

112TH CONGRESS
1ST SESSION

H. R. 1002

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2011

Ms. ZOE LOFGREN of California (for herself, Mr. FRANKS of Arizona, Mr. SMITH of Texas, Mr. COHEN, Mr. COBLE, Ms. JACKSON LEE of Texas, Mr. SENSENBRENNER, Mr. HALL, Mr. ROGERS of Kentucky, Mr. ACKERMAN, Mr. BARTON of Texas, Mr. GALLEGLY, Mr. UPTON, Mr. PALLONE, Mr. STEARNS, Ms. ESHOO, Mr. GENE GREEN of Texas, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Mr. HOLDEN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KING of New York, Mrs. MALONEY, Ms. ROYBAL-ALLARD, Mr. ROYCE, Mr. THOMPSON of Mississippi, Mr. LUCAS, Mr. DOGGETT, Mr. DOYLE, Mr. FRELINGHUYSEN, Mr. JONES, Mr. LATHAM, Mr. LOBIONDO, Mrs. MYRICK, Mr. WHITFIELD, Mr. BRADY of Texas, Mrs. MCCARTHY of New York, Mr. MCGOVERN, Mr. PASCRELL, Mr. PITTS, Mr. ROTHMAN of New Jersey, Ms. LORETTA SANCHEZ of California, Mr. SESSIONS, Mr. SHIMKUS, Mr. MEEKS, Mrs. BONO MACK, Mr. BRADY of Pennsylvania, Mr. INSLEE, Mr. CHABOT, Mrs. BIGGERT, Mr. GONZALEZ, Mr. HOLT, Mr. SIMPSON, Mr. WEINER, Mr. CRENSHAW, Mr. CULBERSON, Mr. GRAVES of Missouri, Mr. ISRAEL, Mr. MATHESON, Mr. PLATTS, Mr. REHBERG, Mr. ROGERS of Michigan, Mr. ROSS of Arkansas, Mr. TIBERI, Mr. FORBES, Mr. WILSON of South Carolina, Mr. SULLIVAN, Mr. ALEXANDER, Mr. BISHOP of New York, Mrs. BLACKBURN, Mr. BURGESS, Mr. CARDOZA, Mr. CARTER, Mr. COLE, Mr. GARRETT, Mr. GERLACH, Mr. GRIJALVA, Mr. KING of Iowa, Mr. KLINE, Mr. MURPHY of Pennsylvania, Mr. RYAN of Ohio, Mr. DAVID SCOTT of Georgia, Mr. BARROW, Mr. BOREN, Mr. BOUSTANY, Mr. CONAWAY, Mr. COSTA, Mr. DENT, Ms. FOXX, Mr. MCCAUL, Mrs. MCMORRIS RODGERS, Mr. MACK, Mr. MARCHANT, Mr. POE of Texas, Mr. REICHERT, Ms. SCHWARTZ, Mr. WESTMORELAND, Ms. MATSUI, Mr. SIRES, Mrs. BACHMANN, Mr. HELLER, Mr. JORDAN, Mr. MCNERNEY, Mr. SHULER, Mr. SMITH of Nebraska, Ms. RICHARDSON, Mr. LATTA, Mr. WITTMAN, Ms. SPEIER, Mr. SCALISE, Mr. CHAFFETZ, Mr. HARPER, Mr. HUNTER, Mr. LANCE, Mr. OLSON, Mr. PAULSEN, Mr. POSEY, Mr. ROONEY, Mr. THOMPSON of Pennsylvania, Mr. OWENS, Mr. CRITZ, Mr. REED, Mr. FITZPATRICK, Mrs. ADAMS, Mr. BARLETTA, Mrs. BLACK, Mr. GOSAR, Mr. GRIMM, Mr. HANNA, Mr. HUELSKAMP, Mr. HULTGREN, Mr. LONG,

Mr. MCKINLEY, Mrs. NOEM, Mr. QUAYLE, Mr. RUNYAN, Mr. SMITH of New Jersey, Mr. BROUN of Georgia, Mr. CALVERT, Mr. DANIEL E. LUNGREN of California, Ms. GRANGER, Mr. BURTON of Indiana, Mr. GRIFFIN of Arkansas, Mr. TONKO, and Mr. HINOJOSA) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wireless Tax Fairness
5 Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) It is appropriate to exercise congressional
9 enforcement authority under section 5 of the 14th
10 Amendment to the Constitution of the United States
11 and Congress’ plenary power under article I, section
12 8, clause 3 of the Constitution of the United States
13 (commonly known as the “commerce clause”) in
14 order to ensure that States and political subdivisions
15 thereof do not discriminate against providers and
16 consumers of mobile services by imposing new selec-

1 tive and excessive taxes and other burdens on such
2 providers and consumers.

3 (2) In light of the history and pattern of dis-
4 crimatory taxation faced by providers and con-
5 sumers of mobile services, the prohibitions against
6 and remedies to correct discriminatory State and
7 local taxation in section 306 of the Railroad Revital-
8 ization and Regulatory Reform Act of 1976 (49
9 U.S.C. 11501) provide an appropriate analogy for
10 congressional action, and similar Federal legislative
11 measures are warranted that will prohibit imposing
12 new discriminatory taxes on providers and con-
13 sumers of mobile services and that will assure an ef-
14 fective, uniform remedy.

15 **SEC. 3. MORATORIUM.**

16 (a) IN GENERAL.—No State or local jurisdiction shall
17 impose a new discriminatory tax on or with respect to mo-
18 bile services, mobile service providers, or mobile service
19 property, during the 5-year period beginning on the date
20 of enactment of this Act.

21 (b) DEFINITIONS.—In this Act:

22 (1) MOBILE SERVICE.—The term “mobile serv-
23 ice” means commercial mobile radio service, as such
24 term is defined in section 20.3 of title 47, Code of
25 Federal Regulations, as in effect on the date of en-

1 actment of this Act, or any other service that is pri-
2 marily intended for receipt on, transmission from, or
3 use with a mobile telephone or other mobile device,
4 including but not limited to the receipt of a digital
5 good.

6 (2) MOBILE SERVICE PROPERTY.—The term
7 “mobile service property” means all property used
8 by a mobile service provider in connection with its
9 business of providing mobile services, whether real,
10 personal, tangible, or intangible (including goodwill,
11 licenses, customer lists, and other similar intangible
12 property associated with such business).

13 (3) MOBILE SERVICE PROVIDER.—The term
14 “mobile service provider” means any entity that sells
15 or provides mobile services, but only to the extent
16 that such entity sells or provides mobile services.

17 (4) NEW DISCRIMINATORY TAX.—The term
18 “new discriminatory tax” means a tax imposed by a
19 State or local jurisdiction that is imposed on or with
20 respect to, or is measured by, the charges, receipts,
21 or revenues from or value of—

22 (A) a mobile service and is not generally
23 imposed, or is generally imposed at a lower
24 rate, on or with respect to, or measured by, the
25 charges, receipts, or revenues from other serv-

1 ices or transactions involving tangible personal
2 property;

3 (B) a mobile service provider and is not
4 generally imposed, or is generally imposed at a
5 lower rate, on other persons that are engaged
6 in businesses other than the provision of mobile
7 services; or

8 (C) a mobile service property and is not
9 generally imposed, or is generally imposed at a
10 lower rate, on or with respect to, or measured
11 by the value of, other property that is devoted
12 to a commercial or industrial use and subject to
13 a property tax levy, except public utility prop-
14 erty owned by a public utility subject to rate of
15 return regulation by a State or Federal regu-
16 latory authority;

17 unless such tax was imposed and actually enforced
18 on mobile services, mobile service providers, or mo-
19 bile service property prior to the date of enactment
20 of this Act.

21 (5) STATE OR LOCAL JURISDICTION.—The term
22 “State or local jurisdiction” means any of the sev-
23 eral States, the District of Columbia, any territory
24 or possession of the United States, a political sub-
25 division of any State, territory, or possession, or any

1 governmental entity or person acting on behalf of
2 such State, territory, possession, or subdivision that
3 has the authority to assess, impose, levy, or collect
4 taxes or fees.

5 (6) TAX.—

6 (A) IN GENERAL.—The term “tax” means
7 a charge imposed by a governmental entity for
8 the purpose of generating revenues for govern-
9 mental purposes, and excludes a fee imposed on
10 a particular entity or class of entities for a spe-
11 cific privilege, service, or benefit conferred ex-
12 clusively on such entity or class of entities.

13 (B) EXCLUSION.—The term “tax” does
14 not include any fee or charge—

15 (i) used to preserve and advance Fed-
16 eral universal service or similar State pro-
17 grams authorized by section 254 of the
18 Communications Act of 1934 (47 U.S.C.
19 254); or

20 (ii) specifically dedicated by a State or
21 local jurisdiction for the support of E-911
22 communications systems.

23 (c) RULES OF CONSTRUCTION.—

24 (1) DETERMINATION.—For purposes of sub-
25 section (b)(4), all taxes, tax rates, exemptions, de-

1 ductions, credits, incentives, exclusions, and other
2 similar factors shall be taken into account in deter-
3 mining whether a tax is a new discriminatory tax.

4 (2) APPLICATION OF PRINCIPLES.—Except as
5 otherwise provided in this Act, in determining
6 whether a tax on mobile service property is a new
7 discriminatory tax for purposes of subsection
8 (b)(4)(A)(iii), principles similar to those set forth in
9 section 306 of the Railroad Revitalization and Regu-
10 latory Reform Act of 1976 (49 U.S.C. 11501) shall
11 apply.

12 (3) EXCLUSIONS.—Notwithstanding any other
13 provision of this Act—

14 (A) the term “generally imposed” as used
15 in subsection (b)(4) shall not apply to any tax
16 imposed only on—

17 (i) specific services;

18 (ii) specific industries or business seg-
19 ments; or

20 (iii) specific types of property; and

21 (B) the term “new discriminatory tax”
22 shall not include a new tax or the modification
23 of an existing tax that—

24 (i) replaces one or more taxes that
25 had been imposed on mobile services, mo-

1 bile service providers, or mobile service
2 property; and

3 (ii) is designed so that, based on in-
4 formation available at the time of the en-
5 actment of such new tax or such modifica-
6 tion, the amount of tax revenues generated
7 thereby with respect to such mobile serv-
8 ices, mobile service providers, or mobile
9 service property is reasonably expected to
10 not exceed the amount of tax revenues that
11 would have been generated by the respec-
12 tive replaced tax or taxes with respect to
13 such mobile services, mobile service pro-
14 viders, or mobile service property.

15 **SEC. 4. ENFORCEMENT.**

16 Notwithstanding any provision of section 1341 of title
17 28, United States Code, or the constitution or laws of any
18 State, the district courts of the United States shall have
19 jurisdiction, without regard to amount in controversy or
20 citizenship of the parties, to grant such mandatory or pro-
21 hibitive injunctive relief, interim equitable relief, and de-
22 claratory judgments as may be necessary to prevent, re-
23 strain, or terminate any acts in violation of this Act.

1 (1) JURISDICTION.—Such jurisdiction shall not
2 be exclusive of the jurisdiction which any Federal or
3 State court may have in the absence of this section.

4 (2) BURDEN OF PROOF.—The burden of proof
5 in any proceeding brought under this Act shall be
6 upon the party seeking relief and shall be by a pre-
7 ponderance of the evidence on all issues of fact.

8 (3) RELIEF.—In granting relief against a tax
9 which is discriminatory or excessive under this Act
10 with respect to tax rate or amount only, the court
11 shall prevent, restrain, or terminate the imposition,
12 levy, or collection of not more than the discrimina-
13 tory or excessive portion of the tax as determined by
14 the court.

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