

Mr. HASKELL. Mr. President, the Emergency Drought Assistance Act of 1977, which I sponsored, has been most helpful to Colorado. It has enabled local communities to mitigate the disastrous effects of last year's paucity of rainfall. We in the West have long appreciated the need to conserve water for periods of drought.

Communities such as those represented by the Amnity Mutual Ditch Co. and the Central Colorado Water Conservancy District have participated in the program established by this act. They and the Department of the Interior deserve our acclaim for the enthusiasm with which they have embraced this program and have worked to see that it was quickly implemented. Unfortunately, it is not always possible to control delay caused by frozen ground and equipment failure. It was never this body's intention to impose unrealistic timetables upon those who must implement this program. It is my understanding that the extension of this program will allow the time necessary to complete these vital projects. This is as it should be, for our desire is to see that drought is mitigated, not that incomplete projects result. Mr. President, I wholeheartedly support the extension of this program.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The bill was considered, ordered to a third reading, read the third time, and passed.

Mr. CURTIS. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### OFFICE OF RAIL PUBLIC COUNSEL

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5798.

The PRESIDING OFFICER laid before the Senate H.R. 5798, an act to amend the Interstate Commerce Act to authorize appropriations for the Office of Rail Public Counsel for fiscal year 1978.

Mr. ROBERT C. BYRD. I ask unanimous consent that the bill be considered as having been read the first and second times and that the Senate proceed to its immediate consideration.

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

The bill was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-334), explaining the purposes of the measure.

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

#### PURPOSE AND SUMMARY

The reported bill amends section 27(6) of the Interstate Commerce Act to authorize an appropriation of \$1,000,000 for the Office of Rail Public Counsel in the Interstate Commerce Commission (ICC or Commission) for fiscal year 1978.

#### Basis and need for the legislation

In section 304(a) of the Railroad Revitalization and Regulatory Reform Act of 1976, amending the Interstate Commerce Act, Congress established the Office of Rail Public Counsel as an independent office affiliated with the ICC. The Office is charged with presenting the views of the public and representing the public interest with respect to rail transportation matters subject to the jurisdiction of the ICC.

The administrative forerunner of the Office of Rail Public Counsel was the Office of Public Counsel, established in 1974 by the Director of the Rail Services Planning Organization (RSPO) in the Commission, pursuant to the discretion vested in him by section 205 of the Regional Rail Reorganization Act of 1973. This office was instrumental in procuring and assisting the participation of traditionally unrepresented and underrepresented segments of the public, such as communities and users of rail service, in aspects of the regional rail reorganization process affecting them. Subsequently, Congress provided for the establishment of the Office of Rail Public Counsel, with expanded powers.

To assure vigorous public participation and representation in the governmental decision-making process affecting rail service, Congress empowered the Office to participate as a party in proceedings before the Commission, initiate such proceedings, and, in accordance with applicable law, to seek judicial review of Commission action, where such proceedings or action involve a common carrier by railroad subject to Part I of the Interstate Commerce Act. The Office is also directed to solicit and present in proceedings before the Commission the views of communities and users of rail service affected by such proceedings when such communities or users might not otherwise be adequately represented and to evaluate, represent, and assist the representation of the public interest in safe, efficient, reliable, and economical rail transportation services before the Commission and other Federal agencies.

The active public participation and representation envisioned by Congress in formulation by the Commission of decisions affecting rail service has been thwarted by the failure of the Executive to appoint a Director of the Office of Rail Public Counsel, as mandated by statute. In its proposed budget the new Administration has requested \$700,000 to fund the Office for fiscal year 1978 and apparently intends to submit to the Senate a nomination for Director in the near future. Congress originally authorized to be appropriated to the Office \$500,000 for the fiscal year ending June 30, 1976; \$500,000 for the fiscal year transition period ending September 30, 1976; and \$2,000,000 for the fiscal year ending September 30, 1977. The Committee urges the prompt appointment and confirmation of a Director and recommends that \$1,000,000 be authorized for the Office for

<sup>1</sup>In its Report on Federal Regulation and Regulatory Reform, October, 1976, pp. 358-65, the Committee's Subcommittee on Oversight and Investigations evaluated the activities of the Office of Public Counsel and concluded that the public participation in the reorganization process made possible through the efforts of the Office had contributed significantly to the reorganization process.

fiscal year 1978. These funds would enable the Office to perform its critical functions in a period during which the nature and extent of rail transportation service are undergoing considerable change and a large segment of the railroad industry remains in a state of upheaval.

The Committee is cognizant that legislation for the creation of a Federal agency for consumer protection is under consideration by Congress. It is not the intent of the Committee that the functions of the Office of Rail Public Counsel be performed by or within two Federal agencies, resulting in unnecessary duplication. However, the Committee firmly supports the objectives embodied in the legislation creating the Office and believes that the performance of the responsibilities of the Office should not be delayed further to the detriment of communities and users of rail services. Should a consumer protection agency be established, serious consideration should be given to whether the Office should be made a part of such agency. A determination should be made whether the performance of the responsibilities of the Office and hence the attainment of the statutory objectives can better be accomplished within or without the framework of such an agency. The Committee does not intend this authorization to preclude any action which would strengthen and make more effective the activities of a public counsel acting with respect to rail matters before the ICC.

#### ORDER THAT COMMITTEE HAVE UNTIL MIDNIGHT TONIGHT TO FILE REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Human Resources have until midnight tonight to file a report on a clean bill dealing with labor law reform.

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

#### ORDER OF BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I believe an order has been entered that after the two leaders or their designees have been recognized on tomorrow under the standing order, Mr. LEAHY will be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. That order has already been entered.

Mr. ROBERT C. BYRD. I thank the Chair.

#### BUDGET ACT WAIVER

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 448.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 286) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 897.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution.

The Senate proceeded to consider the resolution.

Mr. BAKER. Mr. President, I rise only to inform my friend, the majority leader, that the item is cleared on this calendar. We have no objection to it passing.

Mr. ROBERT C. BYRD. I thank my friend.

The PRESIDING OFFICER. The question is on agreeing to the resolution. The resolution was agreed to, as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 897. Such waiver is necessary because hearings were delayed in order to accommodate the Administration in formulating its position on nuclear nonproliferation and to await its substantive testimony which did not occur until May 6, 1977. Furthermore, the Administration bill, S. 1432, was not introduced until April 29, 1977, and three committees were given jurisdiction over it. The number of hearings which were required in order to receive input from all necessary groups of witnesses made the May 15 deadline impossible to meet.

The effect of defeating consideration of the authorization will be to substantially reduce the program of cooperation and assistance to developing countries for the purpose of developing indigenous energy resources. In particular, a program to promote exchange of United States scientists, technicians, and energy experts with those of developing countries will have to be deferred.

The desired authorization will not delay the appropriations process and can be easily accommodated in a supplemental appropriation.

An authorization of this kind was contemplated in the congressional budget. There is a \$5,000,000 authorization for "international cooperation" in the fiscal year 1978 Energy Research and Development Administration authorization bill. The present authorization raises this amount to \$10,000,000.

This authorization is sufficiently small that it will not significantly affect the congressional budget. However, its impact in terms of nuclear proliferation will be considerable in relations to its size, it is therefore considered an important part of the Nuclear Nonproliferation Act of 1977.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

#### NATIONAL DRUG ABUSE CONFERENCE

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a resolution on behalf of Mr. JACKSON and Mr. MAGNUSON and I ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows.

A resolution (S. Res. 381) to express the sense of the Senate in support of the National Drug Abuse Conference in Seattle on April 3-8, 1978.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. JACKSON. Mr. President, this year the National Drug Abuse Conference will be held in Seattle on April 3-8, 1978. NDAC 1978 is the largest and most comprehensive drug and alcohol conference in the world and is expected to

attract representatives from the drug and alcohol abuse, social services, law enforcement, medical, psychological, psychiatric, and pharmaceutical fields from around the world. Ethnic and cultural groups, the young, the elderly, and the military will be represented. Some 5,000 people are expected to be in attendance.

The spread of drug abuse across America continues to threaten the quality of our national life. It is destroying individual lives, dividing families and disrupting the social structures of our cities and communities. The economic cost alone, in terms of lost productivity, narcotics-related crime and drug abuse prevention programs, is estimated in excess of \$10 billion a year. The toll of human suffering is beyond measure.

The Conference is designed to help people working in the drug abuse field to improve professional skills, increase knowledge of the drug and alcohol abuse field and share their experiences and ideas.

I believe there is a need to highlight the international scope of the dangerous substance abuse problem, to focus attention on the cultural and topical issues in the field, to address the critical issues which concern those working in the field, and to increase the public awareness and understanding of drug abuse, prevention methods, education, treatment, and research. I believe that this Conference will achieve these objectives; I wholeheartedly support the efforts and objectives of the Conference organizers; and I am introducing this resolution to aid in increasing national awareness of both the Conference and the nationwide dangerous substance abuse problem.

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

The resolution (S. Res. 381) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 381

Whereas the National Drug Abuse Conference is being held in Seattle on April 3-8, 1978; and

Whereas it is the purpose of the Conference to bring together those people involved in the drug and alcohol abuse fields for an exchange of ideas and information on treatment, education, research and techniques; and

Whereas it is also the purpose of the Conference to increase public awareness and understanding of substance abuse problems, solutions and treatments available; Now, therefore, be it

Resolved, That it is the sense of the Senate that it is fully supportive of the principles behind, and the goals and objectives of, this Conference.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

#### ORDER FOR RECESS TO 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the

Senate completes its business today it stand in recess until the hour of 9:30 a.m. tomorrow.

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

#### ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of Mr. LEAHY under the order previously entered there be a brief period for the transaction of routine morning business on tomorrow, until the hour of 10 o'clock a.m.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may be permitted to speak during that period for the transaction of routine morning business for not to exceed 2 minutes each.

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

#### ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, has an order been entered already to the effect that at 10 o'clock tomorrow morning the Senate will proceed to the consideration of the amendment that is in disagreement between the two Houses on the supplemental appropriations bill?

The PRESIDING OFFICER. Such an order has already been entered.

Mr. ROBERT C. BYRD. I thank the Chair.

#### ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now, again, be a period for the transaction of routine morning business.

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

Is there morning business?

#### COMMUNICATIONS ACT AMENDMENTS OF 1977

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1547, Calendar No. 534, a bill to amend the Communications Act of 1934.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BAKER. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Tennessee, the minority leader.

Mr. BAKER. I would only say to my friend from South Carolina that this item was carried until a moment ago when it was cleared and we have no objection to proceeding to its consideration and passing at this time.

Mr. HOLLINGS. I thank the minority leader.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1547) to amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures, and to authorize the Federal Communications Commission to regulate pole attachments, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science and Transportation with amendments as follows:

On page 1, line 5, strike "Communication" and insert "Communications";

On page 7, beginning with line 15, strike through and including page 8, line 18, and insert in lieu thereof:

Sec. 5. Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by striking the word "Subject" and inserting in lieu thereof the following "Except as provided in section 224 and subject".

Sec. 6. Title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"REGULATIONS OF POLE ATTACHMENTS

"Sec. 224. (a) As used in this section:

"(1) The term 'utility' means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

"(2) The term 'Federal Government' means the Government of the United States or any agency or instrumentality thereof.

"(3) The term 'State' means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

"(4) The term 'pole attachment' means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

"(b) (1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of title III of the Communications Act of 1934, as amended.

"(2) Within 180 days from the date of enactment of this section the Commission shall prescribe by rule regulations to carry out the provisions of this section.

"(c) (1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions for pole attachments in any case where such matters are regulated by a State.

"(2) Any State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that it regulates the rates, terms and conditions for pole attachments.

"(d) (1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole

attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

"(2) As used in this subsection, the term 'usable space' means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

"(e) Upon the expiration of the 5-year period that begins on the date of enactment of this Act the provisions of subsection (d) of this section shall cease to have any effect."

On page 11, line 8, strike "6" and insert "7".

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Communications Act Amendments of 1977".*

Sec. 2 Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended to read as follows:

"(b) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

"(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

"(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

"(C) violated any provision of section 317 (c) or 509(a) of this Act; or

"(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section 507 of this Act.

"(2) The amount of any forfeiture penalty determined under this subsection shall not exceed \$2,000 for each violation. Each day of a continuing violation shall constitute a separate offense, but the total forfeiture penalty which may be imposed under this subsection, for acts or omissions described in paragraph (1) of this subsection and set forth in the notice or the notice of apparent liability issued under this subsection, shall not exceed—

"(A) \$20,000, if the violator is (i) a common carrier subject to the provisions of this Act, (ii) a broadcast station licensee or permittee, or (iii) a cable television operator; or

"(B) \$5,000, in any case not covered by subparagraph (A).

The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

"(3) (A) At the discretion of the Commis-

sion, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5, United States Code. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a).

"(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

"(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

"(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

"(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

"(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement license, permit, certificate, instrument or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this Act.

"(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged with respect to any conduct of the type described in the citation sent under this paragraph.

"(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

"(A) such person holds a broadcast station license issued under title III of this Act and if the violation charged occurred—

"(i) more than 1 year prior to the date

of issuance of the required notice or notice of apparent liability; or

"(1) prior to the date of commencement of the current term of such license,

whichever is earlier so long as such violation occurred within 3 years prior to the date of issuance of such required notice; or

"(B) such person does not hold a broadcast station license issued under title III of this Act and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."

Sec. 3. (a) The first sentence of section 504(a) of the Communications Act of 1934 (47 U.S.C. 504(a)) is amended by inserting immediately after "recoverable" the following: ", except as otherwise provided with respect to a forfeiture penalty determined under section 503(b) (3) of this Act."

(b) Section 504(b) of such Act is amended (1) by striking out "parts II and III of title III and section 503(b), section 507, and section 510" and inserting in lieu thereof "title II, parts II and III of title III, and sections 503(b) and 507"; and (2) by striking out ", upon application therefor."

Sec. 4. Section 510 of the Communications Act of 1934 (47 U.S.C. 510) is repealed in its entirety.

Sec. 5. Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by striking the word "Subject" and inserting in lieu thereof the following "Except as provided in section 224 and subject".

Sec. 6. Title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"REGULATIONS OF POLE ATTACHMENTS

"SEC. 224. (a) As used in this section:

"(1) The term 'utility' means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

"(2) The term 'Federal Government' means the Government of the United States or any agency or instrumentality thereof.

"(3) The term 'State' means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

"(4) The term 'pole attachment' means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

"(b) (1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of title III of the Communications Act of 1934, as amended.

"(2) Within 180 days from the date of enactment of this section the Commission shall prescribe by rule regulations to carry out the provisions of this section.

"(c) (1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions for pole attachments in any case where such matters are regulated by a State.

"(2) Any State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that it regulates the rates, terms, and conditions for pole attachments.

"(d) (1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

"(2) As used in this subsection, the term 'usable space' means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

"(e) Upon the expiration of the 5-year period that begins on the date of enactment of this Act the provisions of subsection (d) of this section shall cease to have any effect."

SEC. 7. The amendments made by this Act shall take effect on the thirtieth day after the date of enactment of this Act; except that the provisions of sections 503(b) and 510 of the Communications Act of 1934, as in effect on such date of enactment, shall continue to constitute the applicable law with the respect to any act or omission which occurs prior to such thirtieth day.

Mr. HOLLINGS. Mr. President, the Committee on Commerce, Science, and Transportation held 2 days of hearings on this bill on June 23 and 24, 1977. Thereafter, after study of additional statements and official reports of the FCC, the committee amended the bill in executive session in October and reported the bill as amended to the full Senate on November 2.

This bill accomplishes two major objectives. First, it would expand, simplify and enlarge the scope of the forfeiture provisions of the Communications Act to provide the Commission with more adequate enforcement powers over persons and entities subject to its regulation. However, while giving the FCC greater enforcement authority, the bill at the same time establishes certain guarantees of due process and fair warning for some persons or entities which are not presently subject to FCC forfeiture liability. Thus, for certain parties the Commission is required to issue, in effect, a "warning" citation before fining for infraction of the rules. Only if a person so warned again commits the same violation of FCC rules would he or she become liable for a forfeiture.

Mr. President, the forfeitures portion of S. 1547 is identical to S. 2343, which passed the Senate in the 94th Congress. I believe that the Commission requires the extra authority which this bill would provide in order to assure the persons who benefit from use of our Nation's electromagnetic spectrum adhere closely to the terms of the Communications Act and FCC rules promulgated thereunder.

The integrity of the Commission's regulatory authority must be fostered. The FCC presently experiences severe difficulty in enforcing some of its rules. For example, because it lacks forfeiture

authority over cable television the Commission must resort to the cumbersome and time-consuming procedures of cease-and-desist proceedings. None of the parties involved in those proceedings profits from lengthy and costly adjudication.

I am sensitive, nevertheless, to the concerns expressed by some of the smaller cable system operators that FCC forfeitures may be indiscriminately imposed upon parties unable to absorb large fines, and for rule violations which have insignificant impact on other interested parties. I note, however, that the bill directs the Commission whenever considering imposition of a fine, to consider the gravity of the offense and the ability to pay. Moreover, the committee report expresses confidence, which I share, that the Commission will exercise its new enforcement powers over regulatees not previously liable for forfeitures in an evenhanded and equitable fashion.

Another reason for providing statutory guidance to the Commission in the matter of rates is to avoid lengthy start-up proceedings at the Commission before it begins active regulation. I am concerned that in view of the long period of time that has already elapsed while the FCC has had pole attachments under study that we do not allow further delay in giving cable television its right to be heard in any pole attachment dispute. The need for a forum exists today, not at some indefinite point in the future after further lengthy study.

Of equal significance to expedition is the need for a simple and effective procedure for resolution of disputes. Accordingly, this bill directs the Commission to institute a simple complaint procedure to adjudicate pole attachment disputes when such disputes are brought to the Commission. The bill does not contemplate the inauguration of a full-scale, common carrier-type regulatory plan, whereby utility companies would have to file tariffs or seek other authority to set pole rental rates at a predetermined level. Essentially, the FCC's involvement would arise only where the parties to the dispute are unable to agree among themselves as to the appropriate rates, terms, and conditions. The Commission may, however, publish advisory guidelines to assist the parties in reaching a mutually satisfactory rental agreement.

S. 1547 as amended in committee exempts telephone and electric cooperatives and municipally owned utilities from FCC regulation. It is believed that these utilities are of a different type than investor-owned utilities in that they are closer to the grassroots level of government whose discretion in this matter the bill seeks to protect.

Because the pole rates charged by municipally owned and cooperative utilities are already subject to a decision-making process based upon constituent needs and interests, S. 1547 precludes substitution of the Commission's judgment for that of locally elected managers of municipal utilities and the managers of customer-owned cooperatives.

Mr. President, I wish to take this opportunity to clear up some other ques-

tions which have recently arisen as to the pole attachment provisions of S. 1547. First, it has been said that the bill would take away the inherent power of the States to regulate CATV pole attachments. This is decidedly not the case. No State which regulates pole attachments on the effective date of this bill would lose jurisdiction. For a State which is not so regulating upon the effective date, its unexercised powers would be displaced only to the extent necessary to give cable television systems in that State a forum to take their complaints regarding unjust or unreasonable pole attachment arrangements. Should that State at any time act to provide that forum, the FCC would drop out of the picture. Furthermore, this bill contains no restrictions nor imposes any guidelines as to the manner by which a State may regulate. The ratesetting formula in this bill applies only to the FCC, and for only a period of 5 years. It is not intended to be a precedent to the States, or the Commission for that matter, after its 5-year life has expired. Thus, the inherent power of a State to regulate CATV pole attachments in a manner of its own choosing is preserved. There is consequently no need to create a "window" or delay period before the FCC may act.

Second, questions have arisen regarding the Federal ratesetting formula contained in the bill. It has been said that this formula would require a cable television system to pay a proportional share of the pole's costs attributable only to the usable space on the pole, and not a proportional share of the costs of the entire pole. Some ambiguity did exist on this point in the language of the bill as introduced. However, the Commerce Committee amendment makes abundantly clear that cable will pay a share of the costs of the entire pole. For example, on a typical pole 35 feet in length there are 11 feet of usable space. CATV usually occupies 1 foot of these 11 feet of usable space. Cable's share of the total capital costs and operating expenses would be one-eleventh of those total costs for all 35 feet, not one eleventh of the costs attributable to the 11 feet of usable space, and not one thirty-fifth of the costs of the pole. There should be no confusion on this point; the language of the bill as amended by the committee is unmistakable. The committee's report reiterates this clearly defined cost allocation.

Another question relating to the bill's Federal ratesetting formula has to do with a purported conflict between the language of the bill and language in the committee's report. It is said that the report errs in suggesting that pole rates can be based on "future" as opposed to "embedded" costs, since section 224(d)(1) of the bill refers to "actual capital costs".

It is said that the terms "future capital costs" and "actual capital costs" are mutually exclusive. However, this purported inconsistency is based upon a misapprehension of the pertinent discussion of the formula in the committee's report. As the report makes clear, it is

not the purpose of this bill to require the FCC "to establish a separate system of accounting to determine operating expenses and capital costs attributable to poles, or to reexamine on its own initiative, the reasonableness of the cost methodology made by the utilities and sanctioned by State or local regulatory agencies." Thus, if a utility employs a cost methodology incorporating future as opposed to embedded costs, and that particular methodology is sanctioned by a regulatory body, then there is not need for the Commission to embark upon its own accounting system. It may simply consider the sanctioned use of future or replacement cost methodology in its own deliberations in a particular pole attachment complaint proceeding. There is no need to foreclose the Commission from accepting a replacement cost approach in a particular situation where that approach has the approval of a State public utility commission in analogous contexts. The report of the committee merely recognizes that establishment of pole attachment rates using a longer term "future" costs or "replacement costs" methodology is fraught with uncertainty, and will probably give rise to debate as to its reasonableness. Nevertheless, the committee recognizes that in some limited situations determination of rates based upon future as opposed to embedded costs of pole space may be entirely appropriate. Not wishing to foreclose the Commission from accepting any particular costing methodology, the committee merely seeks to permit the Commission to consider each case on its own merits and according to its own facts.

One further point deserves comment. The report of the committee (No. 95-580) (page 15) appears to suggest that as a jurisdictional requirement for FCC pole attachment authority a cable television facility must already be attached to a utility pole. While it is true, as the report explains that this bill does not grant a CATV system a right of access to the poles of a utility company, it is not necessary in all situations that a cable system be physically attached to a utility pole for FCC jurisdiction to arise. Thus, where an electric power company contracts with a cable company for the latter's initial leasing of space on an electric utility pole, FCC jurisdiction arises upon execution of the contract, regardless of the fact that at the moment the CATV system has not yet attached its facilities to the utility company's poles. Thus, following the reasoning of the report, if the contract between the electric power company and the CATV company makes provision of communications space for attachment of cable TV facilities, a communications nexus is established sufficient to justify, in a jurisdictional sense, the potential involvement of the Commission. While the bill would not require a power company to dedicate a portion of its pole plant to communications use, if it voluntarily chooses to do so by contracting with a CATV company, it has submitted itself to FCC jurisdiction in this area.

Mr. President, I ask unanimous con-

sent that the committee amendments be considered and adopted en bloc.

The PRESIDING OFFICER. Without objection, the committee amendments are considered and agreed to en bloc.

UP. AMENDMENT NO. 1169

Mr. HOLLINGS. Mr. President, I send to the desk a technical amendment on behalf of myself and Senator MAGNUSON.

The PRESIDING OFFICER. The clerk will state the technical amendment offered by the Senator.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes certain technical amendments, unprinted amendment numbered 1169.

The amendment is as follows:

On page 10, strike out lines 13 through 16 and insert in lieu thereof the following:

"(2) Each State which regulates the rates, terms and conditions for pole attachments shall certify to the Commission that—

"(A) it regulates such rates, terms and conditions; and

"(B) in so regulating such rates, terms and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

Mr. HOLLINGS. Mr. President, the amendment which I offer today would express more clearly the intent of the bill to assure that pole attachment regulation by the States be conducted in a just fashion, and that due consideration be given by the States to the interests of all parties involved in pole attachment disputes. My amendment would make explicit what is now implicit in S. 1547—a State choosing to preempt Federal pole attachment regulation must certify to the FCC that it has the authority to consider and considers the interests of both utility and cable television customers. All State public utility commissions, of course, regulate utilities under a mandate to serve the interests of the consumers of utility services—the customers of electric power and telephone companies. However, in most States cable television is not regulated as a public utility service. Consequently, State or local regulatory bodies in many cases may not feel that their regulatory duties encompass the interests of the consumers of cable television services—in each case the State will have to determine for itself whether existing statutory or other legal authority is sufficiently broad to permit the regulatory body to act in behalf of CATV as well as utility customers.

Since pole attachment disputes involve cable television as well as utility companies, and ultimately their customers, it is only fair that State or local regulatory forums which will consider pole attachment disputes consider the interests of all parties to a dispute; any forum which undertakes to adjudicate these disputes must consider the interests of the public represented on both sides of the dispute.

My amendment would require any State wishing to recapture its authority to regulate in this area to represent to the FCC that its regulation of pole attachments will be based upon even-handed consideration of the interests of both utility and cable television custom-

ers. I believe that this amendment expresses the intent of the Commerce Committee that pole attachment regulation, whether conducted at the Federal or State or local level, be carried out in a fair and reasonable manner.

However, I must emphasize that it is not the intent of my amendment to authorize the Federal Communications Commission to pass upon the regulatory program of any State. Any state certification to the FCC which complies with the two simple requirements of my proposal—subsection (c) (2) (A) and (B)—will have the effect of automatically foreclosing further Commission pole attachment authority within that State—(of course, there will be a need for cooperation between the FCC and State or local regulatory bodies during the transition from Federal to local jurisdiction.) The FCC will not be called upon to look behind the certification to determine whether in fact the statements made are accurate.

Any discrepancy between the representations made in the certification and actual circumstances should be resolved at the State level. I ask unanimous consent that the technical amendment be agreed to.

Mr. President, I ask for adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Carolina.

The amendment was agreed to.

UP AMENDMENT NO. 1170

Mr. HOLLINGS. Mr. President, I send to the desk a technical amendment, No. 2, on behalf of the distinguished Senator from Hawaii (Mr. INOUE), and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS), for Mr. Inoue, proposes certain technical amendments, unprinted amendment No. 1170.

The amendment is as follows:

On page 11, strike line 8 and insert in lieu thereof the following:

SEC. 6. Section 222(a)(10) of the Communications Act of 1934 (47 U.S.C. 222(a)(10)) is amended by striking out "except Hawaii".

SEC. 7. Section 222 of the Communications Act of 1934 (47 U.S.C. 222), as amended, is further amended by adding at the end thereof the following new subsection:

"(g)(1) The authority of any carrier to provide any service or operate any facilities which it is authorized to provide or operate on the date of enactment of this subsection shall not be altered solely by the inclusion of Hawaii within the definition of 'Continental United States', nor shall such inclusion restrict or impair any carrier's eligibility after the date of enactment of this subsection for new or additional authority.

(2) Whenever, upon a complaint or upon its own initiative, and after opportunity for a hearing, the Commission finds that any charge, classification, regulation, or practice relating to intercarrier arrangements of any carrier serving Hawaii is or will be unjust, unreasonable, discriminatory, or not in the public interest, the Commission shall determine and prescribe what charge, classification, regulation, or practice, or such other remedy as is or will be just, reasonable, non-

discriminatory and in the public interest to be thereafter followed."

SEC. 8. The amendments made by this Act shall take \* \* \*.

Mr. INOUE. Mr. President, this amendment is intended to remove the anomalous designation of the State of Hawaii as an international point under section 222 of the Communications Act of 1934. It would do this by amending section 222(a)(10) to include Hawaii within the definition of "Continental United States." It thus would remove the applicability of the international/domestic dichotomy to the Hawaiian market and would foster competition among all carriers serving that market. My amendment would further amend section 222 by adding a new subsection, which would provide that carriers currently serving the Hawaiian market may continue to do so. Additionally, it would provide for the entry of additional carriers and the offering of new or additional services to the Hawaiian market, subject to the approval of the Federal Communications Commission.

Mr. President, my amendment is identical to S. 1866 which passed the Senate unanimously last August.

Before the Senate passed S. 1866, extensive hearings were held on the issue by the Senate Committee on Commerce, Science, and Transportation.

Nearly all witnesses, including representatives from the State of Hawaii, the Federal Communications Commission, the IRC's, the Office of Telecommunications Policy, and Hawaiian business and consumer groups testified in favor of extending to Hawaii telecommunications services comparable to those available in the continental United States.

S. 1866 is currently pending before the House Communications Subcommittee. In response to my inquiries, the chairman of that subcommittee has said he has no problem with S. 1866, but inasmuch as he believes section 222 of the Communications Act should be repealed in its entirety, he prefers to consider S. 1866 in that overall context at a later, unspecified date. Meanwhile, Mr. President, the consumers in Hawaii and those on the mainland wishing to communicate with Hawaii suffer.

This situation is especially exasperating for those who wish to communicate between Hawaii and the mainland because the House could pass S. 1866, without jeopardizing its consideration of legislation to repeal section 222. In other words, the one does not preclude the other.

I therefore urge the Senate to once again in the form of my amendment pass the necessary legislation to treat Hawaii equally with her 49 sister States.

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

The amendment was agreed to.

Mr. HOLLINGS. Mr. President, I ask that the Senate proceed to third reading of S. 1547, as amended.

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

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

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be discharged from further consideration of H.R. 7442 and that the Senate proceed to its immediate consideration, and that the text of S. 1547 as amended be substituted for the text of H.R. 7442.

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

Without objection, the passage of S. 1547 will be vitiated.

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

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 7442) was read the third time and passed.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which H.R. 7442 was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that further consideration of S. 1547 be indefinitely postponed.

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

Mr. HOLLINGS. I thank the distinguished majority leader and the distinguished minority leader for their consideration.

#### PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene tomorrow at 9:30 a.m.

After the two leaders or their designees have been recognized under the standing order, Mr. LEAHY will be recognized for not to exceed 15 minutes, following which there will be a period for the transaction of routine morning business, with a limitation of statements therein of 2 minutes each, and such period to culminate at 10 a.m.

At 10 a.m., the Senate, under the previous order, will proceed to the consideration of the amendment involving the disagreement between the two Houses on the supplemental appropriations bill. There is a time limitation on that amendment and motions in relation to the same of not to exceed 5 hours, with the final vote to occur not later than 3 p.m. tomorrow. So Senators may expect a rollcall vote or rollcall votes tomorrow.

RECESS UNTIL 9:30 A.M.  
TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance