

AMENDMENT TO H.R. 3086
OFFERED BY MS. LOFGREN OF CALIFORNIA

At the end of the bill, add the following:

1 **SEC. 3. MORATORIUM ON MOBILE SERVICE TAXES.**

2 (a) IN GENERAL.—No State or local jurisdiction shall
3 impose a new discriminatory tax on or with respect to mo-
4 bile services, mobile service providers, or mobile service
5 property, during the 5-year period beginning on the date
6 of enactment of this Act.

7 (b) DEFINITIONS.—In this section:

8 (1) MOBILE SERVICE.—The term “mobile serv-
9 ice” means commercial mobile radio service, as such
10 term is defined in section 20.3 of title 47, Code of
11 Federal Regulations, as in effect on the date of en-
12 actment of this Act, or any other service that is pri-
13 marily intended for receipt on, transmission from, or
14 use with a mobile telephone or other mobile device,
15 including but not limited to the receipt of a digital
16 good.

17 (2) MOBILE SERVICE PROPERTY.—The term
18 “mobile service property” means all property used
19 by a mobile service provider in connection with its
20 business of providing mobile services, whether real,

1 personal, tangible, or intangible (including goodwill,
2 licenses, customer lists, and other similar intangible
3 property associated with such business).

4 (3) MOBILE SERVICE PROVIDER.—The term
5 “mobile service provider” means any entity that sells
6 or provides mobile services, but only to the extent
7 that such entity sells or provides mobile services.

8 (4) NEW DISCRIMINATORY TAX.—The term
9 “new discriminatory tax” means a tax imposed by a
10 State or local jurisdiction that is imposed on or with
11 respect to, or is measured by, the charges, receipts,
12 or revenues from or value of—

13 (A) a mobile service and is not generally
14 imposed, or is generally imposed at a lower
15 rate, on or with respect to, or measured by, the
16 charges, receipts, or revenues from other serv-
17 ices or transactions involving tangible personal
18 property;

19 (B) a mobile service provider and is not
20 generally imposed, or is generally imposed at a
21 lower rate, on other persons that are engaged
22 in businesses other than the provision of mobile
23 services; or

24 (C) a mobile service property and is not
25 generally imposed, or is generally imposed at a

1 lower rate, on or with respect to, or measured
2 by the value of, other property that is devoted
3 to a commercial or industrial use and subject to
4 a property tax levy, except public utility prop-
5 erty owned by a public utility subject to rate of
6 return regulation by a State or Federal regu-
7 latory authority; unless such tax was imposed
8 and actually enforced on mobile services, mobile
9 service providers, or mobile service property
10 prior to the date of enactment of this Act.

11 (5) STATE OR LOCAL JURISDICTION.—The term
12 “State or local jurisdiction” means any of the sev-
13 eral States, the District of Columbia, any territory
14 or possession of the United States, a political sub-
15 division of any State, territory, or possession, or any
16 governmental entity or person acting on behalf of
17 such State, territory, possession, or subdivision that
18 has the authority to assess, impose, levy, or collect
19 taxes or fees.

20 (6) TAX.—

21 (A) IN GENERAL.—The term “tax” means
22 a charge imposed by a governmental entity for
23 the purpose of generating revenues for govern-
24 mental purposes, and excludes a fee imposed on
25 a particular entity or class of entities for a spe-

1 cific privilege, service, or benefit conferred ex-
2 clusively on such entity or class of entities.

3 (B) EXCLUSION.—The term “tax” does
4 not include any fee or charge—

5 (i) used to preserve and advance Fed-
6 eral universal service or similar State pro-
7 grams authorized by section 254 of the
8 Communications Act of 1934 (47 U.S.C.
9 254);

10 (ii) specifically dedicated by a State or
11 local jurisdiction for the support of E911
12 communications systems; or

13 (iii) used to preserve and advance
14 Federal telecommunications relay services
15 or State programs implementing this Fed-
16 eral mandate pursuant to title IV of the
17 Americans with Disabilities Act of 1990
18 (Public Law 101–336; Stat. 327) and con-
19 tained in section 225 of the Communica-
20 tions Act of 1934 (47 U.S.C. 225).

21 (c) RULES OF CONSTRUCTION.—

22 (1) DETERMINATION.—For purposes of sub-
23 section (b)(4), all taxes, tax rates, exemptions, de-
24 ductions, credits, incentives, exclusions, and other

1 similar factors shall be taken into account in deter-
2 mining whether a tax is a new discriminatory tax.

3 (2) APPLICATION OF PRINCIPLES.—Except as
4 otherwise provided in this section, in determining
5 whether a tax on mobile service property is a new
6 discriminatory tax for purposes of subsection
7 (b)(4)(C), principles similar to those set forth in sec-
8 tion 306 of the Railroad Revitalization and Regu-
9 latory Reform Act of 1976 (49 U.S.C. 11501) shall
10 apply.

11 (3) EXCLUSIONS.—Notwithstanding any other
12 provision of this section—

13 (A) the term “generally imposed” as used
14 in subsection (b)(4) shall not apply to any tax
15 imposed only on—

16 (i) specific services;

17 (ii) specific industries or business seg-
18 ments; or

19 (iii) specific types of property; and

20 (B) the term “new discriminatory tax”
21 shall not include a new tax or the modification
22 of an existing tax that either—

23 (i)(I) replaces one or more taxes that
24 had been imposed on mobile services, mo-

1 bile service providers, or mobile service
2 property; and

3 (II) is designed so that, based on in-
4 formation available at the time of the en-
5 actment of such new tax or such modifica-
6 tion, the amount of tax revenues generated
7 thereby with respect to such mobile serv-
8 ices, mobile service providers, or mobile
9 service property is reasonably expected to
10 not exceed the amount of tax revenues that
11 would have been generated by the respec-
12 tive replaced tax or taxes with respect to
13 such mobile services, mobile service pro-
14 viders, or mobile service property; or

15 (ii) is a local jurisdiction tax that may
16 not be imposed without voter approval,
17 provides for at least 90 days prior notice
18 to mobile service providers, and is required
19 by law to be collected from mobile service
20 customers.

21 (d) ENFORCEMENT.—Notwithstanding any provision
22 of section 1341 of title 28, United States Code, or the
23 constitution or laws of any State, the district courts of
24 the United States shall have jurisdiction, without regard
25 to amount in controversy or citizenship of the parties, to

1 grant such mandatory or prohibitive injunctive relief, in-
2 terim equitable relief, and declaratory judgments as may
3 be necessary to prevent, restrain, or terminate any acts
4 in violation of this section.

5 (1) JURISDICTION.—Such jurisdiction shall not
6 be exclusive of the jurisdiction which any Federal or
7 State court may have in the absence of this section.

8 (2) BURDEN OF PROOF.—The burden of proof
9 in any proceeding brought under this section shall be
10 upon the party seeking relief and shall be by a pre-
11 ponderance of the evidence on all issues of fact.

12 (3) RELIEF.—In granting relief against a tax
13 which is discriminatory or excessive under this sec-
14 tion with respect to tax rate or amount only, the
15 court shall prevent, restrain, or terminate the impo-
16 sition, levy, or collection of not more than the dis-
17 criminatory or excessive portion of the tax as deter-
18 mined by the court.

19 (e) GAO STUDY.—The Comptroller General of the
20 United States shall conduct a study, throughout the 5-
21 year period beginning on the date of the enactment of this
22 Act, to determine—

23 (1) how, and the extent to which, taxes imposed
24 by local and State jurisdictions on mobile services,

1 mobile service providers, or mobile property, impact
2 the costs consumers pay for mobile services; and

3 (2) the extent to which the moratorium on dis-
4 criminatory mobile services taxes established in this
5 Act has any impact on the costs consumers pay for
6 mobile services.

7 (f) REPORT.—Not later than 6 years after the date
8 of the enactment of this Act, the Comptroller General shall
9 submit, to the Committee on the Judiciary of the House
10 of Representatives and the Committee on the Judiciary
11 of the Senate, a report containing the results of the study
12 required under subsection (e) and shall include in such
13 report recommendations for any changes to laws and regu-
14 lations relating to such results.

