

Union Calendar No. 122

112TH CONGRESS
1ST SESSION

H. R. 1002

[Report No. 112-188]

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. PASCARELL, 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

JULY 29, 2011

Additional sponsors: Mr. RIBBLE, Mr. MARINO, Mr. ROSS of Florida, Ms. CLARKE of New York, Mr. BILBRAY, Mr. ROSKAM, Mr. SCHOCK, Mr. WALSH of Illinois, Mr. TOWNS, Mrs. CAPPS, Mr. CARSON of Indiana, Mrs. CHRISTENSEN, Mr. ALTMIRE, Mr. BACA, Mr. BRALEY of Iowa, Mr. PENCE, Mr. FLORES, Mr. CUELLAR, Mr. BOSWELL, Mr. BUCSHON, Mr. McCOTTER, Mr. RAHALL, Mr. DEUTCH, Mr. MANZULLO, Mr. HIGGINS, Mr. WU, Ms. BASS of California, Mr. MCHENRY, Mr. GINGREY of Georgia, Mr. COFFMAN of Colorado, Mrs. CAPITO, Mr. HERGER, Mr. WEBSTER, Mr. FLEMING, Mr. DAVIS of Kentucky, Mr. HASTINGS of Washington, Mr. CAMP, Mr. KILDEE, Mr. JOHNSON of Ohio, Mrs. MILLER of Michigan, Mr. PEARCE, Mr. HEINRICH, Mr. STIVERS, Mr. FARENTHOLD, Mr. GARY G. MILLER of California, Mr. RIVERA, Mr. LUETKEMEYER, Mr. YOUNG of Florida, Mr. WEST, Mr. ROHRABACHER, Mrs. SCHMIDT, Mr. MILLER of Florida, Ms. JENKINS, Mr. NUGENT, Mr. CLAY, Mr. ISSA, Mr. KINZINGER of Illinois, Ms. MCCOLLUM, Mr. FATTAH, Mr. GARDNER, Mr. GIBSON, Mr. HUIZENGA of Michigan, Ms. HERRERA BEUTLER, Mr. AUSTRIA, Ms. WILSON of Florida, Mr. YODER, Mr. HURT, Mr. AL GREEN of Texas, Mr. DOLD, Mr. SCHRADER, Mr. SOUTHERLAND, Mr. REYES, Mr. BISHOP of Georgia, Mr. THORNBERRY, Mr. SAM JOHNSON of Texas, Mr. WALBERG, Mr. ROKITA, Mr. PAYNE, Ms. SEWELL, Ms. HAYWORTH, Ms. FUDGE, Mr. PAUL, Mr. HECK, Mr. MICHAUD, Mr. MCKEON, Mr. LABRADOR, Mr. MEEHAN, Mr. BENISHEK, Mr. DENHAM, Ms. ROS-LEHTINEN, Mr. KELLY, and Mr. HONDA

JULY 29, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 10, 2011]

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 *Congress finds the following:*

8 *(1) It is appropriate to exercise congressional en-*
9 *forcement authority under section 5 of the 14th*
10 *Amendment to the Constitution of the United States*
11 *and Congress’ plenary power under article I, section*
12 *8, clause 3 of the Constitution of the United States*
13 *(commonly known as the “commerce clause”) in order*
14 *to ensure that States and political subdivisions there-*
15 *of do not discriminate against providers and con-*
16 *sumers of mobile services by imposing new selective*
17 *and excessive taxes and other burdens on such pro-*
18 *viders and consumers.*

19 *(2) In light of the history and pattern of dis-*
20 *criminatory taxation faced by providers and con-*
21 *sumers of mobile services, the prohibitions against*
22 *and remedies to correct discriminatory State and*
23 *local taxation in section 306 of the Railroad Revital-*
24 *ization and Regulatory Reform Act of 1976 (49*
25 *U.S.C. 11501) provide an appropriate analogy for*

1 *congressional action, and similar Federal legislative*
2 *measures are warranted that will prohibit imposing*
3 *new discriminatory taxes on providers and consumers*
4 *of mobile services and that will assure an effective,*
5 *uniform remedy.*

6 **SEC. 3. MORATORIUM.**

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

12 *(b) DEFINITIONS.—In this Act:*

13 *(1) MOBILE SERVICE.—The term “mobile serv-*
14 *ice” means commercial mobile radio service, as such*
15 *term is defined in section 20.3 of title 47, Code of*
16 *Federal Regulations, as in effect on the date of enact-*
17 *ment of this Act, or any other service that is pri-*
18 *marily intended for receipt on, transmission from, or*
19 *use with a mobile telephone or other mobile device, in-*
20 *cluding but not limited to the receipt of a digital*
21 *good.*

22 *(2) MOBILE SERVICE PROPERTY.—The term*
23 *“mobile service property” means all property used by*
24 *a mobile service provider in connection with its busi-*
25 *ness of providing mobile services, whether real, per-*

1 sonal, tangible, or intangible (including goodwill, li-
2 censes, customer lists, and other similar intangible
3 property associated with such business).

4 (3) *MOBILE SERVICE PROVIDER.*—The term “mo-
5 bile service provider” means any entity that sells or
6 provides mobile services, but only to the extent that
7 such entity sells or provides mobile services.

8 (4) *NEW DISCRIMINATORY TAX.*—The term “new
9 discriminatory tax” means a tax imposed by a State
10 or local jurisdiction that is imposed on or with re-
11 spect to, or is measured by, the charges, receipts, or
12 revenues from or value of—

13 (A) a mobile service and is not generally
14 imposed, or is generally imposed at a lower rate,
15 on or with respect to, or measured by, the
16 charges, receipts, or revenues from other services
17 or transactions involving tangible personal prop-
18 erty;

19 (B) a mobile service provider and is not
20 generally imposed, or is generally imposed at a
21 lower rate, on other persons that are engaged in
22 businesses other than the provision of mobile
23 services; or

24 (C) a mobile service property and is not
25 generally imposed, or is generally imposed at a

1 *lower rate, on or with respect to, or measured by*
2 *the value of, other property that is devoted to a*
3 *commercial or industrial use and subject to a*
4 *property tax levy, except public utility property*
5 *owned by a public utility subject to rate of re-*
6 *turn regulation by a State or Federal regulatory*
7 *authority;*

8 *unless such tax was imposed and actually enforced on*
9 *mobile services, mobile service providers, or mobile*
10 *service property prior to the date of enactment of this*
11 *Act.*

12 (5) *STATE OR LOCAL JURISDICTION.*—*The term*
13 *“State or local jurisdiction” means any of the several*
14 *States, the District of Columbia, any territory or pos-*
15 *session of the United States, a political subdivision of*
16 *any State, territory, or possession, or any govern-*
17 *mental entity or person acting on behalf of such*
18 *State, territory, possession, or subdivision that has*
19 *the authority to assess, impose, levy, or collect taxes*
20 *or fees.*

21 (6) *TAX.*—

22 (A) *IN GENERAL.*—*The term “tax” means a*
23 *charge imposed by a governmental entity for the*
24 *purpose of generating revenues for governmental*
25 *purposes, and excludes a fee imposed on a par-*

1 *particular entity or class of entities for a specific*
2 *privilege, service, or benefit conferred exclusively*
3 *on such entity or class of entities.*

4 *(B) EXCLUSION.—The term “tax” does not*
5 *include any fee or charge—*

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

11 *(ii) specifically dedicated by a State or*
12 *local jurisdiction for the support of E-911*
13 *communications systems.*

14 *(c) RULES OF CONSTRUCTION.—*

15 *(1) DETERMINATION.—For purposes of sub-*
16 *section (b)(4), all taxes, tax rates, exemptions, deduc-*
17 *tions, credits, incentives, exclusions, and other similar*
18 *factors shall be taken into account in determining*
19 *whether a tax is a new discriminatory tax.*

20 *(2) APPLICATION OF PRINCIPLES.—Except as*
21 *otherwise provided in this Act, in determining wheth-*
22 *er a tax on mobile service property is a new discrimi-*
23 *natory tax for purposes of subsection (b)(4)(A)(iii),*
24 *principles similar to those set forth in section 306 of*

1 *the Railroad Revitalization and Regulatory Reform*
2 *Act of 1976 (49 U.S.C. 11501) shall apply.*

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

5 (A) *the term “generally imposed” as used in*
6 *subsection (b)(4) shall not apply to any tax im-*
7 *posed only on—*

8 (i) *specific services;*

9 (ii) *specific industries or business seg-*
10 *ments; or*

11 (iii) *specific types of property; and*

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

15 (i) *replaces one or more taxes that had*
16 *been imposed on mobile services, mobile*
17 *service providers, or mobile service property;*

18 (ii) *is designed so that, based on infor-*
19 *mation available at the time of the enact-*
20 *ment of such new tax or such modification,*
21 *the amount of tax revenues generated there-*
22 *by with respect to such mobile services, mo-*
23 *bile service providers, or mobile service*
24 *property is reasonably expected to not ex-*
25 *ceed the amount of tax revenues that would*

1 *have been generated by the respective re-*
2 *placed tax or taxes with respect to such mo-*
3 *bile services, mobile service providers, or*
4 *mobile service property; and*

5 *(iii) is a local jurisdiction tax that*
6 *may not be imposed without voter approval,*
7 *provides for at least 90 days' prior notice to*
8 *mobile service providers, and is required by*
9 *law to be collected from mobile service cus-*
10 *tomers.*

11 **SEC. 4. ENFORCEMENT.**

12 *Notwithstanding any provision of section 1341 of title*
13 *28, United States Code, or the constitution or laws of any*
14 *State, the district courts of the United States shall have ju-*
15 *risdiction, without regard to amount in controversy or citi-*
16 *zenship of the parties, to grant such mandatory or prohibi-*
17 *tive injunctive relief, interim equitable relief, and declara-*
18 *tory judgments as may be necessary to prevent, restrain,*
19 *or terminate any acts in violation of this Act.*

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

23 *(2) BURDEN OF PROOF.—The burden of proof in*
24 *any proceeding brought under this Act shall be upon*

1 *the party seeking relief and shall be by a preponder-*
2 *ance of the evidence on all issues of fact.*

3 (3) *RELIEF.*—*In granting relief against a tax*
4 *which is discriminatory or excessive under this Act*
5 *with respect to tax rate or amount only, the court*
6 *shall prevent, restrain, or terminate the imposition,*
7 *levy, or collection of not more than the discriminatory*
8 *or excessive portion of the tax as determined by the*
9 *court.*

10 **SEC. 5. GAO STUDY.**

11 (a) *STUDY.*—*The Comptroller General of the United*
12 *States shall conduct a study, throughout the 5-year period*
13 *beginning on the date of the enactment of this Act, to deter-*
14 *mine—*

15 (1) *how, and the extent to which, taxes imposed*
16 *by local and State jurisdictions on mobile services,*
17 *mobile service providers, or mobile property, impact*
18 *the costs consumers pay for mobile services; and*

19 (2) *the extent to which the moratorium on dis-*
20 *criminatory mobile services taxes established in this*
21 *Act has any impact on the costs consumers pay for*
22 *mobile services.*

23 (b) *REPORT.*—*Not later than 6 years after the date*
24 *of the enactment of this Act, the Comptroller General shall*
25 *submit, to the Committee on the Judiciary of the House*

1 *of Representatives and Committee on the Judiciary of the*
2 *Senate, a report containing the results of the study required*
3 *subsection (a) and shall include in such report rec-*
4 *ommendations for any changes to laws and regulations re-*
5 *lating to such results.*

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