To prohibit discrimination in State taxation of multichannel video programming distribution services.

IN THE HOUSE OF REPRESENTATIVES

February 12, 2009

Mr. CONYERS (for himself, Mr. BOUCHER, Mr. SENSENBRENNER, and Mr. JORDAN of Ohio) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit discrimination in State taxation of multichannel video programming distribution services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the “State Video Tax Fairness Act of 2009”.

SEC. 2. PROHIBITION.

No State shall impose a discriminatory tax on any means of providing multichannel video programming distribution services, including Internet protocol technology
(or any successor protocol), direct broadcast satellite delivery, and cable television services.

SEC. 3. DISCRIMINATORY TAX.

(a) Determination of Discriminatory Tax.—For the purposes of this Act, a tax is discriminatory if the net tax rate imposed on one means of providing multichannel video service is higher than the net tax rate imposed on another.

(b) Net Tax Rate.—The net tax rate imposed on multichannel video service includes any charge levied by a State legislature or other statewide taxing authority with respect to, or measured by, the charges, receipts, or revenues from, the provision of multichannel video service, to generate revenues for governmental purposes. The net tax rate is the effective rate paid by the provider or its customers for the service, offset by any exemption, deduction, credit, incentive, subsidy, or exclusion that diminishes the effective rate.

(c) Exclusion and Limitation.—

(1) The net tax rate imposed on multichannel video service does not include any obligation by any name, whether a duty, fee, charge, payment, or tax, or other payment obligation, imposed or collected, in whole or in part, as consideration for, or as a condition related to, the acquisition of a property right or
other item or service of value that is paid directly or indirectly to any State or local taxing authority.

(2) For purposes of paragraph (1), a service provider is deemed to be paying such an obligation indirectly to governmental units if, and to the extent that—

(A) governmental units had previously imposed the obligation on, or collected the obligation from, the service provider or its customers;

(B) the State abolished or limited the obligation;

(C) revenues collected from the payment of the obligation are directed to a fund other than the general fund; and

(D) the fund is directed in whole or in part to compensate the governmental units that had previously imposed or collected the obligation for lost revenue.

SEC. 4. EXCEPTION.

(a) CURRENT TAXES.—The prohibition contained in this Act shall not apply to any tax that was imposed in its current form before January 1, 2008. Nothing in this section shall preclude any such tax from being ruled discriminatory or otherwise illegal on any basis other than the prohibition contained in this Act and nothing in this
section shall affect the outcome or remedy of any pending or future litigation invoking other provisions of law.

(b) INTERPRETATION.—Nothing in this section shall be interpreted to mean that discriminatory taxes in the multichannel video programming marketplace are acceptable. It is the sense of Congress that such discrimination effectively stifles competition to the detriment of all consumers, and that states that have adopted discriminatory regimes should repeal them forthwith, even if not obligated to do so under this Act.