

INTERNET TAX NONDISCRIMINATION ACT—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. In my capacity as the Senator from the State of Ohio, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, there is a quorum call in effect at this stage. How is the time being charged?

The PRESIDING OFFICER. The time is not being charged.

Mr. REID. I ask unanimous consent that the time be charged equally against the three who will control time.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MCCAIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 18½ minutes.

Mr. MCCAIN. Mr. President, I yield myself 4 minutes.

Mr. President, I have here in my hand a document prepared by the National Governors Association that expresses support for extending the Federal ban on State and local taxation of Internet access, so long as the moratorium respects three principles. One: Do no harm to State and local revenues. Two: Be clear about what services are covered by the moratorium to ensure that voice services and other services that use the Internet are excluded from the scope of the moratorium. Three: Stay flexible by extending the moratorium temporarily. These are the same principles that Senator ALEXANDER and others have stated they want to respect.

I agree with these principles, which is why I will offer today a compromise amendment to S. 150, the Internet Tax Non-discrimination Act.

The amendment would ensure that a significant portion—in fact, an overwhelming portion—of State and local telecommunications services tax revenues would remain protected. This means that almost \$20 billion of revenue would not be impacted by the proposal that I support. I would contrast this with the \$18 billion that the NGA claims the version of S. 150 that passed in the House last year would cost State and local governments, and the almost \$12 billion that the association claims

S. 150 would take away from States and localities.

I respectfully submit that the relatively small impact that the compromise amendment would have on States and local revenues would stem primarily from our wish to treat all States equally under this moratorium. Still, to accommodate the States that were taxing the Internet in 1998 when the moratorium was first enacted, the amendment would propose to give those States 3 more years of Internet access tax revenues. The compromise amendment would even permit those States that were not originally grandfathered but that nevertheless have begun taxing Internet access 2 years of additional revenue.

The NGA has also asked for clarity in the definition of Internet access. I agree that there should be clarity in this matter. To that end, the compromise amendment provides as plainly as possible that it would not prohibit States and localities from taxing traditional telephone services, voice services that use the Internet, and other services that use the Internet. The amendment also makes clear that e-mail could not be taxed by the compromise amendment. Once again, I have respected another core principle of the NGA in the matter.

And finally, the NGA seeks a temporary, rather than a permanent extension of the moratorium under the premise that, as the association and Senator ALEXANDER say “A temporary solution is better than permanent confusion.” The compromise amendment would extend the moratorium for a period of 4 years from November 1, 2003. Simply put, anything shorter would put us back on this floor debating this measure right after it is signed by the President.

So I remind my colleagues: What I will offer today does very clearly address the concerns raised by the NGA and other State and local groups. I hope, therefore, that my colleagues will support me in passing this reasonable compromise.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Arizona for his courtesy, his hard work, and his meetings on a complex issue, about which there are differences of opinion. People might wonder why are we having a hard time agreeing. One of the reasons is we have a difference of opinion, which I will talk about in a minute. A second is that sometimes even when we agree, when we sit down and try to write down what we agree on, we then disagree.

I am not sure if that is because we don't agree, or because our staffs have missed the boat, or because we Senators are not as wise as we should be. But let me be responsive to Senator MCCAIN, because he has come to the table with a specific proposal. I appreciate that. We got that yesterday after-

noon and we read it carefully last night, and I sent him a letter which he got just a little while ago. I tried to say to him my thanks for it. I identified four areas which are the principles he just talked about that I see as concerns and four ways to fix the problems.

He then asked me if I would be willing to offer an amendment to fix the problems, and I am preparing such an amendment to do that. But maybe we can speed that up. Let me go through the points he made and say where I have concern.

The first problem with the most recent McCain proposal is the definition. The definition is basically the same definition as in the last proposal, which is the Allen-Wyden bill. It does not simply extend the moratorium on State and local taxes on Internet access; it broadens the definition to include business taxes State and local governments collect, and those business taxes amount to a half billion dollars a year. That is the first problem.

How would we fix it? We would fix it by adopting the narrower definition of the Alexander-Carper amendment which was introduced 6 months ago with 11 bipartisan sponsors, or we could go to the original definition that was in the 1998 moratorium.

Let's remember what we are talking about here. Everybody is saying we have had a moratorium since 1998 that says, let's not allow State and local governments to tax Internet access. Certainly access is a very little thing. It was just the connection between you and AOL at the time it was passed. Now it is the connection between you and a variety of people—maybe the connection between you and your telephone company providing high-speed Internet access, your cable company providing high-speed Internet access, or it may be between you and DIRECTV providing high-speed Internet access, or in Manassas, VA, they provide it to you by the electric company. So it is just you and your provider.

The problem with this definition—it is the same problem with the definition of the distinguished Senator from Virginia—is that it broadens that, not to include just the end user and the provider, but the business taxes, the whole process. It would be as if we were to say, OK, we want to pass a Federal law saying in Virginia and Arizona and Tennessee you can't tax hybrid cars. You can't collect State taxes on hybrid cars because that will help clean the air. We will pass a Federal law: No State tax. But not just the sales tax on the hybrid car, also on the sales taxes that might apply to the supplier tier 1, supplier tier 2, supplier tier 3, and all the way back to the supplier of steel for the raw material.

That is the first problem. It is the same old definition, and that is the biggest problem. The fix would be just, if all we are doing is extending the 1998

moratorium another 4 years so Congress can work on this comprehensively, why don't we use that definition? That would be No. 1.

No. 2, Senator MCCAIN says and Senator ALLEN said in a debate we had at Heritage—and if I am misrepresenting their point of view, I hope they will correct me—that it was not the intent of their legislation to stop States from taxing telephone services, including telephone calls made over the Internet. It was not their intention to preclude State and local governments from taxing telephone services including telephone calls made over the Internet.

I would respectfully submit if that is their intention, the newest McCain proposal does not do that. Perhaps, if he doesn't intend to do that, our staffs could meet and we could work that out, or I could offer an amendment to try to fix it. If I were offering an amendment, it would simply say: Nothing in this act would preclude State and local governments from taxing telephone services, including telephone calls made over the Internet.

That is the second issue. That is a big issue because certain local governments collect \$18 billion a year in State and local taxes. We may not like that but that is what they do. They choose to do that in Tennessee and Texas instead of imposing a State income tax. They prefer to do that instead of putting a higher tax on food. That is their decision. I don't think we intend by this bill which purports to just extend the Internet access moratorium to decide the huge question of whether State and local governments should be permitted to tax telephone calls. Senator SUNUNU has a bill on the subject. He has done that in the normal order, and it will be considered by the Commerce Committee of which Senator MCCAIN is chairman. That is the place for that. That is No. 2. Maybe that is just a misunderstanding. If we both want the same thing, we ought to be able to write that down. Senator ALLEN and I have trouble in doing that.

Mr. WYDEN. Mr. President, will the Senator yield?

Mr. ALEXANDER. I would like to finish with the other points, and then of course I will.

The other two points are on duration. Four years is better than permanent, and I thank the Senator for that. But 4 years is a long time. We don't need more than 15 months or 2 years for the Commerce Committee and the Congress to look at this in a comprehensive way.

What I am afraid of is once we make a fix here it will never get out of the law. And if we get the wrong definition in here, or if somehow I am right but I am defeated and the result is that we really do ban State and local governments from collecting taxes on telephone services, then we will have driven a hole through State and local budgets that we didn't intend.

Finally, on the grandfather clauses, I think they should all end at the same

time the moratorium ends, whenever that ends.

Those are four points, and that is not many points. If they were all fixed, I could go for the bill, and maybe some other people could as well.

Let me conclude with this, and I will be glad to yield to someone else, including Senator WYDEN.

The reason I am on the floor has nothing to do at all with the Internet. It has everything to do with my view of federalism. I do not think we should be passing laws that cost money and send the bill to State and local governments. I think we promised not to do that.

The way I read Senator MCCAIN's proposal is it costs at least \$½ billion a year to State and local governments with his view of the definition. If the telephone language isn't fixed, it is \$3 billion to \$10 billion a year, according to the Congressional Budget Office. The grandfather clauses which exist at least in 27 States today where they are collecting taxes on Internet access are \$200 million or \$300 million a year. Those are significant dollars.

I wish I could find a more effective way to say this. If we want to give another subsidy to high-speed Internet access, which is the most rapidly growing technology in America, according to the New York Times of last week, and which has \$4 billion in Federal subsidies and subsidies from every State, if we want to give one more subsidy to this business, then why don't we pay for it? Why don't we pay for it instead of sending the bill to local governments? I am afraid this compromise doesn't do that.

I have mentioned this several times. I would like to mention it again. I am preparing an amendment on this. President Bush's plan in 1999 when he was Governor of Texas exempted the first \$25 that you pay on high-speed Internet access. It was exempted from taxation in Texas. That might cost you \$1 to \$3 a month. That is what we are talking about.

Everybody in Manassas, VA, can get high-speed Internet access for \$25 from their electric company.

The Governors, State and local governments asked us to pass the Texas plan—to pass the Bush plan. But we are insisting on passing another plan that doesn't benefit the consumers. It benefits the most highly subsidized technology company that I can find, if we have time—and we will have time later—I have a book called "The Nation of Laboratory Broadband Policy Experiences in the States." It details all of the wonderful State and local subsidies that are now being granted in addition to the \$4 billion.

Put the subsidies aside. My major concern is if we want to impose a cost on State and local governments, we should not break our promise of 1995, which was: No money, no mandate. If we break our promise, throw us out.

I am afraid that the McCain substitute breaks the promise. I would

like to work with Senator MCCAIN to resolve those last four differences. I look forward to the opportunity of joining with him, Senator ALLEN, and Senator WYDEN in coming to a result quickly this week.

Mr. WYDEN. Mr. President, will the Senator yield?

Mr. ALEXANDER. Yes.

Mr. WYDEN. I appreciate the Senator yielding. He has been very gracious.

Mr. ALEXANDER. I yield on the Senator's time.

Mr. MCCAIN. Mr. President, I yield 3 minutes to the Senator from Oregon.

Mr. WYDEN. Mr. President, I want to ask the Senator a question because I have the sense that the Senator from Tennessee thinks we ought to just use the 1998 definition of Internet access. Is that correct? Is that what the Senator from Tennessee is saying?

Mr. ALEXANDER. I thank the Senator for his question. I suggest that the 1998 definition is a better definition than the one in the latest McCain proposal. The best definition is in the Alexander-Carper compromise in December, but in the interest of trying to get to a result, I could vote for either one of those two definitions.

Mr. WYDEN. What concerns me is that both the 1998 definition and the proposal of the Senator from Tennessee essentially discriminates against the future because the future is about broadband, particularly for rural areas, for job creation, and highly skilled jobs. If you use the 1998 definition, or essentially the Senator's proposal for just Internet access—I emphasize that is all we are talking about, Internet access—what you will have is a situation where folks could get Internet access through cable and those folks end up essentially getting a free ride. But if you get the Internet access and future DSL, you are going to get taxed.

That is why Senator MCCAIN and I and others would like to essentially continue the 7-year path we have had which is to promote technological neutrality—not to advantage one technology against another.

On the question of Internet access, which is what the President talked about yesterday where he said he doesn't want to see Internet access get taxed, that is what is in the McCain proposal. That is what I was trying to do. Unfortunately, that is not in the Senator's proposal or in the 1998 definition.

What will happen is this country will have the technology policy that discriminates against the future and discriminates against the field in which it is going to create highly skilled jobs.

By the way, cable isn't going to be serving those rural areas. It is going to be broadband and DSL which serves them.

I very much appreciate the Senator from Arizona yielding me this time. We have clarified an important concept. Both in the 1998 definition that the Senator from Tennessee said he would

be for or his compromise, in my view, would have the Senate taking a position with respect to the future of the Internet and with respect to the future of technology that would not be in the public interest.

I thank my colleague from Arizona for yielding me the time.

I wrap up by way of saying I am going to continue to work with the Senator from Tennessee who has been very thoughtful and generous with his time. We can find a common ground.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ALEXANDER. Mr. President, how much time do I have?

The PRESIDING OFFICER. Six and one-half minutes.

Mr. ALEXANDER. Mr. President, I wish to make two points to the Senator from Oregon who has worked hard on this legislation from the very beginning. He is an original cosponsor.

No. 1, he is right about the 1998 definition. It isn't high-speed Internet access. There is a difference between the way high-speed Internet access offered over a telephone line and high-speed Internet access offered over a cable is treated.

But there are two solutions to that. One is, the Ninth Circuit just solved the problem—the Ninth Circuit Court of Appeals—by treating them the same. Now that is on appeal to the Supreme Court. So whatever we do here might be changed by the courts. That is why we need a short moratorium, so Senator MCCAIN's committee and your committee can go into a comprehensive look and solve this whole problem over the next 2 years. We are ready to do that. The FCC is ready to do that.

The second answer is, the Alexander-Carper amendment endeavors to treat all providers of high-speed Internet access the same. It is the best we can do from here. If the courts and the FCC do something in addition to that, we cannot control it.

Finally, I am concerned about the digital divide, too. But if power companies are going to be offering high-speed Internet access in Manassas, VA, which they do for \$25 a month—thanks to the Rural Electrification Association, everybody is going to have high-speed Internet access available to them if they have an electric wire to their house. If they do not, DirecTV will sell it to them from the sky, or their telephone company will sell it to them, or their cable company will sell it to them. Yet another way may be invented.

So I do not think we have any problem with encouraging high-speed Internet access. It is the fastest growing technology in America today. It is the most heavily subsidized. They are giving it away in LaGrange, GA, and only about half the people will take it. It is coming. It is available. But if we are going to give any kind of subsidy, let's pay for it here. Let's not send the bill to State and local governments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield 2 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, again, I want to make it clear to the Senator from Tennessee, I am anxious to work with him. But what we have seen, essentially, in this iteration of the debate, is a dusting off of the same arguments we have heard on the floor of the Senate in the past, that somehow this is going to result in extraordinary losses of revenue.

For example, in 1997, we were told by a number of the organizations at the State and local level that this was going to produce massive losses of revenue. In fact, the exact quote is: Our efforts, the efforts of Senator MCCAIN and I, and others, in 1997, would lead to a collapse of the State and local revenue system. The very next year, the year after we passed our first moratorium on multiple and discriminatory Internet taxes, we saw revenue go up \$7 billion. So we have had essentially all of these dire projections, these calamitous projections year after year—and I put them all in the RECORD—and they have not come to pass.

The reason they have not come to pass is that nobody is talking about the Internet getting a free ride. All we have said, from the very beginning, is that under this legislation you have to treat the online world like you treat the offline world.

When I came to the floor of the Senate with the distinguished chairman of the Commerce Committee on this more than 7 years ago—and folks probably found this subject even more difficult then than they do now; I know that is hard to believe—we said: Look, if you buy the newspaper—essentially “snail mail”—you are not paying any taxes, but if you buy the newspaper in the interactive edition, you pay a tax.

That was discriminatory. All we have tried to do over the last 7 years is essentially keep that principle in place and allow it to evolve with the technology. So for 7 years this has been about technology neutrality and dealing with these questions of State and local finance. The States have not lost money as a result of our making sure that you are not going to see multiple and discriminatory taxes on Internet access.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MCCAIN. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I appreciate the letter from the Senator from Tennessee. My understanding is, he has four major concerns. I hope to work with him to resolve these concerns. If not, I hope we will see amendments and let the Senate work its will as to

whether those concerns are valid in the view of a majority of the Senate. I look forward to seeing and debating and voting on these amendments.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Four minutes.

Mr. ALEXANDER. Mr. President, I thank the Senator from Arizona and look forward to doing that.

If I may continue the discussion for a moment with the Senator from Oregon, the reason State and local governments did not lose much money in the last few years from the moratorium on State and local taxation is because, one, there was a very narrow definition—narrower than the one this latest proposal and your proposal makes. You broaden the definition to include the whole Internet access backbone. You are not just talking about the connection between the end user and provider; you are talking about this backbone. You are talking about the normal business taxes that any other business would pay.

The other thing is, high-speed Internet access really had not arrived 5 or 6 years ago. It has arrived today. It is the fastest-growing technology. If we make a mistake on the telephone section of this bill, we will drive a Mack truck through State and local governments, and we can rename this bill the “Higher Local Property Tax” bill of 2004 or the “State Income Tax Bill in Tennessee” or the “State Income Tax Bill in Texas,” because if you take away hundreds of millions of dollars from State and local governments—or billions of dollars eventually—they have to look for another source of revenue. They may cut government some, but they will have to look for another source of revenue. We should be neutral about it. Ronald Reagan, the Republican Party—we have stood on the notion that we would return more responsibility, return more decisionmaking to local governments.

I urge my colleagues to look carefully at this legislation and vote for something that does no harm to State and local governments, and vote for something that gives the Commerce Committee a short time to figure this out properly, and vote for something that does not give an unnecessary benefit, unnecessary subsidy to what I judge to be already the most heavily subsidized and fastest growing new technology existing in the United States today.

I yield the floor.

Mr. MCCAIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Arizona has 9 minutes, the Senator from Tennessee has 1 minute 15 seconds, and the Senator from North Dakota has 18½ minutes.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, it is obvious from the most recent discussion

between my colleagues—Senator ALEXANDER, Senator WYDEN, and others—that if this had been easy to fix, it would have been fixed.

I talked to Senator MCCAIN last evening before we broke, and we talked a bit about the process that brought this bill to the floor of the Senate. This bill came from the Commerce Committee. We tried, during the markup in the Commerce Committee, to reach an agreement about the definition. The definition is really the critical piece here, and we were not successful in the committee.

We agreed, when we reported it out of the Commerce Committee, that we would continue to work to try to see if we could find an acceptable definition that would represent a compromise. Frankly, we did that. Senator MCCAIN kept his word. We all continued to talk and work to see if, before we brought this bill to the floor, we would have that agreement. But the fact is, we did not reach an agreement. So now we have very differing views about exactly how we should proceed.

For my purpose, it does not matter to me whether the moratorium is 1 year, 2 years, 5 years. That is much less relevant to me than the question of this definition, of exactly what cannot be taxed, exactly what we are doing with the definition, exactly what consequences that definition would have on State and local revenues, and on the taxation of certain products and services. The determination of how we create a definition that represents the interests that all of us want is what is critical. At this point, we have been unable to do that.

So my hope would be that while this bill is on the floor of the Senate, we can find a way to reach a compromise that is satisfactory. At this point, I would not support the underlying bill that is on the floor with the definition as it currently exists. But what we ought to do is find a way by which we create a definition that does exactly what the Senate wants it to do, without being broader than is necessary to substantially erode the revenue base that now exists with State and local governments. I think that is possible, but it is not easy.

Listening to the discussion of Senator ALEXANDER and Senator WYDEN and others demonstrates this is very complicated. It happens I have worked in this area for some while because of the issue Senator ENZI and I have worked on, which is not a part of this discussion today, but the one in which we talk about the issue of the consumption tax that exists when you buy a product, for example, from a catalog, from a remote seller, or perhaps over the Internet. When you purchase that product over the Internet or from a catalog, you actually owe a tax; you just don't pay it. Nobody pays that tax or almost no one pays the tax. It is called a use tax.

The use tax is applied when the sales tax is not collected. But no one pays,

or almost no one pays the use tax. So there is a substantial amount of money being lost to State and local governments for the support of schools and other services.

In addition, the folks on Main Street who actually sell the product from their storefront must charge the tax, and their competitor over the Internet sells without charging a tax. So there is a competitive issue that is a problem for local businesses as well. But the issue Senator ENZI and I and many others are concerned about and want to fix is not a part of the discussion. This is a narrower discussion about the moratorium that previously existed with respect to the imposition of a tax on the connection to the Internet. I have no disagreement with respect to the goals of those who want to prevent taxing "the Internet connection" in order not to retard the growth of broadband and the buildout of the infrastructure. We have no disagreement about that. I support the moratorium. I supported the previous moratorium. Again, it is of little matter to me whether it is 1 year or 5 years or even longer.

What is of great moment to me is how this definition is written. Because if it is written inappropriately, there could be a very significant set of unintended consequences that could be very costly to State and local governments and to their ability to fund education and other matters.

In summary, what I say is this: The bill is on the floor at the moment. One of the central pieces of the bill is at this point in great dispute. Unless we can find a way to negotiate a compromise on that definition, my guess is this legislation will not advance. I would prefer that it does advance. I hope we can find a compromise in the coming hours and days so that we write this definition in a manner that expresses the intent of the Senate and are able to move the legislation forward.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DORGAN. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally charged to both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Who yields time?

Mr. WYDEN. I believe this time should be taken from the time allocated to Chairman MCCAIN.

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

Mr. WYDEN. Mr. President, Chairman MCCAIN, I and others who have worked on this effort to try to find

common ground thought it was important early on to begin efforts to find some areas of agreement that would bring the sides together. Let me outline 10 particular areas of compromise we have essentially offered in the managers' proposal.

I, for example, strongly believe there should be a permanent ban on multiple and discriminatory taxes on Internet access. But in the name of trying to find a compromise, now we have a 4-year moratorium. We have a 3-year phaseout of the grandfather clause. This was something that was important to the States. We have a 2-year grandfather of taxes on DSL. Again, as I talked earlier, that is the technology of the future.

A fourth compromise reflects the concern about voiceover. What we have done is clarified that our legislation is not going to affect taxation of voice communication services utilizing the voiceover Internet protocol. We have clarified the taxes that would be covered, addressed a number of concerns the States had with respect to income and property taxes. We want to make sure those taxes, those opportunities for State and local revenue are protected.

We clarified the House language on DSL which was something State and local groups complained was too open-ended and vague.

With respect to the bundling of services, States and localities asked for a clear and uniform accounting rule. We protected universal services. We protected e-911 taxes, and we also made clear nontax regulatory powers would not be affected.

I thank the chairman for this time. I only wanted the Senate to know that as you tried to bring both sides together, there were 10 specific areas of compromise that were offered. I thank him for the time.

Mr. MCCAIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Six minutes 40 seconds.

Mr. MCCAIN. Mr. President, I reserve 5 minutes for the Senator from Virginia when he arrives. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield myself such time as I may consume.

Let me, in response to my colleague from Oregon, say once again I believe we ought to pass this legislation dealing with a moratorium. There might be 5, 10, 15, or 50 areas in which we have worked to try to reach compromise. I don't know the exact number, but I would not dispute that. I simply say again: The problem remains the definition of what is determined to be in the law that represents the moratorium impact; that is, what is the definition of the Internet service? What exactly are you precluding from a State and local tax base? Is it now taxed? Would it be taxed in the future. It is obviously very complicated. If it were not complicated, I believe Senator ALEXANDER

and Senator ALLEN and Senator VOINOVICH and others would have long ago reached a compromise. But that has not been the case.

Perhaps one of the things we could do during this discussion and the ensuing debate today, tomorrow, and beyond, if that is what it takes, is at least begin to understand exactly what is in the compromise that is being proposed and what is in the legislation that has been offered by Senator ALEXANDER and Senator CARPER in their 2-year moratorium, called S. 2084. But again, if this were easy, compromise would already have been reached. It is not easy. It is very complicated and difficult and hard to understand.

I have been in a good number of meetings in which it appears to me virtually everyone, including myself, failed to understand what we were debating, but we debated it aggressively nonetheless. My hope is we can do better than that this time. We have had a good start with some of the discussion back and forth earlier today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia has 5 minutes.

Mr. ALLEN. Mr. President, I would like to address this issue as it lays right now as we are moving to proceed, and some of the misinformation, mischaracterizations of where we are. This issue is not a novel or new one for the Senate. We have debated this in the committee. It has been on the floor. Senator WYDEN and I were ready to roll with this back in November—a permanent moratorium making sure forever there would not be discriminatory taxes, multiple taxes, or access taxes for consumers on the Internet. Now we get to this point and there are a lot of mischaracterizations.

The Senator from Arizona, chairman of the Commerce Committee, has come up with a proposal, an amendment to the bill, which is not permanent. To me it is not ideal. It is not perfect. But a lot of what happens in the Senate fails to meet that standard of ideal and perfect. Once in a while, one has to be practical, pragmatic, and sometimes cut back on what you think is the ideal.

This amendment of the Senator from Arizona is a 4-year moratorium rather than a permanent moratorium. I look at a "Dear Colleague" letter from some of my colleagues, Senator CARPER and Senator ALEXANDER, and they say: A moratorium of 4 years, that is tantamount to a permanent moratorium while they argue for a 2-year extension of a moratorium.

Well, if 4 years is permanent, I guess whoever gets elected President next year is going to be there permanently; Senators with a 6-year term, that must be ad infinitum. Four years is temporary; it is not ideal. I would prefer it to be permanent, and the reason I would like it to be permanent is because companies have to invest millions, tens of millions of dollars, if they are going to get broadband out, espe-

cially small towns and rural areas. In the event there is a shorter duration, then that means it is less likely that there will be stability, predictability, and confidence that the laws will stay the same. Anyone, even those with a fourth grade education—at least those students who have the benefit of Virginia's standards of learning—will understand that if you tax something, fewer people will be able to afford it.

The question before the Senate is whether we want to have Internet access and the Internet service monthly bills to be burdened with, on average, about a 17-percent tax, as is the case on telephone bills. Senator WYDEN, myself, and many others believe that if we want more people to have access to broadband and the Internet, then the best way is not to burden it with regulations or taxes. This is particularly true for those with lower incomes and those in rural areas and small towns, who need access to the ability to conduct commerce, access to education, access to telemedicine—access to all forms of information, which is key to competitiveness these days.

The grandfather clause has also been changed from the bill Senator WYDEN and I originally introduced. We wanted to stop those who found a loophole in the original moratorium and started taxing the backbone of the Internet. They are taxing that and, of course, ultimately the consumer has to pay for those taxes. We wanted to stop that immediately. Senator MCCAIN's amendment gives those States greater leeway and gives them up to 2 years to wean themselves off of this latest loophole for taxation. For those who have been taxing prior to 1998—and many States are still taxing—although States such as Iowa, South Carolina, Connecticut, and the District of Columbia, which were grandfathered, have stopped taxing Internet access. But other States are continuing to do so. Senator MCCAIN's amendment—unlike what the House did, which was stopping these States from taxing instantly—gives them 3 years to wean themselves off of it.

The compromise that Senator MCCAIN put forward, to me, is not ideal; it is beneficial, though, in that at least for the next 4 years we are protecting consumers from being hit with these burdensome, counterproductive, undesirable taxes on their access to the Internet. While not perfect, it is a measure that we can move forward with. It will have the Senate on record as not being in favor of taxing access to the Internet, but rather on the side of the consumers, on the side of freedom, and on the side of opportunity.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. ALLEN. Therefore, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DORGAN. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from North Dakota has 10 minutes 45 seconds. The Senator from Arizona has 1 minute 26 seconds. The Senator from Tennessee has 1 minute 15 seconds.

Mr. DORGAN. Mr. President, I think we are probably ready to go to the bill. Let me make a point, however, with respect to my colleague from Virginia.

Look, once again, there is no disagreement in this Chamber about the question of whether we would support punitive or discriminatory taxes with respect to the Internet. The answer is, of course not. I don't care how long the moratorium is for. Let it be forever, as far as I am concerned. That is not the issue. The issue with the legislation proposed is what kind of definition exists, and what will the impact of that definition be on the revenue base of the State and local governments?

If we can get that definition squared away in a thoughtful and appropriate way, we ought to pass this 100-0. I regret that that is not the case with respect to the compromise offered. That should not surprise anybody because this has gone on now for some months. It is complicated, and we have found it difficult to reach agreement or an acceptable compromise at this point. I expect the likely thing to have happen here is we will be on the bill itself and it will be open to amendment. We can have amendments, and perhaps second degrees, and we will have discussion and votes and find out how the Senate feels about the specific definitions.

Again, the question of whether there should be support for a discriminatory or punitive tax on the Internet—that ought not to be a question. I think the answer to that is, no, absolutely not. Whether it is 1 year, 3 years, or 5 years, that is not a very big issue for me. We need, in the coming hours, to focus on the question of, What is the right definition? What do we intend to accomplish, and how do we define it in a way that is fair to everybody?

I believe we ought to have public policy that encourages the buildout of broadband in this country. I think it will help this country's economy and be something that stimulates economic growth in our country. Whatever we do with this legislation, I don't want to retard the growth of broadband and the development of the Internet. I think that I speak for almost all of my colleagues when I say that. Let's find a way to write this definition in an appropriate manner and that is satisfactory and move ahead. At this point, it hasn't been done even with the compromise. We have much work to do to reach that point.

Mr. President, I ask, does the Senator from Tennessee seek time?

Mr. ALEXANDER. Yes, I seek 30 to 45 seconds.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 45 seconds.

Mr. ALEXANDER. Mr. President, I want to simply echo what the distinguished Senator from North Dakota

said. I am perfectly willing and prepared to vote for a short-term ban on State and local taxation of pure Internet access, and I have been ready to do that since December. So I am for that. I can step over here and take my purist position and give you a long argument on why we don't need to do that and make that kind of subsidy, but I know there are 100 Members here and we all have to pitch in. I am ready to do that.

All we have to fix in the McCain proposal is the definition, which the Senator has just mentioned. We have to make clear, in my view, that nothing in this bill should preclude State and local governments from taxing telephone services, including telephone calls made over the Internet. That is two. The short term is three. I prefer 2 years, not 4 years. The fourth item is the grandfather clause, which ought to be easy to fix. They ought to end at the same time the moratorium ends. So that is not many points of difference—the definition, telephone calls over the Internet, and the term of the grandfather clause.

The PRESIDING OFFICER. Who yields time?

Mr. DORGAN. Mr. President, my understanding is that Senator McCain is just off the Senate floor and will be returning in a moment. Until he returns, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

Mr. DORGAN. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from North Dakota has 2 minutes 55 seconds remaining, and the Senator from Arizona has 1 minute 26 seconds remaining.

Mr. DORGAN. I am prepared to yield back my time if that is the intention of the Senator from Arizona. That being the case, I yield back my time.

Mr. McCain. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, under the previous order, the motion to proceed is agreed to.

INTERNET TAX NONDISCRIMINATION ACT

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 150) to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Pending:

McCain amendment No. 2136, in the nature of a substitute.

Stabenow amendment No. 2141 (to amendment No. 2136) to express the sense of the Senate that the White House and all executive branch agencies should respond promptly and completely to all requests by Members of Congress of both parties for information about public expenditures.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 2136 WITHDRAWN

Mr. McCain. Mr. President, I now withdraw the pending substitute amendment No. 2136.

The PRESIDING OFFICER. The Senator has a right to withdraw the amendment.

AMENDMENT NO. 3048

Mr. McCain. Mr. President, I send a new substitute amendment to the desk. The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. McCain] proposes an amendment numbered 3048.

The amendment is as follows:

(Purpose: To extend the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act for 4 years, and for other purposes)

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Tax Nondiscrimination Act".

SEC. 2. FOUR-YEAR EXTENSION OF INTERNET TAX MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

“(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2007:

“(1) Taxes on Internet access.
“(2) Multiple or discriminatory taxes on electronic commerce.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

“(10) TAX ON INTERNET ACCESS.—
“(A) IN GENERAL.—The term ‘tax on Internet access’ means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.
“(B) GENERAL EXCEPTION.—The term ‘tax on Internet access’ does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.”.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking “except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998.”.

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting “The term ‘Internet access service’ does not include telecommunications serv-

ices, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting “The term ‘Internet access’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

“SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

“(a) PRE-OCTOBER 1998 TAXES.—

“(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

“(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) TERMINATION.—This subsection shall not apply after November 1, 2006.

“(b) PRE-NOVEMBER 2003 TAXES.—

“(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

“(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) TERMINATION.—This subsection shall not apply after November 1, 2005.”.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

“SEC. 1106. ACCOUNTING RULE.

“(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

“(b) DEFINITIONS.—In this section:

“(1) CHARGES FOR INTERNET ACCESS.—The term ‘charges for Internet access’ means all charges for Internet access as defined in section 1105(5).

“(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term ‘charges for telecommunications services’ means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following: