The motion to lay on the table was agreed to.

Mr. GORE. Mr. President, I rise today in support of the legislation currently before the Senate. There are several amendments offered,Ms. I would like clarification. First, I am troubled by the fact that this bill does not contain a specific exception allowing businesses to call their existing customers. Earlier drafts of this legislation would have included such an exemption. Second, I want to be sure that the FCC has the flexibility to adopt a wide array of options whatever types of rules they find necessary to protect the public interest. The reported bill does not specify which approach they must choose. For example, they are not required to adopt a national database of prohibited numbers. Finally, I have concerns regarding the directions given to the FCC to explore the effect of its regulations on local telephone solicitations, and the extent of the Federal system with regard to interstate calling.

First, with regard to existing business relationships, it is important that businesses need to be able to contact customers with whom they have a prior or existing relationship. Furthermore, these are the types of calls customers want to receive, because it informs them about promotional opportunities from vendors with whom they have had relationships.

Is it not true that the committee deleted the established business relationship exception from the bill because it wanted to become involved in the technicalities of determining what this phrase means? Nevertheless, is it not true that the FCC may consider establishing different rules concerning calls made by businesses to their prior or existing customers?

Mr. PRESSLER. Yes, that is correct.

Mr. GORE. Also, with regard to the rulemaking to be conducted by the FCC to protect telephone subscribers' privacy rights, it is my understanding that the FCC is free to adopt any type of regulation that they decide accomplishes the purpose of this legislation. The committee has specifically directed the FCC consider as one possibility the option of mandating companies to maintain company-based do not call systems to identify customers who do not wish to be called again by that company. Is that correct?

Mr. PRESSLER. Yes, that is correct.

Mr. GORE. Furthermore, I also noticed that the committee has directed the FCC to consider whether the procedures eventually adopted should apply to businesses that conduct primarily local telephone solicitations.

What is the reason for excluding small businesses and holders of second-class mail permits such as newspapers as two examples of companies that conduct these types of solicitations, am I correct in understanding that any company conducting primarily local telephone solicitations might be included in this category? It would seem that the provision should apply to companies that conduct business locally, and thus become part of the community, and are subject to the scrutiny of the community, and must live by their reputation in the community, regardless of the size of the business they conduct. For example, one of my constituents, Olan Mills, has photography studios located across the country. However, each location generally conducts solicitations directly from the studio, within the local community. Nearly all of these locations are local in nature, and rarely cross State boundaries unless the studio is located in a community near a State line. Am I correct in believing that this is the kind of business meant by the committee to be considered under this provision?

Mr. PRESSLER. Yes, that is correct.

Mr. GORE. Finally, I would like a clarification as to the relationship between the Federal regulations to be enacted by the FCC and State laws in the area of intrastate telephone solicitations. In one of the areas where the States have jurisdiction, if in the area of these telephone solicitations, it would be preferable to have the Federal law as a national scheme to protect telephone subscribers. While the States remain free to adopt laws affecting intrastate communications, I am sure the Senator would join me in encouraging the States to adopt laws consistent with the Federal system to facilitate the telemarketers' ability to comply fully with both the State and Federal laws regarding intrastate communications.

Mr. PRESSLER. The Senator is correct in his understanding.

Mr. GORE. I thank the Senator for the clarification.

The PRESIDING OFFICER. If there is no objection, the committee amendment, as agreed to, and the bill is deemed to have read a third time and passed.

The bill (S. 1410), as amended, will appear in a subsequent issue of the Record.

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

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

The motion to lay on the table was agreed to.

AUTOMATED TELEPHONE CONSUMER PROTECTION ACT

Mr. HOLLINGS, Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar 262, S. 1452, the Automated Telephone Consumer Protection Act.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1462) to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which was referred to the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Automated Telephone Consumer Protection Act."

SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

(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. 218. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

"(a) DEFINITIONS.—As used in this section—

"(1) The term 'automated telephone dialing system' means equipment which has the capacity—

"(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

"(B) to dial such numbers.

"(2) The term 'telephone facsimile machine' means equipment which has the capacity to transmit text or images, or both, from one point to another, into an electrical or other signal and to transmit that signal over a regular telephone line.

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

"(b) RESTRICTIONS.—It shall be unlawful for any person within the United States—

"(1) to make any call using any automatic telephone dialing system or an artificial or prerecorded voice—

"(A) to any emergency telephone line of any hospital, medical physician or service office, health care facility, or fire protection or law enforcement agency; or

"(B) to any telephone number assigned to paging or cellular telephone service to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior express consent of the person to whom the call is initiated for emergency purposes; or

"(2) to send an unsolicited advertisement by a facsimile machine.

"(c) TECHNICAL AND PROCEDURAL STANDARDS.—

"(1) PROMOTION.—It shall be unlawful for any person within the United States—

"(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any telephone dialing system that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system (to make any telephone solicitation) in a manner that does not comply with such standards; or

"(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly and in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business sending the message and the telephone number of the sending machine or of such business.
Mr. Steve Hamm, administrator of the Department of Consumer Affairs of the State of North Carolina, informed me that his office receives more complaints about computerized telephone calls and 900 numbers than any other problems. Despite the fact that South Carolina recently passed legislation to protect consumers from unwanted computerized calls within our State, South Carolina consumers continue to suffer from computerized calls made from out-of-State. The State law does not, and cannot, regulate interstate calls. Only Congress can protect citizens from telephone calls that cross State boundaries. That is why Federal legislation is essential.

In response to these continuing consumer complaints in South Carolina, Mr. Hamm asked me to come down to South Carolina to hear directly from my constituents about their problems with 900 numbers and computerized telephone calls. I chaired 2 days of hearings on October 10 in Greenville, SC, and on October 11 in Columbia, SC. These hearings gave consumers in South Carolina the opportunity to share their real-life experiences with these calls and to suggest some improvements to the bill.

Mr. President, the substitute bill I am offering today contains a number of small changes to the bill that was reported by the Commerce Committee. These changes address the concerns that were raised at the hearing in Washington and hearings in South Carolina, and in the additional comments that were received from the public.

The substitute bill contains a private right-of-action provision that will make it easier for consumers to recover damages from receiving these computerized calls. The provision would allow consumers to bring an action in State court against any entity that violates the bill. The bill does not, because of constitutional constraints, dictate to the States which court in each State shall be the proper venue for such an action, as this is a matter for State legislators to determine. Nevertheless, it is my hope that States will make it as easy as possible for consumers to bring such actions, preferably in small claims court. The consumer outrage at receiving these calls is clear. Unless Congress makes it easier for consumers to obtain damages from those who violate this bill, these abuses will undoubtedly continue.

Small claims court or a similar court would allow the consumer to appear before the court without an attorney. It is difficult to imagine how this legislation is set to be fair to both the consumer and the telemarketer. However, it would defeat the purposes of the bill if the attorneys' costs to consumers of bringing an action are too high. I think the only way to get a properly balanced bill is to assure consumers that they will have as much protection as it is feasible to provide through the existing small claims court system.
permitting their citizens to go to court to enforce this bill. The substitute also permits the States to enforce the provisions of the bill. Several parties, including the Federal Communications Commission (FCC) itself, raised concerns that the FCC might not have the resources to enforce this bill. The Senate also made it clear that the FCC should be allowed to enforce the bill rigorously. The substitute also included provisions that limit the use of certain telephone calls, including calls to certain emergency numbers, to deter fraud.

The substitute bill specifically directs the FCC to initiate a rulemaking to collect data on the extent to which restrictions might apply to calls placed to telephone numbers designated as emergencies. This provision has been included in response to complaints from some businesses that computerized telephone calls can be made to emergency numbers, thereby circumventing the restrictions on such calls. The Supreme Court has generally recognized that persons at work do not have the same level of privacy protection as persons in their homes. Thus, the legality of a ban on unauthorized computerized calls to the workplace is unclear. Restrictions other than a ban on such calls, however, might be justifiable. If the FCC finds, after a notice and comment proceeding, that the record justifies some form of restriction on computerized calls to the workplace on constitutional and policy grounds, the FCC is free to adopt such regulations.

The substitute makes clear that computerized telephone calls to emergency numbers can be subject to permissible restrictions to deter fraud. The substitute extends the ban to caller identification and caller validation requirements that are consistent with the intent of the original bill. For instance, the substitute extends the ban on calling paging and cellular lines to specialized mobile radio, radio common carrier, and other services that charge the person receiving the call. The substitute also allows consent to be given orally, in writing, electronically, or by any other means, as long as the consent is expressly given to the particular entity making the call. Such consent could be obtained, for instance, by including a clause in a contract or purchase agreement indicating that signing the agreement constitutes the purchaser's express consent to receive a computerized telephone call.

This bill has been drafted to comply strictly with the first amendment guarantees of freedom of speech. The record of our hearings demonstrates that a ban on computerized calls to the home—except in emergencies or with the called party's consent—is the least restrictive means of protecting the consumer's privacy in the home. There is no other alternative that will protect the interests of the consumer. Any proposed new technology or other method of allowing consumers to avoid receiving these calls is likely to lead to an increase in the burden on the consumer to protect his or her privacy interests.

Let me also make clear with respect to the Constitution that this legislation does not cover calls made by live persons. The intention of this bill is to deal directly with computerized calls. From the record of the hearings we have held and the consumer complaints we have received, it is clear that it is the computerized call that generates the most significant consumer outrage and that is most clearly an invasion of our privacy, a nuisance, and a threat to our health and safety.

Mr. Hamm testified at our hearings in South Carolina:

And I think that while I have not found any individuals that are crazy about telephone solicitations generally. I haven't talked to the first consumer nor the first business that welcomes these kinds of calls in terms of computer calls.

All this legislation requires is that when a person is called at home, there must be a live person at the other end of the line. This applies regardless of the message being delivered because it is an equal invasion of privacy whether the computerized message is made for political, charitable, or commercial purposes.

Mr. President, these changes have been fully shared and explored with the members of the industry and the consumer representatives who support this bill. There is no opposition to the bill. I believe Congress should carry out its duty to protect the integrity of the home and stop this unwarranted invasion of our privacy. I therefore urge the passage of this substitute bill by the Senate.

Mr. WARNER. Mr. President, I join my distinguished colleague from South Carolina, the chairman of the committee that has jurisdiction over this legislation, in urging the adoption of this legislation. Indeed, the most important thing we have in this country is our freedom and our privacy, and this is clearly an invasion of that.

Mr. HOLLINGS. I thank the distinguished colleague.

AMENDMENT NO. 1511

(Purpose: To make an amendment in the nature of a substitute, and to amend the title of the bill.)

Mr. HOLLINGS. Mr. President, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk reads as follows:

The Senator from South Carolina (Mr. Hollings) proposes an amendment numbered 1511.
Mr. HOLLINGS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Automated Telephone Call Protection Act."

SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

(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. 225. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

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

"(1) The term 'automatic telephone dialing system' means equipment which has the capacity—

"(A) to store or produce telephone numbers to be called, using a random or sequential process;

"(B) to dial such numbers.

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

"(3) 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.—The Commission shall prescribe regulations to make it unlawful for any person within the United States—

"(A) to 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 message to any telephone number or address of such business, other entity, or individual, and

"(B) to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the Commission shall have initiated for emergency purposes;

"(c) Technical and procedural requirements. —The Commission shall establish technical and procedural requirements for automated telephone dialing systems which are capable of preventing the sending of unsolicited advertisements and for telephone facsimile machines which do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

"(d) Artificial or prerecorded voice message equipment. —The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone.

"(e) Artificial or prerecorded voice messages. —Such standards shall provide that—

"(1) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the name of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual, and

"(f) State law not preempted.—Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

"(1) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

"(2) the use of automatic telephone dialing systems to transmit prerecorded telephone solicitations;

"(3) the use of artificial or prerecorded voice messages.

"(g) Actions by States.—

"(1) Authority of States.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person is or has been engaging in a pattern or practice of telephone calls to residents of that State in violation of the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for violations of both such actions. The court may, in its discretion, increase the award for monetary loss to an amount not to exceed three times the actual monetary loss up to $1,500 for each violation, or to increase the award of damages to an amount not to exceed three times the actual monetary loss up to $1,500 for each violation, if the court finds the defendant willfully or knowingly violated such regulations.

"(2) Exclusive jurisdiction of federal courts.—The district courts of the United States shall have exclusive jurisdiction over all civil actions brought under this section. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or other orders affording relief, commanding the defendant to comply with the provisions of regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to enjoin the defendant from violating any such regulations. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

"(3) Rights of commission.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the Commission shall have the right, after instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

"(4) Venue; Service of Process.—Any civil action brought under this subsection in a district court may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the defendant committed the alleged wrong, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

"(5) Investigatory powers.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent
FRITZ HOLLINGS. In supporting the immediate passage of S. 1462, the Automated Telephone Consumer Protection Act of 1991. This bill addresses an issue of great concern to many of my Texas constituents and people all over the country: The unreasonable encroachment upon their privacy by unsolicited automated calls to homes, businesses, and public institutions and by the unsolicited use of facsimile machines to transmit advertising.

Automatic dialer recorded message players are used by telemarketers to automatically dial a telephone number and deliver an artificial or prerecorded voice message. The use of these machines makes long distance telemarketing much less expensive. As a result, these machines are widely used and the telemarketing industry has grown by immense proportions.

Advertisements for all kinds of consumer products, trips, investments, credit cards, and various offers are frequently communicated to homes, business, and cellular telephones, as well as pagers, machines, through the use of automated calls. Such advertisements are all transmitted via facsimile machines. On survey found that about 75 percent of the public favor some form of regulation of these calls, and one-half of these favored prohibiting all unsolicited calls.

As Senator Hollings has noted, consumer complaints about the use of these machines and the use of junk fax have steadily increased.

This bill would ban all unsolicited automated calls to the home that are not made for emergency purposes. It would also ban all automated calls to emergency telephone lines, cellular telephones, and paging systems. Furthermore, it would ban all unsolicited advertising to facsimile machines.

In spite of the tradition of Congress to pass legislation that regulates a particular industry or technology, we must enact this bill in order to avoid the unreasonable interference with the privacy of consumers and the normal conduct of public and private business. I urge my colleagues to endorse this important legislation that will restrict the use of automated calling and junk fax, without making distinctions based upon the content of the respective communications.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the Senate's amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

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

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

[The bill (S. 1462)]

CHARGE OF VOTE—ROLL CALL

246

Mr. WARNER. Mr. President, I propose a unanimous-consent request which has been cleared by both the majority and Republican leader. I ask unanimous consent to change my vote from "nay" to "aye" on rollcall 246, adopting the conference report on H.R. 2707 for fiscal year 1992 Labor, Health and Human Services and Education appropriations bill. The measure was approved by a majority, 72 to 25, and the addition of an affirmative vote by making 73 at its own, will have no effect on the outcome.

Mr. WARNER. Without objection, it is so ordered.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SENATE REFORM

Mr. BOREN. Mr. President, as we come near the close of this legislative week, I again want to discuss an issue that I have been discussing now on a weekly basis, both with my colleagues and with the American people. That is a need to reform Congress as an institution. All of us realize that we have serious problems with the functioning of this institution. There are constructur changes that need to be made so that we can better fulfill our responsibilities, to grapple with the problems which confront us.

The last time that Congress took a major look at itself and made sweeping reforms at its own internal structures and procedures was in the period immediately after World War II, as the cold war was about to begin. In 1946, 1947, the Monroney-La Follette Commission was established by a joint action of the House and Senate to examine the institution of Congress, to make sure that the Congress was ready to meet the challenges of a new age.

The cold war was beginning. The superpower confrontation was begin-