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

MARCH 16, 2009

Ms. ZOE LOFGREN of California (for herself, Mr. FRANKS of Arizona, Mr. COHEN, Mr. SMITH of Texas, Mrs. BONO MACK, Mr. SENSENBRENNER, Ms. ESHOO, Mr. COBLE, Ms. JACKSON-Lee of Texas, Mr. WEXLER, Mr. JORDAN of Ohio, Mr. GUTIERREZ, Mr. ISSA, Mr. GONZALEZ, Mr. CARDOZA, Mr. FORBES, Mr. COSTA, Mr. WITTMAN, Mr. BACA, Mr. RADANOVICH, Mr. GENE GREEN of Texas, and Mr. BERRY) 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.

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 “Cell Tax Fairness Act
5 of 2009”.
SEC. 2. 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 enactment of this Act, or any other service that is primarily intended for receipt on, transmission from, or use with a mobile telephone, 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 and includes, but is not limited to 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 any tax imposed by
a State or local jurisdiction that—

(A) is imposed on or with respect to, or is
measured by the charges, receipts, or revenues
from or value of—

(i) any mobile service and is not gen-
erally imposed, or is generally imposed at
a lower rate, on or with respect to, or
measured by the charges, receipts or reve-
 nues from, other services or transactions
involving tangible personal property;

(ii) any mobile service provider and is
not generally imposed, or is generally im-
posed at a lower rate, on other persons
that are engaged in businesses other than
the provision of mobile services; or

(iii) any mobile service property and is
not generally imposed, or is generally im-
posed 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; and
(B) was not generally imposed and actually
enforced on mobile services, mobile service pro-
viders, 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 sev-
eral States, the District of Columbia, any territory
or possession of the United States, a political sub-
division of any State, territory, or possession, or any
governmental entity or person acting on behalf of
such State, territory, possession, or subdivision and
with the authority to assess, impose, levy, or collect
taxes or fees.
(6) TAX.—
(A) IN GENERAL.—The term “tax” means
any charge imposed by any governmental entity
for the purpose of generating revenues for gov-
ernmental purposes, and is not a fee imposed
on an individual 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); or

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

(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)(A)(iii), 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—

(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 respec-
tive replaced tax or taxes with respect to such mobile services, mobile service providers, or mobile service property.

SEC. 3. ENFORCEMENT.

(a) 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.

(b) 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 no more than the discriminatory or excessive portion of the tax as determined by the court.