

112TH CONGRESS
1ST SESSION

S. 543

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

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2011

Mr. WYDEN (for himself, Ms. SNOWE, Mrs. GILLIBRAND, Mr. MCCAIN, Mr. MENENDEZ, Mr. ENSIGN, Mr. NELSON of Florida, and Mr. BURR) introduced the following bill; which was read twice and referred to the Committee on Finance

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
9 enforcement authority under section 5 of the 14th

1 amendment to the Constitution of the United States
2 and Congress' plenary power under article I, section
3 8, clause 3 of the Constitution of the United States
4 (commonly known as the "commerce clause") in
5 order to ensure that States and political subdivisions
6 thereof do not discriminate against providers and
7 consumers of mobile services by imposing new selec-
8 tive and excessive taxes and other burdens on such
9 providers and consumers.

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

22 **SEC. 3. MORATORIUM.**

23 (a) IN GENERAL.—No State or local jurisdiction shall
24 impose a new discriminatory tax on or with respect to mo-
25 bile services, mobile service providers, or mobile service

1 property, during the 5-year period beginning on the date
2 of enactment of this Act.

3 (b) DEFINITIONS.—In this Act:

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

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

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

24 (4) NEW DISCRIMINATORY TAX.—The term
25 “new discriminatory tax” means a tax imposed by a

1 State or local jurisdiction that is imposed on or with
2 respect to, or is measured by, the charges, receipts,
3 or revenues from or value of—

4 (A) a mobile service and is not generally
5 imposed, or is generally imposed at a lower
6 rate, on or with respect to, or measured by, the
7 charges, receipts, or revenues from other serv-
8 ices or transactions involving tangible personal
9 property;

10 (B) a mobile service provider and is not
11 generally imposed, or is generally imposed at a
12 lower rate, on other persons that are engaged
13 in businesses other than the provision of mobile
14 services; or

15 (C) a mobile service property and is not
16 generally imposed, or is generally imposed at a
17 lower rate, on or with respect to, or measured
18 by the value of, other property that is devoted
19 to a commercial or industrial use and subject to
20 a property tax levy, except public utility prop-
21 erty owned by a public utility subject to rate of
22 return regulation by a State or Federal regu-
23 latory authority;

24 unless such tax was imposed and actually enforced
25 on mobile services, mobile service providers, or mo-

1 bile service property prior to the date of enactment
2 of this Act.

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

12 (6) TAX.—

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

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

22 (i) used to preserve and advance Fed-
23 eral universal service or similar State pro-
24 grams authorized by section 254 of the

1 Communications Act of 1934 (47 U.S.C.
2 254); or

3 (ii) specifically dedicated by a State or
4 local jurisdiction for the support of E-911
5 communications systems.

6 (c) RULES OF CONSTRUCTION.—

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

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

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

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

25 (i) specific services;

1 (ii) specific industries or business seg-
2 ments; or

3 (iii) specific types of property; and

4 (B) the term “new discriminatory tax”
5 shall not include a new tax or the modification
6 of an existing tax that—

7 (i) replaces one or more taxes that
8 had been imposed on mobile services, mo-
9 bile service providers, or mobile service
10 property; and

11 (ii) is designed so that, based on in-
12 formation available at the time of the en-
13 actment of such new tax or such modifica-
14 tion, the amount of tax revenues generated
15 thereby with respect to such mobile serv-
16 ices, mobile service providers, or mobile
17 service property is reasonably expected to
18 not exceed the amount of tax revenues that
19 would have been generated by the respec-
20 tive replaced tax or taxes with respect to
21 such mobile services, mobile service pro-
22 viders, or mobile service property.

23 **SEC. 4. ENFORCEMENT.**

24 Notwithstanding any provision of section 1341 of title
25 28, United States Code, or the constitution or laws of any

1 State, the district courts of the United States shall have
2 jurisdiction, without regard to amount in controversy or
3 citizenship of the parties, to grant such mandatory or pro-
4 hibitive injunctive relief, interim equitable relief, and de-
5 claratory judgments as may be necessary to prevent, re-
6 strain, or terminate any acts in violation of this Act.

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

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

14 (3) RELIEF.—In granting relief against a tax
15 which is discriminatory or excessive under this Act
16 with respect to tax rate or amount only, the court
17 shall prevent, restrain, or terminate the imposition,
18 levy, or collection of not more than the discrimina-
19 tory or excessive portion of the tax as determined by
20 the court.

○