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some indication by the end of next week whether we will start the August recess on the 4th or the 11th or the 18th or thereafter.

ORDERS FOR MONDAY, JUNE 12, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 12 noon on Monday, June 12, 1995; that, following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for the transaction of morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak for up to 5 minutes each.

Further, that at the hour of 1 p.m., the Senate resume consideration of S. 652, the telecommunications bill and the pending Thurmond second-degree amendment to the Dorgan amendment No. 1264.

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

PROGRAM

Mr. DOLE. Mr. President, all Members should be aware that the Senate will resume consideration of the telecommunications bill at 1 o'clock on Monday. The chairman is here. He is ready to do business now. He will be ready to do business on Monday. Senator PRESSLER is available. Senators should, therefore, be aware that rollcall votes can be expected throughout Monday's session of the Senate, however, not before 5 p.m. on Monday.

Let me indicate to my colleagues who will say, "Well, we didn't have enough time for debate," we have time right now. It is 3:10. For 3, 4, 5 hours, the Senator from South Dakota is willing to stay on into the evening and will be here all day Monday. So I hope people do not come back at 5 and say, "We didn't have time to debate."

We have all day today and all day Monday starting at 1 o'clock. I just said if we cannot get an up-or-down vote on the pending amendment, then all the recourse the manager would have would be to make a motion to table sometime on Monday. I did not file cloture to shut off debate. It is a very important amendment. It is a very important bill. I am not trying to take time away from any Senators. You can see there is nobody here. So all those people who complain Monday about having time to debate, they could have been here today. Right?

Mr. PRESSLER. Right.

Mr. DOLE. And they can be here Monday. So I just hope if we are told we have not had time, we need more time to debate, that they will think about what they did not do on Friday and what they could have done on Monday

ORDER FOR RECESS

Mr. DOLE. Mr. President, if there is nobody here to debate the telecommunications bill, I ask unanimous consent that the Senate stand in recess under the previous order, following the outstanding remarks about to be made by the Senator from Nebraska—I added that "outstanding"—Senator EXON.

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

The Senator from Nebraska is recognized.

COMMUNICATIONS DECENCY ACT

Mr. EXON. Mr. President, I have delayed bringing up this matter until an appropriate time when I would not necessarily inconvenience all of my colleagues with the very important amendments that I have had a part in developing as a member of the committee of jurisdiction, the Commerce Committee.

I will be back on the floor on this matter, though, next week before the vote or votes are held on the matter on which I wish to address the Senate today. There has been a great amount of behind-the-scenes activity. There has been a great amount of activity on the Internet system, and I am here today to outline the measure that I will offer as a substitute to the measure that was reported unanimously out of the Commerce Committee, called the Exon decency bill with regard to the Internet.

I cannot think of a more appropriate means of bringing this to the attention of the Senate and the American people than in our debate and eventual enactment of the telecommunications legislation, which is the most far-reaching legislation dating back to 1934. Obviously, everyone knows of the dramatic developments in telecommunications since 1934. It is about time we do something.

But as we are doing this, and with the many important factors that we have considered and deliberated on for a long, long time, including last year when the Commerce Committee had extensive hearings on the whole matter and scope of telecommunications, what we should do and should not do, what we should try to do, and what we can do—unfortunately, the Senate adjourned before that bill was reported out of the Commerce Committee last year and was considered and enacted into law.

When Senator PRESSLER took over as the very distinguished chairman of the Commerce Committee this year, Senator PRESSLER, rightfully, in company with the Democratic leader on the Commerce Committee, Senator HOLLINGS, moved very aggressively on, once again, bringing forth a piece of legislation not distinctly different from the legislation that we reported after extensive hearings and deliberations and brought to the floor last year.

So here we are, Mr. President, making some very significant changes. One of the things this Senator feels we should properly address, and will address and, hopefully, act on in a fair and reasonable fashion, with full understanding, absent of outlandish claims and charges, is the matter of trying to clean up the Internet—or the information superhighway, as it is frequently called—to make that superhighway a safe place for our children and our families to travel on.

Mr. President, at this time, I send an amendment to the desk and ask unanimous consent that it be printed in the RECORD and held at the desk. I will formally call it up for consideration sometime next week.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator has that right.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. EXON. Mr. President, earlier this week, I circulated a "Dear Colleague" letter which explained the revisions in the communications decency provision. In title IV of the telecommunications reform bill, as my colleagues know, title IV includes legislation that I have worked on for about a year to make the Internet and other aspects of the information superhighway safer for our families and for our children to travel.

It seems an appropriate time to explain these revisions and file my amendment so that it may be printed in the RECORD, as I have just asked for and received consent for—primarily, for the convenience and review of my colleagues before we debate this matter further next week and eventually come to a vote.

Mr. President, some basic rules of the road need to be established. As the information superhighway rolls up to the front door of every household and school and library in America, this bill will bring exciting, revolutionary, and new information technologies within the reach of every American. There has not been anything that I think is more exciting that has ever been developed than the information superhighway and what it is going to do to make more information and more education readily accessible to any who seek it.

I have said on many occasions that I happen to believe the whole computer Internet system is the most important, the most revolutionary development since the printing press. Eventually, I predict, it will do as much good for circulation of information as the printing press. I support the development of this so very, very strongly.

I simply cite that there are some dangerous places, Mr. President, on the information superhighway. I think that while we are creating this as an important part of our new telecommunications bill, we who are charged with the responsibilities to pass laws that are reasonable and proper should emphasize a little in our thinking what is proper and what is not proper

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It is my intention to point out to the U.S. Senate some of what I think is highly improper, what I think is eroding the society and will continue to erode the society of America, unless we have the courage to stand up and do something about it, despite the minority of naysayers in the United States of America who do not want to change anything.

Mr. President, the Snowe-Rockefeller-Exon-Kerrey amendment that assures that schools and libraries will gain affordable access to the digital world, including the Library of Congress, the great universities, and the museums, will remain in place.

The Communications Decency Act is proposed in the context of this information revolution that is exploding in our society. Just as we modernize the rules which apply to the telecommunications industry, we need to modernize the rules which apply to the use of their products and their services that are going to be distributed in a form that we never even imagined previously.

Unfortunately, the current laws, which clearly protect young and old users from harassment and obscenity and indecency, are woefully out of date with this new challenge and this new opportunity. The current law is drafted in the technology, primarily, of the telephone, dating back to 1934. Our efforts today, and in the coming weeks, bring closer the day of technological convergence. Soon the concept of a telephone will be as relevant as today's concept of the telegraph.

The principles that I have proposed in the Communications Decency Act are simple and constitutional. Telecommunications devices should not be used to distribute obscenity, indecency to minors, or used to harass the innocent.

The revisions offered to the committee-reported bill are in response to concerns raised by the Justice Department, the profamily and antipornography groups, and the first amendment scholars. If anyone would take the time to look through them and study them, I think most, but not all, would conclude that they are reasonable and proper.

I have also had a great deal of cooperation from the online service providers. The online service providers, of course, are those entrepreneurs who have assisted us in providing services to the many outlets that are anxious to have their services in America. These service providers are key members of this new industry.

Certainly, what we are trying to do here is to only craft and put into law some of the provisions that have been in existence for a long, long time, way back to 1934, to make sure that the same restrictions that were necessary and have been placed into law, and have been held constitutional time and time again by the courts, have a role to play in the new Internet system and how that Internet system reacts, as best explained on this chart, which I will get to in a few moments.

So I have had good cooperation from many, many people who are truly experts in this area, including members of the telephone industry who have worked and operated without problems under very similar, if not identical, restraints in the law that everyone thought had been good.

The proposed revisions that I have submitted to the desk that passed unanimously out of the Commerce Committee, follow closely the confines of several Supreme Court cases. I am very confident that this legislation will withstand a constitutional challenge.

I am not interested, Mr. President, in passing a piece of legislation here, and then say, "Look what a good job we did," and then have that matter in the very near future declared unconstitutional by the Supreme Court. We would have to start all over again.

I assure all from the beginning, I have put out the hand of cooperation to all parties—even those most opposed to any action whatever in this area—and I find that there are a great number of well-intentioned people who shudder at the thought of passing any kind of legislation in this area.

They are not bad people. I just do not think they fully understand, as I think I do and as I think 9 out of 10 Americans do, when they find out what is going on, on the information superhighway today.

Mr. President, a few days ago I had a remarkable demonstration, in more detail than I had even fully known, of what is readily available to any child with the very basic Internet access. I want to repeat that, Mr. President: Of what is readily available to any child with the basic Internet access. It is not an exaggeration to say that the worst, most vile, most perverse pornography is only a few click-click-clicks away from any child on the Internet.

I have talked to so many people about this and had so many interviews and read so much material. There have been many experiences during these last few months, people have told me of the fact that they knew nothing about what was on the Internet with regard to what I was concerned about.

Only last week I had a journalist who was doing a story on this who conceded—this was a woman—when she started writing this story she was extremely skeptical of what my motives were and whether there truly was a problem. It just happened that very recently, though, during the process of writing the article that she was doing for a national publication, she put her computer at home on the Internet system and was sitting with her 8- or 9-year-old daughter one evening.

She said, "Senator, I got my eyes opened very wide, very quickly." She said, "I was astonished at what I came across accidentally. Even more astonished when I started doing even preliminary searches of what we were getting into. Finally, I recognized it was not something I wanted my daughter to see, let alone me sharing it with her."

I did a television show on this subject. Half the people that called in were very upset that I was not for free speech, I wanted to violate the Constitution.

The most rewarding of those who supported it was a call out of the blue from an obviously very young person who identified himself as a 12-year-old boy. He said, "Senator EXON, I want to salute you for doing this. I am a 12-year-old. I am completely literate on the computer. I have seen and observed the material that you are talking about. It is common talk among all of us my age and younger, and, of course, older, in school." He said, "I appreciate the fact you are trying to do something about it, because someone has to." That word from a 12-year-old really meant more to me, Mr. President, than all of the brickbats that have been thrown my way from, basically, people that I think are uninformed in what this Senator is trying to do.

The fundamental purpose of the Communications Decency Act is to provide much-needed protection for children. Throughout the process of refining this legislation, I have held out the hand of friendship and understanding and cooperation to those who have had different ideas, and I have made revisions in many instances that I think are very appropriate and help in our effort rather than hurt us.

I responded to the concerns raised over the last several months and those raised earlier today by my friend and colleague from the State of Vermont, Senator LEAHY. I have publicly and privately expressed support for Senator LEAHY's study. But not as a substitute for or at the expense of these critical provisions which are designed to allow children and families to share and enjoy the many wonderful benefits of the information revolution that are taking part on the Internet.

The reason that I am concerned is that I am afraid that there are some of my colleagues in the Senate on both sides of the aisle that might be tempted by Senator LEAHY's efforts, that have been primarily sponsored, as I understand it, by the Clinton administration people, primarily in the Justice Department.

What the Clinton administration and the Justice Department is trying to do is punt—punt like in football. We happen to know something about football in Nebraska. I would simply say that any time Nebraska has a fourth down and 37 yards on our own 3-yard line, they always punt. But this is not a time to punt on this important matter, if it concerns my colleagues as much as it does me.

I think if they will take time to study it, most of my colleagues would agree that we cannot punt. Even though it is third down or fourth down and 37, we better act.

In response to the concerns that have been raised by the Justice Department

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and others, the Exon revision drops the bill's definition of "knowing" and the so-called "predominant defense issue."

The remaining defenses are narrow and streamlined and limited to the new revised section 223. A new section is added to assure that no other Federal statute will be limited or affected by the Communications Decency Act.

I want to repeat that, Mr. President: The new section is added to assure that no other Federal statute will be limited or affected by the Communications Decency Act.

This is important to many Members and pro-family groups. The current dial-a-porn statute would be left untouched and unamended by the decency provisions. We have made that clear.

Furthermore, the bill's narrow, streamlined defenses would not apply to the current dial-a-porn law or any other Federal statute. We are leaving that measure that has been heavily debated, on which there have been court cases alone, to stand exactly like it is. The Exon Decency Act does not touch it.

With these revisions, decency provisions pose no risk to any current or future dial-a-porn, obscenity, or indecency prosecution. The State preemption provision in the committee-reported bill is clarified, in that its application is limited to commercial activities and consistent with the interstate commerce clause. This provision will assure that businesses and nonprofit services and access providers know that State and Federal rules and obligations with respect to the Communications Decency Act are consistent and are predictable. This assurance is critical to any interstate enterprise.

In addition, new language is added to this provision to assure that the State preemption provision in no way limits State authority over activities not covered by the Communications Decency Act. In other words, State child endangerment or delinquency statutes will in no way be adversely affected by this legislation.

The heart and the soul of the Communications Decency Act are its protection for families and children. The distribution of obscenity and indecency to minors by means of telecommunications devices would be covered by new sections in the revised language. Unlike the current dial-a-porn statute, there would be no noncommercial loophole in the new provisions. I am saddened to report that there is a great deal of grosaly obscene and indecent material on the Internet available to anyone free of charge. The decency revisions strengthen the committee-reported bill by providing clear, constitutional, and much-needed protections for users of the telecommunications services.

I look forward to discussing this critical piece of legislation as the Senate further considers the telecommunications reform bill, as I indicated earlier, next week.

Mr. President, given the floor debate will be a key part of the legislative history for these new provisions, I ask unanimous consent that a section-by-section analysis, as well as the text of my amendment, be printed in the RECORD following my remarks.

The Chair had previously given authority for those to be printed. I am asking that they be printed following the conclusion of my remarks today.

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

(See exhibit 1.)

Mr. EXON. I also ask that a copy of an Omaha World-Herald article, which appeared in the Seattle Times, entitled, "Police Cruise the Information Highway" appear in the RECORD, also following my remarks.

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

(See exhibit 2.)

Mr. EXON. I send those to the desk for action, as has been agreed to.

Mr. President, let me, if I might at this juncture, go into a little further discussion as best I can, and as I think decency would allow me to proceed. This is the blue book. This is a sample of what is available today free of charge: Click, click, click on the computer, on the information superhighway. This will be available for any of my colleagues who are not familiar with what is going on on the Internet today, to have a firsthand look at the listings of materials that are available free of charge and pictures of what is being shown. To give an idea, let me read through some of the listings that appear on the bulletin boards.

The computer is a wonderful device for arranging, storing, and making it relatively easy for anyone to call up information or pictures on any subject they want. That is part of the beauty of the Internet system. This is on some of these bulletin boards, and there is such a long list it would take a big binder to cover all of them, but let me read through what is in the form of pictures that have been taken on computer screens on the Internet. I have several pages of them here. I am going to just go through some of them and tell you any child who can read—and of course anyone else, too—could click onto this kind of an index that tells them what to do to punch in very easily to any of these types of things.

Multimedia erotica; erotica fetish; nude celebrities; pictures black, erotic females; pictures boys; pictures celebrities; pictures children; pictures erotic children; pictures erotica; pictures erotica amateur; pictures erotica amateur females; pictures erotica amateur males; erotica animal; erotica auto; erotica bestiality; erotica bestiality, hamster, duct tape; bestiality, hamster, duct tape; [two of those] erotica black females; erotica black males; erotica blondes; erotica bondage; erotica breasts. Here is a good one: Erotica cartoons; erotica children; erotica female; erotica female, anal; erotica fetish; erotica fury; erotica gay men; erotica male; erotica male, anal; erotica Oriental; erotica porn star.

This goes on and on and on—so much repetition. But it is startling, page after page after page, on screen after screen after screen—free, free of charge, with a click, click, click.

The blue book will be available to any who want to see how bad this is. I hope if any of my colleagues are not familiar with it, they become familiar.

Mr. President, I draw the Senate's attention to the chart that I have before me. I have been here in the Senate for 17 years. I think this is the second time I have ever used charts. We never had charts in the Senate until we had television. But now we talk to our American citizens, many of whom watch us very religiously from their homes throughout the Nation, as much as we do to our colleagues on the floor.

To try to explain this as briefly as I can, and I certainly do not claim to be an expert at it, the Internet system here in the center is the information system and the information system explosion that I have been talking about. When we look at what is good about this system, it is the Internet, the information, and all the multitude of good that is coming out of this today and is going to be further exploding in the future.

Then we have people at home on the Internet and children at home on the Internet. Under the system that the Exon Decency Act would provide and protect is this kind of a system with those at home, the children, having direct and full access to the Internet. After they get on the Internet, there would be a degree of protection to keep them from going on to the pornography bulletin boards.

That is what I am talking about here. The child at home, the adult at home could get on the Internet and they could go to the Library of Congress, the museums or any of the other magnificent sources of information we have. But anyone who pollutes that system over here on the pornography bulletin board would be subjected to the restraints in the law that the Exon decency provision tries to put in place.

Let me describe this for just a moment, if I might, and emphasize once again that we have today laws against—and providing fines and jail terms—people who misuse the telephone system to promiscuously spread pornography.

We also have in like manner in that regard laws prohibiting the use of United States mail for pornography.

Obviously, Mr. President, under the present law we do not put the innocent mailman in jail for delivering pornography, which is prevented by the law, from one place into a home.

This is a way that I would like to see, and I think most people would like to see, the Internet operate. But that is not the way the system works today and is the reason for the Exon decency provisions.

This is the way it works, Mr. President. You will notice in the previous chart that there are lines connecting these entities. On this chart, I simply say to you this is the way it is today. This is the way it is today where either

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the child or the adult at home enters the Internet system and is automatically connected with an additional click to the pornography bulletin board which is the material in the blue book and everything that I connected with it that I call smut. They are all connected together.

I happen to feel, if we make law the Exon decency bill, the Exon decency bill would not prevent or eliminate people from seeking the pornography bulletin board, and if they are adults and if the material on that is designed for and dedicated to adults, whom I would basically describe perhaps for these purposes as someone 18 years of age or more, then they could seek out the pornography bulletin board, and any of the people on the Internet, who have been claiming that Senator Exon's bill wants to close them down, if they want to watch pornography on the Internet, should have that right. I agree. I do not like it but I agree. It would be unconstitutional I think if we tried to eliminate that totally.

What I am trying to do with the Exon Decency Act is make the Internet like this rather than the direct connection accidentally to this system.

Over here in the pornography bulletin board we have entrepreneurs, entrepreneurs who are seeking money, cash money-making opportunities. They have facilities to where you dial into these bulletin boards, and they will through a credit card system allow you to subscribe whenever you want to the whole galaxy of things that they have, some of which I read out of the blue book. And that would continue, that would be allowed for adults under the Exon Decency Act.

What would be prevented under the Exon Decency Act is that these people who make lots of money, hundreds of millions of dollars selling smut, people on this pornography bulletin board, not unlike the Library of Congress, if I dare use that example, have a complete library of anything and everything that you could possibly imagine that you might see in an adult bookstore. If it is pocketed over there where it is very difficult to reach and you have to pay for it, that is one thing. But that is not the way it is.

What do these entrepreneurs over here do, Mr. President? What they do is to use the free access, without charge advertising with the best of some of their pornographic, obscene material, and they put it over here on the Internet with their printing press. That is a printing press and everybody has one. They can enter their computer, and they can take off anything that is in the Internet and store it, if they have the proper equipment. And people do.

Let me emphasize once again what I am trying to do, Mr. President, is to stop these people over here essentially from using teasers, not unlike coming attractions that we see when we go to the movies—best of the coming shows tnat will be here 2 weeks from today. And obviously when you get into movies you see some of the most violent explosions on previews of things to come.

When they, the pornographers over here, the money-making pornographers enter the free system of advertising, you do not even have to pay the price of going in and sitting down in a seat at a movie theater. What they do is take the best and most enticing pictures of whatever they want to sell that particular day or that particular week and they enter it over here on the Internet. They are posted on the bulletin board. And those are the ones, those are the pictures, those are the articles that are freely, without charge, accessible to very young children and to anyone else who wants to see them.

Among other things, the Exon bill would prevent the money makers over here—and many of them are perverts but very smart perverts—from advertising free on the Internet system to pollute, in the view of this Senator, our children and our grandchildren.

Simply stated, Mr. President, I have tried to summarize this as best I can in the 20 or 30 minutes' time I have taken of the Senate today, and I will be talking more about it next week as we come to a vote on this matter. I hope that most of my colleagues would recognize and realize that this is not the time to punt. This is the timely way to take action with regard to the telecommunications measure before us. I say today, as I have said before to my colleagues and all others outside the Senate who have an interest in this, many of them legitimate, I invite once again, if there is any particular problem you have with the Exon language, come let us reason together. I am not an unreasonable individual as my colleagues on both sides of the aisle in the Senate recognize.

There has been nothing that has concerned me more in my 8 years as Governor of Nebraska and my 17 years of having the great opportunity to serve my State in the Senate, there is nothing that I feel more strongly about than this piece of legislation, because I think it is more than just a piece of legislation. It is a time I suggest to step up to the plate and not offer excuses, not go along with those who say I wish to do what I wish to do, when and in whatever form I want, and I do not care what it might do to others.

I am going to do everything I can to see that a constitutional remedy is offered. If it is offered exactly as I am recommending or will recommend in future, if changes are in order, will that stop all of this and end the problem? No, it will not. It is too big for that. We still have obviously pornography through the mails, yet we have laws against it. We have pornography on the telephone. I guess that we do not have, though, anywhere near the stalking that is going on with regard to children by deviants. The newspapers have been full of that material very recently. And there are many hundreds of cases that take place all of the time that never reach the press, for obvious reasons.

I simply say, Mr. President, that this Senator is very dedicated to this cause.

I have no ill will toward those who do not agree with me, but I hope that after studying this they would at least agree that there is a problem that we should do something about.

I thank the Chair, and I yield the floor.

EXHIBIT 1

AMENDMENT 1268

Beginning on page 137 line 12 through page 143 line 10, strike all therein and insert in lieu thereof:

(1) by striking subsection (a) and inserting in lieu thereof:

"(a) Whoever—

"(1) in the District of Columbia or in interstate or foreign communications

"(A) by means of telecommunications device knowingly—

"(i) makes, creates, or solicits, and

"(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

"(B) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication;

"(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

"(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

"(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years, or both.";

and

(2) Section 223 (47 U.S.C. 223) is further amended by adding at the end the following new subsections:

"(d) Whoever—

"(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device—

"(A) makes, creates, or solicits, and

"(B) initiates the transmission of or purposefully makes available,

any comment, request, suggestion, proposal, image, or other communication which is obscene, regardless of whether the maker of such communication placed the call or initiated the communications; or

"(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by subsection (d)(1) with the intent that it be used for such activity;

shall be fined not more than $100,000 or imprisoned not more than two years or both.

"(e) Whoever—

"(1) knowingly within the United States or in foreign communications with the United States by means of telecommunications device—

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"(A) makes, creates, or solicits, and

"(B) initiates the transmission of, or purposefully makes available,

any indecent comment, request, suggestion, proposal, image, or other communication to any person under 18 years of age regardless of whether the maker of such communication placed the call or initiated the communication; or

"(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined not more than $100,000 or imprisoned not more than two years or both.

"(f) Defenses to the subsections (a), (d), and (e), restrictions on access, judicial remedies respecting restrictions for persons providing information services and access to information services—

"(1) The provision of access by a person, to a person including transmission, downloading, storage, navigational tools, and related capabilities which are incidental to the transmission of communications, and not involving the creation or editing of the content of the communications, for another person's communications to or from a service, facility, system, or network not under the access provider's control shall by itself not be a violation of subsection (a), (d), or (e). This subsection shall not be applicable to an individual who is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing or knowing distribution of communications which violate this section.

"(2) It is a defense to prosecution under subsection (a)(2), (d)(2), or (e)(2) that a person did not have editorial control over the communication specified in this section. This defense shall not be available to an individual who ceded editorial control to an entity which the defendant knew or had reason to know intended to engage in conduct that was likely to violate this section.

"(3) It is a defense to prosecution under subsection (a), (d)(2), or (e) that a person has taken good faith, reasonable and appropriate steps, to restrict or prevent the transmission of, or access to, communications described in such provisions according to such procedures as the Commission may prescribe by regulation. Nothing in this subsection shall be construed to treat enhanced information services as common carriage.

"(4) No cause of action may be brought in any court or administrative agency against any person on account of any activity which is not in violation of any law punishable by criminal or civil penalty, which activity the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

"(g) No State or local government may impose any liability for commercial activities or actions by commercial entities in connection with an activity or action which constitutes a violation described in subsection (a)(2), (b)(2), or (e)(2) that is inconsistent with the treatment of those activities or actions under this section provided, however, that nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude an State or local government from governing conduct not covered by this section.

"(h) Nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under (a), (d), or (e) shall be construed to affect or limit the application or enforcement of any other federal law.

"(i) The use of the term 'telecommunications device' in this section shall not impose new obligations on (one-way) broadcast radio or (one-way) broadcast television operators licensed by the Commission or (one-way) cable service registered with the Commission and covered by obscenity and indecency provisions elsewhere in this Act.".

On page 144, strike lines 1 through 17.

SECTION BY SECTION ANALYSIS—EXON REVISIONS TO THE COMMUNICATIONS DECENCY ACT

Section 223(a) of the Communications Act is amended to modernize its application to new technologies and to codify Court and FCC interpretations that this section applies to communications between non-consenting parties. This revision would make Section 223(a) Constitutional on its face. Section 223(a) would become the key Federal telecommunications anti-harassment provision.

Sections 223 (b) and (c), the current law "dial-a-porn" statute provisions are left untouched. The "dial-a-porn" statute remains drafted in the technology of the telephone. This "overlap" remains as an "insurance policy" against challenges to new sections.

A new Section 223(d) is added. Whoever knowingly by means of telecommunications device "makes, creates or solicits" and "initiates the transmission of or purposefully makes available" an obscene communication could be subject to penalty.

A new Section 223(e) is added. Whoever knowingly by means of telecommunications device "makes, creates or solicits" and "initiates the transmission of or purposefully makes available" an indecent communication to a minor could be subject to penalty.

The section (f) defenses of the Committee-reported bill are narrowed, and streamlined. Similar defenses exist in the current "dial-a-porn" statute. These new defenses are necessary because information service providers are not common carriers and the total absence of defenses would expose the statute to Constitutional invalidation.

Defense (f)(1) (the access defense) is narrowed from the Committee-reported bill. This defense can not be used by one owned, controlled or a conspirator with a violator of this section.

Defense (f)(2) (the editorial control defense) is narrowed and not available to one who cedes editorial control to another likely to use that control to violate this section.

Defense (f)(3) (the good faith defense) is narrowed and the illustrative list of options in the Committee-reported bill is dropped. The FCC would determine by regulation "good faith, reasonable and appropriate" steps to restrict access to prohibited communications.

Defense (f)(4) assures that service providers will not be prosecuted for implementing a defense which is not a violation of law.

The State pre-emption provision in Section (g) limited to "commercial" activities and savings language is added to assure that States retain full rights to prosecute activities not covered by this section.

A new section (h) is added to assure that the Communications Decency Act in no way adversely affects prosecutions under other federal laws.

And finally, a new section (i) is added to clarify that one-way broadcasters and cable operators already covered by other obscenity and indecency provisions in the Communications Act of 1934 as amended incur no new obligations under this section.

EXHIBIT 2

[From the Omaha World-Herald, June 8, 1995]

POLICE CRUISE INFORMATION HIGHWAY

Police in Fresno, Calif., have a quick and dirty way to show parents how easily their children find sexually explicit material over computers: They bring parents in for show and tell.

Surfing the Internet, police have unearthed sexually graphic conversations, photographs and X-rated movie clips, complete with audio.

"(Parents) come up and go, 'What? Computers can do that?'" said Ken Diliberto, a network-systems specialist who helps detectives in Fresno, one of few cities whose police departments are using sophisticated methods to catch computer-aided criminals.

A Maple Valley, Wash., youth's disappearance for 18 days after meeting a San Francisco teen in an America Online "chat room" for gays and lesbians startled parents and raised questions about just what can happen in cyberspace.

Just as pedophiles and stalkers exist in society, there are electronic predators, police and prosecutors say. Though parents warn children not to talk to strangers on the street, few are as vigilant with people their kids meet via computer.

"There's nothing from the message itself that tells you anything about the person," said Ivan Orton, a King County, Wash. senior deputy prosecutor who handles technology crimes.

"You've got nothing but the words, and lots of people adopt different personas when they go on-line," he said. "Men become women. Women become men. You don't know who you're dealing with."

The FBI has pursued charges against people who transmit pornography, including child pornography, on-line, or who entice children with e-mail messages to cross state lines for sexual purposes.

Diliberto and Fresno detectives suggest that parents be aware of their children's computer use.

ATTENTION SURPRISES ON-LINE RUNAWAY

MAPLE VALLEY, WA.—When Daniel Montgomery took a bus to San Francisco to meet a friend he had encountered on-line, he figured he might get some attention from his parents.

But Daniel, who turned 16 Monday, had no idea he'd draw the attention of the nation.

"I didn't think it was going to get this big" he said, clicking the mouse of a computer in his Maple Valley house Tuesday. "I don't know, maybe it was stupidity."

Nearly three weeks after he disappeared to meet a mystery person called Damien Starr, fueling speculation of abduction and pedophilia, Daniel explained publicly that his departure was neither a kidnapping nor a luring. Instead, he said, it was something closer to running away with the encouragement of an on-line friend.

Sitting at the computer where he first communicated with Starr in a gay-and-lesbian "chat room" on America Online, Daniel said his friend was not an older man looking to exploit him sexually but rather a teenager, 16 or 17, who had been kicked out of his own house because he was gay.

While he would not reveal Damien Starr's real name or say much about the three men in their 30s who live with Starr in a San Francisco apartment. Daniel did say none of them tried to harm him in any way.

Daniel, who described his adventure as an "uninformed" vacation, said he was never hurt or in danger.

"I want people to understand there was nothing but friendly contact," he said.

Mr. KERREY addressed the Chair.

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The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I ask unanimous consent that I be allowed to speak for 15 additional minutes as in morning business.

The PRESIDING OFFICER (Mr. PRESSLER). Without objection, it is so ordered.

TELECOMMUNICATIONS BILL

Mr. KERREY. Mr. President, I thought we were finished earlier. I listened carefully to the senior Senator from Nebraska on this issue. I come to make final statements. I do not know if I will take the whole 15 minutes. I appreciate that the Presiding Officer and others were expecting to leave when the senior Senator was done.

I must say, as I have on a number of other occasions, I am not sure most Americans know what it is we are about to do. I expect this bill is going to be enacted sometime in the next 4, 5, 6 days. It is 146 or so pages long, I believe, and it is going to touch every single American. If you have a phone, if you have a cable, if you use broadcast, if you buy records, if you are connected at all to the information services industry, you will be affected by this law.

I have said, and I believe it to be the case, that it is not something that is occurring as a consequence of Americans saying we want to change our laws, we are unhappy with our phone service, we are unhappy with our cable service, we are unhappy with what we have. Typically, what we do around here is we try to make adjustments according to the agendas as we observe Americans saying that they have for themselves—the deficit, crime, education, all sorts of things that tend to dominate our debates.

This one is being driven by corporations who have a desire to do things they currently are prohibited from doing under our laws. So we are rewriting our laws. I do not object to that. In fact, I have been an advocate for a number of years of deregulating the telecommunications industry, and I am enthusiastic about doing so.

I just want to make it clear that the laws of this land will have ultimately an effect, and this law will have about as large an effect on the American people as anything that I have been a part of in the 7 years that I have been in the U.S. Senate. I do not want anybody to suffer under the illusion that we are just dealing with something relatively minor here.

I cannot, and I said it before, support this legislation in its current form. The debate that we were having earlier on the Department of Justice role—indeed, the compromise that was produced in this legislation was produced by the senior Senator from Nebraska in the committee to try to give DOJ, the Department of Justice, a role to consult as the application for permission to do long distance was being processed by a regional Bell operating company or local telephone company trying to get into long distance.

But I must say, of all the things that had provoked interest in and by the American people, the title IV provision, the Communications Decency Act, sponsored by the senior Senator from Nebraska, has received the most interest. I will say directly that my own first amendment tendencies to support the first amendment cause me to sort of immediately say there must be something wrong with this thing.

I am not familiar with the things that were available that the senior Senator showed earlier in the blue book, but I am a regular user of the Internet and I have used E-mail and the computer for last 12 or so years and consider myself to be relatively literate, though I will say I am not familiar with the items in question.

I am prepared to acknowledge, and I think we all should acknowledge, there is a serious problem here. I have noted with a considerable amount of concern, since the senior Senator from Nebraska was successful in getting this attached to this bill, that he has been subject to a considerable amount of abuse and a considerable amount of attacks and a considerable amount of criticism from all sorts of sources, I suspect many of whom are not terribly informed what is in his bill or what is available over the Internet.

Not surprisingly, the senior Senator from Nebraska has not withered under that fire and has not backed off from a legitimate concern, as I say, that may be one of the few real concerns that we are getting from the American people.

If you asked me today in the area of communications what is on people's minds, what sort of things are people bothered by, it may, in fact, be the violence, indecency in broadcasting that tops the list. It may be the only thing.

I ask my senior colleague, if you went to a townhall meeting, let us say in Broken Bow or Omaha, Lincoln, and you just raised the question of telecommunications and you define it as the media, telephone, so forth and ask them, "Of all the things about this, what's the problem for you," they may complain the rates are too high with cable, or they have some broadcast problems out in the western part of the State, like we had at Scottsbluff a couple years ago. But this one does come up in townhall meetings. This issue does get raised. Parents are concerned. Citizens at the local level are concerned about this particular subject.

I do not know exactly where the efforts to amend this legislation will go. I have not looked at the details of the changes the senior Senator has proposed, but I am not unmindful, at least in this particular area, of all the things we are debating, this is something regarded by citizens as something that needs to be addressed.

Earlier in the comments of Senator EXON, he used the word "punt" and brought up the Nebraska football team. After Nebraska won the national championship, Senator EXON just sort of clapped his hands and thunderously here comes the team to Washington, down to the White House.

It was a very moving moment for those of us who waited a long time for this to happen. In a conversation with Coach Osborne that I had that day at the White House, I asked Coach Osborne—he is the football coach for the University of Nebraska. He has been giving many speeches and expressed some real concern of what is going on with young people today, particularly in Nebraska but throughout the country, since he recruits throughout the country.

I do not know if the senior Senator had just introduced the bill at that time, but he said he did not know if this particular piece of legislation was good or not because he had not read the details of it, but it addressed a problem that he thought was real and present at the local community. It addressed a problem that he himself is personally terribly concerned about.

Mr. President, I hope that in the process starting Monday, Tuesday, Wednesday—whenever it is we reach a final vote—that we will begin to generate some enthusiasm amongst Americans to pay attention to these 146 pages that we are about to enact in *some shape or form.*

I personally hope, though I know it is going to be difficult to do, and I am here to put out an appeal to the Presiding Officer and the senior Senator from Nebraska who were very much a part of the committee's deliberation—I am not on the Commerce Committee; I was allowed to have a staffer sit in on much of the deliberation—I hope that we can get a good-faith effort to narrow the differences between the Dorgan amendment and the Thurmond amendment on this DOJ role.

It is a very serious matter. It is a very serious matter to me personally. I cannot support this legislation unless there is a role for the Department of Justice. I intend to oppose it strongly unless there is.

I am very much concerned about what is going to happen to the American consumer as we move from a regulated monopoly at the local level to competition at the local level—very much concerned about it.

As I paid attention, I must say, this has been my dominant concern right from the opening bell. I do not know if the senior Senator from Nebraska has any way to try to help us bring Senator THURMOND and Senator DORGAN together and maybe perhaps bring a majority around some increase in strength in the role for DOJ, but it seems to me we can do it in a fashion that addresses the concerns of the senior Senator from South Dakota.

The chairman of the committee has expressed over and over concerns for duplication, excess bureaucracy. We drafted at least that portion of the

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