108TH CONGRESS
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HOUSE OF REPRESENTATIVES
REPORT
108–234

INTERNET TAX NONDISCRIMINATION ACT

JULY 24, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 49]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 49) to permanently extend the moratorium enacted by the Internet Tax Freedom Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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19–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Tax Nondiscrimination Act".

SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREEDOM ACT MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

"(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes:

"(1) Taxes on Internet access.

"(2) Multiple or discriminatory taxes on electronic commerce.".

(b) CONFORMING AMENDMENTS.—(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d).

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking "unless" and all that follows through "1998".

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking "except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,".

(c) CLARIFICATION.—The second sentence of section 1104(5), and the second sentence of section 1101(e)(3)(D), of the Internet Tax Freedom Act (47 U.S.C. 151 note) are each amended by inserting ", except to the extent such services are used to provide Internet access" before the period.

PURPOSE AND SUMMARY

H.R. 49, the "Internet Tax Nondiscrimination Act,"[1] promotes equal access to the Internet and protects electronic commerce from discriminatory State and local taxes. The bill makes permanent the current moratorium on Internet access taxes and on multiple and discriminatory taxes created by the Internet Tax Freedom Act[2] (ITFA) in 1998. The moratorium was extended for 2 years during the 107th Congress through H.R. 1552, also entitled the "Internet Tax Nondiscrimination Act."[3] H.R. 49 applies equally to all States, and thereby abolishes the grandfather clause contained in the ITFA for those States currently taxing access to the Internet. As amended, the bill ensures that all technologies used to provide Internet access receive tax protection under the ITFA. Without H.R. 49, Internet users will be subject to a potential deluge of duplicative and predatory taxation on the Internet when the current moratorium expires on November 1, 2003.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

Internet Retail Commerce in Perspective

The Internet and information technology (IT) industries are a vital component of the U.S. economy. According to the U.S. Department of Commerce, despite an economic slowdown, IT industries have continued to create the "enduring foundation of a stronger economy."[4] For example, U.S. businesses are expanding their use of IT in operations, with IT investment in 2001 far surpassing

[1] H.R. 49 was introduced by Representative Chris Cox on January 7, 2003.

[2] The Internet Tax Freedom Act comprises titles XI and XII of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105–277, 112 Stat. 2681 (1998) (codified as amended at 47 U.S.C. § 151 (1998)).

[3] Pub. L. No. 107–75, 115 Stat. 703 (2001).

[4] ECONOMICS AND STATISTICS ADMINISTRATION, U.S. DEP'T OF COMMERCE, DIGITAL ECONOMY 2002, at v. [hereinafter "Digital Economy 2002"].

every year prior to 2000.[5] Internet retail sales[6] continue to accelerate. In 2000, Internet retail sales totaled $28 billion.[7] By 2001, this number had climbed to over $35 billion.[8] In the third quarter of 2002, e-commerce sales reached more than $10 billion.[9] These numbers, however, comprise a minute fraction of overall retail sales. For example, during the third quarter of 2002, online retail sales represented a mere 1.3 percent of overall retail sales.[10] According to the U.S. Department of Commerce, despite early warnings that online businesses would drive their "bricks and mortar" counterparts to extinction, "nothing approaching these degrees of transformation has yet occurred."[11]

Taxing Status of the Internet

A common misconception concerning Internet taxation is that the ITFA prohibits States from imposing a sales tax on sales accomplished via the Internet. In fact, the ITFA placed a moratorium only on the imposition of new taxes on Internet access services or any multiple or discriminatory taxes on electronic commerce by State or local governments. In other words, States may not (during the moratorium period) enact a sales tax which applies only to Internet transactions or which taxes Internet transactions at a different rate than other transactions. It may apply a sales tax which is imposed on sales equally without regard to the medium.[12]

Another misconception is that States do not have the power to tax transactions where the seller is located outside the State and has no real connection with the State. Rather, the important question in the out-of-State seller context is not the State's power to tax the transaction, but rather whether the out-of-State seller has sufficient nexus to the State so the State can require the out-of-State seller to collect the sales tax from the purchaser.

In sum, the Internet is not a tax-free haven as it is often mischaracterized. Online retailers do not escape taxation. Telecommunications channels such as telephone lines, certain wireless transmissions, and satellites are subject to State and local taxes. Electronic merchants pay State income and other direct taxes and physically-present electronic merchants are required to collect and remit sales and use taxes for most interstate transactions. In short, almost all existing taxes that are applied to traditional businesses are also applied to online businesses. The only substantive difference between the tax treatment of online and traditional retailers is a State's lack of authority to require nonresident electronic merchants to collect and remit sales taxes.

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[5] *Id.* at 7.

[6] Retail sales do not include food services.

[7] "Estimated Quarterly U.S. Retail E-commerce Sales: 4th Quarter 1999—3rd Quarter 2002," U.S. DEP'T OF COMMERCE (Feb. 2003), available at: *http://www. census.gov/mrts/www/current.html.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Digital Economy 2002 at 9. "To date the Internet as a commercial medium has disappointed initial expectations. E-commerce as a share of total U.S. retail sales remains at approximately 1 percent. At the industry level, reliance on e-commerce has been widespread but uneven." *Id.* at vi.

[12] The ITFA specifically states that: "[n]othing in this title shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act." 47 U.S.C. § 1101(b) (2001).

State Taxing Efforts Targeting the Internet

Prior to the enactment of the ITFA, State tax collectors had moved toward or begun taxation schemes that targeted electronic commerce inequitably. Examples included: (1) Vermont and Texas sought to impose more onerous tax collection obligations on merchants who take orders via the Internet than on those who take only telephone orders;[13] (2) Tacoma, Washington had required Internet service providers (ISPs) to pay a 6 percent gross receipts tax, even for national ISPs without any employees in Tacoma.[14] Tacoma's law also required everyone, even foreign sellers, who sold a product over the Internet to anyone in Tacoma to pay a $72 business license fee;[15] and (3) some States were reportedly contemplating a "bit tax," designed to burden only electronic commerce because it would be levied on every bit of digital information transmitted over the Internet.[16]

Constitutional Limitations On Taxing Interstate Commerce

The taxing powers of the States are distinctly limited by the Commerce and Due Process Clauses of the United States Constitution. The Commerce Clause establishes Congressional authority for regulating commerce between the States by declaring: "The Congress shall have power . . . [t]o regulate Commerce with foreign Nations, and among the several States. . . ."[17] While the Commerce Clause establishes a basis for congressional regulation, the Supreme Court has also interpreted the Commerce Clause to create a "negative" limitation on State power to regulate in areas that might adversely affect interstate commerce.[18] This limitation on State power is commonly referred to as the Dormant Commerce Clause. In addition, the Due Process Clause of the Fourteenth Amendment to the Constitution requires that, for a State to exercise jurisdiction over a defendant, that defendant must have minimum contacts with the State "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[19]

The degree to which these constitutional limitations protect consumers from sales taxes was examined in a series of Supreme Court decisions, notably *Quill Corp.* v. *North Dakota By and Through Heitkamp*,[20] decided in 1992. In *Quill*, the State of North Dakota attempted to require an out-of-State mail order catalog retailer to collect and pay a use tax on goods purchased for use within the State.[21] Quill Corporation (Quill), a Delaware corporation, grossed more than $1 million a year in mail order catalog sales to

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[13] *H.R. 1552 and H.R. 1675: Internet Tax Nondiscrimination Act: Hearing Before the Subcommittee on Commercial and Admin. Law of the House Committee on the Judiciary,* 107th Cong. (2001) at 8 (statement of Mr. Cox). [hereinafter Hearing on H.R. 1552 and H.R. 1675].

[14] *H.R. 1054: Internet Tax Freedom Act; Hearing Before the Subcommittee on Commercial and Admin. Law of the House Committee on the Judiciary,* 105th Cong. at 45–54 (1997) at 15 (statement of Ms. Ireland) [hereinafter Hearing on H.R. 1054].

[15] *Id.*

[16] *Hearing on H.R. 1552 and H.R. 1675* at 8 (statement of Mr. Cox).

[17] U.S. CONST. art. I, § 8, cl. 3.

[18] *See, e.g., South Carolina State Highway Dept.* v. *Barnwell Bros., Inc.*, 303 U.S. 177. (The Commerce Clause, "by its own force," prohibits certain State actions that interfere with interstate commerce. *Id.* at 185).

[19] *International Shoe Co.* v. *Washington,* 326 U.S. 310, 316 (1945) (quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940)).

[20] 504 U.S. 298 (1992).

[21] *Id.*

North Dakota residents, but lacked a physical presence in the State.[22] When North Dakota moved to compel Quill to collect and remit use taxes, Quill claimed the tax was unconstitutional.[23]

First, the Court ruled that collection of use taxes from consumers of businesses without a physical presence in the taxing State met the "minimum contacts requirement" of the Due Process Clause of the Fourteenth Amendment.[24] The Court held that Quill, incorporated in Delaware, had purposefully directed its marketing activity toward residents of North Dakota, allowing Quill to be subject to the legal jurisdiction of the State consistent with the due process clause.[25]

Under Commerce Clause scrutiny, however, Quill's contacts with North Dakota did not warrant the State's mandate that Quill collect the use tax. The Supreme Court concluded North Dakota's efforts to compel a remote seller to collect and remit use taxes to that State without a physical presence or other sufficient taxing "nexus" violated the Commerce Clause.[26] By requiring a remote seller to have a physical presence in the taxing State, the Court maintained a previously enunciated use tax safe harbor for remote vendors "whose only connection with customers in the taxing State is by common carrier or United States mail." [27]

While the *Quill* Court established that the "substantial nexus" requirement called for a physical presence for the business, it observed that Congress was free to reevaluate that requirement:

> No matter how we evaluate the burdens that use taxes impose on interstate commerce, Congress remains free to disagree with our conclusions. . . . Accordingly, Congress is now free to decide whether, when, and, to what extent the States may burden interstate mail order concerns with a duty to collect use taxes.[28]

With this decision, the Court made clear that it was left to Congress to decide whether physical presence would continue to be a requisite for burdening interstate mail-order, and by extension, Internet transactions, with a duty to collect use taxes.

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[22] *Id.* at 302.
[23] *Id.* at 303.
[24] *Id.* at 308.
[25] *Id.* While the Supreme Court has yet to rule on the degree of connection an electronic merchant must have with a taxing State in order to satisfy the Due Process minimum contacts test, it is likely a remote Internet retailer who seeks to sell merchandise to an in-State buyer through advertisement or other solicitation will be deemed to have "purposefully availed" itself of the benefits of the taxing State's market for purposes of meeting the Due Process requirement set out in *Quill*. However, meeting this requirement would not necessarily validate the constitutionality of the State tax since "a corporation may have the 'minimum contacts' with a taxing State as required by the Due Process Clause, and yet lack the 'substantial nexus' with that State required by the Commerce Clause." 504 U.S. at 313.
[26] *Id.* at 311. The Court reiterated the four-part test enunciated in *Complete Auto Transit Inc.* v. *Brady*, 430 U.S. 274 (1977), holding that State taxation survives a Dormant Commerce Clause challenge if the "tax:
(1) is applied to an activity with a substantial nexus with the taxing State,
(2) is fairly apportioned,
(3) does not discriminate against interstate commerce, and
(4) is fairly related to services provided by the State."
Quill, 504 U.S. at 311 (quoting *Complete Auto*, 430 U.S. at 279).
[27] 504 U.S. at 315 (quoting *National Bellas Hess, Inc.* v. *Dept. of Revenue of Illinois*, 386 U.S. 753, 758 (1967)).
[28] 504 U.S. at 318.

THE FEDERAL LEGISLATIVE RESPONSE

The Internet Tax Freedom Act

The ITFA was enacted to address the emerging challenges associated with electronic commerce. The Act imposed a 3-year moratorium on State and local governments' ability to impose new taxes on Internet access, but grandfathered existing taxes on Internet access that were in place prior to October 1, 1998.[29] The moratorium also applied to multiple and discriminatory taxes on electronic commerce. Further, the ITFA established a nineteen-member Advisory Commission on Electronic Commerce (ACEC) to study and submit a report to Congress on international, Federal, State and local tax issues pertaining to the Internet.

Principal Terms and Definitions Contained in the ITFA

Section 1104(5) of the ITFA defines "Internet access" as "a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services."

In general, taxation of Internet access refers to applying State and local taxes to the monthly charge that subscribers pay for access to the Internet through ISPs. When applied, the tax on Internet access is most commonly a retail general sales tax, but may also take the form of other transactional taxes such a telecommunications or gross receipts.[30]

The ITFA contains a "grandfather" clause with regard to Internet access taxes. Section 1101(a)(1) applies only to Internet access taxes that were not "generally imposed or actually enforced" prior to October 1, 1998. Hence, the States that collected these taxes prior to October 1, 1998 presently have authority to do so.

Section 1104(2)(A) of the ITFA defines "multiple" as "any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision . . . without a credit . . . for taxes paid in other jurisdictions."

For example, if State A imposes a tax on an online transaction that occurs between an Internet seller in State A and a consumer in State B, only one of these States would be permitted to collect taxes on the transaction unless a tax credit were provided. The ITFA ban on multiple taxes also prohibits more than one State from collecting taxes on an electronic transaction that might involve more than two taxing jurisdictions. This situation might arise if an Internet server is located in a State different from that of the Internet retailer and customer.

Section 1104(6)(B) does, however, permit multiple sales and use taxes that are geographically vertical. For example, the State, county, and city within a county could all levy their sales tax on the same e-commerce transaction. The other exception included within section 1104(6)(B) permits a tax to be levied on persons engaged in electronic commerce (*e.g.*, a personal income tax, corporate

[29] 47 U.S.C. § 1101(a)(1) (2001).

[30] *See generally,* Nonna A. Noto, "Extending the Internet Tax Moratorium and Related Issues," CONG. RESEARCH SERV., Long Report for Congress RL31177 (Jan. 17, 2002).

income tax, or business activity tax), even if a sales or use tax is levied on the transaction.

Section 1104(2) of the ITFA defines a "discriminatory tax" as: (A) any tax imposed by a State or political subdivision on electronic commerce that—(i) is not generally imposed and legally collectible by such State or political subdivision on transactions involving similar property, goods, services or information accomplished through other means; (ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services or information accomplished through other means (unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period); (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or (iv) establishes a classification on Internet access service providers for purposes of establishing a higher tax rate than the tax rate generally applied to providers of similar information services delivered through other means.

Discriminatory taxes include taxes levied specifically on electronic transactions or taxes that single out the electronic transactions for higher rates of taxation. For example, if State A collects a 5-percent sales tax on the sale or retail goods, State A could not impose a higher tax rate on retail goods sold online. This provision also prohibits States from imposing a tax collection requirement on persons or businesses who would not have to collect these taxes if they occurred in a similar, non-electronic transaction. Thus, State A cannot require a remote electronic seller to collect and remit sales taxes if other merchants selling similar goods are not required to do so. Finally, this section prohibits States from subjecting ISPs to a tax burden higher than that placed on information services delivered through other means.

Section 1104(2)(B) of the definition addresses nexus issues. It lists conditions under which the use of a computer server, an Internet access service, or online services, by a remote seller, does not establish nexus. Circumstances that do not establish nexus include the sole ability to access a site on a remote seller's out-of-State computer server; the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; and the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

Advisory Commission on Electronic Commerce

As noted above, the ITFA established the ACEC to study international, Federal, State, and local tax issues pertaining to the Internet.[31] In accordance with its statutory mandate, the ACEC reported the results of its study on April 3, 2000. The ACEC made numerous key findings which received a majority of the Commissioners' support, including: (1) "[m]ake permanent the current moratorium on any transaction taxes on the sale of Internet access, including taxes that were grandfathered under the ITFA;" and (2) "[f]or a period of 5 years, extend the current moratorium barring

[31] 47 U.S.C. § 1102 (1998).

multiple and discriminatory taxation of e-commerce and prohibit taxation of sales of digitized goods and products and their non-digitized counterparts."[32] Another ACEC majority proposal concerned the sales and use tax collection issue: "[e]ncourage State and local governments to work . . . in drafting a uniform sales and use tax act within 3 years after the expiration of the [ITFA] moratorium . . . that would simplify State and local sales and use taxation policies so as to create and maintain parity of collection costs . . . between remote sellers and comparable single-jurisdiction vendors that do not offer remote sales. . . ."[33]

The Internet Tax Nondiscrimination Act

In light of the ACEC findings, H.R. 49 extends permanently the moratorium provisions created by the ITFA. The bill thus creates a lasting ban on the imposition of taxes on Internet access and on multiple and discriminatory taxes on electronic commerce. H.R. 49 also eliminates the grandfather provision, thereby encouraging equal access to the Internet in every State.

Developments Since 1998

On May 22, 2003, the Subcommittee on Commercial and Administrative Law held a markup of H.R. 49. During markup, the Ranking Minority Member Mel Watt introduced one amendment addressing a development in the tax treatment of certain types of Internet access since 1998. Mr. Watt noted that some States had issued letter rulings that DSL Internet access service constituted a "bundle" of taxable telecommunications services and Internet access. Thus some Internet access had become subject to State taxation in contravention to the ITFA, while others were not. Mr. Watt withdrew the amendment, and Subcommittee Chairman Chris Cannon stated his intention to study the issue and develop amendment language with Mr. Watt to offer for consideration at the full Committee markup. Additionally, Mr. Cannon offered an amendment in the nature of a substitute which was adopted by voice vote.

Prior to markup on July 16, 2003, the Committee made a number of observations with regard to the ITFA in light of the evolving technological landscape since 1998. First, in enacting the ITFA, Congress intended to prohibit States and localities from taxing access to the Internet. Congress, therefore, prohibited taxes on "Internet access,"[34] which it defined in section 1104(5) as:

> (5) **Internet access.**—The term 'Internet access' means a service that enables users to access content, information, electronic mail, or other services over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services.

The first sentence of this subsection demonstrates Congress' broad, flexible approach to what constitutes "Internet access." Con-

[32] ADVISORY COMM. ON ELECTRONIC COMMERCE, 2000, Report to Congress, at 5.
[33] *Id.* at 19.
[34] The ITFA has an exception for Internet access taxes imposed by those States subject to the grandfather clause.

gress did not define "Internet access" in terms of a particular technology or a specific method of provisioning. Instead, Congress described the general functionality encompassed by Internet access, thereby allowing for the evolution of Internet access technologies and methods of providing Internet access in response to market forces and technological advancements.

Because the first sentence of the definition could be read to encompass telecommunications services, including plain old telephone service, or "POTS," Congress in the second sentence of the definition expressly excluded telecommunications services. The net effect of this definition is to create a broad moratorium on taxation of Internet access, while still preserving the ability of States and localities to tax telecommunications services, including traditional telephone service.

Under the ITFA, the moratorium applies to taxes on all forms of Internet access, regardless of the means by which that access is provided to the user. Whatever the current or future technology employed, the ITFA applies to that technology when it provides Internet access. In practice, Internet access provided to the user may include a transmission component that is an integral part of the Internet access, as in the case of Digital Subscriber Line (DSL) Internet access, cable modem Internet access, and certain wireless Internet access. In such cases, the transmission component is not a separate telecommunications service subject to taxation.

Internet access also may be provided to the user without a transmission component included, as in the case of dial-up Internet access, which requires the use of a telephone line. In this case, by contrast, the transmission component is a separate telecommunications service subject to taxation. In both scenarios, however, the ITFA prohibits the taxation of Internet access.

Moreover, high-speed Internet access may be delivered through various arrangements between telecommunications companies, Internet access providers (IAPs) and ISPs. In one of many such examples, an IAP may purchase the transmission capability from a telecommunications company and combine the Internet transmission service with its own Internet services in order to provide their customers high-speed Internet access. In another arrangement, an IAP may purchase from an ISP the Internet services and use its own high-speed Internet transmission service to provide access. These are only two of many possible arrangements which provide Internet access. Transmissions pursuant to such arrangements constitute "Internet access" within the definition in the ITFA.

Since the enactment of the ITFA, States have adopted differing views of "Internet access," some of which have been overly narrow. They have segregated what they consider to be Internet access from the transport used to deliver that access, and taxed the transport as "telecommunications services" separate from, and merely, in their view, "bundled" with, Internet access.[35] Taxation of the transport component of Internet access is, in reality, a tax on Internet access. The result has been unequal treatment of technologies: while apparently no States tax the dial-up method of Internet access (with the exception of those subject to the grandfather clause),

[35] *See* Ala. Dept. of Revenue, Priv. Ltr. Rul. (Aug. 22, 2002); Ky. Rev. Cabinet, Priv. Ltr. Rul. (Jan. 17, 2003).

some tax other technologies, such as DSL Internet services, thereby undermining the purpose of the ITFA. In contrast, other States have ruled that transmission and access together constitute "Internet access" and are included within the ITFA moratorium.[36] The Committee believes that the latter interpretation more correctly conforms with Congressional intent. But the disparity of treatment necessitated further clarification to the definition of "Internet access" to ensure that the ITFA is technology-neutral.

At the full Committee markup of H.R. 49 on July 16, 2003, Mr. Watt and Mr. Cannon offered the following amendment to the definition of Internet access (new language inserted in italics), which was adopted:

> (5) **Internet access.**—The term "Internet access" means a service that enables users to access content, information, electronic mail, or other services over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services, *except to the extent such services are used to provide Internet access.*

The amendment clarified the exception to the definition: while telecommunications services are not generally within the definition of Internet access, to the extent they are used to provide Internet access, they are subject to the moratorium. Transmission services used to provide Internet access, whether at the wholesale or retail level, constitute "Internet access." Those services used to provide Internet access, including DSL Internet services, cable modem Internet services, and similar or successor technologies, are subject to the tax moratorium of the ITFA.

The amendment further elucidated that "POTS" is not included within the definition of "Internet access." The phrase "are used to provide Internet access" is viewed from the perspective of the provider, and POTS alone is not, indeed cannot be, used to provide Internet access. As noted above, cable modem Internet access services, which are not telecommunications services, are already subject to the ITFA moratorium. This tax exclusion does not apply to cable video services, however, which are subject to franchise fees.

The amendment ensures parity of tax treatment for all technologies used to provide Internet access to consumers and emphasizes the original intent of the ITFA. Examples of services that fall within the definition of "Internet access" include, but are not limited to:

—DSL Internet access services, including their transport mechanisms;

—That portion of wireless telephone services used to provide Internet access, including transport mechanisms; and

—That portion of cable modem service used to provide Internet access, including transport mechanisms.

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[36] See La. Dept. of Revenue, Priv. Ltr. Rul. 03–004 (Apr. 4, 2003); S.C. Dept. of Revenue, Priv. Ltr. Rul. 03–2 (Mar. 10, 2003).

HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law held a hearing on H.R. 49 on April 1, 2003. Testimony was received from the following witnesses: Hon. Jack Kemp, Co-Director, Empower America; Hon. James S. Gilmore, III, former Governor of the Commonwealth of Virginia; Mr. Harley T. Duncan, Executive Director, Federation of Tax Administrators; and Mr. Harris N. Miller, President of the Information Technology Association of America. Additional materials were submitted by six individuals and organizations.

COMMITTEE CONSIDERATION

On May 22, 2003, the Subcommittee on Commercial and Administrative Law met in open session and ordered favorably reported the bill H.R.49, with an amendment in the nature of a substitute, by voice vote, a quorum being present. On July 16, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 49, with an amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 49.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 49, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 49, the Internet Tax Nondiscrimination Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro, who can be reached at 225–3220.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 49—Internet Tax Nondiscrimination Act.

SUMMARY

H.R. 49 would permanently extend a moratorium on certain State and local taxation of online services and electronic commerce, and would eliminate an exception to the prohibition for certain States. Under current law, the moratorium is set to expire on November 1, 2003. CBO estimates that enacting H.R. 49 would have no impact on the Federal budget, but it would impose significant costs on some State and local governments.

By extending and expanding the moratorium on certain types of State and local taxes, H.R. 49 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would cause revenue losses to State and local governments that would exceed the threshold established in UMRA ($59 million in 2003, adjusted annually for inflation). While there is some uncertainty about the number of States affected, CBO estimates that the direct costs to States and local governments would probably total between $80 million and $120 million annually. CBO estimates that the bill contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that enacting H.R. 49 would have no impact on the Federal budget.

INTERGOVERNMENTAL MANDATES CONTAINED IN THE BILL

The Internet Tax Freedom Act (ITFA) currently prohibits State and local governments from imposing taxes on Internet access until November 1, 2003. The ITFA, enacted as Public Law 105–277 on October 21, 1998, also contains an exception to this moratorium, sometimes referred to as the "grandfather clause," which allows certain State and local governments to tax Internet access if such tax was generally imposed and actually enforced prior to October 1, 1998.

H.R. 49 would make the moratorium permanent and would eliminate the grandfather clause. The bill also would State that the term "Internet access" or "Internet access services" as defined in ITFA would not include telecommunications services except to the extent that such services are used to provide Internet access, known as "aggregating" or "bundling" of services. These extensions and expansions of the moratorium constitute intergovernmental mandates as defined in UMRA.

ESTIMATED DIRECT COSTS OF MANDATES TO STATE AND LOCAL GOVERNMENTS

CBO estimates that repealing the grandfather clause would result in revenue losses for about 10 States and for several local governments totaling between $80 million and $120 million annually beginning in 2004. We also estimate that the change in the definition of Internet access could affect tax revenues for many States and local governments, but we cannot estimate the magnitude or the timing of any such additional impacts at this time.

UMRA includes in its definition of the direct costs of a mandate the amounts that State and local governments would be prohibited from raising in revenues to comply with the mandate. The direct costs of eliminating the grandfather clause would be the tax revenues that State and local governments are currently collecting but would be precluded from collecting under H.R. 49. States also could lose revenues that they currently collect on certain services if those services are redefined as access under the bill.

The Grandfather Clause

The primary and most immediate budget impact would be the revenue losses resulting from eliminating the grandfather clause that currently allows some State and local governments to collect taxes on Internet access. While there is some uncertainty about the number of jurisdictions currently collecting such taxes—and the precise amount of those collections—CBO believes that about 10 States (Hawaii, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, Washington, Wisconsin) and several local jurisdictions in Colorado, Ohio, South Dakota, Texas, Washington, and Wisconsin are currently collecting such taxes and that these taxes total between $80 million and $120 million annually. This estimate is based on information from the States involved, from industry contacts, and on data from the Department of Commerce. In arriving at this estimate, CBO took into account the fact that some companies are challenging the applicability of the tax to the service they provide and thus may not be collecting or remitting the taxes even though the States feel they are obligated to do so. Such potential liabilities are not included in the estimate.

It is possible that if the moratorium were allowed to expire as scheduled under current law, some State and local governments would enact new taxes or decide to apply existing taxes on Internet access during the next 5 years. It is also possible that some governments would repeal existing taxes or preclude their application to these services. Because such changes are difficult to predict, for the purposes of estimating the direct costs of the mandate, CBO consid-

ered only the revenues from taxes that are currently in place and actually being collected.

Definition of Internet Access

Depending on how the language altering the definition of what telecommunications services are taxable is interpreted, that language also could result in substantial revenue losses for States. It is possible that States could lose revenue if taxes that they are levying on services that are not defined as "access" would be considered access under this bill. Revenues could also be lost if Internet access providers choose to bundle products and call the product Internet access. Such changes would reduce State and local revenues from telecommunications taxes and possibly revenues from content currently subject to sales and use taxes. However, CBO cannot estimate the magnitude of these losses.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill would impose no new private-sector mandates as defined in UMRA.

ESTIMATE PREPARED BY:

Impact on State, Local, and Tribal Governments: Sarah Puro (225–3220)
Federal Costs: Melissa Zimmerman and Jenny Lin (226–2860)
Impact on the Private Sector: Paige Piper/Bach (226–2960)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

FEDERAL MANDATE STATEMENT

In compliance with 2 U.S.C. § 658b, the Committee notes that the information required by the applicable parts of such section is found in the letter from the Congressional Budget Office and the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 49 does not authorize funding. Therefore, clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. Section 1 provides that this Act may be cited as the "Internet Tax Nondiscrimination Act."

Section 2. Permanent Extension of the Moratorium.

(a) Moratorium.—Section 1101(a) of the Act is amended to read: "(a) Moratorium.—No State or political subdivision thereof may impose any of the following taxes: (1) Taxes on Internet access. (2)

Multiple and discriminatory taxes on electronic commerce." This section creates a permanent ban on taxes on Internet access and on Internet-specific taxes. This section also abolishes the grandfather clause of the ITFA, discussed in section (b), infra.

(b) Conforming Amendments.—

(1) Section 1101(d), "Definition of generally imposed and actually enforced," is deleted.

(2) The definition of "Tax on Internet access" in section 1104(10) is amended by striking "unless such tax was generally imposed and actually enforced prior to October 1, 1998."

(3) The definition of "Discriminatory tax" in section 1104(2)(B)(i) is amended by striking "except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998."

Section 1101(a) of the ITFA contains a "grandfather" provision allowing certain States to impose taxes on Internet access. Specifically, States that had taxes on Internet access that were "generally imposed and actually enforced prior to October 1, 1998" are currently permitted to continue to do so.

In order to ensure that the benefits of the moratorium are applied equally to every State, H.R. 49 deletes the grandfather provision. Therefore, the grandfather provision contained in section 1101(a), the definition of "generally imposed and actually enforced prior to October 1, 1998" contained in section 1104(d), and references to the definition contained in sections 1104(1) and 1104(2)(B)(i) were deleted.

Furthermore, since 1998, there has been uncertainty whether some States had legitimately invoked the right to tax under the grandfather clause. In particular, at least one ISP has asserted that some States claiming authority under the grandfather clause have interpreted erroneously certain of their pre-tax laws to allow for the imposition of Internet access taxes. Such uncertainty, coupled with the goal that Internet access remain untaxed for every citizen, bolsters the conclusion that the grandfather clause should be deleted.

At full Committee markup of H.R. 49 on July 16, 2003, two amendments were offered by Representative Sheila Jackson Lee to preserve or, in the alternative, phase out, the grandfather clause. These amendments were defeated by voice vote.

(c) Clarification.—As discussed *supra*, this language added by the amendment by Mr. Watt and Mr. Cannon clarifies that access to the Internet is not subject to State and local taxation regardless of the technology used to provide that access.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNET TAX FREEDOM ACT

* * * * * * *

SEC. 1101. MORATORIUM.

[(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending on November 1, 2003—

[(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and

[(2) multiple or discriminatory taxes on electronic commerce.]

(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes:

(1) Taxes on Internet access.

(2) Multiple or discriminatory taxes on electronic commerce.

* * * * * * *

[(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

[(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

[(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.]

(e) EXCEPTION TO MORATORIUM.—

(1) * * *

* * * * * * *

(3) DEFINITIONS.—In this subsection:

(A) * * *

* * * * * * *

(D) INTERNET ACCESS SERVICE.—The term "Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services*, except to the extent such services are used to provide Internet access*.

* * * * * * *

SEC. 1104. DEFINITIONS.

For the purposes of this title:

(1) * * *

(2) DISCRIMINATORY TAX.—The term "discriminatory tax" means—

(A) * * *

(B) any tax imposed by a State or political subdivision thereof, if—

(i) [except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,] the sole ability to access a site on a remote seller's out-of-State computer server

is considered a factor in determining a remote seller's tax collection obligation; or

* * * * * * *

(5) INTERNET ACCESS.—The term "Internet access" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services*, except to the extent such services are used to provide Internet access*.

* * * * * * *

(10) TAX ON INTERNET ACCESS.—The term "tax on Internet access" means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services **[**unless such tax was generally imposed and actually enforced prior to October 1, 1998**]**.

* * * * * * *

AGENCY VIEWS

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

MAY 14 2003

The Honorable F. James Sensenbrenner
Chairman, Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Sensenbrenner:

We are writing to urge you to swiftly schedule Judiciary Committee consideration of legislation to extend the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce. Quick consideration by the Committee and the full House will allow Congress time to pass, and the President to sign, legislation before the current moratorium expires on November 1 of this year.

The Internet is an innovative force that opens vast potential economic and social benefits of e-commerce and enables such applications as distance learning, telemedicine, e-business, e-government and precision farming. The next-generation, broadband Internet offers even greater impact, and this Administration strongly supports the deployment of broadband services. In this regard, government must not slow the roll-out or usage of Internet services by establishing administrative barriers or imposing new access taxes. As the President stated at the Waco Economic Forum in 2002, "If you want something to be used more, you don't tax it."

Your efforts, Mr. Chairman, were critical in passing the last extension in 2001. We look forward to working with you again on this important issue. If you should have any further questions or concerns, please feel free to contact us or Brenda Becker, Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, at (202) 482-3663, or Pam Olson, Assistant Secretary for Tax Policy, Department of the Treasury, at (202) 622-0050.

Sincerely,

Donald L. Evans

John W. Snow

cc: Rep. John Conyers, Jr.
Rep. Christopher Cox

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 16, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is H.R. 49, the "Internet Tax Nondiscrimination Act."

The chair recognizes the gentleman from Utah, Mr. Cannon, Chairman of the Subcommittee on Commercial and Administrative Law.

Mr. CANNON. Mr. Chairman, the Subcommittee on Commercial and Administrative Law reports favorably the bill H.R. 49, with a single amendment in the nature of a substitute, and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 49, follows:]

I

108TH CONGRESS
1ST SESSION

H. R. 49

To permanently extend the moratorium enacted by the Internet Tax Freedom Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2003

Mr. COX (for himself, Mr. CALVERT, Mr. CANNON, Mr. CHABOT, Mr. CUNNINGHAM, Mr. TOM DAVIS of Virginia, Mr. DREIER, Mr. FLAKE, Mr. GOODLATTE, Mr. HERGER, Mr. HYDE, Mr. ISSA, Mr. MCKEON, Mr. GARY G. MILLER of California, Mr. OSE, Mr. PENCE, Mr. PLATTS, Mr. POMBO, Mr. ROHRABACHER, Mr. WELDON of Florida, Mr. DOOLITTLE, Mrs. MUSGRAVE, Ms. GINNY BROWN-WAITE of Florida, Mr. SWEENEY, Mr. FRANKS of Arizona, Mr. KING of Iowa, Mr. MCCOTTER, Mr. BLUMENAUER, Mr. ROYCE, Mr. TANCREDO, Mr. BLUNT, Mr. DICKS, Mr. LEWIS of California, and Mr. BEAUPREZ) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To permanently extend the moratorium enacted by the Internet Tax Freedom Act, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREEDOM ACT MORATORIUM.

(a) PERMANENT EXTENSION; INTERNET ACCESS TAXES.—Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking ''taxes during the period beginning on October 1, 1998, and ending on November 1, 2003—'' and inserting ''taxes after September 30, 1998:'';

(2) by striking paragraph (1) of subsection (a) and inserting the following:

''(1) Taxes on Internet access.'',

(3) by striking ''multiple'' in paragraph (2) of subsection (a) and inserting ''Multiple'';

(4) by striking subsection (d); and

(5) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(b) CONFORMING AMENDMENT.—Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''unless'' and all that follows through ''1998''.

○

Chairman SENSENBRENNER. And the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment and open for amendment at any point.

[The Subcommittee amendment follows:]

SUBCOMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 49 (AS ORDERED REPORTED BY THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW ON MAY 22, 2003)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREEDOM ACT MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d).

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''unless'' and all that follows through ''1998''.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

Chairman SENSENBRENNER. The chair recognizes the gentleman from Utah, Mr. Cannon, to strike the last word.

Mr. CANNON. Thank you, Mr. Chairman.

The Subcommittee on Commercial and Administrative Law reports favorably on H.R. 49, the "Internet Tax Nondiscrimination Act."

Consideration of this bill is important because the current moratorium on Internet tax expires on November 1st of this year.

H.R. 49 also presents the Committee with the opportunity to report to the full House a bill that will assist our economy at a time when our Nation can ill afford additional taxation on vital business and communications mediums, and it gives clarity and the ability to plan for those who are going to invest in this vital area of our economy.

In 1998, Congress passed the Internet Tax Freedom Act. This limits State authority to impose new taxes on Internet access, and it protects Internet commerce from multiple and discriminatory taxes.

On April 1st of this year, my Subcommittee conducted a hearing on H.R. 49, and on May 22nd, the Subcommittee reported H.R. 49 favorably by voice vote with one amendment, which I offered, making technical and conforming changes to the bill.

Failure to report H.R. 49 favorably would give States and localities free rein to impose crippling and potentially fatal taxes on Internet commerce. The costly burdens associated with the administration of overlapping and disparate taxes in thousands of localities, threaten the viability of some independent service providers and will limit consumer choice.

Taxes on Internet access would result in tax increases for consumers and will widen the digital divide in this Nation among those with access to the services and information offered on the Internet and those without access.

The bill we consider today extends permanently the moratorium on Internet tax or access taxes and multiple and discriminatory taxes. This sound policy reflects our insights gained since 1998, as well as the position of the 125 co-sponsors of this bill, of which I am one. I am encouraged by the fact that 20 Members of this Committee are also co-sponsors.

I want to stress that this bill does not touch the issue of the collection of sales taxes by remote vendors, a completely separate matter. As I expressed in the past, the Committee will consider the States' efforts to streamline sales taxes in a hearing shortly.

Today, my distinguished, the Ranking Member of my Subcommittee, Mr. Watt, will offer one amendment, which ensures that all technologies used to provide Internet access receive equal protection under the ITFA. I commend Mr. Watt for his time working on this vital issue, and his dedication to what is an issue of fundamental fairness. I intend to support his neutrality amendment and urge my colleagues to do the same.

I, therefore, encourage the Committee to fully support H.R. 49.

Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt?

Mr. WATT. Thank you, Mr. Chairman.

I concur and move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I concur in the statement of Mr. Cannon. There are a number of us who have been working to try to resolve this issue, which would free the Internet from any kind of—Internet access—from any kind of taxation, yet, at the same time, deal with the issue of taxation of sales at remote sites. And the failure to deal with the latter issue obviously imposes a substantial burden on States and local Governments because that's where a lot of them would get substantial parts of their revenues.

These two issues have been tied together for the last several years to try to give States and local Governments the opportunity to work out some uniform method of treating taxation of remote sales over the Internet, and that process is still going on. I think those of us who have been trying to tie these two things together have understood all along that they are really two separate issues. And while we had hoped that both issues would be resolved at the same time or in the same time frame, it doesn't appear that that's going to be the case.

So there certainly never has been a problem on our side of the aisle or in general about this part of the bill. The problem has always been how can we incentivize States to go ahead and come up with a uniform regime to deal with remote sales, and that work is still ongoing, and Mr. Cannon and the Subcommittee will continue to work on that, despite the passage of this bill.

So I plan to offer one amendment, which I will do at the appropriate time and hope that my colleagues will support the amendment and the underlying bill, and I yield back the balance of my time.

Chairman SENSENBRENNER. Without objection, opening statements will be placed in the record at this point.

[The prepared statement of Mr. Coble follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

I am a recent cosponsor of the bill before us, H.R. 49, the Internet Tax Nondiscrimination Act. Recent—not because I did not previously support a permanent ban on excessive and discriminatory taxes on the Internet, but instead because I was concerned that the states' sales tax issue would be forgotten without continuing debate on Internet taxation.

I have been assured by the Chairman of the Subcommittee on Commercial and Administrative Law, Mr. Cannon, that the subcommittee will hold a hearing on the Sales Tax Simplification Plan this September. I appreciate Chairman Cannon's willingness to conduct a hearing on this issue, and look forward to the opportunity to discuss the merits of this plan along with possible room for improvement. Among others, the small mom and pop shops in my district have explained to me that this is an issue that should be address by Congress sooner than later.

Again, I support a permanent ban on access, multiple, and discriminatory taxes on the Internet and encourage my colleagues to support of H.R. 49.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, I support this amendment because it will clarify the underlying bill and will ensure that the Internet tax moratorium is applied consistently.

The underlying bill makes the current moratorium on Internet taxes permanent. This amendment simply clarifies the bill to exclude telecommunications services from the definition of Internet access as long as they are not used to provide Internet access.

Doing this is important for several reasons. First, telecommunications services are already subject to a large amount of federal, state and local taxes. If states were allowed to tax Internet access services, these taxes would be an even larger burden, not to mention an enormous competitive disadvantage.

Second, this amendment ensures that the Internet Tax Freedom Act is technology neutral. Internet access should be tax-free. Americans should be able to access the Internet without being subject to state and local taxes, whether these taxes are imposed directly or through their Internet service provider.

This amendment ensures healthy competition among all providers of Internet access regardless of speed, technology, or provider. All Internet access services should be able to compete fairly and their taxation should not be based on the type or speed of service, the type of provider, or how the service is billed.

This amendment has received widespread support from industry members such as SBC, AT&T, and Verizon, just to name a few.

I urge my colleagues to support this amendment.

[The prepared statement of Mr. Goodlatte follows:]

PREPARED STATEMENT OF THE HONORABLE BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, thank you for holding this markup of this important legislation.

As co-chairman of the Congressional Internet Caucus and chairman of the House Republican High Technology Working Group, I have long been a champion of efforts to eliminate Internet access taxes and other discriminatory taxes on electronic commerce. During the 107th Congress, I introduced the Internet Tax Fairness Act, legislation that, in part, sought to permanently ban Internet access taxes and discriminatory taxes on electronic commerce. Although the prohibition on these taxes was extended temporarily until November of 2003, the time is now for Congress to act to permanently extend this prohibition.

Excessive regulations will hamper the Internet's tremendous growth and stifle investment in small businesses that utilize this tremendous medium. In addition, taxing Internet access will increase the costs of households going on-line and result in a greater disparity between those households that can afford to go on-line and those that cannot. The last thing that consumers need is for the puzzling array of taxes on their phone bills to be repeated on their Internet service bills.

H.R. 49, the Internet Tax Nondiscrimination Act, will encourage continued investment in and utilization of the Internet by permanently banning all Internet access taxes and by eliminating the "grandfather" clause in the current law that allows certain states to continue imposing these crippling taxes on the Internet. This bill is forward-looking and will provide the certainty that businesses need to make calculated decisions regarding the ways in which they will utilize and invest in Internet technologies.

Mr. Chairman, thank you again for holding this important markup. I sincerely hope that the 108th congress acts to permanently ban all Internet access taxes and discriminatory taxes on electronic commerce.

[The prepared statement of Mr. Delahunt follows:]

PREPARED STATEMENT OF THE HONORABLE WILLIAM D. DELAHUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, I move to strike the last word.

The states are confronting their worst budget crisis since the Great Depression. A declining economy, spiraling Medicaid costs, and the erosion of their tax base have left them with a collective deficit of some $100 billion. And governors of both political parties face a stark choice between unpopular tax increases and drastic cuts in Medicaid, education, public safety and other essential services. Or both.

I appreciate the concern of the sponsors of the bill that without a continuation of the moratorium on Internet access taxes, some states might be tempted to help make up their shortfalls by enacting such taxes.

On the other hand, I wish the proponents of the moratorium were as concerned about the fact that states are losing tens of billions of dollars each year because the taxable transactions on which they rely for half their revenues are increasingly taking place over the Internet.

Some are clearly not concerned. Grover Norquist, who testified at our hearing in support of this bill, said that he wants to shrink government until "we can drown it in the bathtub." "I hope a state goes bankrupt," he said.

Unless you agree with him, the money has got to come from somewhere. Uncollected sales taxes on Internet purchases cost the states more than $16 billion in

2001. Unless there is a system in place that enables state and local governments to collect these taxes, their annual losses from on-line sales will grow to $45 billion by 2006, and $66 billion by 2011—with total losses coming to nearly half a trillion dollars by that date.

What does this mean for individual states? To take just a few examples: My home state of Massachusetts lost $256 million in 2001, and its losses will climb to over a billion dollars in 2011. Tennessee lost $450 million in 2001, and by 2011 its annual losses will grow to $1.8 billion. Florida—which relies on the sales tax for more than half of its annual revenues—lost $1.2 billion in 2001, with its losses estimated to quadruple to nearly $5 billion just ten years from now. And Texas lost $1.4 billion in 2001 and stands to lose $5.6 billion in 2011.

These losses are magnifying the fiscal problems that the states were already experiencing because of increased costs and shrinking revenues. With no relief in sight, nearly every state is curtailing health care for the poor and mentally ill. Laying off teachers. Dismissing state troopers. Closing parks and libraries. Shortening the school year. Eliminating college programs. And slashing other services that have long been taken for granted.

And of course by failing to ensure sales tax parity between remote sellers and main street merchants, we are putting at risk the thousands of small businesses that sustain our economy and contribute so much to our neighborhoods and communities. As former Governor Engler of Michigan said the last time we considered this issue, "It's time to close ranks, come together, and stand up for Main Street America. Fairness requires that remote sellers collect and pay the same taxes that our friends and neighbors on Main Street have to collect and pay."

And so, Mr. Chairman, while I support the moratorium on Internet access taxes, I think it is important that we get our priorities right. At subcommittee I offered an amendment expressing the Sense of Congress that once we have told the states what they may not do to make up their lost revenues we have an obligation to tell them what they may do.

The Quill decision prohibited a state from collecting sales taxes from out-of-state businesses that do not have a physical presence in that state. But the Court said that Congress could authorize the states to collect those taxes once they have modified their taxing systems to alleviate the burdens placed on interstate commerce by multiple taxing jurisdictions.

The states have made substantial progress over the past year in developing a simplified, efficient and "technology-neutral" system for the taxation of goods and services that can meet that test. Once a sufficient number of states have implemented the Streamlined Sales and Use Tax Agreement, Congress should move expeditiously to consider legislation authorizing them to require remote sellers to collect and remit sales and use taxes on in-state sales.

I will shortly introduce such legislation, together with the gentleman from Oklahoma (Mr. Istook) and the gentleman from Alabama (Mr. Bachus). And I hope that the committee will give it the most serious consideration.

I have refrained from offering my amendment today because our subcommittee chairman, the gentleman from Utah (Mr. Cannon), has given his commitment that the subcommittee will take up the sales tax issue in the near future. I appreciate his responsiveness and I know he is a man of his word.

The states are meeting their responsibilities. It's time for us to meet ours.

Chairman SENSENBRENNER. Are there amendments?

Ms. LOFGREN. Mr. Chairman?

The gentleman from North Carolina, Mr. Watt?

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. Mr. Watt has an amendment.

Mr. WATT. Yes, Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 49 offered by Mr. Watt and Mr. Cannon. At the end of Section 2, page 2——

Mr. WATT. I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection.

[The amendment of Mr. Watt and Mr. Cannon follows:]

AMENDMENT TO H.R. 49

OFFERED BY MR. WATT

AND MR. CANNON

(Page and line nos. refer to Subcommittee Amendment in the Nature of a Substitute)

At the end of section 2 (page 2, after line 8), add the following new subsection:

(c) CLARIFICATION.—The second sentence of section 1104(5), and the second sentence of section 1101(e)(3)D), of the Internet Tax Freedom Act (47 U.S.C. 151 note) are each amended by inserting ", except to the extent such services are used to provide Internet access" before the period.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes to explain his amendment.

Mr. WATT. Thank you, Mr. Chairman.

I offer this amendment with the Chairman of the Subcommittee, Mr. Cannon. The amendment relates to an issue that we tried to deal with at the Subcommittee and had some preliminary discussions about. I introduced then a proposed amendment and withdrew it at the Subcommittee level, and Mr. Cannon and I agreed to work together to help clarify the meaning of Internet access to put an end to the current confusion that has led to discriminatory and inconsistent State taxation of some access to the Internet.

This amendment is the product of numerous discussions since the Subcommittee markup, and I commend Mr. Cannon and others who have been involved for their commitment to reach this consensus.

I raise this issue at the Subcommittee because I believe that if we are going to exempt Internet access from taxation that we must do so in a manner that applies to all methods of providing that access on an equal basis; in other words, the tax prohibition must be technologically neutral. Since the enactment of the Internet Tax Freedom Act in 1998, the Internet and Internet access have changed dramatically. DSL and wireless Internet access are just two examples of those changes.

Although we still have a digital divide, new technologies are bringing higher speeds of access to more people. It is certainly my hope that the Internet Tax Freedom Act and this amendment will continue to contribute to the growth of the Internet and to facilitate the narrowing of the digital divide in disadvantaged communities.

This amendment is intended to address certain ambiguities that have surfaced concerning the proper interpretation of the Internet Tax Freedom Act. The exclusion of "telecommunications service" from the current definition of Internet access was intended to ensure that traditional telecommunications services were not covered by the moratorium. But some States have interpreted this exclusion to permit taxation in ways that we believe are inconsistent with the Internet Tax Freedom Act.

For example, some State rulings have held that DSL Internet access, when sold to a consumer as part of a larger telecommunications package, is taxable as telecommunications service, while fully exempting some similar competing services offered by others when they are not part of a package.

Other States have, more in keeping with the goals of the Internet Tax Freedom Act, interpreted the moratorium to fully exempt the sale of DSL Internet access to consumers, regardless of how it is provided or packaged to the consumer.

Further, adding to the confusion are interpretations by some States that would tax the underlying telecommunications used by Internet service providers to provide access to the Internet.

The amendment I am offering would clarify that the exclusion of telecommunications services from the moratorium does not apply to telecommunications used to provide Internet access. Internet access offered by DSL, wireless, satellite or cable technologies would all be free from State or local taxes when purchased by consumers.

In addition, the telecommunications used by the Internet access provider would also be free from taxation. This would ensure that the consumers are not paying the heavy burden of these taxes by increasing the cost of Internet access. As we make the Internet Tax Freedom Act permanent, we must ensure that it is neutral as to technology, neutral regardless of speed, and neutral regardless of provider.

While we are fully supportive of facilitating broader access to the Internet, we remain fully committed to promoting responsible legislative solutions to the State sales tax simplification effort and appreciate Chairman Cannon's ongoing commitment to conduct hearings on this matter.

Mr. Chairman, this amendment has gained the wide support of wire, line and wireless providers, long distance companies, and local exchange carriers and others. Without objection, I would like to include in the record a letter of endorsement submitted on behalf of hundreds of telecommunication companies and Internet providers. I urge my colleagues to support the amendment and yield back.

Chairman SENSENBRENNER. Without objection, the letter will be included in the record.

[The endorsement letter follows:]

July 15, 2003

The Honorable F. James Sensenbrenner, Jr., Chairman
The Honorable John Conyers, Jr., Ranking Member
Committee on the Judiciary
2138 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515
By Electronic Means

Dear Chairman Sensenbrenner and Ranking Member Conyers:

We, the undersigned organizations, write to offer our unqualified support for the amendment to be offered by Commercial Law Subcommittee Ranking Member Melvin Watt and Subcommittee Chairman Chris Cannon that would clarify the definition of Internet access in the Internet Tax Non-discrimination Act (H.R. 49). We salute the Committee's hard work on H.R. 49. We strongly support the goals of this legislation and urge its swift passage after these important changes are adopted.

The Committee is considering a permanent extension of the moratorium on taxation on Internet access. We believe that the moratorium should not be made permanent absent the clarification of the Internet access definition called for by Congressmen Watt and Cannon. Current law does not accommodate the technological changes that have occurred since the Internet Tax Freedom Act was enacted in 1998. Internet access has changed significantly in the past five years, and the Act must reflect that reality.

The Watt-Cannon amendment would confirm the technological neutrality of the Act. The goal of the amendment is to provide that all Internet access providers are treated the same. The amendment does not affect cable modem, direct satellite or other technologies that are currently exempt. The public is best served when all Internet access providers enjoy the same treatment.

We commend the Judiciary Committee's leadership in creating and maintaining the national policy goal of encouraging businesses and individuals to connect to the Internet by pre-empting state and local taxation of Internet access.

Sincerely,

AT&T AT&T Wireless Cingular Wireless
Level 3 Communications SBC Sprint Bell South
T-Mobile USA Verizon Verizon Wireless
Cellular Telecommunications & Internet Association (CTIA)
United States Telecom Association (USTA) Alltel
US Internet Industry Association

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?

Mr. CANNON. Thank you, Mr. Chairman.

I ask unanimous consent at this point to submit for the record some letters in support of the legislation.

Chairman SENSENBRENNER. Without objection.

[The letters of support follow:]

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

July 15, 2003

To the Members of the Judiciary Committee:

I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of every size, sector and region, to express our strong support for H.R. 49, the Internet Tax Nondiscrimination Act. The Chamber supports legislation to permanently extend the moratorium on new, multiple and discriminatory taxes on Internet transactions, and supports efforts to make the moratorium technology neutral.

The United States has the most dynamic economy in the world, thanks in large part to the growth of the Internet, which has revolutionized the manner in which we transact business. The Internet is the quintessential example of interstate commerce, as Internet sales and purchases cross national and state borders seamlessly. Therefore, this is an issue that in many ways defines the need for federal regulation.

The Internet Tax Nondiscrimination Act, and its companion legislation in the Senate, S.52, brings to light an issue that is critical to American businesses – the collection of sales taxes on Internet and remote transactions. Crafting a taxation system for Internet sales would require the untangling of a large and archaic web of rules already in place for thousands of taxing jurisdictions.

Extending the moratorium ensures that American businesses and consumers are not burdened by more complex regulations while possible tax reform is explored.

Therefore, we urge you to support H.R. 49 and the amendment to make it technology neutral, and to oppose any amendments to weaken the ban or reduce its length.

Sincerely,

R. Bruce Josten

Qwest
607 14th Street NW, Suite 950
Washington, DC 20005
Phone 202.429.3100
Facsimile 202.467.4268

Gary R. Lytle
Senior Vice President-Federal Relations

July 17, 2003

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Sensenbrenner:

On behalf of Qwest, I would like to congratulate you and Members of the Judiciary Committee on approving H.R. 49, the "Internet Tax Nondiscrimination Act" and express our support for the legislation.

The bill, as amended on July 16, 2003, would help reduce some of the confusion and inconsistency among the States in administering the original Internet Tax Freedom Act enacted in 1998. As you know, the technologies used to access the Internet have changed significantly since 1998 and your Committee properly recognizes the need to update existing law. In particular, consumers can now access the Internet through digital subscriber line, "3G" wireless, cable modem, and direct satellite services. These services either did not exist or were in their infancy when the Internet Tax Freedom Act was being debated in the 105th Congress. Federal, state, and local tax laws need to be amended to recognize these technological developments, to ensure that all service providers offering access to the Internet are treated equally, and to satisfy the original intent of Congress to keep the Internet free of taxation.

We look forward to working with you and the Ranking Member as the bill moves through the legislative process.

Sincerely,

Gary R Lytle

cc: The Honorable John Conyers, Jr., Ranking Member

AMERICANS FOR TAX REFORM

Grover G. Norquist President

July 16, 2003

The Honorable James Sensenbrenner
2449 Rayburn House Office Building
Washington D.C. 20515

Dear Chairman Sensenbrenner:

I would like to state my opposition to narrowing the definition of "Internet access" to force Internet access providers to unbundle software, services and content. Because narrowing the definition exposes millions of Internet access subscribers to new taxes on portions of their monthly subscription fees, support for this new definition represents a vote for a tax increase.

Those who argue in favor of unbundling software and content services from Internet router service are advocating for a tax increase on digital online services for Americans that use them. Because Americans for Tax Reform (ATR) strongly opposes efforts to tax the Internet, we believe that there should be no attempt to narrow Internet access definitions, which, in turn, permits states and localities to expand their tax jurisdiction to online digital services.

Taxation of digital content will significantly discourage consumers from accessing content on the Internet. As a member of the Advisory Commission on Electronic Commerce, I have witnessed first hand that the most used aspect of the Internet is the delivery of services, information, software, and other resources. Applying a myriad of state and local taxes to this transmitted data will encumber the free flow of information. Supporters of unbundling will force subscribers to fill out a tax form, provide a zip code, and pay 5 to 10 percent more for Internet service, before receiving any information.

Congress has already provided a clearly defined and constructive prohibition against taxes on Internet access. However, some pro-tax individuals and governments are advocating for Congress to narrow the definition of Internet access that will expose Internet users to new taxes on the services and content that they have been receiving tax-free. **Therefore, any attempt to narrow the current tax protection provided to American Internet users will result in new tax burdens, or tax increases, on consumers.**

Americans for Tax Reform will continue to work with members of the Senate Commerce, Science and Transportation Committee to reduce current barriers to e-commerce. I strongly encourage you to oppose any efforts to add language requiring Internet access providers to unbundle software, services and content.

Sincerely;

Grover G. Norquist

1920 L Street NW • Suite 200 • Washington DC 20036
Phone (202) 785-0266 • Fax (202) 785-0261 • www.atr.org

Mr. CANNON. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CANNON. Mr. Chairman, the amendment offered by Mr. Watt achieves technological neutrality for providers of Internet access and thereby restores the ITFA to its original intent.

Since the enactment of the ITFA in 1998, some States have termed certain Internet access technologies, in particular the transmission of components of access as telecommunications services, exempt under the act. The result has been a disparity of tax treatment among Internet access providers. The moratorium provisions have applied for some Internet access providers, but others have been excluded from an act whose protections were intended to cover all Internet access.

At Subcommittee markup of H.R. 49, Mr. Watt offered an amendment addressing the problem of disparity of tax treatment among technologies that provide Internet access. Mr. Watt withdrew his amendment, stating the need for further discussion of the issue. At that time, I committed to work with Mr. Watt on an amendment to achieve technological neutrality for consideration of the full Committee.

Mr. Watt's amendment today is the bipartisan result of that commitment. It achieves tech neutrality by adding a simple clarification to the exception for telecommunications services with the words "except to the extent such services are used to provide Internet access."

The amendment language makes clear that Internet access, regardless of the technology used, cannot be taxed under the ITFA. This distinction is also a measured one. It does not encompass all telecommunications, rather only those to the extent that they provide Internet access.

Therefore, traditional telephone services and telecommunications services that are not used to provide Internet access remain outside the moratorium. But the amendment makes clear that technologies that are used to provide Internet access, including DSL Internet services, cable modem services and similar technologies are within the ITFA moratorium. It effectuates the plain language of the ITFA, which makes no distinction among the means by which Internet access is provided in order for the tax moratorium to apply.

For these reasons, the amendment is a thoughtful and necessary clarification of the ITFA, in light of the evolving tax landscape, and I urge my colleagues to support it.

Ms. LOFGREN. Would the gentleman yield?

Mr. CANNON. Mr. Chairman, I have given my Ranking Member, Mr. Watt, some perfunctory things, but I would like to just say that when he introduced his amendment, I desperately wanted to see something like that happen, but I could not imagine how we would come up with language to do it. And it's been a very complicated issue. I'm not sure where the final language came from, but the final language is elegant, it serves with great clarity, and I think it accomplishes our objective. That would not have happened without the time, dedication and effort on this issue that Mr. Watt has brought to bear. And so I want to thank him, in a heartfelt man-

ner, for his support on this, and I urge my colleagues to support the amendment and support the final bill on passage.

Ms. LOFGREN. Would the gentleman yield?

Mr. CANNON. I would be happy to yield to the gentlelady from California.

Ms. LOFGREN. Thank you.

I just want to clarify that earlier this year I introduced H.R. 1481 that would have extended the Internet tax moratorium for 5 years, and I did that because I thought that was the maximum amount of time that was feasible politically.

However, discriminatory access taxes are not a good idea. They won't be a good idea 6 years from now, and I actually prefer the permanent moratorium. I'm a co-sponsor of the bill. I commend the gentleman and my colleague, Mr. Watt, for the amendment which I think does remove a further disparity, and I think this a great piece of legislation, and I look forward to voting for it here in Committee and again on the floor.

And I thank the gentleman for yielding.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. CANNON. I yield back the balance of my time, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Massachusetts?

Mr. DELAHUNT. Yes, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I urge support for the amendment, Mr. Chairman, and I applaud the work both of the chair of the Committee and the Ranking Member, Mr. Watt.

It is no secret that the States are confronting their worst budget crisis since the Great Depression. A combination of a declining economy and spiraling Medicaid costs and erosion of the tax base have left them with a collective "get" of some $100 billion, and governors of both political parties are facing a very stark choice between unpopular tax increases and drastic cuts in Medicaid, education, public safety and other essential services.

I appreciate the concern of the sponsors of the bill that without a continuation of the moratorium on Internet access taxes, some States could very well be tempted to help make up their shortfalls by enacting such taxes.

Yesterday, on the front page of the USA Today, there was a story regarding needy local and State Governments tacking more taxes onto travelers. In the past 2 months, at least four States have adopted substantial increases or substantial tax increases on lodging, meals, car rentals, et cetera. So there's a crisis.

On the other hand, I hope that the proponents of the moratorium will address the fact that the States are losing tens of billions of dollars each year because the taxable transactions on which they rely for half, half of their revenues, are increasingly taking place over the Internet.

Uncollected sales taxes on Internet purchases cost the States more than $16 billion in 2001. Remember, $16 billion, with a shortfall of $100 billion. I would submit that is substantial and significant. And unless there is a system in place that enables State and local Governments to collect these taxes, their annual losses from on-line sales will grow to $45 billion by 2006, $66 billion by 2011,

with total losses over that period of time in excess of a half-a-trillion dollars.

From my home State of Massachusetts, they lost $256 million in 2001. In Florida, which relies on the sales tax for more than half of their total revenue, a loss which registered $1.2 billion in 2001, with losses estimated to quadruple into $5 billion in the next 10 years. Now, these losses are obviously magnifying the fiscal problems that the States are already experiencing.

By failing to ensure sales tax parity between remote sellers and Main Street merchants, we are also putting at risk the thousands of small businesses that sustain our economy and contribute to our communities at so many different levels. As far as the former governor of Michigan, Governor Engler said the last time we considered this issue, "It's time to close ranks, come together and stand up for Main Street America." So, if we're concerned about small businesses, the issue has to be addressed of the loss of revenue.

And so, Mr. Chairman, while I support the moratorium on Internet access taxes, I think it's time that we get our priorities right. At Subcommittee, I offered an amendment expressing the sense of Congress that once we have told the States what they may not do to make up their lost revenues, we have an obligation to tell them what they may do.

The Quill decision prohibited a State from collecting sales taxes from out-of-State businesses that do not have a physical presence in that State. But the Court said in that decision that Congress could authorize the States to collect these taxes once they have modified their taxing systems to relieve the burden on interstate commerce of multiple-taxing jurisdictions.

The States have made great progress over the past year in developing a simplified, efficient and technologically neutral system for the taxation of goods and services that can meet that test. And once a sufficient number of States have implemented the so-called streamlined sales and use tax agreement, Congress should move expeditiously to consider legislation authorizing them to require remote sellers to collect and remit sales and use taxes on Internet sales.

Mr. CONYERS. Would the gentleman yield for a moment?

Mr. DELAHUNT. I yield to the gentleman. I don't think I have time left.

Mr. CONYERS. I appreciate his——

Chairman SENSENBRENNER. The gentleman's time has expired, and without objection, he will be given an additional minute.

Mr. DELAHUNT. I thank the chair.

Mr. CONYERS. Thank you, Mr. Chairman.

I appreciate his approach here, but the mere mention of the former governor of Michigan's name, who has——

Mr. DELAHUNT. Reclaiming my time—— [Laughter.]

Mr. CONYERS. Who has left the State and is on the wanted list in Michigan is not helpful to your argument.

Mr. DELAHUNT. Well, reclaiming my time.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. DELAHUNT. I yield to the gentleman.

Chairman SENSENBRENNER. There are a lot of present governors that are on the wanted list, starting with the one in California. [Laughter.]

Mr. DELAHUNT. Reclaiming my time.

Mr. SMITH. Reclaiming or recalling?

Mr. DELAHUNT. Reclaiming. [Laughter.]

Mr. DELAHUNT. Shortly, I intend to introduce such legislation, together with the gentleman from Oklahoma, Mr. Istook, and the gentleman from Alabama, Mr. Bachus. I hope that the Committee will give that legislation serious consideration. I am not going to offer the amendment today expressing a sense of Congress because I've had conversations with the chair of the Subcommittee, Mr. Cannon, and he has indicated that he will hold a hearing and have that issue, have the various perspectives on that particular issue heard.

But I really believe that the States are meeting their responsibilities, and it will shortly be time for this Committee and this Congress to meet eyes.

With that, I will yield back.

Mr. SMITH. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith?

Mr. SMITH. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman, and I'll be brief.

Mr. Chairman, I support this amendment because it will clarify the underlying bill and will ensure that the Internet tax moratorium is applied consistently. The bill itself makes the current moratorium on Internet taxes permanent. This amendment simply clarifies the bill to exclude telecommunications services from the definition of Internet access, as long as they are not used to provide Internet access.

The amendment has received widespread support from industry members such as SBC, AT&T and Verizon, just to name a few, and I urge my colleagues to support the amendment

Mr. Chairman, I will yield back the balance of my time.

Mr. KING. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King?

Mr. KING. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

First, I'd like to associate myself with the remarks of the gentleman from Massachusetts with regard to any collection of sales tax on Internet sales and the impact on Main Street businesses. I think that's an essential issue that we need the move forward and work on. And from my position as one who supports a national consumption tax, if we don't solve this problem early, we'll never be able to transfer into something that could totally renovate our economy and create a dynamic export market for us in this country. That's one piece.

But the piece that I really want to address on this issue is that situation of voiceover IP, and that emerging technology is something that could renovate our voice long distance services and something for a long time I've viewed it as an opportunity to provide for essentially I won't say free long distances services, but cou-

pled into everybody's monthly bill would be a minimal amount that would cover all long distance charges if the voiceover IP, Internet Protocol, can be developed, and it's on the way to that development today. We're on the cusp of having that blossom out across our country and our economy.

And if we prohibit the taxation of voiceover IP, then that sets the land line traditional long distance services at a disadvantage to voiceover IP. So I support the bill. I support the policy, but I just would like to point out to the Committee that there will be a day, if voiceover IP is developed the way it's anticipated, that we'll have to take this issue back up again, and that would conclude my remarks.

I yield back the balance——

Mr. CANNON. Would the gentleman yield?

Mr. KING. I would yield.

Mr. CANNON. Thank you.

I appreciate the gentleman's approach to this. The fact is technology is evolving. This language I think does a pretty good for where we are today, and clearly this will be an issue that we may have to deal with in the future. And so, to the degree that becomes an issue, we happily look forward to dealing with it.

If I might, also, if the gentleman would continue to yield, I just wanted to respond to the gentleman from Massachusetts. He's been very gracious in this process. I appreciate the discussion. We have a hearing agreed to probably for some time in September. It's subject—on the SSTP—it's subject only to getting dates for the witnesses that we're working on together, and this is an issue that we do intend to pursue. It's a major issue now with about 25 percent of Americans living in States where the legislatures have moved the program, and so we do intend, on the Subcommittee, to visit this issue at the earliest possible moment and hopefully get that on a track where we can resolve that as well.

I thank you and yield back.

Mr. KING. I thank the gentleman from Utah for his remarks, and I will say supporting my opinion that one day we will have to revisit this, and sooner better than later, should the technology develop sooner better than later, for all of us.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble?

Mr. COBLE. I thank the Chairman. I, too, will be brief, Mr. Chairman.

I am a recent co-sponsor of the bill—recent not because I did not previously support a permanent ban on excessive and discriminatory taxes on the Internet, but rather because I was concerned that the State sales tax issue might be cast aside without continuing debate on the Internet taxation.

I also speak in favor of Mr. Watt's amendment. As has been mentioned, the distinguished gentleman from Utah has assured us that he will conduct a hearing I believe in September on the sales tax simplification plan, and I appreciate his willingness to do that.

I think we need to discuss the merits of this plan, along with possible room for improvement. Mr. Chairman, among others, the small "mom and pop" operations in my district, and perhaps in the districts of my colleagues, have explained to me that this is an

issue that should be addressed by the Congress sooner, rather than later.

Again, I support the permanent ban on access, multiple and discriminatory taxes on the Internet and encourage my colleagues to support the Watt amendment and the bill H.R. 49, and I yield back the balance of my time.

Mr. WATT. Would the gentleman yield?

Mr. COBLE. Well, I yielded back, but I will yield, if I can just reclaim my time.

Mr. WATT. I wanted to associate myself with your remarks, and Mr. Delahunt's remarks, and the gentleman from Iowa's remarks.

The other issue is extremely important, and I hope nobody takes this permanent moratorium as an indication that we think the other issue is any less important, and I'm sure Mr. Cannon feels that way. So we'll keep pushing on it.

Mr. COBLE. Reclaim and yield back.

Ms. JACKSON LEE. Mr. Chairman?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

I could not possibly let this opportunity, this all too rare opportunity to express agreement with Mr. Coble go unutilized.

I also, in the past, have opposed a permanent extension of this moratorium because I feel strongly that we have to act so that States can, in fact, collect their use taxes for sales over the Internet, both so as not to discriminate against "brick and mortar" businesses and so as not to destroy the revenue bases of the States, and I still feel that way, but I think, at this point, it makes sense to decouple the two issues.

I also support the Watt amendment and express agreement with the views voiced by the distinguished gentleman from Massachusetts and by the distinguished gentleman from the Carolinas.

I yield back.

Ms. JACKSON LEE. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman.

First, I have an opening statement I would ask be made a part of the record.

Second, I would like to commend the gentleman from Utah for bringing this legislation forward. I, as you know, have been a strong supporter of this for a number of years, working with Congressman Cox on this legislation, which the House has passed to extend this moratorium. I am pleased that he has been able to take it a step further now to make it permanent, and I also support this amendment offered by himself and the gentleman from North Carolina to make it clear that Internet access is Internet access, and it shouldn't be confused with previously existing and allowed telecommunications taxes.

I would also like to thank the gentleman from Massachusetts for attempting to move separately the issue of changing the nexus

rules. I think they are two separate issues, and we work better together if we focus on them differently. And I agree with him that the States have made some significant progress in terms of making it simpler to collect these taxes on the Internet, but I want to point out a couple of things.

First of all, this is not a new problem, it's not new to the Internet, and the overwhelming majority of the lost State sales taxes, if you identify it as such, that the gentleman cited are not from Internet sales. They are from long, longstanding catalogue sales and other sales by telephone and other means.

The Internet is still a fraction of the direct sales that take place in the country that would otherwise be subject to a sales tax.

Secondly, I think the States still have a considerable way to go in simplifying this process so that small businesses or really any business, but I'm most concerned about small businesses, doing business on the Internet are not extraordinarily burdened by having to collect, and remit, and keep track of taxes for a multitude of different jurisdictions.

And while I would like to work with the gentleman, and I commend the gentleman from Utah for offering to hold a hearing, I do not believe we should rush into this because many of our constituents who have grown used to not paying sales taxes on these transactions involving out-of-State entities are going to view this, rightly or wrongly, are going to view this as a tax increase when they suddenly start purchasing the same thing they——

Chairman SENSENBRENNER. Will the yield?

Mr. GOODLATTE. Yes, I would be happy to.

Chairman SENSENBRENNER. I'd like to associate myself with the gentleman's remarks in this area. And I would point out that every State that has a sales tax also has a use tax which is supposed to be declared and paid by residents of the State who bring taxable items in from out of State. And this is a question of the States collecting their own use taxes.

I know that on the Wisconsin State Income Tax form there is a specific line where the taxpayer is supposed to declare the use tax that he owes for items that were purchased out of State and brought into Wisconsin. And I don't think the other States are much different than that.

The fact that States are not enforcing their use tax law and not collecting the use tax that their residents are due and owing I think is more a problem that has to be resolved at the State level and in enforcing their own State tax collection law, rather than being dealt with up here.

I thank the gentleman for yielding.

Mr. GOODLATTE. I thank the gentleman for his very welcome additional comments on this subject, and the last thing I want to point out is that this is not a problem that this Congress ever created. We have never passed a law prohibiting the States from collecting these sales taxes. This is something that the U.S. Supreme Court has determined, based upon our Constitution, and based upon the lack of the power of one State to compel somebody in another State to collect these sales taxes for them, it verges on taxation without representation or at least the collection of taxation and having to comply with another State's regulatory burden without that.

It could be accomplished through a uniform State law, and I think the Congress should look very carefully before we venture into this area, and I would urge my colleagues to support this legislation which will help to promote commerce, promote the Internet, and I would yield back the balance of my time.

Mr. DELAHUNT. Would the gentleman yield for just a moment?

Mr. GOODLATTE. I would be happy to yield.

Mr. DELAHUNT. I thank the gentleman. I thank him for his words and observations.

I would just simply point out that, and the chair is correct, clearly, in terms of the law it's there, but the reality——

Chairman SENSENBRENNER. The gentleman's time has expired, and without objection, he will be granted an additional minute.

Mr. DELAHUNT. The reality is, is that the Supreme Court in Quill recognized that the enforcement of the collection of the use taxes simply is beyond the capacity of the States, given the reality that I'm sure, whether it be Wisconsin or Massachusetts or Virginia, people simply will not, either intentionally, because they do not understand the concept of a use tax, be willing to pay that tax.

Now, I'm sure during the course of the hearing, and over time, as this legislation is filed, we'll have a good and healthy debate, but I really think that we have to understand what the reality is. And the reality is, if the States do not, if we do not assist them in terms of this particular issue, they will just simply find other means of meeting their budgetary requirements.

Mr. GOODLATTE. Reclaiming my time. I appreciate the gentleman's comments. I would just caution Members of the Committee not to rush into this because there are many complexities, and we do not want to have a negative economic impact, nor do I want to see us get the blame for effectively, from the standpoint of consumers, being viewed as having been the ones responsible for increasing their taxes.

I yield back.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Ms. JACKSON LEE. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The question is on——

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. I'd like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. If I could yield for a moment to Mr. Watt, to try and understand what his amendment is doing.

Mr. WATT. Well, the amendment is intended to make the underlying bill technologically neutral. Right now there's a provision in the Telecommunications Tax Freedom law that says that communications services are exempt from the moratorium, and some States have taken that language to mean that if a telephone company provides, as part of a package of telephone service and DSL service——

Ms. JACKSON LEE. So you put them all——

Mr. WATT.—they put them together, and they tax them.

Ms. JACKSON LEE. So you just equalize it.

Mr. WATT. So we're equalizing them. Wireless DSL is being taxes in some States. So we're just making, all the amendment does is make it——

Ms. JACKSON LEE. Nontaxable.

Mr. WATT.—make it impossible to apply taxes to any kind of access, I mean, any kind of informational access, not voice access.

Ms. JACKSON LEE. I thank the gentleman very much. Reclaiming my time.

Let me, first of all, say that I've listened to the debate, and I appreciate Mr. Watt carefully crafting an amendment to equalize the burden, if you will, or when I say equalize the burden or equalize the burden on States that previously have had the right to make their own determination.

This is all about jobs, and it's about revenue, and it's about revenue in a time that is a very difficult time with respect to State budgets. And I believe that the fact that we have an amendment before us that is equalizing the burden on these States that now are not grandfathered in is unfortunate. It reminds me of the two initiatives that we've already passed dealing with the Chile Free Trade Agreement and the U.S.-Singapore Free Trade Agreement, which has no basis to suggest that they create jobs.

And I think that we're working negatively against States such as New Mexico, North Dakota, Ohio, and South Dakota, and Tennessee and Texas, with respect to this overall legislation, that removes the grandfather provision that these States have depended upon.

It's interesting to note that this first bill was introduced in 1998. It looks as if we could have worked with the States to be able to develop a process in which those who desire to tax, which is their privilege and right to do so, could have done so without the intrusion of Federal law, which is likewise what I contribute to the initiatives that we've just passed, 2788 and 2739, the two trade bills which also I think provide an intrusion on processes that should not have had an intrusion on.

I specifically note that the USTR has been very nonresponsive on the issues of legislating immigration issues on these trade bills. They haven't responded to the fact that jobs in America will be decreased, and I'm very glad that the Senate is concerned about losing jobs, as I am, when they say that the provisions allowing the entry of temporary workers are too broad and far-reaching, and the USTR has negotiated a whole new immigration package, and they had no authority to do so.

So here we have another legislative initiative that I'm concerned about intrudes upon the rights of States that already had existing laws on taxation, and now this legislation removes the provision that protects them to allow them to do so.

I have no quarrel with Mr. Watts' amendment. I have a quarrel with the elimination of the grandfathered taxes, and I will say this, as I look forward to offering amendments, that this biases retailers who have individuals paying taxes. So now we have business done on the Internet, and the access tax is considered too burdensome when we know that the reaping of the benefits by utilizing the Internet is very, very great.

So I don't know why the grandfather clause had to be eliminated from this legislation and what excuse and reason we gave to do so.

And I would just offer that thought to my colleagues as it relates to I think a discriminatory effect against States who had these laws in place.

And I yield back.

Chairman SENSENBRENNER. The question is on the Watt amendment.

Mr. SCHIFF. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I move to strike the last word, and I'll be very brief.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. I wanted to speak on behalf of the amendment offered by Mr. Watt and Mr. Cannon that would ensure parity of tax treatment among various technologies through which Internet access can be provided. There can be a legitimate debate about what form of Internet services ought to be the subject of taxation, what form should not be subject to taxation, but there is little argument in favor of discriminating between various technologies and various providers.

To the degree that we can ensure parity, whether you access the Internet through DSL technology or cable modem or through cellular technology, it is I think very much an imperative that we have equality of treatment so that we can have vigorous competition among the providers and not use the tax code to incentive the use of one means of access over the others, and so I urge support for the Watt-Cannon amendment.

Chairman SENSENBRENNER. The question is on the Watt-Cannon amendment to the amendment in the nature of a substitute.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it, the ayes have it. The amendment to the amendment in the nature of a substitute is agreed to.

Are there further amendments?

Ms. JACKSON LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. JACKSON LEE. The shorter one, please, the short language one.

The CLERK. Amendment to H.R. 49 offered by Ms. Jackson Lee. Page 1, strike line 6 and all that follows through page 2, line 5 and insert the following:

Section 1101(a) of the Internet Tax——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment of Ms. Jackson Lee follows:]

AMENDMENT TO H.R. 49

OFFERED BY MS. Jackson Lee

Page 1, strike line 6 and all that follows through page 2, line 5 and insert the following:

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''taxes during the period beginning on October 1, 1998, and ending on November 1, 2003'' and inserting ''taxes after September 30, 1998''.

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, this amendment deals with the continuing of the grandfather provision dealing with the States who have previously had this access tax. If this bill becomes law, the seven States that now collect taxes on Internet transactions will be prohibited from doing so.

There is no present accurate figure on the amount of revenue each State derives from these taxes. However, it is estimated that millions of dollars will be lost upon implementation of a permanent ban on collection. At a time when States are financially burdened, depriving those that have come to rely upon access taxes of that source of revenue may unduly disrupt their ability to manage their budgets and meet their fiscal responsibilities.

But I've likewise heard from retailers who believe that the taxation that they have to pay imbalances or the consumers have to pay at retail stores creates an imbalance between the marketplace on the Internet versus the marketplace in the retail industry. The retail industry is already suffering as it relates to the good business on the Internet. I don't covet the business. Congratulations to them. But if States have had this in place, then the Federal law comes in to violate States' rights with no substitute or process of which they can either engage in this taxation in the future or develop a process of which they can utilize their present laws, then I think this legislation violates States' rights, but more importantly takes away a revenue stream of which will be no source of compensation from the Federal Government; in essence, an unfunded mandate to these States who have in place this Internet access tax.

I would argue that this was an unnecessary elimination from this legislation. It was in the legislation previously. Texas had suspended its taxation for a period of time, and it's renewed it. It is

an access fee of a low amount, and I believe that we are interfering with the rights of a State on its own taxation policies as it relates to this issue.

If there is a question of process, and procedure, and regularity, then engage in a process where we develop procedures, if you will, for States to do so, but not to totally eliminate their right to do so. And I'd ask my colleagues to support this amendment.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?

Mr. CANNON. I thank you, Mr. Chairman.

I rise in the strong opposition to this amendment. If I might just give a little bit of history here. This is, in fact, a national issue. Anybody who is going to make an investment in the telecommunications or Internet system needs to have clarity on this issue, and that clarity has to be national.

It really, it can't be said that the States which continued under the grandfather clause to tax the Internet had any kind of right or reason to anticipate that the grandfathering clause would continue. They all understood that we were doing the Commission on Electronic Commerce, that that was intended to create an environment that would be regular, that would be national and that would have a bright line in it that would encourage investment.

Now, the gentlelady was talking a moment ago about moving jobs off-shore, and I sympathized with that concern, but there is little we can do in Congress today that is as important as creating clarity in the context of the Internet so as to encourage investment in what is going to be the driving force, has been and will leap to the forefront of our economy, I believe in the near term, as the driving force behind growth in the economy and in continuing improvement in quality and lowering of costs for consumers.

We have a broad coalition on this bill, and let me just remind everyone that a key factor here is that we want to reduce the digital divide. You reduce the digital divide. You reduce the digital divide by bringing down the cost of getting access to the Internet.

People who are on the wrong side of the digital divide are the people that we need to reach out and draw into this system, and we can't mandate that, we can't legislate that, we can't order that. The only way you can overcome the digital divide is by reducing the cost, and that has to be a national policy, and while the gentlelady will acknowledge that I think I've been a leader on States' rights, there are certain things that the Federal Government has to do, and this is among those things. It is not something we're starting now. The grandfather clause was an aberration.

The national telecommunications policy goes back to post-war America, prior to that; it goes back to post-World War I and has continued and has given us the ability to have a system that does the remarkable things a system does. To have pockets of the system that are grandfathered and therefore dealt with inconsistently is I think wrong as a matter of national policy, and I can't imagine that anybody really wants to enhance the ability of the State to tax something so significant, so important to us as the Internet.

Now, if I might just take another moment and point out the magnitude that we're dealing with here. We have several States that are grandfathered now, and let me give you the revenue that comes from this grandfather provision and compare that with Bush's eco-

nomic package and the amount of money the States got so you get a sense of magnitude here.

Wisconsin collected excess taxes of about $24 million last year, and the Bush package would provide $379 million, almost 20 times as much money.

Ohio had access taxes of $3.6 million, and they have, from the Bush economic development package, $769 million. That's roughly 200 times.

In Texas, the gentlelady's home State, access taxes provided $45 million, and the Bush package provides $1.2 billion. Let me just point out that in Texas, in particular, you have what I think is the great nemesis of the Internet, its complication. You have an amount of tax or an amount of access that is not taxed and then a higher amount that is taxed.

The higher amount goes to the higher bandwidth utilization of the Internet. Why do you want people who can't afford access to be penalized from high-speed access? We want poor people to just have slow access? It seems to me that this is the time to recognize that the issue of the grandfather clause is not significant, not important, and for the purposes of national consistency, which would encourage investment, we should reject this amendment, vote no on it, I urge my colleagues.

Ms. LOFGREN. Would the gentleman yield?

Mr. CANNON. I'm sorry?

Ms. LOFGREN. Would the gentleman yield?

Mr. CANNON. I certainly would yield to the gentlelady from California.

Ms. LOFGREN. I would just like to note that I also oppose the amendment. I agree that this policy must be nationwide in scope, that every Nation or locality that has burdened Internet access, has retarded the growth of the Internet, we know that from localities and other countries who have done this——

Chairman SENSENBRENNER. The gentleman's time has expired.

Ms. LOFGREN. I would ask unanimous consent that the gentleman be granted an additional minute.

Chairman SENSENBRENNER. Without objection.

Ms. LOFGREN. To remove, there was never a guarantee, as the gentleman has stated, that the grandfather clause would be maintained. We do know that if we unburden access to the Internet, we will stimulate the roll-out of broadband across the country, which is one of the most important things that we could do as a Nation to stimulate an economy that is terribly troubled.

As the gentleman knows, I did not support the President's tax cut plan, and I think it was ill conceived, but that is, to me, unrelated to our need to stimulate the development of broadband, which defeating this amendment will help do. And I thank the gentleman for yielding.

Mr. CANNON. Reclaiming my time. Let me just say that the purpose of talking about the President's plan is only to give an idea of the magnitudes here. These are really truly irrelevant numbers, on the one hand, not irrelevant, but small.

On the other hand, let me associate myself with the gentlelady's comments. The rolling out of broadband is the most important thing we can do to stimulate this economy over the next decade and beyond, and this bill, the underlying bill, will help that. This

amendment would dramatically injure that, and I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Jackson Lee amendment to the amendment in the nature of a substitute.

Those in favor will say aye.

Those opposed, no.

The noes appear to have it, the noes have it, and the amendment is not agreed to.

Are there further amendments?

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 49 offered by Ms. Jackson Lee. Page 1, strike line 6 and all that follows through page 2, line 5 and insert the following:

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment of Ms. Jackson Lee follows:]

AMENDMENT TO H.R. 49

OFFERED BY MS. Jackson Lee

Page 1, strike line 6 and all that follows through page 2, line 5 and insert the following:

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''taxes during the period beginning on October 1, 1998, and ending on November 1, 2003'' and inserting ''taxes after September 30, 1998''.

SEC. 3. GRADUAL ELIMINATION OF GRANDFATHER CLAUSE.

Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''(g) GRADUAL ELIMINATION OF GRANDFATHER CLAUSE.—If, by reason of the provisions of this Act allowing a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, a State or political subdivision is imposing such a tax on Internet access on the date of the enactment of the Internet Tax Nondiscrimination Act, then beginning on the date that is two years after the date of the enactment of the Internet Tax Nondiscrimination Act, the rate of such tax cannot exceed 50 percent of the rate of that tax on the date of the enactment of the Internet Tax Nondiscrimination Act, and beginning on the date that is four years after the date of the enactment of the Internet Tax Nondiscrimination Act, that State or political subdivision may no longer impose that tax.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

I restate my position that this eliminating the rights of these States to implement Internet access taxes is a ripping away of their rights and an abuse of power on our behalf as it relates to this legislation.

This amendment is a gradual elimination of the grandfather clause, which would indicate that the rate of the tax cannot exceed 50 percent of the rate of the tax on the date of the enactment of the Internet Nondiscrimination Act, and beginning on the date that is 4 years after the date of the enactment of the Internet Tax and Nondiscrimination Act, that State or political subdivision may no longer impose the tax.

I respect my good friend's argument about elimination of the digital divide, and I would offer to say that I certainly have been one of the strongest proponents of eliminating the digital divide. We've been trying to eliminate the digital divide for as long as we've probably discovered and found to be precise this whole issue of technology and access to the Internet, and we certainly have not been as successful as I would like.

I don't think, however, that should be used a firewall or a door to the reality of taking away rights of States who have in place the taxation of the Internet. I also believe that the Internet transactions have, if you will, have not replaced traditional ones, in part, presumably due to the digital divide—this is the argument—nor have the revenues from e-commerce met early expectations.

But I still think this is a representation of the opponents, but I still think that H.R. 49 is shortsighted, because by imposing a permanent moratorium on a broadly defined category of access taxes, the bill may dry up a source of revenue from an industry that will be more sophisticated and utilized in years to come. Particularly in the post-9/11 America, consumers and businesses may increase their reliance on the Internet in lieu of a vast variety of business services, including libraries, movies, concerts and retail goods. There lies the elimination of a lot of jobs because if you don't utilize them, a lot of jobs will go away in the retail industry, movies, concerts and might I say librarians who have libraries and books, et cetera.

So you're giving an unfair advantage to those who would operate on the Internet. There is no excuse to not help eliminate the digital divide just because you're giving a grandfather provision to seven States. It would have been worthwhile if during this period, from 1998 to 2003, we could have worked with these States to devise a process that would be balanced, to allow a certain access fee, maybe a certain capping of it, and then as well recognizing that it is important to have universal access to the Internet.

But this carte blanche elimination and moratorium is unfair, and I don't see any great movement to close the digital divide any more so than what we've been working on. And why should something good, closing the Internet divide, be stopped because seven States have an access fee? It's bogus. If our good friends in the industry are interested, as I believe they are in closing the Internet divide, they will do so.

I mention the two trade agreements, and I suggest that they, too, will eliminate jobs—we're lumping these all together—but they also have another undermining feature, and that is legislating immigration policies that the USTR thinks that they can do in spite of Congress.

So I would argue that this amendment is a fair amendment in that it is a gradual elimination and an ultimate elimination of the grandfather clause, and it fairly treats the States that already have this process in place, and I can't imagine why my colleagues would want to deny the rights of separate States.

Despite a promised, if you will, economic package, I'd rather have a bird in hand is worth far more than a promise. And so an economic plan that is promised, with a deficit of $453 billion, I don't know whether those monies will ever get to the State on any kind of economic plan of this Administration. And I would argue that this State fee is, of necessity, and argue for support of my amendment.

I yield back.

Chairman SENSENBRENNER. The gentleman from Utah?

Mr. CANNON. I thank the Chairman.

The gentlelady, rather than her first, this is the long amendment, but I believe that the same arguments apply here as otherwise.

I would first like to commend the gentlelady because I know she's been a very strong advocate of eliminating the digital divide. We disagree on the effect of this amendment and what it would have on the digital divide. But let me just point out that to the degree that you have confusion, and that grandfather clause creates confusion of the system, you defer investment, you defer job development, and you reduce the amount of broadband roll-out you're going to have. It seems to me that is as straightforward as it possibly could be.

I would urge the Members of the Committee to reject this amendment and——

Mr. DELAHUNT. Would the gentleman yield?

Mr. GOODLATTE. Would the gentleman yield?

Mr. CANNON. I promised to yield to the gentleman from Virginia, Mr. Goodlatte first.

Mr. GOODLATTE. I thank the gentleman for yielding, and I strongly support his position in opposition to this amendment.

I would add to his comments about two Congresses ago, I offered an amendment to an Internet tax moratorium extension that eliminated the grandfather clause, and at that time there were only about five States that were claiming to be grandfathered.

Now, the gentlewoman mentioned seven States. We have over here a list of nine States that claim to be grandfathered, and there's a very compelling reason. The States are going to continue to look for ways to claim grandfather status unless we make it clear that there's absolutely no grandfather status, that every State is treated exactly the same, and I would urge my colleagues——

Ms. JACKSON LEE. Would the gentleman yield?

Mr. GOODLATTE.—to oppose the amendment.

Ms. JACKSON LEE. Would the gentleman yield for a question?

Mr. CANNON. I'm still trying to, if you wouldn't mind, let me just respond to the gentleman from Virginia by pointing out that he has

been a leader on this issue, as in many other issues I followed in his path on these things, and what he's saying I think is very important.

What we need here is a bright line and not a fudging line that every tax commissioner in every State is going to try to figure out a loophole around and to get beyond.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. CANNON. Now, if the gentlelady wouldn't mind, I believe that the gentleman from Massachusetts wanted to be recognized.

Mr. DELAHUNT. Just for a moment. I appreciate the gentleman yielding.

I think the arguments that are being made by the proponent of the amendment really do speak to the issue of the need to address the more fundamental concern and the effort by the States, through the streamlined sales and use tax agreement, to address these.

Mr. CANNON. The gentleman is correct. That's the place where you deal with this issue, it seems to me, because when you deal with it there, you're dealing with it on a basis that does not impede investment. And I'd be happy to yield to the gentlelady from——

Mr. DELAHUNT. Would the gentleman yield? Just yield for one moment.

I have to say, as the Chairman knows, I've been involved in this issue since I arrived here some 7 years ago with the Chairman and have served on this Committee. And I have to state for the record that I have not heard from any representatives of the States that are currently grandfathered, neither have I heard from the National Association of Governors, nor the National Council on State Legislatures, regarding the grandfather issue here.

And as the chair did point out, while in relative terms, the magnitude of the revenue that has been generated by the existing taxes, you know, is not really that substantial and that we should address our efforts in trying to work with our colleagues on both sides of the aisle as far as the so-called SST agreement.

With that, I'll yield.

Mr. CANNON. Actually, it's my time, but I'm happy to yield to the gentlelady from California.

Ms. LOFGREN. I would like to note I also oppose this amendment. I spent 14 years on the Board of Supervisors in Santa Clara County. I'm very sympathetic and concerned about the revenue shortfalls that are hitting every locality and State. It is a very serious problem.

But I would note that we need to develop and stimulate private-sector high-tech jobs as well. Right now, there is an 8.5 percent unemployment rate in Silicon Valley. The San Jose Mercury News just did a survey and found out that one-third of households in Santa Clara County have experienced a layoff since the President took office.

So we need to stimulate broadband development, and I think that the amendment would detract from that effort, and we certainly don't want to do that. So I join the gentleman from Utah in opposing the amendment, although I am sure the amendment was offered with the best of intentions. I think in the end it would do more harm than good to our economy, and I hope that we will defeat the amendment.

Mr. CANNON. I thank the gentlelady, and I yield back.

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on the Jackson Lee amendment to the amendment in the nature of a substitute.

Ms. SÁNCHEZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Sánchez?

Ms. SÁNCHEZ. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. SÁNCHEZ. I yield to the gentlewoman from Texas.

Ms. JACKSON LEE. I thank the distinguished gentlelady from California for her kindness.

I have served as a Member of the House Science Committee for the entire 10 years of my time here in Congress and will take a back seat to very few on my advocacy for the technology industry. I happen not to be on the Subcommittees of jurisdiction in this Committee, but I believe in advocating for closing the digital divide, for investment in our technology industries and certainly trying to enhance and prevent the lull in employment, trying to enhance opportunities for employment and certainly trying to assist in the elimination of the loss of jobs in all areas dealing with technology.

I've also fought with the industry on the question of the digital divide and its investment in our local communities. But since we're talking globally, I mentioned the other entities that would be negatively impacted, and that is the goods and services from a retail perspective. Some said movies, concerts, et cetera. There's another component to this. And just as we would boost the Internet access, without, according to my colleagues, this access tax, you're also hurting other industries as well because you give an upper hand.

I would have preferred that if we could have worked together on, this is a gradual elimination. This is fair. This is balanced. My colleagues are acting like they should have it all, and I think that is unfair, and I think the Judiciary Committee, through its jurisdiction, is being unfair.

If States have gone from five to seven to nine, then there's obviously a legitimate law and a legitimate need upon which they're basing their taxation, their access. I would prefer that we have an amendment and a provision that would structure either how you could opt into taxation or how you could be allowed to do so. This is not a strictly, if you will, right and wrong issue. There is wrong on both sides; those who want to eliminate it totally maybe and the process which we might be utilizing——

Mr. DELAHUNT. Would the gentlelady yield for a moment?

Ms. JACKSON LEE.—it to increase—I'd be happy to yield in a moment.

This amendment is gradual.

Chairman SENSENBRENNER. The time belongs to the gentlewoman from California.

Ms. JACKSON LEE. Could the gentlewoman just let me finish my sentence, and then I'd be happy to have her yield to him.

This is a gradual one. It's 50 percent, and then it goes on to elimination in 4 years. And so it is trying to seek an appropriate balance, and I respect the gentleman from Utah and the gentleman

from North Carolina on this legislation, but I do think this adds a balance.

I'd be happy to—I don't have the time, but I'd be happy to have the gentleman have the time to yield.

Mr. DELAHUNT. Would the gentlelady from California yield for a moment?

Ms. SÁNCHEZ. I will yield.

Mr. DELAHUNT. I would ask my friend from Texas has she received any communication from any of the States that have impacted, that would be impacted by the elimination of the grandfather clause?

Ms. JACKSON LEE. If the gentlelady would yield to me, I'd appreciate it very much.

I thank the gentleman for asking. Yes, I have received inquiries and concern from retailers who would be impacted negatively.

Mr. DELAHUNT. I'm speaking in terms of either State legislatures or from the office of the governors of the States that would be impacted.

Ms. JACKSON LEE. Over the course of the time that this legislation has been moving, yes, I have been in contact and have had concerns being expressed, but the specific inquiries have come from retailers.

Mr. DELAHUNT. I thank the gentlelady.

Ms. SÁNCHEZ. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Jackson Lee amendment to the amendment in the nature of a substitute.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If not, the question is on agreeing to the amendment in the nature of a substitute as amended.

All of those in favor will say aye.

Opposed, no.

The ayes appear to have it, the ayes have it, and the amendment in the nature of a substitute as amended is agreed to.

A reporting quorum is present. The question now occurs on the motion to report the bill H.R. 49 favorably as amended.

All of those in favor will say aye.

Opposed, no.

The ayes appear to have it, the ayes have it, and the motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by House rules, in which to submit additional dissenting supplemental or minority views.

This will conclude the markup for today. The last bill on the agenda, the prison industries bill, I have been persuaded that an

additional week's negotiation would be advisable, so that will be the first bill on next Wednesday's markup.

The business notice before this Committee having been completed, the Committee stands adjourned.

[Whereupon, at 11:26 a.m., the Committee was adjourned.]

ADDITIONAL VIEWS

We offer these additional views to emphasize our continued commitment to the vitally important issue of State sales tax simplification which, in past terms of Congress, has been linked to the moratorium on Internet access taxes. Because the moratorium and simplification issues have been decoupled, we support H.R. 49, as amended.[1] However, our commitment to the State sales tax simplification project derives from the ongoing need to develop a "level playing field" for the collection of sales taxes by all forms of retailers. We believe that we must address this issue expeditiously and with similar vigor.

As a result of the 1992 Supreme Court decision in *Quill* v. *Heitcamp*,[2] there exists a disparity in the tax treatment of similarly situated sellers. *Quill* held that absent congressional authorization, States are not permitted to require sellers to collect taxes unless, among other things, the seller has a "substantial nexus" with the State. Congress recognized the potential impact of the Quill decision on Internet transactions when the ITFA was passed. Indeed, ITFA called for the creation of a commission—the Advisory Commission on Electronic Commerce (ACEC)[3]—to conduct a study of the impact of electronic commerce on all forms of taxation, and specifically the issues concerning the state and local taxation of transactions over the Internet. In April 2000, the ACEC delivered its final report to Congress.[4] Although the ACEC was unable to obtain the requisite consensus (two-thirds vote) required by ITFA on the issue of Internet sales tax, the report included a majority policy recommendation that states simplify their sales and use tax systems. Officially established in March 2000, the Streamlined Sales Tax Project (SSTP) is a collection of thirty-nine States and the District of Columbia organized to accomplish that goal.[5] Since that

[1] Mr. Watt offered an amendment during the markup of H.R. 49 in the Subcommittee on Commercial and Administrative Law in May 2003. The amendment equalizes the treatment of all providers of Internet access regardless of technology. At Full Committee markup, Mr. Cannon, Chairman of the subcommittee, joined Mr. Watt in offering the amendment which passed with strong bipartisan support. (Ms. Jackson Lee also offered two amendments. One, designed to preserve the grandfathered States' authority to collect Internet access taxes, and the other, to establish a system to phase out those States' collection of access taxes were both defeated by voice vote.)

[2] 504 U.S. 298 (1992). Quill held that in order to sustain an interstate sales tax, the tax must apply to an activity with a substantial nexus with the taxing State; be fairly apportioned; not discriminate against interstate commerce; and be fairly related to the services provided by the State. In the event a good is sold across interstate lines without being subject to a sales tax, the purchaser remains subject to a comparable "use tax" within his or her own State.

[3] The ACEC consisted of nineteen members. Eight were representatives of State and local governments; eight were from business and consumer groups, and three were representative of the Federal Government from the offices of the U.S. Trade Representative, the U.S. Secretary of Commerce, and the U.S. Secretary of the Treasury.

[4] ACEC offered consensus recommendations in only three areas unrelated to the sales tax issue: (1) the digital divide; (2) privacy implications of the Internet; and (3) international trade and tariffs.

[5] The participating States are: Alabama, Arizona, Arkansas, Florida, Illionois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri,

Continued

time the SSTP has made substantial progress towards establishing a uniform, modernized and streamlined system of sales and tax collection and administration. Presently, over thirty States, collectively referred to as the Streamlined Sales Tax Implementing States (SSTIS), have adopted an interstate tax agreement.[6]

The Majority has indicated that hearings will be held to address the streamlining issue this fall. We welcome this opportunity because failure to revisit this issue raises many of the identical concerns we expressed in rejecting long term extension of the moratorium last Congress. Those concerns, however, are magnified exponentially in light of the tremendous budget shortfalls and deficits that many States are currently experiencing. Moreover, the significant security burdens imposed upon the States post 9/11 suggest that these burdens will persist.[7]

All interested parties—retailers (both electronic and traditional), State and local governments, and consumers—will suffer if we continue to avoid addressing this issue. The problems with the present system from the perspective of the retail industry are multifaceted. First, the complexity of the tax system is daunting. There are presently over 6,500 taxing jurisdictions in the United States when all State, county and municipal authorities are included. The jurisdictions generally require separate collection, have overlapping definitions of goods and services subject to tax, specify differing sets of exemptions and *de minimus* thresholds, have differing bad debt rules, and varying sets of forms and audit systems. Any retailer with a physical nexus to a State is subject to a myriad of confusing and complex State and local taxes. This carries with it large paperwork and collection burdens. Second, the legal uncertainty of the present system can be harmful, even for remote sellers, because of the many questions left unresolved by the Quill decision and under ITFA. Determining what constitutes a "substantial nexus" for a particular retailer can be highly subjective. Third, the current disparate tax treatment between traditional "brick and mortar" retailers and remote sellers has the potential to cause continuing economic distortion.[8] Yet the present system, by creating a tax incentive to be located in a remote physical location, threatens to do exactly that.[9] This, in turn, has the potential to harm local employment and real estate values.

The impact on State and local governments of a prolonged maintenance of the current system carries with it the potential for significant financial loss at a time when States are suffering devastating budget crises. Sales taxes constitute the most important State and local revenue source, far greater than income and property taxes, with the Census Bureau estimating that 47.9% of State

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Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

[6] Under the procedures of the STTP, the agreement must now be converted into legislation by the participating States.

[7] The States are currently facing an aggregate revenue shortfall of $21.5 billion (23% greater than the Nov. 2002 projections), and that number is projected to grow to $53.5 billion for FY 2004. Moreover, according to statistics compiled by U.S. Conference of Mayors, a Tom Ridge-imposed Code Orange terror alert is projected to cost State government $70 million per week.

[8] In an industry such as retail sales, where a 1–2% profit margin may be standard, a 6–8% sales tax differential can offer a significant price advantage.

[9] Perversely, the present system also creates an incentive, in terms of State sales taxes, to be located *outside* of the United States.

and local revenues come from sales taxes. Projections of annual online sales were estimated to exceed $100–300 billion in 2002. That translates into a loss for State and local governments of as much as $20 billion in uncollected sales taxes under the present system.[10] Loss of sales tax revenues could have a grave impact on critical services such as police, safety, health and education.

Finally, the present system could significantly harm individual consumers. The loss of sales taxes from remote sales may lead to increasing income and property taxes or declining public services. A separate concern is the adverse impact of the present bifurcated system on the poor and minorities. According to a study by the U.S. Department of Commerce, wealthy individuals were 20 times more likely to have Internet access, while Hispanics and African Americans were far less likely to have such access.[11] As a result, poor and minority consumers are more likely to buy locally (often with cash) and thus, face a greater sales tax burden than those with credit and broader access to the Internet.

Since passage of the ITFA in 1998, State governments, business leaders and consumer advocates have coalesced to address the thorny issue of interstate taxation and e-commerce. Reportedly, significant progress has been made in reforming and simplifying State laws. The Judiciary Committee has taken an important step in passing H.R. 49, as amended, to provide a level playing field for all providers of Internet access. The Committee should also be on the forefront of providing the States with the necessary authority to collect sales taxes in a uniform and non-discriminatory manner from all remote sellers, including those conducting business over the Internet. Hearings devoted to the State tax simplification issue will enable us to consider whether we should approve an interstate process that addresses the simplification issue.

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[10] *See Donald Bruce and William F. Fox, E-Commerce in Context of Declining State Sales Tax Basis*, Center for Business and Economic Research (CBER), University of Tennessee, Knoxville, February 2000.

[11] *Falling Through the Net II: New Data on the Digital Divide, National Telecommunications and Information Administration,* National Telecommunications and Information Administration, July 1998 (httpL//www.ntia.doc.gov/ntiahome/net2/falling.html).