RSC Republican Study Committee
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Legislative Bulletin……..…March 3, 2004

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 1
Year to Date Prior to Today's Bills: 6

Total Cost of Discretionary Authorizations: $5 million over five years
*Year to Date Prior to Today's Bills: $10.291 billion over five years**

Total Amount of Revenue Reductions: 0
Year to Date Prior to Today's Bills: $304 million over five years

Total Change in Mandatory Spending: -$140 million over five years
*Year to Date Prior to Today's Bills: -$258 million over five years**

Total New State & Local Government Mandates: 1
Year to Date Prior to Today's Bills: 2

Total New Private Sector Mandates: 1+ (the various fees in the PTO bill are considered private-sector mandates)
Year to Date Prior to Today's Bills: 5

*Not including the costs contained in H.R. 3783, the Surface Transportation Extension Act, which passed the House on 2/11/04. A cost estimate remains unavailable.

H.R. 912—Charles "Pete" Conrad Astronomy Awards Act (Rohrabacher)

Order of Business: The bill is scheduled to be considered on Wednesday, March 3rd, under a motion to suspend the rules and pass the bill.

Summary: H.R. 912 would direct NASA to establish an awards program to recognize amateur astronomers' discoveries of near-Earth-orbit asteroids. Each year, assuming eligible discoveries, the program would give two $3000 awards, as follows:

- one to the amateur astronomer or group of amateur astronomers who in the preceding calendar year discovered the intrinsically brightest near-Earth asteroid among the near-Earth asteroids that were discovered during that year by amateur astronomers or groups of amateur astronomers; and

- one to the amateur astronomer or group of amateur astronomers who made the greatest contribution to the cataloguing near-Earth asteroids during the preceding year.

Recommendations for the awards would be made by the Minor Planet Center of the Smithsonian Astrophysical Observatory and finalized by the NASA Administrator. The awards could only go to American citizens or permanent U.S. residents whose respective employers do not provide them any funding, payment, or compensation for outer space observation and to such people who are not professional astronomers in any capacity.

Additional Background: Near-Earth asteroids are rocks, the bits and pieces left over from the initial agglomeration of the inner planets (Mercury, Venus, Earth, and Mars) some 4.6 billion years ago, that have been nudged by the gravity of nearby planets into orbits that bring them relatively close to Earth. Though most remaining asteroids exist today between the orbits of Mars and Jupiter, some asteroids get knocked out of such orbit and resettle in orbits near Earth's orbit. The scientific interest in such asteroids (and near-Earth comets as well) is due largely to their status as the relatively unchanged remnant debris from the solar system formation process and due to the possibility that a larger asteroid could impact Earth. Such asteroids have impacted Earth before (http://neo.jpl.nasa.gov/images/meteorcrater.html), and some scientists theorize that the extinction of the dinosaurs was the result of a large asteroid or comet hitting Earth. To read more about such impacts, visit this webpage: http://neo.jpl.nasa.gov/neo/target.html

For more details on NASA's Near-Earth Object Program, visit this webpage: http://neo.jpl.nasa.gov/

The awards program is named in honor of Charles "Pete" Conrad, astronaut and space scientist. In September of 1962, Conrad was selected as an astronaut by NASA. His first flight was Gemini V, which established the space endurance record and placed the United States in the lead for man-hours in space. As commander of Gemini XI, Conrad helped to set a world altitude record. He then served as commander of Apollo XII, the second lunar landing. On Conrad's final mission, he served as commander of Skylab II, the first United States Space Station. Conrad was born on June 2, 1930, in Philadelphia, Pennsylvania, and

died on July 8, 1999, from injuries sustained in a motorcycle accident in California. For more biographical information on Conrad, visit this webpage: http://www.jsc.nasa.gov/Bios/htmlbios/conrad-c.html

Committee Action: On October 8, 2003, the Subcommittee on Space and Aeronautics marked up H.R. 912, adopted it by voice vote, and forwarded it to the full Science Committee. On February 4, 2004, the full Committee marked up the bill and reported it by voice vote to the full House.

Cost to Taxpayers: CBO confirms that H.R. 912 would not have a significant impact on the federal budget, as it would only authorize $6000 (plus small administrative costs) annually from sums otherwise authorized to be appropriated to NASA.

Does the Bill Create New Federal Programs or Rules?: The bill would create one new program using existing funds.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Science Committee, in House Report 108-418, fails to cite a specific clause of constitutional authority.

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H.R. 3389—To amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit Malcolm Baldrige National Quality Awards to be made to nonprofit organizations (*Miller of North Carolina*)

Order of Business: The bill is scheduled for consideration on Wednesday, March 3rd, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3389 adds "nonprofit organizations" to those eligible to apply for the Malcolm Baldrige National Quality Awards.

Additional Background: The Malcolm Baldrige National Quality Awards, established in 1987, are given to businesses and education and health care organizations that apply and are judged to be outstanding in seven areas: leadership, strategic planning, customer and market focus, information and analysis, human resource focus, process management, and business results. The program is a public-private partnership (with about 95% of funding coming from the private sector) within the National Institutes of Standards and Technology. The program received $5.4 million in federal funds for fiscal year 2004.

Committee Action: H.R. 3389 was introduced on October 29, 2003 and referred to the Committee on Science. The bill was discharged from the Subcommittee on Environment,

Technology, and Standards on February 2. On February 4, the Science Committee considered the bill and reported it favorably to the House by voice vote.

Cost to Taxpayers: The Congressional Budget Office estimates that H.R. 3389 would not have a significant effect on the budget and would not affect direct spending or revenues.

Does the Bill Create New Federal Programs or Rules?: The bill does not create any new programs or rules, but expands eligibility for a current-law award program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Committee on Science, in House Report 108-419, cites Article I, Section 8, but fails to cite a specific clause.

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H.R. 1417—Copyright Royalty and Distribution Act of 2003 (Smith of Texas)

Order of Business: The bill is scheduled for consideration on Wednesday, March 3rd, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1417 replaces the current system of copyright arbitration, using copyright arbitration royalty panels convened by the Librarian of Congress, with Copyright Royalty Judges. These judges would determine rates and distribution of royalties for certain material when copyright users and owners cannot reach agreement in private negotiation.

Specifically, the bill:

- Requires the Librarian of Congress, in consultation with the Register of Copyrights, to appoint three full-time Copyright Royalty Judges (CRJs), with one judge designated as the Chief Copyright Royalty Judge. Judges must have at least seven years of legal experience, with one judge having significant knowledge of copyright law and one judge having significant knowledge of economics. Judges terms are set at six years (with the possibility of reappointment). The Chief Copyright Royalty Judge would be paid at level AL-1 for administrative law judges ($136,000 for 2004), while the other two judges would be paid at level AL-2 ($132,400 for 2004).
- Provides for three full-time staff to assist the judges.
- Gives the CRJs the authority to set and adjust the terms and rates of royalty payments for certain materials, including retransmission of television broadcast signals by satellite carriers and ephemeral recordings. Judges would also have the authority to authorize the distribution of royalty fees for certain licenses. The objectives of the judges are to "maximize the availability of creative works to the public" and "afford the copyright owner a fair return for his or her creative work."

- Provides for increased "partial distribution" of royalties while distribution proceedings are pending.
- Provides that the CRJs and staff will be located in the Library of Congress, but will be separate and independent from the Copyright Office.
- Allows CRJs to consult with the Register of Copyrights on any matters other than questions of fact, requiring such consultations to be in writing or on the record.
- Requires final determinations in a proceeding to have a majority vote. Any dissenting opinion must be included with the determination.
- Requires parties filing to participate in a proceeding to pay a $150 filing fee (currently participants must bear the entire costs of the proceedings). Requires a voluntary three-month negotiating period between parties after petitions are filed.
- Sets up an expedited small claims process for contested claims of $10,000 or less and exempts parties from the $150 filing fee.
- Gives CRJs authority to determine royalty rates through paper-only proceedings.
- Allows the admittance of hearsay in proceedings if deemed appropriate by the judge.
- Requires state, local, or tribal governments and private-sector entities to appear before or provide evidence to CRJs if subpoenaed.
- Bounds CRJs by any precedent-setting court decisions.
- Requires a 60-day discovery period for cases, followed by a 21-day settlement conference, the results of which can be made binding on participants by a judge. If a settlement is not reached, the CRJs must issue a determination within 11 months. Motions for rehearings must be made within 15 days after a determination. Within 30 days of a determination, the decision could also be appealed to the U.S. Court of Appeals for the District of Columbia.
- Authorizes "such sums" to pay for costs associated with the CRJs and their duties that are not paid for by filing fees, which are intended to cover administrative costs.
- Changes the license period for all compulsory licenses to five years and staggers the dates, so that old rates will not have to be reconsidered simultaneously.

The legislation takes effect six months after the date of enactment, but the Librarian of Congress is required to appoint interim CRJs within 90 days of enactment.

Additional Background: Under the current copyright system, the use of copyright material with a compulsory license requires payment of royalties. The Copyright Office at the Library of Congress collects royalties from users of compulsory licensed material and distributes the royalties to the owners of the works using guidelines agreed upon in private negotiations between the users and owners.

When users and owners cannot agree on royalty rates or distribution, the Librarian of Congress is authorized to convene a Copyright Arbitration Royalty Panel (CARP) of three independent arbitrators. CARPs make recommendations to the Librarian that are adopted unless the recommendation is arbitrary or in conflict with copyright law.

Committee Action: The Subcommittee on Courts, the Internet, and Intellectual Property favorably reported the bill by voice vote on May 20, 2003. The full Judiciary Committee favorably reported the bill by voice vote on September 24, 2003.

Cost to Taxpayers: The Congressional Budget Office estimates that H.R. 1417 will cost $1 million in 2004 and $5 million over the 2004-2008 period, subject to appropriations.

Does the Bill Create New Federal Programs or Rules?: The bill does create a new "program" by creating a system of Copyright Royalty Judges, but this new system replaces the current-law Copyright Arbitration Royalty Panel.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the bill contains a new intergovernmental and private-sector mandate (requires state, local, or tribal governments and private-sector entities to appear before or provide evidence to Copyright Royalty Judges if subpoenaed).

Constitutional Authority: The Judiciary Committee, in House Report 108-408, sites Article I, Section 8, Clause 8 ("To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries").

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H.Res. 412 — Honoring the men and women of the Drug Enforcement Administration on the occasion of its 30th Anniversary (Souder)

Order of Business: The resolution is scheduled for consideration on Wednesday, March 3, 2004, under suspension of the rules.

Summary: The resolution honors the DEA on its 30th anniversary and states that it is resolved:

"That the House of Representatives—

- "congratulates the DEA on the occasion of its 30th Anniversary;
- "honors the heroic sacrifice of those of its employees who have given their lives or been wounded or injured in the service of our Nation; and
- "thanks all the men and women of the DEA for their past and continued efforts to defend the American people from the scourge of illegal drugs."

Additional Information: The DEA was first created by executive order on July 6, 1973. According to the resolution's eight findings, between 1986 and 2002, DEA agents seized over 10,000 kilograms of heroin, 900,000 kilograms of cocaine, 4,600,000 kilograms of marijuana, 113,000,000 dosage units of hallucinogens, and 1,500,000,000 dosage units of methamphetamine, and made over 443,000 arrests of drug traffickers. The DEA has 173 domestic offices and 78 foreign offices worldwide, with over 8,800 employees who "continue to hunt down and bring to justice the drug trafficking cartels that seek to poison our citizens with dangerous narcotics."

H.Res. 412 recognizes the employees and DEA task force officers wounded or injured in the line of duty and names many of those killed in the line of duty:

> Emir Benitez, Gerald Sawyer, Leslie S. Grosso, Nickolas Fragos, Mary M. Keehan, Charles H. Mann, Anna Y. Mounger, Anna J. Pope, Martha D. Skeels, Mary P. Sullivan, Larry D. Wallace, Ralph N. Shaw, James T. Lunn, Octavio Gonzalez, Francis J. Miller, Robert C. Lightfoot, Thomas J. Devine, Larry N. Carwell, Marcellus Ward, Enrique S. Camarena, James A. Avant, Charles M. Bassing, Kevin L. Brosch, Susan M. Hoefler, William Ramos, Raymond J. Stastny, Arthur L. Cash, Terry W. McNett, George M. Montoya, Paul S. Seema, Everett E. Hatcher, Rickie C. Finley, Joseph T. Aversa, Wallie Howard, Jr., Eugene T. McCarthy, Alan H. Winn, George D. Althouse, Becky L. Dwojeski, Stephen J. Strehl, Richard E. Fass, Juan C. Vars, Jay W. Seale, Meredith Thompson, Frank S. Wallace, Jr., Frank Fernandez, Jr., Kenneth G. McCullough, Carrol June Fields, Rona L. Chafey, Shelly D. Bland, Carrie A. Lenz, Shaun E. Curl, Royce D. Tramel, Alice Faye Hall-Walton, and Elton Armstead

Committee Action: The resolution was introduced on October 21, 2004, and referred to the House Judiciary Committee. The Committee considered the bill and ordered it to be reported to the full House by on January 28, 2004, by voice vote.

Cost to Taxpayers: The resolution has no cost.

Does the Bill Create New Federal Programs or Rules?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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H.Res. 56—Supporting the goals of the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of the events surrounding the restriction, exclusion, and internment of individuals and families during World War II (*Honda*)

Order of Business: The resolution is scheduled to be considered on Wednesday, March 3rd, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 56 would resolve that the House:

- "recognizes the historical significance of February 19, 1942, the date Executive Order 9066 was signed by President Roosevelt, restricting the freedom of Japanese Americans, German Americans, and Italian Americans, and legal resident aliens through required identification cards, travel restrictions, seizure of personal property, and internment; and

- "supports the goals of the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of these events."

Additional Background: President Franklin Delano Roosevelt, through Executive Order 9066, ordered the exclusion of 120,000 Japanese Americans and legal resident aliens from the west coast of the United States and the internment of American citizens and legal permanent residents of Japanese ancestry in internment camps during World War II. Italian Americans and German Americans were also subject to required identification cards, travel restrictions, seizure of personal property, and internment.

President Gerald Ford formally rescinded Executive Order 9066 on February 19, 1976.

The Commission on Wartime Relocation and Internment of Civilians, created by Congress and President Carter in 1980, concluded that Executive Order 9066 was not justified by military necessity and that the decision to issue the order was shaped by "race prejudice, war hysteria, and a failure of political leadership."

On August 10, 1988, President Ronald Reagan signed into law the Civil Liberties Act, which apologized on behalf of the nation for "fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry."

On November 7, 2000, President Bill Clinton signed into law the Wartime Violation of Italian Americans Civil Liberties Act, which spawned a report containing detailed information on the types of violations that occurred, as well as lists of individuals of Italian ancestry that were arrested, detained, and interned.

The Japanese American community recognizes a National Day of Remembrance on February 19th of each year to educate the public about the lessons learned from the internment.

Committee Action: On January 28, 2004, the Judiciary Committee marked up and by voice vote ordered the resolution reported to the full House.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Create New Federal Programs or Rules?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Judiciary Committee, in House Report 108-410, does not cite a specific clause of constitutional authority.

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H.R. 1561—United States Patent and Trademark Fee Modernization Act of 2003 (Smith of Texas)

Order of Business: The bill is scheduled for consideration on Wednesday, March 3, 2004, under a structured rule, with three amendments made in order. The text of the amendments can temporarily be accessed at http://www.house.gov/rules/108rule1561.htm

Summary: H.R. 1561 would increase the fees that the Patent and Trademark Office (PTO) collects for activities related to the processing and filing of patent and trademark applications and reduce certain filing fees for patents and fees for electronic applications to register trademarks. The bill also would grant the PTO permanent authority to collect and spend those fees. Under current law, the collection and spending of those fees is subject to provisions in appropriation acts.

The bill also creates an 18-month pilot authority that allows PTO to use commercial entities to perform some patent search duties. Private companies would not be involved in the actual granting of patents. (Some opponents have called this pilot program outsourcing. Proponents argue that without this flexibility to use private firms, PTO will have to dramatically increase its workforce likely resulting in longer delays and higher costs for those applying for patents.) A detailed report to Congress and to the Patent Public Advisory Committee is required on this pilot program.

Under H.R. 1561, the PTO director "shall establish fees for all other processing, services, or materials" for other costs not specified in the bill.

Additional Information: CBO estimates that PTO will have collected a total of about $1.2 billion in fees in 2003, which in general cover the PTO's operating expenses. In the 2003 appropriation act, appropriators placed a limit on collected funds PTO could spend. Of the estimated $1.2 billion in fees that were to be collected in 2003, the appropriations act allowed the PTO to spend $1.1 billion. According to a Dear Colleague circulated in the House, since 1992, "America's inventors and small businesses have seen more than $650 million of the fees they paid the PTO diverted to unrelated programs."

The current PTO fee schedule can be found here:
http://www.uspto.gov/web/offices/ac/qs/ope/fee2004jan01.htm

The PTO has prepared a one-page document on how the fees would change under H.R. 1561 (see document included in the legislative bulletin e-mail).

Sensenbrenner Amendment: Makes several changes to the underlying bill including:

(1) Strikes the provision that permits the PTO to collect and spend its fees without going through the appropriations process and instead creates a Patent and Trademark Fee Reserve Fund in the Treasury into which all fees are deposited. If the Appropriations for the PTO are less than the amount of fees collected, then the Director of the PTO may rebate the excess fees to patent and trademark applicants. The Director determines if there are sufficient excess fees to warrant a rebate and determines which applicants shall receive

rebates. In others words, PTO funding will still be subject to Appropriations, but it will no longer be possible to divert excess fees to other government spending.

(2) Requires that any private firm used during the pilot project to conduct patent searches conduct such searches in the U.S., and that if conducted by individuals, the individuals be U.S. citizens, and if conducted by business, the business be organized under the laws of the U.S. and employ U.S. citizens to perform searches.

(3) Reduces the fee to be paid for filing an original patent by 75% for any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Director, if the application is filed electronically. (NOTE: this does not replace, but rather expands the 50% reduction already available to these individuals and entities.)

(4) Caps the fees for a patent search at either $500, $300, or $100 (depending on the type of patent) for the next three years and provides that the Director may not increase the fees by more than 20% annually for the three years after that.

(5) Permits the Director to make inflation adjustments for the fees charged for processing, services, or materials.

Manzullo Amendment: Freezes fees at their current level until 2009 (and then permits inflation adjustments every 5 years) for

(1) any individual whose net worth (excluding retirement funds) does not exceed $2 million; or for
(2) any unincorporated business, partnership, corporation, association, organization or unit of local government with a net worth (excluding retirement accounts) that does not exceed $2 million and which has fewer than 15 employees.

Reduces the search fee established within the bill for the same entities by 50% and caps the patent search fee at $500. Prevents any additional fees or surcharges from being imposed on the same entities. For any individual whose net worth does not exceed $7 million or any unincorporated business, partnership, corporation, association, organization or unit of local government whose net worth does not exceed $7 million and which has fewer than 500 employees fees for filing and basic national fees, patent maintenance fees, and search and other fees are reduced by 50% (in other words this amendment applies the traditional small business fee reduction to these entities).

Jackson-Lee Amendment: Adds a new provision requiring that a "substantial number" of the contracts awarded under the commercial entity pilot program be awarded to: (1) individuals who are U.S. citizens and (2) U.S small businesses, minority-owned businesses, or women-owned businesses. (Note: the Sensenbrenner Amendment already addresses the issue of U.S. based businesses.)

Committee Action: The bill was introduced on April 2, 2003 and referred to the House Committee on Judiciary, which considered the legislation and reported it to the full House on July 25, 2003, by voice vote.

Cost to Taxpayers: CBO estimated that enacting the bill, as reported, would result in a net decrease in mandatory spending of about $58 million in 2004, about $140 million over the 2004-2008 period, and about $220 million over the 2004-2013 period.

According to the Committee Report, the primary purpose of H.R. 1561 is to readjust the fee schedule, thereby generating an additional $201 million in fiscal year 2004 revenue for agency use.

Does the Bill Create New Federal Programs or Rules?: No. The bill increases current user fees, creates new ones, and reduces certain electronic filing fees. It changes control over who allocates PTO fees collected from the current process controlled by the Congressional appropriations process, to the Director of the PTO having control under H.R. 1561.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: While H.R. 1561 contains no intergovernmental mandates, it **would impose private-sector mandates** as defined in law on patent and trademark applicants. Patent and trademark fees are private-sector mandates because the federal government controls the trademark and patent systems. The bill would increase fees and establish new fees for certain patent and trademark services. At the same time, the bill would reduce certain filing fees for patents and fees for electronic applications to register trademarks. Based on information from the PTO, CBO estimates that the aggregate direct cost of those mandates would range from about $190 million in 2004 to about $225 million in 2008 and **would exceed the annual threshold established by UMRA** ($117 million in 2003, adjusted annually for inflation) in each of the next five years.

Constitutional Authority: Though the Judiciary Committee (in House Rpt.108-241) only cites Article I, Section 8, of the Constitution (Powers of Congress) and fails to site a specific clause of constitutional authority, Article I, Section 8, Clause 8 grants Congress the authority "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Outside Organizations:

The U.S. Chamber of Commerce sent a letter dated February 11, 2004, to Members of Congress, based on the reported version:

> On behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of every size, sector, and region, supports H.R. 1561, the United States Patent and Trademark Fee Modernization Act of 2003. …
>
> "Of specific interest to the business community is the issue of funding for PTO. During the past 12 years, more than $650 million has been diverted from PTO to

other government programs, creating a significant strain on the efficiency and capabilities of the agency. The private sector has long signaled its willingness to bear the financial burden of reforming PTO, but only if these additional revenues are made available for PTO reforms. An increase in fees, without the full implementation of reforms, would severely undermine the innovation and efficiency of American industry. The Chamber urges you to enact this important legislation and oppose any amendments that would weaken this reform measure. We may include any votes related to this bill in our annual *How They Voted* scorecard."

The Patent Office Professional Association [The PTO employees' union] in communication dated February 23, 2004 stated:

> "Many small businesses will be irreparably harmed if Congress adopts the pending U.S. Patent and Trademark Office Fee Modernization Act (H.R. 1561). This bill establishes a new search fee and gives the USPTO the unlimited ability to raise those search fees without congressional approval, according to the Patent Office Professional Association (POPA), an organization representing USPTO patent examiners. …
>
> "Under H.R. 1561, small business patent filing fees would double, from about $375 to $750. "And that's the administration's low-ball cost," said POPA President Ronald Stern. "Why establish a separate search fee and make it easy to raise? Because the administration wants to outsource the search, which will inefficiently duplicate efforts and jack up costs way beyond the means of many small businesses."

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