

“(c) APPLICATION OF DEFINITION.—

“(1) IN GENERAL.—Effective as of November 1, 2003—

“(A) for purposes of subsection (a), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

“(B) for purposes of subsection (b), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108-435).

“(2) EXCEPTIONS.—Paragraph (1) shall not apply until June 30, 2008, to a tax on Internet access that is—

“(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

“(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

“(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to June 30, 2008, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).”

SEC. 4. DEFINITIONS.

Section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in paragraph (1) by striking “services”;

(2) by amending paragraph (5) to read as follows:

“(5) INTERNET ACCESS.—The term ‘Internet access’—

“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

“(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

“(i) to provide such service; or

“(ii) to otherwise enable users to access content, information or other services offered over the Internet;

“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

“(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

“(E) includes a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.”

(3) by amending paragraph (9) to read as follows:

“(9) TELECOMMUNICATIONS.—The term ‘telecommunications’ means ‘telecommunications’ as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and ‘telecommunications service’ as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).”, and

(4) in paragraph (10) by adding at the end the following:

“(C) SPECIFIC EXCEPTION.—

“(i) SPECIFIED TAXES.—Effective November 1, 2007, the term ‘tax on Internet access’ also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

“(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

“(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

“(III) is imposed on a broad range of business activity; and

“(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

“(ii) MODIFICATIONS.—Nothing in this subparagraph shall be construed as a limitation on a State’s ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

“(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.”

SEC. 5. CONFORMING AMENDMENTS.

(a) ACCOUNTING RULE.—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking “telecommunications services” each place it appears and inserting “telecommunications”, and

(2) in subsection (b)(2)—

(A) in the heading by striking “SERVICES”;

(B) by striking “such services” and inserting “such telecommunications”, and

(C) by inserting before the period at the end the following: “or to otherwise enable users to access content, information or other services offered over the Internet”.

(b) VOICE SERVICES.—The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

SEC. 6. SUNSET OF GRANDFATHER PROVISIONS.

Section 1104(a) of the Internet Tax Freedom Act is amended by adding at the end thereof the following:

“(3) EXCEPTION.—Paragraphs (1) and (2) shall not apply to any State that has, more than 24 months prior to the date of enactment of this paragraph, enacted legislation to repeal the State’s taxes on Internet access or issued a rule or other proclamation made by the appropriate agency of the State that such State agency has decided to no longer apply such tax to Internet access.”

SEC. 7. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted,

except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

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

The bill was read the third time.

The bill (H.R. 3678), as amended, was passed.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I also want to express my appreciation for the diligent work of my friend from Delaware. Senator CARPER has worked on this issue for years. We have had a number of others who have been involved in this issue. Of course, the chairman of the committee, Senator INOUE, has been very helpful during the day. We have had assistance from Senator ROCKEFELLER and Senator WYDEN, but I and the Senate owe a debt of gratitude for the work done by my friend from Delaware, working with our friend from New Hampshire.

PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2007—Continued

AMENDMENT NO. 3452 WITHDRAWN

Mr. REID. Mr. President, I ask unanimous consent that the Sununu amendment No. 3452 be withdrawn and the cloture motion be withdrawn.

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

A PRODUCTIVE WEEK

Mr. REID. Mr. President, there will be no votes tomorrow. We have announced long since that we would have no votes Monday. We have a lot we are going to do Tuesday, the first of which is to complete the work on the important Amtrak legislation. There has been great progress made on that today.

I think we have had an interesting week. We may not be happy with the results—I say that because some are happy, some are not—but it has been a productive week. It has been a week in which, in spite of the divisiveness of the issues before us, they have been handled in a very collegial way. There have been strong feelings expressed on both sides, but it has been done, I think, in a way that brings credit to the Senate.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, just briefly, a couple of other observations, I would say that I know it is the position of the Senator from New Hampshire—of course, he can speak for himself, but it is the position of the Senator from New Hampshire, myself, and many others that we make this moratorium permanent. I think that still ought to be our goal in the future.

With regard to the week that is now coming to a conclusion, I would have to state it has been quite a good week, with a number of achievements that

are important for the Senate and, in particular, the confirmation of Judge Southwick, which was not only important to the State of Mississippi but important to this institution, the Senate, in terms of how we are going to treat nominees in the future.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, let me add a couple comments with respect to the legislation we just passed by unanimous consent.

The adoption of this legislation comes after a very tough negotiation that goes back not just a couple days or a couple weeks or a couple months but literally years, almost a decade. In tough negotiations, not everyone is happy. But I think the American people basically want us to figure out how to get work done. The American people look for us to set aside partisan differences, and they want to see some results.

My hope is, for the most part, they come to understand what we have done here tonight and realize the House still has to speak on this matter. The American people will, if not applaud the actual results, some of which are not easily understood, at least say: Well, on this matter, at least, the U.S. Senate figured out how to work together. A couple guys from small States got together, along with the help of a bunch of others, including Senators ALEXANDER and ENZI and VOINOVICH. I am grateful to them for all their good work on this too.

I think among the most important results that flow from the adoption of this legislation are, No. 1, we preserve the intent in the 1998 initial Internet moratorium legislation. What we wanted to do in 1998 was not to allow additional States and additional local governments to place a tax on access to the Internet, if you will, a tax on our AOL bills. That was part of the 1998 legislation that said for a handful of States—nine or so—that were already doing that, they were allowed to continue to do so but nobody else could pile on.

This legislation today makes sure we are not going to be allowing additional access taxes or additional taxes by State and local governments for access to the Internet. That protects the consumers, but it also does it in a way that I think is fair to the States. Because 3 years before the 1998 legislation was passed—3 years prior—in 1995, this same Congress passed legislation saying that the unfunded mandates were a bad idea, and that the Federal Government was not going to tell State and local governments how to spend their money without providing that money, the Federal Government was not going to take away the ability of State and local governments to raise money without providing for funds to make up for the shortfall.

What we have done is we have protected the States that are already de-

veloping revenues from access taxes on the Internet. We said we are not going to allow, as we go forward with new innovations—for, if you will, telecom companies, telephone companies—we are not going to allow them to bundle services and begin to offer those bundled services—traditionally taxed by State and local governments, in some cases—and ship them over on the Internet to avoid all State and local taxes. So the States have spoken loudly: Do not take away our revenue base. We have been responsive to that.

As a Governor for 8 years in my State, and as, at one time, the chairman of the National Governors Association, I never liked it when the Federal Government came in and said: Spend your money this way or that way, without giving us the money. I never liked it when the Federal Government came in and said: We are going to take your ability to raise money away without providing for the shortfall. I think we are consistent here and true to the concerns that have been raised by State and local governments on that score.

The third thing we have done—I sort of alluded to it—the technology in this area continues to change dramatically. I like to kid, but I say 5 years ago I could not even spell VOIP, Voice Over Internet Protocol, which basically means sending telephone services over the Internet.

Actually, 5 years ago, the idea of being able to do that was, I think, a gleam in somebody's eye. Today it is common practice. Not only that, we have the ability to send something called IPTV, Internet Protocol TV, to send television signals over the Internet. In my State, we do not necessarily raise our revenues this way. But some places do. They raise some of the revenues for educational purposes, for paramedics, for fire services, for police services. They raise their revenues by taxing telephone services and cable services. It is inappropriate for us to come and say: You cannot do that, even as those services are somehow transferred and transmitted over the Internet.

So what we have done, by not making the moratorium permanent, is we have made sure we are going to come back and revisit this issue somewhere down the line. We say 7 years. The House says 4 years. We will have the opportunity and the requirement to come back and revisit this issue. If the technology changes—and it will. I can tell you one thing for sure, the technology that is in place today is not going to be same in 4, 5, 6, 7 years, just as it was not 4 or 5 or 6 or 7 years ago. It has continued to change. By virtue of this legislation, we will be better prepared for that change.

Again, I close with this: When I talk to people in our State, and in other States as well, when I hear about the low regard people have for the Congress and, frankly, for the administration—but we will stick with us right now—

one of the things that people are most unhappy about is our seeming inability to work together, to hang in there, until we have been able to carve out, find a middle ground that is responsive to the concerns of most people. We have done that. It has not been easy, but we have been persistent, and I think ultimately—at least tonight, today—successful.

I am pleased to have been a part of this effort and to have had a chance to work with our Senators ALEXANDER, STEVENS, INOUE, MCCAIN, and Senator SUNUNU.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I am pleased to be able to stand up tonight, after Senator CARPER, which is very appropriate, to talk about this success. The Senator from Delaware has described, I think very clearly, the strength of this legislation, the value of the legislation, and the importance of the legislation.

We really do have a responsibility to act in our role as a Congress to prevent Internet access taxes. Because this is a national—and, in fact, global—communications network. It is a national and global network for commerce and business as well. That is our responsibility under the Constitution to make sure there are not unnecessary, undue burdens on interstate commerce and trade.

So what we have done tonight is to take legislation that was passed in the House and really improve it dramatically. Senator MCCONNELL indicated we have nearly doubled the length. We added clarification language as to what could and could not be taxed, and how the grandfathered States that were taxing prior to 1998 would be treated.

We also added explicit language to make sure that Internet services, such as e-mail and instant messaging, could not be taxed. This is an important issue for me and many others, particularly Senator WYDEN from Oregon, who spoke about it today on the floor of the Senate.

It is important that consumers know that Internet access is not going to be taxed, first and foremost, because taxes raise the price of something. I do not think Congress wants to be in the position of allowing the price and the cost of Internet access for every consumer in America to go up. We do not want to be in the position of raising the cost of Internet access as well because it would affect the pace of investments and the incentives to make investments.

Anytime you tax something, you are going to get less of it. This ban on Internet taxes is extremely important. I would like to make the ban permanent. I think the time has come to make it permanent. After passing it in 1998, and extending it in 2001 and 2004, to look at yet another short-term extension does not seem to make as much sense to me as making the ban on access taxes permanent. But at the same

time, we need to recognize that a 7-year extension is the longest extension we have ever had, and that alone I think should make us very proud of the work that was done, and it was bipartisan.

A lot of members of the Commerce Committee worked very hard on this issue. Senator CARPER certainly spent a lot of time on this issue. We haven't always agreed on every aspect of the legislation, but we can agree, and we have agreed, on this 7-year extension tonight.

I do want to make special mention of Senator INOUE, one of the Senators who was mentioned earlier as well. He is the chairman of the Commerce Committee. It was very frustrating to me that we never had a chance to vote on this legislation in the Commerce Committee, but he and his staff didn't stop working on the issue, and they put in a tremendous effort today to work through all of the details that are required. Even if it only takes the Senate 32 seconds to make a unanimous consent request to pass the final product, that 32 seconds has behind it hours and hours of work by many Members of the Senate and many more staff members. So I appreciate Senator INOUE's work and the work of the staff as well.

I am pleased we are sending this to the House tonight, but also pleased to note that we are doing it before the expiration of the current moratorium. The last extension was passed in 2004 and expires on November 1, or next Thursday. It is not that often, unfortunately, that Congress does something in a fairly timely way. So to pass this legislation tonight in advance of that expiration date adds a little bit more satisfaction, knowing we did the right thing, and that we did it on time. I am pleased to support the legislation.

I yield the floor.

Mr. CARPER. Mr. President, let me take one more minute on this subject to also extend my thanks and compliments to our staffs. On my staff, Bill Ghent and Chris Prendergast worked long and hard for many hours. Our Commerce Committee staff, both Democrat and Republican, did a terrific job under the leadership of Senator INOUE, and we are deeply grateful to him and to Senator STEVENS' staff for the wonderful work they did. The Commerce staff works in a way I wish every committee staff and subcommittee staff would—Democrat, Republican, majority, minority—it is almost seamless the way they approach almost every issue, including this one. I think one of the things that happens when you work like that is you get something done. While it is not unanimous acclaim for what we have done here, I think for the most part it is good work.

If we live to see what happens over in the House, hopefully we will be able to resolve our differences with them.

PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2007—Continued

The PRESIDING OFFICER (Mr. SANDERS). The Senator from Delaware.

Mr. CARPER. Mr. President, the bill before us is the Amtrak reauthorization bill. Each year it seems we find ourselves fighting increasing gridlock on our highways, whether it is Iowa, Delaware, New Hampshire, or Vermont. We face growing threats of smog in our skies, polluted air, crowded conditions at our Nation's airports, and financial challenges facing our aviation industry. If we don't broaden our investment in transportation infrastructure across our Nation, we are headed for a crisis.

Each year an outfit called the Texas Transportation Institute releases something they call the Urban Mobility Report. It continues to show traffic congestion growing across our Nation in cities of all sizes, consuming more hours of the day and affecting more travelers and shipments of goods than ever before. The annual financial cost of traffic congestion has ballooned. In 1982 it was about \$14 billion; today, \$78 billion. There is a personal cost as well—the time lost to traffic.

The same Urban Mobility Report quantifies this loss at 4.2 billion lost hours. That is not commuting time. This is just sitting in traffic not going anywhere, 4.2 billion lost hours and almost 3 billion gallons of wasted fuel. That is the equivalent on the one hand of 105 million weeks of people's lives and 58 fully loaded supertankers.

Rail remains the most underdeveloped opportunity to reshape our national transportation network. Rail can efficiently move large numbers of people over moderate distances, anywhere from 100 to 400 miles, and requires a smaller right-of-way than highways.

I would also point out that to move a ton of freight from Boston, Massachusetts, to Washington, DC, takes about 1 gallon of diesel fuel. So in a time and age when we are worried about the amount of oil we are importing, 1 gallon of diesel fuel can move a ton of freight from Boston to Washington.

But with respect to corridors, this is important in densely populated areas where there is not much land available to support new infrastructure, and the land that is available is mighty expensive.

States are starting to put their own funding toward rail corridor development as well. Several are using rail to relieve congestion at airports by investing in rail service in connection with their airports, much like we have at BWI, just north of here near Baltimore, much like we have at Newark, NJ, and other places. But what they are doing is using rail service to make a connection with airports as a substitute for the spoke portion of a hub-and-spoke air journey.

Early success stories include rail service between Boston Airport and Portland, ME, as well as increased

service from the Milwaukee Airport to the Chicago region.

More and more people are taking the train in our country, and there are a variety of reasons for that. Trains are convenient, they are comfortable, they are reliable. When you ride the train, you have bigger seats, you have more leg room. You can also use the phone and access the Internet. If you want a place that is quiet, you can go to the quiet car. If you want to eat, you can go to the dining car.

Amtrak used to have an ad campaign that said: "Amtrak: The Civilized Way to Travel." Compared to some of the adventures I have had in airplanes in the last year, it surely is the civilized way to travel.

When you arrive at your destination, in many cases the train station is in the center of town as it is here; as it is in Wilmington and Philadelphia, and as it is in New York City and a lot of other places as well. On-time performance is not great, but it is on par with the airlines nationwide. But in the Northeast corridor where some of us live, the train is even more reliable. The Acela Express has an on-time performance of almost 90 percent—not 100 percent but pretty darn good.

As a result, Amtrak ridership is starting to break records. In fiscal year 2007, a record-breaking 25.8 million people rode Amtrak. Total ticket revenues increased about 11 percent over fiscal year 2006 to some \$1.4 billion; still less than the cost of running the train, but still a hefty increase.

Ridership has increased across the Nation. The Acela Express has seen a 20-percent increase over last year and the Northeast corridor's regional trains are up as well. Outside of the Northeast corridor, interestingly, the Keystone Service train, the train between Harrisburg, PA, and Philadelphia and New York, experienced about a 21-percent increase in ridership; the Chicago-St. Louis corridor, 42 percent. California's Capitol Corridor, which is a train that runs from Auburn to San Jose, is up 15 percent, and the San Diego-San Luis Obispo Pacific Surfliner is up about 9 percent. I think what we need to do is to look at those corridors to see what is working and try to apply that to a whole lot of other Amtrak lines. What we do in this bill is just that.

The Passenger Rail Investment Improvement Act would require the Federal Railroad Administration to develop performance standards to evaluate the financial performance, on-time performance, and customer satisfaction of each Amtrak train.

Amtrak is then required to establish performance improvement plans for the five long-distance routes with their worst performance, including the worst financial performance. A year later, Amtrak must implement the plans and the Federal Railroad Administration may withhold funds for a route plan if the plan is not implemented. In future years, the remaining 10 long-distance