

111TH CONGRESS
1ST SESSION

H. R. 1521

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 16, 2009

Ms. ZOE LOFGREN of California (for herself, Mr. FRANKS of Arizona, Mr. COHEN, Mr. SMITH of Texas, Mrs. BONO MACK, Mr. SENSENBRENNER, Ms. ESHOO, Mr. COBLE, Ms. JACKSON-LEE of Texas, Mr. WEXLER, Mr. JORDAN of Ohio, Mr. GUTIERREZ, Mr. ISSA, Mr. GONZALEZ, Mr. CARDOZA, Mr. FORBES, Mr. COSTA, Mr. WITTMAN, Mr. BACA, Mr. RADANOVICH, Mr. GENE GREEN of Texas, and Mr. BERRY) 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 “Cell Tax Fairness Act
5 of 2009”.

1 **SEC. 2. MORATORIUM.**

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

7 (b) DEFINITIONS.—In this Act:

8 (1) MOBILE SERVICE.—The term “mobile serv-
9 ice” means commercial mobile radio service, as such
10 term is defined in section 20.3 of title 47, Code of
11 Federal Regulations, as in effect on the date of en-
12 actment of this Act, or any other service that is pri-
13 marily intended for receipt on, transmission from, or
14 use with a mobile telephone, including but not lim-
15 ited to the receipt of a digital good.

16 (2) MOBILE SERVICE PROPERTY.—The term
17 “mobile service property” means all property used
18 by a mobile service provider in connection with its
19 business of providing mobile services, whether real,
20 personal, tangible, or intangible and includes, but is
21 not limited to goodwill, licenses, customer lists, and
22 other similar intangible property associated with
23 such business.

24 (3) MOBILE SERVICE PROVIDER.—The term
25 “mobile service provider” means any entity that sells

1 or provides mobile services, but only to the extent
2 that such entity sells or provides mobile services.

3 (4) NEW DISCRIMINATORY TAX.—The term
4 “new discriminatory tax” means any tax imposed by
5 a State or local jurisdiction that—

6 (A) is imposed on or with respect to, or is
7 measured by the charges, receipts, or revenues
8 from or value of—

9 (i) any mobile service and is not gen-
10 erally imposed, or is generally imposed at
11 a lower rate, on or with respect to, or
12 measured by the charges, receipts or reve-
13 nues from, other services or transactions
14 involving tangible personal property;

15 (ii) any mobile service provider and is
16 not generally imposed, or is generally im-
17 posed at a lower rate, on other persons
18 that are engaged in businesses other than
19 the provision of mobile services; or

20 (iii) any mobile service property and is
21 not generally imposed, or is generally im-
22 posed at a lower rate, on or with respect
23 to, or measured by the value of, other
24 property that is devoted to a commercial or
25 industrial use and subject to a property

1 tax levy, except public utility property
2 owned by a public utility subject to rate of
3 return regulation by a State or Federal
4 regulatory authority; and

5 (B) was not generally imposed and actually
6 enforced on mobile services, mobile service pro-
7 viders, or mobile service property prior to the
8 date of enactment of this Act.

9 (5) STATE OR LOCAL JURISDICTION.—The term
10 “State or local jurisdiction” means any of the sev-
11 eral States, the District of Columbia, any territory
12 or possession of the United States, a political sub-
13 division of any State, territory, or possession, or any
14 governmental entity or person acting on behalf of
15 such State, territory, possession, or subdivision and
16 with the authority to assess, impose, levy, or collect
17 taxes or fees.

18 (6) TAX.—

19 (A) IN GENERAL.—The term “tax” means
20 any charge imposed by any governmental entity
21 for the purpose of generating revenues for gov-
22 ernmental purposes, and is not a fee imposed
23 on an individual entity or class of entities for
24 a specific privilege, service, or benefit conferred
25 exclusively on such entity or class of entities.

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

3 (i) used to preserve and advance Fed-
4 eral universal service or similar State pro-
5 grams authorized by section 254 of the
6 Communications Act of 1934 (47 U.S.C.
7 254); or

8 (ii) specifically dedicated by a State or
9 local jurisdiction for the support of E-911
10 communications systems.

11 (c) RULES OF CONSTRUCTION.—

12 (1) DETERMINATION.—For purposes of sub-
13 section (b)(4), all taxes, tax rates, exemptions, de-
14 ductions, credits, incentives, exclusions, and other
15 similar factors shall be taken into account in deter-
16 mining whether a tax is a new discriminatory tax.

17 (2) APPLICATION OF PRINCIPLES.—Except as
18 otherwise provided in this Act, in determining
19 whether a tax on mobile service property is a new
20 discriminatory tax for purposes of subsection
21 (b)(4)(A)(iii), principles similar to those set forth in
22 section 306 of the Railroad Revitalization and Regu-
23 latory Reform Act of 1976 (49 U.S.C. 11501) shall
24 apply.

1 (3) EXCLUSIONS.—Notwithstanding any other
2 provision of this Act—

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

6 (i) specific services;

7 (ii) specific industries or business seg-
8 ments; or

9 (iii) specific types of property; and

10 (B) the term “new discriminatory tax”
11 shall not include a new tax or the modification
12 of an existing tax that—

13 (i) replaces one or more taxes that
14 had been imposed on mobile services, mo-
15 bile service providers, or mobile service
16 property; and

17 (ii) is designed so that, based on in-
18 formation available at the time of the en-
19 actment of such new tax or such modifica-
20 tion, the amount of tax revenues generated
21 thereby with respect to such mobile serv-
22 ices, mobile service providers, or mobile
23 service property is reasonably expected to
24 not exceed the amount of tax revenues that
25 would have been generated by the respec-

1 tive replaced tax or taxes with respect to
2 such mobile services, mobile service pro-
3 viders, or mobile service property.

4 **SEC. 3. ENFORCEMENT.**

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

9 (b) RELIEF.—In granting relief against a tax which
10 is discriminatory or excessive under this Act with respect
11 to tax rate or amount only, the court shall prevent, re-
12 strain, or terminate the imposition, levy, or collection of
13 no more than the discriminatory or excessive portion of
14 the tax as determined by the court.

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