

112TH CONGRESS
1ST SESSION

H. R. 1002

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2011

Received, read twice and referred to the Committee on Finance

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wireless Tax Fairness
3 Act of 2011”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

17 (2) In light of the history and pattern of dis-
18 criminatory taxation faced by providers and con-
19 sumers of mobile services, the prohibitions against
20 and remedies to correct discriminatory State and
21 local taxation in section 306 of the Railroad Revital-
22 ization and Regulatory Reform Act of 1976 (49
23 U.S.C. 11501) provide an appropriate analogy for
24 congressional action, and similar Federal legislative
25 measures are warranted that will prohibit imposing
26 new discriminatory taxes on providers and con-

1 sumers of mobile services and that will assure an ef-
2 fective, uniform remedy.

3 **SEC. 3. MORATORIUM.**

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

9 (b) DEFINITIONS.—In this Act:

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

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

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

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

10 (A) a mobile service and is not generally
11 imposed, or is generally imposed at a lower
12 rate, on or with respect to, or measured by, the
13 charges, receipts, or revenues from other serv-
14 ices or transactions involving tangible personal
15 property;

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

21 (C) a mobile service property and is not
22 generally imposed, or is generally imposed at a
23 lower rate, on or with respect to, or measured
24 by the value of, other property that is devoted
25 to a commercial or industrial use and subject to

1 a property tax levy, except public utility prop-
2 erty owned by a public utility subject to rate of
3 return regulation by a State or Federal regu-
4 latory authority;

5 unless such tax was imposed and actually enforced
6 on mobile services, mobile service providers, or mo-
7 bile service property prior to the date of enactment
8 of this Act.

9 (5) STATE OR LOCAL JURISDICTION.—The term
10 “State or local jurisdiction” means any of the sev-
11 eral States, the District of Columbia, any territory
12 or possession of the United States, a political sub-
13 division of any State, territory, or possession, or any
14 governmental entity or person acting on behalf of
15 such State, territory, possession, or subdivision that
16 has the authority to assess, impose, levy, or collect
17 taxes or fees.

18 (6) TAX.—

19 (A) IN GENERAL.—The term “tax” means
20 a charge imposed by a governmental entity for
21 the purpose of generating revenues for govern-
22 mental purposes, and excludes a fee imposed on
23 a particular entity or class of entities for a spe-
24 cific privilege, service, or benefit conferred ex-
25 clusively on such entity or class of entities.

1 (B) EXCLUSION.—The term “tax” does
2 not include any fee or charge—

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

8 (ii) specifically dedicated by a State or
9 local jurisdiction for the support of E-911
10 communications systems.

11 (c) RULES OF CONSTRUCTION.—

12 (1) DETERMINATION.—For purposes of sub-
13 section (b)(4), all taxes, tax rates, exemptions, de-
14 ductions, credits, incentives, exclusions, and other
15 similar factors shall be taken into account in deter-
16 mining whether a tax is a new discriminatory tax.

17 (2) APPLICATION OF PRINCIPLES.—Except as
18 otherwise provided in this Act, in determining
19 whether a tax on mobile service property is a new
20 discriminatory tax for purposes of subsection
21 (b)(4)(C), principles similar to those set forth in sec-
22 tion 306 of the Railroad Revitalization and Regu-
23 latory Reform Act of 1976 (49 U.S.C. 11501) shall
24 apply.

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

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

6 (i) specific services;

7 (ii) specific industries or business seg-
8 ments; or

9 (iii) specific types of property; and

10 (B) the term “new discriminatory tax”
11 shall not include a new tax or the modification
12 of an existing tax that either—

13 (i)(I) replaces one or more taxes that
14 had been imposed on mobile services, mo-
15 bile service providers, or mobile service
16 property; and

17 (II) is designed so that, based on in-
18 formation available at the time of the en-
19 actment of such new tax or such modifica-
20 tion, the amount of tax revenues generated
21 thereby with respect to such mobile serv-
22 ices, mobile service providers, or mobile
23 service property is reasonably expected to
24 not exceed the amount of tax revenues that
25 would have been generated by the respec-

1 tive replaced tax or taxes with respect to
2 such mobile services, mobile service pro-
3 viders, or mobile service property; or

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

10 **SEC. 4. ENFORCEMENT.**

11 Notwithstanding any provision of section 1341 of title
12 28, United States Code, or the constitution or laws of any
13 State, the district courts of the United States shall have
14 jurisdiction, without regard to amount in controversy or
15 citizenship of the parties, to grant such mandatory or pro-
16 hibitive injunctive relief, interim equitable relief, and de-
17 claratory judgments as may be necessary to prevent, re-
18 strain, or terminate any acts in violation of this Act.

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

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

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

8 **SEC. 5. GAO STUDY.**

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

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

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

21 (b) REPORT.—Not later than 6 years after the date
22 of the enactment of this Act, the Comptroller General shall
23 submit, to the Committee on the Judiciary of the House
24 of Representatives and Committee on the Judiciary of the
25 Senate, a report containing the results of the study re-

1 quired subsection (a) and shall include in such report rec-
2 ommendations for any changes to laws and regulations re-
3 lating to such results.

Passed the House of Representatives November 1,
2011.

Attest:

KAREN L. HAAS,

Clerk.