is a problem, then we are now going to say with this legislation, if we leave section (d) in there, they must come to Washington, DC. You must come to Washington, DC.

What has happened to federalism, to States rights and local rights? It was brought to my attention that in the State of Arizona they have pointed out that this, in fact, could preempt the Constitution of the State of Arizona.

This is a flaw in this legislation, Madam President, that, again, a nonelected Commission—which I have a great respect for that Commission—could, in essence, preempt the Constitution of the State.

I ask unanimous consent to have printed in the RECORD a letter from the National Governors' Association, National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors, all in support of this amendment. They point out that this will not be the impediment to the barrier, but it is the right amendment to correct this flaw.

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

NATIONAL GOVERNORS' ASSOCIATION,
NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, AND UNITED STATES CONFERENCE OF MAYORS,
June 6, 1995.

Hon. ROBERT DOLE,
Majority Leader, U.S. Senate,
Hon. TOM DASCHLE,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR DOLE AND SENATOR DASCHLE: On behalf of state and local governments throughout the nation, we are writing to strongly urge your support for two amendments to S. 652, the Telecommunications Competition and Deregulation Act of 1995. Together these amendments would prevent an unwarranted preemption of state and local government authority and speed the transition to a competitive telecommunications environment. The first amendment achieves the appropriate balance between the needed preemption of barriers to entry and the legitimate authority of states and localities, and the second permits states to continue efforts already underway to promote competition.

First, Senator Feinstein will offer an amendment to delete a broad and ambiguous preemption section (section 254(d) of Title II). The Senate's bill's proposal under Section 254(d) for Federal Communications Commission (FCC) review and preemption of state and local government authority is totally inappropriate. Section 254 (a) and (c) provide the necessary safeguard against any possible entry barriers or impediments by state and local governments in the development of the information superhighway. In particular we are concerned that Section 254(d) would preempt local government authority over the management of public rights-of-way and local government's ability to receive fair and reasonable compensation for use of the right-of-way. We strongly opposed any preemption which would have the impact of imposing new unfunded costs upon our states, local governments, and taxpayers.

Second, Senator Leahy will offer an amendment to strike language preempting states from requiring intraLATA toll dialing parity. Ten states have already established this requirement as a means of increasing competition; thirteen more states are considering its adoption. If the goal of S. 652 is to increase competition, the legislation should not take existing authority from states that is already being used to further compensation. We strongly oppose this preemption and urge your support for Senator Leahy's amendment.

Again, we urge you to join Senator Feinstein and Senator Leahy in their efforts to eliminate these two provisions from the bill and avoid unwarranted preemption of state and local government in this critical area.

Sincerely,

TERRY BRANSTAD,
Co-Lead Governor on Telecommunications.
JANE L. CAMPBELL,
President, National Conference of State Legislatures.
RANDALL FRANKE,
President, National Association of Counties.
CAROLYN LONG BANKS,
President, National League of Cities.
VICTOR ASHE,
President, U.S. Conference of Mayors.

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, June 8, 1995.

STATE PREEMPTION IN FEDERAL TELECOMMUNICATIONS DEREGULATION LEGISLATION

SUMMARY

The U.S. Senate has begun consideration of S. 652, a bill to rewrite the Federal Communications Act of 1934 to promote competition. Several provisions in the bill and certain proposed amendments would adversely affect states, and Governors need to communicate their concerns to their senators to:

Support the Feinstein/Kempthorne amendment to strike section 254(d) on FCC preemption;

Support the Leahy/Simpson amendment to protect the state option to require intraLATA toll dialing parity (open, competitive markets for regional phone service); and

Oppose the Packwood/McCain amendment to preempt local and state authority to tax direct broadcast satellite services (DBS).

BACKGROUND

Both the House and the Senate have reported legislation to reform the Federal Communications Act of 1934. The Senate bill, S. 652, would require local phone companies to open their networks to competitors while also permitting those companies to offer video services in competition with local cable television franchises. Once the regional Bell telephone companies open their networks, they can apply to the Federal Communications Commission (FCC) for permission to offer long-distance service.

During the debate over telecommunications in 1994, states and localities banded together to promote three principles for inclusion in federal legislation: strong universal service protections, regulatory flexibility that would retain an effective role for states to manage the transition to a procompetitive environment rather than federal agency preemption, and authority for states and localities to manage the public rights-of-way. At a June 6 meeting of the State and Local Coalition, chaired by Governor George V. Voinovich, the attached letter was signed by local officials and Iowa Governor Terry E. Branstad, NGA co-lead Governor on Telecommunications. The letter calls for the support of two amendments.

Feinstein/Kempthorne Amendment: Deleting Section 254(d). Senator Dianne Feinstein (D–Calif.) and Senator Dirk Kempthorne (R–Idaho) are offering an amendment that would strip broad and ambiguous FCC preemption language from section 254(d) of the bill. Section 254(a) preempts states and localities from erecting barriers to entry, and this preemption is supported by NGA policy. Section 254(b) permits states to set terms and conditions for doing business within a state, including consumer protections and quality of services; section 254(c) ensures the authority of states and local government to manage the public rights-of-way.

Paragraph (c) was inserted in the bill in committee by Senator Kay Bailey Hutchison (R-Tex.), and includes a requirement that any such fees and charges be nondiscriminatory. Paragraph (d) states that if the FCC ''determines that a state or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this section, the FCC shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.'' Because small telephone or cable companies are unlikely to have a presence in Washington, D.C., this provision would result in a bias toward major competitors. Striking paragraph (d) leaves adequate protections for a competitive market.

Leahy/Simpson Amendment: Deleting Preemption of State Authority to Require IntraLATA Toll Dialing Parity. One major reason that competition in long distance service has increased is the requirement that local phone companies permit long-distance carriers dialing parity (i.e., consumers no longer have to dial additional numbers to utilize an alternative long-distance carrier service). Customers choose a carrier, and all interLATA calls are billed through that company. However, calls within a local access and transport area (intraLATA), or so-called short-haul or regional long-distance calls, are under state jurisdiction and not subject to this FCC rule. To date, ten states have required toll dialing parity, and twelve states are currently considering its adoption. Paragraph 255(B)(ii) of S. 652 would preempt the authority of states to order intraLATA toll dialing parity; Senator Patrick S. Leahy (D-Vt.) and Senator Alan K. Simpson (R-Wyo.) are offering an amendment that would remove this preemptive language.

State and Local Taxing Authority. As reported by the Senate Commerce, Science, and Transportation Committee, S. 652 includes language ensuring that state and local government taxation authority is not affected by the bill. Senator Bob Packwood (R-Ore.) and Senator John McCain (R-Ariz.) may offer an amendment exempting the DBS industry from any local taxation, even taxes administered by states. This language is taken from H.R. 1555, recently approved by the House Commerce Committee. States must ensure that the Senate bill avoids the preemption of state and local taxing authority.

ACTIONS NEEDED

Governors need to contact their senator to urge support for both the Feinstein/

Kempthorne amendment and the Leahy/Simpson amendment, and to urge opposition to the Packwood/McCain amendment.

Mr. LEVIN. Madam President, I support the Feinstein amendment to remove the provision in S. 652 which would preempt local control of the public rights-of-way.

The Feinstein amendment would remove section 254(d) of the telecommunications bill currently being considered by the Senate which directs the FCC to examine and preempt any State and local laws or regulations which might prohibit a company from providing telecommunications services.

As a former local official I have always felt it was important that we in Congress pay proper recognition to the rights of local government.

Section 254(d) is the type of legislating that we in Washington should not be doing—preempting State and local decisions in areas where local government has the responsibility and specified knowledge to act in the best interest of their local communities. Washington should not micromanage how local government administers its streets, highways, and other public rights-of-way.

I will vote in favor of the Feinstein amendment and in favor of the right of local governments to retain control over their streets, highways, and rights-of-way.

Mr. KEMPTHORNE. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator's time is expired.

Mr. GORTON. Madam President, how much time is remaining?

The PRESIDING OFFICER. Three minutes, 38 seconds.

Mr. GORTON. Madam President, once again, the alternative proposal, which will be voted on only if this amendment is defeated, retains not only the right of local communities to deal with their rights of way, but their right to meet any challenge on home ground in their local district courts.

The Feinstein amendment itself, Madam President, would deprive the FCC of any jurisdiction over a State law which deliberately prohibited or frustrated the ability of any telecommunications entity to provide competitive service.

It would simply take that right away from the FCC, and each such challenge would have to be decided in each of the various Federal district courts around the country.

The States retain the right under subsection (d) to pass all kinds of legislation that deals with telecommunications providers, subject to the provision that they cannot impede competition.

The determination of whether they have impeded competition, not by the way they manage trees or rights of way, but by the way they deal with substantive law dealing with telecommunications entities. That conflict should be decided in one central place, by the FCC.

The appropriate balance is to leave purely local concerns to local entities, but to make decisions on the natural concerns which are at the heart of this bill in one central place so they can be consistent across the country.

Madam President, the purposes of this bill will be best served by defeating this amendment and adopting the subsequent amendment. I yield back the balance of my time.

Mrs. FEINSTEIN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. CAMPBELL). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Feinstein amendment No. 1270.

The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced— yeas 44, nays 56, as follows:

[Rollcall Vote No. 258 Leg.]

YEAS—44

Abraham	Faircloth	Levin
Akaka	Feingold	Mack
Baucus	Feinstein	McCain
Biden	Ford	Mikulski
Bingaman	Glenn	Moseley-Braun
Bond	Graham	Murray
Boxer	Hatfield	Pell
Bradley	Hutchison	Pryor
Burns	Inhofe	Robb
Byrd	Kempthorne	Roth
Campbell	Kennedy	Sarbanes
Cohen	Kerry	Simpson
Conrad	Kohl	Thomas
DeWine	Lautenberg	Wellstone
Dodd	Leahy	

NAYS—56

Ashcroft	Gramm	Moynihan
Bennett	Grams	Murkowski
Breaux	Grassley	Nickles
Brown	Gregg	Nunn
Bryan	Harkin	Packwood
Bumpers	Hatch	Pressler
Chafee	Heflin	Reid
Coats	Helms	Rockefeller
Cochran	Hollings	Santorum
Coverdell	Inouye	Shelby
Craig	Jeffords	Simon
D'Amato	Johnston	Smith
Daschle	Kassebaum	Snowe
Dole	Kerrey	Specter
Domenici	Kyl	Stevens
Dorgan	Lieberman	Thompson
Exon	Lott	Thurmond
Frist	Lugar	Warner
Gorton	McConnell	

So the amendment (No. 1270) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. PRESSLER. I ask unanimous consent that the Gorton amendment now be adopted by voice vote.

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

Without objection, the amendment is agreed to.

So the amendment (No. 1277) was agreed to.

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

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

AMENDMENTS NOS. 1284, AS MODIFIED, AND 1282, AS MODIFIED, EN BLOC

(Purpose: To require audits to ensure that the Bell operating companies meet the separate subsidiary requirements and safeguards)

(Purpose: To recognize the National Education Technology Funding Corporation as a nonprofit corporation operating under the laws of the District of Columbia, to provide authority for Federal departments and agencies to provide assistance to such corporation, and for other purposes)

Mr. PRESSLER. Mr. President, I send two amendments to the desk and ask for their immediate consideration en bloc. The amendments are modified versions of the amendments Nos. 1284 and 1282 by Senators SIMON and MOSELEY-BRAUN. They are acceptable to the bill managers and have been cleared on both sides of the aisle.

Mr. FORD. Mr. President, he may be giving away the dome on the Capitol Building. We want to know.

The PRESIDING OFFICER. The Senate will be in order. Senators wishing to hold conversations will retire to the cloakroom.

Will the Senator from South Dakota repeat his request.

Mr. PRESSLER. I ask adoption of the Simon amendment and the Moseley-Braun amendment.

The PRESIDING OFFICER. Without objection, the amendments may be considered en bloc at this time. The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER], for Mr. SIMON, proposes amendment numbered 1284, as modified; and, for Ms. MOSELEY-BRAUN, amendment numbered 1282, as modified.

The amendments (Nos. 1284 and 1282), as modified, are as follows:

AMENDMENT NO. 1284

On page 31, insert at the appreciate place the following:

''(d) BIENNIAL AUDIT.—

''(1) GENERAL REQUIREMENT.—A company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor selected by the Commission, and working at the direction of, the Commission and the State commission of each State in which such company provides service, to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b).

''(2) RESULTS SUBMITTED TO COMMISSION; STATE COMMISSIONS.—The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

''(3) ACCESS TO DOCUMENTS.—For purposes of conducting audits and reviews under this subsection—

''(A) the independent auditor, the Commission, and the State commission shall have

access to the final accounts and records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

''(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

''(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

AMENDMENT NO. 1282

At the end of the bill, insert the following:

TITLE —NATIONAL EDUCATION TECHNOLOGY FUNDING CORPORATION

SEC. 01. SHORT TITLE.

This title may be cited as the ''National Education Technology Funding Corporation Act of 1995''.

SEC. 02. FINDINGS; PURPOSE.

(a) FINDINGS.—The Congress finds as follows:

(1) CORPORATION.—There has been established in the District of Columbia a private, nonprofit corporation known as the National Education Technology Funding Corporation which is not an agency or independent establishment of the Federal Government.

(2) BOARD OF DIRECTORS.—The Corporation is governed by a Board of Directors, as prescribed in the Corporation's articles of incorporation, consisting of 15 members, of which—

(A) five members are representative of public agencies representative of schools and public libraries;

(B) five members are representative of State government, including persons knowledgeable about State finance, technology and education; and

(C) five members are representative of the private sector, with expertise in network technology, finance and management.

(3) CORPORATE PURPOSES.—The purposes of the Corporation, as set forth in its articles of incorporation, are—

(A) to leverage resources and stimulate private investment in education technology infrastructure;

(B) to designate State education technology agencies to receive loans, grants or other forms of assistance from the Corporation;

(C) to establish criteria for encouraging States to—

(i) create, maintain, utilize and upgrade interactive high capacity networks capable of providing audio, visual and data communications for elementary schools, secondary schools and public libraries;

(ii) distribute resources to assure equitable aid to all elementary schools and secondary schools in the State and achieve universal access to network technology; and

(iii) upgrade the delivery and development of learning through innovative technology-based instructional tools and applications;

(D) to provide loans, grants and other forms of assistance to State education technology agencies, with due regard for providing a fair balance among types of school districts and public libraries assisted and the disparate needs of such districts and libraries;

(E) to leverage resources to provide maximum aid to elementary schools, secondary schools and public libraries; and

(F) to encourage the development of education telecommunications and information technologies through public-private ventures, by serving as a clearinghouse for information on new education technologies, and by providing technical assistance, including assistance to States, if needed, to establish State education technology agencies.

(b) PURPOSE.—The purpose of this title is to recognize the Corporation as a nonprofit corporation operating under the laws of the District of Columbia, and to provide authority for Federal departments and agencies to provide assistance to the Corporation.

SEC. 03. DEFINITIONS.

For the purpose of this title—

(1) the term ''Corporation'' means the National Education Technology Funding Corporation described in section 02(a)(1);

(2) the terms ''elementary school'' and ''secondary school'' have the same meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965; and

(3) the term ''public library'' has the same meaning given such term in section 3 of the Library Services and Construction Act.

SEC. 04. ASSISTANCE FOR EDUCATION TECHNOLOGY PURPOSES.

(a) RECEIPT BY CORPORATION.—Notwithstanding any other provision of law, in order to carry out the corporate purposes described in section 02(a)(3), the Corporation shall be eligible to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any federal department or agency, to the extent otherwise permitted by law.

(b) AGREEMENT.—In order to receive any assistance described in subsection (a) the Corporation shall enter into an agreement with the Federal department or agency providing such assistance, under which the Corporation agrees—

(1) to use such assistance to provide funding and technical assistance only for activities which the Board of Directors of the Corporation determines are consistent with the corporate purposes described in section 02(a)(3);

(2) to review the activities of State education technology agencies and other entities receiving assistance from the Corporation to assure that the corporate purposes described in section 02(a)(3) are carried out;

(3) that no part of the assets of the Corporation shall accrue to the benefit of any member of the Board of Directors of the Corporation, any officer or employee of the Corporation, or any other individual, except as salary or reasonable compensation for services;

(4) that the Board of Directors of the Corporation will adopt policies and procedures to prevent conflicts of interest;

(5) to maintain a Board of Directors of the Corporation consistent with section 02(a)(2);

(6) that the Corporation, and any entity receiving the assistance from the Corporation, are subject to the appropriate oversight procedures of the Congress; and

(7) to comply with—

(A) the audit requirements described in section 05; and

(B) the reporting and testimony requirements described in section 06.

(c) CONSTRUCTION.—Nothing in this title shall be construed to establish the Corporation as an agency or independent establishment of the Federal Government, or to establish the members of the Board of Directors of the Corporation, or the officers and employees of the Corporation, as officers or employees of the Federal Government.

SEC. 05. AUDITS.

(a) AUDITS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS.—

(2) REPORTING REQUIREMENTS.—The report of each annual audit described in paragraph (1) shall be included in the annual report required by section 06(a).

(b) RECORDKEEPING REQUIREMENTS; AUDIT AND EXAMINATION OF BOOKS.—

(1) RECORDKEEPING REQUIREMENTS.—The Corporation shall ensure that each recipient of assistance from the Corporation keeps—

(A) separate accounts with respect to such assistance;

(B) such records as may be reasonably necessary to fully disclose—

(i) the amount and the disposition by such recipient of the proceeds of such assistance;

(ii) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(iii) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(C) such other records as will facilitate an effective audit.

(2) AUDIT AND EXAMINATION OF BOOKS.—The Corporation shall ensure that the Corporation, or any of the Corporation's duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance from the Corporation that are pertinent to such assistance. Representatives of the Comptroller General shall also have such access for such purpose.

SEC. 06. ANNUAL REPORT; TESTIMONY TO THE CONGRESS.

(a) ANNUAL REPORT.—Not later than April 30 of each year, the Corporation shall publish an annual report for the preceding fiscal year and submit that report to the President and the Congress. The report shall include a comprehensive and detailed evaluation of the Corporation's operations, activities, financial condition, and accomplishments under this title and may include such recommendations as the Corporation deems appropriate.

(b) TESTIMONY BEFORE CONGRESS.—The members of the Board of Directors, and officers, of the Corporation shall be available to testify before appropriate committees of the Congress with respect to the report described in subsection (a), the report of any audit made by the Comptroller General pursuant to this title, or any other matter which any such committee may determine appropriate.

Ms. MOSELEY-BRAUN. Mr. President, this amendment is identical to S. 792, legislation designed to connect public schools and public libraries to the information superhighway, which I introduced earlier this year.

If there is any objective that should command complete American consensus, it is to ensure that every American has a chance to succeed. That is the core concept of the American dream—the chance to achieve as much and to go as far as your ability and talent will take you. Public education has always been a part of that core concept. In this country, the chance to be educated has always gone hand in hand with the chance to succeed.

TECHNOLOGY

Nonetheless, I am convinced that it will be difficult if not impossible for us to prepare all of our children to compete in the emerging global economy

unless they all have access to the technology available on the information superhighway. Technology can help teachers and students play the new roles that are being required of them in the emerging global economy. It can help teachers use resources from across the globe or across the street to create different learning environments for their students without ever leaving the classroom. Technology can also allow students to access the vast array of material, available electronically, necessary to engage in the analysis of real world problems and questions.

GAO REPORTS

Last year, I asked the General Accounting Office to conduct a comprehensive, nationwide study of our Nation's education infrastructure. The GAO decided to meet my request with five separate reports. The first report entitled—''The Condition of America's Schools''—concluded that our Nation's public schools need $112 billion to restore their facilities to good overall condition.

The most recent GAO report entitled—''America's Schools Not Designed or Equipped for the 21st Century''—concluded that more than half of our Nation's public schools lack six or more of the technology elements necessary to reform the way teachers teach and students learn including: computers, printers, modems, cable TV, laser disc players, VCR's, and TV's. The report states that: 86.8 percent of all public schools lack fiber-optic cable; 46.1 percent lack sufficient electrical wiring; 34.6 percent lack sufficient electrical power for computers; 51.8 percent lack sufficient computer networks; 61.2 percent lack sufficient phone lines for instructional use; 60.6 percent lack sufficient conduits and raceways; and 55.5 percent lack sufficient phone lines for modems.

LOCAL PROPERTY TAXES

The most recent GAO report did find that students in some schools are taking advantage of the benefits associated with education technology. The bottom line, however, is that we are still failing to provide all of our Nation's children with the best technology resources in the world because the American system of public education has forced local school districts to maintain our public schools primarily with local property taxes.

In Illinois, the local share of public education funding increased from 48 percent during the 1980–81 school year to 58 percent during the 1992–93 school year, while the State share fell from 43 to 34 percent during this same period. The Federal Government's share of public education funding has also fallen from 9.1 percent during the 1980–81 school year to 5.6 percent during the 1993–94 school year.

INFORMATION SUPERHIGHWAY

These statistics as well as the results of the second GAO report suggest to me that the Federal Government must do more to help build the education portion of the information superhighway. Federal support for the acquisition and use of technology in elementary and secondary schools is currently fragmented, coming from a diverse group of programs and departments. Although the full extent to which the Federal Government currently supports investments in education technology at the precollegiate level is not known, the Office of Technology Assessment estimated in its report—''Power On!''—that the programs administered by the Department of Education provided $208 million for education technology in 1988.

There is little doubt that substantial costs will accompany efforts to bring education technologies into public schools in any comprehensive fashion. In his written testimony before the House Telecommunications and Finance Subcommittee on September 30, 1994, Secretary of Education Richard Riley estimated that it will cost anywhere from $3 to $8 billion annually to build the education portion of the national information infrastructure.

NATIONAL EDUCATION TECHNOLOGY FUNDING CORPORATION

Mr. President, three leaders in the areas of education and finance came together recently to help public schools and public libraries meet these costs. On April 4, John Danforth, former U.S. Senator from Missouri, Jim Murray, former president of Fannie Mae, and Dr. Mary Hatwood Futrell, former president of the National Education Association, created the National Education Technology Funding Corp.

As outlined in its articles of incorporation, the National Education Technology Funding Corp. will stimulate public and private investment in our Nation's education technology infrastructure by providing States with loans, loan guarantees, grants, and other forms of assistance.

AMENDMENT

Mr. President, I introduced S. 792, the National Education Technology Funding Corporation Act, on May 11, 1995, to help provide the seed money necessary to get this exciting private sector initiative off the ground. Rather than supporting our Nation's education technology infrastructure by creating another Federal program, this legislation would simply authorize Federal departments and agencies to make grants to the NETFC.

The amendment I am introducing today would not create the NETFC or recognize it as an agency or establishment of the U.S. Government; it would only recognize its incorporation as a private, nonprofit organization by private citizens. However, since NETFC would be using public funds to connect public schools and public libraries to the information superhighway, my amendment would require the corporation to submit itself and its grantees to appropriate congressional oversight procedures and annual audits.

This amendment will not infringe on local control over public education in any way. Rather, it will supplement, augment, and assist local efforts to support education technology in the least intrusive way possible by helping local school districts build their own on-ramps to the information superhighway.

S. 792 has been cosponsored by Senators BURNS, CAMPBELL, KERRY, and ROBB and endorsed by the National Education Association, the National School Boards Association, the American Library Association, the Council for Education Development and Research, and organizations concerned about rural education.

CONCLUSION

Mr. President, I urge my colleagues to take this important step to help connect public schools and public libraries to the information superhighway by quickly enacting my amendment into law.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

Without objection, the amendments are agreed to.

So the amendments (Nos. 1282 and 1284), as modified, were agreed to.

Mr. SIMON. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will now report the motion to invoke cloture on S. 652.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to close debate on Calendar No. 45, S. 652, the Telecommunications Competition and Deregulation Act:

Trent Lott, Larry Pressler, Judd Gregg, Don Nickles, Rod Grams, Rick Santorum, Craig Thomas, Spencer Abraham, J. James Exon, Bob Dole, Ted Stevens, Larry E. Craig, Mike DeWine, John Ashcroft, Robert F. Bennett, Hank Brown, Conrad R. Burns.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question now occurs, Is it the sense of the Senate that debate on S. 652, the telecommunications bill, shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 89, nays 11, as follows: