

1 EXECUTIVE COMMITTEE MEETING TO CONSIDER S. 662, THE
2 BREAST CANCER AND CERVICAL CANCER TREATMENT ACT; AND H.R.
3 3916, REPEAL OF THE FEDERAL COMMUNICATIONS EXCISE TAX
4 WEDNESDAY, JUNE 14, 2000
5 U.S. Senate,
6 Committee on Finance,
7 Washington, DC.

8 The meeting was convened, pursuant to notice, at
9 10:08 a.m., Hon. William V. Roth, Jr. (chairman of the
10 committee) presiding.

11 Present: Senators Grassley, Hatch, Nickles, Lott,
12 Jeffords, Mack, Baucus, Breaux, Conrad, Graham, Kerrey,
13 and Robb.

14 Also present: Franklin G. Polk, Staff Director and
15 Chief Counsel; David Podoff, Minority Staff Director and
16 Chief Economist.

17 Also present: Len Burman, Deputy Assistant Secretary
18 for Tax Analysis, Treasury Department; Lindy Paull, Chief
19 of Staff, Joint Committee on Taxation; Jennifer Baxendell
20 and Kathy Means, Health Analysts; Jeff Kupfer, Tax
21 Counsel; and Carla Martin, Chief Clerk.

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1 OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S.
2 SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. The committee will please come to
5 order.

6 Our business today is to mark up and report out two
7 important pieces of legislation. The first piece of
8 legislation, S. 662, the Breast and Cervical Cancer
9 Treatment Act, will bring much-needed Medicare to women
10 afflicted with breast or cervical cancer.

11 The second item on our agenda is H.R. 3916, a bill to
12 repeal the Federal Communications Excise Tax.

13 Now, I had intended to have a third item on our
14 agenda. I had hoped to mark up a resolution regarding
15 the FSC dispute. However, based on my conversation with
16 Deputy Secretary Eizenstat yesterday, I agreed to the
17 administration's request to defer action on the
18 resolution pending further administration discussions
19 with the Europeans.

20 The administration has offered a concrete proposal to
21 resolve the dispute, and I think the onus is on the
22 Europeans at this point to engage in a constructive
23 dialogue aimed at resolving the matter.

24 That said, I intend to follow the developments on the
25 FSC dispute closely, and will continue my discussions

1 with the administration on the resolution and the
2 Treasury Department proposal.

3 As I have said before, I intend to ensure that this
4 matter is resolved in a way that allows American
5 companies operating in international markets to compete
6 on fair terms with their competitors.

7 Now, before I turn to the items on the agenda, I have
8 been asked by some members if we could hold both votes on
9 final passage until the end of the mark up so that they
10 can leave for other committees to participate, and I
11 intend to accommodate them.

12 Now I would like to turn to the mark-up of S. 662,
13 the Breast and Cervical Cancer Treatment Act. Before we
14 begin the discussion of the bill before us, a brief
15 history lesson is in order.

16 Senator Baucus. Mr. Chairman?

17 The Chairman. Yes. Let me call upon you first for
18 any comments.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA

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4 Senator Baucus. Mr. Chairman, on the FSC matter, I
5 think your undertaking is wise, and I would like to note
6 for the record that is bipartisan. Both sides agree that
7 that is the appropriate course of action.

8 However, I very much hope that Secretary Eizenstat
9 and the American administration is successful in
10 persuading the Europeans to work out a proper
11 accommodation on FSC.

12 It is, frankly, outrageous what the Europeans are
13 doing here. The Europeans are agreed with the United
14 States a while ago when we were taking up DSC in 1984,
15 and that was ruled to be illegal. So we worked out an
16 accommodation with the Europeans and the Europeans agreed
17 that the U.S. FSC approach was fine. They agreed. Now
18 they come back and they say no.

19 I just think that everyone should know that Europeans
20 have backed off, they have reneged on their agreement. I
21 just very much hope, and fully expect our negotiators to
22 be very successful in negotiations with the Europeans.

23 Having said that, I think it is appropriate not to
24 pass a resolution which might have the effect of rubbing
25 salt in the eyes of the Europeans. But it is,

1 nevertheless, a very important issue, and I hope we are
2 very successful in following it through.

3 The Chairman. Well, let me say that, frankly, I am
4 outraged by the action on the part of the EC. As you
5 pointed out, agreement was reached on FSC as a means of
6 assuring our businesses fair treatment.

7 They backed off of it, and I just find the whole
8 situation of highest concern. It must be resolved in a
9 manner that gives us a fair trading environment, and we
10 will work with you and appreciate your support.

11 As I said, we will now turn to the Breast and
12 Cervical Cancer Treatment Act. Let me just point out
13 that nearly 10 years ago Congress created the National
14 Breast and Cervical Cancer Early Detection Program
15 through the Centers for Disease Control to help lower
16 income women receive the early detection services that
17 are the best protection against breast and cervical
18 cancer.

19 This important program has served more than a million
20 women in subsequent years. However, the screening
21 program does not include a treatment component. Instead,
22 women who receive the terrifying words that they do, in
23 fact, have cancer must rely on informal networks of
24 donated care.

25 Last year, our good friend and sorely missed Senator

1 John Chafee introduced S. 662 to make it easier for women
2 facing breast and cervical cancer to receive necessary
3 treatment.

4 I think each and every one of us share that important
5 goal. S. 662 does that through the Medicaid program.
6 Now, maybe some of us would have approached the problem
7 differently. I think there are very valid concerns about
8 creating disease-specific eligibility categories within
9 the Medicaid program, which would take this successful
10 and most important program away from its original
11 mandate.

12 However, despite those concerns, I think this bill
13 should move forward because we are dealing with a unique
14 set of circumstances. A new Medicaid eligibility
15 category created in S. 662 is specifically linked to a
16 unique and existing federal screening program and must
17 not, and should not, be viewed as a precedent for
18 extending Medicaid eligibility body part by body part.

19 Instead, what we are doing today is fulfilling a
20 promise made nearly 10 years ago. We are saying to lower
21 income, uninsured women that we will continue to help you
22 access the preventive health care services you need.

23 But now through S. 662, our commitment to you will
24 not stop with screening. If problems are found, the
25 Federal Government stands ready to work with the States

1 to make sure you receive the treatment you need to get
2 well.

3 Senator Baucus?

4 Senator Baucus. Yes. Mr. Chairman, I very much
5 appreciate your bringing up this bill. I might say that,
6 in my office, I have witnessed firsthand three women who
7 struggled with cancer. They are survivors. Their
8 struggles in fighting for life with their loved ones,
9 working with their doctors and friends, have just taught
10 me a lot.

11 I want to tell you, Mr. Chairman, that even though
12 the three women in my office that I am referring to had
13 breast cancer, they had treatment, too. Their treatment
14 was covered.

15 So for women who are diagnosed with cancer, which is
16 bad enough, to then have to fight even more because they
17 do not have a way to pay for treatment, I think, is
18 unconscionable. I do not know why we have not done this
19 earlier.

20 I regret to say that it has become later in my life
21 that I have become more sensitized because of the three
22 breast cancer patients in my office, all survivors. But
23 they have taught me so much and make me wonder why we
24 have not done something like this more quickly. I am, at
25 the very least, glad we are taking it up right now.

1 There are about 6,000 women, I think, diagnosed with
2 breast cancer, 500 with cervical cancer a year. For
3 those who do not have the wherewithal to pay for
4 treatment, I think the very least we can do is make sure
5 they have the wherewithal to pay for that treatment.

6 The Chairman. Thank you, Senator Baucus.

7 I would now ask our staff to walk us through.

8 Jennifer?

9 Ms. Baxendell. Thank you, sir.

10 S. 662, the Breast and Cervical Cancer Treatment Act,
11 creates a new optional eligibility category for State
12 Medicaid programs. It gives the States the flexibility
13 to extend Medicaid coverage to women who receive cancer
14 diagnoses through the Centers for Disease Control's early
15 detection program for breast and cervical cancer. This
16 screening program is targeted at women with incomes below
17 250 percent of the federal poverty limit.

18 States taking up this new option will have a further
19 choice of making women presumptively eligible for
20 Medicaid, which essentially means that they could begin
21 treatment immediately after receiving their diagnosis
22 while at the same time the formal process of Medicaid
23 enrollment takes place.

24 The final section of the bill relates to the match
25 rate that will be available to States participating in

1 the new program. States would receive the same enhanced
2 match reimbursement rate that they receive through the
3 State Children's Health Insurance Program, and the new
4 option set forth in the bill would become available to
5 the States beginning on October 1 of this year.

6 The Chairman. Are there any questions on the
7 substance of the bill just presented?

8 Senator Nickles. Mr. Chairman?

9 The Chairman. Senator Nickles.

10 Senator Nickles. Mr. Chairman, I would just ask
11 staff a couple of questions.

12 The 250 percent of poverty is what level, dollar-
13 wise?

14 Ms. Baxendell. It depends on the family size, sir.
15 For a family of one, the federal poverty level, 100
16 percent is roughly \$8,000. So 250 percent would be
17 \$16,000, plus \$4,000, so around \$20,000. For a family
18 size of two using the same approximation, off the top of
19 my head, comes to around \$26,000.

20 Senator Nickles. All right. You mention the match
21 rate. The recommendation before us was to use the SCHIP,
22 but if I remember, SCHIP was much more generous than
23 Medicaid.

24 Ms. Baxendell. For example, sir, it averages
25 nationally \$68 federal dollars for every \$32 State

1 dollars, compared to the Medicaid program which averages
2 \$57 federal to \$43 State.

3 Senator Nickles. Now, correct me if I am wrong, but
4 did the President not recommend that the match rate be in
5 Medicaid?

6 Ms. Baxendell. The President's budget proposal this
7 year did include this new Medicaid option at the standard
8 Medicaid match rate, yes.

9 Senator Nickles. All right.

10 Mr. Chairman, just a comment.

11 The Chairman. Please.

12 Senator Nickles. I do not often say the President
13 is right, but I think he is right. I am concerned about
14 our inducing States to do different things by enhanced
15 match rates. We did that in SCHIP. I argued, maybe, I
16 guess, unsuccessfully, and I think we maybe got it down a
17 little bit.

18 But in SCHIP we ended up saying, a group of middle
19 income people are basically eligible--to enhance the
20 States to sign them up for their kids, this population,
21 they are eligible for federal subsidies at higher
22 incomes. So we have a greater subsidy for higher incomes
23 than we do low incomes, is another way of saying that.
24 We're doing the same thing here.

25 Are we going to do this by each disease and problem?

1 Are we going to have a different match rate for prostate,
2 are we going to do a different match rate for other
3 individual diseases? I am not sure that is right.

4 I think the idea of saying, hey, if somebody is
5 tested and they find out they have cancer, they would
6 automatically be eligible so they could receive the
7 service, yes. Most States have significant surpluses
8 right now. Why do we not just say they are automatically
9 eligible for Medicaid, if the State so chooses to do so,
10 at whatever the Medicaid match rate is? To me, it makes
11 more sense.

12 I am afraid we are going to end up, if we follow this
13 path, that five years from now we are going to have 10
14 different match rates for whatever the disease might be
15 based on its popularity, or something, or the signs of
16 the times.

17 I just do not know that it is good policy. I think
18 we made a mistake on SCHIP when we said we are going to
19 give greater subsidies for higher income kids than lower
20 income kids. I see us following that path, and I am just
21 not sure.

22 I want to raise that. I think that the President, by
23 saying eligibility based on the reimbursement rate for
24 Medicaid for those States, is a better policy. We are
25 not talking about a whole lot of money, just this

1 specific of \$50 million a year or something. I am not
2 arguing the money, I am arguing the policy. To me, it
3 would be more consistent to stay with the Medicaid match
4 rate.

5 One other question. Let me ask staff another
6 question. The President's proposal, I believe, said that
7 individuals would be eligible to receive immediate care
8 under Medicaid. Did he say they would be eligible for
9 any other Medicaid expenses?

10 Ms. Baxendell. His optional eligibility category
11 was for complete Medicaid eligibility. It was not
12 restricted to a specific package of benefits within the
13 program.

14 Senator Nickles. Well, this is a big expense.
15 Correct me if I am wrong.

16 Ms. Baxendell. Women who come in through this new
17 optional eligibility category are eligible for the full
18 array of Medicaid services.

19 Senator Nickles. All right. Each State has
20 Medicaid eligibility standards. We are saying, if
21 someone qualifies for this, then they are qualified for
22 all Medicaid services.

23 So again, Mr. Chairman, we are setting up something
24 by differentiating income status and eligibility and
25 saying people or individuals are entitled to all Medicaid

1 services. You could easily have the situation where
2 someone, because their income is, say with two children
3 at \$24,000, eligible for this, and therefore eligible for
4 all Medicaid services, broken ankle or whatever it might
5 be. But somebody next door could have the broken ankle
6 and they are not Medicaid-eligible, and they have an
7 identical income. Am I correct?

8 Ms. Baxendell. That is correct. If the first woman
9 has breast cancer screened through the CDC screening
10 program.

11 Senator Nickles. I would like to have more
12 consistency, because the inequities, I think, are going
13 to be causing this committee and this Congress in the
14 future more problems. I can see some problems.

15 So, I raise that, Mr. Chairman. I do think having
16 consistency on the Medicaid eligibility reimbursement
17 rate so we do not have higher reimbursement, plus the
18 fact that most all States are having significant
19 surpluses, I think we have made a little mistake with
20 SCHIP and I think we are compounding it a little bit.

21 So I wanted to raise that with you. We do not have
22 to fix it right now, but it is something I think we
23 should address.

24 The Chairman. Senator Graham?

25 Senator Graham. Mr. Chairman, my comments are

1 exactly in line with those of the Senator from Oklahoma.
2 We all feel, and many of us have been touched by breast
3 or cervical cancer. My mother died of breast cancer, so
4 I have strong empathy for what we are trying to do here.

5 My concern is that we not fall into the trap of
6 dealing with individual diseases or circumstances outside
7 of some conceptual framework of where we are going. So,
8 I have a few questions.

9 We started this process when we directed the CDC to
10 provide screening for cervical and breast cancer. What
11 year was that?

12 Ms. Baxendell. It was 10 years ago, sir. 1990.

13 Senator Graham. And was there an income eligibility
14 for who could be served by the CDC in terms of screening?

15 Ms. Baxendell. Statutorily, it is limited to low-
16 income women. That low-income definition is set forth in
17 regulations at 250 percent of poverty or below.

18 Senator Graham. All right. Were there any other
19 diseases for which the CDC was authorized to provide
20 screening?

21 Ms. Baxendell. The screening program for the CDC
22 mandate is for cervical and breast cancer, both.

23 Senator Graham. But no other diseases.

24 Ms. Baxendell. That is correct, sir.

25 Senator Graham. Have there been any proposals in

1 the intervening 10 years to expand that screening to
2 other forms of cancer or other diseases?

3 Ms. Baxendell. I am sure there have been proposals,
4 sir, but nothing has been enacted.

5 Senator Graham. Among the cancers, in terms of
6 incidence, how do these two rank, for instance, in
7 relationship to lung cancer, colon cancer, or other forms
8 of cancers?

9 Ms. Baxendell. For women, breast cancer and lung
10 cancer are the two more prevalent forms, and cervical is
11 of a lesser degree of prevalence.

12 Senator Graham. Excuse me. You said, for women,
13 what is the most prevalent?

14 Ms. Baxendell. Breast and lung are right at the
15 top, one and two. It might be two and one; I am not sure
16 of the exact order.

17 Senator Graham. Now, the CDC screening, is it 100
18 percent federally paid?

19 Ms. Baxendell. No, it is not. The States put up
20 one dollar for every three federal dollars used in the
21 screening program.

22 Senator Graham. So it is a 75/25.

23 Ms. Baxendell. That is correct.

24 Senator Graham. Are all States currently
25 participating in the CDC screening?

1 Ms. Baxendell. All States participate. They go up
2 to different points on the income scale. Most States, I
3 think 45 out of the 50, are clustered between 200 and 250
4 percent of poverty and a few are lower.

5 Senator Graham. Is there some process in mind that
6 would lead us from these two diseases where we have for
7 10 years authorized screening at a 75/25 match rate for
8 persons under 250 percent of poverty, and now are
9 proposing to go to a treatment benefit? Is there a
10 program to reach out to other diseases with a similar
11 pattern of screening by CDC, treatment through an
12 expanded Medicaid program?

13 Ms. Baxendell. Not that we are aware of. What
14 makes this Medicaid option unique, but not a precedent
15 within the Medicaid program, is it is specifically linked
16 to a preexisting CDC screening program that lacked a
17 treatment component.

18 Now, the creation of new CDC screening programs would
19 fall under the jurisdiction of Senator Jeffords' HELP
20 committee, so we are not aware of any work that they are
21 undertaking to create new screening programs at this
22 point.

23 Senator Graham. A final question. Are there any
24 other diseases which have a Medicaid treatment similar to
25 what we are about to do for cervical and breast cancer,

1 that is where the States have the option of going up to
2 250 percent?

3 Ms. Baxendell. There is only one other disease-
4 specific eligibility category within the Medicaid
5 program. That is limited to tuberculosis. That was a
6 public health response to development of bacterial-
7 resistant tuberculosis strains, so Medicaid did create a
8 new optional eligibility category with treatment limited
9 only to those services needed to combat tuberculosis.
10 So, there are no other precedents, be they up to 250
11 percent or lower, for any disease-specific category of
12 eligibility.

13 Senator Graham. Mr. Chairman, I would just conclude
14 by suggesting that maybe the Senator from Vermont and the
15 Chair of this committee might consider developing a plan
16 of action that would give us some sense that what we are
17 doing here is going to be part of a larger and more
18 comprehensive program that is based on standards such as
19 incidence of need, severity of need, importance of early
20 detection and treatment in order to avoid fatality, and
21 other relevant factors so that we do not fall into the
22 trap that I think the Senator from Oklahoma suggested,
23 that we be accused of making judgments based on factors
24 other than medical science as to how we are going to
25 structure our federal health care policy.

1 The Chairman. Thank you.

2 Senator Jeffords. Mr. Chairman, may I respond?

3 The Chairman. Yes.

4 Senator Jeffords. I ask unanimous consent that my
5 entire statement be made a part of the record.

6 The Chairman. Without objection.

7 [The prepared statement of Senator Jeffords appears
8 in the appendix.]

9 The Chairman. Would any Senator like to offer
10 comments? Yes, sir. The Senator from Virginia.

11 Senator Robb. Thank you, Mr. Chairman.

12 I would just like to follow up on one question that
13 is raised by the comments by both the Senator from
14 Oklahoma and the Senator from Florida, and that is
15 whether or not there was any particular policy objective
16 that was advanced to create this difference in
17 reimbursement rate. Are we overlooking something here
18 with an attempt to try to achieve conformity?

19 I supported the 1990 legislation. I am a co-sponsor
20 of this legislation. I had not really focused on the
21 rate differential and the potential for the precedent
22 that we are establishing and how that might be applied in
23 other areas. Was there some specific rationale that was
24 advanced?

25 Ms. Baxendell. That is an excellent question, sir.

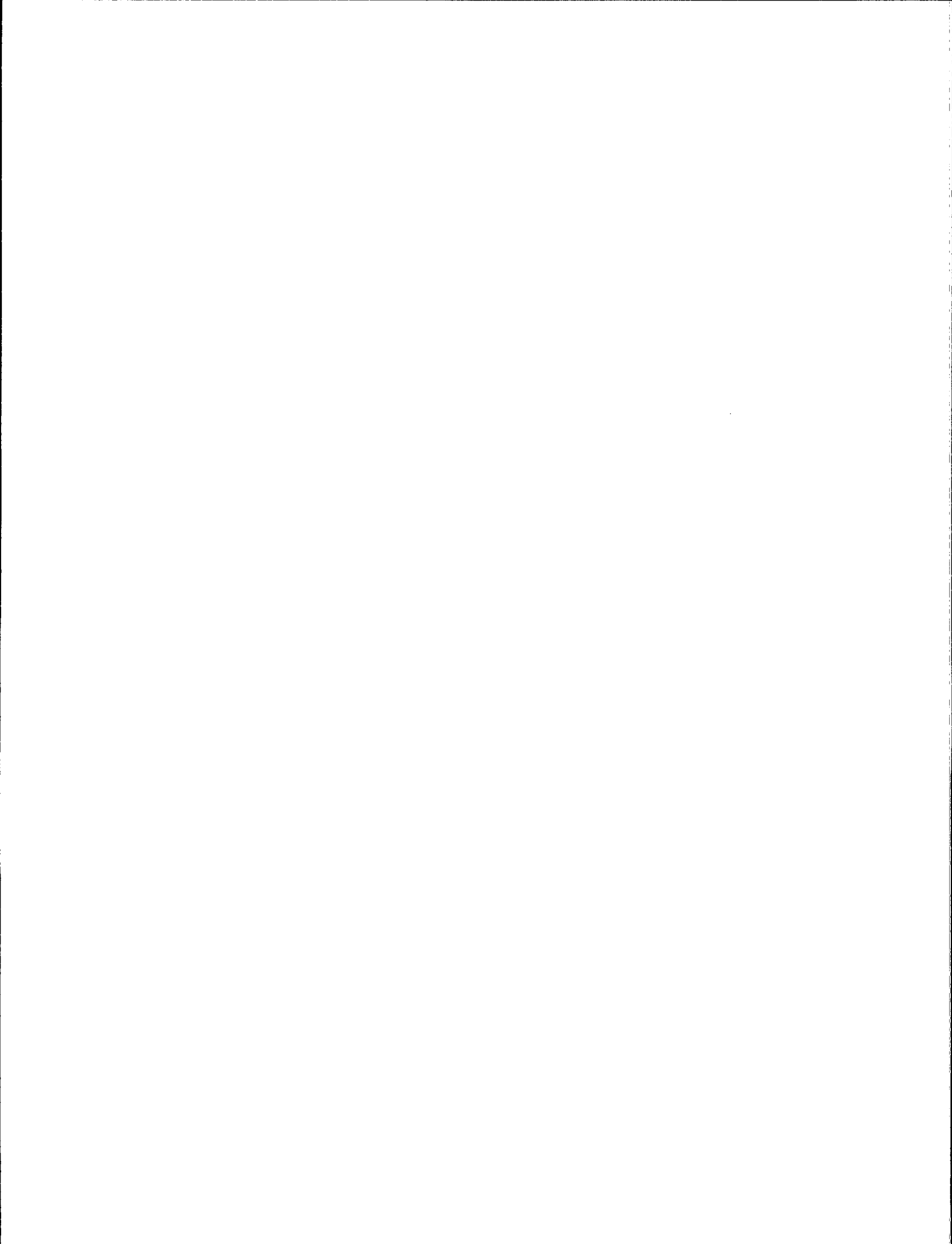
1 When S. 662 was originally introduced, it included a
2 75/25 match rate that I think was designed to give States
3 a special financial incentive to take up the new option
4 to fulfill a commitment that was viewed as only partially
5 lived up to by the Federal Government.

6 When the federal screening program was created, a
7 situation existed in which several thousand women were
8 receiving each year cancer diagnoses through a federal
9 program, and then were wished well and provided support
10 services through efforts to help coordinate donated care,
11 but there was no treatment associated with the diagnosis
12 they received through a federal program.

13 So S. 662 was drafted in order to not only create a
14 new option for States, but to encourage States to take up
15 that option at a 75/25 match.

16 The Chairman's mark changes that enhanced match rate
17 back to the enhanced CHIP match rate, which is consistent
18 with another precedent that has been established within
19 the program to designate a group that we want to
20 encourage to be brought into the program, but in the same
21 way we have made other attempts to encourage through the
22 CHIP program. That encouragement through CHIP was
23 successful. All 50 States have now participated in that
24 program.

25 Senator Robb. Thank you. Certainly to have the



1 diagnosis without the treatment is, indeed, very
2 difficult to support.

3 Thank you, Mr. Chairman.

4 The Chairman. Thank you, Senator Robb.

5 Now, Senator Hatch?
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1 OPENING STATEMENT OF HON. ORRIN G. HATCH, A. U.S. SENATOR
2 FROM UTAH

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4 Senator Hatch. Thank you, Mr. Chairman. I am a
5 proud co-sponsor of S. 662, the Breast and Cervical
6 Cancer Treatment Act, and I am pleased to support S. 662
7 today.

8 Mr. Chairman, I want to commend you for reaching an
9 excellent compromise that not only provides care for
10 women suffering from cervical and breast cancer, but also
11 provides care for them this year. As you know, similar
12 legislation recently passed by the House of
13 Representatives will not go into effect until October 1,
14 2001.

15 I think it is tragic if we had to wait for a year to
16 implement something that is so important to so many women
17 throughout this country, and really families, children,
18 if you really stop to think about it.

19 I have met several times with the Utah Breast Cancer
20 Coalition, and they have told me time and time again that
21 having S. 662 signed into law this year is their
22 organization's top priority. Today, because of your
23 efforts and others' here on this committee, we are one
24 step closer to making this a reality.

25 Now, you have done an excellent job bringing everyone

1 together. Even more important, you have given women
2 suffering from these diseases hope that this legislation
3 will soon become law.

4 I, for one, appreciate your hard work on this issue
5 and once again commend you for a job well done. I would
6 like to see this bill pass without amendment, if we can.

7 The Chairman. Thank you for those remarks, Senator
8 Hatch.

9 Senator Nickles. Mr. Chairman, can I ask the staff
10 another question? Or go ahead. Excuse me. I did not
11 mean to cut in front of you.

12 The Chairman. The Senator from North Dakota.
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1 OPENING STATEMENT OF THE HON. KENT CONRAD, A U.S. SENATOR
2 FROM NORTH DAKOTA

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4 Senator Conrad. Mr. Chairman, I, too, am a co-
5 sponsor of the Breast and Cervical Cancer Treatment Act.
6 I think back to my own growing up and my grandmother
7 suffered breast cancer, the grandmother that raised me.
8 Really, a remarkable woman who suffered a lot as a result
9 of breast cancer.

10 This bill advances the fight against breast and
11 cervical cancer in an important way. If you can detect
12 it early, you have a much better chance of defeating it
13 and avoiding the really severe consequences that breast
14 cancer can bring. Certainly cervical cancer, although we
15 see less incidence of it, is also a vicious killer.

16 So Mr. Chairman, I hope we will act expeditiously on
17 this legislation. I want to thank you and thank our
18 Ranking Member for bringing this bill to us. We have got
19 a chance to do something, move it quickly, get it to the
20 floor, and get it passed, and that is something we should
21 do.

22 The Chairman. Thank you, Senator Conrad.

23 Now, Senator Kerrey.

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1 OPENING STATEMENT OF THE HON. J. ROBERT KERREY, A U.S.
2 SENATOR FROM NEBRASKA

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4 Senator Kerrey. Mr. Chairman, a couple of comments.
5 First off, I am also sponsoring this bill, and I
6 appreciate very much the effort that you have made to get
7 this mark-up done. Hopefully this will become law soon,
8 with the President's signature, in an expedited fashion.

9 I would make a couple of points, though. One, is
10 that Medicaid itself has a stigma attached to it. It is
11 seen as a welfare program by an awful lot of people, and
12 it is has an extremely complicated eligibility process.
13 I do associate myself with the remarks made by both the
14 Senator from Oklahoma and the Senator from Florida.

15 I think some kind of effort to both simplify and keep
16 the eligibility requirements approximately the same
17 across the board is a terribly important thing for us to
18 do.

19 But I would note that there were 97 votes for
20 military retirees to be able to buy into Tricare, and
21 there were 50-some votes for military retirees to be able
22 to buy into another non-welfare program called the
23 Federal Employees Health Benefit Program, both of which
24 are extremely expensive.

25 I think the Tricare program costs almost \$50 billion

1 over 10 years, and the Federal Employees Health Benefit
2 Program costs almost \$90 billion over 10 years.
3 Fortunately, it was not 60 votes to enact that one, but I
4 was disturbed to see 97 votes for the first one.

5 I think it is important for us to remember that as we
6 try to figure out how to solve this problem of women
7 simply not being able to come up with the money to be
8 able to come up with the money to get treatment for
9 breast cancer and cervical cancer, that we found a way to
10 solve that problem for military retirees in a fashion
11 that does not require them to have to go through the
12 stigma of applying for a welfare program.

13 Second, I would thank the Chairman for adding
14 language that will have the FCC tracking whether or not
15 this reduction in tax is going to be passed on to the
16 consumers. I appreciate very much your putting that in
17 there.

18 I was tempted to add language that would require them
19 to put a line in their bill, since they threatened to do
20 that once before, to sort of coerce Congress into getting
21 rid of the tax. I would love to have them now put a line
22 in their bill to show that they are willing to pass this
23 on to consumers.

24 I did not force that upon the committee, but I do
25 appreciate very much that the FCC will be tracking and

1 reporting to Congress as to whether or not this tax
2 reduction is going to get passed on to consumers as the
3 companies, at least they have been telling people
4 publicly, would happen if this tax was removed.

5 The Chairman. Now, are there any amendments to
6 this?

7 Senator Graham. Mr. Chairman?

8 The Chairman. Senator Graham.

9 Senator Graham. Mr. Chairman, as we discussed prior
10 to this committee hearing, I have been very interested in
11 offering an amendment to this bill, but I am going to
12 withdraw or desist from doing that.

13 But I would like to raise the concern that I think
14 this is the first Medicaid bill that we have had before
15 the committee in several months, and there are other
16 issues involving the Medicaid program in addition to the
17 important one that is before us today.

18 The matter that I am concerned with, which has also
19 been co-sponsored by Senators Mack, McCain, Jeffords,
20 Moynihan, Feinstein, and had been originally introduced
21 by Senator Chafee, has to do with some changes as it
22 relates to legal aliens, particularly pregnant women and
23 children who are in the United States and would give to
24 States the option, as this bill does, of extending
25 coverage, including to legal alien children who are under

1 the SCHIP program.

2 I think that is an important issue. It certainly is
3 important to States that have large numbers of children
4 who fall in that category. I would hope that, before
5 this Congress completes its work, ideally, in this
6 committee, that we would have an opportunity to consider
7 that, as well as other suggested modifications to the
8 Medicaid program.

9 Thank you, Mr. Chairman.

10 The Chairman. Well, I would say to my distinguished
11 colleague that I appreciate the fact that he did not
12 raise the amendment. As I said to him, my very real
13 concern was that it would complicate and delay the
14 enactment of this legislation which, I think there is
15 general consensus, is of critical importance.

16 So if there are no amendments, I would like to remind
17 members that I intend to hold the vote on final passage
18 of this legislation until we vote on final passage of the
19 telephone tax repeal.

20 So with that, I would like to turn to the next order
21 of today's business, the mark-up of H.R. 3916, a bill to
22 repeal the Federal Communications Excise Tax.

23 Now, this tax on talking is outdated, unfair, and
24 complex for both consumers to understand and for the
25 collectors to administer. It cannot be justified on any

1 tax policy grounds.

2 It was first imposed in 1898--1898, let me repeat--as
3 a temporary measure to fund the Spanish-American War.
4 That war lasted about eight months.

5 Senator Nickles. It was a good war.

6 The Chairman. I am not arguing that point.

7 Here we are, 102 years later, and we are still
8 dealing with this tax.

9 So I think the time has come for us to take action,
10 time to end the federal phone tax. Temporary, Chuck
11 says, means only 102 years.

12 For too long, while America is listening to a dial
13 tone, Washington has been hearing the dollar tone.
14 Pretty corny. Let us hang up the phone tax once and for
15 all.

16 So I would ask Senator Baucus, would you like to
17 comment?

18 Senator Baucus. Yes, Mr. Chairman.

19 This obviously is a tax that should be repealed, for
20 several reasons. One, we are not at war. In past times,
21 the tax was opposed when we were at war.

22 Second, it makes no sense to tax one form of
23 telecommunications and not another. Here we are in an
24 era where telephone, cable, and wireless are all merging
25 and diverging, and who knows what is happening.

1 The telephone tax was generally opposed in an era
2 when we did not have wireless and cable near to the
3 degree we have now for, say, telephone communications,
4 let alone data transfer.

5 For example, you can dial up the Internet now for a
6 long-distance telephone call on a cable and pay no tax.
7 If you dial up on your modem and you hook up to the
8 telephone line, you pay a tax. That makes no sense.

9 These kinds of differences and discriminations are
10 going to become more and more burdensome in the future
11 unless we repeal this tax now, which really means that on
12 down the road we are going to have to find some way to be
13 sure that taxes with respect to communications are fair.

14 In addition, I might add, though, that I do not have
15 the total number here, but if you total up the number of
16 tax bills in the Congress today that have been
17 introduced, they are pretty significant, \$300 billion or
18 so over five years. This will, I think, lose around \$55
19 billion over 10 years, something like that.

20 Those of us on our side of the aisle voted against
21 the budget resolution that called for a tax cut which we
22 think is much too large.

23 All I am saying, Mr. Chairman, is as we enact a
24 measure which will reduce taxes by about \$55 billion over
25 10 years, that we have to keep in mind this should be in

1 the context of other tax bills that are introduced in the
2 Congress and other tax reduction bills that we are going
3 to be voting on, remembering that for many of us the top
4 priority really is paying down the national debt, because
5 that is a tax reduction today, it is a tax reduction
6 tomorrow.

7 I just urge us all to keep all these measures in the
8 larger context of budget policy and proper priorities of
9 tax reduction and proper priorities in budgeting.

10 Having said that, I am certainly going to vote for
11 it. I might say, too, this measure somewhat raises the
12 question of the digital divide issues. Some will say
13 that this will reduce the digital divide. I must say
14 that, in rural States, this will have no effect of
15 reducing the digital divide, none whatsoever.

16 The problems we face are ones of deregulation
17 economics, that is, the market will provide the service,
18 broad band width, where the people are in high density
19 areas, in urban areas, in cities, and to wealthier
20 people. DSL is available more to wealthier people than
21 it is to people that are not so wealthy.

22 Therein is another discrimination. I can set up a
23 DSL line, pay the telephone tax on a telephone
24 conversation, and then jam through lots of data over the
25 same telephone line, the DSL, at higher frequencies and

1 pay no tax. Does that make any sense? Clearly, it
2 really does not, so for that reason it is another
3 discriminatory provision of this measure.

4 Just to say, yes, we should appeal it. It makes no
5 sense today. But I hope, while repealing it, we keep all
6 these other relevant issues in perspective because there
7 is going to come a time later on this year when we are
8 going to have to vote on tax reduction bills and other
9 spending measures, measures that will have an effect on
10 the budget, which may have more importance or less
11 importance than this.

12 We just do not know, because it is not here before us
13 today. I guess what I am really saying is, I wish we
14 were to take up these matters more in an overall context
15 rather than one at a time, having no idea what the others
16 are going to be. But having said that, I will vote for
17 repeal. Thank you.

18 Senator Graham. Mr. Chairman?

19 The Chairman. Thank you. Let me proceed with
20 calling it up, then I will call on you. I want to call
21 up H.R. 3916, which is a bill that was passed by the
22 House of Representatives, gradually repeals the Federal
23 Communications Excise Tax, which is Section 4251 of the
24 Internal Revenue Code.

25 The House bill phases out the three percent tax over

1 three years, so that it is completely repealed as of
2 October 1, 2002. So I would now offer an amendment in
3 the nature of a substitute.

4 My amendment, which has been described in the Joint
5 Committee on Taxation document that was released on
6 Monday, is very straightforward. It immediately repeals
7 the Federal Communication Excise Tax in full, effective
8 for all amounts paid with respect to bills first rendered
9 after August 31, 2000.

10 In other words, if my proposal is enacted, no
11 consumer who receives a bill after September 1, 2000 will
12 have to pay this federal tax.

13 I do want to note one modification to my substitute
14 amendment, which has already been referred to by Senator
15 Kerrey. He filed an amendment designed to ensure that
16 consumers actually receive the benefits from the tax
17 repeal, and we all intend for that to happen.

18 So, I think the Senator's amendment makes good sense.
19 Accordingly, I modified my substitute to include a
20 modified version of the Senator's amendment as follows:
21 one year after complete repeal of the Phone Tax Act takes
22 effect, the GAO, in consultation with the FCC, shall
23 provide a report to Congress detailing what amount of the
24 communications excise tax repeal has been passed on to
25 residential and business consumers.

1 With that, we are open to comments. Let me call on
2 Senator Kerrey, then I will call on you, Senator Graham.

3 Senator Kerrey. Mr. Chairman, let me thank you for
4 including the provision that you just referenced. I do
5 think that it is important for consumers.

6 The companies have been saying that if this tax
7 reduction occurs, it will get passed on to consumers. I
8 think it is very important that we have some kind of
9 tracking mechanism. The one that you have proposed
10 through FCC and GAO, I think, is the best way of doing
11 it.

12 If I could, as well, point out that one of the
13 arguments that have been made over and over that I think
14 is a bit misleading, is gee, we imposed this tax during
15 the Spanish-American War, therefore we ought to get rid
16 of it. It draws a lot of laughs from people to say we
17 put it in during the Spanish-American War and we did not
18 take it off.

19 I point out to my colleagues that in 1942, after the
20 United States has entered the second World War, Congress
21 passed the Revenue Act of 1942, then had another act in
22 1943 that passed over the President's veto imposing
23 additional tax on the American people.

24 Going into the war, approximately 4 million Americans
25 paid income tax. Coming out of the war, about 48 million

1 Americans paid income tax, and included in the imposition
2 for the first time was withholding.

3 So I point out to colleagues, if the standard is that
4 if we impose the tax during a war we ought to take it off
5 after the war is over, we have a lot more taxes we need
6 to take off other than just the tax on
7 telecommunications.

8 So I think citizens are misinformed by, very often,
9 the advocates of the companies when they say, gee, this
10 was put on during the Spanish-American War and was not
11 taken off.

12 There were a lot of taxes that were put on during a
13 war that have not been taken off. As I said, the most
14 difficult one of all, the one that the American people
15 felt the most, was the withholding tax that was imposed
16 in the Revenue Act of 1941, reinforced through the
17 Revenue Act of 1942.

18 So I hope that as the companies are out there
19 explaining this, they will not get too energetic with
20 their enthusiasm for having scored an apparently good
21 debating point, because if that becomes the premise upon
22 which we evaluate our revenue around here, we have got a
23 lot more work to do to take off taxes on the American
24 people.

25 The Chairman. Well, it seems to me what you are

1 saying is we should not get into any more wars. But the
2 withholding was considered one of the brilliant ideas.
3 It has certainly served its purpose well, but it has also
4 enabled high taxes to be imposed.

5 With that, I would like to call on my good friend,
6 Senator Graham.

7 Senator Graham. Mr. Chairman, I would like to
8 withhold my comments until we have disposed of your
9 amendment, because I intend to offer another amendment.

10 The Chairman. I am told that you should offer your
11 amendment now, then the vote will be on my substitute.

12 So will you proceed with your amendment, please?

13 Senator Graham. Mr. Chairman, my concern is in line
14 with what has been said by Senator Baucus on this
15 amendment, and by Senator Nickles on the previous
16 legislation. That is, that we are dealing with a
17 specific part of a much larger issue out of context.

18 As an example, the Senate voted in its budget
19 resolution for \$150 billion of tax relief over the next
20 five years. I believe that is a correct statement. We
21 are about to vote to spend \$24 billion out of that \$150
22 billion, or roughly 16 percent of the total tax relief
23 that we have authorized on this one measure without
24 considering what the other alternatives will be.

25 There have been proposed in the Senate thus far in

1 this Congress, including this matter, a total of \$137.6
2 billion of tax relief, of which we have actually adopted
3 \$43.4 billion before taking up this proposal.

4 My concern is that, at this unique time in American
5 history when we have a surplus and we have what looks
6 like will be a continuing surplus, we have the obligation
7 to use that surplus as prudently as possible and to look
8 across a wide range of what are the things that would be
9 of the greatest benefit to the American people.

10 I am concerned that the way in which we are
11 approaching this increment by increment is not affording
12 us that opportunity. There are very few taxes which, on
13 an objective basis, singularly considered, you would not
14 get a fairly substantial vote of the American people to
15 repeal.

16 The question is, what is the relative value? What is
17 the relative social and economic importance of repeal or
18 modification of various taxes? I would have to say that,
19 of all the taxes that could be repealed for economic and
20 social purposes that I think are beneficial to the
21 American people, from maintaining our strong economy to
22 giving greater emphasis to education, I would not place
23 the repeal of the 3 percent telephone tax as a very high
24 national priority.

25 To underscore that, I am offering an amendment which

1 clearly states what I think the priorities are. This
2 amendment, in which I am joined by Senator Robb and
3 Senator Bryan, would delay the effective date of this
4 legislation until after enactment of legislation that
5 extends the solvency of the Social Security trust fund
6 through 2075, and extends the solvency of the Medicare
7 Part A program through 2025. I think those are the two
8 national priorities.

9 Until we know whether, and if so, how much of the
10 non-Social Security surplus is going to be required in
11 order to achieve those goals of solvency to 2075 in
12 Social Security and 2025 in Medicare Part A, I am going
13 to vote against any tax cut, as I have in the past,
14 because those are my two priorities.

15 I would just conclude by saying that this is not by
16 any means a partisan issue. I asked the question, is
17 this telephone tax repeal part of Governor Bush's tax cut
18 proposal, and the answer is, no. Governor Bush does have
19 an item in his web site that states his opposition to
20 taxes on Internet access, but does not reference the
21 repeal of the telephone excise tax.

22 So I think there are others who feel that, whatever
23 value this might have as an absolute matter, that putting
24 this in the context of what we should do, that it is not
25 one of our Nation's priorities.

1 I suggest, the amendment that I have offered does
2 state what I believe would be overwhelmingly supported by
3 the American people as their priority: strengthening
4 Social Security and Medicare first.

5 I move the amendment.

6 The Chairman. Well, let me say, this amendment, of
7 course, has been offered earlier on other matters by the
8 distinguished Senator from Florida. Just let me say, I
9 support both Social Security and Medicare reform.

10 However, I do not believe that tax cuts, in a period
11 of income tax overpayment, as evidenced by our non-Social
12 Security surpluses over the next decade, should be held
13 hostage for them.

14 I would point out that the administration itself did
15 not adhere to this criterion. Their tax cut, small as it
16 is, is not predicated on such reform, nor are there much
17 larger spending increases so predicated.

18 I would point out that many of my distinguished
19 members of the Senate on the other side did not support
20 this when Democrats offered their substitute tax plan
21 last summer.

22 Now, this bill does not impose on the funds needed
23 for Social Security reform. The budget resolution
24 reserves the entire \$1 trillion non-Social Security
25 surplus over the next five years for Social Security

1 reform.

2 Finally, the President has, of course, not submitted
3 a plan for Social Security reform. I believe that the
4 repeal of this outdated, unfair, complex phone tax is
5 important. I believe that it is affordable in the non-
6 Social Security surpluses.

7 I believe that protecting the entire Social Security
8 surplus is a responsible step of ensuring the resources
9 needed for Social Security reform. So, I would urge that
10 the amendment be defeated.

11 Senator Graham. Mr. Chairman, if I could just close
12 on my amendment.

13 The Chairman. Yes.

14 Senator Graham. I think it is very much of a
15 misstatement to infer that we can achieve these goals of
16 Social Security trust fund actuarially sound to 2075 and
17 Medicare Part A to 2025 by relying totally on reserving
18 the surpluses generated by Social Security to achieve
19 that end.

20 Both candidates for president have advocated programs
21 that are going to require significant amounts of non-
22 Social Security surplus to be used in the Social Security
23 program. Governor Bush, in advocating that one-sixth of
24 the Social Security program be sanctioned for individual
25 accounts, has created the necessity for a significant

1 transitional expenditure, that is, to pay the benefits to
2 the current beneficiaries which will not be available to
3 be paid by the one-sixth of the Social Security payroll
4 tax, which will no longer go into the trust fund but will
5 go for individual accounts. It is estimated that that is
6 about a \$900 billion item over the next 10 years.

7 Vice President Gore has advocated taking a portion of
8 the non-Social Security funds and use them to go directly
9 into the Social Security trust fund in relationship to
10 the savings of interest charges to the general treasury
11 that will occur because Social Security is paying down
12 the national debt. We can debate which of those two
13 approaches is preferable, but they both have a
14 significant financial implication.

15 Unless we are going to tell the American current
16 Social Security beneficiaries that we are going to cut
17 the size of their checks, we are going to have to pay for
18 it someplace. Unless the Congress is going to raise
19 other taxes, which does not seem to be likely, the place
20 we are going to do it is through the non-Social Security
21 surplus.

22 My concern is that we are chewing away at that non-
23 Social Security surplus. In fact, the non-Social
24 Security surplus is currently estimated to be \$171
25 billion over the next five years. As I have indicated,

1 we have already spent \$43.4 of that on tax cuts and are
2 about to spend another \$24 billion if we vote for this
3 bill today.

4 My position is a simple one. Not that any one of
5 these proposal is a bad idea, or not advanced for a good
6 reason, but there has to be in government, as there is in
7 our families and private lives, some sense of priorities.

8 The priority is to secure the solvency of the two big
9 programs for which the Federal Government is in a
10 contractual relationship with the American people. This
11 is not discretionary spending.

12 People have been paying their payroll taxes
13 throughout their working lives. They have a contractual
14 expectation that Part A of Medicare is going to be there
15 because they pay that through their payroll taxes, and
16 that Social Security is going to be there because they
17 pay that through their payroll taxes.

18 It is our obligation, as the trustees of these
19 programs and as the representatives of the American
20 people, to ensure that that contract can be completed.
21 This amendment makes that the first priority for the use
22 of the abundance which we have now achieved. I urge the
23 adoption of this amendment.

24 The Chairman. I will call now on Senator Robb, then
25 I would like to proceed to the vote.

1 Senator Robb?

2 Senator Robb. Thank you, Mr. Chairman. I join with
3 my colleague from Florida in offering this amendment as
4 we have, and others. I say that as someone who is a
5 strong supporter of the repeal of this particular excise
6 tax. We have done this on other matters, and the concern
7 remains.

8 I will not repeat the concerns that were just
9 articulated by the Senator from Florida, but I do believe
10 that we have a responsibility to make certain that we are
11 not incrementally spending all of the potential tax
12 credits that we might have on our individual chits.

13 I would mention to the Chairman that I personally try
14 to keep tabs of everything that I have agreed to support.
15 I keep a little running tab. But that is only my own
16 tab; everybody else can keep an individual tab.

17 They may individually spend whatever resources are
18 available for different priorities, and I have a very
19 real concern, shared by the Senator from Florida, that
20 each of our little individual tab sheets will add up to
21 more resources than we have available.

22 One other point I might make in this connection, Mr.
23 Chairman. I am concerned, as a strong proponent of this
24 particular appeal, that we do not allow this to get
25 caught up in any partisan or House/Senate conflicts.

1 I am concerned on this matter as I am on PNTR and
2 others that if we have different approaches, that we may
3 have difficulty with our friends from the other body in
4 trying to reconcile this.

5 I would like to get this passed this year. I would
6 hope that, on behalf of the Chairman and others, that we
7 would do everything we can not to have that kind of
8 difficulty, even though the Chairman's mark is more
9 generous than the House mark because of the three-year
10 phase-in over on the House side.

11 I recognize that there are always prospects of
12 enhanced revenue projections just over the horizon, and
13 that gives a certain amount of freedom to expand in a
14 variety of different areas. They are not all bad, but I
15 would hope that we would use as cautious an approach as
16 we can.

17 I think that the amendment that is offered by the
18 Senator from Florida to this and to other matters where
19 we are getting ahead of our bookkeeping, if you will, is
20 a good one. I hope it will be the committee's judgment
21 to support it.

22 Senator Conrad. Mr. Chairman?

23 The Chairman. Yes, please.

24 Senator Conrad. Very briefly. As a senior member
25 of the Budget Committee, I must say I share the concerns

1 that have been raised by the Senator from Florida and the
2 Senator from Virginia. It is very easy around here to
3 get one'd to death. We have one proposal, another
4 proposal. All of them have merit, all of them are good
5 proposals. The question is, do they all add up?

6 I am very concerned we are headed in a direction
7 where we are going to have something where we have got a
8 lot of individual proposals, all of which are attractive,
9 all of which have merits, but we get an overall plan and
10 proposal that does not add up, that does not assure that
11 the highest priority is put on securing Social Security,
12 protecting Medicare, and paying down the national debt.
13 Those are my priorities. I just hope very much that, as
14 we go forward here, we keep in mind that we have got to
15 have an overall plan that adds up.

16 I thank the Chairman.

17 The Chairman. Thank you.

18 We will now vote on the Graham-Robb amendment. Those
19 in favor, say aye.

20 [A chorus of ayes]

21 The Chairman. All those opposed will say nay.

22 [A chorus of nays]

23 The Chairman. The nays have it. [Laughter].

24 Senator Graham. Could we have a roll call, Mr.
25 Chairman.

1 The Chairman. A roll call vote has been demanded,
2 and the Clerk will call the roll.
3 The Clerk. Mr. Grassley?
4 Senator Grassley. No.
5 The Clerk. Mr. Hatch?
6 Senator Hatch. No.
7 The Clerk. Mr. Murkowski?
8 The Chairman. No, by proxy.
9 The Clerk. Mr. Nickles?
10 The Chairman. No, by proxy.
11 The Clerk. Mr. Gramm, of Texas?
12 The Chairman. No, by proxy.
13 The Clerk. Mr. Lott?
14 The Chairman. No, by proxy.
15 The Clerk. Mr. Jeffords?
16 Senator Jeffords. No.
17 The Clerk. Mr. Mack?
18 Senator Mack. No.
19 The Clerk. Mr. Thompson?
20 The Chairman. No, by proxy.
21 The Clerk. Mr. Coverdell?
22 The Chairman. No, by proxy.
23 The Clerk. Mr. Moynihan?
24 Senator Baucus. Aye, by proxy.
25 The Clerk. Mr. Baucus?

1 Senator Baucus. Aye.

2 The Clerk. Mr. Rockefeller?

3 Senator Baucus. Aye, by proxy.

4 The Clerk. Mr. Breaux?

5 Senator Breaux. Aye.

6 The Clerk. Mr. Conrad?

7 Senator Conrad. Aye.

8 The Clerk. Mr. Graham, of Florida?

9 Senator Graham. Aye.

10 The Clerk. Mr. Bryan?

11 Senator Baucus. Aye, by proxy.

12 The Clerk. Mr. Kerrey?

13 Senator Kerrey. Aye.

14 The Clerk. Mr. Robb?

15 Senator Robb. Aye.

16 The Clerk. Mr. Chairman?

17 The Chairman. No.

18 The Clerk. Mr. Chairman, the tally is 9 ayes, 11

19 nays.

20 The Chairman. The amendment is not agreed to.

21 If there are no further amendments, I ask all in

22 favor of my substitute amendment, as modified, to say

23 aye.

24 [A chorus of ayes]

25 The Chairman. All opposed, say no.

1 [No response]

2 The Chairman. The ayes have it and the amendment is
3 agreed to.

4 I now move to favorably report H.R. 3916 as an
5 amendment to the Senate's. Those in favor, signify by
6 saying aye.

7 [A chorus of ayes]

8 The Chairman. No, nay.

9 [A chorus of nays]

10 The Chairman. The ayes have it. The measure is so
11 reported.

12 We will now turn to S.662. I move to favorably
13 report S. 662, as amended, to the Senate. Those in
14 favor, signify by saying aye.

15 [A chorus of ayes]

16 The Chairman. Opposed, nay.

17 [No response]

18 The Chairman. The ayes have it and the legislation
19 is reported favorably.

20 Thank you very much for your cooperation. The
21 committee is in recess.

22 [Whereupon, at 11:10 a.m., the meeting was
23 concluded.]

24

25

ORIGINAL

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I N D E X

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THE HONORABLE WILLIAM V. ROTH, JR. A United States Senator from the State of Delaware	2
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**UNITED STATES SENATE
COMMITTEE ON FINANCE**

Wednesday, June 14, 2000

10:00 a.m.

215 Dirksen Senate Office Building

**OPEN EXECUTIVE SESSION
AGENDA**

- I. S. 662, the Breast and Cervical Cancer Treatment Act**
- II. H.R. 3916 (Repeal of the Federal Communications Excise Tax)**

Statement of Senator Chuck Grassley
Finance Committee Mark-up of S. 662
Breast and Cervical Cancer Treatment Act of 2000

Mr. Chairman, I commend you for holding this mark-up today on such an important issue. I am one of 70 co-sponsors of S. 662. This legislation is critical to the fight against breast and cervical cancer. I look forward to the passage of this legislation this year.

As a result of my wife Barbara's personal victory over breast cancer more than ten years ago, I am painfully aware of the need to increase public awareness and to develop public policy that serves both the detection and treatment needs of women with breast cancer.

Early detection through a routine mammogram saved Barbara's life. However, detection alone cannot fight this disease. Detection and treatment are both key to saving the lives of all women who develop his disease.

For more than 10 years, we have seen the success of a national screening program. It is tragic that many of the women who learn they have cancer through the national screening program have no means by which to get treatment. Most of these women are well below the age to be covered by Medicare and have no health insurance.

This legislation reaches out to the thousands of women who fall through the cracks of the current system and have no way to pay for treatment after receiving the devastating news that they have breast or cervical cancer.

A woman from northeast Iowa shared her personal experience with me. After learning of her cancer through the early detection program, Barbara Morrow was left to rely on charity care. She also accumulated more than \$70,000 in debt for breast cancer. She sends what she can each month, yet her bills are so high she often wonders if she should quit treatment so she will not saddle herself and her family with so much debt.

Then, her grandson was diagnosed with cancer at age 9. He is now 16, and she and her daughter continue to care for him. Now she feels she must stay alive to help her daughter and grandson.

Mr. Chairman, thank you again for holding today's mark-up on The Breast and Cervical Cancer Treatment Act. This legislation is much-needed for millions of women like Barbara Morrow.



**Statement of Senator Jim Jeffords
Before the Committee on Finance
on Consideration of the Breast and Cervical
Cancer Treatment Act (S. 662)
June 14, 2000**

As a cosponsor of the Breast and Cervical Cancer Treatment Act (S. 662), I would like to thank Chairman Roth for scheduling today's Committee markup of this legislation.

This bill ensures that women diagnosed with breast and cervical cancer under a federal screening program will receive timely treatment for their cancer. The emotions a woman experiences when diagnosed with a life-threatening disease such as cancer are unimaginable. Not having the certainty of

timely medical treatment adds unbearable weight to the diagnosis.

I believe we must ensure that women screened under this program receive treatment, and I believe the Chairman's mark represents a responsible approach for getting accomplishing this goal. The hard realities are that more than two million women live with breast cancer in America today, and the disease claims the life of another woman every 15 minutes. Yet, when diagnosed **and treated** early enough, in stages I and II, women experience a rate of survival close to 95 percent.

This issue is a personal one for me, since my

wife Liz is a cancer survivor. I am thankful that we had health care coverage under the federal health system and did not have to worry about how she would get medical treatment. But this uncertainty is the very issue that some women must face today without this legislation.

In 1990 Congress passed legislation establishing the Centers for Disease Control's National Breast and Cervical Cancer Early Detection Program, which has detected more than 6,000 cases of breast and cervical cancer to date. This program is available to women under 65 who do not have private health insurance. In most states the upper income limit for eligibility for screening is 200 to 250 of

the federal poverty level.

So far, the women diagnosed under this program have been able to obtain medical treatment through resources donated by the community. However, given the increasing pressures on community health systems, such as decreased reimbursement, I am deeply concerned that women may not be able to rely on this informal approach in the future. I think it would be a travesty to provide medical screening through the existing federal program, and then leave these women to their own devices when it comes to getting treatment, particularly at a time in their life when they are facing the enormous pain and uncertainty of a

cancer diagnosis.

The Breast and Cervical Cancer Treatment Act
is an important bill that I am pleased to support.

S. 662 -- THE BREAST AND CERVICAL CANCER TREATMENT ACT

CHAIRMAN'S MARK

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Section 1 - Optional Medicaid Coverage of Certain Breast or Cervical Cancer Patients

- A. Coverage as Optional Categorically Needy Group
- B. Presumptive Eligibility
- C. Enhanced Match
- D. Effective Date

EXPLANATION OF PROVISIONS

SECTION 1 - OPTIONAL MEDICAID COVERAGE OF CERTAIN BREAST OR CERVICAL CANCER PATIENTS

A. Coverage as Optional Categorically Needy Group

Current Law

The requirements of federal law, coupled with decisions by individual states in structuring their Medicaid programs, determine who is eligible for Medicaid in a given state. In general, federal law places limits on the categories or groups of individuals that can be covered and establishes specific eligibility rules for each category. Within these parameters, states are given additional options. Medicaid is also a means-tested entitlement program. To qualify, applicants' income and resources must be within certain limits, most of which are determined by states, again within federal statutory parameters. Moreover, states have flexibility in defining countable income and resources.

States must provide Medicaid coverage to certain groups and have the option of covering others. Examples of major *mandatory* eligibility groups relevant to individuals targeted by S. 662 (i.e., non-institutionalized adult females) include: (1) persons who would be eligible for cash assistance under former rules of the Aid to Families with Dependent Children (AFDC) program (in effect on July 16, 1996, as adjusted) even if they do not qualify for cash grants under the new Temporary Assistance for Needy Families (TANF) program, (2) disabled individuals receiving supplemental security income (SSI) and/or state supplemental payments (except in those states that use more restrictive disability or income standards for determining Medicaid eligibility for such persons), (3) individuals qualifying for transitional medical assistance for up to 12 months after Medicaid eligibility is lost due to increases in hours of employment, support payments or

earned income, and (4) pregnant women who are in families with income up to 133% of the federal poverty level.

Examples of major *optional* coverage groups relevant to S. 662 include: (1) pregnant women in families with income between 133% and 185% of the federal poverty level, and (2) persons qualifying as "medically needy," that is, those who fall into one of Medicaid's categorical coverage groups and meet the (usually higher) income and resource requirements for medically needy coverage. States may further expand eligibility through waivers of federal rules, or use of existing provisions that permit changes in income and resource standards or calculation methods.

With the exception of the medically needy and special categories for pregnant women, all of the above groups have access to the full range of Medicaid benefits offered in a state. States may specify a narrower set of benefits for the medically needy, within federal parameters. Persons who qualify as pregnant women are limited to pregnancy-related benefits during the period of pregnancy (and for 60 days postpartum).

In general, Medicaid beneficiaries are permitted to have other forms of health insurance. When a Medicaid beneficiary has other insurance, Medicaid becomes the secondary payer and would, for example, cover cost-sharing obligations under the primary insurance plan, and would also pay for Medicaid covered services not offered by the primary insurance plan. In some circumstances, Medicaid pays the premiums required for other insurance.

The Breast and Cervical Cancer Mortality Prevention Act of 1990 (P.L. 101-354) authorized the Centers for Disease Control and Prevention (CDC) to begin a national program to increase screening services for all women, with priority given to low-income women. The CDC's National Breast and Cervical Cancer Early Detection Program (Public Health Service Act, Title XV) was reauthorized through FY2003 by P.L. 105-340. States are required to contribute \$1 for every \$3 of federal grant funds. To receive a grant, states must cover specified screening services under Medicaid. The specified screening services for breast cancer are physical breast examination and mammography; for cervical cancer, pelvic examination and pap smear. If a superior screening procedure becomes available and is recommended for use, the superior procedure is to be utilized. The law for this program does not specify financial eligibility standards. Cost-sharing can be imposed on a sliding scale based on income only for women above 100% of FPL. If the woman is covered by other health benefits programs (e.g., private insurance, Medicare, Medicaid) that pay for these screening services, that other program is the first payer. The upper payment limit for covered screening services is the Medicare rate.

Explanation of Provision

S. 662 would establish a new optional categorically needy coverage group under Medicaid. Eligible individuals are those women who are under age 65, have been screened under the Centers for Disease Control's Breast and Cervical Cancer Early Detection Program, and need treatment for breast or cervical cancer. In addition, such individuals must not otherwise be eligible for Medicaid under a mandatory coverage group and must not have other creditable

health insurance coverage (as defined in Section 2701(c) of the Public Health Service Act).

As of March 1999, the upper income eligibility level in most states (45 of 50) for individuals screened under the CDC program was 200 to 250% of the federal poverty level.

Medicaid coverage would be limited to medical assistance provided during the period in which the individual requires breast or cervical cancer treatment.

Reason for change

Since its inception in 1990, the Center for Disease Control's National Breast and Cervical Cancer Early Detection Program has provided screening services to more than a million women across the country. In the process, more than 6,000 cases of breast cancer and 500 cases of cervical cancer have been detected. Currently, women facing these diagnoses have to rely upon informal systems of donated care to meet the costs associated with treating their disease. S. 662 will give the states the option of making women diagnosed through the CDC screening programs eligible for Medicaid, bypassing the need to rely on informal systems of care.

B. Presumptive Eligibility

Current Law

Medicaid law stipulates that state Medicaid plans must provide safeguards to assure that eligibility is determined in a manner consistent with simplicity of administration and in the best interests of beneficiaries. Regulations further specify that state Medicaid agencies must establish and inform applicants of time limits for determining eligibility and must determine eligibility within those limits, except in unusual circumstances. The largest permissible time limits are 90 days for disability-based applications and 45 days for other applications. The time standards must cover the period from the date of application to the date the agency mails notice of its decision to the applicant.

Currently, states have the option of extending what is known as "presumptive eligibility" to two categories of Medicaid beneficiaries-- pregnant women and children under 19 years of age. Presumptive eligibility allows such individuals whose family income appears to be below the state's Medicaid income standards to enroll temporarily in Medicaid, until a final formal determination of eligibility is made. The primary purpose of this option is to make needed services immediately available to these specified groups. Presumptive eligibility has been permitted for pregnant women since 1986, and for children under 19 since 1997.

For pregnant women and children, current law defines the period of presumptive eligibility, entities qualified to determine presumptive eligibility, and administrative requirements for state Medicaid agencies and qualified entities that make such determinations. The period of presumptive eligibility begins with the date on which a qualified entity determines, on the basis

of preliminary information, that the applicant's income does not exceed the applicable income standard. The period ends with the earlier of either: (a) the day on which the final eligibility determination is made, or (b) for those beneficiaries who fail to submit an application, the last day of the month following the month in which the qualified entity established presumptive eligibility. Qualified entities include Medicaid providers; Head Start programs; Women, Infants and Children (WIC) supplemental nutrition programs; and agencies that determine eligibility for subsidized child care. Finally, state Medicaid agencies must provide qualified entities with the necessary forms for application, and information on how to assist individuals in completing applications. In turn, qualifying entities must notify the state Medicaid agency of presumptive eligibility determinations within 5 working days, and inform applicants that formal application is required within a specified time frame using an appropriate form.

Payments for covered items and services provided to beneficiaries during the period of presumptive eligibility will be matched at the applicable federal medical assistance percentage for those items and services.

Explanation of Provision

S. 662 includes the option of extending presumptive eligibility to individuals qualifying for Medicaid under the new optional coverage group. With one exception, the rules governing presumptive eligibility are the same as those already specified in current law for pregnant women and children under 19 years of age. In S. 662, qualifying entities for determining presumptive eligibility would be limited to Medicaid providers only.

Reason for change

Presumptive eligibility would give states the option to ensure that no time lag exists between a diagnosis received through the CDC screening program and Medicaid eligibility for treatment.

C. Enhanced Match

Current Law

Medicaid is a federal-state matching program. The federal share of a state's payments for Medicaid benefits is called the federal medical assistance percentage (FMAP). The FMAP for a given state is determined by a formula that considers the state's per capita income compared to the national average. The law establishes a minimum FMAP of 50% and a maximum of 83%. The federal share of Medicaid payments for benefits is higher in poor states. In FY2000, FMAPs range from 50% to 76.8%.

The law provides some exceptions to the FMAP for Medicaid benefits. For example, family planning services (instruction in contraceptive methods and family planning supplies) are federally matched at a 90% rate. Benefits provided to children who qualify for Medicaid via an

expansion of eligibility under the State Children's Health Insurance Program are matched at an enhanced rate that can range from 65% to 85%. Medicaid services received through an Indian Health Service facility are fully funded by the federal government with no state share.

With specific exceptions, Medicaid administrative expenses are generally matched at the rate of 50%.

Explanation of Provision

The Chairman's mark makes a change to S. 662 to fit within the budget reserve account of \$250 million over 5 years included in the concurrent resolution on the budget for fiscal year 2001. S. 662 as introduced stipulates that states would receive a federal matching rate equal to 75% for activities related to offering, arranging and furnishing medical assistance to individuals eligible under the new optional categorically needy group. However, S. 662 is scored by the Congressional Budget Office as costing \$380 million over 5 years. The Chairman's mark uses the enhanced matching rate structure used for the state children's health insurance program, which averages a 68 to 32 match rate (compared to the Medicaid average match of 57 to 43). This model, with an October 1, 2000 start date, is scored at \$250 million over 5 years.

Reason for change

The enhanced match rate included in the bill is intended to give states a financial incentive to take up the new option to extend Medicaid eligibility to women receiving breast or cervical cancer diagnoses through CDC's screening program.

D. Effective Date

All amendments made by S. 662 apply to medical assistance provided on or after October 1, 2000, without regard to whether final regulations to carry out these amendments have been promulgated by that date.

Breast and Cervical Cancer Treatment Act Mark-Up
Amendment of Senator Bob Graham
June 13, 2000

Chairman's Mark: To provide Medicaid coverage for certain low-income women who have been screened for breast or cervical cancer through specified federal screening programs.

This mark does not include provisions to provide Medicaid/CHIP coverage to certain legal immigrants.

Graham Amendment:

Permits states the option to cover all eligible legal immigrant pregnant women and children, including those who have arrived in the United States after August 22, 1996. (Currently, states must wait five years before extending such coverage to legal immigrants who arrived in the United States since August 22, 1996.)

Permits states to cover legal immigrant children under the Children's Health Insurance Program (CHIP). States can cover CHIP children under either the expanded Medicaid option or a separate CHIP program. However, to choose this CHIP option, states must have first taken up the option to cover poor legal immigrant children under the regular (non-CHIP) Medicaid program. Under current law, legal immigrant children are ineligible for CHIP.

These provisions are a part of the late Senator John Chafee's Immigrant Children's Health Improvement Act of 1999 (S. 1227).

DESCRIPTION OF H.R. 3916
(REPEAL OF THE FEDERAL COMMUNICATIONS EXCISE TAX)

Scheduled for Markup

By the

SENATE COMMITTEE ON FINANCE

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION



June 12, 2000

JCX-57-00

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I. INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the present Federal communications excise tax, an overview of the history of the tax, a description of H.R. 3916, as passed by the House of Representatives, and a proposed Chairman's amendment for consideration by the Committee on Finance. H.R. 3916 has been scheduled for markup by the Committee on Finance on June 14, 2000.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3916 (Repeal of the Federal Communications Excise Tax)*, (JCX-57-00), June 12, 2000.

II. DESCRIPTION OF H.R. 3916

A. Present Law

In general

A three-percent Federal excise tax is imposed on amounts paid for communications services (Code sec. 4251).² Communications services are defined as "local telephone service," "toll telephone service," and "teletypewriter exchange service."³ The person paying for the service (i.e., the consumer) is liable for payment of the tax. Service providers are required to collect the tax; however, if a consumer refuses to pay, the service provider is not liable for the tax and is not subject to penalty for failure to collect if reasonable efforts to collect have been made. Instead, the service provider must report the delinquent consumer's name and address to the Treasury Department, which then must attempt to collect the tax.

Local telephone service is defined as the provision of voice quality telephone access to a local telephone system that provides access to substantially all persons having telephone stations constituting a part of the local system. Toll telephone service is defined as voice quality communication for which (1) there is a toll charge that varies with the distance and elapsed transmission time of each individual call and payment for which occurs in the United States, or (2) a service (such as a "WATS" service) which, for a flat periodic charge, entitles the subscriber to an unlimited number of telephone calls to or from an area outside the subscriber's local system area.

Special rules, enacted in 1997, apply to the sale of "prepaid telephone cards." These cards are subject to tax when they are sold by a telecommunications carrier to a non-carrier (rather than when communication services are provided to the consumer). The base to which the tax is applied is the face amount of the card.

Exemptions

Present law provides for the following exemptions:

- Public coin-operated service from the tax on local telephone service, and to the extent that the charge is less than 25 cents, from the toll telephone service tax.⁴
- Service for the collection of news by the public press, news ticker, or radio broadcasting services (providing a news service as part of or similar to that of the public press), from the toll telephone service tax. (Local telephone service provided to the press is subject to tax.)

² The tax base does not include State or local taxes on the same service provided that the amount of the State or local tax is separately stated on the customer's bill.

³ Teletypewriter exchange service refers to a data system that is understood to be no longer in use.

⁴ If coin-operated toll service is taxable, the tax is computed to the nearest multiple of five cents.

- Private communication service for which a separate charge is made, from the local telephone service tax.⁵
- Service provided to international organizations and the American Red Cross.
- Toll telephone service provided to members of the Armed Services who are stationed in combat zones.
- Certain toll telephone service to common carriers, telephone or telegraph companies, or radio broadcasting stations or networks in the conduct of these businesses.
- Installation charges (including wires, poles, switchboards, or other equipment).
- Telephone service provided to non-profit hospitals.
- Telephone service provided to State and local governments.
- Telephone service provided to nonprofit educational organizations.

B. Overview of History of the Communications Tax⁶

The first tax on telephone service was enacted in 1898 to help finance the Spanish-American War. That tax was repealed in 1902 and was not re-enacted until World War I required additional revenues. The World War I telephone tax was repealed in 1924 and was re-enacted in 1932. All of these initial telephone taxes applied only to toll (long distance) service. In 1941, with the advent of World War II, the tax was extended to general local service.

An excise tax on telephone service has been in effect in every year since 1941, despite enactment of periodic legislation to repeal or phase-out the tax. In the Excise Tax Reduction Act of 1965, Congress scheduled a phase-out, beginning with a reduction in the then 10-percent rate⁷ for both local and toll service to three percent after 1965. Additional reductions of one

⁵ Private communication service is defined as (1) service that entitles the customer to exclusive or priority use of a communication channel or group of channels, or an intercommunication system for the customer's stations; (2) switching capacity, extension lines and stations, or other associated services provided in connection with services described in (1); and (3) channel mileage connecting a telephone outside a local service area with a central office in the local area.

Unlike the other exemptions, the special treatment for private communication service is accomplished by means of an exclusion from the definition of local telephone service rather than as a stated exemption.

⁶ For a more complete discussion of the history of the communications excise tax, see Congressional Research Service (Louis Alan Talley), *The Federal Excise Tax on Telephone Service, A History*, May 9, 2000 (RL30553).

⁷ At their highest, the tax rates were 15 percent on general local service and 25 percent on toll service costing more than 24 cents per message. These rates were in effect from 1944 until 1954.

percentage point per year were scheduled thereafter until there would have been no tax effective on January 1, 1969. However, the scheduled reductions were repealed in 1966 (effective April 1, 1966), and the 10-percent rate was re-instated. A delayed phase-out schedule was enacted in 1968, to begin in 1970. This phase-out schedule also was postponed, with a one-percentage point per year phase-out finally going into effect on January 1, 1973.

In 1973, the tax rate declined from 10 percent to 9 percent as the first step in this phase-out, which was to be completed beginning in 1982. However, the Omnibus Reconciliation Act of 1980 delayed the repeal by one year (until 1983); and the Economic Recovery Tax Act of 1981 further delayed repeal for two additional years. After reaching a rate of one percent, the rate was increased again to three percent in 1983, and after being extended at that rate several times, the three percent rate was made permanent by the Revenue Reconciliation Act of 1990.

C. Explanation of the Bill

H.R. 3916, as passed by the House of Representatives, would phase out the communications excise tax, beginning with amounts paid with respect to bills first rendered 30 days after enactment. The phase-out schedule is as follows:

<u>Period</u>	<u>Tax Rate</u>
30 days after enactment-September 30, 2001	2 percent
October 1, 2001 – September 30, 2002	1 percent
October 1, 2002 and thereafter	No tax

III. PROPOSED CHAIRMAN'S AMENDMENT

An amendment in the nature of a substitute to H.R. 3916 would be adopted. The amendment would provide that the communications excise tax would be repealed in full, effective for amounts paid with respect to bills first rendered after August 31, 2000.

ESTIMATED REVENUE EFFECTS OF THE CHAIRMAN'S AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3916
 FOR MARKUP BY THE COMMITTEE ON FINANCE ON JUNE 14, 2000

Fiscal Years 2000 - 2010

(Millions of Dollars)

Provision	Effective	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2000-05	2000-10
Repeal the Federal Communications Excise Tax	(1)	-125	-4,328	-4,562	-4,799	-5,043	-5,303	-5,578	-5,868	-6,174	-6,502	-6,852	-24,160	-55,134
<hr/>														
Joint Committee on Taxation														

NOTE: Details may not add to totals due to rounding.

(1) Effective for amounts paid for telephone bills first rendered after 8/31/00.

KERREY AMENDMENT #1

One year after complete repeal, require the FCC to provide a report to Congress detailing what, if any, amount of the communications excise tax repeal has been passed on to residential and business consumers.

In addition, this amendment would require the FCC to issue an annual report card on competition, infrastructure investment, access to advance services and investments in telecommunication technologies in schools, libraries and telemedicine. This report shall consider urban, rural, low income, business, residential and small business areas. All beneficiaries of this tax repeal shall comply with FCC rules to compile this report card.

Graham/Robb Amendment to H.R. 3916

Chairman's Mark

The tax cuts proposed in the Chairman's Mark go into effect without regard to whether Congress and the Administration reach agreement on legislation extending the solvency of the Social Security and Medicare programs.

Graham/Robb Amendment

The Graham/Robb amendment would delay the effective date of the telephone tax repeal in the Chairman's mark until after enactment of legislation that (a) extends the solvency of the Social Security trust fund through 2075 and (b) extends the solvency of the Medicare Part A program through 2025.