

106TH CONGRESS
1ST SESSION

S. 1755

To amend the Communications Act of 1934 to regulate interstate commerce
in the use of mobile telephones.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 1999

Mr. BROWNBACK (for himself and Mr. DORGAN) introduced the following bill;
which was read twice and referred to the Committee on Commerce,
Science, and Transportation

A BILL

To amend the Communications Act of 1934 to regulate
interstate commerce in the use of mobile telephones.

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 “Mobile Telecommuni-
5 cations Sourcing Act”.

6 **SEC. 2. FINDINGS**

7 The Congress finds the following:

8 (1) The provision of mobile telecommunications
9 services is a matter of interstate commerce within
10 the jurisdiction of the United States Congress under

1 Article I, Section 8 of the United States Constitu-
2 tion. Certain aspects of mobile telecommunications
3 technologies and services do not respect, and operate
4 independently of, State and local jurisdictional
5 boundaries.

6 (2) The mobility afforded to millions of Amer-
7 ican consumers by mobile telecommunications serv-
8 ices helps to fuel the American economy, facilitate
9 the development of the information superhighway
10 and provide important safety benefits.

11 (3) Users of mobile telecommunications services
12 can originate a call in one State or local jurisdiction
13 and travel through other States or local jurisdictions
14 during the course of the call. These circumstances
15 make it more difficult to track the separate seg-
16 ments of a particular call with all of the States and
17 local jurisdictions involved with the call. In addition,
18 expanded home calling areas, bundled service offer-
19 ings and other marketing advances make it increas-
20 ingly difficult to assign each transaction to a specific
21 taxing jurisdiction.

22 (4) State and local taxes imposed on mobile
23 telecommunications services that are not consistently
24 based can subject consumers, businesses and others
25 engaged in interstate commerce to multiple, con-

1 fusing and burdensome State and local taxes and re-
2 sult in higher costs to consumers and the industry.

3 (5) State and local taxes that are not consist-
4 ently based can result in some telecommunications
5 revenues inadvertently escaping State and local tax-
6 ation altogether, thereby violating standards of tax
7 fairness, creating inequities among competitors in
8 the telecommunications market and depriving State
9 and local governments of needed tax revenues.

10 (6) Because State and local tax laws and regu-
11 lations of many jurisdictions were established before
12 the proliferation of mobile telecommunications serv-
13 ices, the application of these laws to the provision of
14 mobile telecommunications services may produce
15 conflicting or unintended tax results.

16 (7) State and local governments provide essen-
17 tial public services, including services that Congress
18 encourages State and local governments to under-
19 take in partnership with the Federal government for
20 the achievement of important national policy goals.

21 (8) State and local governments provide serv-
22 ices that support the flow of interstate commerce,
23 including services that support the use and develop-
24 ment of mobile telecommunications services.

1 (9) State governments as sovereign entities in
2 our Federal system may require that interstate com-
3 merce conducted within their borders pay its fair
4 share of tax to support the governmental services
5 provided by those governments.

6 (10) Local governments as autonomous subdivi-
7 sions of a State government may require that inter-
8 state commerce conducted within their borders pay
9 its fair share of tax to support the governmental
10 services provided by those governments.

11 (11) To balance the needs of interstate com-
12 merce and the mobile telecommunications industry
13 with the legitimate role of State and local govern-
14 ments in our system of federalism, Congress needs
15 to establish a uniform and coherent national policy
16 regarding the taxation of mobile telecommunications
17 services through the exercise of its constitutional au-
18 thority to regulate interstate commerce.

19 (12) Congress also recognizes that the solution
20 established by this legislation is a necessarily prac-
21 tical one and must provide for a system of State and
22 local taxation of mobile telecommunications services
23 that in the absence of this solution would not other-
24 wise occur. To this extent, Congress exercises its

1 power to provide a reasonable solution to otherwise
 2 insoluble problems of multi-jurisdictional commerce.

3 **SEC. 3. AMENDMENT OF COMMUNICATIONS ACT OF 1934 TO**
 4 **PROVIDE RULES FOR DETERMINING STATE**
 5 **AND LOCAL GOVERNMENT TREATMENT OF**
 6 **CHARGES RELATED TO MOBILE TELE-**
 7 **COMMUNICATIONS SERVICES.**

8 The Communications Act of 1934 (47 U.S.C. 151 et
 9 seq.) is amended by adding at the end thereof the fol-
 10 lowing:

11 **“TITLE VIII—STATE AND LOCAL**
 12 **TREATMENT OF CHARGES**
 13 **FOR MOBILE TELECOMMUNI-**
 14 **CATIONS SERVICES.**

15 **“SEC. 801. APPLICATION OF TITLE.**

16 “(a) IN GENERAL.—This title applies to any tax,
 17 charge, or fee levied by a taxing jurisdiction as a fixed
 18 charge for each customer or measured by gross amounts
 19 charged to customers for mobile telecommunications serv-
 20 ices, regardless of whether such tax, charge, or fee is im-
 21 posed on the vendor or customer of the service and regard-
 22 less of the terminology used to describe the tax, charge,
 23 or fee.

24 “(b) GENERAL EXCEPTIONS.—This title does not
 25 apply to—

1 “(1) any tax, charge, or fee levied upon or
2 measured by the net income, capital stock, net
3 worth, or property value of the provider of mobile
4 telecommunications service;

5 “(2) any tax, charge, or fee that is applied to
6 an equitably apportioned gross amount that is not
7 determined on a transactional basis;

8 “(3) any tax, charge, or fee that represents
9 compensation for a mobile telecommunications serv-
10 ice provider’s use of public rights of way or other
11 public property, provided that such tax, charge, or
12 fee is not levied by the taxing jurisdiction as a fixed
13 charge for each customer or measured by gross
14 amounts charged to customers for mobile tele-
15 communication services; or

16 “(4) any fee related to obligations under section
17 254 of this Act.”.

18 “(c) SPECIFIC EXCEPTIONS.—This title—

19 “(1) does not apply to the determination of the
20 taxing situs of prepaid telephone calling services;

21 “(2) does not affect the taxability of either the
22 initial sale of mobile telecommunications services or
23 subsequent resale, whether as sales of the service
24 alone or as a part of a bundled product, where the
25 Internet Tax Freedom Act would preclude a taxing

1 jurisdiction from subjecting the charges of the sale
 2 of these mobile telecommunications services to a tax,
 3 charge, or fee but this section provides no evidence
 4 of the intent of Congress with respect to the applica-
 5 bility of the Internet Tax Freedom Act to such
 6 charges; and

7 “(3) does not apply to the determination of the
 8 taxing situs of air-ground radiotelephone service as
 9 defined in section 22.99 of the Commission’s regula-
 10 tions (47 C.F.R. 22.99).

11 **“SEC. 802. SOURCING RULES.**

12 “(a) IN GENERAL.—Notwithstanding the law of any
 13 State or political subdivision thereof to the contrary, mo-
 14 bile telecommunications services provided in a taxing juris-
 15 diction to a customer, the charges for which are billed by
 16 or for the customer’s home service provider, shall be
 17 deemed to be provided by the customer’s home service pro-
 18 vider.

19 “(b) JURISDICTION.—All charges for mobile tele-
 20 communications services that are deemed to be provided
 21 by the customer’s home service provider under this title
 22 are authorized to be subjected to tax, charge, or fee by
 23 the taxing jurisdictions whose territorial limits encompass
 24 the customer’s place of primary use, regardless of where
 25 the mobile telecommunication services originate, terminate

1 or pass through, and no other taxing jurisdiction may im-
 2 pose taxes, charges, or fees on charges for such mobile
 3 telecommunications services.

4 **“SEC. 803. LIMITATIONS.**

5 “This title does not—

6 “(1) provide authority to a taxing jurisdiction
 7 to impose a tax, charge, or fee that the laws of the
 8 jurisdiction do not authorize the jurisdiction to im-
 9 pose; or

10 “(2) modify, impair, supersede, or authorize the
 11 modification, impairment, or supersession of, the law
 12 of any taxing jurisdiction pertaining to taxation ex-
 13 cept as expressly provided in this title.

14 **“SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE**
 15 **STANDARD NUMERIC JURISDICTIONAL**
 16 **CODES.**

17 “(a) ELECTRONIC DATABASE.—A State may provide
 18 an electronic database to a home service provider or, if
 19 a State does not provide such an electronic database to
 20 home service providers, then the designated database pro-
 21 vider may provide an electronic database to a home service
 22 provider. The electronic database, whether provided by the
 23 State or the designated database provider, shall be pro-
 24 vided in a format approved by the American National
 25 Standards Institute’s Accredited Standards Committee

1 X12, that, allowing for de minimis deviations, designates
2 for each street address in the State, including to the ex-
3 tent practicable, any multiple postal street addresses ap-
4 plicable to one street location, the appropriate taxing juris-
5 diction, and the appropriate code for each taxing jurisdic-
6 tion, for each level of taxing jurisdiction, identified by one
7 nationwide standard numeric code. The electronic data-
8 base shall also provide the appropriate code for each street
9 address with respect to political subdivisions which are not
10 taxing jurisdictions when reasonably needed to determine
11 the proper taxing jurisdiction. The nationwide standard
12 numeric codes shall contain the same number of numeric
13 digits with each digit or combination of digits referring
14 to the same level of taxing jurisdiction throughout the
15 United States using a format similar to FIPS 55-3 or
16 other appropriate standard approved by the Federation of
17 Tax Administrators and the Multistate Tax Commission,
18 or their successors. Each address shall be provided in
19 standard postal format.

20 “(b) NOTICE; UPDATES.—A State or designated
21 database provider that provides or maintains an electronic
22 database described in subsection (a) shall provide notice
23 of the availability of the then current electronic database,
24 and any subsequent revisions thereof, by publication in the
25 manner normally employed for the publication of informa-

1 tional tax, charge, or fee notices to taxpayers in that
2 State.

3 “(c) USER HELD HARMLESS.—A home service pro-
4 vider using the data contained in the electronic database
5 described in subsection (a) shall be held harmless from
6 any tax, charge, or fee liability that otherwise would be
7 due solely as a result of any error or omission in the elec-
8 tronic database provided by a State or designated data-
9 base provider. The home service provider shall reflect
10 changes made to the electronic database during a calendar
11 quarter no later than 30 days after the end of that cal-
12 endar quarter for each State that issues notice of the
13 availability of an electronic database reflecting such
14 changes under subsection (b).

15 **“SEC. 805. PROCEDURE WHERE NO ELECTRONIC DATABASE**
16 **PROVIDED.**

17 “(a) IN GENERAL.—If neither a State nor designated
18 database provider provides an electronic database under
19 section 804, a home service provider shall be held harmless
20 from any tax, charge, or fee liability in that State that
21 otherwise would be due solely as a result of an assignment
22 of a street address to an incorrect taxing jurisdiction if,
23 subject to section 806, the home service provider employs
24 an enhanced zip code to assign each street address to a
25 specific taxing jurisdiction for each level of taxing jurisdic-

tion and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. Where an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for that enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 806 is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if such home service provider demonstrates that it has—

“(1) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

“(2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

“(3) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of the electronic database.

1 “(b) TERMINATION OF SAFE HARBOR.—Subsection
 2 (a) applies to a home service provider that is in compliance
 3 with the requirements of subsection (a), with respect to
 4 a State for which an electronic database is not provided
 5 under section 804 until the later of—

6 “(1) 18 months after the nationwide standard
 7 numeric code described in section 804(a) has been
 8 approved by the Federation of Tax Administrators
 9 and the Multistate Tax Commission; or

10 “(2) 6 months after that State or a designated
 11 database provider in that State provides the elec-
 12 tronic database as prescribed in section 804(a).

13 **“SEC. 806. CORRECTION OF ERRONEOUS DATA FOR PLACE**
 14 **OF PRIMARY USE.**

15 “(a) IN GENERAL.—A taxing jurisdiction, or a State
 16 on behalf of any taxing jurisdiction or taxing jurisdictions
 17 within such State, may—

18 “(1) determine that the address used for pur-
 19 poses of determining the taxing jurisdictions to
 20 which taxes, charges, or fees for mobile tele-
 21 communications services are remitted does not meet
 22 the definition of place of primary use in section
 23 809(3) and give binding notice to the home service
 24 provider to change the place of primary use on a

1 prospective basis from the date of notice of deter-
2 mination if—

3 “(A) where the taxing jurisdiction making
4 such determination is not a State, such taxing
5 jurisdiction obtains the consent of all affected
6 taxing jurisdictions within the State before giv-
7 ing such notice of determination; and

8 “(B) the customer is given an opportunity,
9 prior to such notice of determination, to dem-
10 onstrate in accordance with applicable State or
11 local tax, charge, or fee administrative proce-
12 dures that the address is the customer’s place
13 of primary use;

14 “(2) determine that the assignment of a taxing
15 jurisdiction by a home service provider under section
16 805 does not reflect the correct taxing jurisdiction
17 and give binding notice to the home service provider
18 to change the assignment on a prospective basis
19 from the date of notice of determination if—

20 “(A) where the taxing jurisdiction making
21 such determination is not a State, such taxing
22 jurisdiction obtains the consent of all affected
23 taxing jurisdictions within the State before giv-
24 ing such notice of determination; and

1 “(B) the home service provider is given an
 2 opportunity to demonstrate in accordance with
 3 applicable State or local tax, charge, or fee ad-
 4 ministrative procedures that the assignment re-
 5 flects the correct taxing jurisdiction.

6 **“SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING**
 7 **PLACE OF PRIMARY USE.**

8 “(a) PLACE OF PRIMARY USE.—A home service pro-
 9 vider is responsible for obtaining and maintaining the cus-
 10 tomer’s place of primary use (as defined in section 809).
 11 Subject to section 806, and if the home service provider’s
 12 reliance on information provided by its customer is in good
 13 faith, a home service provider—

14 “(1) may rely on the applicable residential or
 15 business street address supplied by the home service
 16 provider’s customer; and

17 “(2) is not liable for any additional taxes,
 18 charges, or fees based on a different determination
 19 of the place of primary use for taxes, charges or fees
 20 that are customarily passed on to the customer as
 21 a separate itemized charge.

22 “(b) ADDRESS UNDER EXISTING AGREEMENTS.—
 23 Except as provided in section 806, a home service provider
 24 may treat the address used by the home service provider
 25 for tax purposes for any customer under a service contract

1 or agreement in effect 2 years after the date of enactment
2 of the Mobile Telecommunications Sourcing Act as that
3 customer's place of primary use for the remaining term
4 of such service contract or agreement, excluding any ex-
5 tension or renewal of such service contract or agreement,
6 for purposes of determining the taxing jurisdictions to
7 which taxes, charges, or fees on charges for mobile tele-
8 communications services are remitted.

9 **“SEC. 808. SCOPE; SPECIAL RULES.**

10 “(a) TITLE DOES NOT SUPERSEDE CUSTOMER’S LI-
11 ABILITY TO TAXING JURISDICTION.—Nothing in this title
12 modifies, impairs, supersedes, or authorizes the modifica-
13 tion, impairment, or supersession of, any law allowing a
14 taxing jurisdiction to collect a tax, charge, or fee from a
15 customer that has failed to provide its place of primary
16 use.

17 “(b) ADDITIONAL TAXABLE CHARGES.—If a taxing
18 jurisdiction does not otherwise subject charges for mobile
19 telecommunications services to taxation and if these
20 charges are aggregated with and not separately stated
21 from charges that are subject to taxation, then the charges
22 for otherwise non-taxable mobile telecommunications serv-
23 ices may be subject to taxation unless the home service
24 provider can reasonably identify charges not subject to

1 such tax, charge, or fee from its books and records that
 2 are kept in the regular course of business.

3 “(c) NON-TAXABLE CHARGES.—If a taxing jurisdic-
 4 tion does not subject charges for mobile telecommuni-
 5 cations services to taxation, a customer may not rely upon
 6 the non-taxability of charges for mobile telecommuni-
 7 cations services unless the customer’s home service pro-
 8 vider separately states the charges for non-taxable mobile
 9 telecommunications services from taxable charges or the
 10 home service provider elects, after receiving a written re-
 11 quest from the customer in the form required by the pro-
 12 vider, to provide verifiable data based upon the home serv-
 13 ice provider’s books and records that are kept in the reg-
 14 ular course of business that reasonably identifies the non-
 15 taxable charges.

16 “(d) REFERENCES TO REGULATIONS.—Any ref-
 17 erence in this title to the Commission’s regulations is a
 18 reference to those regulations as they were in effect on
 19 June 1, 1999.

20 **“SEC. 809. DEFINITIONS.**

21 “In this title:

22 “(1) CHARGES FOR MOBILE TELECOMMUNI-
 23 CATIONS SERVICES.—The term ‘charges for mobile
 24 telecommunications services’ means any charge for,
 25 or associated with, the provision of commercial mo-

1 bile radio service, as defined in section 20.3 of the
2 Commission’s regulations (47 C.F.R. 20.3), or any
3 charge for, or associated with, a service provided as
4 an adjunct to a commercial mobile radio service,
5 that is billed to the customer by or for the cus-
6 tomer’s home service provider regardless of whether
7 individual transmissions originate or terminate with-
8 in the licensed service area of the home service pro-
9 vider.

10 “(2) TAXING JURISDICTION.—The term ‘taxing
11 jurisdiction’ means any of the several States, the
12 District of Columbia, or any territory or possession
13 of the United States, any municipality, city, county,
14 township, parish, transportation district, or assess-
15 ment jurisdiction, or any other political subdivision
16 within the territorial limits of the United States with
17 the authority to impose a tax, charge, or fee.

18 “(3) PLACE OF PRIMARY USE.—The term ‘place
19 of primary use’ means the street address representa-
20 tive of where the customer’s use of the mobile tele-
21 communications service primarily occurs, which must
22 be either—

23 “(A) the residential street address or the
24 primary business street address of the cus-
25 tomer; and

1 “(B) within the licensed service area of the
2 home service provider.

3 “(4) LICENSED SERVICE AREA.—The term ‘li-
4 censed service area’ means the geographic area in
5 which the home service provider is authorized by law
6 or contract to provide commercial mobile radio serv-
7 ice to the customer.

8 “(5) HOME SERVICE PROVIDER.—The term
9 ‘home service provider’ means the facilities-based
10 carrier or reseller with which the customer contracts
11 for the provision of mobile telecommunications serv-
12 ices.

13 “(6) CUSTOMER.—

14 “(A) IN GENERAL.—The term ‘customer’
15 means—

16 “(i) the person or entity that con-
17 tracts with the home service provider for
18 mobile telecommunications services; or

19 “(ii) where the end user of mobile
20 telecommunications services is not the con-
21 tracting party, the end user of the mobile
22 telecommunications service, but this clause
23 applies only for the purpose of determining
24 the place of primary use.

1 “(B) The term ‘customer’ does not
2 include—

3 “(i) a reseller of mobile telecommuni-
4 cations service; or

5 “(ii) a serving carrier under an ar-
6 rangement to serve the customer outside
7 the home service provider’s licensed service
8 area.

9 “(7) DESIGNATED DATABASE PROVIDER.—The
10 term “designated database provider” means a cor-
11 poration, association, or other entity representing all
12 the political subdivisions of a State that is—

13 “(A) responsible for providing the elec-
14 tronic database prescribed in section 804(a) if
15 the State has not provided such electronic data-
16 base; and

17 “(B) sanctioned by municipal and county
18 associations or leagues of the State whose re-
19 sponsibility it would otherwise be to provide the
20 electronic database prescribed by this title.

21 “(8) PREPAID TELEPHONE CALLING SERV-
22 ICES.—The term ‘prepaid telephone calling service’
23 means the right to purchase exclusively tele-
24 communications services that must be paid for in
25 advance, that enables the origination of calls using

1 an access number, authorization code, or both,
2 whether manually or electronically dialed, if the re-
3 maining amount of units of service that have been
4 prepaid is known by the provider of the prepaid
5 service on a continuous basis.

6 “(9) RESELLER.—The term ‘reseller’—

7 “(A) means a provider who purchases tele-
8 communications services from another tele-
9 communications service provider and then re-
10 sells, uses as a component part of, or integrates
11 the purchased services into a mobile tele-
12 communications service; but

13 “(B) does not include a serving carrier
14 with which a home service provider arranges for
15 the services to its customers outside the home
16 service provider’s licensed service area.

17 “(10) SERVING CARRIER.—The term ‘serving
18 carrier’ means a facilities-based carrier providing
19 mobile telecommunications service to a customer
20 outside a home service provider’s or reseller’s li-
21 censed service area.

22 “(11) MOBILE TELECOMMUNICATIONS SERV-
23 ICE.—The term ‘mobile telecommunications service’
24 means commercial mobile radio service, as defined in

1 section 20.3 of the Commission’s regulations (47
2 C.F.R. 20.3).

3 “(12) ENHANCED ZIP CODE.—The term ‘en-
4 hanced zip code’ means a United States postal zip
5 code of 9 or more digits.

6 **“SEC. 810. COMMISSION NOT TO HAVE JURISDICTION OF**
7 **TITLE.**

8 “Notwithstanding any other provision of this Act, the
9 Commission shall have no jurisdiction over the interpreta-
10 tion, implementation, or enforcement of this title.

11 **“SEC. 811. NONSEVERABILITY.**

12 “If a court of competent jurisdiction enters a final
13 judgment on the merits that is no longer subject to appeal,
14 which substantially limits or impairs the essential ele-
15 ments of this title based on Federal statutory or Federal
16 Constitutional grounds, or which determines that this title
17 violates the United States Constitution, then the provi-
18 sions of this title are null and void and of no effect.

19 **“SEC. 812. NO INFERENCE.**

20 “(a) INTERNET TAX FREEDOM ACT.—Nothing in
21 this title may be construed as bearing on Congressional
22 intent in enacting the Internet Tax Freedom Act or as
23 affecting that Act in any way.

24 “(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing
25 in this title shall limit or otherwise affect the implementa-

1 tion of the Telecommunications Act of 1996 or the amend-
2 ments made by that Act.”.

3 **SEC. 4. EFFECTIVE DATE.**

4 The amendment made by section 3 applies to cus-
5 tomer bills issued after the first day of the first month
6 beginning more than 2 years after the date of enactment
7 of this Act.

○