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106TH CONGRESS
2D SESSION

S. 1755

[Report No. 106-326]

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, Mr. DORGAN, Mr. WYDEN, Mr. CLELAND, Mr. BREAUX, Mr. ROCKEFELLER, Mr. BRYAN, Mr. LOTT, Mr. GORTON, Ms. SNOWE, Mr. ASHCROFT, Mr. ABRAHAM, Mr. KERRY, Mr. BURNS, Mr. HOLLINGS, Mr. FRIST, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JUNE 30, 2000

Reported by Mr. MCCAIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Mobile Telecommuni-
3 cations Sourcing Act”.

4 **SEC. 2. FINDINGS**

5 The Congress finds the following:

6 (1) The provision of mobile telecommunications
7 services is a matter of interstate commerce within
8 the jurisdiction of the United States Congress under
9 Article I, Section 8 of the United States Constitu-
10 tion. Certain aspects of mobile telecommunications
11 technologies and services do not respect, and operate
12 independently of, State and local jurisdictional
13 boundaries.

14 (2) The mobility afforded to millions of Amer-
15 ican consumers by mobile telecommunications serv-
16 ices helps to fuel the American economy, facilitate
17 the development of the information superhighway
18 and provide important safety benefits.

19 (3) Users of mobile telecommunications services
20 can originate a call in one State or local jurisdiction
21 and travel through other States or local jurisdictions
22 during the course of the call. These circumstances
23 make it more difficult to track the separate seg-
24 ments of a particular call with all of the States and
25 local jurisdictions involved with the call. In addition,
26 expanded home calling areas, bundled service offer-

1 ings and other marketing advances make it increas-
2 ingly difficult to assign each transaction to a specific
3 taxing jurisdiction.

4 (4) State and local taxes imposed on mobile
5 telecommunications services that are not consistently
6 based can subject consumers, businesses and others
7 engaged in interstate commerce to multiple, con-
8 fusing and burdensome State and local taxes and re-
9 sult in higher costs to consumers and the industry.

10 (5) State and local taxes that are not consist-
11 ently based can result in some telecommunications
12 revenues inadvertently escaping State and local tax-
13 ation altogether, thereby violating standards of tax
14 fairness, creating inequities among competitors in
15 the telecommunications market and depriving State
16 and local governments of needed tax revenues.

17 (6) Because State and local tax laws and regu-
18 lations of many jurisdictions were established before
19 the proliferation of mobile telecommunications serv-
20 ices, the application of these laws to the provision of
21 mobile telecommunications services may produce
22 conflicting or unintended tax results.

23 (7) State and local governments provide essen-
24 tial public services, including services that Congress
25 encourages State and local governments to under-

1 take in partnership with the Federal government for
2 the achievement of important national policy goals.

3 (8) State and local governments provide serv-
4 ices that support the flow of interstate commerce,
5 including services that support the use and develop-
6 ment of mobile telecommunications services.

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

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

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

1 (12) Congress also recognizes that the solution
 2 established by this legislation is a necessarily prac-
 3 tical one and must provide for a system of State and
 4 local taxation of mobile telecommunications services
 5 that in the absence of this solution would not other-
 6 wise occur. To this extent, Congress exercises its
 7 power to provide a reasonable solution to otherwise
 8 insoluble problems of multi-jurisdictional commerce.

9 **SEC. 3. AMENDMENT OF COMMUNICATIONS ACT OF 1934 TO**
 10 **PROVIDE RULES FOR DETERMINING STATE**
 11 **AND LOCAL GOVERNMENT TREATMENT OF**
 12 **CHARGES RELATED TO MOBILE TELE-**
 13 **COMMUNICATIONS SERVICES.**

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

17 **“TITLE VIII—STATE AND LOCAL**
 18 **TREATMENT OF CHARGES**
 19 **FOR MOBILE TELECOMMUNI-**
 20 **CATIONS SERVICES.**

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

22 “(a) **IN GENERAL.**—This title applies to any tax,
 23 charge, or fee levied by a taxing jurisdiction as a fixed
 24 charge for each customer or measured by gross amounts
 25 charged to customers for mobile telecommunications serv-

1 ices, regardless of whether such tax, charge, or fee is im-
 2 posed on the vendor or customer of the service and regard-
 3 less of the terminology used to describe the tax, charge,
 4 or fee.

5 “(b) GENERAL EXCEPTIONS.—This title does not
 6 apply to—

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

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

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

22 “(4) any fee related to obligations under section
 23 254 of this Act.”.

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

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

3 “(2) does not affect the taxability of either the
4 initial sale of mobile telecommunications services or
5 subsequent resale, whether as sales of the service
6 alone or as a part of a bundled product, where the
7 Internet Tax Freedom Act would preclude a taxing
8 jurisdiction from subjecting the charges of the sale
9 of these mobile telecommunications services to a tax,
10 charge, or fee but this section provides no evidence
11 of the intent of Congress with respect to the applica-
12 bility of the Internet Tax Freedom Act to such
13 charges; and

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

18 **“SEC. 802. SOURCING RULES.**

19 “(a) IN GENERAL.—Notwithstanding the law of any
20 State or political subdivision thereof to the contrary, mo-
21 bile telecommunications services provided in a taxing juris-
22 diction to a customer, the charges for which are billed by
23 or for the customer’s home service provider, shall be
24 deemed to be provided by the customer’s home service pro-
25 vider.

1 “(b) JURISDICTION.—All charges for mobile tele-
 2 communications services that are deemed to be provided
 3 by the customer’s home service provider under this title
 4 are authorized to be subjected to tax, charge, or fee by
 5 the taxing jurisdictions whose territorial limits encompass
 6 the customer’s place of primary use, regardless of where
 7 the mobile telecommunication services originate, terminate
 8 or pass through, and no other taxing jurisdiction may im-
 9 pose taxes, charges, or fees on charges for such mobile
 10 telecommunications services.

11 **“SEC. 803. LIMITATIONS.**

12 “‘This title does not—

13 “(1) provide authority to a taxing jurisdiction
 14 to impose a tax, charge, or fee that the laws of the
 15 jurisdiction do not authorize the jurisdiction to im-
 16 pose; or

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

21 **“SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE**
 22 **STANDARD NUMERIC JURISDICTIONAL**
 23 **CODES.**

24 “(a) ELECTRONIC DATABASE.—A State may provide
 25 an electronic database to a home service provider or, if

1 a State does not provide such an electronic database to
2 home service providers, then the designated database pro-
3 vider may provide an electronic database to a home service
4 provider. The electronic database, whether provided by the
5 State or the designated database provider, shall be pro-
6 vided in a format approved by the American National
7 Standards Institute's Accredited Standards Committee
8 X12, that, allowing for de minimis deviations, designates
9 for each street address in the State, including to the ex-
10 tent practicable, any multiple postal street addresses ap-
11 plicable to one street location, the appropriate taxing juris-
12 diction, and the appropriate code for each taxing jurisdic-
13 tion, for each level of taxing jurisdiction, identified by one
14 nationwide standard numeric code. The electronic data-
15 base shall also provide the appropriate code for each street
16 address with respect to political subdivisions which are not
17 taxing jurisdictions when reasonably needed to determine
18 the proper taxing jurisdiction. The nationwide standard
19 numeric codes shall contain the same number of numeric
20 digits with each digit or combination of digits referring
21 to the same level of taxing jurisdiction throughout the
22 United States using a format similar to FIPS 55-3 or
23 other appropriate standard approved by the Federation of
24 Tax Administrators and the Multistate Tax Commission,

1 or their successors. Each address shall be provided in
2 standard postal format.

3 “(b) NOTICE; UPDATES.—A State or designated
4 database provider that provides or maintains an electronic
5 database described in subsection (a) shall provide notice
6 of the availability of the then current electronic database,
7 and any subsequent revisions thereof, by publication in the
8 manner normally employed for the publication of informa-
9 tional tax, charge, or fee notices to taxpayers in that
10 State.

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

1 **“SEC. 805. PROCEDURE WHERE NO ELECTRONIC DATABASE**
2 **PROVIDED.**

3 “(a) IN GENERAL.—If neither a State nor designated
4 database provider provides an electronic database under
5 section 804, a home service provider shall be held harmless
6 from any tax, charge, or fee liability in that State that
7 otherwise would be due solely as a result of an assignment
8 of a street address to an incorrect taxing jurisdiction if,
9 subject to section 806, the home service provider employs
10 an enhanced zip code to assign each street address to a
11 specific taxing jurisdiction for each level of taxing jurisdic-
12 tion and exercises due diligence at each level of taxing ju-
13 risdiction to ensure that each such street address is as-
14 signed to the correct taxing jurisdiction. Where an en-
15 hanced zip code overlaps boundaries of taxing jurisdictions
16 of the same level, the home service provider must des-
17 ignate one specific jurisdiction within such enhanced zip
18 code for use in taxing the activity for that enhanced zip
19 code for each level of taxing jurisdiction. Any enhanced
20 zip code assignment changed in accordance with section
21 806 is deemed to be in compliance with this section. For
22 purposes of this section, there is a rebuttable presumption
23 that a home service provider has exercised due diligence
24 if such home service provider demonstrates that it has—

25 “(1) expended reasonable resources to imple-
26 ment and maintain an appropriately detailed elec-

1 tronic database of street address assignments to tax-
2 ing jurisdictions;

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

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

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

16 “(1) 18 months after the nationwide standard
17 numeric code described in section 804(a) has been
18 approved by the Federation of Tax Administrators
19 and the Multistate Tax Commission; or

20 “(2) 6 months after that State or a designated
21 database provider in that State provides the elec-
22 tronic database as prescribed in section 804(a).

1 **“SEC. 806. CORRECTION OF ERRONEOUS DATA FOR PLACE**
2 **OF PRIMARY USE.**

3 “(a) IN GENERAL.—A taxing jurisdiction, or a State
4 on behalf of any taxing jurisdiction or taxing jurisdictions
5 within such State, may—

6 “(1) determine that the address used for pur-
7 poses of determining the taxing jurisdictions to
8 which taxes, charges, or fees for mobile tele-
9 communications services are remitted does not meet
10 the definition of place of primary use in section
11 809(3) and give binding notice to the home service
12 provider to change the place of primary use on a
13 prospective basis from the date of notice of deter-
14 mination if—

15 “(A) where the taxing jurisdiction making
16 such determination is not a State, such taxing
17 jurisdiction obtains the consent of all affected
18 taxing jurisdictions within the State before giv-
19 ing such notice of determination; and

20 “(B) the customer is given an opportunity,
21 prior to such notice of determination, to dem-
22 onstrate in accordance with applicable State or
23 local tax, charge, or fee administrative proce-
24 dures that the address is the customer’s place
25 of primary use;

1 “(2) determine that the assignment of a taxing
2 jurisdiction by a home service provider under section
3 805 does not reflect the correct taxing jurisdiction
4 and give binding notice to the home service provider
5 to change the assignment on a prospective basis
6 from the date of notice of determination if—

7 “(A) where the taxing jurisdiction making
8 such determination is not a State, such taxing
9 jurisdiction obtains the consent of all affected
10 taxing jurisdictions within the State before giv-
11 ing such notice of determination; and

12 “(B) the home service provider is given an
13 opportunity to demonstrate in accordance with
14 applicable State or local tax, charge, or fee ad-
15 ministrative procedures that the assignment re-
16 flects the correct taxing jurisdiction.

17 **“SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING**
18 **PLACE OF PRIMARY USE.**

19 “(a) **PLACE OF PRIMARY USE.**—A home service pro-
20 vider is responsible for obtaining and maintaining the cus-
21 tomer’s place of primary use (as defined in section 809).
22 Subject to section 806, and if the home service provider’s
23 reliance on information provided by its customer is in good
24 faith, a home service provider—

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

4 “(2) is not liable for any additional taxes,
5 charges, or fees based on a different determination
6 of the place of primary use for taxes, charges or fees
7 that are customarily passed on to the customer as
8 a separate itemized charge.

9 “(b) ADDRESS UNDER EXISTING AGREEMENTS.—

10 Except as provided in section 806, a home service provider
11 may treat the address used by the home service provider
12 for tax purposes for any customer under a service contract
13 or agreement in effect 2 years after the date of enactment
14 of the Mobile Telecommunications Sourcing Act as that
15 customer’s place of primary use for the remaining term
16 of such service contract or agreement, excluding any ex-
17 tension or renewal of such service contract or agreement,
18 for purposes of determining the taxing jurisdictions to
19 which taxes, charges, or fees on charges for mobile tele-
20 communications services are remitted.

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

22 “(a) TITLE DOES NOT SUPERSEDE CUSTOMER’S LI-
23 ABILITY TO TAXING JURISDICTION.—Nothing in this title
24 modifies, impairs, supersedes, or authorizes the modifica-
25 tion, impairment, or supersession of, any law allowing a

1 taxing jurisdiction to collect a tax, charge, or fee from a
2 customer that has failed to provide its place of primary
3 use.

4 “(b) **ADDITIONAL TAXABLE CHARGES.**—If a taxing
5 jurisdiction does not otherwise subject charges for mobile
6 telecommunications services to taxation and if these
7 charges are aggregated with and not separately stated
8 from charges that are subject to taxation, then the charges
9 for otherwise non-taxable mobile telecommunications serv-
10 ices may be subject to taxation unless the home service
11 provider can reasonably identify charges not subject to
12 such tax, charge, or fee from its books and records that
13 are kept in the regular course of business.

14 “(c) **NON-TAXABLE CHARGES.**—If a taxing jurisdie-
15 tion does not subject charges for mobile telecommuni-
16 cations services to taxation, a customer may not rely upon
17 the non-taxability of charges for mobile telecommuni-
18 cations services unless the customer’s home service pro-
19 vider separately states the charges for non-taxable mobile
20 telecommunications services from taxable charges or the
21 home service provider elects, after receiving a written re-
22 quest from the customer in the form required by the pro-
23 vider, to provide verifiable data based upon the home serv-
24 ice provider’s books and records that are kept in the reg-

1 ular course of business that reasonably identifies the non-
2 taxable charges.

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

7 **“SEC. 809. DEFINITIONS.**

8 “In this title:

9 “(1) CHARGES FOR MOBILE TELECOMMUNI-
10 CATIONS SERVICES.—The term ‘charges for mobile
11 telecommunications services’ means any charge for,
12 or associated with, the provision of commercial mo-
13 bile radio service, as defined in section 20.3 of the
14 Commission’s regulations (47 C.F.R. 20.3), or any
15 charge for, or associated with, a service provided as
16 an adjunct to a commercial mobile radio service,
17 that is billed to the customer by or for the cus-
18 tomer’s home service provider regardless of whether
19 individual transmissions originate or terminate with-
20 in the licensed service area of the home service pro-
21 vider.

22 “(2) TAXING JURISDICTION.—The term ‘taxing
23 jurisdiction’ means any of the several States, the
24 District of Columbia, or any territory or possession
25 of the United States, any municipality, city, county,

1 township, parish, transportation district, or assess-
2 ment jurisdiction, or any other political subdivision
3 within the territorial limits of the United States with
4 the authority to impose a tax, charge, or fee.

5 “(3) PLACE OF PRIMARY USE.—The term ‘place
6 of primary use’ means the street address representa-
7 tive of where the customer’s use of the mobile tele-
8 communications service primarily occurs, which must
9 be either—

10 “(A) the residential street address or the
11 primary business street address of the cus-
12 tomer; and

13 “(B) within the licensed service area of the
14 home service provider.

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

20 “(5) HOME SERVICE PROVIDER.—The term
21 ‘home service provider’ means the facilities-based
22 carrier or reseller with which the customer contracts
23 for the provision of mobile telecommunications serv-
24 ices.

25 “(6) CUSTOMER.—

1 “(A) IN GENERAL.—The term ‘customer’
2 means—

3 “(i) the person or entity that con-
4 tracts with the home service provider for
5 mobile telecommunications services; or

6 “(ii) where the end user of mobile
7 telecommunications services is not the con-
8 tracting party, the end user of the mobile
9 telecommunications service, but this clause
10 applies only for the purpose of determining
11 the place of primary use.

12 “(B) The term ‘customer’ does not
13 include—

14 “(i) a reseller of mobile telecommuni-
15 cations service; or

16 “(ii) a serving carrier under an ar-
17 rangement to serve the customer outside
18 the home service provider’s licensed service
19 area.

20 “(7) DESIGNATED DATABASE PROVIDER.—The
21 term ‘designated database provider’ means a cor-
22 poration, association, or other entity representing all
23 the political subdivisions of a State that is—

24 “(A) responsible for providing the elec-
25 tronic database prescribed in section 804(a) if

1 the State has not provided such electronic data-
2 base; and

3 “(B) sanctioned by municipal and county
4 associations or leagues of the State whose re-
5 sponsibility it would otherwise be to provide the
6 electronic database prescribed by this title.

7 “(8) PREPAID TELEPHONE CALLING SERV-
8 ICES.—The term ‘prepaid telephone calling service’
9 means the right to purchase exclusively tele-
10 communications services that must be paid for in
11 advance, that enables the origination of calls using
12 an access number, authorization code, or both,
13 whether manually or electronically dialed, if the re-
14 maining amount of units of service that have been
15 prepaid is known by the provider of the prepaid
16 service on a continuous basis.

17 “(9) RESELLER.—The term ‘reseller’—

18 “(A) means a provider who purchases tele-
19 communications services from another tele-
20 communications service provider and then re-
21 sells, uses as a component part of, or integrates
22 the purchased services into a mobile tele-
23 communications service; but

24 “(B) does not include a serving carrier
25 with which a home service provider arranges for

1 the services to its customers outside the home
2 service provider's licensed service area.

3 “(10) SERVING CARRIER.—The term ‘serving
4 carrier’ means a facilities-based carrier providing
5 mobile telecommunications service to a customer
6 outside a home service provider's or reseller's li-
7 censed service area.

8 “(11) MOBILE TELECOMMUNICATIONS SERV-
9 ICE.—The term ‘mobile telecommunications service’
10 means commercial mobile radio service, as defined in
11 section 20.3 of the Commission's regulations (47
12 C.F.R. 20.3).

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

16 **“SEC. 810. COMMISSION NOT TO HAVE JURISDICTION OF**
17 **TITLE.**

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

21 **“SEC. 811. NONSEVERABILITY.**

22 “If a court of competent jurisdiction enters a final
23 judgment on the merits that is no longer subject to appeal,
24 which substantially limits or impairs the essential ele-
25 ments of this title based on Federal statutory or Federal

1 Constitutional grounds, or which determines that this title
 2 violates the United States Constitution, then the provi-
 3 sions of this title are null and void and of no effect.

4 **“SEC. 812. NO INFERENCE.**

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

9 “(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing
 10 in this title shall limit or otherwise affect the implementa-
 11 tion of the Telecommunications Act of 1996 or the amend-
 12 ments made by that Act.”.

13 **SEC. 4. EFFECTIVE DATE.**

14 The amendment made by section 3 applies to cus-
 15 tomer bills issued after the first day of the first month
 16 beginning more than 2 years after the date of enactment
 17 of this Act.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Mobile Telecommuni-*
 20 *cations Sourcing Act”.*

21 **SEC. 2. FINDINGS.**

22 *The Congress finds the following:*

23 (1) *The provision of mobile telecommunications*
 24 *services is a matter of interstate commerce within the*
 25 *jurisdiction of the United States Congress under arti-*

1 *cle I, section 8 of the United States Constitution. Cer-*
2 *tain aspects of mobile telecommunications technologies*
3 *and services do not respect, and operate independ-*
4 *ently of, State and local jurisdictional boundaries.*

5 *(2) The mobility afforded to millions of Amer-*
6 *ican consumers by mobile telecommunications services*
7 *helps to fuel the American economy, facilitate the de-*
8 *velopment of the information superhighway and pro-*
9 *vide important safety benefits.*

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

21 *(4) State and local taxes imposed on mobile tele-*
22 *communications services that are not consistently*
23 *based can subject consumers, businesses and others en-*
24 *gaged in interstate commerce to multiple, confusing*

1 *and burdensome State and local taxes and result in*
2 *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 the*
8 *telecommunications market and depriving State and*
9 *local governments of needed tax revenues.*

10 *(6) Because State and local tax laws and regula-*
11 *tions of many jurisdictions were established before the*
12 *proliferation of mobile telecommunications services,*
13 *the application of these laws to the provision of mo-*
14 *bile telecommunications services may produce con-*
15 *flicting or unintended tax results.*

16 *(7) State and local governments provide essential*
17 *public services, including services that Congress en-*
18 *courages State and local governments to undertake in*
19 *partnership with the Federal Government for the*
20 *achievement of important national policy goals.*

21 *(8) State and local governments provide services*
22 *that support the flow of interstate commerce, includ-*
23 *ing services that support the use and development of*
24 *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 pro-*
5 *vided 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 its*
9 *fair share of tax to support the governmental services*
10 *provided by those governments.*

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

19 (12) *Congress also recognizes that the solution es-*
20 *tablished by this legislation is a necessarily practical*
21 *one and must provide for a system of State and local*
22 *taxation of mobile telecommunications services that in*
23 *the absence of this solution would not otherwise occur.*
24 *To this extent, Congress exercises its power to provide*

1 *a reasonable solution to otherwise insoluble problems*
 2 *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 following:*

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

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

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

22 *“(b) GENERAL EXCEPTIONS.—This title does not*
 23 *apply to—*

24 *“(1) any tax, charge, or fee levied upon or meas-*
 25 *ured by the net income, capital stock, net worth, or*

1 *property value of the provider of mobile telecommuni-*
2 *cations service;*

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

6 *“(3) any tax, charge, or fee that represents com-*
7 *penetration for a mobile telecommunications service*
8 *provider’s use of public rights of way or other public*
9 *property, provided that such tax, charge, or fee is not*
10 *levied by the taxing jurisdiction as a fixed charge for*
11 *each customer or measured by gross amounts charged*
12 *to customers for mobile telecommunication services;*

13 *“(4) any generally applicable State-imposed*
14 *business and occupation tax—*

15 *“(A) that is applied to gross receipts or*
16 *gross proceeds;*

17 *“(B) that is the legal liability of the carrier;*

18 *and*

19 *“(C) under which the carrier may elect to*
20 *use the sourcing rules under this title; or*

21 *“(5) any fee related to obligations under section*
22 *254 of this Act.”.*

23 *“(c) SPECIFIC EXCEPTIONS.—This title—*

24 *“(1) does not apply to the determination of the*
25 *taxing situs of prepaid telephone calling services;*

1 “(2) does not affect the taxability of either the
2 initial sale of mobile telecommunications services or
3 subsequent resale, whether as sales of the service alone
4 or as a part of a bundled product, where the Internet
5 Tax Freedom Act would preclude a taxing jurisdic-
6 tion from subjecting the charges of the sale of these
7 mobile telecommunications services to a tax, charge,
8 or fee but this section provides no evidence of the in-
9 tent of Congress with respect to the applicability of
10 the Internet Tax Freedom Act to such charges; and

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

15 **“SEC. 802. SOURCING RULES.**

16 “(a) *IN GENERAL.*—Notwithstanding the law of any
17 State or political subdivision thereof to the contrary, mobile
18 telecommunications services provided in a taxing jurisdic-
19 tion to a customer, the charges for which are billed by or
20 for the customer’s home service provider, shall be deemed
21 to be provided by the customer’s home service provider.

22 “(b) *JURISDICTION.*—All charges for mobile tele-
23 communications services that are deemed to be provided by
24 the customer’s home service provider under this title are au-
25 thorized to be subjected to tax, charge, or fee by the taxing

1 *jurisdictions whose territorial limits encompass the cus-*
 2 *tomers' place of primary use, regardless of where the mobile*
 3 *telecommunication services originate, terminate or pass*
 4 *through, and no other taxing jurisdiction may impose taxes,*
 5 *charges, or fees on charges for such mobile telecommuni-*
 6 *cations services.*

7 **“SEC. 803. LIMITATIONS.**

8 *“This title does not—*

9 *“(1) provide authority to a taxing jurisdiction to*
 10 *impose a tax, charge, or fee that the laws of the juris-*
 11 *isdiction do not authorize the jurisdiction to impose; or*

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

16 **“SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE**
 17 **STANDARD NUMERIC JURISDICTIONAL**
 18 **CODES.**

19 *“(a) ELECTRONIC DATABASE.—A State may provide*
 20 *an electronic database to a home service provider or, if a*
 21 *State does not provide such an electronic database to home*
 22 *service providers, then the designated database provider*
 23 *may provide an electronic database to a home service pro-*
 24 *vider. The electronic database, whether provided by the*
 25 *State or the designated database provider, shall be provided*

1 *in a format approved by the American National Standards*
2 *Institute’s Accredited Standards Committee X12, that, al-*
3 *lowing for de minimis deviations, designates for each street*
4 *address in the State, including to the extent practicable,*
5 *any multiple postal street addresses applicable to one street*
6 *location, the appropriate taxing jurisdictions, and the ap-*
7 *propriate code for each taxing jurisdiction, for each level*
8 *of taxing jurisdiction, identified by one nationwide stand-*
9 *ard numeric code. The electronic database shall also provide*
10 *the appropriate code for each street address with respect to*
11 *political subdivisions which are not taxing jurisdictions*
12 *when reasonably needed to determine the proper taxing ju-*
13 *risdiction. The nationwide standard numeric codes shall*
14 *contain the same number of numeric digits with each digit*
15 *or combination of digits referring to the same level of taxing*
16 *jurisdiction throughout the United States using a format*
17 *similar to FIPS 55–3 or other appropriate standard ap-*
18 *proved by the Federation of Tax Administrators and the*
19 *Multistate Tax Commission, or their successors. Each ad-*
20 *dress shall be provided in standard postal format.*

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

1 *ner normally employed for the publication of informational*
 2 *tax, charge, or fee notices to taxpayers in that 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 any*
 6 *tax, charge, or fee liability that otherwise would be due sole-*
 7 *ly as a result of any error or omission in the electronic*
 8 *database provided by a State or designated database pro-*
 9 *vider. The home service provider shall reflect changes made*
 10 *to the electronic database during a calendar quarter no*
 11 *later than 30 days after the end of that calendar quarter*
 12 *for each State that issues notice of the availability of an*
 13 *electronic database reflecting such changes under subsection*
 14 *(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 oth-*
 21 *erwise would be due solely as a result of an assignment of*
 22 *a street address to an incorrect taxing jurisdiction if, sub-*
 23 *ject to section 806, the home service provider employs an*
 24 *enhanced zip code to assign each street address to a specific*
 25 *taxing jurisdiction for each level of taxing jurisdiction and*

1 *exercises due diligence at each level of taxing jurisdiction*
2 *to ensure that each such street address is assigned to the*
3 *correct taxing jurisdiction. Where an enhanced zip code*
4 *overlaps boundaries of taxing jurisdictions of the same level,*
5 *the home service provider must designate one specific juris-*
6 *isdiction within such enhanced zip code for use in taxing the*
7 *activity for that enhanced zip code for each level of taxing*
8 *jurisdiction. Any enhanced zip code assignment changed in*
9 *accordance with section 806 is deemed to be in compliance*
10 *with this section. For purposes of this section, there is a*
11 *rebuttable presumption that a home service provider has ex-*
12 *ercised due diligence if such home service provider dem-*
13 *onstrates that it has—*

14 “(1) *expended reasonable resources to implement*
15 *and maintain an appropriately detailed electronic*
16 *database of street address assignments to taxing juris-*
17 *dictions;*

18 “(2) *implemented and maintained reasonable in-*
19 *ternal controls to promptly correct misassignments of*
20 *street addresses to taxing jurisdictions; and*

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

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

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

10 “(2) *6 months after that State or a designated*
 11 *database provider in that State provides the electronic*
 12 *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 purposes*
 19 *of determining the taxing jurisdictions to which taxes,*
 20 *charges, or fees for mobile telecommunications services*
 21 *are remitted does not meet the definition of place of*
 22 *primary use in section 809(3) and give binding no-*
 23 *tice to the home service provider to change the place*
 24 *of primary use on a prospective basis from the date*
 25 *of notice of determination if—*

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

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

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

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

23 “(B) the home service provider is given an
24 opportunity to demonstrate in accordance with
25 applicable State or local tax, charge, or fee ad-

1 *ministrative procedures that the assignment re-*
2 *fects the correct taxing jurisdiction.*

3 **“SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING**
4 **PLACE OF PRIMARY USE.**

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

11 “(1) *may rely on the applicable residential or*
12 *business street address supplied by the home service*
13 *providers’ customer; and*

14 “(2) *is not liable for any additional taxes,*
15 *charges, or fees based on a different determination of*
16 *the place of primary use for taxes, charges or fees that*
17 *are customarily passed on to the customer as a sepa-*
18 *rate itemized charge.*

19 “(b) *ADDRESS UNDER EXISTING AGREEMENTS.*—*Ex-*
20 *cept as provided in section 806, a home service provider*
21 *may treat the address used by the home service provider*
22 *for tax purposes for any customer under a service contract*
23 *or agreement in effect 2 years after the date of enactment*
24 *of the Mobile Telecommunications Sourcing Act as that cus-*
25 *tomers’ place of primary use for the remaining term of such*

1 *service contract or agreement, excluding any extension or*
2 *renewal of such service contract or agreement, for purposes*
3 *of determining the taxing jurisdictions to which taxes,*
4 *charges, or fees on charges for mobile telecommunications*
5 *services are remitted.*

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

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

14 “(b) *ADDITIONAL TAXABLE CHARGES.—If a taxing ju-*
15 *risdiction does not otherwise subject charges for mobile tele-*
16 *communications services to taxation and if these charges*
17 *are aggregated with and not separately stated from charges*
18 *that are subject to taxation, then the charges for otherwise*
19 *non-taxable mobile telecommunications services may be sub-*
20 *ject to taxation unless the home service provider can reason-*
21 *ably identify charges not subject to such tax, charge, or fee*
22 *from its books and records that are kept in the regular*
23 *course of business.*

24 “(c) *NON-TAXABLE CHARGES.—If a taxing jurisdic-*
25 *tion does not subject charges for mobile telecommunications*

1 *services to taxation, a customer may not rely upon the non-*
 2 *taxability of charges for mobile telecommunications services*
 3 *unless the customer's home service provider separately states*
 4 *the charges for non-taxable mobile telecommunications serv-*
 5 *ices from taxable charges or the home service provider elects,*
 6 *after receiving a written request from the customer in the*
 7 *form required by the provider, to provide verifiable data*
 8 *based upon the home service provider's books and records*
 9 *that are kept in the regular course of business that reason-*
 10 *ably identifies the non-taxable charges.*

11 “(d) *REFERENCES TO REGULATIONS.*—*Any reference*
 12 *in this title to the Commission's regulations is a reference*
 13 *to those regulations as they were in effect on June 1, 1999.*

14 **“SEC. 809. DEFINITIONS.**

15 *“In this title:*

16 “(1) *CHARGES FOR MOBILE TELECOMMUNI-*
 17 *CATIONS SERVICES.*—*The term ‘charges for mobile*
 18 *telecommunications services’ means any charge for, or*
 19 *associated with, the provision of commercial mobile*
 20 *radio service, as defined in section 20.3 of the Com-*
 21 *mission's regulations (47 C.F.R. 20.3), or any charge*
 22 *for, or associated with, a service provided as an ad-*
 23 *adjunct to a commercial mobile radio service, that is*
 24 *billed to the customer by or for the customer's home*
 25 *service provider regardless of whether individual*

1 *transmissions originate or terminate within the li-*
2 *icensed service area of the home service provider.*

3 “(2) *TAXING JURISDICTION.*—*The term ‘taxing*
4 *jurisdiction’ means any of the several States, the Dis-*
5 *trict of Columbia, or any territory or possession of the*
6 *United States, any municipality, city, county, town-*
7 *ship, parish, transportation district, or assessment ju-*
8 *risdiction, or any other political subdivision within*
9 *the territorial limits of the United States with the au-*
10 *thority to impose a tax, charge, or fee.*

11 “(3) *PLACE OF PRIMARY USE.*—*The term ‘place*
12 *of primary use’ means the street address representa-*
13 *tive of where the customer’s use of the mobile tele-*
14 *communications service primarily occurs, which must*
15 *be—*

16 “(A) *either the residential street address or*
17 *the primary business street address of the cus-*
18 *tomers; and*

19 “(B) *within the licensed service area of the*
20 *home service provider.*

21 “(4) *LICENSED SERVICE AREA.*—*The term ‘li-*
22 *icensed service area’ means the geographic area in*
23 *which the home service provider is authorized by law*
24 *or contract to provide commercial mobile radio serv-*
25 *ice to the customer.*

1 “(5) *HOME SERVICE PROVIDER.*—*The term*
2 *‘home service provider’ means the facilities-based car-*
3 *rier or reseller with which the customer contracts for*
4 *the provision of mobile telecommunications services.*

5 “(6) *CUSTOMER.*—

6 “(A) *IN GENERAL.*—*The term ‘customer’*
7 *means—*

8 “(i) *the person or entity that contracts*
9 *with the home service provider for mobile*
10 *telecommunications services; or*

11 “(ii) *where the end user of mobile tele-*
12 *communications services is not the con-*
13 *tracting party, the end user of the mobile*
14 *telecommunications service, but this clause*
15 *applies only for the purpose of determining*
16 *the place of primary use.*

17 “(B) *The term ‘customer’ does not include—*

18 “(i) *a reseller of mobile telecommuni-*
19 *cations service; or*

20 “(ii) *a serving carrier under an ar-*
21 *rangement to serve the customer outside the*
22 *home service provider’s licensed service*
23 *area.*

24 “(7) *DESIGNATED DATABASE PROVIDER.*—*The*
25 *term ‘designated database provider’ means a corpora-*

1 *tion, association, or other entity representing all the*
 2 *political subdivisions of a State that is—*

3 *“(A) responsible for providing the electronic*
 4 *database prescribed in section 804(a) if the State*
 5 *has not provided such electronic database; and*

6 *“(B) sanctioned by municipal and county*
 7 *associations or leagues of the State whose respon-*
 8 *sibility it would otherwise be to provide the elec-*
 9 *tronic database prescribed by this title.*

10 *“(8) PREPAID TELEPHONE CALLING SERVICES.—*

11 *The term ‘prepaid telephone calling service’ means the*
 12 *right to purchase exclusively telecommunications serv-*
 13 *ices that must be paid for in advance, that enables the*
 14 *origination of calls using an access number, author-*
 15 *ization code, or both, whether manually or electroni-*
 16 *cally dialed, if the remaining amount of units of serv-*
 17 *ice that have been prepaid is known by the provider*
 18 *of the prepaid service on a continuous basis.*

19 *“(9) RESELLER.—The term ‘reseller’—*

20 *“(A) means a provider who purchases tele-*
 21 *communications services from another tele-*
 22 *communications service provider and then re-*
 23 *sells, uses as a component part of, or integrates*
 24 *the purchased services into a mobile tele-*
 25 *communications service; but*

1 *which substantially limits or impairs the essential elements*
2 *of this title based on Federal statutory or Federal Constitu-*
3 *tional grounds, or which determines that this title violates*
4 *the United States Constitution, then the provisions of this*
5 *title are null and void and of no effect.*

6 **“SEC. 812. NO INFERENCE.**

7 “(a) *INTERNET TAX FREEDOM ACT.*—*Nothing in this*
8 *title may be construed as bearing on Congressional intent*
9 *in enacting the Internet Tax Freedom Act or as affecting*
10 *that Act in any way.*

11 “(b) *TELECOMMUNICATIONS ACT OF 1996.*—*Nothing*
12 *in this title shall limit or otherwise affect the implementa-*
13 *tion of the Telecommunications Act of 1996 or the amend-*
14 *ments made by that Act.”.*

15 **SEC. 4. EFFECTIVE DATE.**

16 *The amendment made by section 3 applies to customer*
17 *bills issued after the first day of the first month beginning*
18 *more than 2 years after the date of enactment of this Act.*

Calendar No. 660

106TH CONGRESS
2D SESSION

S. 1755

[Report No. 106-326]

A BILL

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

JUNE 30, 2000

Reported with an amendment