you can see that we have carefully considered the problem.

Our recommendation is that you support the inclusion of the excess Ak Chin water in this settlement. We also recommend that you add the full exchange provisions to the settlement as a way to greatly protect and enhance the unity of the national wildlife refuge system, and provide a tangible benefit to the State and CAWCD in regard to the security of the CAP water supply.

The Office of management and Budget advises that from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Thank you for your attention to our concerns.

Sincerely,
TIMOTHY W. GLIBBEN,
Chairman, Working Group on Indian Water Settlements

Mr. Speaker, I reserve the balance of my time.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

(Mr. RHODES asked and was given permission to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I naturally rise in support of this legislation, and I would be remiss if I did not begin by thanking the chairman of the full committee, the gentleman from California, Mr. MILLER, for his assistance in getting this Senate bill to the floor with the House amendment so that we can pass the bill here in the last day of the session and proceed to conference with the Senate to resolve the remaining differences which exist in the bill.

The chairman has very, very adequately explained the process that got us to this point, and I am in full agreement with 95 percent of the chairman's statement. The chairman knows which 5 percent I am not in agreement with, and we will be continuing discussions about that 5 percent as we go along toward conference with the Senate.

This is a very important bill for the State of Arizona. If resolves a long-standing dispute and it rights many longstanding wrongs in favor of the San Carlos Apache Indians.

But as important as righting those wrongs is the fact that, with resolution of this dispute, the parties to the dispute now have an element called certainty. They now know, or will know, what their rights are as it pertains to certain quantities of water, ground water and surface water, in the State of Arizona.

This is important to the Indians; it is important to the cities who are parties to the settlement; it is important to the State of Arizona.

Without this element of certainty being acquired by the parties to this agreement, they all faced years and years, perhaps decades, of very expensive litigation in order for a court to determine the rights of various and sundry rights they have.

While that litigation is continuing, they are unable to plan for their futures, unable to know what degree of certainty they have to their water rights and their ability to go forth into the next century.

So, achieving this negotiated settlement is an extremely important event in the lives of the participants and the lives of those who are parties to the agreement. I commend everybody who has been involved.

I certainly wish to thank my fellow members of the Arizona delegation here in the House, our two Senators, Senator MCCAIN and Senator DeCONCINI, for their assistance.

I again thank the gentleman from California (Mr. MILLER) and all of our staffs who worked very hard on this legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona (Mr. KYL).

Mr. KYL. I thank my colleague for yielding. I wish to express my appreciation to him and to Chairman MILLER for their work on this bill. I too support the bill.

The San Carlos Indian Tribe is in my congressional district, as are many of the communities which will benefit from the resolution of the disputes to which this bill will help resolve. The only concern that we have is the change that has been made in the legislation that was alluded to by the chairman. The compromise that was delicately put together here is, to some extent, distorted as a result of this change, but time is of the essence here. It is important this bill move to conference so these issues can be discussed.

One of the most critical things is the fact that litigation is pending, as my colleague from Arizona pointed out, and the longer that litigation proceeds and the further down the road it gets, the more difficult it is to reach these kinds of compromise agreements.

We are very concerned that unless we can bring it up soon and get this legislation passed, we may have missed the opportunity to reach a negotiated settlement which would be in the interests of all of the parties.

So, time is important. We do urge that our colleagues support this legislation, move the bill to conference, and there we can try to iron out those items upon which we currently differ.

It is legislation well worth supporting.

Mr. RHODES. Mr. Speaker, I urge our colleagues to support passage of this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MILLER) that the House suspend the rules and pass the Senate bill, S. 291, as amended.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

TELEPHONE CONSUMER PROTECTION ACT OF 1991

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1462) to amend the Communications Act of 1934 to prohibit certain practices involving the use or marketing of telephone equipment, as amended.

The Clerk read as follows:

S. 1462

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

SECTION 1. SHORT TITLE.
This Act may be cited as the "Telephone Consumer Protection Act of 1991".

SEC. 2. FINDINGS.
The Congress finds that:

(1) The use of the telephone to market goods and services to the home and other businesses is now pervasive due to the increased use of cost-effective telemarketing techniques.

(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers.

(3) More than 300,000 solicitors call more than 18,000,000 Americans every day.

(4) Total United States sales generated through telemarketing amounted to $435,000,000,000 in 1990, a more than fourfold increase since 1984.

(5) Unrestricted telemarketing, however, can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.

(6) Many consumers are outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers.

(7) Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operations; therefore, Federal law is needed to control residential telemarketing practices.

(8) The Constitution does not prohibit restrictions on commercial telemarketing solicitations.

(9) Individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

(10) Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

(11) Technologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.

(12) Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health or safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.
H 11308

CONGRESSIONAL RECORD — HOUSE
November 26, 1991

(13) While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, United States District Court for the United States District Court for the Federal Communications Commission should have the flexibility to design different regulations to deal with automated or prerecorded calls. It finds that it is not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech rights embodied in the First Amendment of the Constitution.

(14) Businesses also have complained to the Congress and the Federal Communications Commission that they should develop reasonable restrictions on automated or prerecorded telephone calls and to businesses as well as to the home, consistent with the constitutional protection of free speech.

SEC. 3. RESTRICTIONS ON THE USE OF TELEPHONE FACSIMILE MACHINES.

(a) AMENDMENT.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

SEC. 227. RESTRICTIONS ON THE USE OF TELEPHONE FACSIMILE MACHINES.

(a) Definitions.—As used in this section—

(1) The term "automatic telephone dialing system" means equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and

(2) The term "automatic facsimile machine" means equipment which has the capacity to transmit text or images, or both, from an electronic signal and to transmit that signal over a regular telephone line, or (B) to transmit text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(3) The term 'telephone solicitation' means the initiation of a telephone call or message for the purpose of encouraging the purchase of, rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include the transmission of a message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(4) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(b) Restrictions on the Use of Automated Telephone Equipment.—

(1) Prohibitions.—It shall be unlawful for any person to use the telephone service in the United States to (A) make any call, other than a call made for emergency purposes or made with the prior express consent of the called party using any automatic telephone dialing system or an artificial or prerecorded voice or (B) to any emergency telephone line (including any '911' line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or protection law enforcement agency);

(2) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

"(3) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio service, or for any other use for which the called party is charged for the call;

(4) To initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, or if the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B); and

(5) To any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine or another device.

(2) Regulations.—The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission—

(A) shall consider prescribing regulations to allow sending calls made using an artificial or prerecorded voice to which they have not given their prior express consent, and

(B) may make a rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines will not adversely affect the privacy rights that this section is intended to protect; and

(C) shall not include the transmission of any unsolicited advertisement.

(3) Private Right of Action.—A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violations;

(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater; or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(4) Protection of Subscriber Privacy Rights.

(1) Rulemaking proceedings required.—Within 120 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall—

(A) consider and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, interactive facing, and other similar call systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

(2) Regulation.—The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission determines that the requirements are not practicable or that the requirements are not effective, and efficient and accomplish the purposes of this section.

(2) Regulations.—Not later than 9 months after the date of enactment of this section, the Commission shall conclude the rulemaking proceeding on the section.

(3) Use of Database permitted.—The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines that such a database, such regulations shall—

(A) specify a method by which the Commission will select an entity to administer such database;

(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscribers objects to receiving telephone solicitations;

(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier, of notification to that provider of exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

(D) specify the methods by which such objections shall be collected and added to the database;

(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under the database;

(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the telephone number of any subscriber included in such database, and (ii) the costs to be recovered from such subscribers; and

(H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the
database that are incurred by the entities carrying out those activities;

"(1) specify the frequency with which such database will be updated and specify the method by which such updating will take place; and (2) require compliance with the regulations prescribed under this subsection;

(2) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

(3) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of the individuals whose numbers are included in such database; and

(4) require that such person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

(2) CONSIDERATIONS REQUIRED FOR USE OF DATABASE METHOD.—If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall:

"(A) in developing procedures for gaining access to the database, consider the different needs of different categories of consumers, including but not limited to small businesses, and determine whether providing access to the database to any business would result in undue burdens or costs for such business; and

"(B) take into account the costs of providing such access to the database to any business or any consumer who objects to receiving telephone solicitations; and

"(C) consider whether the notice of such business would be met through special markings of area white pages directories, and whether such notices would be followed by area code and local exchange prefix.

(3) PRIVATE RIGHT OF ACTION.—A person who has received more than one telephone call within any thirty-day period by the same party on behalf of the same entity in violation of the regulations prescribed under this subsection may, separately or jointly with one or more other persons, initiate any such action described in paragraph (2) of this subsection, and that such person may also bring an appropriate court of such business, other entity, or individual;

"(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation;

(5) STATE LAW NOT PREEMPTED.—Except for the regulations prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

"(1) STATE LAW NOT PREEMPTED.—Except for the regulations prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

(6) RELATION TO SUBSECTION (b).—The provisions of this subsection shall not be construed to repeal or modify the regulations prescribed under subsection (b) of this paragraph.

(7) TECHNICAL AND PROCEDURAL STANDARDS.—
mission's complaint for any violation as alleged in the Commission's complaint.

(9) Definition.—As used in this subsection, the term "attorney general" means the chief legal officer of a State.

(a) Amendment.—Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by striking "Except as provided" and all that follows through to the provisions and inserting "Except as provided in sections 223 through 227, inclusive, and subject to the provisions".

(c) Deadline for Regulations; Effective Date.—

(1) Regulations.—The Federal Communications Commission shall promulgate regulations to implement the amendments made by this section not later than 9 months after the date of enactment of this Act.

(2) Effective Date.—The requirements of section 228 of the Communications Act of 1934 (as added by this section), other than the authority to prescribe regulations, shall take effect one year after the date of enactment of this Act.

SEC. 4. AM RADIO SERVICE.

Section 331 of the Communications Act of 1934 is amended—

(1) in the heading of such section, by inserting "and AM radio stations" after "television stations";

(2) by inserting "(a) Very High Frequency Stations"—after "Sec. 331"); and

(3) by adding at the end the following new subsection:

"(b) AM Radio Stations.—It shall be the policy of the Commission, in any case in which the licensee of an existing AM daytime-only station located in a community with more than 100,000 persons that lacks a local full time aural station licensed to the community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal over its entire community of license 24 hours a day, if technically feasible. The Commission shall report to the appropriate committees of Congress within 30 days after the date of enactment of this Act on how it intends to meet this policy goal."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts (Mr. Markley) will be recognized for 20 minutes.

Mr. MARKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the House will consider a substitute amendment to Senate 1462 that embodies the text of H.R. 1304, the Telephone Advertising Consumer Protection Act, which passed this body on November 16. I am offering this compromise amendment with the gentleman from New Jersey (Mr. Rinaldo). The compromise effectively merges and improves legislation passed by the Senate dealing with automatic dialing systems and unsolicited facsimile messages.

In short, Mr. Speaker, the compromise will finally give the public the opportunity to just say no to unsolicited phone or fax advertisements. The compromise gives the public a fighting chance to start curtailing unwanted telemarketing by requiring the FCC to conduct a rulemaking and weigh the alternative methods for protecting consumers' privacy rights and to put them in place before our home telephones become the receptacles of junk calls in the same way that junk mail often inundates our mailboxes.

Mr. Speaker, today in America more than 300,000 solicitors make more than 19 million calls every day, while some 75,000 stockbrokers make 1.5 billion telemarketing calls a year. Automatic dialing machines, on the other hand, have the capacity to call 20 million Americans during the course of a single day, with each individual machine delivering a proroced message to 1,000 homes.

In addition, automatic dialing machines place calls randomly, meaning they sometimes call unlisted numbers, or numbers of hospitals, police and fire stations, causing public safety problems. H.R. 1304 would prohibit advertising calls to public safety numbers, as well as to paging, specialized mobile radio and cellular equipment.

In the final analysis a person's home is his castle. Preservation of the tranquility and privacy of that castle should compel us to avail consumers of the opportunity to place the telephone line into their home, the sanctuary from which they escape all the other calls. And Congress should do no less.

I believe that telemarketing can be a powerful and effective business tool, but the nightly ritual of phone calls to homes from strangers and robots has many Americans fed up.

Mr. Speaker, the aim of this legislation is not to eliminate the brave new world of telemarketing, but rather to secure an individual's right to privacy that might be unintentionally intruded. Our technologies.

For this reason the legislation addresses the unsolicited commercial telemarketing to residential subscribers. If a live call is being made for the purpose other than for a commercial solicitation, then it is not regulated under this bill. In the context of the legislation a telephone solicitation is a call to encourage the purchase, rental of, or investment in property, goods, or services.

In addition, the compromise bill makes it unlawful for any person to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message. The legislation also includes absolute exceptions to this prohibition:

First, where there is the prior express consent of the called party; and second, where the call is initiated for emergency purposes. The term "emergency purposes" is also intended to include any automated telephone call that notifies consumers of impending or current power outages, whether these outages are for scheduled maintenance, unscheduled outages caused by storms, or power interruptions for loads that would create serious societal impacts.

Second, the bill also allows the Federal Communications Commission to exempt, by rule or order, classes or categories of calls made for commercial purposes that do not "adversely affect the privacy rights" that this section of the bill is intended to protect, and that "do not include the transmission of any unsolicited advertisement." An example of such a use may be to leave messages with consumers to call a debt collection agency to discuss their student loan or to notify a consumer that a product they have ordered is ready to be picked up at the store. I fully expect the Commission to grant an exemption, for instance, for voice messaging services that forward calls. For example, if a consumer is late paying a bill, and the company calls his home to tell him that he'll be arriving late and can't get through to him, this service allows him to leave a message and board the plane. While he is traveling, the service automatically dials the number repeatedly until the message is delivered. Such a voice messaging service is a benefit to consumers and should not be hindered by this legislation.

I believe we have put together a consensus compromise, one that reflects a responsible approach to address what the record indicates is of greatest concern to consumers.

I, as usual, want to thank the gentleman from New Jersey (Mr. Rinaldo) for his leadership, for his cooperation, and for his steadfast support in the development of this legislation. It is typical of the working relationship that we have had on the subcommittee for the last 5 years that we could produce such a complex piece of legislation. As well, I would like to thank the gentlemen from New York (Mr. Cuozzo) on the minority side who, along with his staff, have worked with us in the development of the legislation, the gentleman from Tennessee (Mr. Cooper), the gentlewoman from New Jersey (Mrs. Roukema), the gentleman from Massachusetts (Mr. Frank), along with the gentleman from Texas (Mr. Bryand). Each and every one of them has played a role in helping to craft this legislation and, working with the majority staff of David Leach at the full committee level and Mick Regan on the minority side, we have been able to put this legislation together. So, I want to thank all of the parties involved.

Mr. Speaker, I think this is an excellent piece of legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. Rinaldo. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge my colleagues to join me in supporting S. 1462, the Automated Telephone Consumer Protection Act of 1991. This bill is sub-
CONGRESSIONAL RECORD — HOUSE

Mr. BRYANT asked and was given permission to revise and extend his remarks.

Mr. BRYANT. Mr. Speaker, I represent the home area of MessagePhone, Inc., a company which is engaged in the business of message forwarding. Senator HOLLING’s legislation, as it passed the Senate, the Automatic Telephone Consumer Protection Act, S. 1462, would have inadvertently ended their operations. The bill however has been corrected to avoid this inadvertent result.

Automatic message delivery, developed by MessagePhone, gives a caller, who encounters a busy or unanswered telephone call, the opportunity to record a short message for subsequent delivery. For example, the technology for this service could call the original destination number every 15 minutes for several hours or until the telephone was answered. The message was delivered. For the purpose of privacy, after delivery, the call attempts are stopped and the message is destroyed. MessagePhone designed the service to give the calling party an alternative to busy and unanswered telephone calls which make up 30 percent of all telephone calls.

Unlike the technology used by telemarketers for their random solicitations, this service is a prepaid, person-to-person communication, not all that different from a regular telephone call. The service is structured so that the messages are short and the content is personal in nature.

Take for instance the scenario where you are at an airport, you missed your flight and have only a few minutes to call your spouse with the updated flight information. The line is busy and you have to leave. With my constituent’s service, you could record a message; they would attempt to deliver a few minutes later, even if you were completely removed from a telephone.

Furthermore, Bell Atlantic currently offers this very service from its payphones. In order to do so, Bell Atlantic had to receive a waiver from the FCC’s Computer II rules. To qualify for the waiver, the service had to pass a rigorous public interest test. A similar requirement must meet by the same public interest test recently was filed by BellSouth. In comments to the FCC, these two Regional Bell Companies have demonstrated that there are well over 1 billion busy and unanswered telephone calls, from payphones, annually.

It is important to note that, in 1988, Judge Greene granted the Regional Bell Operating Companies a waiver of the modified final judgment, concluding that automatic message delivery services were little more than a delay in a standard telephone transmission and that the Regional Bells should be allowed to offer these caller-directed services to the public.

Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. BRYANT).
Mr. RINALDO, too, for allowing us to make this needed correction to the bill. Mr. RINALDO. Mr. Speaker, I yield 3 minutes to the ranking minority member of the full committee, the gentleman from New York (Mr. LaWR). Mr. LAWR asked and was given permission to revise and extend his remarks.)

Mr. LENT. Mr. Speaker, I urge my colleagues to support S. 1462, the Telephone Protection Act of 1991. This bill contains many of the same provisions included in the MessagePhone Advertising Consumer Rights Act, which the House passed last week. The bill reflects a consensus that has been worked out between the House and the Senate on concerns about the telemarketing industry. I want to commend both the gentleman from Massachusetts (Mr. MARKET) and the gentleman from New Jersey (Mr. RINALDO) as well as the gentlelady from New Jersey (Mrs. ROUKEMA), for an outstanding job and Mike Reagan, Jerry Wallace, and other Energy and Commerce Committee staff for helping to bring this bill to the floor.

This is important legislation with bipartisan support designed to address various consumer concerns without unnecessarily burdening the telemarketing industry. The bill before the House today reflects a further effort to address problems in the telemarketing industry, while accommodating legitimate concerns of telemarketers that their industry not be unfairly stigmatized.

S. 1462 explicitly recognizes that there are certain classes and categories of calls that consumers do not mind, and in fact would probably like to receive. Calls informing a customer that a bill previously unstocked is now available at a store are clearly not burdensome, and should not be prohibited. Similarly, the bill grants the FCC the latitude to exempt certain services that telephone companies presently offer, or in the future are likely to offer, to send messages and other important information.

While the telemarketing industry is understandably concerned about being subject to excessive regulation, I believe that the Nation's consumers have a reasonable concern regarding privacy. S. 1462 balances both of these concerns, and I urge my colleagues to join me in supporting the bill.

Mr. MARKET. Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee (Mr. COOPER). (Mr. COOPER asked and was given permission to revise and extend his remarks.)

Mr. COOPER. Mr. Speaker, I thank the distinguished chairman of the subcommittee for yielding time to me. I congratulate him for his leadership in moving this legislation. And I add my congratulations to the distinguished ranking member, the gentleman from New Jersey.

Mr. Speaker, I rise in support of this legislation because it effectively addresses the nightly assault by telemarketing machines and operators on the privacy of our homes. Yet it does so in a balanced way that permits telemarketing to remain an important function of promoting commerce.

I have said here before that some of these calls are much more annoying than others. For example, I regard and I hope the FCC will regard, robotic calls by machines such as auto dialers and computerized voice responses to be a much greater threat to the privacy of our homes than calls by live operators. At least you can vent your anger to a real person if you have interrupted your dinner. You can ask them questions and hold them accountable to some extent. At least a live person can only call one person at a time.

Among calls placed by live operators, there are some that we may not mind so much. Some are even helpful. We may not mind a call from a local business in town reminding us of a special sale or opportunity. If they are rude or intrusive, they are accountable in the local area by the damage to their reputation among the people who live there. For interstate calls, especially from other time zones, there is no such accountability. Unwanted calls to your residence are among the most wanted ones and make us cringe at the thought of answering the telephone at night. As I have said before, it's a classic case of the bad apples spoiling the whole barrel.

Chairman MARKET and the Subcommittee on Telecommunications and Finance crafted an excellent bill that would enable the Federal Communications Commission to protect consumers from the calls they don't want, but not restrict their ability to receive the calls they do want. The FCC was given broad flexibility to find better regulatory approaches to achieve this result. I am pleased to see that with a compromise on the legislation passed by the other body, the chairman preserved this flexibility. I commend him for preserving the opportunity for a choice by the consumer.

Under the legislation before us the FCC still has the same breadth of options available to address this issue. Some options are spelled out as examples for the Commission's consideration, but they are not limiting. I was concerned that the compromise with the other body might narrow the options and tilt the regulatory process toward adoption of a national data base. That has clearly not occurred here.

My own belief is that the national database will not bear up well under close scrutiny. I think the company-specific do-not-call approach offers consumers greater choice. To me, it seems more efficient in the terms of the cost of implementation and the lag times required to implement it, as
November 26, 1991

CONGRESSIONAL RECORD—HOUSE

H 11313

compared to the national database. But that is for the FCC to decide.

I am especially pleased that the Commission still has the opportunity to press and promote for local telephone solicitations that are different from that selected for the non-local calls. This will enable the Commission to take into account that telemarketers making local calls already have an accountability within the community by virtue of their reputation as businesses and as individuals. The other methods and procedures available to the Commission for the local option might be entirely different approaches from that selected for the nonlocal calls. For example, the Commission might decide to use a hybrid approach of a mandatory, company-specific do-not-call system at the local level and something else, perhaps even a national database for other calls.

Overall, Mr. Speaker, this is a good compromise. The FCC has the latitude to strike a good balance between curbing annoying telemarketing while preserving telemarketing's contribution to commerce. I thank the chairman for his leadership and the wholehearted support and endorsement this legislation.

Mr. RINALDO. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from New Jersey (Mrs. ROUKEMA).

Mr. GINGRICH. Mr. Speaker, I thank my friend for yielding time to me.

Mr. Speaker, I simply want to report to the House that the President 5 minutes ago met with the press and, in response to the Speaker's request for instructions on economic growth, said this House has had a full year to play around with the issue. He is requesting that the Democrats make in order this afternoon a vote on the Republican growth plan.

As soon as the transcript of his exact comments is available, I will bring the transcript to the floor and read his exact words into the Record. I think it is now up the Speaker to make in order a vote on the bill.

Mr. MARKEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Oklahoma (Mr. SYMAR).

Mr. SYMAR. Mr. Speaker, I thank the chairman of the subcommittee for yielding this time to me.

Mr. Speaker, I rise in support of today's legislation, and I want to commend the gentleman from New Jersey (Mr. RINALDO) and the gentleman from Massachusetts (Mr. MARKEY), as well as the staff of the majority and the minority for the outstanding job that they have done to bring us this legislation today.

I also want to particularly commend the chairman of the subcommittee for his statement in which he says that "the new approach" is also intended to include any automated telephone calls that notify consumers of impending or current power shortages, whether these outages are for scheduled maintenance or unscheduled outages caused by storms or other unusual management programs. That language is inserted, I'm told, in order to try to accommodate the concerns many of our rural electric cooperatives have had with respect to using normal maintenance on their lines.

Mr. Speaker, I appreciate the personal attention of the subcommittee chairman, and I will convey to the REC's their concerns have been addressed by this legislation.

☐ 1300

Mr. RINALDO. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from my home State of New Jersey (Mrs. ROUKEMA).

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentlewoman from New Jersey.

The SPEAKER pro tempore. The gentlewoman from New Jersey (Mrs. ROUKEMA) is recognized for 2 minutes.

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mr. ROUKEMA. Mr. Speaker, I rise today in strong support of S. 1462, the Telephone Advertising Regulation Act. I also want to thank the distinguished chairman of the Subcommittee on Telecommunications and Finance, Mr. MARKEY, and the distinguished ranking member, my colleague from New Jersey, Mr. RINALDO, for their expeditious handling of this compromise legislation, which preserves the rights of consumers and protects the health and safety of the public. At last a reliable law will be passed.

Telecommunications and computer technology advances have made information exchange easier, and brought our Nation and the world closer together. However, as with any vital technology, telecommunications and computer equipment may be used in a counterproductive and abusive fashion.

Today, we unfortunately find that automatic dialing recorded message players are being used in record numbers to solicit unsuspecting and unwilling residential and commercial telephone subscribers. This practice is an unwarranted invasion of privacy, and it can be dangerous and life-threatening for those in the hospital. Increasingly, I hope there will be no longer by the wayside and allow telephones to become a potential health hazard.

I am sure my colleagues have heard many complaints about computer-generated phone calls from their constituents. In my case, I have been contacted by number of physicians in my district who have justifiably complained that their office emergency lines, which are needed for critical cases, are being clogged with unsolicited computer calls. One of these physicians also happens to be my husband, Dr. Richard W. Roukema, who has repeatedly suffered this problem on his phone lines reserved for emergency calls. I want to especially appreciate the support of Chairman MARKEY in this respect. His wife, also a practicing physician, understood the problem immediately.

This is harassment. Computer-generated calls are also harassing police and fire emergency numbers. This problem is particularly serious when the computer-generated call will not disconnect and free up the phone line until after its message has been completed. Mr. Speaker, this practice must stop before lives are lost.

S. 1462 contains a provision which prohibits computer-generated calls to emergency phone lines or pagers at hospitals, physicians' or medical services, health care facilities and fire protection and law enforcement agencies.

Yet, as alluded to earlier, it is not just calls to doctors' offices or police and fire stations that pose a public hazard. I recently recounted the story of a New York mother who tried to call an ambulance for her injured child, and the sheer terror she experienced when she picked up her phone only to find it occupied by a computer call that would not disconnect. Fortunately, that injured child survived, but, Mr. Speaker, let us not wait for tragedy before we act.

S. 1462 also contains a provision requiring computer-generated calls to disconnect as soon as the receiver seeks to terminate the message. This is a commonsense provision which ensures the safety of telephone customers who may have received unsolicited and unwanted computer-generated calls.

Another important aspect of S. 1462 is that it protects the privacy of telephone subscribers by allowing those citizens who object to receiving computer-generated phone calls to add their names to a national database or a comparable substitute as determined by the FCC. This key provision finally guarantees telephone subscribers freedom from unwanted intrusions into their privacy.

The Senate language has tightened up the prohibition on automatic dialing computers by completely prohibiting their use unless the FCC grants an exemption in the public interest. Such an exemption would include emergency information about natural disasters and health-related evacuations.

Under the provisions of the bill, live telemarketers will be able to make personalized calls to those customers who have not requested an exemption from such calls. This will allow legitimate telemarketers to conduct business in a safe and responsible fashion.

In conclusion, this compromise is faithful to the basic purposes of the
original intent of the legislation. It preserves the privacy of the consumer through the ban on autodialers except where consumers choose the exemption.

I support the bill.

Mr. MARKEY. Mr. Speaker, will the gentlewoman yield?

Mrs. ROUKEMA. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Speaker, I would like to make it quite clear that that particular provision is a direct result of the interest which the husband of the gentlewoman from New Jersey [Mrs. ROUKEMA] showed on this subject.

Mrs. ROUKEMA. My husband and your wife.

Mr. MARKEY. Mr. Speaker, I would simply like to point out that when the gentlewoman from New Jersey [Mrs. ROUKEMA] a year or a year and a half ago approached me with this problem that her husband, a physician, had with the inability for him to have complete control over his telephone for professional purposes, that that triggered the discussion, the process, which has resulted in the provision being built into this legislation which will protect not only your husband, but my wife, who is also a physician, and the other tens of thousands of physicians and emergency personnel across the country, from having their lines stopped up by these junk calls which in dire circumstances could prevent, for example, by physicians some very serious medical problems in the country.

Mr. Speaker, I want to congratulate the gentlewoman from New Jersey [Mrs. ROUKEMA] and congratulate her husband, because this legislation is really in the name of her husband.

Mr. RINALDO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. RINALDO. I would like to once again thank the gentleman of the full committee, the gentleman from Michigan [Mr. Dingell], for his work, along with his work, along with his staff on these issues. I would like to thank Senator HOLLINGS, Senator PRESSLER, Senator JOYCE, and Senator DAWES for their work on these issues.

I would like to thank John Windhausen and Mary McManus from the Senate Commerce staff for that work, and the yeoman work, to use the words of the gentlewoman from New Jersey [Mrs. ROUKEMA], of Steve Cope from legislative counsel, who has helped us enormously.

When a bill of this magnitude is passed, I recognize my indebtedness to the people who work for me directly on an ongoing basis. At this juncture I would just like to personally acknowledge the work of Gerry Salemi and Jerry Waldron and Colin Crowell and Ed Laughlin, each of whom have participated in this long process. Also I would like to note as well, so that all of the

proper thank yours are made, Justin Lilley on the minority side as well, and hope that his effort, which has produced a piece of legislation which the gentleman from New Jersey [Mr. RINALDO] and I, the gentlewoman from Michigan [Mr. Dingell] and the gentlewoman from New York [Mrs. Laxalt], have been able to bring out to the floor here today.

Mr. RINALDO. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. Mr. Speaker, I am glad to yield to the gentleman from New Jersey.

Mr. RINALDO. Mr. Speaker, I just want to underscore what the chairman of the committee has stated. I think it is important to note for the Record that we have a situation on the Subcommittee on Telecommunications and Finance where both majority and minority staffs work very well together in an effort to work out problems with legislation, to compromise effectively, to negotiate, and to come up with the kind of package that meets the needs of the people we represent and the people of this great country of ours, and I would particularly acknowledge the endeavors of David Leach, Jerry Waldron, Colin Crowell, Mike Regan, Justin Lilley, and Cathy Red, for the fine job they have done, not working for any partisan interest, but working together to achieve the kind of results that we see here this morning, of course once again, in the very bipartisan and fair manner in which Chairman MARKEY runs the subcommittee.

Mr. MARKEY. Mr. Speaker, reclaiming my time, I thank the gentleman from New Jersey [Mr. RINALDO].

Mr. Speaker, I would just like to say that this is the beginning of the end for junk faxes and junk calls in America. This knows no partisan line. This is not a Democrat or Republican issue, this is not a liberal or conservative issue. When those junk faxes start coming over your machine, you do not think like a Democrat or a Republican, you just think how are you going to be able to get your hands around the neck of the person making you pay with your paper for whatever message they are trying to send you.

We are sending instructions over to the FCC that we want them to begin the process here of shutting down the abuse of the telephones and fax machines that have grown over the last half a decade, which have participated in this long process. Also I would like to note as well, so that all of the

had a number of provisions important to women and minorities in rural areas, giving them access to telemarketing. I especially want to note the cooperation I got from the gentleman from Massachusetts [Mr. MARKEY] on a number of issues relating to exemptions when there are medical emergencies and safety issues.

Mr. Speaker, I can attest again to the gentleman from New Jersey [Mr. RINALDO] and the gentleman from Massachusetts [Mr. MARKEY] effectively working on a number of bills. I think we have had a lot of suspensions in this area, and I just want to join in commending them for this very strong effort and their excellent staffs.

Mr. Speaker, I rise today in strong support of S. 1462, the Automated Telephone Consumer Protection Act. I commend the gentlemen from Massachusetts and New Jersey for producing a final product that represents an appropriate balance so that individuals will be protected from unwanted calls while still having the ability to take advantage of doing some of their shopping and subscription renewals at home over the telephone.

As an early cosponsor of the House version H.R. 1504, I am a supporter of the effort to control unwanted calls. The question, however, was how to do this while still allowing those telephone solicitation calls that consumers might want: From their alma mater, from their favorite charity, from their newspaper or magazine about a lapse subscription. This bill gives the Federal Communications Commission [FCC] a way of regulating those types of calls and provides some necessary guidance and considerations for the FCC as part of their deliberations.

The bill appropriately singles out calls in which there is an existing business relationship between the caller and the consumer. Different rules should apply to these types of calls. Businesses need to be able to contact customers with whom they have a prior or existing business relationship. Generally, these calls are not objectionable to the recipient; the call is the customer's acceptance of special promotions and other offers from vendors with whom they are already familiar. At the same time, I want to emphasize that these vendors should be keeping track of customers' wishes regarding telephone calls and where and when they like to receive or not. Responsible telemarketers should respect certain basic privacy concerns regardless of whether there is an existing business relationship.

Responsible telemarketing practices will not be restricted by this legislation, and the industry will continue to play a beneficial consumer role in our society. For example, newspapers often use telemarketing to renew lapsed subscriptions or offer special promotions to people who receive the paper on a few days a week. Customers are familiar with these calls and generally find it a convenience not to have to get in touch with their distributor about renewal.

Finally, the bill allows the FCC to evaluate alternatives for protecting residential phone customers from unwanted calls. The FCC is authorized to consider several options for how best to accomplish this. It is my personal opinion that the creation of a giant national data-
CONGRESSIONAL RECORD — HOUSE

November 26, 1991

base containing the names of people who do not wish to receive telemarketing calls is not the best way to go. This proposal is extremely problematic and may cause more harm than good. I would, therefore, urge the FCC to adopt another, less intrusive, means of protection for residential telephone customers from unwanted telemarketing.

Once again, let me congratulate the sponsors of the bill for their extraordinary efforts to produce a final product that deals with various concerns raised by different parties. Because of the leadership of the subcommittee chairman and ranking Republican member, we are able to pass this consensus bill before the end of the first session. I would urge my colleagues to vote for the bill.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to note that, as usual, from my 5 years as subcommittee chairman, the gentleman from New Mexico (Mr. Richard- son) has, as he has on every single piece of legislation, inserted provisions that are going to be very important and vital for the protection of the American public. I would like to make that notation here before we conclude debate.

Mr. Speaker, again, we worked in a bipartisan fashion. We hope that the House sees fit to accept this legislation today.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SAAF is pro tempore (Mr. Marzolla). The question is on the motion offered by the gentleman from Massachusetts (Mr. Markey) that the House suspend the rules and pass the Senate bill, S. 1462, as amended.

The question is taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

REGARDING UNFAIR IMPRISONMENT OF DR. NGUYEN DAN QUE BY GOVERNMENT OF VIETNAM

Mr. SOLARZ. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 78) regarding the unfair imprisonment and trial of Dr. Nguyen Dan Que by the Government of Vietnam.

The Clerk read as follows:

H. Con. Res. 78

Whereas the normalization of relations with the Socialist Republic of Vietnam and the potential lifting of the economic embargo depend in part on that nation taking certain steps related to the recognition of certain human rights;

Whereas Dr. Nguyen Dan Que is a nonviolent human rights and democracy in the Socialist Republic of Vietnam;

Whereas Dr. Nguyen Dan Que's right to free expression is guaranteed by Article 19 of the Universal Declaration of Human Rights;

Whereas Dr. Nguyen Dan Que has been imprisoned for 12 of the last 13 years and has for 14 years suffered from ill health;

Whereas Dr. Nguyen has finally been charged with treason and trying to overthrow the Vietnamese government;

Whereas Dr. Que is scheduled to go on trial on November 29, 1991; and

Whereas numerous international human rights organizations have called for the release of Dr. Que, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) Dr. Nguyen Dan Que should be accorded a fair and impartial trial as is his right under Articles 10 and 11 of the Universal Declaration of Human Rights;

(2) the United States government should press the Vietnamese government to ensure the application of international fair trial standards;

(3) if Dr. Que is found guilty of nonviolently expressing his views regarding human rights, he should be released immediately;

Sec. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the following persons: the Permanent Representative of Vietnam to the United Nations, the Permanent Representative of Vietnam to the United Nations National Assembly, the Foreign Minister and the Prime Minister of the Socialist Republic of Vietnam, as well as the Secretary of State and the President of the United States.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. Solarz) will be recognized for 20 minutes, and the gentleman from Michigan (Mr. Brookfield) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. Solarz).

Mr. SOLARZ. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SOLARZ asked and was given permission to revise and extend his remarks.)

Mr. SOLARZ. Mr. Speaker, this resolution was introduced by Senator Roth and passed by the other body on Saturday. It expresses the deep concern of the Congress about the impending trial of Dr. Nguyen Dan Que of Vietnam.

Dr. Que, a human rights activist who has spent most of the past 14 years in prison, was arrested in Ho Chi Minh City on June 14, 1980, apparently for the high crime of signing a petition for nonviolent political reform and respect for human rights in Vietnam.

According to Asia Watch, one of the most respected human rights organizations in the world, Dr. Que's crime is the exercise of basic human rights of speech and association, as guaranteed, believe it or not, by Vietnam's own constitution, as well as by the International Covenant on Civil and Political Rights, to which the government of Vietnam has acceded.

According to a Ho Chi Minh City law journal, Dr. Que's accusations take as evidence of his so-called criminal intent such alleged facts as—now, listen to this one—his interest in studying Russian, his membership in Amnesty International, his letters protesting human rights abuses in China, Turkey, Greece, Colombia, and the Philippines, his sending a telegram to the government of Japan protesting the repatriation of a defecting Chinese pilot, and testimony from others that Dr. Que is apparently the sort of person who "asks others to join him in action, the same way Western politicians do."

My friends, these may be serious crimes in Vietnam, but in the United States and most other countries of the world, they would not as evidence of criminality, but as a manifestation of decency and good will and a commitment to the cause of fundamental human rights.

The resolution before us today urges that Dr. Que be accorded a fair and impartial trial and that international observers be permitted access to all court proceedings and evidence.

It also states that if Dr. Que is merely guilty of the nonviolent expression of his views, as Asia Watch and other groups report, he should be released immediately.

Mr. Speaker, this is a significant resolution, as it reaffirms the importance of human rights in the evolving bilateral relationship between the United States and Vietnam. I think it is very important for the leadership in Hanoi to know that the continued and systematic violation of basic human rights will inevitably limit the degree of bilateral cooperation between our two countries.

I also hope that the adoption of this resolution will serve to encourage the government in Vietnam to expedite the release and emigration of those so-called reeducation camp detainees who remain in long-term detention and who have been there in most if not all instances for nearly 17 years.

The fact is, of course, that the Government of Vietnam has released most of the thousands of people who had been held in reeducation camps since 1975, and a number of us worked long and hard to bring that about, but the State Department and human rights groups have contended that there are about 100 who remain in long-term detention in these reeducation camps, and we hope the day will soon come when literally all of them are released.

Finally, Mr. Speaker, I want to express my appreciation to the gentleman from Virginia (Mr. Wolf), my very good friend, who encouraged the Committee on Foreign Affairs to move this resolution expeditiously to the floor. For many years now he has been an outspoken advocate on behalf of the cause of human rights in Vietnam in general and the plight of the reeducation camp prisoners over there in particular.

I think we all owe him a debt of gratitude for reminding us of our continuing obligation to speak up on behalf of these people, who suffer either by virtue of their association with our country during the course of