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WIRELESS TAX FAIRNESS ACT OF 2011

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

H.R. 1002

MARCH 15, 2011

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WIRELESS TAX FAIRNESS ACT OF 2011

TUESDAY, MARCH 15, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS,
COMMERCIAL AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:37 p.m., in room 2141, Rayburn Office Building, the Honorable Howard Coble (Chairman of the Subcommittee) presiding.

Present: Representatives Coble, Gallegly, Franks, Reed, Ross, Cohen, Conyers, Johnson, Watt, and Quigley.

Staff present: (Majority) Daniel Flores, Subcommittee Chief Counsel; Travis Norton, Counsel; John Hilton, Counsel; Allison Rose, Professional Staff Member; Ashley Lewis, Clerk; (Minority) James Park, Counsel; and Norberto Salinas, Counsel.

Mr. COBLE. The Subcommittee will come to order.

We will make our opening statements brief as we usually try to do because of the time frame. There will be action on the floor subsequently.

I am pleased to be an original cosponsor of H.R. 1002, the "Wireless Tax Fairness Act of 2011". There are over 290 million wireless subscribers in the United States. Wireless service is important whether your car breaks down on the highway and you need to call for help or you are a small business with traveling salesmen who use e-mail and telephone to remain in contact. In recent years, many American families have dropped their land line and use wireless service as their primary telephone.

With wireless service so widespread in today's society, State and local taxing authorities have begun to impose higher tax rates on wireless service than on other goods and services. In part, this is a vestige of the Ma Bell era when telephone companies could impose high taxes under a regulated monopoly structure. But as States and localities continue to find themselves in financial distress, some have continued to single out wireless subscriptions as a source of additional revenue. In Nebraska, for example, a consumer pays a 19 percent tax on his wireless bill compared to the general sales tax rate of 7 percent. In my home State of North Carolina, the consumer pays almost 2 percent more in taxes on wireless than on other services. There is no principled reason why State and local taxes on wireless service should be higher than taxes on other services. Such high taxes are akin to so-called "sin" taxes such as those imposed on liquor and tobacco products.

The Wireless Tax Fairness Act would impose a 5-year prohibition on any new wireless taxes. Current wireless tax rates, even if discriminatory, would not be changed by this bill, and I think that is probably the right way to go. Thus, State and local revenue projections would not be affected unless a State wants to admit that it is planning a new discriminatory wireless tax in the near future. This bill would give States breathing room to reform their wireless tax policy at the State and local level.

This bill would also reduce the tax burden on America's small businesses, most of which rely on wireless service for employee communication and e-mail. It would enable small businesses to use the money they would have paid in taxes to create jobs and grow the economy.

I am pleased to support this legislation and recognize the Ranking Member, the distinguished gentleman from Tennessee, Mr. Cohen.

[The bill, H.R. 1002, follows:]

I

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wireless Tax Fairness Act of 2011".

SEC. 2. FINDINGS.

Congress finds the following:

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

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

(2) In light of the history and pattern of discriminatory taxation faced by providers and consumers of mobile services, the prohibitions against and remedies to correct discriminatory State and local taxation in section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 11501) provide an appropriate analogy for congressional action, and similar Federal legislative measures are warranted that will prohibit imposing new discriminatory taxes on providers and consumers of mobile services and that will assure an effective, uniform remedy.

SEC. 3. MORATORIUM.

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

(b) DEFINITIONS.—In this Act:

(1) MOBILE SERVICE.—The term ''mobile service'' means commercial mobile radio service, as such term is defined in section 20.3 of title 47, Code of 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-

ductions, credits, incentives, exclusions, and other similar factors shall be taken into account in determining whether a tax is a new discriminatory tax.

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

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

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

(i) specific services;

(ii) specific industries or business segments; or

(iii) specific types of property; and

(B) the term "new discriminatory tax" shall not include a new tax or the modification of an existing tax that—

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

bile service providers, or mobile service property; and

(ii) is designed so that, based on information available at the time of the enactment of such new tax or such modification, the amount of tax revenues generated thereby with respect to such mobile services, mobile service providers, or mobile service property is reasonably expected to not exceed the amount of tax revenues that would have been generated by the respective replaced tax or taxes with respect to such mobile services, mobile service providers, or mobile service property.

SEC. 4. ENFORCEMENT.

Notwithstanding any provision of section 1341 of title 28, United States Code, or the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, 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.

○

Mr. COHEN. Thank you, Mr. Chairman. I appreciate your scheduling this bill for a hearing. It is a very important bill. Last September, in the not too distant past in what some of my colleagues call the good old days when I was Chairman of this Subcommittee, we passed out a similar bill, H.R. 1002, the "Wireless Tax Fairness Act." I supported the legislation similar in the 110th and 111th, and I am an original cosponsor of this legislation.

If enacted, this would impose a 5-year moratorium on any new discriminatory State or local taxes on mobile services, mobile service providers, or mobile service property. The legislation's near-term goal is to protect consumers of wireless services from further increases in their wireless tax burden during the moratorium.

In the long run, my hope is the moratorium will lead to a comprehensive set of principles for State and local taxation of all telecommunication services regardless of platform that all the relevant stakeholders can agree to voluntarily. This way Congress would not need to repeatedly revisit this issue on how States tax communication services. My fear is that, absent such a comprehensive solution, Congress may be compelled to impose one that leaves none of the stakeholders happy. Hopefully we can all get together.

The fact is the tax structures of many States fail to account for the advent of wireless communications, cultural lag. And this failure by States will inure to our constituents' detriment.

Wireless communication services have become exponentially more integral to the daily lives of Americans over the last decade. As of the end of 2008, more households chose wireless service over land line service as their sole source of voice communications and this trend has only continued since then. I know not too long ago, I looked at people that only had wireless communications and thought that was like Star Wars. Now I am one of those people.

Particularly troubling is the possibility that discriminatory State taxation of wireless telecommunication services has a disparate impact on racial and ethnic minorities. According to the Washington Post, 60 percent of Latino and African Americans access the Internet using wireless services which is a rate higher than the population as a whole and "others" groups. Therefore, the burden of higher taxes on wireless services fall disproportionately on their shoulders. And wireless service, in general, is a regressive tax, and something State and local governments too often easily resort to is regressive taxes that hurt the most under-represented people and the most needy people in their jurisdictions.

Having been a State Senator for 24 years in a State that has a regressive tax system and a local elected official also, I am not insensitive to the concerns of State and local governments, but I do believe they need to use the main tools at their disposal which is property taxes and income taxes and sales taxes and not necessarily find these new regressive taxes to hurt minorities and other folks.

I am mindful of the resentment that local governments might feel when Congress intervenes, but nevertheless in this circumstance, I think we are looking out for the little fellow and that needs to happen and fairness. Sometimes the State governments are right and sometimes they are wrong, but in this one I think they are wrong.

Representative Lofgren has been the prime sponsor. I appreciate she is going to be a witness today and she has been a stalwart person on this. She probably had wireless phones way before I even thought about it back when I was thinking they were Star Wars. She is so advanced.

At this time, H.R. 1002 is really a modest bill. It does not seek to override existing discriminatory State taxes on wireless services. It simply seeks to prohibit new discriminatory taxes for the next 5 years. All the stakeholders, include the telecommunication industry and the State and local governments, should use the moratorium to find a long-term solution to the taxation of communication services fair to everyone and bring us into the 21st century.

I thank all our witnesses but particularly Ms. Lofgren who has been such a leader on this issue, and I look forward to their testimony.

Thank you, Mr. Chairman. I yield back the remainder of my time.

Mr. COBLE. Thank you.

Does the gentleman from Michigan want to be recognized, Mr. Conyers?

Mr. CONYERS. No, thanks, sir. I am troubled by the bill, but I do not have an opening statement.

Mr. COBLE. I thank you, sir.

As I said in my opening statement, I think it is significant to note that the current rates would not be changed. I think that makes good sense.

Now, there was some confusion surrounding this. I did not know that Ms. Lofgren was to be a witness. It was her understanding that she was to be a witness. So I have agreed to let her give her statement, and I would like for the Members probably not to question her because of the interest of time.

I think I would also indicate that the distinguished gentleman from Arizona, Mr. Franks, is the lead Republican on this bill. Am I correct, Mr. Franks? So you and Ms. Lofgren have shared that.

So Ms. Lofgren, why don't you give us your statement? Then we will recognize the witnesses who will appear before us.

TESTIMONY OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. LOFGREN. Thank you very much, Mr. Chairman, and thank you for your flexibility on the miscommunication. I understand that my full statement will be made part of the record, so I will just make a few brief comments.

This is the third Congress where I have introduced this bill, and I want to especially thank Mr. Franks, who is the principal cosponsor, for his cosponsorship but also for the hard work that he has put into this measure and getting cosponsors to the measure as we have introduced it.

Mr. COBLE. Well, Ms. Lofgren, if you would yield, I appreciate you saying that, and after your statement, if Mr. Franks wants to be heard for his opening statement, we will do that as well.

Folks, I am not trying to rush anybody. We are all on a tight timeframe because of floor action. So you proceed, Ms. Lofgren.

Ms. LOFGREN. Thank you very much.

When it comes to taxes, we know that not only are taxes a source of revenue for government, which is necessary, but how we tax has an impact on what people do. And when it comes to telecommunications, the taxes are really not well aligned with what our purpose is for the Internet. In fact, wireless services are taxed nationwide at an average of rate of 16.3 percent, whereas other goods average 7.42 percent. In New York, it is nearly 23 percent, nearly 21 percent in Illinois, 21.5 in Florida, 23.5 in Nebraska. These are jurisdictions where cell phone access to the Internet is taxed like a sin tax. Really you would think that we were trying to discourage people from accessing the Internet using a mobile platform which is far from the truth. It is at odds with the national policy to expand our broadband network.

And as Mr. Cohen has mentioned, there is this aspect. These discriminatory taxes especially discriminate against low-income individuals because low-income individuals access the Internet through their mobile platform considerably more frequently than do more affluent individuals, and the reasons are obvious. Getting a DSL line or a cable line, an expensive laptop or desktop computer is a lot of cash. A cell phone can access the Internet in a very affordable way, and that is why communities of color, low-income communities increasingly utilize this platform for access to the Internet. That is a good thing not only for those communities, but it is good for our country and we should not discourage it.

As the Chairman has noticed, this is a moratorium on taxes. I served on the board of supervisors for 14 years in Santa Clara County. I well understand the need that local governments have for revenue, but this does not decrease revenue. It just prohibits discriminatory taxes in the future. If you do a 1 percent tax on everything, it would not exclude this, but you can't tax cell phone access like a sin tax if this measure passes.

It is regressive. It is unfortunate, and it is something that we need to do something about on a bipartisan basis. Ordinarily I support local governments and State governments in setting their own taxing policies, but when the outcome is so at odds with the Nation's policy to expand broadband access, I think we have to act, and I am glad that we are doing so with such support across the Congress and on a bipartisan basis. Again, thanks to Mr. Franks and to you, Mr. Chairman.

And I would yield back my time with thanks for the opportunity to appear.

[The prepared statement of Ms. Lofgren follows:]

Statement of Congresswoman Zoe Lofgren

Before the
Subcommittee on Courts, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
112th Congress, 1st Session

March 15, 2011

Hearing on H.R. 1002, the Wireless Tax Fairness Act of 2011

Thank you Chairman Coble, Ranking Member Cohen, and members of the Subcommittee, for holding this hearing on H.R. 1002, the Wireless Tax Fairness Act of 2011 and for inviting me to testify before you today.

This is the third Congress where I have introduced this legislation. It would impose a five-year moratorium on new, discriminatory taxes imposed only on wireless telecommunications services by state and local governments. The measure itself may be modest, but the goals that inspired it are not. The Wireless Tax Fairness Act would advance core national priorities of innovation, economic growth, and competitiveness, by fostering the expansion of next-generation communications and information networks.

We in Congress know well that taxation is, inherently, a tool of substantive policymaking. Taxes are necessary to raise government revenues, but can also create significant incentives that either encourage or discourage particular activities. It is the responsibility of government to

broadband adoption, so we have some catching up to do.[3] Broadband Internet is critical infrastructure, like highways, ports, or the power grid. It's essential to daily life and to future economic growth.

As the FCC explained in the National Broadband Plan, "wireless broadband is poised to become a key platform for innovation in the United States over the next decade."[4] The use of new spectrum from the 700 megahertz auction and the deployment of "4G" networks are just beginning. These technologies have tremendous promise: not just faster internet access but also many new, innovative applications. Anyone who has spent even a few minutes playing around with the applications on an iPhone or a Blackberry has caught a glimpse of what the future might hold.

Unfortunately, discriminatory tax rates on wireless service inhibit the expansion of these services. At a hearing during the 111th Congress, this subcommittee heard uncontested testimony about the peer-reviewed evidence that higher wireless taxes directly reduce both consumer adoption of wireless services and investment in wireless networks. As the National Broadband Plan put it, "The U.S. must lead the world in broadband innovation and investment and take all appropriate steps to ensure Americans have access to modern, high-performance broadband and the benefits it enables."[5] At a time when the government is pursuing many other ways to expand wireless broadband, including the possible reallocation of spectrum via auctions, it makes no sense to allow excessive taxes to be imposed on such investments. protect and advance national imperatives. This is one of those rare instances. We should not let discriminatory taxes threaten the growth and innovation that advanced wireless networks will unleash.

[3] OECD Broadband statistics, July 2010, http://www.oecd.org/document/0,3746,en_2649_201185_46462759_1_1_1_1,00.html.
[4] Federal Communications Commission, *National Broadband Plan* at 75.
[5] *Id* at 29.

Mr. COBLE. I thank you, Ms. Lofgren.

The gentleman from Arizona who is a Member of this Subcommittee, Mr. Franks, do you want to be heard?

Mr. FRANKS. Well, thank you, Mr. Chairman. I will be very brief. Thank you, Ms. Lofgren.

Mr. Chairman, I want to thank you for scheduling this hearing today on H.R. 1002, the "Wireless Tax Fairness Act of 2011." Congresswoman Lofgren and I reintroduced H.R. 1002 last Thursday with the broad bipartisan support of 144 original cosponsors.

Access to wireless networks represents a key component of millions of Americans' livelihoods, providing the efficient communication capabilities, whether a phone or broadband or Internet or otherwise, necessary to run a successful business.

The exorbitant taxes on wireless customers are not only unfair, they are counter-intuitive, yet adding another costly impediment to the success of so many American businesses which are already struggling in the midst of a prolonged recession and already a hefty tax burden.

These taxes also single out low-income and senior Americans who frequently rely on wireless service as their sole means of telephone and Internet access.

H.R. 1002, the "Wireless Tax Fairness Act," provides a balanced approach, in my judgment, that protects the revenue needs of States and localities while allowing for a 5-year hiatus to develop a rational tax regime that maintains the affordability of wireless services.

As Chairman of the Subcommittee on the Constitution, I am sensitive, Mr. Chairman, to the constitutional implications of any legislation that comes before us and the limits on the Federal Government's power. However, the mobile nature of wireless services and the ability to use such services all across the country clearly grants Congress the power to, quote, regulate commerce among the States.

Additionally, the Fourteenth Amendment provides that no State shall deny to any person within its jurisdiction the equal protection of the laws. Under section 5 of the Fourteenth Amendment, Congress shall have the power to enforce by appropriate legislation the provisions of this Article.

So, Mr. Chairman, I believe that H.R. 1002, the "Wireless Tax Fairness Act," is a constitutionally sound, pro-consumer bill, pro-business bill, and I strongly encourage this Subcommittee and the full Committee to mark up this bill as expeditiously as possible so that it can be considered by the full House.

And I thank Ms. Lofgren and I thank you, Mr. Chairman, for holding this hearing.

Mr. COBLE. I thank the gentleman.

Ms. Lofgren, you may be excused.

While the witnesses find their way to the table, I will give some background on them.

Mr. Scott Mackey is a partner at KSE Partners LLP. Mr. Mackey is an expert in tax policy and wireless communications. He is former chief economist at the National Conference of State Legislatures. For 10 years, Mr. Mackey focused his studies on taxation of electronic commerce and telecommunications tax reform. He has testified before panels all over the country and has been quoted extensively on CNN, the New York Times, the Wall Street Journal, and USA Today.

Mr. Mackey is a former legislative assistant to Senator James Jeffords. He received his bachelor's degree in economics from Middlebury College and his M.B.A. from the University of Colorado.

Ms. Bernita Sims sits as a city council member from High Point, North Carolina. And I must say to my colleagues I am in a bind. I had a very good visit with my friends from the furniture capital of the world last night, and I told Ms. Sims we are on different sides of this issue. She said, well, I am going to bring you around tomorrow.

But Councilwoman Bernita Sims, it is good to have you and other members of the High Point City Council with us today.

Ms. Sims has been a member of the High Point City Council since December 2003 where she is the current chair of the Public Service Committee, a member of the Planning Committee, and liaison to the local Alcohol and Beverage Commission. She was elected mayor pro tem in December of 2005 by her fellow council members and served a 1-year term.

She serves on the National League of Cities Committee on Finance, Administration, and Intergovernmental Relations. She is also the chairman of the Finance and Legislative Action Committee for the North Carolina League of Municipalities. Last year she received the High Point Chamber of Commerce Minority Business Associate of the Year Award.

Bernita, good to have you with us. Scott, good to have you with us.

Our last witness today is Mr. Harry Alford who is the President and CEO of the National Black Chamber of Commerce. Mr. Alford is a major advocate for advancing African American businesses in the United States and around the world. Because of his extensive involvement in international business, Mr. Alford was recently named Cultural Ambassador by the United States Department of State. Mr. Alford also sits on the board of directors for the National Newspaper Publishers Association and writes weekly business columns for their members. He is an active member of the board of directors of the Chamber of Commerce and a consultant to several corporations and publications.

It is good to have each of you with us.

The ground rules, folks. We try to comply with the 5-minute rule. We apply that rule to ourselves and to you all as well. And when you see the panel before you, when that light turns amber, that is your warning that the ice upon which you are skating is becoming thin, and you will give a minute, of course, to pare down. But when the red light appears, that is your signal that your 5 minutes have elapsed.

So, Mr. Mackey, why don't you kick us off?

TESTIMONY OF SCOTT R. MACKEY, PARTNER, KSE PARTNERS LLP

Mr. MACKEY. Thank you very much, Mr. Chairman, Mr. Cohen, Members of the Subcommittee.

I am here to report on a study that I have just recently completed that is attached to my testimony. I have been doing this for about the last 7 years.

And basically the findings of my study, as has already been discussed, is that the average wireless consumer pays over 16 percent of their bill in wireless taxes and fees versus just a little over 7 percent in the State sales tax. So there is a big disparity, as folks have already mentioned so far, between what wireless consumers pay and what you pay for things you buy over the counter at the store.

Unfortunately, this disparity is growing. As I have done the study over time, I have found that while the disparity has always existed, the disparity is getting worse. And in fact, between 2007 and 2010 when this study covers, wireless taxes and fees grew three times faster than the sales taxes. So there is a problem and the disparity is getting worse.

And I think one of the reasons that it is important for the time out that is being contemplated in this bill is that if we are ever going to get our hands around this problem and get the States and localities and the stakeholders to work this out, we have got to stop the problem from getting worse because the worse it gets, the harder it is to solve.

The opening statements have really covered a lot of the key issues, so I will be very brief in terms of why policymakers should care about this issue.

The first one, obviously, as was alluded to by many of the speakers, is the disproportionate impact of these taxes, the regressive nature of these taxes, and the disproportionate impact on low-income people and on minority communities. Clearly, the facts are not in dispute. Low-income people are increasingly relying more on wireless as their sole communications link and these taxes apply much more heavy burdens, as a share of income, than on wealthier individuals. Particularly one of the disturbing trends of going to very high per-line charges, for instance, in the City of Baltimore where they just raised the tax to $4 per line per month—so if you have a family share plan with three or four lines, you are paying $4 per month on each one of those lines even though, in some instances, the actual cost of adding a line is only $5. So in the case of Baltimore, the tax burden on those individual additional lines is over 100 percent.

The second reason I think that this bill is very important is for the reason stated by Representative Lofgren at the outset of her remarks. We have government policies seemingly working at cross purposes here where through the stimulus programs and through other efforts, States are trying to encourage the deployment of better and faster wireless networks and the roll-out of those. So on the one hand, we are trying to promote, incentivize, and encourage it, and on the other hand, in some instances in some States, we are taxing at such high rates that it discourages the use. So you have got government policies working at cross purposes. And this bill would help to stop the problem from getting worse and give us time to try to sort all this out.

And finally, as was alluded by the Chairman, the impact on business costs. Businesses, including our own small business where we have outfitted half of our employees with multiple mobile devices, are increasingly relying on this technology to increase productivity, profitability, and ultimately this will lead to creation of jobs. But

these taxes do impact businesses significantly. It is not just consumers that are paying them. And so by causing a time out on these taxes, it is going to prevent the burden from getting worse on the small businesses that are using wireless technology.

So this bill, in conclusion, does not fully address the problem, but it does cause a pause and a time out, so hopefully collectively we can address the problem. And if we don't do this, I fear that the disparity and the dependence on these revenues by local governments is going to get worse. It is going to increase, and therefore it is going to make it that much harder to solve this problem down the road.

So I appreciate the opportunity to testify before you today. I look forward to any questions you might have. And again, I thank you for the opportunity.

[The prepared statement of Mr. Mackey follows:]

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Written Testimony
of
Scott R. Mackey
Economist / Partner
KSE Partners LLP

Hearing on H.R. 1002, the "Wireless Tax Fairness Act of 2011"

House Committee on the Judiciary
Subcommittee on Courts, Commercial and Administrative Law

March 15, 2011

Chairman Coble, Ranking Member Cohen, and members of the Subcommittee, thank you for this opportunity to testify on an issue of real importance to millions of wireless consumers, small and large businesses, wireless providers, and the US economy.

My name is Scott Mackey and I am a partner at KSE Partners LLP. Over the past eleven years, I have worked with major wireless telecommunications providers to reduce or eliminate excessive and discriminatory taxes on wireless services at the state and local level. It has been a frustrating experience to say the least, because while many state and local government officials recognize that this is a major problem, with a few notable exceptions, there has been no progress in reducing the tax burden on communications users.

So I am happy to appear today to support H.R. 1002. Representative Lofgren and her primary co-sponsor, Representative Franks, and the over 144 other members co-sponsoring this legislation are to be commended for supporting this pro-consumer, pro-growth legislation.

Almost five years ago this Subcommittee held a hearing on the general topic of state and local taxation of interstate telecommunications services. At the time, I testified that despite a seven-year effort by the industry to work with state and local governments to address excessive taxes on communications services, very little progress had been made. Today, I am sorry to report that since that time, things have actually gone from bad to worse.

Over the past few years, state or local governments in Arizona, California, Delaware, Georgia, Hawaii, Kentucky, Maryland, Maine, Nebraska, New York, Oregon and Wisconsin have imposed or have attempted to impose ***new discriminatory*** taxes on wireless service. And wireless users have every reason to be concerned about the possibility of new targeted taxes in other states and localities as well.

H.R. 1002 simply calls for a "time out" from the imposition of **new** discriminatory taxes on wireless service and property. A discriminatory wireless tax is a tax that is imposed on wireless service at a higher rate than on other goods and services subject to generally applicable taxes. Although the bill would not address existing discriminatory taxes on wireless providers and their customers, the bill would at least stop the situation from going from bad to worse. This legislation would protect millions of wireless consumers – and thousands of small and large businesses that use wireless service every day to improve profitability and productivity – from new discriminatory taxes for five years.

Today I will focus on three important reasons why Congress should pass the "Wireless Tax Fairness Act of 2011" this year:

- First, tax burdens on wireless providers and consumers continue to grow. I recently released a third version of my study of taxes on wireless consumers and found that the average tax rate on wireless increased three times faster than rates of broad-based sales taxes. States and localities are not only failing to reform their existing discriminatory tax systems, but in some instances they are making the situation worse. Without this legislation, states and localities will continue to single out wireless service for new discriminatory taxes.

- Second, at a time when state and local economic development experts are touting expanded broadband deployment as critical to economic development in their communities, excessive new wireless taxes imposed piecemeal by state and local governments are a deterrent to new broadband network investments. Now is the time to encourage investment in wireless networks that will bring wireless broadband service to many more Americans across the country.

- Finally, at a time when many low and middle-income families are struggling to make ends meet, H.R. 1002 would protect wireless users from burdensome new taxes. Wireless taxes are among the most regressive forms of taxation used by state and local government to fund public services – especially at the high rates imposed on consumers – so this legislation would particularly benefit low and middle income families by protecting them from regressive new wireless taxes.

1) H.R. 1002 Highlights the Lack of Reform of Telecommunications Taxes

The first comprehensive attempt to catalog the tax burden on communication services, providers and their customers was published in September 1999 by the Committee on State Taxation (COST). This landmark study found that consumers of telecommunications services paid effective state/local tax rates that were more than twice those imposed on taxable goods sold by general business (13.74% vs. 6%). Including federal taxes, the tax burden was nearly three times higher than general business. In addition, due to the sheer number of different state and local taxes imposed in many jurisdictions, the typical communications service provider was required to file seven to eight times as many tax returns compared to those filed by typical businesses (63,879 vs. 8,951 annually).

I published a follow-up study in *State Tax Notes* in February 2011 using the COST study methodology to examine in more detail the tax burden on wireless customers. Its findings were consistent with the COST study – that wireless customers faced tax burdens that were, on average, two and one half times higher than general business. This report is attached as an appendix to this testimony.

Wireless providers and consumers have attempted to address the existing discriminatory tax burden on wireless services in the states. For over eleven years, the wireless industry has engaged in a dialogue with representatives of state and local government organizations – and state legislatures – actively trying to address the problem.

The Advisory Commission on Electronic Commerce was formed by Congress in 1998 as part of the original Internet Tax Freedom Act to examine issues surrounding the taxation on Internet access, electronic commerce, and communications. The Commission held hearings on these issues throughout 1998 and 1999. In 1999, the communications industry testified before the Commission on the impact of excessive and discriminatory taxation of communication services, the communications infrastructure needed to build out networks, and the daunting compliance burden placed upon providers asking the commission to prod states toward substantial reform in these areas.

In response to the presentation of the data contained in the COST report, one member of the Commission suggested that the Commission should recommend that Congress pass legislation outlawing discriminatory taxation of communications services by state and local governments, similar to what was done for the railroad industry under the Federal 4-R Act. While the industry supported the concept, it did not pursue this approach because state and local organizations had expressed a desire to work with the industry to pursue the reforms needed to address the excessive level of taxation imposed upon communication consumers. The industry was sensitive to the states' desire to work together and chose to focus their efforts on working with state and local governments on the needed reform in the states, rather than seek federal intervention.

As a result of the Commission members' failure to reach a 2/3 majority consensus, the Commission ultimately did not forward any recommendations to Congress. However, the communications industry used the Commission's work as a springboard to reach out to key government organizations such as the National Conference of State Legislatures (NCSL) and the National Governors' Association (NGA) – as well as the local organizations – to promote the reforms needed to reduce the level of taxes imposed upon its consumers. As a result of the ongoing dialogue, both the NGA and the NCSL issued policy positions, approved by their respective memberships, calling for states to eliminate excessive and discriminatory taxes on the communications industry and its consumers.

Particularly relevant to today's discussion are two of the policy principles adopted by the NCSL membership in 2000 and reaffirmed in 2007:

- **Tax Equity**: *Under a uniform, competitively neutral system, industry-specific telecommunications taxes are no longer justified.*

- **Tax Fairness**: *With the blurring of distinctions between various services and technologies, state and local governments must strive to set tax burdens on telecommunications services, property and providers that are no greater than those tax burdens imposed on other competitive services and the general business community.*

In 2005, recognizing that efforts to reduce state and local taxes on users of communications services were going nowhere, the National Governors' Association invited the industry and state and local organizations to participate in a new series of negotiations to formulate a plan to address the problem. After months of negotiations, it became clear that some of the major local government organizations were unwilling to agree to any reforms that would eliminate the authority of localities to impose excessive taxes on communications customers. The opposition of local governments to comprehensive state-level reform efforts is one of the main reasons we believe that it is critical to pass H.R. 1002.

The communications industry also worked with individual state legislatures in key states to address the issue. Unfortunately, most of these efforts were unsuccessful. Since 2005, reform bills that would have reduced the level of tax on wireless services were considered but failed to pass in Florida, Illinois, Oregon, Pennsylvania and South Dakota. In California, the wireless industry reached out directly to the cities to seek a comprehensive state-level solution to the problem presented by the impending elimination of the Federal excise tax, but the cities decided they did not want to work with the industry and moved ahead unilaterally seeking to expand their utility tax base to new services.

There are two notable exceptions to this lack of success in reducing excessive wireless taxes: Texas and Virginia. In 2006, the Virginia General Assembly passed legislation replacing a myriad of local taxes and fees with a single, state-collected tax imposed at the same rate as is imposed on general business. This reform eliminated local taxes that were as high as 28% on customers in certain cities with a new tax, imposed at the state level, of 5% on all types of communications services. Under this new law, which took effect in 2007, consumers of all communications services – wireless, wireline, and cable – will no longer pay excessive tax rates on these services. This legislation could serve as a model for action in other states. Members of the industry have reached out to local governments organizations to work with them on efforts in the states that would follow the Virginia model of simplifying the confusing array of taxes on consumers through the implementation of a state-level tax – this legislation is designed to encourage such efforts.

In Texas, the legislature repealed a 1.25% special tax on wireless and other telecommunications services effective this month. The tax was initially imposed to fund communications infrastructure projects for schools and libraries, but once that project was complete the revenue went to the general fund. This repeal moves Texas closer to a tax system that does not discriminate against wireless consumers.

2) H.R. 1002 Would Stop New Taxes that Could Impede Investment in Wireless Networks

The wireless industry plays a critical role in the US economy because of its beneficial impact on the productivity of businesses. A 2008 study by *Ovum and Indepen* found that in 2005, the productivity value of all mobile wireless services was worth $185 billion to the US economy. That same study found that new productivity enhancements from wireless broadband will contribute an additional $860 billion to US GDP over the next decade. These productivity benefits of wireless broadband networks highlight the urgency of enacting this legislation which would prevent new discriminatory taxes from being imposed on wireless infrastructure investment.

Productivity is simply a measure of output per worker, and strong productivity growth generates important economic benefits. It boosts incomes, living standards, capital formation, and overall economic growth. In the late 1990s, the rapid productivity growth due to the emergence of the Internet and electronic commerce was widely credited with fueling the robust economic expansion of recent years.

Just as the initial development of the Internet was the driver of productivity in the late 1990s, broad deployment of wireless broadband will drive innovation and productivity in the very near future. Tax and regulatory policies that promote investment in wireless broadband networks and applications will generate important economic benefits. Conversely, policies that increase the cost of investment or otherwise slow investment in communications infrastructure will delay important economic benefits

Consumers benefit greatly from additional investment in communications networks because competition among providers reduces prices. Numerous recent studies have found that broadband penetration in the United States is well behind many of our global competitors. Additional investment in broadband networks by wireless companies in the U.S. will bring high speed networks to businesses and consumers that lack a single provider today, as well as bring competition and lower prices to businesses and consumers served by multiple broadband providers.

State and local governments recognize the importance of advanced communications networks because they are subsidizing these networks through tax incentives, indirect investment, and even direct investment in municipal broadband networks. Yet at the same time they are imposing excessive consumer taxes that hinder the build-out of these networks by driving up costs to consumers.

Discriminatory state and local taxes on wireless providers and consumers impede wireless broadband deployment in two ways. First, excessive taxes on consumers reduce the quantity of wireless service purchased. Economists have found that each $1.00 in additional taxes on wireless service will reduce consumer purchases by about $1.20. By reducing consumer purchases, wireless providers have less revenue to reinvest in network enhancements. While wireless companies currently invest about $20 billion annually in their networks, excessive and discriminatory taxes on wireless services will hinder additional deployment.

Second, discriminatory taxes on wireless property and infrastructure purchases increase the cost of investment. Sales taxes on equipment purchases drive up the initial costs of such

investments, while discriminatory property taxes on providers increase the ongoing costs of deploying new network equipment. The imposition of excessive taxes on network equipment seems to work directly against the stated goal of most policymakers to encourage investment in more broadband networks to reach more of their citizens.

3) H.R. 1002 Would Stop New Taxes Which Disproportionately Burden the Poor

There is no dispute that state and local taxes on wireless consumers are highly regressive. Simply stated, lower income consumers (for example, the working poor and seniors on fixed incomes) pay a much higher proportion of their incomes in wireless taxes than do higher income consumers. When many of these special industry taxes were first imposed on wireline phone service 50 or even 100 years ago, telephone service was considered a luxury only affordable by the rich. Today, as evidenced by the fact that over 300 million Americans have wireless devices, wireless services are considered by many to be a necessity.

While most consumption taxes are regressive by nature, it is unfortunate when regressive taxes are imposed at excessive levels on a service that many citizens believe is a necessity. Many states, for example, exempt food from sales and use taxes to mitigate the overall regressivity of the sales tax. Unfortunately, in the case of communications services, consumers in many states face layer upon layer of regressive taxes.

A disturbing trend is making this problem worse. In the last few years, some jurisdictions have imposed flat "per line" taxes, such as Baltimore's new $4.00 per line per month tax. These taxes take an already regressive tax and make it much worse. In the case of Baltimore, $4.00 per month on a $25 monthly calling plan is a 16% tax rate on that plan but only 4% on a $100 monthly calling plan. When the state sales tax of 5% is added on, the consumer on a $25 monthly plan in Baltimore is paying an effective tax rate of 21%! And if that consumer has a family plan with multiple lines, the $4.00 applies to each line. Several wireless providers allow consumers to add an additional line for as little as $5.00 per month. The tax on the additional line actually exceeds the cost of the line in Baltimore when the city tax, 911 fees, and sales taxes are included.

Reducing consumer taxes to the same rate charged on other goods and services would not completely eliminate the regressive nature of taxes on communication services, but it would make such taxes much less burdensome to consumers on low and fixed income households.

Chairman Coble and members of the Subcommittee, thank you again for holding this hearing and allowing me to testify in support of this bill. I hope both the Subcommittee and the full Committee will mark-up this legislation soon, so that wireless consumers can be protected from new discriminatory taxes. From the information that has been presented today, you can see that wireless consumers are already paying more than their fair share in state and local taxes. We hope that during this "time-out" state and local governments will work with the industry on meaningful reform, building on the success efforts in Virginia and Texas, which truly simplifies the taxation of wireless services and reduces the level of regressive taxes on working families.

taxanalysts special report

A Growing Burden: Taxes, Fees, and Government Charges on Wireless Service

by Scott Mackey

Scott Mackey is an economist and partner at KSE Partners LLP in Montpelier, Vt. He works with a coalition of wireless providers (AT&T, Sprint Nextel, T-Mobile USA, US Cellular, and Verizon Wireless) in support of state and local tax policies that encourage investment in wireless networks and the reduction of excessive state and local taxes on wireless consumers.

Summary

Wireless users across the United States continue to face excessive and discriminatory federal, state, and local taxes and fees on their wireless bills. After several years in which taxes and fees on wireless users stabilized and even fell slightly, the trend toward higher impositions resumed between 2009 and 2010.

Wireless users now face a combined federal, state, and local tax and fee burden of 16.3 percent, a rate two times higher than the average retail sales tax rate and the highest wireless rate since 2005. Consumers in 46 states now pay wireless taxes, fees, and government charges that exceed the retail sales tax rate.

Although federal, state, and local taxes and fees all contribute to the high burden on wireless consumers, the recent increase in rates is mostly attributable to the rapid growth in the rate of the federal Universal Service Fund (USF) surcharge. Increases in the federal USF have added 0.9 percentage point to the rate since 2007, while state and local increases added about 0.2 percent, for a net increase in rates of 1.1 percentage points — from 15.2 percent to 16.3 percent. The average customer pays about $7.84 per month in taxes, fees, and government surcharges.

Nebraska retained its designation as the state with the highest rate on wireless consumers, at 23.69 percent, while Washington retained its number two designation with a 23 percent rate. In Nebraska, the city of Lincoln added to the consumer burden by increasing its telecommunications business license tax from 5.5 percent to 6 percent in 2009. A resident of Lincoln spending the industry average of $48 per month on wireless service pays $11.35 in taxes, fees, and government surcharges, almost one-fourth of the monthly bill. Rounding out the top five high-rate states are New York, Florida, and Illinois. Wireless consumers face the lowest burdens in Oregon, Nevada, Idaho, Montana, and West Virginia.

Consumers in 46 states now pay wireless taxes, fees, and government charges that exceed the retail sales tax rate.

In the three years since the last report on this subject was published in State Tax Notes, most states, with some notable exceptions, have not increased wireless-specific rates. Most of the increased burden on wireless consumers is the result of the expansion of broad-based sales taxes that apply to wireless as well as other goods and services. Although several wireless-specific tax measures were proposed over the past few years, consumers have become more knowledgeable about the high level of taxation currently imposed on their wireless service and have voiced opposition to proposed increases or impositions of new targeted taxes.

Unfortunately, local governments in a few states have been aggressive in levying new taxes on wireless users as the recession has stressed revenue collections from property and other broad-based taxes. For example, the city of Baltimore increased its per-line tax from $3.50 per month to $4 per month, while Montgomery County, Md., increased its per-line tax from $2 to $3.50. These local per-line taxes are in addition to the state sales tax, state and county 911 fees, and the federal USF charge. These local per-line taxes are especially burdensome on

Table 1.
Wireless vs. General Business Tax Rates

	1/1/2003	4/1/2004	7/1/2005	7/1/2006	7/1/2007	7/1/2008	7/1/2009	7/1/2010
Weighted Average								
General sales/use tax	6.87%	6.93%	6.94%	7.04%	7.07%	7.11%	7.26%	7.42%
Wireless -state/local tax and fee	10.20%	10.74%	10.94%	11.14%	11.00%	10.86%	10.74%	11.21%
Wireless - federal tax and fee	5.07%	5.48%	5.91%	2.99%	4.19%	4.23%	4.79%	5.05%
Wireless federal/state/local tax and fee	15.27%	16.22%	16.85%	14.13%	15.19%	15.09%	15.53%	16.26%

Source: Method derived from Council On State Taxation, "50-State Study and Report on Telecommunications Taxation," May 2005. Updated from state statutes, FCC data, and local ordinances by Scott Mackey, KSE Partners LLP, Montpelier, Vt.

Federal includes 3 percent federal excise tax (until 5/2006) and federal Universal Service Fund (USF) charge, which is set by the FCC and varies quarterly:
Federal USF 1/1/2003 28.5% FCC "hold harmless" times FCC contribution factor of 7.3% = 2.07%
Federal USF 4/1/2004 — 28.5% FCC "hold harmless" times FCC contribution factor of 8.7% = 2.48%
Federal USF 7/1/2005 28.5% FCC "hold harmless" times FCC contribution factor of 10.2% = 2.91%
Federal USF 7/1/2006 — 28.5% FCC "hold harmless" times FCC contribution factor of 10.5% = 2.99%
Federal USF 7/1/2007 — 37.1% FCC "hold harmless" times FCC contribution factor of 11.3% = 4.19%
Federal USF 7/1/2008 — 37.1% FCC "hold harmless" times FCC contribution factor of 11.4% = 4.23%
Federal USF 7/1/2009 37.1% FCC "hold harmless" times FCC contribution factor of 12.9% = 4.79%
Federal USF 7/1/2010 — 37.1% FCC "hold harmless" times FCC contribution factor of 13.6% = 5.05%

Source: http://www.fcc.gov/omd/contribution-factor.html

low-priced "family share plans," in which families can add additional lines for as little as $5 per month. Interestingly, when Prince George's County, Md., proposed increasing its local tax from 8 percent to 11 percent in 2008 and put the proposed increase to a public vote, the increase was overwhelmingly defeated by a 3-1 ratio.

States and local governments continue to suffer from severe fiscal distress because of the effect of the recession on traditional state and local revenue sources. The risk of new wireless taxes is particularly acute as local governments consider their limited sources for tax revenue, amidst strong political opposition to raising property taxes and other broad-based taxes during a recession. With the continued success of the wireless industry, the industry and its consumers will continue to be a tempting target for additional revenue.

However, a mounting body of evidence on the economic importance of wireless broadband networks suggests that "burdensome and discriminatory taxes deter the adoption and use of broadband, mobile, and other advanced ICT [information and communications technology] sector tools that are major drivers of growth in the information-based economy of the 21st century."[1] State and local efforts to raise revenue from the wireless industry and its customers conflict with the policy goal of increasing consumer broadband adoption.

[1]International Chamber of Commerce (ICC), "ICC Discussion Paper on E-Business, IT and Telecoms (EBITT) and Its Task Force on Internet & Telecoms Infrastructure and Services," Paris, France: Oct. 26, 2010, p. 2.

Introduction

This is the third in a series of reports that examine taxes and fees imposed on wireless consumers by federal, state and local governments. The first report, published in *State Tax Notes* in July 2004, found that taxes, fees, and government charges on wireless consumers were excessive and rising compared with broad-based taxes imposed on other taxable goods and services. The second report, published in *State Tax Notes* in early 2008 using data from 2007, found that state and local taxes and fees on wireless consumers continued to rise but were largely offset by the elimination of the federal excise tax on wireless service to produce a net reduction in the average overall rate of wireless taxes, fees, and government charges between 2004 and 2007.[2]

This report, using the same method as the earlier reports, finds a reversal of the trend toward lower taxes, fees, and government charges on wireless service since 2007. With a few notable exceptions, state and local taxes, fees, and government charges remained high but were relatively stable, while the burden of the federal USF surcharge increased significantly. The average U.S. wireless consumer now faces taxes, fees, and government surcharges of 16.26 percent, the highest level since 2005 and more

[2]Scott Mackey, "The Excessive State and Local Tax Burden on Wireless Communication Services," *State Tax Notes*, July 19, 2004, p. 181, *Doc 2004-13368*, or *2004 STT 138-2*; Scott Mackey, "Excessive Taxes and Fees on Wireless Service: Recent Trends," *State Tax Notes*, Feb. 18, 2008, p. 519, *Doc 2008-1260*, or *2008 STT 34-4*.

than double the average 7.42 percent rate imposed on other general goods and services.

Recent Trends in Wireless Taxes and Fees

Table 1 shows trends in national average rates on wireless service and sales taxes between 2003 and 2010. Since 2007, average state-local sales tax rates have increased from 7.07 percent to 7.42 percent, while the average imposition on wireless users has increased from 15.19 percent to 16.26 percent. In other words, wireless impositions have increased about three times faster than broad-based consumption taxes. Much of that increase on wireless consumers is attributable to increases in the federal USF charge.

The USF is the federal program that subsidizes telecommunications service for schools, libraries, hospitals, and rural telephone companies (and their customers). The rapid growth in demand for these subsidies has led the Federal Communications Commission to increase the "contribution factor" significantly, from 10.2 percent in 2005 to 13.7 percent in 2010. Wireless carriers must pay that surcharge on their interstate revenue, which the FCC deems to be 37.1 percent of the total wireless bill. Wireless carriers have the option of using that "hold harmless percentage" to determine the amount of customer surcharges to recover their USF obligations.

Table 2 shows a summary of the average federal, state, and local government taxes and fees on wireless users in each state as of July 1, 2010. Those effective rates range from a high of 23.7 percent in Nebraska to a low of 6.9 percent in Oregon, a state that does not impose a sales tax.

One way to measure the disparity between taxes and fees on wireless service and other taxable goods and services is to compare the wireless rates with the sales tax rates in each state. This information is presented in Table 3, ranking states from highest to lowest in terms of the disparity between impositions on wireless service and the sales tax rate. Using this metric, Nebraska has the largest disparity between the rates on wireless service and the combined state and local sales taxes. Wireless taxes and fees are almost 12 percentage points — 2.5 times — higher than the sales tax rate. Other states where wireless impositions are significantly higher than the sales tax are New York, Florida, Washington, and New Hampshire. New Hampshire makes the list because it has no general sales tax but imposes a 7 percent communications tax on wireless service. Only three states — Nevada, Idaho, and Lonisiana — impose lower rates on wireless than other taxable products subject to the sales tax.

Table 4 shows a detailed 50-state breakdown of the types of taxes and fees imposed by states and local governments in each state. To facilitate interstate comparisons, a single estimated rate for each state is calculated by averaging the rates imposed in the most populated city and in the state's capital city.

Several interesting issues stand out from a review of the data in this table.

Centralization vs. Decentralization. States vary greatly in terms of their willingness to allow local governments to impose wireless taxes. California is at one extreme. Although the state imposes several customer surcharges on wireless users for varions programs like 911, California does not apply any state-level tax on wireless service for general governmental purposes. However, the state allows local governments (mostly cities) broad authority to levy utility user taxes on wireless service. Rates on these taxes range from a low of 2 percent to a high of 10 percent.

Other states that grant local governments broad authority to impose taxes at high rates include Washington, Florida, Illinois, Maryland, New York, Nebraska, and Missouri. Unlike California, however, all those states also impose state-level taxes on wireless service. As a result, all those states have relatively high rates on wireless service.

Some local governments have used their authority to impose burdensome taxes on wireless consumers. Baltimore City, Montgomery County, and Prince Georges County in Maryland have already been mentioned. Also, Olympia, Wash., imposes a 9 percent telecommnnications tax on top of the state-local combined sales tax of 8.5 percent. Chicago imposes a 7 percent excise tax on wireless service on top of the state's 7 percent excise tax. In Missouri, numerous cities impose their own business license taxes on wireless service at rates as high as 11 percent. Those taxes are in addition to existing state and local sales taxes on wireless service. The same situation exists in the Nebraska, where the local "utility" taxes can be as high 6.5 percent, in addition to the 6.5 percent combined state-local sales tax. Finally, Tucson, Ariz., increased its telecommunications license tax from 2 percent to 4 percent in 2009.

Several states that do not permit local governments to impose their own wireless taxes nonetheless have high taxes on wireless consumers because they impose two separate state taxes on wireless service. Kentucky, Indiana, Rhode Island, Pennsylvania, Sonth Dakota, and North Dakota all impose both a sales tax and a state gross receipts tax on wireless service. Althongh the rates are relatively low in some of those states, the imposition of double taxes bumps Pennsylvania and Rhode Island into the top 10 list.

State Universal Service Funds. Some states have their own universal service funds that are nsed to subsidize landline service primarily to rural and high-cost areas. Twenty-one states have a USF or similar type of mechanism that is funded by an imposition on wireless users. In most of those states,

Table 2.
Taxes and Fees on Wireless Service, July 2010

Rank	State	State-Local Wireless Rate	Sales Tax State-Local Rate	Federal Rate (USF)	Combined Federal-State-Local Rate
1	Nebraska	18.64%	7.00%	5.05%	23.69%
2	Washington	17.95%	9.00%	5.05%	23.00%
3	New York	17.78%	8.25%	5.05%	22.83%
4	Florida	16.57%	7.25%	5.05%	21.62%
5	Illinois	15.85%	9.00%	5.05%	20.90%
6	Rhode Island	14.62%	7.00%	5.05%	19.67%
7	Missouri	14.23%	7.23%	5.05%	19.28%
8	Pennsylvania	14.08%	7.00%	5.05%	19.13%
9	Kansas	13.34%	8.13%	5.05%	18.39%
10	Texas	12.43%	8.25%	5.05%	17.48%
11	Maryland	12.23%	6.00%	5.05%	17.28%
12	Utah	12.16%	6.80%	5.05%	17.21%
13	South Dakota	12.02%	5.96%	5.05%	17.07%
14	Arizona	11.97%	7.20%	5.05%	17.02%
15	D.C.	11.58%	5.75%	5.05%	16.63%
16	Tennessee	11.58%	9.25%	5.05%	16.63%
17	Arkansas	11.07%	8.38%	5.05%	16.12%
18	Oklahoma	10.74%	8.45%	5.05%	15.79%
19	North Dakota	10.68%	6.00%	5.05%	15.73%
20	California	10.67%	9.25%	5.05%	15.72%
21	New Mexico	10.52%	7.60%	5.05%	15.57%
22	Kentucky	10.42%	6.00%	5.05%	15.47%
23	Colorado	10.40%	7.56%	5.05%	15.45%
24	Indiana	9.84%	7.00%	5.05%	14.89%
25	South Carolina	9.52%	7.25%	5.05%	14.57%
26	North Carolina	9.43%	7.75%	5.05%	14.48%
27	Minnesota	9.38%	7.71%	5.05%	14.43%
28	Mississippi	9.08%	7.00%	5.05%	14.13%
29	New Jersey	8.87%	7.00%	5.05%	13.92%
30	Georgia	8.57%	7.50%	5.05%	13.62%
31	Vermont	8.50%	6.50%	5.05%	13.55%
32	Wisconsin	8.34%	5.55%	5.05%	13.39%
33	New Hampshire	8.18%	0.00%	5.05%	13.23%
34	Ohio	7.95%	7.13%	5.05%	13.00%
35	Wyoming	7.94%	5.50%	5.05%	12.99%
36	Iowa	7.91%	6.50%	5.05%	12.96%
37	Massachusetts	7.81%	6.25%	5.05%	12.86%
38	Hawaii	7.75%	4.00%	5.05%	12.80%
39	Alabama	7.45%	7.25%	5.05%	12.50%
40	Michigan	7.27%	6.00%	5.05%	12.32%
41	Maine	7.16%	5.00%	5.05%	12.21%
42	Connecticut	6.96%	6.00%	5.05%	12.01%
43	Alaska	6.69%	2.50%	5.05%	11.74%
44	Virginia	6.56%	5.00%	5.05%	11.61%
45	Louisiana	6.28%	9.00%	5.05%	11.33%
46	Delaware	6.25%	0.00%	5.05%	11.30%
47	West Virginia	6.23%	6.00%	5.05%	11.28%
48	Montana	6.03%	0.00%	5.05%	11.08%
49	Idaho	2.20%	6.00%	5.05%	7.25%
50	Nevada	2.08%	7.91%	5.05%	7.13%
51	Oregon	1.81%	0.00%	5.05%	6.86%
US Simple Average		9.87%	6.38%	5.05%	**14.92%**
US Weighted Average		11.21%	7.42%	5.05%	**16.26%**

Federal USF 7/1/2010 — 37.1% FCC "hold harmless" times contribution factor of 13.6% = 5.05%
For flat monthly taxes and fees, average monthly bill is estimated at $48.16 per month per CTIA.

Source: Method from COST, "50-State Study and Report on Telecommunications Taxation," May 2005.
Updated July 2010 using state statutes and regulations.

the amount of the surcharge is relatively modest. However, several states have USF impositions that significantly add to the burden on wireless service. As shown in Table 4, USF impositions in Nebraska and Kansas exceed 4 percent of the wireless bill. In those two states, the USF imposition is a major reason why both rank in the top 10 for impositions on wireless users.

State and Local 911 Taxes and Fees. Most states impose a 911 tax or fee on wireless consumers to support the emergency communications systems. Those fees average about 75 cents per month per line. The wireless industry and wireless consumers have generally supported those fees, but have expressed concerns about efforts in some states to use the revenue for other purposes. According to the FCC, over $100 million in 911 funds was diverted for other purposes in 2009.[3] As a result of that state activity, which has occurred over multiple years, Congress passed legislation to help prevent further diversions. The ENHANCE 911 Act of 2004 (P.L. 108-494) made clear that a states is ineligible for federal 911 grant money if the state has allocated 911 fees for unintended purposes. In 2008 Congress also passed the Net 911 Improvement Act, which highlights the need to keep 911 fees protected for the purposes intended. The Net 911 law also requires the FCC to monitor the practice of state implementation, collection and uses of 911 fees and report its findings to the US Congress.

Fees Unrelated to Wireless Service. A few states impose fees on wireless users that are completely unrelated to wireless service. In 2009 Wisconsin imposed a police and fire protection fee of 75 cents per month per line on all wireless subscribers. Although the measure stated it was established to fund a grant program for local police and fire departments, the money goes into the state's general fund and can be used for any governmental purpose. Utah funds its poison control centers using a fee on wireless and wireline phone customers.

Why Should Policymakers Care?

The rising popularity of wireless service, and the explosive growth in the wireless subscriber base, has led some policymakers to question whether wireless taxes are detrimental to the industry. However, there are three primary reasons why policymakers should be cautious about expanding narrowly based wireless taxes, fees, and charges. First, discriminatory taxes may impede investment in wireless infrastructure, which in turn reduces economic growth and job creation. Second, many discriminatory taxes have a disproportionately large effect on low- and moderate-income wireless Americans, reducing consumer access to and adoption of wireless services. Third, if there is a national policy consensus around encouraging deployment and adoption of broadband services, excessive and discriminatory taxes on wireless and other communications services run directly counter to that goal.

Economic Impact of Wireless Taxes. Consumer demand for wireless service is price sensitive. According to the most recent study on the price elasticity of demand for wireless service, each 1 percent increase in the price of wireless service reduces consumer demand for wireless service by about 1.2 percent.[4] Using this estimate, the 9 percentage point disparity between wireless taxes, fees, and government charges and other taxable goods and services would suppress demand for wireless service by about 10 percent below what it would be if the tax and fee burden on wireless was equivalent to that imposed on other taxable goods and services.

The recent growth in the prepaid wireless segment suggests that consumers are indeed sensitive to price when purchasing wireless service. The average monthly revenue per wireless subscriber is significantly lower from prepaid customers than traditional postpaid customers on contract plans. The rapid growth in the number of prepaid subscribers, from roughly 16 percent of the market in 2007 to about 20.5 percent in 2010, suggests strongly that many consumers are price sensitive.[5]

Wireless carriers invested about $25 billion in their wireless networks in 2008, or roughly 17 percent of their gross revenues.[6] If wireless service were subject to the same tax treatment as other taxable goods and services, carriers would have had up to $2.5 billion more available to invest in network improvements.

Network investment is important not only to consumers and businesses that use those networks, but to the entire American economy. A recent report by the International Chamber of Commerce in Paris surveyed the evidence not only from the United States and Europe but from the developing world as

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[3]Federal Communications Commission, Second Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, Aug. 13, 2010. *Available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-300946A1.pdf.

[4]Allan T. Ingraham and J. Gregory Sidak, "Do States Tax Wireless Services Inefficiently? Evidence on the Price Elasticity of Demand," *Virginia Tax Review*, fall 2004, pp. 249-261.

[5]Robert F. Roche, "Prepaid Wireless in the United States: A Snapshot From CTIA Based on CTIA's Semi-Annual Wireless Industry Survey Results," Washington, D.C.: CTIA, Nov. 2010, p. 5.

[6]U.S. Census Bureau, Annual Capital Expenditures Survey, Table 4a (NAICS code 5172), *available at* http://www.census.gov/econ/aces/xls/2008/Full%20Report.htm.

Table 3.
Taxes and Fees on Wireless Service, July 2010 Compared to General Sales Tax Rate

Rank	State	State-Local Wireless Rate	Sales Tax State-Local Rate	Wireless Over/(Under) General Rate
1	Nebraska	18.64%	7.00%	11.64%
2	New York	17.78%	8.25%	9.53%
3	Florida	16.57%	7.25%	9.32%
4	Washington	17.95%	9.00%	8.95%
5	New Hampshire	8.18%	0.00%	8.18%
6	Rhode Island	14.62%	7.00%	7.62%
7	Pennsylvania	14.08%	7.00%	7.08%
8	Missouri	14.23%	7.23%	7.00%
9	Illinois	13.85%	9.00%	6.85%
10	Delaware	6.25%	0.00%	6.25%
11	Maryland	12.23%	6.00%	6.23%
12	South Dakota	12.02%	5.96%	6.06%
13	Montana	6.03%	0.00%	6.03%
14	D.C.	11.58%	5.75%	5.83%
15	Utah	12.16%	6.80%	5.36%
16	Kansas	13.34%	8.13%	5.21%
17	Arizona	11.97%	7.20%	4.77%
18	North Dakota	10.68%	6.00%	4.68%
19	Kentucky	10.42%	6.00%	4.42%
20	Alaska	6.69%	2.50%	4.19%
21	Texas	12.43%	8.25%	4.18%
22	Hawaii	7.75%	4.00%	3.75%
23	New Mexico	10.52%	7.60%	2.92%
24	Indiana	9.84%	7.00%	2.84%
25	Colorado	10.40%	7.56%	2.84%
26	Wisconsin	8.34%	5.55%	2.79%
27	Arkansas	11.07%	8.38%	2.69%
28	Wyoming	7.94%	5.50%	2.44%
29	Tennessee	11.58%	9.25%	2.33%
30	Oklahoma	10.74%	8.45%	2.29%
31	South Carolina	9.52%	7.25%	2.27%
32	Maine	7.16%	5.00%	2.16%
33	Mississippi	9.08%	7.00%	2.08%
34	Vermont	8.50%	6.50%	2.00%
35	New Jersey	8.87%	7.00%	1.87%
36	Oregon	1.81%	0.00%	1.81%
37	North Carolina	9.43%	7.75%	1.68%
38	Minnesota	9.38%	7.71%	1.67%
39	Massachusetts	7.81%	6.25%	1.56%
40	Virginia	6.56%	5.00%	1.56%
41	California	10.67%	9.25%	1.42%
42	Iowa	7.91%	6.50%	1.41%
43	Michigan	7.27%	6.00%	1.27%
44	Georgia	8.57%	7.50%	1.07%
45	Connecticut	6.96%	6.00%	0.96%
46	Ohio	7.95%	7.13%	0.82%
47	West Virginia	6.23%	6.00%	0.23%
48	Alabama	7.45%	7.25%	0.20%
49	Louisiana	6.28%	9.00%	-2.72%
50	Idaho	2.20%	6.00%	-3.80%
51	Nevada	2.08%	7.91%	-5.83%
US Simple Average		9.87%	6.38%	3.49%
US Weighted Average		11.21%	7.42%	3.80%

For flat monthly taxes and fees, average monthly consumer bill is estimated at $48.16 per month per CTIA.

Source: Method from COST, "50-State Study and Report on Telecommunications Taxation," May 2005. Updated July 2010 using state statutes and regulations.

Table 4.
State and Local Transaction Taxes, Fees, and Government Charges on Wireless Service
July 1, 2010

State	Type of Tax	Rate	Comments
Alabama	Ala. cell service tax	6.00%	Access, interstate and intrastate
	E911	1.45%	70 cents per month
	Total Transaction Tax	7.45%	
Alaska	Local sales tax	2.50%	Avg. of Juneau (5%) and Anchorage (0%)
	Local E911	3.53%	Anchorage — $1.50; Juneau — $1.90
	State USF	0.66%	1.05% times FCC safe harbor
	Total Transaction Tax	6.69%	
Arizona	State sales (transaction priv.)	6.60%	intrastate telecommunications service
	County sales (transaction priv.)	0.60%	Phoenix (Maricopa County) = 0.7%; Tucson (Pima County) = 0.5%
	City telecommunications	4.35%	Avg. Phoenix (4.7%) & Tucson (4%)
	911	0.42%	20 cents per month
	Total Transaction Tax	11.97%	
Arkansas	State sales tax	6.00%	6% effective 3/1/2004
	Local sales taxes	2.38%	Avg. Little Rock (1.5%) and Fayetteville (3.25%)
	State High Cost Fund	1.26%	2.0% times FCC safe harbor
	Wireless 911	1.35%	$.65 / month statewide.
	TRS	0.08%	$.04 per line per month
	Total Transaction Tax	11.07%	
California	Local utility user tax	8.00%	Avg. of Los Angeles (9%) and Sacramento (7%)
	State 911	0.50%	intrastate
	PUC fee	0.18%	intrastate
	ULTS (lifeline)	1.15%	intrastate
	Deaf/CRS	0.20%	intrastate
	High Cost funds A & B	0.58%	intrastate
	Teleconnect Fund	0.08%	intrastate
	CASF - advanced services fund	0.00%	
	Total Transaction Tax	10.67%	
Colorado	State sales tax	2.90%	access and intrastate
	Local sales tax — city/county	3.56%	Avg. of Denver (3.62%) and Colorado Springs (3.5%)
	Local sales tax — RTD, CD, BS	1.10%	Denver (1.2%) / Colorado Springs (1%)
	911	1.45%	Denver ($.70) / Colorado Springs ($.70)
	USF	1.38%	2.2% times FCC safe harbor
	Total Transaction Tax	10.40%	
Connecticut	State sales tax	6.00%	Access, interstate and intrastate
	911	0.96%	47 cents per line
	Total Transaction Tax	6.96%	
Delaware	Public utility gross receipts tax	5.00%	Access and intrastate
	Local 911 tax	1.25%	60 cents per month
	Total Transaction Tax	6.25%	
District of Columbia	Telecommunication privilege tax	10.00%	Monthly gross charge; 11% for nonresidential
	911	1.58%	76 cents per month;
	Total Transaction Tax	11.58%	
Florida	State communications services	9.17%	Access, interstate and intrastate
	Local communications services	6.36%	Jacksonville 5.82%; Tallahassee 6.9%
	911	1.04%	50 cents per month statewide

Table 4.
State and Local Transaction Taxes, Fees, and Government Charges on Wireless Service
July 1, 2010
(continued)

State	Type of Tax	Rate	Comments
	Total Transaction Tax	16.57%	
Georgia	State sales tax	2.91%	4% of "access charge" — assume $35
	Local sales tax	2.54%	Avg. rate Atlanta (4%) and Augusta (3%)
	Local 911	3.11%	Altanta $1.50/line; Augusta $1.50/line
	Total Transaction Tax	8.57%	
Hawaii	Public service co. tax	4.00%	
	General excise tax	1.88%	
	PUC fee	0.50%	.5% of intrastate
	Wireless 911	1.37%	$.66 per month
	Total Transaction Tax	7.75%	
Idaho	Telephone service asst. program	0.12%	Set annually by PUC currently 6 cents per mo
	Statewide wireless 911	2.08%	Boise = increased from 75 cents per month to $1.00/month
	Total Transaction Tax	2.20%	
Illinois	State telecom excise tax	7.00%	Access, interstate and intrastate
	Simplified municipal tax	5.50%	Avg. of Chicago (7%) and Springfield (4%)
	Wireless 911	3.35%	Chicago up from $1.25 to $2.50/mo.;others 73 cents per mo
	Total Transaction Tax	15.85%	
Indiana	State sales tax	7.00%	Access and intrastate
	Utility receipts tax	1.40%	Same base as sales tax
	Wireless 911	1.04%	50 cents per month
	State USF	0.25%	0.4% x FCC safe harbor
	PUC fee	0.15%	
	Total Transaction Tax	9.84%	
Iowa	State sales tax	6.00%	
	Local option sales taxes	0.50%	Avg. of Cedar Rapids (1%) and Des Moines (0%)
	Wireless 911	1.35%	65 cents per month
	Dual party relay service fee	0.06%	3 cents per month
	Total Transaction Tax	7.91%	
Kansas	State sales tax	6.30%	intrastate and interstate
	Local option sales taxes	1.83%	Avg. of Wichita (1.0%) and Topeka (2.65%)
	USF	4.18%	6.64% x FCC safe harbor
	Wireless 911	1.04%	25 cents per state and $.25/mo. county
	Total Transaction Tax	13.34%	
Kentucky	State sales tax	6.00%	Access, interstate and intrastate
	School utility gross receipts	1.50%	Avg Frankfort (3%) and Lousiville (0%)
	Lifeline support charge	0.17%	8 cents per month
	Wireless 911	1.45%	70 cents per month
	Communications gross receipts tax	1.30%	1.3% effective Jan. 1, 2006
	Total Transaction Tax	10.42%	
Louisiana	State sales tax	3.00%	Intrastate rate
	Wireless 911	1.76%	New Orleans 85 cents per mo.; Baton Rouge 85 cents per mo.
	State USF	1.52%	May vary by carrier based on ARPU
	Total Transaction Tax	6.28%	
Maine	State service provider tax	5.00%	intrastate

Table 4.
State and Local Transaction Taxes, Fees, and Government Charges on Wireless Service
July 1, 2010
(continued)

State	Type of Tax	Rate	Comments
	911 tax	0.93%	Increased from 37 cents to 45 cents on 7/1/2010
	Maine USF	0.85%	1.35% times FCC safe harbor
	MTEAF	0.38%	0.6% times FCC safe harbor
	Total Transaction Tax	7.16%	
Maryland	State sales tax	6.00%	"mobile telecommunications service"
	Local telecom excise	4.15%	84 per month in Baltimore; No tax in Annapolis
	State 911	0.52%	25 cents per month
	County 911	1.56%	Baltimore 75 cents per month; Annapolis 75 cents per month
	Total Transaction Tax	12.23%	
Massachusetts	State sales tax	6.25%	interstate and intrastate
	Wireless 911	1.56%	increased from 30 cents to 75 cents per month 9/1/08
	Total Transaction Tax	7.81%	
Michigan	State sales tax	6.00%	interstate and intrastate
	State wireless 911	0.39%	19 cents per month
	County wireless 911	0.87%	Average of Detroit (8.42/mo.) and Lansing (42 cents per mo.)
	Total Transaction Tax	7.27%	
Minnesota	State sales tax	6.88%	Interstate and intrastate
	Local sales tax	0.83%	Minneapolis (0.9%) and St. Paul (0.75%)
	911	1.56%	Increased from 65 cents to 75 cents July 1, 2009
	Telecom access MN fund	0.12%	Set by PUC currently 6 cents month
	Total Transaction Tax	9.38%	
Mississippi	State sales tax	7.00%	Access, interstate and intrastate
	Wireless 911	2.08%	$1 per month per line
	Total Transaction Tax	9.08%	
Missouri	State sales tax	4.23%	Access and intrastate
	Local sales taxes	3.50%	Avg. Jefferson City (3.5%) and Kansas City (3.5%)
	Local business license tax	6.50%	Jefferson City (7%); Kansas City (6% residential, 10% business)
	Total Transaction Tax	14.23%	
Montana	Telecom excise tax	3.75%	Access, interstate and intrastate
	911 and E911 tax	2.08%	$1 per number per month
	TDD tax	0.21%	10 cents per number per month
	Total Transaction Tax	6.03%	
Nebraska	State sales tax	5.50%	Access and intrastate
	Local sales tax	1.50%	Lincoln (1.5%) and Omaha (1.5%)
	City business and occupation tax	6.13%	Avg. of Omaha (6.25%) and Lincoln (6.0%); access and intrastate
	State USF	4.37%	6.95% times FCC safe harbor
	Wireless 911	1.04%	Up to 70 cents per month eff. July 1, 2006; currently 50 cents
	TRS	0.10%	5 cents per month effective July 1,2007
	Total Transaction Tax	18.64%	
Nevada	Local franchise / gross receipts	1.56%	5% of first $15 intrastate revenues
	Local 911 tax	0.52%	up to 25 cents per month — imposed by counties
	State deaf relay charge	0.06%	3 cents per month

Table 4.
State and Local Transaction Taxes, Fees, and Government Charges on Wireless Service
July 1, 2010
(continued)

State	Type of Tax	Rate	Comments
	Nevada USF	0.10%	0.155% times FCC safe harbor
	Total Transaction Tax	2.08%	
New Hampshire	Communication services tax	7.00%	Access, interstate and intrastate
	911 tax	1.18%	Reduced from 64 cents to 57 cents
	Total Transaction Tax	8.18%	
New Jersey	State sales tax	7.00%	Increased to 7% effective July 15, 2006
	Wireless 911	1.87%	90 cents per month effective 7/1/2004
	Total Transaction Tax	8.87%	
New Mexico	State gross receipts (sales) tax	5.13%	5% intrastate; 4.25% interstate
	City and county gross receipts tax	2.47%	Avg. Santa Fe (3.0625%) and Albuquerque (1.875%)
	Wireless 911	1.06%	51 cents per month per subscriber
	TRS surcharge	0.33%	Intrastate charges
	State USF	1.54%	2.45% times FCC safe harbor
	Total Transaction Tax	10.52%	
New York	State sales tax	4.00%	Intrastate and monthly access
	Local sales taxes	4.25%	NYC (4.5%); Albany (4%)
	MCTD sales tax	0.19%	NYC - .375%; Albany 0%
	State excise tax (186e)	2.50%	mobile telecom service — includes interstate
	MCTD excise/surcharge (186c)	0.30%	NYC and surrounding counties - .6%; Albany 0%
	Local utility gross receipts tax	1.49%	NYC .84% of 2.35%; Albany 1%
	State wireless 911	2.49%	$1.20 per month
	Local wireless 911	0.62%	30 cents per month NYC and most counties
	MCTD surcharge (184)	0.07%	NYC .13%; Albany — no tax
	NY franchise tax (184)	0.38%	
	School district utility tax	1.50%	Albany 3%, NYC no tax
	Total Transaction Tax	17.78%	
North Carolina	State sales tax	8.00%	Access, interstate and intrastate
	Wireless 911	1.25%	Reduced from 70 cents to 60 cents on July 1, 2010
	TRS Charge	0.19%	9 cents per month
	Total Transaction Tax	9.43%	
North Dakota	State sales tax	5.00%	Access and intrastate
	Local sales taxes	1.00%	Avg Fargo (1%) & Bismarck (1%)
	State gross receipts tax	2.50%	interstate and intrastate
	Local 911 tax	2.08%	$1 in Bismarck and Fargo
	TRS	0.10%	Up to 11 cents per mo — currently 5 cents
	Total Transaction Tax	10.68%	
Ohio	State sales tax	5.50%	Access, interstate and intrastate
	Local sales taxes	1.75%	Columbus (1.25%) and Cleveland (2.25%)
	Regulatory fee	0.12%	Intrastate gross revenues
	State/local wireless 911	0.58%	Reduced from 32 cents to 28 cents per month effective Jan. 1, 2009
	Total Transaction Tax	7.95%	
Oklahoma	State sales tax	4.50%	Access, interstate and intrastate
	Local sales taxes	3.95%	Avg. of Oklahoma City (3.875%) and Tulsa (4.017%)
	Local 911	1.04%	50 cents per month in OK City and Tulsa
	USF	1.25%	1.99% times FCC safe harbor

Table 4.
State and Local Transaction Taxes, Fees, and Government Charges on Wireless Service
July 1, 2010
(continued)

State	Type of Tax	Rate	Comments
	Total Transaction Tax	10.74%	
Oregon	Local utility tax	0.00%	No tax on wireless in Portland or Salem
	911 tax	1.56%	8.75 per month
	RSPF surcharge	0.25%	8.12 per month
	Total Transaction Tax	1.81%	
Pennsylvania	State sales tax	6.00%	Access, interstate and intrastate
	State gross receipts tax	5.00%	Access, interstate and intrastate
	Local sales tax	1.00%	Philadephia 2%; Harrisburg 0%
	Statewide wireless 911	2.08%	$1 per month
	Total Transaction Tax	14.08%	
Rhode Island	State sales tax	7.00%	Access, interstate and intrastate
	Gross receipts tax	5.00%	Access, interstate and intrastate
	911 fee	2.08%	$1 per month
	Additional wireless 911 fee	0.54%	26 cents per month
	Total Transaction Tax	14.62%	
South Carolina	State sales tax	6.00%	Access, interstate and intrastate
	Local sales tax	1.25%	Avg. of Charleston (1.5%) and Columbia (1%)
	Municipal license tax	1.00%	Charleston (1%) and Columbia (1.0%)
	911 tax	1.27%	61 cents per month
	Total Transaction Tax	9.52%	
South Dakota	State sales tax	4.00%	access, interstate and intrastate
	State gross receipts tax	4.00%	Wireless only effective July 1, 2008
	local option sales tax	2.00%	Avg. of Pierre (2%) and Sioux Falls (2%)
	911 excise	1.56%	Up to 75 cents per month
	TRS fee	0.31%	15 cents per month
	PUC fee	0.15%	intrastate receipts
	Total Transaction Tax	12.02%	
Tennessee	State sales tax	7.00%	Access, interstate and intrastate
	Local sales tax	2.50%	Statewide local rate for intrastate
	911 tax	2.08%	$1 permonth
	Total Transaction Tax	11.58%	
Texas	State sales tax	6.25%	Access, interstate and intrastate
	Local sales tax	2.00%	Austin (2%) and Houston (2%)
	Telecom Infrastructure Fund	0.00%	Repealed effective Oct. 1, 2008
	Wireless 911 tax	1.04%	50 cents per month
	Texas USF	2.14%	3.4% times FCC safe harbor
	911 equalization surcharge	1.00%	intrastate long distance
	Total Transaction Tax	12.43%	
Utah	State sales tax	4.70%	Access and intrastate
	Local sales taxes	2.10%	Avg. of Salt Lake City (2.15%) and Provo (2.05%)
	Local utility wireless	3.50%	Levied at 3.5% max. in SLC and Provo
	Local 911	1.27%	61 cents per month
	State 911	0.17%	8 cents per month
	Poison Control	0.15%	7 cents month
	State USF	0.28%	0.45% rate times FCC safe harbor
	Total Transaction Tax	12.16%	
Vermont	State sales tax	6.00%	Access, interstate and intrastate

Table 4.
State and Local Transaction Taxes, Fees, and Government Charges on Wireless Service
July 1, 2010
(continued)

State	Type of Tax	Rate	Comments
	Local sales tax	0.50%	Avg. of Montpelier (0%) and Burlington (1%)
	State USF (also funds 911)	2.00%	Increased from 1.7% to 2% effective Sept. 1, 2009 through Sept. 1, 2010
	Total Transaction Tax	8.50%	
Virginia	State communications sales tax	5.00%	
	Wireless 911	1.56%	75 cents per month
	Total Transaction Tax	6.56%	
Washington	State sales tax	6.50%	Access, interstate and intrastate
	Local sales taxes	2.50%	Avg. Olympia (2.0%) & Seattle (3.0%)
	B&O / Utility Franchise — local	7.50%	Olympia (9%) & Seattle (6%) avg.
	911 — state	0.42%	$.20/month
	911 local	1.04%	$.50/month;
	Total Transaction Tax	17.	95%
West Virginia	Wireless 911	6.23%	$3.00 per month
	Total Transaction Tax	6.23%	
Wisconsin	State sales tax	5.00%	Access, intrastate and interstate
	Local sales tax	0.55%	Avg. of Milwaukee (0.6%) & Madison (0.5%)
	Wireless 911	0.00%	Reduced from $.92 per month to $0 eff 7/1/08
	Police and Fire Protection Fee	1.56%	$.75 per month effective 9/1/2009
	State USF	1.23%	1.96% times FCC safe harbor
	Total Transaction Tax	8.34%	
Wyoming	State sales tax	4.00%	access and intrastate
	Local sales tax	1.50%	Avg. of Cheyenne (2%) and Casper (1%)
	TRS	0.12%	Up to $.25/month $.06 currently
	USF	0.75%	1.2% times FCC safe harbor
	911 tax	1.56%	$.75/ month levied locally
	Total Transaction Tax	7.94%	

*Sources:*Methodology: Committee on State Taxation, 50-State Study and Report on Telecommunications Taxation, May 2005. Updated July 2010 by Scott Mackey, KSE Partners LLP, using state statutes and regulations. Average Revenue Per Unit (ARPU): $48.16 per Cellular Telephone and Internet Association, June 2010.

well.[7] Economists that have examined the link between investments in communications and information technology infrastructure and economic growth have consistently found a strong link. Simply put, wireless infrastructure investment enables an entire entrepreneurial culture to focus on creating applications and devices to make businesses more productive and to improve the lives of consumers. These tools in turn make businesses more productive and profitable so that they can create new jobs that generate economic activity and tax revenues for governments.

Although most infrastructure investments create these types of multiplier effects, the multiplier effects for telecommunications infrastructure are higher than other industries because communications and information technology are so deeply embedded in business processes. Those infrastructure investments also benefit the government and nonprofit sectors in ways that do not necessarily show up directly in economic statistics but nonetheless make these sectors more efficient and enable them to lower the cost of providing government services.

As noted in the International Chamber of Commerce report, "Remedying the discriminatory tax treatment of telecom goods and services may reduce tax receipts in the short-term, but the longer-term increase in the use of advanced capability devices,

[7]ICC discussion paper.

service demand, and network deployment resulting from these tax reductions is likely to counteract this loss of revenue over time."[8] Policymakers have to weigh the trade-offs between the short-term revenue benefits of excessive wireless taxes versus the long-term economic impact on the state from reduced infrastructure investment.

Wireless Taxes are Regressive. Excessive and discriminatory taxes on wireless service are unfair to consumers, especially low-income consumers who rely on wireless service much more heavily than higher-income consumers. Studies by the Pew Foundation and federal agencies surveying households about wireless use reveal that low-income populations rely much more heavily on wireless service for voice service as well as access to the Internet.[9] Low-income families spend much more of their disposable incomes on wireless service than do middle- and high-income families, so tax policies that place excessive burdens on wireless consumers are regressive and punitive on poorer Americans. Increasingly, both in America and abroad, wireless services are recognized as a critical tool in allowing consumers and businesses to participate in, and gain success in, the 21st century economy.

Conclusion

Wireless consumers continue to be burdened with excessive and discriminatory taxes, fees, and charges in many states and localities across the United States. With state and local governments continuing to face revenue challenges, the wireless industry and its customers continue to be at risk as an attractive target for raising new revenues.

Targeting wireless consumers, however, disproportionately effects poorer families and may have ramifications for long-term state economic development and growth. Higher taxes on wireless service, coupled with increased taxes on wireless investments, may lead to slower deployment of wireless network infrastructure, including 4G wireless broadband technologies that an increasingly mobile workforce relies on for economic success.

States and local governments should study their existing tax systems and consider policies that transition their tax systems away from narrowly based wireless taxes and toward broad-based tax sources that do not distort consumer purchasing decisions and do not slow investment in critical infrastructure like wireless broadband. Those changes would position states to attract additional wireless infrastructure investments that generate economic growth through the new jobs and revenue growth they produce. ☆

[8]ICC discussion paper, p. 2.

[9]Steven J. Blumberg et al., "Wireless Substitution: Early Release Estimates From the National Health Interview Survey, July — December 2009," Atlanta: Centers for Disease Control, May 12, 2010. *Available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf.

Mr. COBLE. And Mr. Mackey, you beat the red light. You were a speed merchant. Thank you, sir.

Ms. Sims, we would be glad to hear from you.

TESTIMONY OF BERNITA SIMS, COUNCILWOMAN, CITY COUNCIL OF HIGH POINT, NORTH CAROLINA

Ms. SIMS. Chairman Coble and distinguished Members of the House Subcommittee on Courts, Commercial and Administrative Law, my name is Bernita Sims. I am a council member from the City of High Point, North Carolina. In addition, I serve on the Finance, Administration and Intergovernmental Relations Committee of the National League of Cities.

I appreciate the opportunity to appear before you today on behalf of the National League of Cities, the United States Conference of Mayors, the National Association of Counties, the Government Finance Officers Association, and the National Association of Telecommunications Officers and Advisors.

Let us be clear. This bill is not about expanding broadband technology or providing tax parity for an overtaxed industry. Rather, this bill is about special treatment and favoritism for wireless phone companies that continue to experience explosive growth and profits. The current tax treatment of wireless services by Federal, State, and local authorities has not hindered product innovation, service growth, or industry profitability. In fact, the wireless communications industry is a strong and successful industry with vibrant subscribership levels and revenues.

If there is one thing all of our organizations share, it is our longstanding opposition to efforts by Congress to preempt State and local taxing authority. How to levy taxes fairly, how to ensure there is no discrimination among companies that provide different forms of the same service, and how to protect local government revenues are all appropriate debates. But these debates belong at the State and local levels. And this is why our associations unite in opposing this bill.

Local governments exercise their taxing authority to the extent provided by State law. As a result, local taxing authority and practices differ from State to State. And oftentimes, taxing policy differs from county to county and city to city within the State. But this is good because this means that every local government taxing authority tailors is tax policy by taking into account the sources of revenue available and the needs and wants of its residents. More importantly, the local officials making these decisions are accountable by the ballot box to those paying the taxes that support the services they use. Our citizens do not need to be protected by the long arm of the Federal Government. They already have the power to change locally imposed taxes.

In today's difficult economic times where State aid to local governments has decreased dramatically, local taxing autonomy is crucial in helping to ensure that the needs of local citizens, our mutual constituents, are met. The ability to make taxing and other fiscal policy decisions at the local level without Federal interference enables High Point to provide the quality services my constituents expect.

Some argue the proposed 5-year ban set forth in this bill wouldn't hurt State and local governments because they can still continue to collect the taxes they currently impose. But this misses the point. What this legislation does is preempt State and local taxing authority and represents a Federal intrusion into historically

protected State and local tax classifications. Enactment of this bill would lead other industries to seek preferential tax treatment at the expense of State and local budgets and taxpayers. This slippery slope necessarily leads to an erosion of our system of federalism and a direct threat to the fiscal health of State and local governments.

It is important to remember that State and local governments, unlike the Federal Government, must balance their budgets. In this tough financial climate, this isn't an easy task and the impact of decisions made by local elected officials are felt immediately by constituents. Hard and oftentimes unpopular choices, like those made by High Point, must be made. Even my counterparts at the county level are leaving no stone unturned to rein in spending, as demonstrated in a recent survey by the National Association of Counties. Essential services may be cut. Public employees may be laid off. Infrastructure repairs and construction may be put on hold. And, yes, taxes may occasionally have to be raised. But what is important to emphasize is that when balancing the budget, all options must be on the table. What this bill does is takes away one of these options, to tax the wireless industry, at the expense of other taxpayers and businesses. To have the Federal Government, which has difficulties balancing its own budget, seek to tie the hands of State and local lawmakers through the misguided enactment of legislation such as this is simply wrong.

Americans are benefitting from being able to access the mobile industry or make a phone call at any time and anywhere. Whether wireless technology is being used by other industries such as health care, education, transportation, or energy, these results affirm our industry is revolutionizing and improving the way we live and work.

Furthermore, State and local taxes on wireless services are not an obstacle to wireless broadband deployment.

The economics of the industry will not be changed by preemption of State or local taxes. Wireless carriers will quite rationally still invest their resources in the most potentially lucrative areas and will still set their prices at the highest aggregate rates they believe the market will bear.

Finally, let me say this. Our associations support the need for State and local governments to stand on their own and use all tools and resources available to them to balance their budgets, while continuing to provide essential services. Not always, but in some cases, taxation of the wireless industry, even at higher rates than other industries, might be one of those tools. It is incumbent for all Members of Congress to support their hometown leaders.

I urge you to oppose this bill.

Thank you.

[The prepared statement of Ms. Sims follows:]

Statement of Bernita Sims
Council Member, City of High Point, North Carolina

Before the
Subcommittee on Courts, Commercial and Administrative Law
U.S. House of Representatives

H.R. 1002
"Wireless Tax Fairness Act of 2011"

March 15, 2011

Chairman Coble and distinguished members of the House Subcommittee on Courts, Commercial and Administrative Law, my name is Bernita Sims. I am a Council Member, from the City of High Point, North Carolina. In addition, I serve on the Finance, Administration and Intergovernmental Relations Committee of the National League of Cities.

I appreciate the opportunity to appear before you today on behalf of the National League of Cities, the United States Conference of Mayors, the National Association of Counties, the Government Finance Officers Association, and the National Association of Telecommunications Officers and Advisors.

Let us be clear. This bill is not about expanding broadband technology or providing tax parity for an overtaxed industry. Rather, this bill is about special treatment and favoritism for wireless phone companies that continue to experience explosive growth and profits. The current tax treatment of wireless services by federal, state, and local authorities has not hindered product innovation, service growth, or industry profitability. In fact, the wireless communications industry is a strong and successful industry with vibrant subscribership levels and revenues.

If there is one thing all of our organizations share, it is our long-standing opposition to efforts by Congress to preempt state and local taxing authority. How to levy taxes fairly, how to ensure there is no discrimination among companies that provide different forms of the same service, and how to protect local government revenues, are all appropriate debates. But these debates belong at the state and local levels. And this is why our associations unite in opposing this bill.

Local governments exercise their taxing authority to the extent provided by state law. As a result, local taxing authority and practices differ from state and state. And often times, taxing policy differs from county to county and city to city within the state. But this is good, because this means that every local government taxing authority tailors its tax policy by taking into account the sources of revenue available and the needs and wants of its residents. More importantly, the local officials making these decisions are accountable by the ballot box to those paying the taxes that support the services they use. Our citizens do not need to be protected by the long-arm of the federal government. They already have the power to change locally imposed taxes.

In today's difficult economic times, where state aid to local governments has decreased dramatically, local taxing autonomy is crucial in helping to ensure that the needs of local citizens – our mutual constituents – are met. The ability to make taxing and other fiscal policy decisions at the local level, without federal interference, enables High Point to provide the quality services my constituents expect.

Some argue the proposed 5-year ban set forth in this bill wouldn't hurt state and local governments because they can still continue to collect the taxes they currently impose. But this misses the point. What this legislation does is preempt state and local taxing authority and represents a federal intrusion into historically-protected state and local tax classifications. Enactment of this bill would lead other industries to seek preferential tax treatment at the expense of state and local budgets and taxpayers. This slippery slope necessarily leads to an erosion of our system of federalism and a direct threat to the fiscal health of state and local governments.

It is important to remember that state and local governments, unlike the federal government, must balance their budgets. In this tough financial climate, this isn't an easy task, and the impact of decisions made by local elected officials are felt immediately by constituents. Hard, and often times unpopular, choices – like those made by High Point – must be made. Even my counterparts at the county level are leaving no stone unturned to rein in spending, as demonstrated in a recent survey by the National Association of Counties. Essential services may be cut. Public employees may be laid off. Infrastructure repairs and construction may be put on hold. And yes, taxes may occasionally have to be raised. But what is important to emphasize is that when balancing the budget, all options must be on the table. What this bill does is takes away one of these options – to tax the wireless industry – at the expense of other taxpayers and businesses. To have the federal government, which has difficulties balancing its own budget,

seek to tie the hands of state and local lawmakers through the misguided enactment of legislation such as this is simply wrong.

This bill fails to recognize the plain fact that not all jurisdictions depend on identical revenue sources. Some have an income tax – others don't. Some tax food – others don't. As a result, some jurisdictions may necessarily have to tax wireless services at a higher level than others. Enactment of this bill would force those jurisdictions to rely even more heavily on other types of taxes, thereby shifting the tax burden to those in the community less able to tolerate it.

The wireless industry argues misleadingly that this bill is necessary because taxes on wireless providers are higher than those imposed on other industries. Our organizations have published a report disputing these claims, which I will be pleased to provide you.

According to CTIA, the wireless association, wireless subscribership jumped from 97 million in June 2000 to nearly 293 million in June 2010, representing a penetration rate of 93%. And the total number of data-capable devices on operators' networks rose to more than 264 million. CTIA President and CEO Steve Largent stated: "As the survey data constantly proves, the wireless industry is an incredibly vibrant, intensely competitive and remarkably innovative while still providing unparalleled value for consumers. Every day across the country, Americans are benefiting from being able to access the mobile Internet or make a phone call at anytime and anywhere. Whether wireless technology is being used by other industries such as healthcare, education, transportation or energy, these results affirm our industry is revolutionizing and improving the way we live and work."

Furthermore, state and local taxes on wireless services are not an obstacle to wireless broadband deployment. Profit motivation is the reason for slower (or nonexistent) deployment in rural areas. Deployment of communications networks is extremely costly; communications carriers are private, for-profit companies and they quite rationally allocate their investment resources to areas of the country where they are likely to achieve the highest return on investment – those areas that have relatively dense populations and thereby greater potential penetration and higher revenues per mile of construction.

The economics of the industry will not be changed by preemption of state or local taxes. Wireless carriers will, quite rationally, still invest their resources in the most potentially lucrative areas and will still set their prices at the highest aggregate rates they believe the market will bear. Relieving wireless providers of local taxes is unlikely to change investment choices and may

simply serve to convert into carrier profits those funds that would otherwise have accrued to localities in this critical economic environment.

However, whether a particular state or local government has imposed too high a tax burden on the wireless industry is an issue that should be addressed by the appropriate state or local government. The federal government should not step in and impose a uniform, nationwide taxing scheme that provides preferential tax treatment to a single industry – the wireless industry – while preempting state and local taxing authority.

Preemption of state and local authority presents a serious matter, as any such preemption that undermines the 10th Amendment to the United States Constitution. Those who support such legislation must ask themselves whether the preemption of state and local authority is ever warranted. I would argue in this case, where the legislation seeks to protect an industry that continues to experience explosive growth and profits, potentially at the expense of other taxpayers – it is most definitely not.

Finally, let me say this. Our associations support the need for state and local governments to stand on their own and use all tools and resources available to them to balance their budgets, while continuing to provide essential services. Not always, but in some cases, taxation of the wireless industry, even at higher rates than other industries, might be one of those tools. It is incumbent for all members of Congress to support their hometown leaders.

I urge you to oppose this bill.

Thank you, Bernita Sims. I appreciate your testimony.

Mr. Alford, we would be glad to hear from you.

TESTIMONY OF HARRY ALFORD, PRESIDENT AND CEO, NATIONAL BLACK CHAMBER OF COMMERCE

Mr. ALFORD. Chairman Coble, Ranking Member Cohen, distinguished Members of the Subcommittee, thank you for allowing the National Black Chamber of Commerce to provide testimony concerning the Wireless Tax Fairness Act of 2011.

When the National Black Chamber of Commerce was incorporated in 1993, the U.S. Census Bureau was reporting 300,000 Black-owned businesses with annual revenues of $30 billion. As of 2007, it now reports 1.9 million Black-owned businesses with annual revenues of $137 billion. We are the fastest growing segment

of the American economy. The future seems to be bright as African Americans have nearly $1 trillion in disposable income, according to Selig School of Business, and our businesses have yet to capture that majority of the market.

Still, our economic status is fragile. Unemployment in Black communities soars over the national average and it is currently at 16 percent. The recession is taking its toll. The saying "when most people catch a cold, Blacks will catch pneumonia" still applies. We can look at what the subprime mortgage debacle did to our communities. African Americans literally lost over 35 percent of their net worth from this malicious scandal. Our life spans make our Social Security contributions more or less a transfer of income. Sometimes our economic future seems to be very tenuous.

Yes, we have a smaller pie to cut from when it comes to the cost of living. This is why we support the Wireless Tax Fairness Act of 2011 because new discriminatory taxes and fees on wireless services are regressive and significantly increase consumers' and businesses' costs of services. State and local tax increases fall disproportionately on African Americans, minority small businesses, and the elderly.

As the economic status of the African Americans is at the bottom rung of the American economy, they will suffer the most from these discriminatory taxes. Our Black-owned businesses will suffer from a consumer base that is weakening and that will greatly lessen the opportunity to create more jobs. Hence, the staggering 16 percent unemployment level may even increase. That chance of making education affordable will also lessen. Unfair taxation is a problem for our communities.

We should concentrate on further deployment of broadband as it is a greater factor in doing business and provide security. Cell phones are no longer a luxury item. They are a necessity to our daily living. Minority-owned businesses and small businesses that are leading the U.S. out of the recession are dependent on access to wireless products and services. It enhances communication, information, education, and creates many opportunities for employment and wealth building. Current tax levels on mobile devices resemble luxury taxes such as liquor, cigarettes, and jewelry.

Local communities should consider ways to increase employment via entrepreneurship. This will increase the payroll tax base and that will offset budget challenges.

Finally, the Wireless Tax Fairness Act of 2011 will help stabilize taxes as stakeholders work to determine what is best for consumers, businesses, the economy, and the further deployment of wireless services in rural and urban areas.

Your consideration of supporting this legislation is indeed appreciated. I look forward to it passing through Congress and being signed by our President. Thank you very much.

[The prepared statement of Mr. Alford follows:]

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CONGRESSIONAL TESTIMONY

"Wireless Tax Fairness Act of 2011"

Presented To:

Subcommittee on Courts, Commercial and Administrative Law

Honorable Howard Coble, Chair
Honorable Steve Cohen, Ranking Member

Presented By:

Harry C. Alford
President/CEO

Chairman Coble, Ranking Member Cohen and distinguished members of this committee thank you for allowing the National Black Chamber of Commerce® to provide testimony concerning the "Wireless Tax Fairness Act of 2011". As we all know this great nation of ours was founded on the principles of free enterprise and a fair and impartial balance on taxation. Taxation should fund our government and should not be excessive or debilitating to our economy. We must practice due diligence in our public spending and ensure that taxation does not cross that fine "line".

The NBCC was founded under the philosophy of the great Booker T. Washington. Mr. Washington believed that African Americans could thrive in America if they became educated and practiced entrepreneurship (create our own jobs and build wealth). He not only talked that, he walked it. He built the great institution, Tuskegee University, from the ground up using students to build the buildings, furniture and accessories in exchange for tuition. That university still thrives today. In regards to entrepreneurship he founded the National Negro Business League in 1902 (ten years before the US Chamber of Commerce). That is the model used by the NBCC today.

When the National Black Chamber of Commerce® was incorporated in 1993, the US Census Bureau was reporting 300,000 Black owned businesses with annual revenues of $30 billion. As of 2007, it now reports 1.9 million Black owned businesses with annual revenues of over $137 billion. We are the fastest growing segment of the American economy. The future seems to be bright as African Americans have nearly $1 trillion in disposable income (according to Selig School of Business) and our businesses have yet to capture the majority of that.

Still, our economic status is fragile. Unemployment in Black communities soars over the national average and is currently at 16%. The recession is taking its toll. The saying "when most people catch a cold, Blacks will catch pneumonia" still applies. We can look at what the Sub-prime Mortgage debacle did to our communities. African Americans literally lost over 35% of their net worth from this malicious scandal. Our life spans make our social security contributions more or less a transfer of income. Sometimes our economic future seems to be very tenuous.

Yes, we have a smaller "pie" to cut from when it comes to the cost of living. This is why we support the "Wireless Tax Fairness Act of 2011". To allow states and local governments to use excessive taxation as a way to cover budget shortfalls rather than prudent spending is reckless and unfair. As the economic status of African Americans is at the bottom "rung" of the American economy they will suffer the most from this abuse. Our Black owned businesses will suffer from a consumer base that is weakening and that will greatly lessen the opportunity to create more jobs. Hence, the staggering 16% unemployment level may even increase. That chance of making education affordable will also lessen. Unfair taxation is a cancer to our communities.

We should concentrate on further deployment of Broadband as it is a great factor in doing business and providing security. Cell phones are no longer a luxury item. They are a necessity to our daily living. It enhances communication, information, education and creates many opportunities for employment and wealth building. Current tax levels on mobile devices resemble luxury taxes such as liquor, cigarettes and jewelry. It is abusive and terribly unfair. It must be checked.

Local communities should consider ways to increase employment via entrepreneurship. This will increase the payroll tax base and that will offset budget challenges. Finding ways to tax the masses in a disproportionate manner improves nothing. It, in effect, hurts our economy and lessens the opportunities for our citizens. Your consideration of supporting this legislation is indeed appreciated. I look forward to it passing through Congress and being signed by our President. Thank you.

Mr. COBLE. Thank you, Mr. Alford.

We will now examine the witnesses.

Ms. Sims, let me ask you this question. How does the City of High Point currently tax wireless subscription?

Ms. SIMS. We currently do not tax wireless subscription. It is done at the State level. It comes back to the city in the form of taxes and user fees from the State.

Mr. COBLE. Now, it has been said by some, Ms. Sims, that a high wireless tax is regressive and therefore burdens low- and middle-income subscribers with a higher effective tax rate as opposed to higher-income subscribers. What do you say to that?

Ms. SIMS. Well, Congressman Coble, I say that whenever it comes down to an issue where we are talking about taxes, quite naturally the conversation shifts to how it impacts individuals in the community who least have the ability to pay. But I must say that in my community, I have not seen one individual—I don't know of anybody who doesn't own a cell phone, and none of them have ever complained about the taxes that are associated with the use of that phone. They complain about the rate that they are charged for the use of the phone, but nothing regarding taxes.

I don't necessarily subscribe to the notion that it imposes an unfair tax burden on those individuals who are least able to pay. I don't subscribe to that.

Mr. COBLE. I thank you for that.

Mr. Mackey, State and local governments seem to agree that wireless tax reform is needed. So why have they made such little progress in reducing wireless taxes on their own accord?

Mr. MACKEY. That is a great question. As I listened to one of the other witnesses say that we ought to be sorting this out at the State and local level, some of us have been working on this issue for 10 or 12 years. We tried—and I work a lot on State tax policy with legislatures—through the Governors Association, the National Conference of State Legislatures to raise the issue. They have encouraged reforms. But at the end of the day in that whole 10-year period, there has only really been one significant tax reform and that was in the State of Virginia which was successfully able to broaden the base, lower the rates down to the sales tax rate. Actually, I am just about to publish another study that shows that local governments in Virginia are better off under the reform than they were under the old high-rate tax system.

So in terms of why that hasn't happened, I think the reason is it is a very difficult conversation to have particularly in the States where because wireless used to be a monopoly and so there were all these monopoly local taxes that were imposed, they are reliant on those taxes and it is a very difficult conversation to have to try to figure out a path toward getting off the reliance of those wireless revenues. So the reason it hasn't happened is because there hasn't been the political will at the State level to force those conversations.

One more quick point is that I think the conversations are going to have to happen because we are at the point now where consumers who are pretty savvy are starting to realize that they have different options for purchasing communication services and other entertainment services, and we are starting to see migration toward Netflix and other forms. So there is going to be a conversation that is going to have to happen at the State and local level because the current system where you load certain services with high taxes and other services don't have any at all, it is just going

to collapse. And those revenue losses are going to occur anyway. And we think this legislation will help us begin those conversations and stop the problem from getting worse.

Mr. COBLE. Let me try to get one more question in before my 5 minutes expire.

Mr. Alford, the National Black Caucus of State Legislators and the National Hispanic Caucus of State Legislators have supported this legislation in the past because presumably of the effect of high wireless taxes on their constituent communities. Can you elaborate, sir, on how these communities are particularly affected by high wireless taxes?

Mr. ALFORD. Yes, sir. There is a growing dependence and a growing necessity on the use of wireless and mobile devices. I think there is a misperception by some that we are taxing wireless phone companies. We are not taxing the companies. We are taxing families and individuals. They are the ones who are paying the bill. And I think the wireless phone companies are American heroes in leading the way for us to be globally competitive.

So it is pretty simple. If you have got $5 and you have to give up $2 and the guy next to you has $10 and he has to give up $2, I think the guy with the $10 is less angry or less hurt—it is simple math—than the guy who has $5.

Mr. COBLE. Thank you, sir.

Mr. Cohen, I beat the red light. I want you to take notice of it. I yield to you.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Mackey, in a previous life, what organization did you represent?

Mr. MACKEY. The National Conference of State Legislatures.

Mr. COHEN. And how many years were you with the National Conference of State Legislatures?

Mr. MACKEY. Almost 10.

Mr. COHEN. And what was your position there?

Mr. MACKEY. When I left, I was the chief economist and staffed the telecommunications tax task force which I believe you served on.

Mr. COHEN. And based on those 10 years of experience with State legislatures, how would you rate overall State legislatures taxing authority compared to the Federal Government? Is it more progressive or more regressive?

Mr. MACKEY. I think it is more regressive due to the higher reliance on consumption and property taxes, whereas the Feds tend to rely more on income-based taxes. So it is more regressive.

Mr. COHEN. Do you remember a Senator from Tennessee named Leonard Donovan?

Mr. MACKEY. Yes.

Mr. COHEN. He said—and I don't think he coined this. I know he didn't. But somebody said don't tax me, don't tax thee, tax that many behind that tree. Is that not more or less the mantra of most State legislators? Some State legislators.

Mr. MACKEY. I would say some, yes.

Mr. COHEN. And is the wireless tax something that would fall into that category? People don't really think about it. It is just a

doodad here and a dabble there. Like Everett Dirksen said, eventually it adds up to real money.

Mr. MACKEY. I think that is right. I mean, one of the issues is that unlike many goods and services that are sold, either historically or by grants of authority, legislatures have allowed local governments, municipalities primarily, more tax options on this service. And so what you see are multiple taxes from multiple governments appearing on the same bill. And so I do think, in a given State, the one municipality might not see the totality of all the taxes. They only see their piece. And because of that, what ends up happening is the aggregation of all these taxes ends up putting a significant burden on the consumer.

Mr. COHEN. In your recent special report, you indicate State and local and Federal taxes and fees combine to an average of over 16 percent nationally for wireless subscribers. How much of that percentage is based on national taxes and fees?

Mr. MACKEY. 5 percent of that is the Federal, the Universal Service Fund.

Mr. COHEN. And what impact will H.R. 1002 have on those taxes and fees?

Mr. MACKEY. It would not affect the Federal Universal Service Fund.

Mr. COHEN. Right, and that is 5 percent. And the 11 percent is what is put on there.

Thank you, sir.

Is it Councilman or Commissioner Sims?

Ms. SIMS. Councilwoman.

Mr. COHEN. Councilmember Sims. I appreciate your service in local government and representing your group.

But let me ask you this. H.R. 1002 simply imposes a 5-year moratorium on new discriminatory taxes on wireless services. State and local government will still be able to tax wireless service and providers as long as they are not discriminatorily applied, you know, a general tax, not specifically picking out just one service.

Why should Congress not impose such a simple moratorium when it is not banning all taxes on wireless services, simply discriminatory taxes?

Ms. SIMS. Well, based on the fundamental principle of how we operate as local municipalities, we don't think that you all should be in the business of banning it at all, and that is the core principle of where we are coming from, that we should be allowed at the State and local level to impose those taxes and make those decisions on our own. So the moratorium, regardless of whether it is only for 5 years—we don't think it should be there at all, that we should still be given the authority to work and to do what we have to do to balance our budgets.

Of course, we all know from an economic perspective we are all challenged. Everybody is trying to figure out how to make this thing work, and the more that we start to get into the issues around technology services—and that is what this all falls into is the whole technology realm—to say that it is sacrosanct and you can't do what you need to do at the local level to generate revenues we think is just wrong.

Mr. COHEN. Mr. Mackey, is taxing of wireless services kind of a new kid in town and starting to be a source of funding for State and locals? Wireless has only been around—what? How many years?

Mr. MACKEY. 15 or so.

Mr. COHEN. And they started taxing it when?

Mr. MACKEY. A lot of the taxes that apply to local land line service were applied to wireless in the late 1990's in the beginning of the year 2000. Back then it was viewed as sort of a luxury tax and it is only the rich that could afford it. So let's apply these taxes. But obviously, things have changed since then.

Mr. COHEN. And they are starting to be discriminatory taxes applied since?

Mr. MACKEY. Pretty much since. And then what we have seen is just sort of a gradual adding of new taxes, increasing of existing discriminatory taxes over the years as we moved forward.

Mr. COHEN. Thank you, sir.

I am going to beat the red light, be in the yellow light, and be better than my Chairman. And I yield back the balance of my time.

Mr. COBLE. I will say to the distinguished gentleman from Michigan, Mr. Cohen and I have beaten the red light, John. So I don't want to put a lot of pressure on you, but I recognize the gentleman from Michigan.

Mr. CONYERS. Thank you, Chairman Coble.

I am trying to decide. I have opposed this bill in the past, and I really think I still do but I am going to look at it more carefully. I have not had that opportunity.

Ms. Sims, could you take a moment and build up my opposition to the bill? I mean, what is our best case against this measure that is before us today?

Ms. SIMS. I believe, Mr. Conyers, that basically we go back to States rights, and I know that sometimes that issue, depending on what side of the coin you are on, is a good thing, and sometimes it is a bad thing. But I believe that fundamentally this whole issue around the ability for us to tax goes back to States rights.

And I think that we look at this and I have heard in this conversation where individuals have said, you know, there is more of a reliance on cell phone services in our neighborhoods and this is the only source of communication that lots of people have and that it is going to unfairly impact these individuals. And I say to that I don't believe that that is so. I think that we tend to pull poor people out in an argument because that grabs at the heart strings, but I know for a fact that individuals who probably should not even have cell phones in their budgets do. And no one has ever gone to any place to purchase a phone and said how much are the taxes on this phone. That has never been the source of the conversation. When they purchase phones, they look at how many minutes I am going to get, what the package is going to give me, does it have Internet access, and what is all of this going to cost me.

So I look at this and say, to be fair to States, we still should have the right to be able to impose this tax, and I don't think that at any level Congress needs to get into that fray. I think that it should be left with States and local municipalities to determine

what their needs are and to be able to use this as a revenue-generating resource in their communities.

Mr. CONYERS. Isn't the tax in this bill regressive?

Ms. SIMS. Is it regressive? I don't believe so, no. Again, that is part of the argument, and I don't believe that that is so.

Mr. CONYERS. Well, do you not normally oppose regressive taxes?

Ms. SIMS. I sometimes oppose taxes. It just depends on what that tax is. I don't oppose necessarily—when we look at this, it is not so much about the tax itself as it is our ability to do it. Now, we may decide at our local level that this is not something we want to do, but that decision needs to be made locally. It does not need to be made at this level. And that is the entire argument that we have at this point. This is not going to unnecessarily impact these companies, and I don't believe, depending on a municipality's or locality's decision to impose the tax, that is a decision that they need to make. I don't believe it needs to be made at this level.

Mr. CONYERS. Mr. Chairman, can the time that I have remaining be added to the next Committee hearing when we have some more time? [Laughter.]

Because I have never ended my time with this much remaining before.

Mr. COBLE. This is a case of first impression for me, John. [Laughter.]

I don't know how to handle that.

Thank you, Mr. Chairman. I appreciate that.

The Chair now recognizes the distinguished gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. I will gladly accept Chairman Conyers' offer of yielding his remaining time.

Mr. COBLE. I figured you might.

Mr. JOHNSON. And you had about 10 seconds left on yours also. I would like to have that.

Mr. Mackey, your credibility has been bolstered I think when you were asked about your former employment which was with the National Conference of State Legislatures?

Mr. MACKEY. Yes.

Mr. JOHNSON. And you said you had been there for about 10 years? But now you are partner with KSE Partners where, according to your statement, over the past 11 years I have worked with major wireless telecommunications providers to reduce or eliminate excessive discriminatory taxes on wireless services at the State and local level. You look too young to have worked for 11 years and before that 10 years with the State legislatures.

Mr. MACKEY. Thank you.

Mr. JOHNSON. I mean, what was your position with the State legislatures?

Mr. MACKEY. I started with them in 1990 and finished in 2000, and I was the chief economist.

Mr. JOHNSON. So, yes, you had a job and then you left that job. Now you are with a lobbying group and you lobby for the wireless cell phone industry. Correct?

Mr. MACKEY. Correct.

Mr. JOHNSON. I just wanted to clear the table of any unfairness that may have existed.

But, listen, now Mr. Alford, you heard Mr. Franks who is the cosponsor of this bill talk about the fact that Congress has the ability to regulate commerce between the States. You heard that. Correct?

Mr. ALFORD. Yes, sir.

Mr. JOHNSON. And you agree with that.

Mr. ALFORD. This is interstate commerce, if not international commerce.

Mr. JOHNSON. So you agree with the notion that it is constitutional to have a health care reform bill that requires people to purchase insurance. Correct?

Mr. ALFORD. I don't tie those two together.

Mr. JOHNSON. Do you understand the issue that exists between the two, one central issue and that is the Federal Government's ability to regulate commerce? You say that it can in this context, and I will accept that. Can it also do so in the health care context?

Mr. ALFORD. If I see that it can, I would agree with——

Mr. JOHNSON. Well, have you agreed with it or have you disagreed with it?

Mr. ALFORD. I don't accept the concept. We are talking about mobile devices, and now you are talking about health care which is a totally different animal.

Mr. JOHNSON. I am just talking philosophically because Ms. Sims makes a great point about Federal intrusion into the affairs of State and local governments.

Now, State and local governments—local government in particular needs every funding source that it can get to provide the people who lack resources and who live in communities racked with crime. They need that money to support their police departments. Don't they?

Mr. ALFORD. They need less crime and that is done through——

Mr. JOHNSON. Well, I mean, how are you going to do that without having a strong police department?

Mr. ALFORD. It is pretty simple, sir. It is just good management skills.

Mr. JOHNSON. Good management skills will keep people from committing crimes.

Mr. ALFORD. You don't tax people to death to lower crime.

Mr. JOHNSON. But what about people who need to call an ambulance and perhaps the local government has a surcharge on cell phone use to supplement the 911 set-up so that people can call and ambulances can come in? Do you think that is a legitimate use of funds by government?

Mr. ALFORD. Absolutely.

Mr. JOHNSON. Well, why shouldn't the local governments have the ability to utilize that revenue stream to perform that particular obligation to its citizens?

Mr. ALFORD. I have no problem with 911 being assessed on mobile devices, as it is.

Mr. JOHNSON. But you would support and you would also, Mr. Mackey, a 5-year moratorium on raising revenues in that way.

Mr. ALFORD. Yes, sir.

Mr. MACKEY. I would just point out that the legislation does permit 911 fees that are used for 911 purposes to be outside of the moratorium.

Mr. JOHNSON. So you think that it is okay for the Federal Government to micro-manage the affairs of State and local governments to that degree.

Mr. MACKEY. I was just pointing out that 911 fees would be permitted even if the bill passed because they are excluded from the moratorium if they are used——

Mr. JOHNSON. But what about police and fire? What about if the money goes for police and fire? Would they be grandfathered in, if you will, under this legislation?

Mr. MACKEY. Only the 911 fee purpose.

Mr. JOHNSON. Only the 911 fee.

And do you think that this bill, Ms. Sims, would become—though it is a 5-year moratorium, do you think it would pretty much become a permanent ban on the raising of cell phone taxes by State and local governments?

Ms. SIMS. I think it has the potential to do so, yes.

Mr. JOHNSON. All right. I have no further questions, Mr. Chairman. Thank you.

Mr. COBLE. I thank the gentleman.

The Chair will now recognize the distinguished gentleman from North Carolina, Mr. Watt, for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I confess the primary reason I came back was to welcome my constituent, Ms. Bernita Sims, to our Committee.

Mr. COBLE. If the gentleman would yield, I owe you an apology because I claimed sole possession of Bernita and I apologize for that.

Mr. WATT. You stole her from me. You stole my constituent. [Laughter.]

I will have you know that she is the Chairman of the 12th Congressional District of North Carolina.

Mr. COBLE. And I reiterate my apologies, Mr. Watt. [Laughter.]

Mr. WATT. So you all can see we steal constituents too around here.

I don't want to get into the global philosophical debate about taxation or non-taxation or what is covered under the Commerce Clause or not covered under the Commerce Clause.

As I have expressed to my colleague, Ms. Lofgren, who is the primary proponent of this bill, below the philosophical level, there are some real serious problems with the legislation: some of the definitions of what a discriminatory tax is; the fact that it covers something called "mobile service property" which means all property used by a mobile service provider in connection with the business of providing mobile services "whether real, personal, tangible, or intangible (including goodwill licenses, customers lists, and other similar intangible property associated with such business)."

It is hard to have that global philosophical discussion about the Commerce Clause when you are down talking about taxes on real property, tangible property, which has generally been the provenance of local communities. And for us to be saying to local communities that they can't exercise their discretion in this area anymore is troublesome to me, not just because Ms. Sims is my constituent and some of her city council people are sitting in the audience with

her. And I just left, when I went out, to go up and meet with the city council people from western Salem. But that is troublesome.

It is troublesome to me that a new discriminatory tax is defined based on "measured by the charges, receipts, or revenues from or value of" various different things. So you have got a static formula here in this bill that kind of freezes us at current levels and disregards any kind of activity going forward into the future. And I think that is troublesome.

Those are not global issues about whether this is covered by the Commerce Clause or whether—you know, some of my colleagues, as Mr. Johnson has pointed out, try to have it both ways. When it is convenient for them to say something is under the Commerce Clause, as it is here, then they say it is under the Commerce Clause. When it is not convenient for them to say it is under the Commerce Clause, such as they don't want any intrusion into health care reform by the Federal Government, then it is not under the Commerce Clause. You know, I don't know whether it is or is not under their philosophy.

It is hard for me to evaluate these things on this kind of global perspective. I have to look at the wording in the bill that is before us, and this bill has a lot of work to be done on it before I can support it. Ms. Lofgren knows that. I have had this conversation with her last year. I wish I had been here for her testimony. I understood she testified earlier.

But I don't really have any questions. I mean, we have had this discussion—what is this? About the third or fourth or fifth year in a row? We have had a bill of this kind trying to do this. And before that, then there was no taxes on the Internet and no taxes on rental cars and no taxes on something else. At some point, you have to draw the line and let local governments have some authority to tax something, otherwise the claim that the Big Brother Federal Government is a big, big, big brother becomes a self-fulfilling prophecy because you have left nothing for State and local governments to tax and gobbled it all up under the jurisdiction of the Commerce Clause. And there has to be some kind of limit to that even in the tort reform area, even in the taxation area.

So we are struggling here to figure out what that limitation is. I think I heard everybody's testimony except part of Mr. Mackey's. I never really heard anybody deal with the exact content of the bill. It was all kind of a philosophical discussion about this, and I don't think we can really evaluate a piece of legislation on a philosophical level. You have got to get down into the nitty-gritty guts of the language, and that is where my troubles are very heavy.

Mr. JOHNSON. Will the gentleman yield?

Mr. WATT. I don't think I have any more time to yield to the gentleman. My red light——

Mr. COBLE. The time has expired, and I am told there is going to be a scheduled floor vote imminently.

Let me say this before I recognize the gentleman from Illinois. Thank you, Mr. Watt.

Mr. Quigley, did you want to be heard?

Mr. QUIGLEY. No. Thank you, Mr. Chairman.

Mr. COBLE. Thank you for coming.

I thank you all for coming.

Let me say this. I came here enthusiastically supportive. I am still supportive, but Bernita, maybe you may have brought me around a little bit. But I appreciate very much the testimony of all three witnesses. As Mr. Watt said, there clearly are two sides to this.

And in closing, I want to thank the High Point City Council members and the distinguished city manager for you all being here and other local elected officials, if there are others in the audience, for the service that you all do each day.

I have two statements I want to present, without objection, into the record. One is for the bill. One is against it. One is from the Speaker of the Minnesota House of Representatives.

[The information referred to follows:]

TESTIMONY OF REPRESENTATIVE KURT ZELLERS
SPEAKER OF THE MINNESOTA HOUSE OF REPRESENTATIVES

Hearing on H.R. 1002, the "Wireless Tax Fairness Act of 2011"

House Committee on the Judiciary
Subcommittee on Courts, Commercial and Administrative Law

March 15, 2011

Chairman Coble, Ranking Member Cohen and members of the Subcommittee, my name is Kurt Zellers, and I have the honor of representing Minnesota House District 32B. In addition to representing the people of my district, I also have the privilege of serving as the Speaker of the Minnesota House of Representatives.

Thank you for the opportunity to appear before you this afternoon to testify regarding the importance of H.R. 1022, the "Wireless Tax Fairness Act of 2011" to my constituents and the more than 4 million wireless consumers in Minnesota. Representatives Lofgren and Franks are to be commended for their longstanding efforts on behalf of this legislation and the broad bi-partisan support they have garnered for this bill.

As a state legislator and the Speaker of the Minnesota House of Representatives, any federal legislation that sets parameters on a state's ability to tax is something that I believe should be done carefully, prudently and most importantly, does no fiscal harm. I believe that the Wireless Tax Fairness Act satisfies these criteria. Our system of Federalism grants state and local policymakers with the ability to determine how states should levy taxes equitably on individuals and businesses that reside within their respective jurisdictions. As the Speaker of the Minnesota House, I am very sensitive to preserving a state's taxing authority to fund government services.

However, I believe that another fundamental tenant of our nation's tax system is that taxes should be levied fairly on our citizens, particularly in situations where multiple levels of government may have the authority to tax. One only needs to look as far as his or her own wireless bill to see that there is nothing fair about the countless number of taxes and fees imposed upon wireless services today.

Currently, the national average federal, state and local wireless tax rate is 16.3%. In Minnesota, consumers pay 9.38 percent in state and local taxes and fees, which by comparison is a relatively modest combined rate of 14.43 percent adding in the rate for federal universal service. In several states, consumers pay taxes, fees, and surcharges in excess of 20% of their monthly bills. In fact, wireless tax rates in forty seven states and the District of Columbia exceed the general sales tax rate. When tax rates reach levels in excess of 20%, as they do with alcohol and tobacco, the purpose is usually to discourage use. My constituents have come to rely on their wireless devices to communicate and access information wherever they may be. Preserving affordability should be an important public policy goal.

H.R.1002, the Wireless Tax Fairness Act provides a measured approach to Congressional action in this arena by only precluding ***new discriminatory*** taxes and fees from being added to existing excessive levels of taxation imposed upon wireless consumers. It is my understanding that the primary taxes and fees that the bill seeks to address are those imposed on wireless services and ultimately paid by the consumer. Importantly, the legislation recognizes the revenue needs of states and localities and does not take away any existing revenue from state or local governments. In fact, H.R. 1002 allows states and localities to raise wireless taxes if done in concert with an increase of taxes on other general goods and services.

Seventy-eight percent of Minnesotans are wireless subscribers and Minnesota collects about $300 million annually in wireless tax revenues. Under this bill, Minnesota and its localities will continue to collect $300 million annually with the potential for increased revenues as use of these services continues to grow. By keeping wireless services affordable, subscribership and adoption of additional wireless services has the potential to grow even higher which in turn translates into higher tax revenues under generally applicable taxes.

Two years ago, the FCC put forth the National Broadband Plan. The Plan highlights the importance of this valuable service by stating, "wireless broadband is poised to become a key platform for innovation in the United States over the next decade." H.R. 1002 complements the National Broadband Plan by expanding investment in wireless networks. The legislation also creates an opportunity for stakeholders to develop a rationale tax regime that maintains affordability and access. This legislation doesn't say that wireless consumers shouldn't pay taxes for the use of wireless services, it just says that they should be levied by state and local jurisdictions fairly. State sovereignty aside, it is very hard to argue against the rationality of this concept.

My focus here this afternoon will be to provide some historical context as to how we got to where we are today and why I believe that taking a "time-out" from imposing new additional discriminatory taxes on wireless services is important to American consumers, our overall global competitiveness and consistent principles espoused by the National Conference of State Legislatures.

Highlighting the problem

Today the tax structure imposed upon the communications industry is a carryover from the days when the industry was operated by Ma Bell as a rate regulated utility. This tax structure was created well before the first wireless call was ever made. As regulated utilities, providers were subject to taxes under statutes applicable to "public utilities." The taxes imposed included gross receipts, franchise and other industry-specific taxes that were then passed on to consumers in the rates as part of the regulatory rate setting process. The phone company never had to worry about the consumer looking for a cheaper alternative because there was no competition in the marketplace. State and local governments could tax telecommunications services without worrying about an outcry from unsuspecting constituents, because "it was just the phone company raising the rates again."

Since the introduction of wireless services in the late 1980's and the passage of the Telecommunications Act of 1996, the marketplace for communications services has changed substantially. Communications services are no longer provided by only a single provider, the "rate-regulated" utility. Consumers now have many options to choose from for their communications services as a number of extremely competitive industries bring innovation and change to consumers at a rapid pace.

Today there are over 293 million wireless consumers. That is an amazing number of consumers when you consider that the total population of the United States is just over 300 million. The benefits of wireless services are not a luxury that only the wealthy can afford, but rather they are used by just about everyone every day. These services are critical not only to my constituents, but also to the very state and local governments that utilize some of these services to be more effective and efficient in how they provide government services. I am sure that most policymakers would agree that these services are considered a necessity and should not be taxed at rates that discourage use of such services. More importantly, wireless broadband may be the only access that millions of consumers have to the Internet.

Unfortunately, as the price of wireless devices and service has decreased over the years, the tax burden on wireless service has increased. As I mentioned earlier, "wireless users now face a combined federal, state, and local tax and fee burden of 16.3 percent, a rate two times higher than the average retail sales tax rate and the highest wireless tax rate since 2005."

Regressive Nature of Wireless Taxes

Our Federal and State income tax system is structured such that if you earn more, you pay more in taxes. That is not the case with respect to the payment of wireless taxes. Minnesota has slightly over 4 million subscribers. Of that 4 million, nearly 17.5 percent of Minnesota's households have "cut the cord" and are wireless only. 35 percent of Minnesota wireless subscribers live in households making less than $50,000. Regardless of whether someone is making $25,000 annually or $100,000 annually, they will pay the same rate on their purchases of wireless services. With a national average wireless tax rate of 16.3 percent, consumers who are of lower and moderate income levels pay disproportionately more for the same service than those with higher incomes.

When you consider how important wireless broadband services have become to Americans today, taxing these services at such an excessive level is counterproductive. As policy makers, we vigorously promote the need for more deployment of wireless broadband, but then curiously turnaround and levy taxes at similar rates to alcohol and tobacco, which are meant to discourage use of such goods. For millions of Americans throughout this country who rely on cell phones to assist in finding a job; locating a place to live; keeping in touch with loved ones and friends; protecting their personal safety or accessing the Internet for educational purposes, their wireless phone is their lifeline and excessive rates of taxation hinder more and more Americans from being able to take part in new and emerging wireless services.

Federalism Perspective

As the Speaker of the Minnesota House, I have to be sensitive to the importance of preserving Minnesota's and its local governments' ability to tax to ensure the funding of essential government services. Minnesota faces a budget shortfall of approximately $6.2 billion. But as policymakers, it's important as we finance public services, not to target one particular good or service for disparate tax treatment as compared to others when there is no rational basis to do so.

Opponents of this bill claim that the legislation departs from longstanding principles of federalism and it provides favorable tax treatment to the wireless industry. I would have a difference of opinion with those that consider a 16.3 percent tax rate favorable treatment, and ultimately, it is the consumer who pays these taxes not the industry. Under our Federalist system, the federal government is authorized to exercise only those powers which are expressly provided for by the Constitution, with all other powers reserved to the states as set forth under the 10th Amendment. Thus, the federal government's powers are limited. However, under the Commerce Clause, Congress is expressly granted the power to regulate commerce under the states. Due to the mobile nature of wireless services and the ability to use such services across the country, the provision of wireless services is clearly interstate commerce and well within the power of Congress to "regulate commerce among the states."

Additionally the 14th Amendment provides that "...No State shall...deny to any person within its jurisdiction the equal protection of the laws" and further specifies under Section 5 that Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

In my opinion, H.R. 1002 does not depart from our federalist principles. In the mid 1970s, Congress passed the federal 4-R Act with precluded states from discriminatorily taxing the railroad industry And more recently, in 2007, this Subcommittee played a leading role in the extension of the Internet Tax Freedom Act.

The primary beneficiaries of this legislation are the wireless consumers, not the wireless providers. I understand the opponent's temptation to try and obfuscate the issue and portray the bill as a corporate give away to large wireless carriers, rather than to say that someone on a fixed income will have to pay an extra $4.00 per month to support local government services solely because they use wireless services as was the case this past year in the City of Baltimore, MD. This policy does not seem consistent with our national goals of ensuring affordable access to broadband services for all Americans, where it is anticipated that wireless services will play a major role in helping to facilitate that goal.

Last year, wireless consumers in Minnesota and across the country paid tens of billions of dollars in state, local and federal taxes and fees imposed on their wireless service to fund general government services. H.R. 1002 does nothing to jeopardize that revenue stream. In all likelihood, state and local revenues from wireless services will continue to grow if this legislation is enacted under generally applicable taxes.

The Wireless Tax Fairness Act provides a common sense solution to a growing problem. Clearly, it is a bill that has broad bi-partisan appeal, as evidenced by the over 100 original bi-partisan cosponsors, which is why I strongly support the swift passage and enactment of H.R. 1002, the "Wireless Tax Fairness Act of 2011."

Thank you again for the opportunity to testify. I would be happy to answer any questions that you may have.

Mr. COBLE. The second is a statement from the Federation of Tax Administrators. I would like to introduce these into evidence, without objection.

[The information referred to follows:]

Statement
Of
The Federation of Tax Administrators
On
Cell Phone Taxation
Before the
Subcommittee on Courts, Commercial and Administrative Law
Of the
Committee on the Judiciary
March 15, 2011

The Federation of Tax Administrators (FTA) is an association of the tax administration agencies in each of the 50 states, the District of Columbia, and New York City. We are pleased to have the opportunity to present our views on legislation that would authorize states to require certain remote sellers to collect state and local sale taxes on goods and services sold into a state.

FTA opposes the Wireless Tax Fairness Act of 2011 (H.R. 1002) as an unwarranted intrusion into state sovereignty. The bill would:

- Result in significant litigation,
- Result in preferential tax treatment of cell phone service providers,
- Increase taxes on individuals and non cell phone businesses to make up for the reduced taxes paid by cell phone service providers, and
- Violate the fundamental principles of Federalism by restricting state and local government authority to develop tax structures that reflect the needs of their communities.

Background

The operative part of H.R. 1002 provides that "No State or political subdivision thereof shall impose a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile services property, during the 5-year period beginning on the date of enactment of this Act." The impact of the bill is created by the definitions.

"Mobile service" is defined as commercial mobile radio service "or any other service that is primarily intended for receipt on or use with a mobile telephone." This would obviously include wireless phone service, but also things like Internet access and presumably, television services, games, music, news services that are intended for receipt on cell phones, etc.

"Mobile service provider" is defined as "any entity that markets, sells, or provides mobile services."

"Mobile services property" is "all property used by a mobile service provider in connection with its business of providing mobile services, whether real, personal tangible

or intangible and includes but is not limited to goodwill, licenses, customer lists and other similar intangible property associated with such business. Coupled with the definition of mobile services, this is very broad.

The key definition is of "new discriminatory tax." The "new" part is that the tax "was not generally imposed and actually enforced prior to the date of enactment of this Act." The tax is one imposed by a state or political subdivision that "is imposed on or with respect to –

(I) any mobile service and is not generally imposed, or is generally imposed at a lower rate, on or with respect to, or measured by charges, receipts or revenues form, from other services or transactions involving tangible personal property;

(II) any mobile service provider and is not generally imposed, or is generally imposed at a lower rate, on other persons that are engaged in businesses other than the provision of mobile services;

(III) any mobile service property and is not generally imposed, or is generally imposed at a lower rate, on or with respect to other commercial or industrial property that is devoted to a commercial or industrial use and subject to a property tax levy;"

The bill contains a rule of construction that says all taxes, rates, exemptions, deductions, credits, incentives, exclusions, and other similar factors shall be taken into account in determining whether a tax is a "new discriminatory tax."

Finally the bill purports to limit its application by saying a new tax is not a new discriminatory tax if it replaces a tax previously imposed on mobile services, providers or property and the amount of tax revenues generated is reasonably expected to not exceed the amount of tax revenues that would have been generated by the respective tax or taxes.

Comments

The overall effect of the bill is to say that any new tax (or change in current taxes) that affects mobile services or mobile service providers cannot increase revenues and will have to treat the services and providers the same as general businesses under the sales, income and property taxes. The practical consequence of the legislation will be to grant mobile services and providers a "most favored nation" status in that they could not be treated any worse than the most favored industry after accounting for exemptions, deductions, etc. In other words, mobile services and providers will have to be provided a benefit equal to any preference granted to any other industry.

While there may be a simplistic, intuitive appeal to the amendment, the effect of its passage will be to stop any efforts to reform and simplify state and local taxes on telecommunications and related communications services dead in their tracks. That is to say, the amendment will not allow state and local efforts (such as undertaken in recent

years in Florida, Illinois and Virginia) to look across the totality of state and local taxes and fees applied to all types of communications services and to roll them into a single tax levied at a single, non-discriminatory rate across all types of communications providers (e.g., telecommunications companies, cable companies, wireless providers, and satellite providers.)

Reform efforts such as those in the states mentioned above greatly benefit the telecommunications industry as a whole and have been championed by significant parts of the industry. They avoid discrimination among providers of similar services and greatly simplify the administration of state and local telecommunications taxes for providers. The amendment effectively blocks such reforms because they involve the creation of a special tax that is a composite of several existing taxes and fees and applies it only to affected communications providers (not to all businesses.) Sometimes the combined rate is higher than the general retail sales tax since it is an amalgamation of several taxes and fees and may be a substitute for some other taxes imposed on general businesses. The proposed amendment would prohibit such a reform even though the reform could accomplish in significant measure the goals that the telecommunications industry has pursued for a number of years.

In addition to frustrating any comprehensive telecommunications tax reform, the amendment will likely frustrate state efforts to rationalize their tax systems in ways that many people would say make sense. For example, efforts to include certain services that are designed for cell phones (e.g., ring tones, music, games, news feeds) will be challenged as being discriminatory if the rate applied to cellular services is higher than the general business rate even though similar services sold in another environment may be taxed at a higher rate.

The "rule of construction" raises an issue of whether it would prevent a state from enacting an exemption for other taxpayers that is not then applied to mobile communications services and providers. For example, if a state were to enact a sales tax exemption for manufacturing machinery and equipment, would a mobile service provider be able to claim that their equipment should also be exempt even though it may no meet the definition of manufacturing equipment used by the state.

In short, the effect of the legislation would be to freeze in place the current state and local telecommunications regime because it will block attempts to rationalize those taxes across providers of similar services. Since the tax cannot exceed the lowest tax rate, the legislation will effectively prevent efforts to reduce or eliminate discrimination among providers of similar services and efforts to otherwise simplify the administration of those taxes. In other words, it will perpetuate and freeze in place what nearly everyone in the U.S. Congress, the communications industry and the state and local tax community recognizes is a complex and overly burdensome tax structure.

Truth in Advertising

There is some need for truth in advertising on the part of the supporters of the amendment. They make much of the current differential between the tax rate applied to mobile services and that applied to general services. They also make much of the fact that the bill carves out E-911 services or Universal Service Fund contributions. What they fail to say is that a significant part of the current differential is attributable to E-911 and USF charges. That is, there are not a large number of states with taxes applied only to cell phones. Rather, the differential is due to 911 and USF – two services state legislatures and Congress have chosen to fund through assessments against users of all forms of telecommunications services. [See attached article [Appendix A] for a listing of the taxes and fees applied to cellular services and note the preponderance of the charges for 911 and USF.]

Capping Tax Receipts

The provision in Paragraph "(3) Exclusions" will in effect work as a cap on cell phone taxes in the future if a state tries to lower its tax on wireless services without reducing the tax to the lowest comparable rate of tax. The provision provides an exclusion for changes to existing laws tax that may be considered discriminatory only if the revenues expected under the new tax are reasonably expected not to exceed the revenues generated under the tax that is being replaced. This would prohibit a new tax that lowers the rate of tax with the expectation that that the lower rate will broaden the tax base and generate new revenues. It also would prohibit a rate reduction if it is anticipated that natural growth in the wireless market would generate more revenue than the older rate of tax. The provision would again tend to freeze existing laws into place during the term of the moratorium.

Significant Litigation

H.R. 1002 contains many undefined terms and phrases that are not clear. Similar legislation in other areas has led to extensive litigation to define terms. The vague language of these types of preemption proposals and the lack of an administrative agency that can issue interpretative rulings leaves only the courts to determine what terms actually mean. This is at best a cumbersome process that will inevitable result in different definitions in different jurisdictions. It will be virtually impossible to for a uniform set of rules to ever be developed because of the nature of trial court and appellate litigation.

Preserving Federalism

The fundamental of Federalism vests states and local governments with the responsibility of providing serves and raising funds need to be able to pay for the services. Freezing into place the current levels of tax for video serves and providers and not allowing new taxes to apply, even if they are broadly based undercuts the authority of state and local governments and creates a privileged class of taxpayer. We urge Congress from taking

any steps in this direction. Taxpayers in general will have to shoulder the burdens that are created when special privileges are conferred on designated parties.

Mr. COBLE. Let me thank all of you for being here and particularly our witnesses.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as they can so that their answers may also be made a part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion into the record.

With that, again I thank the witnesses and those others in attendance, and this hearing is adjourned.

[Whereupon, at 2:37 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PHOTOS VIA BIGSTOCKPHOTO.COM

THE CUSTOMER

Taxing cellphones as a luxury good is outdated

BY TIMOTHY NOAH

Taxes on cellphone use are so high that you might wonder whether the government considers the gadget a vice, like the consumption of alcohol or tobacco. A pack of smokes costs about $5, on top of which state tax will add, on average, $1.45. That's an average tax rate of more than 20 percent. In Nebraska, Washington or New York — where taxes on cellular service are highest— the combined state and local tax is about 18 percent. Nationwide, the average state-local tax burden on cellphone service is 11 percent, compared with an average general sales or use tax of 7 percent.

Federal taxation of cigarettes (a federal excise tax of about 25 percent is built into the price of a pack) is much more onerous than federal taxation of cellphone use (a 5 percent surcharge paid into the Universal Service Fund subsidizes schools, libraries, hospitals and rural providers). Nationwide, the combined federal-state-local tax on cellular phone service averages 16 percent.

Why so much? A new analysis by Scott Mackey, a Vermont-based economist who works for wireless providers, lays into the Federal Communications Commission, which since 2007 has raised its USF surcharge from 4 to 5 percent. But state and local taxes on cellphone use average more than twice the federal surcharge. And Mackey points out that during the recession local governments bumped their taxes on cell service to replace lost revenue. Baltimore went from $3.50 to $4 per month. Montgomery County went from $2 to $3.50.

The 16 percent average nationwide tax is largely, I would guess, a relic of the time (a dozen years ago?) when cellphones were a luxury item. But today cellphones are ubiquitous. Although 25 percent of American households have no land lines, only 2 percent have no phone service at all, according to the Pew Foundation's Internet and Life Project. According to another Pew study, 17 percent of families earning less than $30,000 rely on a cellphone to access the Internet.

The only logical reason to maintain the current tax scheme would be to discourage cellphone use. That's why we have sin taxes on unhealthy stuff like Marlboros and Coca-Cola. But cellphones aren't unhealthy (except if people use them while driving).

If we're going to chide cellphone providers for adding sneaky fees to your bill, we mustn't ignore the government when it does the same.

Noah writes for Slate.

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