AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

113TH CONGRESS
1ST SESSION

H. R. 2309

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

JUNE 11, 2013

Ms. LOFGREN (for herself, Mr. FRANKS of Arizona, Mr. ALEXANDER, Mr. AMODEI, Mrs. BACHMANN, Mr. BARLETTA, Mr. BARTON, Ms. BASS, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mrs. BLACKBURN, Mr. BOUSTANY, Mr. BRADY of Pennsylvania, Mr. BRADY of Texas, Mr. BROUN of Georgia, Ms. BROWN of Florida, Mr. BUCSHON, Mr. BUTTERFIELD, Mr. CALVERT, Mrs. CAPPS, Mr. CÁRDENAS, Mr. CARSON of Indiana, Mr. CARTER, Mr. CHABOT, Mr. CHAFFETZ, Mrs. CHRISTENSEN, Mr. COBLE, Mr. COFFMAN, Mr. COHEN, Mr. COLLINS of Georgia, Mr. CONAWAY, Mr. COSTA, Mr. COTTON, Mr. CRAWFORD, Mr. CRENSHAW, Mr. CULBERSON, Mr. CUELLAR, Mr. DENT, Mr. DOYLE, Ms. ESHOO, Mr. ENYART, Mr. FARENTHOLD, Mr. FLEMING, Mr. FLORES, Mr. FORBES, Mr. GARDNER, Mr. GARRETT, Mr. GERLACH, Mr. GINGREY of Georgia, Mr. GOSAR, Mr. GRAYSON, Mr. GENE GREEN of Texas, Mr. GRIFFIN of Arkansas, Mr. GRIJALVA, Mr. GRIMM, Mr. GUTIERREZ, Mr. HALL, Mr. HANNA, Mr. HARPER, Mr. HASTINGS of Florida, Mr. HASTINGS of Washington, Mr. HECK of Nevada, Mr. HOLDING, Mr. HOLT, Mr. HONDA, Mr. HUIZENGA of Michigan, Mr. HULTGREN, Mr. ISRAEL, Mr. ISSA, Ms. JACKSON LEE, Ms. JENKINS, Mr. JOHNSON of Ohio, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JONES, Mr. JORDAN, Mr. KELLY of Pennsylvania, Mr. KING of New York, Mr. KINZINGER of Illinois, Mr. KLINE, Mr. LABRADOR, Mr. CLAY, Mr. LANCE, Mr. LATTA, Mr. LONG, Mrs. CAROLYN B. MALONEY of New York, Mr. MARINO, Mr. MATHESON, Ms. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCOLLUM, Mrs. MCMORRIS RODGERS, Mr. MCNERNEY, Mr. MEEHAN, Mr. MEEKS, Mr. NUGENT, Mr. OLSON, Mr. OWENS, Mr. PALLONE, Mr. PEARCE, Mr. PITTS, Mr. POE of Texas, Mr. POLIS, Mr. RADEL, Mr. REED, Mr. REICHERT, Mr. ROGERS of Michigan, Mr. ROKITA, Ms. ROS-LEHTINEN, Mr. ROSS, Ms. ROYBAL-ALLARD, Mr. ROYCE, Mr. RUIZ, Mr. RUNYAN, Mr. RYAN of Ohio, Mr. SALMON, Ms. LORETTA SANCHEZ of California, Mr. SCALISE, Mr. SCHRADER, Mr. SENSENBRENNER, Mr. SESSIONS, Ms. SEWELL of Alabama, Mr. SHIMKUS, Mr. SIMPSON, Ms. SINEMA, Mr. SMITH of Nebraska, Mr. SMITH of Texas, Mr. STIVERS, Mr. STOCKMAN, Mr. SWALWELL of California, Mr. TAKANO, Mr. THOMPSON

of Mississippi, Mr. THORNBERRY, Mr. TIBERI, Mr. TONKO, Mr. VARGAS, Mr. VEASEY, Mr. WALBERG, Mr. WEBER of Texas, Mr. WEBSTER of Florida, Mr. WESTMORELAND, Mr. WITTMAN, Mr. WHITFIELD, Ms. WILSON of Florida, Mr. WILSON of South Carolina, Mr. YODER, Mr. MASSIE, Mr. GRAVES of Missouri, Ms. CLARKE, Mr. DESANTIS, and Mr. COLE) 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 2013''.

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-

actment of this Act, or any other service that is primarily intended for receipt on, transmission from, or use with a mobile telephone or other mobile device, including but not limited to the receipt of a digital good.

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

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

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

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

ices or transactions involving tangible personal property;

(B) a 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; or

(C) a mobile service property and is not generally imposed, or is generally imposed at a lower rate, on or with respect to, or measured by the value of, other property that is devoted to a commercial or industrial use and subject to a property tax levy, except public utility property owned by a public utility subject to rate of return regulation by a State or Federal regulatory authority;

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

(5) STATE OR LOCAL JURISDICTION.—The term ''State or local jurisdiction'' means any of the several States, the District of Columbia, any territory or possession of the United States, a political subdivision of any State, territory, or possession, or any

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

(6) TAX.—

(A) IN GENERAL.—The term ''tax'' means a charge imposed by a governmental entity for the purpose of generating revenues for governmental purposes, and excludes a fee imposed on a particular entity or class of entities for a specific privilege, service, or benefit conferred exclusively on such entity or class of entities.

(B) EXCLUSION.—The term ''tax'' does not include any fee or charge—

(i) used to preserve and advance Federal universal service or similar State programs authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254);

(ii) specifically dedicated by a State or local jurisdiction for the support of E–911 communications systems; or

(iii) used to preserve and advance Federal telecommunications relay services or State programs implementing this Fed-

eral mandate pursuant to title IV of the Americans with Disabilities Act of 1990 (Public Law 101–336; 104 Stat. 327) and codified in section 225 of the Communications Act of 1934 (47 U.S.C. 225).

(c) RULES OF CONSTRUCTION.—

(1) DETERMINATION.—For purposes of subsection (b)(4), all taxes, tax 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.

(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)(C), 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 either—

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

(ii) is a local jurisdiction tax that may not be imposed without voter approval, provides for at least 90 days' prior notice

to mobile service providers, and is required by law to be collected from mobile service customers.

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

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

(3) RELIEF.—In granting relief against a tax which is discriminatory or excessive under this Act with respect to tax rate or amount only, the court shall prevent, restrain, or terminate the imposition, levy, or collection of not more than the discrimina-

tory or excessive portion of the tax as determined by the court.

SEC. 5. GAO STUDY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study, throughout the 5-year period beginning on the date of the enactment of this Act, to determine—

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

(2) the extent to which the moratorium on discriminatory mobile services taxes established in this Act has any impact on the costs consumers pay for mobile services.

(b) REPORT.—Not later than 6 years after the date of the enactment of this Act, the Comptroller General shall submit, to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, a report containing the results of the study required under subsection (a) and shall include in such report recommendations for any changes to laws and regulations relating to such results.

○