said. I am perfectly willing and prepared to vote for a short-term ban on State and local taxation of pure Internet access, and I have been ready to do that since December. So I am for that. I can step over here and take my purist position and give you a long argument on why we don't need to do that and make that kind of subsidy, but I know there are 100 Members here and we all have to pitch in. I am ready to do that.

All we have to fix in the McCain proposal is the definition, which the Senator has just mentioned. We have to make clear, in my view, that nothing in this bill should preclude State and local governments from taxing telephone services, including telephone calls made over the Internet. That is two. The short term is three. I prefer 2 years, not 4 years. The fourth item is the grandfather clause, which ought to be easy to fix. They ought to end at the same time the moratorium ends. So that is not many points of difference—the definition, telephone calls over the Internet, and the term of the grandfather clause.

The PRESIDING OFFICER. Who yields time?

Mr. DORGAN. Mr. President, my understanding is that Senator MCCAIN is just off the Senate floor and will be returning in a moment. Until he returns, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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 (Mr. CRAPO). Without objection, it is so ordered.

Mr. DORGAN. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from North Dakota has 2 minutes 55 seconds remaining, and the Senator from Arizona has 1 minute 26 seconds remaining.

Mr. DORGAN. I am prepared to yield back my time if that is the intention of the Senator from Arizona. That being the case, I yield back my time.

Mr. MCCAIN. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, under the previous order, the motion to proceed is agreed to.

INTERNET TAX NONDISCRIMINATION ACT

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 150) to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Pending:

McCain amendment No. 2136, in the nature of a substitute.

Stabenow amendment No. 2141 (to amendment No. 2136) to express the sense of the Senate that the White House and all executive branch agencies should respond promptly and completely to all requests by Members of Congress of both parties for information about public expenditures.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 2136 WITHDRAWN

Mr. MCCAIN. Mr. President, I now withdraw the pending substitute amendment No. 2136.

The PRESIDING OFFICER. The Senator has a right to withdraw the amendment.

AMENDMENT NO. 3048

Mr. MCCAIN. Mr. President, I send a new substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 3048.

The amendment is as follows:

(Purpose: To extend the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act for 4 years, and for other purposes)

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. FOUR-YEAR EXTENSION OF INTERNET TAX MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2007:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

''(a) PRE-OCTOBER 1998 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2006.

''(b) PRE-NOVEMBER 2003 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

''(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2005.''.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

"SEC. 1107. EFFECT ON OTHER LAWS.

''(a) Universal Service.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 5, is amended by adding at the end the following:

"SEC. 1108. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.

''Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or any other service utilizing Internet Protocol or any successor protocol. This section shall not apply to Internet access or to any services that are incidental to Internet access, such as e-mail, text instant messaging, and instant messaging with voice capability.''.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect on November 1, 2003.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, this substitute, which I will describe in more detail in a minute, is, I hope, a fair and true compromise between the opposing sides in this debate. At least I hope it is viewed by a majority of the Senate as such.

I also understand there are very strongly held views on this issue. This is not the first time we have been to the Senate floor on this issue. This is the third time we have had debate and votes on it, and each time it becomes more difficult because we are talking about a lot more money, a lot more involvement, a lot more taxes and, of course, as technology evolves, of greater importance to America, whether it be economically, whether it be entertainment, or politically. The rise of the Internet in political campaigns in America today is one of the most recent phenomena.

I hope since we have, at least according to a letter I received from Senator ALEXANDER, boiled down our differences to four major differences—I in no way understate the importance of those differences, but there are only four—perhaps we could propose amendments and vote on those four differences and, in the meantime, continue our dialog in trying to reach a reasonable compromise.

I would like to point out it does no one any good for us to leave this issue in limbo. If we are going to allow taxation of the Internet in a broad variety of ways, then the Senate should decide to do so. If we are going to adopt this compromise, then the Senate should do so. The House, as we know, long ago passed legislation.

This particular legislation, before I offered a substitute amendment, was reported out of the committee 10 months ago. I hope all will act together in good faith and try and resolve it.

By the way, those four major differences, as defined in the letter to me from Senator ALEXANDER, are definition, voice over IP, duration, and grandfather clause. I hope we can address each of those either, as I said, in the form of negotiation or in the form of amendments which would be up or down.

I have been told the majority leader says we are going to complete action on this bill by Thursday night late. The Democrats have a retreat beginning on Friday which we all respect. I hope we can get a lot done so we do not find ourselves here at a very late hour on Thursday night.

Mr. President, I offer this amendment to the Internet Tax Nondiscrimination Act which offers, I believe, a true and fair compromise. On one end of the spectrum are those who do not believe the tax moratorium should be extended, and on the other end are those who want to make it permanent. This proposal, I believe, offers a middle-ground alternative to this debate and addresses the concerns State and local governments have expressed, while retaining some—many have said too few—aspects of the bill that was favorably reported by the Commerce Committee last year.

Before I summarize the substance of the amendment, I would like to spend a moment addressing a couple criticisms that have been raised about the compromise proposal.

First, I have heard a few Members talk about how consideration of S. 150 is moving too fast and that Members and their staffs have not had adequate opportunity to consider the substance of this matter.

With all due respect to my colleagues who believe this has been a less than deliberative process, I can think of few debates recently in which Members have had more time to prepare and negotiate. We voted the bill out of the Commerce Committee in July of last year. The Finance Committee, after requesting a sequential referral, discharged the bill without amending it.

Throughout this time, Members, including Senators DORGAN, HOLLINGS, ALLEN, WYDEN, SUNUNU, and many others who have spoken on this floor about this matter, continued to negotiate the substance of the legislation.

During that time, we heard from State and local groups such as the National Governors Association and the National Association of Counties. They had several opportunities, and did, to provide significant input.

We are here after almost 1 year of considering this matter, not because we have not discussed the issue thoroughly enough. Nor are we here because we have not properly defined Internet access or otherwise adequately dealt with the specifics of the Internet tax moratorium. We are debating this measure because the two opposing sides will not budge from their positions.

To be clear, the compromise amendment will not likely move those who are firmly on one side or the other. As Senator VOINOVICH said yesterday, for some Members the philosophical divide in this debate may be ''too deep to bridge.'' Its purpose is only to offer a compromise that other Members can vote for knowing that it strikes a reasonable balance between those who want a permanent and broad Internet access tax moratorium and those who want no moratorium at all.

Second, some Members who do not want to reinstate the Internet tax moratorium have expressed their view that the amendment is not a true compromise; that it does not go all the way to meeting their concerns about State and local revenues. I must respond to them by saying the amendment is a compromise precisely because it does not completely satisfy one side or the other. However, the amendment does protect a significant portion of the $20 billion in tax revenues from telecommunications services that States and localities claim they could lose as a result of S. 150.

In fact, even using the most aggressive revenue loss estimates available, it appears what is at stake is not more than 3.5 percent of total State and local tax revenues from telecommunications services. In my opinion, that is not just a compromise but a very generous concession to those who want to defeat the Internet tax moratorium. To criticize this proposal at this point as somehow not enough is just an empty exercise in moving the proverbial goalpost of this debate.

It seems to me the goalpost continues to move so much that it would not surprise me to hear at the end of this week that some Members actually support a Federal law requiring States to tax Internet access. I remind my colleagues that this debate is about striking a balance between S. 150, the Allen-Wyden bill, and S. 2084, the Alexander-Carper bill.

Clearly, this amendment goes a long way to compromising with the opponents of the Internet tax moratorium. Again, I have to repeat this because it is a crucial point: This body does not typically operate by capitulating 100 percent to one side or the other on a particular matter that is before it. In its normal course of business, the Senate compromises, and that is exactly what this amendment does.

Simply put, the amendment offered today is truly a reasonable compromise that addresses a host of concerns the States and localities have raised over the past 10 months. Throughout the negotiation process, State and local

groups have asked for a temporary extension to the Internet tax moratorium. Specifically, they have asked for a 2-year extension of the moratorium. The compromise amendment would extend the moratorium for 4 years.

Why 4 years? If we do it for 2 years, we would almost automatically be back revisiting the issue immediately when one looks at the process we have just been through. I think 4 years is a great deal less than permanent and not much more than 2 years, as the opponents of this legislation have alleged.

Another concern we have heard from State and local government is extending the Internet tax moratorium would somehow impact traditional telephone services. This amendment would ensure that State and local revenues from traditional phone service would not be impacted in any way, shape, or form. Again, the amendment would accommodate a concern raised by States and localities to the full satisfaction of State and local authorities.

State and local governments have also expressed concern that this bill would hamper their ability to tax voice services provided over the Internet. This amendment addresses that matter by setting forth a broad definition of services, including voice services that are provided over the Internet that would not be considered Internet access and therefore not be subject to the Internet tax moratorium. Once again, I believe this provision should fully address the concern of State and local governments.

The list of concessions made to State and local government interests in the amendment is extensive. For example, the compromise amendment would clarify that the Internet tax moratorium does not apply to nontransactional taxes such as taxes on net income, net worth, or property value. The amendment would clarify that otherwise taxable services would not become tax free solely because they are offered as a package with Internet access. The amendment would grandfather for 3 years, from November 1, 2003, the States that were taxing Internet access in October 1998. It would grandfather for 2 years, from November 1, 2003, the States that began to tax—according to many, improperly—Internet access after October 1998. It would ensure that universal service would not be affected by the moratorium. It would ensure that 9–1–1 and e–9–1–1 services would not be affected by the moratorium. Finally, it would ensure that regulatory proceedings that do not relate to taxation would not be impacted by the Internet tax moratorium.

I want to point out again, there are really 10 compromises offered in this: the 4-year moratorium, the 3-year phaseout of the grandfather clause, the 2-year grandfather of taxes on DSL, and voice over IP carve-out. It clarifies taxes covered. It clarifies the House's language on DSL. It provides a clear and uniform accounting rule. The universal service fees are unaffected. As I mentioned, e–9–1–1 taxes are unaffected, and nontax regulatory powers are unaffected.

I hope we can move forward if there is not agreement. Meanwhile, we continue to discuss the issue.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, my colleague from Arizona talks about four issues. There are three of them we really ought to be able to reach agreement on reasonably soon, and the other one is a very difficult issue, there is no question about that. That is the definition. But on grandfathering and VOIP, for example, the length of time of a moratorium, frankly, I think we can reach an agreement on those three areas.

Frankly, if we are able to reach an agreement on the definition, I do not care much about the grandfathering. I know some of my colleagues do, but that is a lot less important to me. I would also say that the length of a moratorium on Internet taxation is of much less importance to me as well. I would be willing to lengthen it by a substantial number of years provided we have the right definition. So I think the thing that is going to be difficult for us but one that we should attempt to resolve is this definition.

I want to just make this point: If the purpose of those who are most insistent on moving this legislation—and there are several in the Chamber who have really worked on this a long time—would be, for example, to create a broad new exemption from taxation for certain services and certain parts of the backbone of the Internet and so on, then that is a problem. I do not support that. I do not think we ought to carve out things that are now being taxed by State and local governments and say, by the way, we are going to federally preempt that. If that is not the purpose, though, then we surely should be able to find common ground on a definition that works.

My hope is that as we proceed we will understand that all of us—I think I speak for all of us—believe we ought to have a moratorium on taxing the Internet, that is, the connection to the Internet. I support that. I believe virtually all of us in this Chamber would agree we ought not levy punitive or discriminatory taxes on the Internet. I believe we would all agree on the goal that we would want to encourage through public policy the build out of broadband and the use of the Internet and particularly advanced telecommunications services. All of those represent areas of broad, substantial agreement in the Senate Chamber.

As we work through this now, the one area where I think we have substantial difficulties is trying to understand what each side means with respect to the definition of Internet service. How far up the backbone of the Internet does it go? Is it a definition that, in fact, would prevent the taxation of certain services that are now taxed, and on which State and local governments rely for that revenue? If that is the case, we ought to know that and discuss that. If it is not the case, we should be able to reach an agreement on the definition.

Senator ALLEN, for example, and many others who have been at this, Senator WYDEN and on the other side Senators CARPER and ALEXANDER and many others—we need to once again get our heads together and see if we can find agreement on this definition. But until that happens and unless that happens, it is my guess we are just going to be around here spinning our big old tractor wheels and nothing is going to happen. We are not going to pass legislation.

We are not going to agree to amendments. I am guessing the consensus wouldn't exist to do that. I wouldn't object to going to vote on some things, speaking for myself, but we have a lot of work to do to reach some sort of compromise. Let me say to my colleague Senator MCCAIN, I recall being in meetings with him a year ago and beyond that, and the attempt was to try to figure out, how can we find common ground? How can we extend the moratorium that then existed? We never got to the point of reaching any kind of agreement, but it wasn't because of any lack of effort on the part of the chairman of the committee. I am here. I will be here during consideration of this, and I want to work with Senator MCCAIN and others to see if we can find a way to make this work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3049 TO AMENDMENT NO. 3048

Mrs. HUTCHISON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] proposes an amendment numbered 3049 to amendment No. 3048.

Mrs. HUTCHISON. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To change the definition of Internet access service)

At the appropriate place, insert the following:

SEC. ____. CHANGE IN DEFINITION OF INTERNET ACCESS SERVICE.

Paragraph (10) of section 1105 of the Internet Tax Freedom Act, as redesignated by this Act, is amended—

(1) by striking ''The term'' and inserting the following:

''(A) IN GENERAL.—The term''; and

(2) by adding at the end the following:

''(B) GENERAL EXCEPTION.—The term does not—

''(i) include a tax levied upon or measured by net income, capital stock, net worth, or property value; or

''(ii) apply to any payment made for use of the public right-of-way or made in lieu of a

fee for use of the public right-of-way, however it may be denominated, including but not limited to an access line fee, franchise fee, license fee, or gross receipts or gross revenue fee.''.

Mrs. HUTCHISON. Mr. President, I thank the Senator from Arizona, the chairman of the Commerce Committee, and the distinguished ranking member, Senator DORGAN, for bringing this to the floor. As has been said by everyone, I think, we have been talking about this issue for a long time. It is such a crucial issue for many States and many cities, that we must get it right.

I think the bill of Senator ALLEN, the underlying bill, and now the bill of Senator MCCAIN are attempting to do something that is right. They are attempting to assure that interstate commerce is not obstructed by taxes on Internet access.

I am afraid, however, that the language is not clear enough as it deals with franchise taxes and right-of-way fees that have been in place in cities in many States in our country for a long time. That is why I have introduced an amendment that will clarify the definition of what is excepted from this Internet access tax ban. It says:

. . . any payment made for the use of a public right-of-way or made in lieu of a fee for use of the public right-of-way, however it may be denominated, including but not limited to an access line fee, a franchise fee, license fee or gross receipts or gross revenue fee.

I think we have found out since we started debating this issue years ago that cities determine their franchise fees, their right-of-way fees, in many different ways. I think it is very important that we not make a mistake here that would cause years of litigation, after which a city might win, it might lose, but it would certainly disrupt what it has been doing. The franchise fee is basically a local tax, not on Internet access, not meant to be on Internet access.

My position is that we should not tax Internet access. I do believe it is a taxation of interstate commerce. However, I think that once you get off the basic access, just as we have telephone lines' access, use of right-of-way, that we must create a level playing field so a line that is used for telephone and an Internet computer line will be able to be taxed in the same way.

In my State of Texas, prior to 1999 cities were compensated by telecommunications providers for the use of their rights-of-way pursuant to individual franchise agreements negotiated between the telecommunications company and the cities.

In the late 1990s, Texas cities and the providers began negotiating and drafting major compromises that would lead to more uniformity, more regulatory certainty. So the Texas law has established a uniform method of compensating cities for use of public rights-of-way. It is called a per access line fee. It is implemented to compensate cities for use of public rights-of-way.

The access lines are reported by the individual telecommunications providers to the Texas Public Utility Commission. The PUC then applies the individual city rate per access line to the total number of lines that a particular city may have within their corporate limits. It is a fair and equitable system that is used in Texas. An average city gets about 3.5 percent of its general revenue from telecommunications right-of-way compensation fees.

Passing Federal legislation that would call into question the validity of this Texas system could have disastrous effects on the ability of Texas cities to provide essential services such as police and fire, water, waste water, and parks, just to name a few. The right-of-way fees represent as much as $39 million annually to the city of Dallas; $9 million for Fort Worth; and $15 million for the city of San Antonio.

Cities in California, Nevada, Florida, Kentucky, and other States would also be adversely affected by the bill as it is written. So I am trying to clarify why franchise fees should be included. I am hoping we are all trying to go in the same direction here. I just want to make sure that we don't make a mistake.

There will be people who say it is really covered. It is covered in the underlying law. It is covered in the amendment that is offered by Senator MCCAIN and the one underlying by Senator ALLEN. People will say that. However, it is not clear and the city attorneys and these Texas cities and other States have looked at the language and they are very concerned they are going to be in litigation over this issue. If we know today that it is not clear, after the lawyers have looked at it, why not be sure? Why not be sure?

Everyone I have talked to believes that right-of-way and franchise fees should not be disturbed. It is part of the level playing field we are trying to create. My amendment will make it very clear what is accepted by definition. This should not have any impact on Internet access as both of the underlying bills would try to protect that from taxation. But it does protect cities, particularly since we have certain laws in some States that do have a component of a gross receipts fee within the access line issue, and I hope we will not step on a State with its local issues, trying to stay consistent with what has been done and accepted through all these years by passing this law without being very clear.

Mine is a clarification amendment.

Mr. WYDEN. Will my colleague yield?

Mrs. HUTCHISON. I am happy to yield to the Senator.

Mr. WYDEN. I want to make sure I understand this. Cable already pays a franchise fee when the streets are torn up in order to offer cable. My understanding of this amendment is that now there would be a new special tax for right-of-way for the very same service.

In effect, my reading of this is that cable would be taxed twice. They already get hit with a franchise fee and now your right-of-way provision would allow for a new special fee, which troubles me, again, because it has been our point all along through Internet access that you have already paid once.

Could my colleague from Texas clarify? Otherwise, I would have to strongly oppose this.

Mrs. HUTCHISON. Mr. President, I appreciate the question.

This is, of course, not to put a new tax in place. This is to try to acknowledge that different cities and different States have different definitions of franchise tax. It happens that in Texas there is a gross-receipts component in the franchise right-of-way access tax. It is a standardized law now for the cities of Texas, for cable companies and telecommunications companies.

We have a different definition which I am trying to protect. Certainly these cities have already made their contracts with their cable companies. This is not meant to change contracts; it is meant to allow the contracts which are in existence and use a well recognized and different definition of franchise or right-of-way tax.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, this amendment excludes from the definition of tax on Internet access transactional taxes such as gross receipts or gross revenue fees, constitutes an end run around Internet tax freedom, and eviscerates the moratorium itself. If we allow this to exclude payments made for use of the public right-of-way, including access line fees, franchise fees, et cetera, this amendment should be rejected.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. I announce that the Senator from South Carolina (Mr. GRAHAM) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 64, nays 32, as follows:

[Rollcall Vote No. 72 Leg.]

YEAS—64

Allard	Burns	Crapo
Allen	Campbell	Daschle
Baucus	Cantwell	Dayton
Bayh	Chambliss	DeWine
Bennett	Cochran	Dole
Bond	Coleman	Dorgan
Boxer	Collins	Ensign
Brownback	Conrad	Fitzgerald
Bunning	Craig	Frist

Grassley	McCain	Santorum
Gregg	McConnell	Sessions
Hagel	Mikulski	Shelby
Harkin	Miller	Smith
Hatch	Murkowski	Snowe
Inhofe	Murray	Stabenow
Johnson	Nelson (NE)	Stevens
Kohl	Nickles	Sununu
Kyl	Pryor	Talent
Leahy	Reed	Warner
Lincoln	Reid	Wyden
Lott	Roberts	
Lugar	Rockefeller	

NAYS—32

Akaka	Dodd	Kennedy
Alexander	Domenici	Landrieu
Biden	Durbin	Lautenberg
Bingaman	Edwards	Levin
Breaux	Enzi	Lieberman
Byrd	Feingold	Nelson (FL)
Carper	Feinstein	Sarbanes
Chafee	Hollings	Schumer
Clinton	Hutchison	Thomas
Cornyn	Inouye	Voinovich
Corzine	Jeffords	

NOT VOTING—4

Graham (FL)	Kerry
Graham (SC)	Specter

The motion was agreed to.

Mr. LOTT. 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.

The PRESIDING OFFICER. The Democratic leader is recognized.

AMENDMENT NO. 3050

(Purpose: To eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, and to increase the Nation's energy independence)

Mr. DASCHLE. Mr. President, I have an amendment at the desk to the underlying bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 3050.

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

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

[The amendment is printed in today's RECORD under ''Text of Amendments.'']

Mr. DASCHLE. Mr. President, I want very much to be able to continue to work on the underlying bill and find a way to resolve many of the outstanding issues. I think we have made some progress today.

Obviously, this is a piece of legislation that provides an opportunity for many of us who have concerns about other matters relating to our Senate agenda as well.

I was very concerned this morning to read in Energy Daily that the leadership has abandoned its plan to bring up the comprehensive Energy bill in May, and may wait now until fall to revisit comprehensive energy legislation.

Now, nearly 6 months after we could have enacted an Energy bill with the renewable fuels standard and other important components there is no prospect now of action on the legislation any time soon. So I have no recourse but to offer the renewable fuels amendment to another legislative vehicle, which I have done with this amendment.

The amendment is very straightforward. It is based on language that has passed in the Senate on two previous occasions. It eliminates the reformulated gasoline program, RFG, oxygenate standard and replaces it with a renewable fuels standard that sets a 10-year schedule for assured growth in ethanol demand.

It contains the same waiver authority agreed to in the energy conference report, strikes all liability protection for MTBE as well as ethanol.

It also bans MTBE within 4 years.

Over two-thirds of the Senate has now gone on record in support of a renewable fuels standard and the renewable fuels standard we create with this legislation. It has been reported out of committee twice, passed by the Senate twice, both times by a margin of more than two-thirds. A similar proposal has been reported out of the Environment and Public Works Committee and is pending now on the Senate calendar.

Last June, 68 Senators voted to add at that time the Frist-Daschle RFS amendment to the Energy bill. It is time to break the impasse.

As I said, my first choice would have been to bring the Energy bill to the floor, have a good debate, and send it on to the President without the MTBE liability immunity.

However, the Energy bill conference report stalled last November because of bipartisan opposition to the special interest MTBE liability relief provision included in that legislation, in spite of the efforts made by many of us to warn that is exactly what would happen. Dropping the liability protection from the bill for both MTBE and ethanol would have attracted more than enough votes to enact the Energy bill. Yet despite the direct intervention by President Bush, the defenders of MTBE liability relief remain defiant.

Senator FRIST placed a revised energy bill without MTBE on the Senate calendar last February, now almost 3 months ago. He has not chosen to call up that bill.

Today, Energy Daily has reported our Republican friends have abandoned plans to move comprehensive energy legislation any time in the near future. That is troubling for many of us who wanted to see it pass. Now we have little choice but to offer very important components of this bill to other legislation that may move through the Senate as well as the House.

The energy tax provisions, for example, that Senator FRIST placed on the calendar have now been added to the FSC/ETI bill. Senators Cantwell and Bingaman are leading the effort to pass stand-alone electricity standards to address the circumstances that caused the blackout last August.

It appears it is time to shift gears, not only for the tax provisions and the reliability standards, but for the renewable fuels standard as well. This bipartisan amendment is a careful balance of the often desperate and competing interests and a compromise in the finest tradition of the Senate. As I have said on many occasions, two-thirds of the Senate is on record in support of the bill. So I hope we can get legislation such as this considered quickly.

CLOTURE MOTION

Mr. DASCHLE. Mr. President, I send a cloture motion to the desk. We can vitiate it if we get an agreement on a rollcall vote shortly. I am very concerned that we move this legislation quickly and comprehensively. This amendment is yet another attempt to do that in this body.

I ask that the motion be reported.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant 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, hereby move to bring to a close the debate on the Daschle amendment No. 3050 to S. 150:

Thomas Daschle, Harry Reid, Jeff Bingaman, Kent Conrad, Byron L. Dorgan, Tom Harkin, Dick Durbin, Max Baucus, Daniel L. Akaka, Evan Bayh, Debbie Stabenow, Mark Dayton, Jay Rockefeller, Ben Nelson, Tim Johnson, Carl Levin.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I was not aware, and I do not believe the manager of the legislation who is temporarily off the floor was aware, this amendment would be offered at this time. He will return shortly. I am sure there are going to be some discussions about the amendment and the appropriate way for us to deal with it.

I understand the importance of this amendment that has been offered by Senator DASCHLE to a number of Senators on both sides of the aisle. I agree we should have a national energy policy. We have been talking about it for at least 3 years or longer. Yet here we stand today with no national energy policy. We do not have legislation on the books that gives incentives for more production of oil and gas to relieve some of the regulatory problems that delay or make it almost impossible to have nuclear plants, hydropower, conservation, alternative fuels, ethanol—the whole package. Yet last year, the Senate passed energy legislation. The House passed it. We had a conference.

Problems developed in the conference, and we have not been able, unfortunately, to move the energy legislation through the Senate because we have not been able to get 60 votes, even though we had, I think, 57 or 58 who voted for the bill.

I still think we should find a way to get this legislation through a conference or through to completion and

send it to the President. If we do not, a pox on all our houses because problems are here. They are going to stay, and they are going to get worse. We are not going to conserve. We are not going to produce. We are not going to do anything. We are at the mercy, then, of countries all over the world to provide the oil for over 50 percent of our energy needs in this country. This is dangerous.

We need a national energy policy because of economic security and national security. So I agree we need to do this. I do not agree with all the features in it. I did not like some of the provisions added at the end in the conference. I have my reservations about some of the renewable fuels. I have reservations about a lot of it, but I voted for it, and I am prepared to vote for it again in its current form with warts or with another problem. We should deal with this problem.

There is one way we will not deal with it comprehensively or deal with it at all, probably, and that is to pick it apart, pick all the meat off the bones of this national energy policy legislation. Piece by piece we will devour this good legislation, for example by putting a piece of it on the FSC/ETI jobs growth bill. If we put tax policies there, put ethanol here, or put it somewhere else, and start picking it apart piece by piece, what will happen is we will probably not get a comprehensive bill, and we probably will not even get the pieces. This is not wise.

I do not have the impression that it has been indicated by our leadership that we are not going to do an energy bill. I think it is on the agenda to be considered further, and it should be considered further.

We should work in a bipartisan and a bicameral way to get this legislation done. For that reason, I think it is a huge mistake to come pull out this one piece a lot of people do like and stick it on this legislation, because it is one of the engines that could possibly pull us to a national energy policy.

We will have discussion over the next few minutes about the way we would like to deal with it. But I personally do not think we should be adding this nongermane amendment, a critical part of the Energy bill, on this bill.

I would also like to say briefly that I think we have a good compromise package which Senator MCCAIN, the chairman of the Commerce Committee, has developed. He has worked over a long period of time with both the proponents and opponents to see if we could find compromise language on this Internet tax issue that was acceptable to get the job done.

It has not been easy because neither side wants to give. The proponents do not want even a 4-year moratorium. They want a permanent moratorium on Internet access taxes. I have in the past been inclined to be in that camp.

However, I have listened to Senator ALEXANDER and Senator VOINOVICH. I have heard from the Governor of my own State, and there is an argument on the other side, there is no question about this. We need to deal with this whole issue in a comprehensive way. The Commerce Committee needs some time and it will not be easy.

I went through the legislative process for telecommunications reform that we passed in 1996. We worked on it for 2 years. It was very laborious and it had the possibility of just falling apart right up until the end. It will probably take us a couple of years to get further comprehensive telecommunications reform done. In the meantime, we should have in place a moratorium on taxing the Internet. In fact, I believe there is an overwhelming majority that agrees. We saw the vote yesterday. I know that was not a vote on the substance, but anytime around here of late that there is a vote of 74 to 11 to go to the substance of a bill, that is pretty strong.

I believe most Senators want to get this moratorium in place. Could we tinker with it here or there? Surely, and there will be legitimate amendments that we should consider.

We are on the legislation now. We can begin the amendment process. We have had a relevant amendment. Senator ALEXANDER, the opponents, were reasonable and have allowed us to do this. They are going to have some really good and tough amendments that we are going to have to deal with, and that is the way the legislative process is supposed to work, I think. To have voted against proceeding to this bill at all would have been it. The year would have been over if we could not get on the substance of a bill of this nature with such a strong majority being in favor of getting results.

So the 4-year moratorium that is in this proposal that makes Internet access 100-percent tax free, while taking care to narrow the definition of Internet access to ensure that traditional telephone service is not included and while excluding voice over Internet protocol, is the right way to go. The Commerce Committee is already beginning to have hearings on comprehensive telecom legislation, and that will be the appropriate place to address matters such as voice over Internet protocol.

Senator SUNUNU has introduced legislation on VOIP, or voice over Internet protocol. We should not address that until we know exactly what we are doing. Certainly, we should not be saying that taxes are going to begin to be assessed in this area until we have thought it through. The compromise does grandfather States that taxed Internet access prior to the 1998 Internet Tax Freedom Act, and there are some 10 or 11 States that are in that category. This legislation would extend that grandfather status for 3 more years. For a 2-year period, it grandfathers the States that currently tax Internet access but were not protected under the 1998 grandfather clause.

So that is an oversimplification, but basically the rest of the bill just incorporates the common components between the two bills that were pending, the Alexander bill and the Allen bill. We should go forward with this legislation. We should get the job done.

What is happening once again is that while we have had one amendment that is germane to the substance, we now have an energy amendment being offered to the Internet tax moratorium. We hear there will be other nongermane amendments. This is the Senate. That is the way we do business, but we have work to do. We all agree this is something we want to do in a bipartisan way. My colleagues should take their shot or take their shots but make them count, and let's not get hung up on this legislation and drag it out with nongermane killer or poison amendments, because it will wind up killing or doing great damage to what I think is a reasonable compromise.

Again, I understand the Senate rules very well. My colleagues can offer anything on any subject at any time, unless there is agreement to the contrary. So Senators on both sides can dump their outbasket on this bill, but that would be a mistake. I do not believe the leadership on either side wants that to happen.

The best thing that could happen is for the Senators to get this off of our agenda right now. Let's get it off our backs. My colleagues would like to be able to vote both ways, or not be able to vote at all. We cannot do that because the moratorium has already ended and there are a lot of innovative people out there thinking of ways to tax Internet access.

Before my colleagues vote to allow a tax on the Internet, they should check with their children. If my colleagues have teenagers or kids in college, they will tear their head off. They do not want this interconnection to the Internet to be taxed, and if we were to go around and ask Senators if they want that, no, we do not want that. Let's vote on this issue. Let's deal with the substantive amendments and the germane amendments, if my colleagues want to offer a couple of relevant amendments.

I plead with the Senate, do not make this a punching bag because, if we do, we are going to show once again that we are incompetent to produce anything.

We did a pension bill. We saw we could do it. It still may not be perfect, but we got it done. This is one of those issues that is bipartisan. We need to get it done, and we need to get it done this week. I hope my colleagues will join in finding a way to make that happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, the amendment that has been offered a few moments ago by my colleague Senator DASCHLE is not some mysterious amendment. It is not some amendment that was offered under some mysterious procedure. This is the way the

Senate allows amendments to be offered.

Senator DASCHLE has offered an amendment that deals with the subject of energy, and specifically renewable fuels. My colleague from Mississippi, Senator LOTT, indicated that it is the way the Senate can do business. He is absolutely correct about that. The rules allow this amendment to be offered. However, I point out that the Senate really does not do business much anymore. We are not voting much. We are kind of at parade rest. If there was a ''gone fishing'' sign, it would long ago have been hung on all three doors of the Senate.

There is very little activity in the Senate. Very little is happening. I expect that is one of the reasons my colleague offered this amendment to this bill.

I will talk for a moment about the Energy bill. The Senator from Mississippi and the Senator from South Dakota both indicated that we ought to have an energy policy, and indeed we should. I was a conferee on the Energy bill. I signed the conference report, much to the consternation of some of my friends, because I thought on the whole it advanced our country's interest in energy.

It was not perfect. There were some things in it I did not like much, but the fact is, it came to the Senate floor and it lost by two votes. Everyone in this Chamber understands why it lost. It lost by two votes because the White House and the majority over in the House of Representatives decided to put in a retroactive waiver for liability of MTBE. They stubbornly persisted and demanded it be part of the bill even when they were told it was likely to kill the bill.

They preferred the bill die rather than take out that provision, the provision that was a favoritism provision for a few enterprises. So the bill died. Now they want to blame others for the death of that energy bill. It does not wash. That energy bill died on the Senate floor, lost by two votes, because there were some that stubbornly persisted in putting a favor in that bill for some of their friends and they would not back away from it. So they lost the bill. They were willing to let the bill go down because of that.

For example, that bill contained important provisions that I thought advanced the country's interests: production incentives, conservation, an efficiency title, a renewable fuels title. I will talk for a moment about the renewable fuels title because that is the subject of Senator DASCHLE's amendment.

I think the renewal fuels title is very important and advances this country's interests. I am a strong supporter of it. Incidentally, I will support this amendment, and I hope we get a vote on this amendment. It does not do damage to the underlying bill at all. We can, should, and will, in my judgment, have a vote on this amendment.

If we are not going to do a big energy bill, if instead of this week having energy on the Senate floor, which I would have preferred, we have the underlying Internet tax bill, if the priority is always going to be something other than an energy bill for the majority leader, then we have no choice but to take provisions of this energy bill that we think advances this country's interests, bring it to the Senate floor, and see if we can legislate on it.

I will now talk about the renewable fuels provision. The renewable fuels provision is pretty simple. Drive to the gas pump this afternoon and see what is going on. We used to see 55 percent of our oil came from off of our shores. It is now 60 percent. Sixty percent of the oil every single day that we use in this country comes from other parts of the world, much of it very troubled.

We are putting this country at great risk if we do not understand that endangers this country's economy, that endangers the opportunity for us to expand, grow, and promote opportunity in the future. Yet people seem oblivious to it. They say it is 60 percent coming from offshore, from Saudi Arabia, from Iraq, from Venezuela, from Kuwait, so what? Well, I think many of us understand the so what.

This country's economy, this country's well-being in the future, is held hostage by others, some of whom wish this country ill. In the new age of terrorism, we would be well advised to understand that this excessive and growing dependence on foreign sources of oil, foreign oil specifically, is very dangerous to this country.

My colleague offers an amendment that says at least one part of the Energy bill dealing with renewable fuels allows us to increase supply of energy in this country in a very significant way that is not only friendly to the environment but allows us to grow some energy in America's fields. It allows us to be innovative in creating new forms of energy to extend America's energy supply. Let me use ethanol as an example. Incidentally, let me say, for those who have heartburn over the offering of this amendment, 69 Senators have already voted for this amendment. This will not be a big problem if you just allow us to have the vote, put it on the bill. If the bill gets signed by the President, we have at least advanced this portion of the Energy bill.

But let me talk for a moment about ethanol. The ability to take the drop of ethanol from a kernel of corn and have the protein feedstock left and use that drop of alcohol to extend America's energy supply—good for us. That is called renewable energy. It expands the supply of energy. It means we can grow our energy in our fields.

We have a prodigious appetite for energy in our country. As all of us know, when the price of energy goes way up, the price of gasoline at the pumps continues to increase relentlessly, and we know we have to do something. It ought to be a warning sign.

My colleague brings to the floor of the Senate a sensible, thoughtful provision that had wide bipartisan support in this Chamber. What he says is pretty simple. He says if it is the case that we didn't have energy on the floor last month, last week, this week, next month, or even this summer, if that is the case, if that is what the majority wishes to do, to not put the Energy bill back on the Senate floor and allow us to work on that to get a good energy bill, then at least let's take portions of the bill that we know had strong bipartisan support and move that because that will strengthen this country.

Once again, let me say to those who counsel let's wait, let's just wait, the question is, Wait for what? Wait for fall? Wait for October? Wait for September? Nobody else is waiting. The price of gasoline is not waiting. The threat to our supply of oil is not waiting.

Read yesterday's newspapers about terrorists who want to interrupt the supply of oil. They are not waiting. Why should we wait to construct a sensible energy policy for this country's future? Why should we wait, above all, to move forward a provision that has strong, broad bipartisan support in this Chamber?

This is not the time to wait. This is time for us to move forward and understand that our economy, our Nation is at peril with respect to an energy supply if we do not advance those portions of the Energy bill that strengthen this country.

I, for example, believe we ought to advance the conservation title and we ought to advance the efficiency title, both of which are very important. My colleague offers, I think, perhaps the easiest and perhaps the most important provision dealing with renewable fuels. The easiest why? Because almost three-fourths of the Senate agree with it. Yet the amendment gets offered and we will have people walking around here choking on it. Nobody ought to choke on this amendment. The Senate ought to agree that this amendment makes sense. This amendment has previously been agreed to. This amendment advances this country's energy interests. We ought to agree to this amendment. Not yesterday, not tomorrow—now. This is not heavy lifting.

The only thing that is difficult in this Senate these days is that we are not doing anything. We face some real serious challenges in this country. We have an economy in trouble. We have energy problems. We are involved in a war in Iraq and a war in Afghanistan. We are beset by the terrorist threat. The fact is, this place is at parade rest. So my colleague Senator DASCHLE comes to the Senate floor and offers something that says, let's move on this subject; let's step forward; let's do the right thing; let's vote; let's advance this country's energy supply by passing the renewable fuels section of the Energy bill.

I understand. I managed the bill on this side on the Internet tax issue. I

understand this is inconvenient, but inconvenience is a small price to pay, incidentally, for advancing that important portion of this energy bill. I commend Senator DASCHLE for offering this, and I will strongly support it and hope we can move it quickly.

Let me just say as one person who is managing this on the floor of the Senate—I can't speak for the majority, but let me speak for the minority managing this—this should not take much time at all. My guess is Senator DASCHLE would agree to a very short time limit on debate. We have already debated this particular issue and had votes on it, so this should not interrupt us more than 30 minutes or an hour, after which we will have expressed ourselves as a Senate to move a very important piece of this energy bill—the renewable fuels portion of the Energy bill—forward with this legislation.

My hope is that is what we will decide to do. There is a possibility, however, that what happens the minute someone offers an amendment like this is this place goes into some sort of apoplectic seizure; it shuts down; we go into a quorum call. Why? Because people want to gnash and wipe their brow and wring their hands and fret on what to do because they can't deal with this. The way to do it is to put it up for a vote, have about 70 Senators vote for it, and add it to this underlying legislation, so that in the end we will have this important piece of the Energy bill for the American people. That will be good for this country and good for the American people, and when we have done it, I will say good for the American Senate as well.

I yield the floor.

Mr. REID. Mr. President, I have the highest regard for the distinguished junior Senator from Mississippi, Senator LOTT, but on this issue I disagree with him. I believe we have to move forward on energy legislation any way we can. If it is piecemeal, let's do that. The people of the State of Nevada are suffering from high gasoline prices. We have the second or third highest gas prices in all America.

For example, the bill we are going to take up next week, the FSC bill, in that bill I think very importantly the managers of that bill added to that some very important tax provisions that deal with energy. There are some short-term solutions I will speak to briefly, but there are some long-term solutions we must address.

Senators BAUCUS and GRASSLEY in the FSC bill address that. What have they done? They have provided tax credits for alternative energy. The tax credit for wind has expired. They are going to add, if we pass that legislation, a tax credit for solar, a tax credit for geothermal. This is the solution to the energy problems we have in this country. It will happen. It is only a question of time, when it is to happen. We need not depend forever on the vagaries of what OPEC does. We have to depend on what we can do.

People come to this Senate floor and say we need to produce our way out of the problem we have. We cannot do that. The United States has, even counting ANWR, less than 3 percent of the entire oil reserves in the world. Ninety-seven percent-plus of the oil is someplace other than the United States. So it is common sense that we cannot produce our way out of the problems we have today. We can do some things with the oil that we do have. We can make it better. We can have some of our smaller producing wells produce a little more. We can do some with exploration. But the answer is not that. We cannot produce our way out of the problems we have with oil.

So what can we do? The one thing we can do is do something with alternative energy. The Nevada test site in the deserts of Nevada has been the site for almost 1,000 nuclear explosions, some above the ground, some below the ground. At the Nevada test site, if you put solar panels on the Nevada test site you could produce enough electricity to serve the entire United States. The Nevada test site with solar panels could produce enough electricity to satisfy all the needs of this country.

We know that wind energy is doing very well. In the Midwest there are some farmers making more money on their windmills producing electricity than they are from the crops they produce. We know that Nevada has been said to be the Saudi Arabia of geothermal. We have, not unlimited, but huge amounts of geothermal power in the State of Nevada. You can drive places in Nevada and see steam coming out of the ground naturally. It is because of geothermal. Some wells have been tapped. The problem with tapping the resources we have with geothermal is the people have no tax credits to do it like they had for wind. If we did that, there would be immediately, in Nevada, a tremendous surge in the production of electricity which would feed our state, California, and other parts of the West with badly needed electricity. There would not be any pollution. The same, of course, applies to solar. So we need to do that.

There are some other solutions to problems we have. Of course, among the long-term solutions I did mention is more fuel-efficient vehicles. We certainly need to do a better job in that regard.

In recent years, there have been two major releases of oil from the Strategic Petroleum Reserve—during the Clinton years and during the first Bush years. It was done because it brought down the price of oil.

For example, in January 16, 1991, there was a decision made to release oil from our petroleum reserve. The next day crude oil prices fell from $32 to $21 a barrel. Of course, it dropped. We have done it on two separate occasions—during the Clinton years and the first Bush years. It made a difference.

A second release occurred. After that second release, within a week of the time the Strategic Petroleum Reserve was being used, the price of oil dropped from $37 to $31 per barrel.

Right now the price of oil is near $40 a barrel. Why doesn't the President release this oil from the petroleum reserve? I don't know. I know one thing. It would certainly be a help if that happened. It would increase the supply in this country. As supply is increased, we would have a lessening of prices.

The other thing which I think is extremely important is that we recognize there are other ways of bringing down the cost of oil. One thing the President could do is use his bully pulpit and his influence, which we understand is significant with the Saudis. Bob Woodward just published a book that said they knew about the war before anybody in the Congress knew about it.

Also, of course, we have been told the President has been assured that in September they will start releasing more oil. That will also bring down the cost of oil. I suggest rather than waiting until this fall the President do something now to pressure the Saudis into releasing more oil. They have cut by 10 percent their production of oil which began on April 1.

These countries are supposed to be our friends. We have young Americans giving their lives in Iraq right now to make that part of the world safer and more stable. It doesn't seem right the Saudis and other OPEC nations are not recognizing what we are doing for them.

We also know there are other things that can happen. The bill that was defeated on the Senate floor last year had a lot of problems with it. Senator MCCAIN referred to it as a ''hooters and polluters'' bill because of all of the ornaments that have been attached to the so-called ''Christmas tree.''

There are things which we need to do. People have said, Well, these things the President can do now do not matter. Getting the Saudis to increase the supply of oil would matter and, of course, having more oil come out of our strategic reserve would matter. The other thing the President could do is say let us stop buying oil to be put in the SPR right now. Some analysts suggest prices will only go down by 10 to 20 cents a gallon. That is significant.

In Nevada where the prices are approaching $2.50 a gallon, it seems to me that would be a help. Anything would help. As far as I am concerned, that is a good enough reason to do it.

Consumers need immediate relief. We are talking about as much as a million barrels of oil a week. That is about how much we put in the SPR which we are buying from the OPEC nations when they cranked up the price of oil. It doesn't make sense to do that. This isn't the huge supply of oil that comes into this country on a weekly base, but it still is a lot. It will make a difference.

The latest price spike in Nevada was caused, they say, by the shutting down of the refinery in northern California

which produces only 165,000 barrels of oil a day, or 1.5 million barrels a week. If that is the case, that is the same amount of oil we are buying from OPEC to put in the SPR. That logically would indicate the price should come down.

I think if we are going to do anything for energy in this country, we have to take it piecemeal: Do ethanol, and do what we are going to do next week with the legislation that has been crafted by Senators GRASSLEY and BAUCUS to give tax credits to the people who will produce good, clean energy.

The President in his State of the Union message said he wanted to move to a hydrogen economy. If we are going to depend on a hydrogen economy, we have to do something about producing hydrogen and use something other than fossil fuel to produce it, which only compounds the pollution. The only way you can have a hydrogen economy is produce the hydrogen by using alternative energy—sun, wind, or geothermal.

I hope we can, as Senator DORGAN has indicated, move forward very quickly and dispose of this legislation. If people vote the way they did the last time, this should go away very quickly. For people who say, I voted for it once, I am not going to this time because it is different form and it is stand alone, it seems to me it should be easier to do it that way than when it was in the bill which had so many different problems.

I commend and applaud the Senator from South Dakota for moving this particular piece of legislation which will improve the energy needs of this country.

I hope we look long term and do things other than what we have been doing; that is, try to produce our way out of the situation that is so desperate for the people in Nevada who have the third or fourth highest gas prices in America.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to be added as a cosponsor of the amendment offered by Senator DASCHLE.

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

Mr. DURBIN. Mr. President, I rise in strong support of this amendment. I have listened to the arguments propounded by the Senator from Mississippi in reference to this amendment.

First, we shouldn't shy away from this amendment for fear of being overworked. It was announced at our luncheon today we have had exactly 11 votes in the last 4 weeks in the Senate. There is certainly room for more activity here, and certainly activity should be focusing on important national issues such as energy.

Energy security is important for our Nation's future and it is a critical part of our foreign policy. Make no mistake: Our focus on the Middle East is about a lot of different issues, but it certainly is about the issue of energy and its future and America's dependence on external sources for its energy. That dependence has led to some terrible circumstances.

We are faced in the Midwest and across the Nation with high gasoline prices. In the city of Chicago and across the State of Illinois and all around our Nation, we are seeing gasoline prices reach record highs. If you ask why is this situation, I am afraid to say the culprit is very obvious: OPEC, the oil cartel in the Middle East, has decided to restrict the flow and supply of oil to the United States. By cutting off supply, demand forces the price up. They know that. We are, frankly, at their mercy.

Interestingly, during the last Presidential campaign when Governor Bush of Texas was running against Vice President Gore, he said at one point if he faced that situation as President of the United States he would take direct action against OPEC to bring down their prices and force them to supply oil to the United States. And yet weeks have gone by and none of that has occurred. In fact, businesses and families and workers all across the Nation are being held captive by the OPEC oil cartel.

Isn't it ironic that at the same moment we have sent over 100,000 Americans to risk their lives for security and stability in the Middle East, at a time when we are placing our military in the Middle East to stabilize it for many of these oil-producing countries, they have turned on us and said despite our jobless recovery and despite our recession they are going to restrict the flow of oil to the United States, knowing full well the hardship which it creates.

If Bob Woodward is accurate in his book, it is scandalous to believe the Saudis are doing this with the understanding that at some time before the election they will start sending more oil to the United States so gasoline prices will come down and benefit the current administration. That is what has been stated.

Prince Bandar, the ubiquitous diplomat in Washington, was the one who was brought in by this administration to be forewarned about the invasion of Iraq even before Members of Congress. He is such an important diplomat and international businessman that the administration felt his counsel was more important than the counsel of Members of Congress of both political parties.

If Mr. Woodward is correct in his assertions in his book, that there has been some sort of an agreement that the price of gasoline is going to go up, creating some discomfort, but come down just in time for an election surprise, an October surprise, that is awful; it is really unfair to the American people.

Why do we bring this amendment to the floor today? Well, Senator DASCHLE and Senator DORGAN, as well as Senator REID of Nevada, have made the case that this is a part of the Energy bill which we can pass today. We can pass it with a limited amount of debate and with an overwhelming, bipartisan rollcall, reflecting the support which alcohol fuels have in the Congress.

We know this fuel source is good for America. First, it is homegrown. We do not have to depend on foreign companies and foreign nations to befriend the United States.

We can grow the corn and other feedstocks that are necessary to make ethanol.

Second, it is definitely going to be an improvement on the environment. We know that by using alcohol fuels, we reduce pollution, which is a very positive thing.

Third, from a selfish point of view of the Corn Belt, we know that as more demand for corn is created by more production of ethanol, the price of corn goes up, farm incomes go up, and Federal payments go down. So it is a positive effect from three different perspectives.

Some argue we are making a mistake by trying to go at this one issue at a time; rather, we should bring the whole Energy bill before us. I saw Senator DOMENICI from New Mexico on the floor a few moments ago. No one has worked harder on this bill than Senator DOMENICI. I know his bitter disappointment when the bill failed by two votes, with bipartisan opposition, last December. I was one of the Senators who voted against it.

There were many provisions of that bill which I support, including the ethanol provision. But, frankly, at the end of the process, the Energy bill had become a dog's breakfast. It turned out to be a smorgasbord of special interest groups. They went out and included provisions in that energy bill which were nothing short of scandalous.

Senator MARIA CANTWELL from the State of Washington came to the floor and echoed an earlier comment made by Senator JOHN MCCAIN—Senator CANTWELL, a Democrat; Senator MCCAIN, a Republican—in which they said this bill had been dominated by hooters, polluters, and corporate looters. Now, it is a great phrase. When you parse it, you understand what they are talking about.

Imagine, the Energy bill we were being asked to vote for included a provision helping someone in the State of Louisiana build a strip mall for a Hooters restaurant. Now, I have never been lucky enough to go in a Hooters restaurant. I am sure there is a great deal of energy in a Hooters restaurant. I cannot believe it is the key to America's energy future. But it was part of that bill.

When it came to the polluters, take a look at the assessment of environmental groups of the Energy bill, which we rejected. Almost to a person, these environmental groups said we were relaxing standards when it came to air pollution; we were turning our back on sound energy policy coupled with sound environmental policy.

When it came to the corporate looters, whether you are dealing with electricity or oil, I think it is obvious. As we debate today this energy issue, across the street from us, in the Supreme Court, they are weighing the arguments in a case that has been brought against the Bush-Cheney administration, a case brought by groups that believe there should be full disclosure of the special interests that came to the table, the outside special interest groups that helped to write the Energy bill.

The Bush-Cheney administration—particularly Vice President CHENEY—has been so adamant to continue to conceal and keep secret the sources of information which led to that energy bill that the case has gone all the way to the U.S. Supreme Court. That is, frankly, because many of those who came to the table must be a great embarrassment to this administration. It has been said, it has been admitted by some, that Enron—and those were the glory days when Enron was still close friends with the White House—Enron was in on the writing of this energy bill. It is no surprise. Just read the bill. It was a bill that, frankly, had too many of those special interest groups writing too many provisions.

So here we come today with a proposal by Senator DASCHLE which is long overdue. It tends to take away all of the chaff and leave the wheat.

Let's go to the important part of the Energy bill where there is bipartisan consensus. Thank goodness we no longer have to labor with those provisions which provided a sweetheart deal for the producers of MTBE. MTBE is a fuel additive that has been put in gasoline for over 20 years in order to make engines run smoother. But over 20 years ago, they discovered that MTBE might work in your engine, but outside it was dangerous to the environment. It is not biodegradable. So if MTBE should leak from an underground fuel tank and get into the water supply of an individual with a well or a town that relies on an aquifer, it could make the water undrinkable and, in fact, potentially dangerous to public health.

European studies link MTBE contamination to the cancer-causing agents which, frankly, we are finding too often in our environment.

So the producers of MTBE knew about this problem in 1984, continued to sell the product, and now communities across America are being inundated with MTBE pollution.

In my State of Illinois, over 25 villages and towns have MTBE contamination. Over 200,000 people in my State live in an area where they are trying to cope with MTBE contamination of their water supply—a danger to families, a danger to businesses.

So what did this energy bill say? Along came a provision in the Energy bill which said the producers of MTBE, unlike any other company in the United States of America, should not be held accountable in court for their wrongdoing. If they knowingly sold a toxic and dangerous product, which caused damage to an individual, to their health, then, frankly, the Energy bill said: We are going to give them a pass. We are going to say they cannot be held accountable in court. Let the individuals bear the burden of the cost of the medical bills and cleaning up their water supply. Let the villages and towns pay the millions of dollars necessary to overcome MTBE contamination.

That is the reason I voted against that energy bill. I went back to Illinois to a meeting of my Illinois Farm Bureau, a group that was very strong for this ethanol provision, and it was a cool reception. They wanted to know why, after some 20 years on Capitol Hill, I turned my back on ethanol.

Well, I told them. I am still for ethanol. I still believe in it. I support this amendment. But I do not believe in the special interest favors that were included in that energy bill. They understood. Many of those same farmers came to me afterward and said: We understand completely. You ought to clean up that bill. You ought to pass the good provisions that are good for America and get rid of the rest of that mess.

Well, we are trying to do that today. Senator DASCHLE's leadership has brought an important part of this bill forward. Ethanol is not just an American homegrown energy source; in my part of the world, ethanol is a job source, and we desperately need jobs in America. We have lost over 2 million jobs under the Bush-Cheney administration. We have lost hundreds of thousands of manufacturing jobs just in the State of Illinois. Ethanol plants being built around the Midwest, around the Nation, will create good-paying jobs in rural areas, something we desperately need. I think it is important we do it.

For those who say, ''Well, why don't we wait until later,'' we cannot afford to wait. The highway bill, which should have been passed last year, that would have created millions of jobs across America, has been stalled in this Republican Congress now for 2 straight years. The battle between the White House and the Republican leadership I cannot even explain at this point, but for reasons that will only be known to them, they have held up the passage of the highway bill at exactly the wrong moment, the moment when we need jobs so much in America.

Passage of this amendment on the ethanol provision will get us moving toward more investment, more capital creation, and more production of ethanol and construction of ethanol plants across America. That is a positive, not just for the Midwest but for our Nation.

I commend Senator DASCHLE. I think, frankly, we should face this issue. We should debate it in a timely fashion. We should vote on it. If the 69 or 70-plus Senators who have stood with ethanol on a bipartisan basis in the past will continue to do so in the future, we can make this part of this bill and send it to the President for his signature, and say to those who have been waiting for some hope: When it comes to dealing with energy, we have an important part of this bill that we have succeeded in passing.

Many other challenges remain on energy. We can face them, but let's do the right thing. Let's adopt the Daschle ethanol amendment today.

I yield the floor.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I regret that I was not here at the time the Democratic leader offered his amendment. But, of course, it would not have mattered really much whether I was here.

I wonder, since we have seen a singular lack of progress in the last few months, particularly in the last few weeks—literally every piece of legislation, with the rarest exception, has been loaded up with extraneous amendments and has had to be brought down. Of course, I have only been here for 18 years. That is not a long time compared to some. But I have to say, I am unaccustomed to this kind of procedure where in good faith we brought this bill to the floor, in good faith we voted cloture on the motion to proceed, and then the Democratic leader stands up and proposes a totally, completely, absolutely extraneous amendment, an entire piece of legislation, the Energy bill, which has been hard fought in this body many times, as an amendment on the Internet tax moratorium bill, without warning, without saying what he was going to do, without having the courtesy to inform me as the chairman of the committee and the manager of the bill. If he had, I would have thought, well, maybe we ought to not bring it up. The temperature is 85 degrees in Phoenix today. It is not raining there like it is outside. Why don't we just go home? Why don't we go home, relax with our constituents and our families and friends, rather than go through this charade of telling Americans that we are legislating.

There was an old line in the cold war era. The Russians said: We pretend to work and they pretend to pay us. Well, we pretend to work and we are still getting paid. We are not working. We are not doing anything.

I say to my friend the minority leader and to my friend from Nevada—and they are my friends—what is this all about? You know very well that if an Internet moratorium is passed, an energy bill will not be part of it. Now we are going to go through the parliamentary charade of having somebody offer a second-degree amendment and somebody else will do a substitute, and then somebody else will offer a second-degree amendment. What am I supposed to tell my constituents, the taxpayers, we are doing here in Washington?

If I had a townhall meeting and said, yes, we had an Internet tax moratorium bill, a bill that is vitally important to both sides as far as whether taxation is going to be imposed on transactions over the Internet, which some 70 or 80 percent of the American people engage in now—billions of dollars—we are going to decide in a parliamentary fashion whether those transactions should be taxed or not taxed, and if so, under what circumstances—this is the third time we have revisited this issue. Ten months ago we passed it.

The Senator from Tennessee will tell me how many hundreds of hours he has devoted to this issue. The Senator from Virginia will tell me how many hundreds of hours he has devoted to it. What do we do? We take up the bill. We have debated it for barely 2 days. And what do we have? The Energy bill as an amendment to the Internet tax moratorium bill.

What am I supposed to tell my constituents? I will tell you what they are going to say: We don't get it. That is what they are going to say: We don't get it. Yes, it is important to me, Senator, whether the State and local governments can tax the things I buy on the Internet. Some people say they should; some people say they should not. But can't you guys and women get together and make a decision on it so I will be relieved of this lack of knowledge as to what the future holds?

What about all those people who are starting businesses that do business over the Internet? What about them? I am sorry, sir, we can't address this issue because we have to take up the Energy bill.

I certainly wouldn't say it is all about ethanol. I certainly wouldn't say it is about a product that we have created a market for which has absolutely, under no circumstances, any value whatsoever except to corn producers and Archer Daniels Midland and other large agribusinesses.

Here we go now. Here we go. The Democrats have a retreat on Friday, so we are not going to be here on Friday. No, we are not going to work 5 days this week. Actually, 3, excuse me. And here we go, now we are going to spend late this afternoon jockeying back and forth.

I am sure there may be a headline in South Dakota that says: Senator DASCHLE fights for ethanol. I bet there will be a whole lot of press releases, too, and maybe even the distinguished Senator from North Dakota will be fighting for ethanol, too. Meanwhile, we are not addressing the issues that the American people care about.

Right now they care about whether we are going to tax the Internet. I urge my colleagues to tell us, all I want to know is, are we going to spend between now and when we go out of session at the beginning of October in this kind of back and forth?

My side is also guilty, I freely admit. Are we going to spend that time between now and the beginning of October, when we will break to take the electioneering from the floor of the Senate out to our respective States, and do this or are we going to seriously legislate as the American people sent us here to do?

Obviously, I am upset because this is a bill I have been working on for a long time, an issue I have been involved in for many years. Obviously, I am upset by it. I apologize if I have offended any of my colleagues. But at the same time, this has been going on now for months. This is not the first time we have done this. This is about the 50th time, again, on both sides of the aisle. So why don't we make a decision. We are going to attach the minimum wage or we are going to attach lawyers' fees or medical malpractice or one of these; we are going to attach them all back and forth. And we will be able to force votes on it, but unfortunately, we don't legislate.

Why don't we make a decision? Why don't the leaders and all 100 of us get together and decide what we are going to do and what we are not going to do. At least the taxpayers may find some comfort in the knowledge that at least we would tell them what we are doing.

I would imagine that as we speak we will have some amendment and then a second-degree amendment, and we will fill up the tree, which probably very few living Americans understand, including Members of this body, but we will consult the Parliamentarian as to how the mechanics work.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. MCCAIN. 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. 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.

Mr. DORGAN. Mr. President, I know my colleague from Virginia wishes to speak on the bill, and perhaps the Senator from New Mexico does.

Let me say to my friend from Arizona, I understand his angst about this. But this is not a new procedure. The Senator from Arizona has employed the same procedure, as have I, as now does Senator DASCHLE today—that is, offering an amendment that does not relate to the underlying legislation.

There is a reason that happens. The reason that happens is the passion one has for legislating on a specific issue that doesn't get resolved because someone else won't allow you to bring it and debate it on the floor. So you offer an amendment under the rules of the Senate to another piece of legislation. That is what happened here. I say to my colleague, he has employed the same tactic, as have I.

Mr. MCCAIN. Never.

Mr. DORGAN. I will be glad to recite them. I will not do it at this moment. There were line-item veto amendments, motor voter, and others. Senator DASCHLE has not offered an amendment for the purpose of a headline in South Dakota. I happen to support renewable fuels and ethanol, and have for a long while. I make no apology for that, nor would Senator DASCHLE, because I think it advances this country's energy interests.

The reason it has to be offered now, according to Senator DASCHLE—and we all understand this—is we had an energy bill that failed here by two votes. I would have preferred we pass an entire energy bill in this Senate. I voted for it and I signed the conference report. I worked with the chairman of the Energy Committee. I would have preferred that to pass because it had titles in four areas I supported. I didn't agree with a colleague who said a few minutes ago he thought there were things that were unworthy and rendered it something we should not have passed. There were things in the Energy bill that were unworthy and I didn't support, but on balance I believed it would advance this country's interests. It failed by two votes in the Senate.

That bill contained production incentives, conservation efficiency, and renewable fuels. The issue of renewable fuels is not new. We have worked on this for a long time. If we cannot get the Energy bill, then we ought to get the renewable fuels piece at least. That has such wide, strong support here in the Senate. We have voted on it. I believe it was 69 votes in favor of that provision. We had bipartisan, strong support for that provision.

So if we cannot get the Energy bill, let's at least take that which will, in my judgment, be beneficial to this country's long-term economic and energy interests. That is what Senator DASCHLE offers this amendment for on this bill, because the other opportunities don't exist. If somebody said, well, let's bring an energy bill to the floor this week, rather than this bill, or bring it to the floor next week—and I am guessing; I don't speak for Senator DASCHLE—he would have said let's do that, because he supports certain provisions of that bill, voted for it, was the author of the renewable fuels provision and ethanol provision. So my guess is he certainly would want that to happen. But because we are now told the Energy bill will take a back seat to this, that, and the other thing, and that it will now perhaps be fall before we talk about it on the floor of the Senate, Senator DASCHLE had every right—perhaps an obligation—to come here and say: I have a passion about this, let's advance this. This is an opportunity.

Again, let me say I will bet, if I do a bit of research, perhaps almost all of us on the floor, with the possible exception of the Senator from Virginia, because he has been here fewer years—

but I would find everybody now on the floor has offered an extraneous amendment to pending legislation. That is not unusual. It is called for in the Senate rules. We face it every time we bring up a bill. What would be counterproductive is if you offer an amendment that becomes like throwing a wrench into the crankcase; you strip all the gears and shut everything down. That is trouble.

That is not the case here. We have already voted on this. We know there is wide bipartisan support. This isn't throwing a wrench in the crankcase; this is advancing a part of the Energy bill that ought to advance.

I will repeat, you have to be completely oblivious to reality not to understand we have a serious energy problem. Part of it is going to be solved by enhanced production, part by conservation, and part by efficiency. But another part of it is going to be solved some way, someday, somehow by a renewable fuels title that represents an advancement in our ability to produce ethanol and other renewable fuels. We are going to do that. We can do it sooner or later. We can do it now or we can wait. But I submit to you this: Given what we face in this world, the threat of terrorism, cutting off an energy supply to our country, 60 percent of our oil coming from outside of our shores, much from troubled parts of the world, we had better get the entire Energy bill up and get it done. I pledge—and I think the Senator from New Mexico will recognize I was a constructive part of his deliberations and voted for it and signed the conference report—I will again be a constructive part of those deliberations.

But if we are not going to get an energy bill up here, my colleague has every right to come to the floor and try to advance this renewable fuels provision. I support that. It is an appropriate thing to do. I don't believe it should impede us in any way. We can do it in a half hour. We know it, we know what it is, and we know what it will do for this country. It cannot be suggested this somehow is going to slow down this bill; it will not and it need not. The only thing that will do that is if those who decide they don't want this piece of the Energy bill to advance decide to find a way to interrupt this amendment.

Having said all that, I will say again it is not about headlines for anybody. It is about the right of Senator DASCHLE to offer an amendment that is important, which has already been discussed in the Senate. I hope the Senate will have a vote on it and pass it and move on and deal with the underlying bill and pass it when we have solved the definition problem. I support a moratorium, and I believe since we have had a moratorium for 5 years previous, we can find a way to solve the definition problem and continue a moratorium with respect to Internet taxation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I wish the Senator from Arizona were here, because I would like to tell him I agree with many of the things he said. I certainly did not come to the floor—in fact, I left after the last vote, assuming I would not be back down here. I thought we were going on with something and that his bill, which had been debated, although it had a number of small amendments—I thought it would go through here and become law. But I have to admit between that little visit to my office and what I got on the phone about 25 minutes ago were very different. I don't want to be accusatory; I just want to say the minority leader, over a long period of time, has been in the same predicament we have all been in with reference to an Energy bill. He has been in the same predicament regarding ethanol as we have. We produced the first bill this year that had ethanol in it. As a matter of fact, everybody remembers that comprehensive bill was defeated by two votes in a cloture. It got 58 votes—that first one.

What we have is somebody has taken a piece of the Energy bill and attached it not directly to the McCain amendment but to the tree on the side, as an amendment which will fail when McCain passes. Nonetheless, I guess making the point that you had a vote on ethanol does somebody something.

AMENDMENT NO. 3051 TO AMENDMENT NO. 3050

Mr. DOMENICI. Mr. President, I want to suggest I am very pleased this happened, because I now send to the desk S. 2095 as an amendment to the Daschle amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 3051 to amendment No. 3050.

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

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued with the reading of the amendment.

Mr. REID. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Can the Chair give the Senator from Nevada an idea of how long it would take to read the amendment?

The PRESIDING OFFICER. The Parliamentarian advises the Chair that the inquiry is not in order while the amendment is being read.

Mr. DOMENICI. I did not hear the Chair.

The PRESIDING OFFICER. The Parliamentarian advises the Chair that an inquiry is not in order during the reading of an amendment.

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

Mr. REID. I object.

The PRESIDING OFFICER. There is objection. The clerk will continue with the reading of the amendment.

The legislative clerk continued with the reading of the amendment.

Mr. REID. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The inquiry is not in order.

Mr. REID. It is not in order?

The PRESIDING OFFICER. The regular order is the reading of the amendment. The clerk will continue.

The legislative clerk continued with the reading of the amendment.

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

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator may not reserve the right to object.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue with the reading of the amendment.

The legislative clerk continued with the reading of the amendment.

Mr. DOMENICI. Mr. President, I ask unanimous consent that there be a temporary holdup in the reading of the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object. I don't know what ''temporary'' means.

Mr. DOMENICI. Will the Senator object if it was understood that the reading could continue as soon as we finish our discussion? Temporarily, just 5 minutes per side and then the reading will continue.

Mr. REID. Reserving the right to object, Mr. President, it is my understanding the Senator from New Mexico is asking that there be 10 minutes of debate equally divided; following that, the reading of the amendment will continue?

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. And nothing will change.

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

Mr. DOMENICI. Mr. President, might I engage in a conversation with the distinguished Senator from Nevada and talk for a minute and tell him what is happening?

What I sent to the desk is a bill we will now call S. 2095, the comprehensive bill that we took to the Senate floor that Senator DORGAN alluded to. It was H.R. 6. We heard arguments that it was too expensive. This bill is no longer expensive. As a matter of fact, it is negative cost. It puts money back in the Treasury.

We heard that Republicans could not vote for it, and some Democrats, because of MTBE. That is out of this bill. It is no longer there.

I went back to the drawing board, took out direct spending, the raising of revenue was taken out of this bill, and

it was put in another bill. So there is no raising of revenue that goes in this bill. It is in the tax bill that will be up next week.

What I came to the floor of the Senate to do, and I say this to the distinguished acting leader of the minority, was to see, rather than piecemeal this bill, if we couldn't get an agreement that S. 2095 could become the subject matter and that we may have three or four or five amendments to a side. That is what I propound to the Senator from Nevada.

I know how strongly Senator DASCHLE feels about this energy bill as it pertains to all the items he wants, including ethanol, and all the other items I described. He would have no objection to any of them. MTBE is out of the bill. It is no longer subject to criticism because it costs too much. As a matter of fact, it is about as cheap a bill as you can get and still get an energy bill.

It does a lot of exciting things. With reference to the electric grid, it does great things to eliminate gridlock and to do other very important activities. I do not want to waste the time of Senator REID going through this bill because I think he knows what we are doing and he knows what he is doing.

I want to save this energy bill. I want to make sure everybody knows it is still alive and that it is good what happened here because some time in the next couple of days, we are going to prove that this energy bill still lives. I do not intend to kill the amendment of Senator MCCAIN. That is not my purpose. I want to make sure everybody knows and everybody in this country knows we have a good energy bill that is alive, and we have the tax portion alive in another area. Frankly, I did not think we could get this far. But I thank the distinguished minority leader for opening up this door.

He opened it a little bit, and I made a nice wide door and put in the whole bill. That is what this is about. A little tiny piece of the bill yielded an opportunity to put the whole bill in here. Now all I ask is that we sit down and make an agreement that this bill be looked at—I could say to the distinguished Senator who spoke about a bill that had been passed some time ago, I can almost guarantee him that if he liked that bill, he will much more like this bill than the one he voted for before. It is much better. It is much more streamline. It accommodates a lot more interests, and I believe we could get an overwhelming majority of votes for it.

I want to close by saying if there is anybody in this country who does not know there is an energy crisis, then they must have been sleepwalking for the last 6 months because we are in a crisis of high order.

I am offering a way to make sure we keep alive an energy bill that will work.

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

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it goes without saying, but I will say it again, I have worked with Senator DOMENICI during my entire 18 years in the Senate. During more than half of that time, he and I have worked as the chairman or ranking member, as the majority of the Senate goes back and forth, on one of the most important subcommittees there is in the appropriation process, Energy and Water, so we have worked very closely together.

We are partners in that legislation, and he is my friend. However, on this energy bill let me say this: First, today of all days is a day when the Supreme Court of the United States was hearing a most important case, a case the Vice President of the United States has stalled for 3½ years. He had meetings during the transition period after President Bush and he were elected, meetings with people from the energy field, oil companies, automobile manufacturers, but we are not certain, people from the nuclear industry.

All the American people have asked for in 3½ years is tell us who they met with, what they talked about, and when the meetings took place. He has refused. Now this matter has gone to the Supreme Court, and that argument was held today. These were secret meetings, I guess is what they are, and if there was ever a time in the history of the country where we need to debate the energy crisis, as some refer to it openly, it is today. The first step to that would be to find out who the Vice President met with, why he met with them, what he talked about, and how long the meetings took place. He has refused to do that.

I also say that this country has arrived at a point in time where we are not going to be able to do major legislation. Let me give some examples with rare exception. Take, for example, the endangered species bill. The endangered species bill has caused problems in the State of North Dakota, and I know this because I have heard my two colleagues from North Dakota talk about the problems of the endangered species law in North Dakota. But it is not limited to North Dakota; the endangered species law is a problem for most States in the country. The State of Nevada ranks 34th in the number of listings for endangered species.

A number of years ago Senator BAUCUS, Senator CHAFEE, Senator Kempthorne and I tried to do a major revision of that bill. We could not do it. In that same Environment and Public Works Committee, there was a decision made that we needed to do something about Superfund. We could not. We have tried. Senator SMITH, Senator LAUTENBERG, and others on that committee tried. They were at loggerheads. They could not come up with a major revision of that bill.

So the decision has been made by most legislators that the way to improve the Superfund law that now exists is to improve it by bits and pieces. The way to improve the endangered species law in this country is to do it by bits and pieces. The Energy bill is the same thing.

I say to my friend, we are not going to pass a bill that the Senator from Arizona referred to as the hooters and polluters bill. Why was it referred to as the hooters and polluters bill? Well, many of us think it did nothing to clear up the environment. Where did the hooters come in? One of the ornaments attached to the Christmas tree bill was to give a financial stipend to a Hooters operation some place in the southern part of this country. That is where it got its name.

We are not going to pass major legislation on energy in the near future. What we can do, though, is pass the part on which there is general bipartisan agreement. Ethanol is an example. More than two-thirds of the Senate voted for that legislation. It seems to me entirely logical that we should dispose of that matter. It would do some good to help the energy crisis we all acknowledge is in this country.

As I spoke about earlier today, I throw bouquets to Senators BAUCUS and GRASSLEY for having done what they did in the recent FSC bill by including in that something that is extremely important—section 45, production tax credits for renewable resources—that expands and extends a credit for wind, geothermal, solar, and biomass. That is important. We should pass that measure next week. I think we are going to do that. We should do the ethanol bill now.

My friend from Arizona, the distinguished senior Senator from Arizona, asked, What is going on in the Senate?

The PRESIDING OFFICER. The Senator's times has expired.

Mr. REID. I ask that the Senator from Nevada be given an extra 4 minutes and the Senator from New Mexico be given an equal amount of time.

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

The Senator from New Mexico.

Mr. DOMENICI. Is it possible we could take that off the reading of the amendment?

Mr. REID. It is possible. I will think about it after.

Mr. DOMENICI. We would think that it would, but that is a guess, although it would be a pretty good guess.

Mr. REID. I ask unanimous consent that I be given 4 additional minutes, an extra 4 minutes be given to the Senator from New Mexico, and then we go back to reading the amendment when I finish.

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

The Senator from Nevada.

Mr. REID. Mr. President, what I was saying is the Senator from Arizona asked, What is going on in the Senate? I mean, can anyone imagine—and I am paraphrasing—they offered an amendment to energy on a bill that deals with the Internet tax?

My friend from Arizona, who is one of the most astute politicians this country has ever seen, knows what is going on. We are in the Senate. This has been going on for more than 200 years. We have the right to do that. In years past, no one ever considered it anything out of the ordinary.

The problem we have in the Senate today is we do not do anything. In the last 4 weeks, we have voted 11 times. Why? Because amendments are offered to important legislation like FSC and there is a desire to have a vote, for example, on overtime. How much time does Senator HARKIN want to debate that? He will take 10 minutes and vote on it. We have not been given that privilege.

So what is going on in the Senate today is what has gone on for 200 years. The difference is, nothing is ever brought to conclusion because people do not want to vote. The majority has made a decision they do not want to vote, so we do not vote.

So I say to my friend from Arizona, we are doing what has been historically done in this body. Some may ask, Well, Senator REID, why would you ask this amendment be read? Because I feel that offering this amendment of some 800 to 900 pages is only a message that says we are going to continue doing business in the Senate the way we have all year long and do nothing. Everybody knows that we are not going to pass this. It is the same as the endangered species. It is the same as Superfund. We are not going to pass a hooters and polluters bill.

We can take bits and pieces out of that legislation and do some good for this country. I repeat: To do the section 45 production tax credit would be a tremendous boon to this country. We would be able to start producing energy alternatively. It would help the capital markets. There would be construction jobs. I think it is the right way to go.

I am disappointed that my friend from New Mexico, who has worked hard—as my friend from North Dakota said, no one has worked harder on this energy bill than my friend from New Mexico, the distinguished senior Senator, but I say to him, someone I should not be giving advice to because he has far more experience than I have, this bill is not going to pass. I repeat for the third time, look at what we have tried to do with endangered species, look what we have tried to do with Superfund. Those are only two of the numerous other pieces of legislation we need to work on, but let's do them piece by piece. That will be my suggestion.

I will give some thought to taking away my objection to reading the amendment, but I am going to give some thought to that because I think offering this amendment is only a way of preventing our moving forward on this important legislation. I have spoken to the manager of this bill. He thinks that working with Senator MCCAIN, the chairman of the Commerce Committee, that we can come up with a compromise in a reasonable period of time. It is totally appropriate that we dispose of Senator DASCHLE's amendment. People should vote it up or down. More than two-thirds of the Senate approved it at one time. Why should that change?

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I wish to talk about what is going on in the Senate. I could hardly believe my friend—and he is my friend; what he said about our working together is true, but I could hardly believe my ears when he suggested that the Republicans are keeping us from voting in the Senate. I mean, I have a list of what has been going on for the last 3 months. You know, it is nothing. It is not because of the Republicans, but the Democrats on every issue have said they want to filibuster it. We have had more clotures in the last 3 months than any 3 months in the history of the Republic, unless there was one after another on one bill of which I am unaware. So let's talk about that in reality.

Let me say to my good friend Senator REID, if he thinks there is only one good provision in this bill that everybody might vote for, let me tick off what is in this bill and ask you if you think it would be 51 or 61 votes for it. Let me start: Encouraging the production of domestic oil without violating the environment; encouraging the development of more natural gas from three sources, all American; encourage the building of necessary infrastructure such as the Alaska natural gas pipeline; encourage more renewable energy—everybody speaks about it, this bill promotes it, and we can't pass it—promote energy efficiency; promote clean coal technology; increase R&D on a variety of technologies and improve our electricity grid.

These are the things in this bill. I don't care how big it is, how many pages are in it. If the distinguished minority leader can bring up one piece of it because it is popular, then I believe I ought to be entitled to bring up the rest of the bill which is also popular. Remember, there is no MTBE in it. If we would have brought that first bill here without MTBE in it, it would have already passed; we would be finished. Yet this bill is more stripped down than that. Because in addition to MTBE not being in it, I have already told you that it doesn't cost anything. I have told you the tax provisions are somewhere else, and I have just given you a litany of what is in it.

I submit, before we are finished, if it takes all night or however long you want us to be here reading it, that we will have a vote and it will be a cloture on this bill and I submit there will be two of them. There will be one on Senator DASCHLE's and one on Senator DOMENICI's. I believe Senator DASCHLE's will fail and I believe mine will pass, and what we will have is we will have the hope and have alive the idea that a good Energy bill, which we have gone through and swept with all kinds of brushes to make it a bill that everybody likes, will be pending before us.

I am hopeful that in the process we will not have taken so much time that Senator MCCAIN can't get his bill done. I am very hopeful of that. I hope Senator MCCAIN's staff understands that all I have been speaking of, unless we have to stay here all night and tomorrow to get this read, I am looking for the time, looking ahead here and figuring that you can get your amendment done and we can get an important decision by this institution, in light of the terrific price of gasoline, whether they want an energy bill or not. That is going to be a good one to watch and it will be a good one to have a vote on, I will tell you.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1 minute 15 seconds remaining.

Mr. DOMENICI. And how much does Senator REID have?

The PRESIDING OFFICER. The Senator has 8 seconds.

Mr. DOMENICI. Do you want to yield our time back?

Mr. REID. I would like an additional 1 minute on our side with the same rule in effect

Mr. DOMENICI. I would take 1 in addition in case you say something that needs to be rebutted.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Virginia.

Mr. ALLEN. I ask the Senator from New Mexico to yield for the purpose of a question.

Mr. DOMENICI. Certainly.

Mr. ALLEN. Mr. President, I ask the Senator from New Mexico, while all this discussion is going on about the underlying bill, and while it is interesting to talk about endangered species and Supreme Court cases and so forth, and energy is important, clean coal and new sources of natural gas are important, and oil, and a variety of other things, the fuel cell and so forth—at any rate, the reality is when you speak of endangered species, there are endangered jobs in rural America.

Even though this debate is on the ethanol matter, the Corn Growers Association is very much strongly in favor of making sure there is no taxation on the Internet. They realize how important that is; that this measure be passed for jobs and economic growth in rural America. There are 35 States in the Corn Growers Association.

I would ask the Senator from New Mexico, what is the purpose of reading this title of this bill as opposed to acting on the Energy bill, which I consider a detour and a tangent off of the Internet access tax issue, or even addressing issues from those who want to tax the Internet and may want to put on some more amendments? Why do we have to spend time listening to the melodious

voice of our clerk reading off the title of your amendment?

Mr. DOMENICI. Senator, I yielded to you without knowing you were going to use all the time I had remaining.

Mr. ALLEN. I am sorry.

Mr. DOMENICI. If there is anybody I would like to do that for, I would do it for you, but how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 32 seconds remaining.

Mr. DOMENICI. Senator, I am going to try to answer your question when I get back on my feet, but I yield the floor at this point.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from New Mexico has stated the bill he offered is not the so-called hooters and polluters bill, so named by the distinguished Senator from Arizona, but in fact it is a slimmed down version of that bill.

I ask through the Chair of my friend from New Mexico, is that, in fact, the case? Could you answer that yes or no? The bill that is now before the Senate is a slimmed down version of the so-called hooters and polluters bill?

Mr. DOMENICI. Senator, I can only do that in dollars. The original bill cost $31-plus billion; this one costs negative $1.2 billion.

Mr. REID. I ask, does this bill have in it the section 45 production tax credit?

Mr. DOMENICI. No, it does not.

Mr. REID. I ask my friend from New Mexico, would you support—supporting your bill here, that is the one I have offered as an amendment, would you support the FSC bill with the section 45 production tax credit in it?

Mr. DOMENICI. Sure.

Mr. REID. Mr. President, I am going to, at this time, that being the case, recognizing that what the Senator has offered is a slimmed down version and is not the original bill, and that he would support the provision in the FSC bill—I think a combination of those two might make some interesting votes here in the next day or two—I withdraw my objection to waiving reading the amendment.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DOMENICI. Could the Senator tell me what you said about votes in the next couple of days? I didn't get it.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Nevada.

Mr. REID. I know the Senator from Virginia wants to speak on the underlying bill. I will be as brief as I can.

What I told the Senator from New Mexico, through the Chair, is that it was my understanding that the bill that was offered in the form of an amendment was nearer the original bill that was offered and cloture was not invoked on it previously. I have been told by my staff and others that it is a slimmed down version of the original bill. That was confirmed by the Senator from New Mexico.

I further went on to say, to ask the Senator from New Mexico if it had the section 45 production tax credit in it. He said no. I then went further and said, would he, the Senator from New Mexico, support the FSC bill, which does have the production tax credits in it, and he said he would.

I then said, that being the case, that we have a smaller version of the original Energy bill than I originally thought, and, further, that he would support the FSC bill, including the production tax credit provision that was placed in there by Senators GRASSLEY and BAUCUS. I then said I think that is going to make for some interesting votes in the next few days.

Mr. DOMENICI. So you said about 2 days? I still didn't get that.

Mr. REID. I would assume the alternatives, I say through the Chair to my friend from New Mexico. I assume the majority has a number of alternatives. They can debate endlessly the amendment you have offered, the amendment the Senator from Arizona has offered, and we already have cloture having been filed on the minority leader's amendment—so it is possible, I don't know if the majority has made that decision, they could file cloture on your amendment.

Mr. DOMENICI. That is correct.

Mr. REID. They could file cloture on the amendment of the Senator from Arizona. That is why I said in a couple of days. It takes 2 days for these cloture motions to ripen. Maybe Thursday we could have a vote on all these matters, and I said it would make for some interesting votes.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum. I don't quite understand, I say to both Senators. I want to help, but I don't understand.

The PRESIDING OFFICER. 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 dispensed with.

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

Mr. MCCAIN. Mr. President, could I ask what the parliamentary situation is?

The PRESIDING OFFICER. There is a pending Domenici second-degree amendment to the pending Daschle first-degree amendment to the underlying text of the bill.

Mr. MCCAIN. So we are debating the Domenici second-degree amendment to the Daschle amendment to the substitute or to the original S. 150.

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. I yield the floor. I thank the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I have been listening to the debate and the reading of titles of amendments. We have seen detours, political posturing, partisanship, criticizing of the Vice President, and all sorts of cover for past obstructionism.

Obviously, things such as the geothermal are important. Clean-coal technology is important. Biomass, solar photovoltaic, energy policy, exploration of the North Slope of Alaska, natural gas pipelines for greater quantities of natural gas—all of that is very important. Then you listen to people talk about endangered species. A Senator was talking about endangered species. I am thinking: You know what is endangered in this country—particularly out in rural areas—is jobs for people in rural America.

The main point of this debate and where we are supposed to be today is those who want to have the Internet free from taxation and others who have other ideas. The Senator from Texas, Senator HUTCHINSON, had an amendment. We voted on it, and we are supposed to be considering other amendments on Internet tax. Now we are off on a tangent of ethanol. First it was ethanol, and now it is the larger Energy bill. I was thinking the key people who like the ethanol provision are people who grow corn in America.

There is an association, the American Corn Growers Association. To get everyone to focus a second on the main issue, which is whether the Internet ought to be taxed at the State and local level, I will share with my colleagues what the American Corn Growers Association actually thinks of S. 150, the bill to make sure there is not taxation on the Internet.

They said they support S. 150. They want to make the existing Federal moratorium against State and local taxes on Internet access, as well as multiple and discriminatory taxes targeting interstate commerce, permanent and national in scope. They feel the bill would ensure technological neutrality so all Internet users, including their members—being the corn growers—are protected by the Federal moratorium no matter what technology they use to access the Internet. The Corn Growers Association feels the new technologies are particularly key to ensuring Internet access to rural America.

They are exactly right, whether that is through DSL lines, through wireless, satellites, or electric power lines, there are a variety of ways rural America needs to get access to broadband.

The American Corn Growers Association, which represents people and interests of corn producers in 35 States, works very hard to enhance farm income. They care about protecting rural communities. They say they recognize the need to have a strong and stable farm economy, not just for the farmers, but for consumers, as well. They feel the Internet Tax Freedom Act and S. 150 is intended to exempt access to the Internet from taxation, including, they recognize, transmission. The Corn

Growers feel to exempt from taxation the transmission is an integral part of accessing the Internet. They feel failure to amend the existing law would make consumers susceptible to substantial taxation of their Internet access. They also say even the definition of Internet access is outdated and does not cover all forms of technology used to access the Internet that exists today.

The wording of the original statute is exclusive of consideration of the multiple technological advancements and changes that have developed in business since 1998. This is inadequate, says the Corn Growers Association, and will almost certainly result in new taxes imposed on Internet users. They feel keeping the current language in place will perpetuate a competitive disadvantage among providers by exempting some of the types of high-speed Internet access while other types would be taxable.

We have the American Corn Growers Association, which undoubtedly would be for ethanol provisions proposed on the floor, but clearly the American Corn Growers Association, as well as dozens of organizations, whether technologically involved or not, care a great deal about whether broadband is going to be taxed.

All these parliamentary procedures and all these delays and tangents and detours take us away from the point at hand and the decision that needs to be made by the Senate. It ought to be done as quickly as possible. The question before us is whether American consumers are going to be hit on average with 17-percent telecommunication taxes on their monthly Internet service bill. The question is whether Internet service bills will look like a telephone bill, with multiple taxes from the localities, from the States, and even the Federal Government.

My friends, it is absolutely essential, I say to my colleagues, that we act on the Internet access tax issue. As more and more taxes get imposed, it is nearly impossible to ever get those taxes off. Look at your telephone bill. There is a slew of taxes; some that are incomprehensible. There is one tax placed on there in 1898 as a luxury tax. It was a luxury tax in 1898 to finance the Spanish-American War. Guess what? We are still paying that tax. That war has been over for over 100 years.

That is why it is important we act and not delay, not dawdle, not get off on tangents. If we do get off the point, we need to get back on the subject, the point of voting and taking a stand on whether Members stand on the side of freedom and opportunity for people by not having Internet access hit with 17-percent taxes or more, or whether we will stand on the side of freedom, where the broadband can get rolled out—not just to city areas and suburban areas, but out to the country, to rural areas so people can have access if they have their own business, access to sell goods or services all over the world, or all over the country, as the case may be.

If we continue to delay on this issue, we will see what has happened in the last 2 years. What has happened in the last 2 years, a little over 2 years, is unelected bureaucrats come up with revenue rulings or taxation rulings that have found a loophole in the original moratorium and have started imposing taxes, about $40 million worth of taxes across the country. That is not a great deal in money, but nevertheless taxing DSL is a great concern to many. When they tax Internet access, that means fewer people can afford it. The reason most people do not have Internet access is they cannot afford it. We are concerned about an economic digital divide. If you want to close the divide and make sure people all over this country have greater ability to have access to the Internet, and the benefits therefrom—whether education, access to information, commerce, telemedicine, a variety of other applications, particularly with broadband—then we must not tax Internet access. Adding taxes will not help.

I hope we will make a decision this week. Let the American people know where we stand. More importantly, let those companies that will have to make investments in the range of tens of millions of dollars to serve various areas know what the policy of this country will be. In the past, the question has been one of freedom—making sure the Internet was free from taxation. We see great growth, great opportunity. That should be the approach for the future, from my point of view.

A decision needs to be made so the folks planning expansion of the Internet—those companies, those entrepreneurs—know what the playing field will be in the future. It is my view, looking at the votes, whether on the motion to proceed or the most recent amendment from the senior Senator from Texas, the vast majority of the Senators realize the Internet ought to remain free from burdensome, onerous taxation. A majority of the Senators recognize we need to update the definition of Internet access to make sure the DSL, wireless and other methods of accessing the Internet, are not subject to these burdensome taxes.

From these votes, at least in the early indications, it appears that a majority of Senators recognizes that we ought to be closing the economic digital divide. A strong majority of Senators recognizes there are innovations, there are new ideas, and we want to make sure this country will be in the lead for adaptations, the benefits, prosperity, and opportunity that will flow from new advancements in technology. We certainly do not want to be increasing the costs to anybody in this country for logging on to the Internet everyday.

In my view, if the Senate does not act, if the Senate does not invoke cloture and pass an updated Federal moratorium on Internet access taxation, what we will see are State and local tax commissars imposing telecommunication-based taxes that average about 17 percent on the Internet. This moratorium that we are trying to get action on here on the Senate floor is designed to protect consumers and avert the adverse impact of taxation on real people in our real world and in our economy.

So while there are all these machinations and maneuverings and parliamentary procedures and political posturing and tangents and detours, I would ask my colleagues, in the midst of this, if we are going to have votes on all these other ideas, some of which have a great deal of merit—and maybe, for those of us who do not want to tax the Internet, we should feel somehow applauded or grateful that people would want to attach salutary, positive ideas; they figure this is going to pass, and this is the way to get those other ideas done—but as you get on to these other nongermane issues, let's act on them quickly, and let's also keep our eye on the ball.

While folks may care about endangered species, let's remember, real people in the real world who we want to make sure have the opportunities that come from having access to broadband and Internet, whether they are a small business owner, a student, or somebody who is looking for a better job, let's make sure we pay attention to the issue at hand, the underlying measure; and that is, to make sure the Internet stays free from onerous and burdensome taxation for all people all over the United States of America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I am kind of surprised that the Corn Growers Association of America is supporting the Allen-Wyden legislation. I am sure that if they really understood the ramifications of this legislation, they would not be supportive of it because they would understand that if that legislation passes, their real estate taxes or other taxes they are paying would increase.

I am going to make a point of getting in touch with them. I received the President's Award last year from the Corn Growers, from Fred Yoder, who was their president, and worked very hard, several years ago, to get the petroleum people and the Corn Growers together to come up with the ethanol compromise that is now in the Energy bill.

I am glad the Senator from Virginia has pointed out they are supporting this legislation. I am going to get in touch with them right away and share with them some information they might not have had at the time they came out to support this legislation.

This afternoon the Senator from Arizona quoted from a policy paper of the National Governors Association and mentioned the criteria that the National Governors Association said

should be in any bill that deals with this question of Internet taxation. I would like to go through that policy paper and share that with my colleagues in the Senate.

First: NGA supports, as I do and as the Presiding Officer does, reasonable extension of the Internet Tax Freedom Act.

In this policy paper that was quoted from:

The NGA calls upon Congress to adopt S. 2084, the ''Internet Tax Ban Extension and Improvement Act.'' This compromise bill, sponsored by Senators Alexander and Carper—

and, by the way, Senator VOINOVICH—

offers a reasonable extension of the moratorium while addressing industry concerns for technological neutrality without unduly burdening state and local governments.

I am not going to go into all these, but I ask unanimous consent that this policy paper be printed in the RECORD.

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

NGA SUPPORTS REASONABLE EXTENSION OF THE INTERNET TAX FREEDOM ACT

The National Governors Association (NGA) supports extending the federal ban on state and local taxation of Internet access in a manner that is technology neutral and fiscally fair to state and local governments. Unfortunately, two pieces of legislation currently moving through Congress violate these basic principles. The House of Representatives has already passed H.R. 49 and S. 150 is currently under consideration in the Senate. By permanently expanding the definition of tax-free Internet access, both bills rob state and local governments of existing revenues while creating a tax free zone for future communications services.

The NGA calls upon Congress to adopt S. 2084, the ''Internet Tax Ban Extension and Improvement Act.'' This compromise bill, sponsored by Senators Alexander and Carper, offers a reasonable extension of the moratorium while addressing industry concerns for technological neutrality without unduly burdening state and local governments.

BACKGROUND

Although the U.S. Constitution grants Congress broad authority to regulate interstate commerce, the federal government, historically, has been reluctant to interfere with states ability to raise and regulate its own revenues. State tax sovereignty is a basic tenet of the federalist system and is fundamental to the inherent political independence and viability of states. Only in the most narrowly defined exceptions has Congress crossed that line.

The 1998 ''Internet Tax Freedom Act'' (ITFA), which imposed a moratorium on state or local taxation of Internet access, is one exception to this long held practice. The ITFA expired briefly in 2000 but Congress renewed it through November 1, 2003. Designed to ''jump start'' the then-fledgling Internet industry, the moratorium included three important restrictions to protect states:

1) it applied only to new taxes—existing taxes were grandfathered;

2) the definition of Internet access, while broad, excluded telecommunication services; and

3) the bill expired after two years to allow Congress, states and industry the opportunity to make adjustments for rapidly developing technologies and markets.

THE NGA POSITION

Today, over 130 million Americans access the Internet using everything from dial-up modems, high-speed broadband, and Digital Subscriber Line (DSL) offerings to wireless technologies and even satellite and power line connections. The Internet's broad reach and technological promise is also transforming entire industries such as telecommunications, which is rapidly migrating all of its services to Internet based technologies and rolling out new services such as Voice Over Internet Protocol (VOIP).

As Congress considers legislation to extend the moratorium, NGA encourages members to adhere to the following guidelines to maintain the balance struck by the original moratorium, a balance that encouraged the growth of the Internet but still respected state sovereignty:

1. DO NO HARM; ANY EXTENSION OF THE MORATORIUM SHOULD PRESERVE EXISTING STATE AND LOCAL REVENUES.

The original moratorium protected existing state revenues by grandfathering tax laws in place before 1998 and prohibiting only new taxes on Internet access. In contrast, H.R. 49 and S. 150 would cost states much needed revenue by repealing the grandfather clause and expanding the law to prohibit taxes on telecommunications ''used to provide Internet access.'' Stating that the proposed bills would trigger a possible point-of-order under the Unfunded Mandates Reform Act, the Congressional Budget Office (CBO) estimates removing the grandfather provision would cost states between $80 and $120 million annually. The effect of the second provision could be even greater. ''[D]epending on how the language altering the definition of what telecommunications services are taxable is interpreted,'' the CBO said, ''that language also could result in substantial revenue losses for states.'' With state and local governments collecting over $18 billion in telecommunications taxes annually, any significant change in the taxability of telecommunications could cost states billions of dollars. At a time when state and local governments are facing large increases in mandatory spending and stagnant revenue growth, Congress should not exacerbate state fiscal problems by interfering with the collection of existing taxes.

2. BE CLEAR; DEFINITIONS MATTER.

The original moratorium split the definition of Internet access into two parts: a broad and inclusive description of Internet access and an absolute exclusion of telecommunications services from the moratorium. The definition read:

''Internet access means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services.''

The exclusion of telecommunications services protected states by clarifying that Internet access was a separate, distinct and limited service. It also clearly preserved existing state and local taxes on telecommunications services that amounted to over $18 billion in 1999. The definition, however, allowed some jurisdictions to tax the telecommunications component of certain broadband technologies like DSL while others remained tax-free. This perceived inequity led to a push to alter the definition of Internet access in H.R. 49 and S. 150 to make tax free telecommunications services ''used to provide Internet access,'' as a means of making the ITFA technology neutral. This change, however, is too broad. Not only would it prohibit taxes states and localities are collecting on DSL, it would also exempt all telecommunications services used anywhere along the Internet—from the end-user all the way to and including the ''backbone.'' Compared to the original moratorium, which expressly exempted telecommunications from its scope, H.R. 49 and S. 150 could ultimately put at risk most, if not all, state and local telecommunication tax revenue. (See attached chart.)

H.R. 49 and S. 150 would also intensify a long-standing problem with the original definition: the unlimited ability to bundle together content and ''other services'' into a single offering of tax-free Internet access. Services such as VOIP highlight the risk states face from this broad definition. Unlike traditional telecommunications services, VOIP uses the Internet to transmit voice communications between computers, phones and other communications devices. Industry observers expect 40 percent of all telephone calls in the United States to be Internet based within five years. If VOIP is allowed to be bundled with Internet access into a single tax-free offering, and telecommunications used to deliver that offering are also tax free, states could quickly see their telecommunications tax base erode to nothing. Language in S. 150 as amended and S. 2084 that requires service providers to unbundled taxable services from non-taxable Internet access is helpful, but only if the universe of what constitutes Internet access is actually limited.

3. STAY FLEXIBLE—A TEMPORARY SOLUTION IS BETTER THAN PERMANENT CONFUSION.

Rapid pace innovation in the Internet and telecommunications industries makes it difficult to define accurately these complex and ever-changing services. The original moratorium was made temporary in part for this reason—to provide Congress, industry and state and local governments with the ability to revisit the issue and make adjustments where necessary to accommodate new technologies and market realities. The fact that the courts, the Federal Communications Commission and Congress are all in the process of examining and redefining the core elements of what constitutes telecommunications and Internet access underscores the need for caution. With so much uncertainty, a temporary extension of the moratorium is the best way to avoid unintended consequences from a permanent moratorium.

CONCLUSION

NGA supports S. 2084 because it best reflects a balance between state sovereignty and federal support for the Internet. First, it protects states by drawing a line in the sand to prohibit new taxes on Internet without interfering with existing state laws. Second, by making the connection from a consumer to their Internet access provider tax free, the Alexander-Carper bill actually levels the playing field for competing technologies without overreaching. Third, it gives Congress, industry and states a chance to revisit the Act by making the moratorium expire after two years. For these reasons NGA supports S. 2084 as a true compromise that is fair to industry, respectful of states, and good for consumers.

STATE AND LOCAL TELECOMMUNICATIONS TAXES POTENTIALLY AT RISK UNDER H.R. 49/S. 150

[$ millions]

	Revenues at risk under H.R. 49 [1]	Revenues at risk under S. 150 as amended [2]
Alabama	$213	$115
Alaska	18	13
Arizona	308	146
Arkansas	146	101
California	1,495	836
Colorado	293	169
Connecticut	276	170
Delaware	27	17
District of Columbia	120	116

STATE AND LOCAL TELECOMMUNICATIONS TAXES POTENTIALLY AT RISK UNDER H.R. 49/S. 150—Continued

[$ millions]

	Revenues at risk under H.R. 49 [1]	Revenues at risk under S. 150 as amended [2]
Florida	1,490	1,059
Georgia	344	182
Hawaii	51	48
Idaho	37	3
Illinois	1,000	807
Indiana	265	148
Iowa	137	49
Kansas	172	74
Kentucky	284	192
Louisiana	207	69
Maine	67	28
Maryland	369	222
Massachusetts	411	256
Michigan	678	477
Minnesota	226	135
Mississippi	190	90
Missouri	334	216
Montana	46	7
Nebraska	101	59
Nevada	52	22
New Hampshire	65	56
New Jersey	699	473
New Mexico	125	101
New York	1,904	1,418
North Carolina	308	225
North Dakota	32	22
Ohio	680	345
Oklahoma	258	166
Oregon	113	63
Pennsylvania	672	547
Rhode Island	100	77
South Carolina	196	90
South Dakota	48	25
Tennessee	348	196
Texas	1,724	1,213
Utah	160	89
Vermont	30	17
Virginia	329	148
Washington	492	331
West Virginia	73	36
Wisconsin	363	255
Wyoming	22	13
Total:	18,098	11,732

[1] H.R. 49: Figures assume the loss of all state and local telecommunications transaction taxes and business taxes as companies migrate their telecommunications services to the Internet.

[2] S. 150: Includes all telecommunications taxes except for 911 fees and business taxes such as property taxes, capital stock taxes on net worth, or sales and use taxes on business inputs.

Source: Special Report/Viewpoint ''Telecommunications Taxes: 50-State Estimates of Excess State and Local Tax Burden,'' Robert Cline, State Tax Notes, June 3, 2002.

Mr. VOINOVICH. First, they talk about: ''DO NO HARM. Any extension of the moratorium should preserve existing state and local revenues.''

The next point they make is: ''BE CLEAR. Definitions matter.''

By the way, in the area of ''DO NO HARM,'' they mention the fact:

With state and local governments collecting over $18 billion in telecommunications taxes annually, any significant change in the taxability of telecommunications could cost states billions [billions] of dollars. At a time when state and local governments are facing large increases in mandatory spending and stagnant revenue growth, Congress should not exacerbate state fiscal problems by interfering with the collection of existing taxes.

In terms of the definitions, they believe that:

The original moratorium split the definition of Internet access into two parts: a broad and inclusive description of Internet access and an absolute exclusion of telecommunications services from the moratorium. The definition read:

''Internet access means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services.''

The exclusion of telecommunications services protected states by clarifying that Internet access was a separate, distinct and limited service.

They go on to say, under definitions:

[The House bill] and S. 150 would also intensify a long-standing problem with the original definition: the unlimited ability to bundle together content and ''other services'' into a single offering of tax-free Internet access. Services such as VOIP—

That is being able to use your computer to make telephone calls—

highlight the risk states face from this broad definition. Unlike traditional telecommunications services, VOIP uses the Internet to transmit voice communications between computers, phones and other communications devices. Industry observers expect 40 percent of all telephone calls in the United States to be Internet based within five years. If VOIP is allowed to be bundled with Internet access into a single tax-free offering, and telecommunications used to deliver that offering are also tax free, states could quickly see their telecommunications tax base erode to nothing [nothing]. Language in S. 150 as amended and S. 2084 that requires service providers to unbundle taxable services from non-taxable Internet access is helpful, but only if the universe of what constitutes Internet access is actually limited.

It also goes on and talks about ''STAY FLEXIBLE. A temporary solution is better than permanent confusion.'' Did you hear that? ''A temporary solution is better than permanent confusion.''

Rapid pace innovation in the Internet and telecommunications industries makes it difficult to define accurately these complex and ever-changing services. The original moratorium was made temporary in part for this reason—to provide Congress, industry and state and local governments with the ability to revisit the issue and make adjustments where necessary to accommodate new technologies and market realities. The fact that the courts, the Federal Communications Commission and Congress are all in the process of examining and redefining the core elements of what constitutes telecommunications and Internet access underscores the need for caution.

We are in an era right now of unbelievable change.

With so much uncertainty, a temporary extension of the moratorium is the best way to avoid unintended consequences from a permanent moratorium.

Their final conclusion—and I am sure the Presiding Officer is very happy about this—is:

NGA supports S. 2084 because it best reflects a balance between state sovereignty and federal support for the Internet. First, it protects states by drawing a line in the sand to prohibit new taxes on Internet without interfering with existing state taxes. Second, by making the connection from a consumer to their Internet access provider tax free, the Alexander-Carper bill actually levels the playing field for competing technologies without overreaching.

That is a point that the Presiding Officer has made several times on the floor of the Senate.

Continuing:

Third, it gives Congress, industry and states a chance to revisit the Act by making the moratorium expire after two years. For these reasons NGA supports S. 2084 as a true compromise that is fair to industry, respectful of states, and good for consumers.

Now, I contacted the National Governors Association earlier today.

I asked them if they could opine on the McCain amendment that was so eloquently spoken to by Senator MCCAIN. They worked very quickly and came back with a letter to Senator FRIST, majority leader, and Senator DASCHLE, Democratic leader. It is signed by Governor Brad Henry, Oklahoma, Chair, Committee on Economic Development and Commerce, and Governor Michael Rounds, South Dakota, Vice Chairman, Committee on Economic Development and Commerce.

I would like to read from that letter.

Dear Senator Frist and Senator Daschle:

The National Governors Association . . . supports an Internet access tax moratorium that benefits consumers, is fair to industry, and does no harm to states. As the Senate once again considers the moratorium, we urge you to oppose efforts that would deprive states of existing tax revenues and to support the compromise proposal to be offered by Senator Alexander and Senator Carper and embodied in S. 2084, the ''Internet Tax Ban Extension and Improvement Act.''

NGA supports the Alexander/Carper compromise because it best reflects the appropriate balance between state sovereignty and federal support for the Internet. First, it protects states by prohibiting new taxes on Internet access without interfering with existing state revenues. Second, by making the connection from a consumer to their Internet access provider tax free, the compromise language encourages broadband deployment by leveling the playing field for all technologies.

That is what we are trying to do. The amendment we tried to get in last year and which will be offered by the Senator from Tennessee tries to level the playing field for all of the providers of this access.

Third, because it is temporary, it gives Congress, industry, consumers, and states a chance to revisit the issue and make adjustments where necessary to accommodate new technologies and market realities.

Here is the paragraph that I think gets to the heart of the matter:

The recent proposal by Senator McCain, while an improvement on the bill sponsored by Senator Allen and Senator Wyden . . . does not go far enough to protect states. By adopting the broad definition of tax-free Internet access used in S. 150—

That is the same definition that is in the Wyden-Allen bill; the same definition is in the amendment proposed by Senator MCCAIN—

and terminating the grandfather protections before the end of the moratorium, the McCain proposal would still deprive state and local governments of existing tax revenues and violate the principle of ''do no harm.''

The nation's governors call on the U.S. Senate to oppose the McCain amendment and support Senator Alexander and Senator Carper in their efforts to strike a reasonable compromise to extend the Internet access tax moratorium.

The Senator from Tennessee, Senator ALEXANDER, Senator CARPER, and Senator VOINOVICH, who is the third sponsor of S. 2084, should be very happy

with the support we are getting from the National Governors Association. I hope our colleagues take that into consideration.

In addition to the letter from the National Governors Association, I would like to share a letter I recently received from the Ohio Department of Taxation. In fact, I have never seen a letter from the Department of Taxation of the State of Ohio turned around so quickly in my life. We faxed them the McCain proposal. We asked them to give us their opinion of the McCain amendment. I suggest to my colleagues that before they vote on this legislation, they take it upon themselves—as a matter of fact, I think it is an obligation for them—to get in contact with their State departments of taxation to get a read from them about what impact this amendment would have on their respective States. Some of my colleagues, frankly, are supporting this and may not want to hear the impact it is having on their State. But I think it is incumbent upon them at least to find out what their States think about this proposed legislation and the impact it would have on their respective States.

I am going to read a portion of this letter. It reads:

Dear Senator Voinovich:

We reviewed the text of the McCain language that you FAXed to us this morning. Our preliminary impression is that this bill is very similar to the version of S. 150 containing the ''managers amendment'' and has roughly the same negative revenue impact on Ohio. Specifically, we think that the bill would cause a state and local revenue loss of about $72 million per year. The amount would become larger as more telecommunications services are provided through Internet technology and/or bundled with Internet access, and as broadband Internet access is used by more households. Specifically, the $72 million estimate does not account for state and local revenues lost as more phone services are replaced by VOIP, which we believe the McCain bill will still prohibit the states from taxing (as long as VOIP is bundled with Internet access).

That is the way they do it. They bundle it together and under their definition this would be exempt from taxation.

As you know, the states objected to S. 150 on several grounds. One of the most important was the language ''the term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''

This ''Allen-Wyden'' definition of Internet access is so broad that it essentially can be used to exempt what we have seen referred to as the ''Internet backbone'' telecommunications services, the ''middle mile'' telecommunications services, and the ''last mile'' telecommunications services. This is in contrast to S2084, which you cosponsored, and which would have provided a much more limited exemption for last mile telecommunications services that are used to connect an end-user (e.g. household) to an Internet service provider such as AOL or Earthlink or Comcast.

That is the thing we don't want. We want people to have to plug into that mile, but the thing we are concerned about is they want to go beyond that. They want to take in the whole watermelon.

In Ohio, the impact of the S. 150 moratorium on state and local taxation of all these telecommunications services may not be as damaging as in some other states because Ohio already has a broad exemption for the purchase of property used in providing telecommunications services. Even so, we still estimate that the annual full-year loss to Ohio from the provision would be about $72 million.

Another notable provision of the McCain bill is the exception of VOIP services from the tax moratorium. To the extent that such service mimics traditional telephone service, we believe that this means that State and local governments would be allowed to tax VOIP services insofar as they mimic traditional telephone services. The so-called VOIP exception to the moratorium actually does nothing for the states' ability to tax that or similar services that may migrate to the Internet. Current Ohio law allows state and local governments to tax VOIP as a telecommunications service, as long as there is no federal preemption.

The McCain ''exception'' to the federal preemption does not apply to services that are defined as Internet access. This means that the exemption will not apply to voice services that are bundled with Internet access, and since that is how VOIP services are currently sold and probably will continue to be sold, the exception in the McCain bill will in fact provide no protection against states losing revenues as phone services migrate to VOIP.

The Senator from Tennessee, the Presiding Officer, has made it very clear if there was an amendment to that bill that made it very clear that could continue to be taxed, that might remedy this whole issue.

The letter goes on to say:

We do not know exactly how much revenues will be lost in the future due to the migration of currently taxable phone service to exempt VOIP service, but it could end up being most of Ohio's telecommunications tax revenues.

I'll read that again:

We do not know exactly how much revenue will be lost in the future due to the migration of current taxable phone service to exempt VOIP service, but it could end up being most of Ohio's telecommunications tax revenues.

You know if that happens, the State is either going to reduce services or they are going to find something else to tax. That is the way this thing operates.

The letter concludes:

To put the estimated $72 million loss in context, in fiscal year 2003, Ohio collected about $250 million in sales tax and use tax from telecommunications service providers. The most recent biennial budget bill switched local telephone providers from the old gross receipts tax to the sales tax and use tax, so that now the forecasted full year sales and use tax revenue from all telecommunications providers is about $370 million. This is at a 5 percent state tax rate—we are ignoring the current 6 percent tax rate because it is set to expire. . . .Thus, the estimated revenue loss from the McCain bill (excluding the VOIP loss) is slightly less than 20 percent of total estimated Ohio telecommunications sales tax revenues.

The fact is the McCain amendment is going to have a devastating impact on the revenues of our States and goes far beyond the moratorium I helped negotiate when I was chairman of the National Governors Association, and is something we should all be concerned about.

I also want to make another couple of points, if I may. I have heard so much today already and in the past about the fact that if we don't get this done, everything is going to stop and it is going to be a terrible thing for farmers and all Americans, and so on. The fact is, Internet technology has grown unbelievably over the past year. According to a study released by the Pew Internet and American Life Project last week, 55 percent of American Internet users have access to broadband, either at home or in the workplace. As a matter of fact, it is going to keep growing because I think the Senator from Tennessee pointed out this afternoon there are some communities that have their own electric companies that are giving it away.

This thing is moving. We don't see anything slowing down. We are moving fast. The report also noted home broadband usage is up 60 percent since March 2003, with half of the growth since November 2003.

You will recall back when we were debating this last year, the allegation was, gee, if we don't get this done, everything is going to be taxed, things are going to end up in the mud, slowed down, and we are in trouble. Since the moratorium ended, half of this growth occurred. So this thing is moving. This moratorium—the fact we didn't extend it has not really impacted this one iota. DSL technology now has a 42-percent share of the home market, which is up 28 percent since March 2003.

Most of the growth I outlined occurred after the Internet tax moratorium expired last November, which refutes the argument S. 150 was necessary to help the expansion of broadband services. In addition, April 21—a couple days ago—a major telecommunications company released their 2004 first quarter earnings. I want to read the first two sentences from the company's press release because it illustrates how fast this technology is growing. This is from SBC Communications:

SBC Communications, Inc., today reported first quarter 2004 earnings of $1.9 billion, as it delivered strong progress in key growth products. In the quarter SBC added 446,000 DSL lines, the best ever by a U.S. telecom provider.

Some of these people who are supporting the Wyden-Allen amendment and now McCain amendment are companies like this. They are doing well. They are moving. They are bragging, ''We are moving ahead.'' We all know the Federal Government today subsidizes this telecommunications industry. If I remember correctly from a speech the Presiding Officer gave this afternoon, it is a $4 billion subsidy from the Federal Government, and the States—all of them—have been doing

everything they can to encourage this industry.

I don't know of any industry that has been treated better than this industry. For the life of me, I cannot understand why it is they insist on having us whack out all of the taxes they are paying. I cannot understand it.

I think if this Senate does the right thing, what we are going to tell this industry, which does a pretty good job of lobbying around here and in the States—I knew it when I was Governor—we will tell them: You know what. You are not going to get a complete release of all the taxes you pay. It is time for you to sit down, like I did with the petroleum industry and the Corn Growers—they came to me and wanted me with them on ethanol, and the oil industry—and the Senator from Oklahoma knows them well—said you have to be with us. I said, you know something, I had Ashland Marathon Oil in Ohio, and I had my Corn Growers and I love you both. You ought to get in the room and sit down and talk to each other and see if you cannot work something out. Lo and behold, after 6 months, they had a big news conference. About 20 Senators were there, and on that stage were people who, if you talked to them 6 months before and said you are going to be on the stage together in a compromise, would have said you are crazy. They were on that stage and they put a compromise together.

The problem we have today in the Senate is the fact that the telecommunications industry thinks this thing is going to go through and they don't have to sit down and talk to State and local government officials, or with the Commerce Committee, and work something out. I know it can be done. I am prayerful our colleagues today understand that and that they will come together and say we have not been able to do this, and we will have a continuation of a moratorium. But let's sit down and work it out. Probably the best way to do that under the circumstances, with the time limitation we have, would probably be to pass a 14-or 15-month extension of the current moratorium, while we can take it back to the Commerce Committee, where we can get the telecommunications industry in, get the Governors and other local government officials in, and the FCC, and start to make some sense out of this.

I thank the Senator from Tennessee, Senator ALEXANDER, for the great leadership he has provided on this issue. We got together last year, and the train was moving and we got in the way of it and caught a lot of criticism because they were accusing us of being for taxing e-mail and the Internet and all the rest of it. That wasn't it at all. All we wanted to do was continue a moratorium but do no harm to our States. We probably understand that more than some Members because we are former Governors. In my case, I am a former mayor and county commissioner, and we also appreciate it because we all worked together for legislation in 1995—the unfunded mandates relief legislation I worked my heart out to get passed. As a matter of fact, the pen President Clinton used to sign that legislation is on the wall in my Senate office in the Hart Building. The first time I set foot on the floor of the Senate was the day the Senate passed the unfunded mandates relief legislation.

I don't like unfunded mandates. I don't think it is fair. We have done it to the States for so many years. We finally got that legislation passed. The American people should know this is a big unfunded mandate, the way it is put together. We can change it and make it fair so they are not going to see the taxes on telecommunications disappear and then see taxes increased in some other area.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, the Senator from Ohio and I know something about unfunded mandates, as does the Chair. It keeps creeping up, and we are making every effort in the committee that I chair and the subcommittee the Senator from Ohio chairs to try to resolve that problem. I think maybe we will because we have the right people in line to do it. I may not agree with the Senator from Ohio on this particular issue, but I certainly do on unfunded mandates.

I just found out that the distinguished Senator from New Mexico, Mr. DOMENICI, has filed an amendment that is a slimmed-down version of the Energy bill. I just have to stake out a position early because it is my understanding that the safe harbor language that was in H.R. 6 that is so fair and so necessary is not a part of the slimmed-down version. If it is not in the bill, I am not going to be able to support the bill. I will do everything I can for the Senator from New Mexico, but this is very serious.

The bill should permit that manufacturers, producers, marketers, traders and distributors of gasoline containing federally approved oxygenate MTBE cannot be sued under a claim that it is a defective product.

The Federal Clean Air Act Amendments of 1990 created the reformulated gas. The reformulated gas program said they had to use oxygenates. The most prevalent oxygenate to be used in these reformulated gases is MTBE. In fact, EPA specifically approved MTBE for this purpose.

Here is the situation we have: We have the Government coming along and saying, You are going to have to use MTBE. For all practical purposes, they have said this, they have mandated it. Then they turn around and say, We are going to let the trial lawyers in to sue you because maybe this substance which we approved, which we endorsed, is causing harm to someone. It is very important to understand that the safe harbor provision is necessary to prevent the trial lawyers from using the court system to punish companies for simply complying with the Federal law by using a federally approved additive.

The safe harbor is narrowly targeted and does not affect any claim against any person or any company actually responsible for spilling gasoline containing MTBE. That is very important because I keep hearing on this Senate floor: You let all these people off the hook who are spilling and polluting. That is not true at all. It is very narrowly defined.

Since September 30, 2003, in anticipation of the Energy bill, trial lawyers, including many known for the work they have done and the wealth they have accumulated in asbestos litigation, have as of March 25 brought over 60 groundwater contamination lawsuits in 17 States seeking damages from over 169 different named companies that allegedly manufactured, sold, or transported gasoline containing the federally approved fuel additive called MTBE.

One of those companies is Frontier Oil. They have been sued. They have never produced MTBE. They have never used it. They blended MTBE. But they are one of the companies being sued. The lawsuits do not allege defendants actually leaked or spilled gasoline containing MTBE that allegedly contaminated their groundwater. The lawsuits do not even name the actual polluters. Instead, the cases target any company that at any time may have distributed or sold gasoline containing MTBE or even some, as I just cited, that did not.

Defendants are vigorously defending these cases and will incur millions of dollars in legal fees and expenses simply for having made or sold gasoline containing a fuel additive specifically approved for use by Congress and the EPA.

I believe it is necessary to stake out this position. I cannot think of a fairness issue with which we have dealt that is more significantly addressed than this one. Government comes along and says you have to use this stuff; then they come along later and say there is something wrong with it and we are not going to offer you any defense at all—any defense. We are talking about huge multimillion-dollar lawsuits.

In the event this language does not end up in the legislation of the slimmed-down bill, I will have to oppose it. I cannot conscientiously support an energy bill that leaves everybody out to dry, particularly in the MTBE case.

That is my position. I think there are many others who share that position of fairness in dealing with this bill.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore (Mr. CHAMBLISS). Without objection, it is so ordered.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk on the pending Domenici amendment.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 a close debate on the 2nd degree pending amendment to Calendar No. 353, S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act:

Bill Frist, John McCain, George Allen, Pete Domenici, Trent Lott, Chuck Hagel, Larry E. Craig, John Ensign, Craig Thomas, Robert F. Bennett, James M. Inhofe, Conrad Burns, Don Nickles, Orrin Hatch, Gordon Smith, Saxby Chambliss, Mitch McConnell.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk on the pending McCain substitute amendment.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 a close debate to the pending McCain Substitute Amendment No. 3048 to Calendar No. 353, S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act:

Bill Frist, John McCain, Jon Kyl, Norm Coleman, Jim Bunning, Gordon Smith, Mitch McConnell, Pete Domenici, Conrad Burns, Rick Santorum, Olympia Snowe, Judd Gregg, Wayne Allard, Thad Cochran, Mike Crapo, Larry E. Craig, Ted Stevens, George Allen.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum with respect to the three cloture votes be waived.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I am disappointed to have to come to the Senate floor and file these cloture motions at this time. Earlier today, I had hoped we would finally make progress on the pending Internet tax access bill. Last week, I said we would be addressing the Internet tax access bill Monday, Tuesday, Wednesday, and Thursday, which I and most people felt would be sufficient time to address this bill and allow for amendments to be debated and discussed.

We did debate and vote on a relevant amendment offered by Senator HUTCHISON today. However, at the very first opportunity to offer an amendment from the other side of the aisle, they offered a completely nongermane amendment, which clearly is going to slow down this legislation.

On Thursday, these cloture motions will be voted on. There will be two cloture votes with respect to the energy amendments, but ultimately we will have a third cloture vote and that vote will be on the underlying substitute relating to the Internet access bill. That is the vote that will determine if we will be going forward on this bill at that time.

Again, I scheduled this measure with the hope of taking a few days and allowing Senators to have that opportunity to bring their amendments to the Senate floor to debate and vote on those amendments. I hoped those amendments would be centering on the Internet tax bill, the bill under consideration. The latest turn of events today means that many Senators who have legitimate and relevant amendments are being denied the opportunity to debate and vote on their amendments. This is unfortunate.

That said, I remain committed to finishing the bill in a timely fashion, and I hope that we can get back together tomorrow morning and make appropriate plans in order to accomplish that over the course of the next several days.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, if the distinguished leader will yield for a brief comment, as I said to Senator DOMENICI this afternoon, this scenario that has been set up is going to create some very interesting votes because if we move down the road where we come to a McCain cloture vote, if cloture is invoked, then Daschle and Domenici fall. At least that is my understanding. If that is the case, then that part of the Energy bill would be gone. But anyway, that sets up some interesting dynamics here.

We do at least have out here, in addition to the FSC legislation, pieces of the original Energy bill. Who knows, we might wind up doing something on energy.

Mr. FRIST. Mr. President, I do hope we will be able to complete the Internet access bill and that we can work through the turn of events of today. Again, I hope over the course of the evening people will come back and lay out a plan to accomplish what is important to the technology community and the communications community broadly, and that is to be able to allow people to vote on the very important underlying bill.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF J.A. TIBERTI

Mr. REID. Mr. President, I rise today to congratulate J.A. Tiberti on his selection by the Boulder Dam Area Council of the Boy Scouts of America for the 2004 Good Scout Award. His philanthropic ventures and contributions to our State's economy have long made him a valuable part of the southern Nevada community.

The Good Scout Award recognizes an individual who exemplifies Scouting's ideals through professional leadership, community involvement, and personal commitment to excellence. This award reflects the personal character, dedication, and generosity of the recipient, and I can think of nobody more deserving than Mr. Tiberti.

As founder and chairman of Tiberti Companies, Mr. Tiberti has served as a prominent leader in southern Nevada's business community for the last 60 years. The company's construction of schools, hotels, banks, grocery stores and department stores has helped meet the needs of southern Nevada's growing population.

He also contributed to the region's dramatic growth by serving on the Las Vegas Planning Commission for 25 years and as a director of Nevada Power Company for 36 years.

Mr. Tiberti has also been a noted philanthropist, giving generously to many worthwhile causes. In 1979, he contributed $1 million to create the College of Engineering at the University of Nevada Las Vegas. This generous gift expanded the opportunities for higher education available to Nevadans and helped UNLV become one of our Nation's leading universities.

Mr. Tiberti and his family also have longstanding ties with the Boy Scout program and were instrumental in the development of Spencer W. Kimball Scout Reservation, Camp Potosi.

Please join me in congratulating J.A. Tiberti on this well-earned honor.

HONORING OUR ARMED FORCES

WILLIAM LABADIE

Mrs. LINCOLN. Mr. President, I rise today to pay tribute to one of Arkansas' heroes who has paid the ultimate sacrifice in defense of his Nation. Sgt. 1st Class William W. Labadie, 45, a native of Bauxite, AR, was mortally wounded on April 7, 2004, during an attack by insurgents on his camp just south of Baghdad.

William Labadie, known to his friends as Wild Bill, joined the Marine Corps right after high school. After serving in the Corps for 8 years he returned home and later became a member of the Arkansas National Guard. Sgt. Labadie was known as a real soldier's soldier. He took his responsibilities seriously and was excited by the