



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, SECOND SESSION

Vol. 150

WASHINGTON, MONDAY, APRIL 26, 2004

No. 54

Senate

Statement of Senator Dianne Feinstein

“Support for a Temporary Extension of the Internet Tax Moratorium”

Mrs. FEINSTEIN. Madam President, I rise to claim an hour under the motion to proceed to speak on the bill.

Before I do, I compliment the Senator from Florida on his comments on Venezuela. He may not know this, but I had the pleasure of spending some time in Venezuela when I was mayor, leading a delegation.

We had a sister city relationship with Caracas. I saw the vibrancy of that democracy at that time. This was in the mid-1980s. All the progress that had been made in the Bolivar nations and the closeness that existed between Venezuela and our country, it was something very special to see.

You could say, I think, that Venezuela led all the nations in terms of its

relationship to us. So the deterioration of that relationship is very much regretted by me. I associate myself with the comments of the Senator from Florida and thank him very much for making them.

I wish to speak about a bill that I am not sure everybody understands very well, let alone exactly what it is. There are essentially three bills floating around. One of them is S. 150. This is a permanent measure. It includes a 3-year grandfather on Internet access if the taxes existed in 1998. That is the Allen-Wyden bill.

There is a McCain proposal that may be brought forward. And, as I understand it, it would last for 4 years. It includes a 3-year grandfather on Internet access taxes that

existed in 1998 and a 2-year grandfather on Digital Subscriber Lines (DSL) taxes.

And there is the Alexander-Carper bill, of which I am a cosponsor. This is a 2 year temporary moratorium that includes a 2-year grandfather on Internet access taxes that were in place in 1998 and a 2-year grandfather on DSL service.

What all that means is very difficult. The last time this bill was on the floor was November 6 and 7 of last year. I remember coming to the floor and saying I had been approached by more than a hundred California cities to oppose the bill. It was a deluge. I had never had that kind of opposition from California cities before in my 12 years in the Senate. That deluge has only increased.

Interestingly enough, I have not received a single letter from a telephone company in support of any of these bills, which is very interesting.

The most dominant voice has been the League of California Cities, firefighters, labor. The League in particular represents over 470 California cities. These cities believe this bill, S. 150, will cost billions of dollars nationwide, and in California it will cost local jurisdictions as much as \$836 million once it really gets started.

Cities and counties across the Nation are facing budget crises. These cuts only make the situation worse. There would be less money to pay for police officers, firefighters, libraries, and parks. Passing this bill, which essentially would end revenue streams which cities have counted on for years to fund vital services, is something I can't do. That is why you have Senator Carper, a Governor, Senator Voinovich, a former mayor and Governor, Senator

Alexander, a Governor, and myself, a mayor, all saying, please don't do this.

I support legislation sponsored by Senators Alexander and Carper which would extend the recently expired moratorium on Internet access by 2 years, and make the moratorium technology neutral.

The Allen-Wyden bill changes the definition of Internet access significantly. That is the problem. Simply put, the definition included in the bill before us is far too broad. The bill says that telecommunications are taxable, and then it adds this: "...except to the extent such services are used to provide Internet access."

But what does the phrase "to provide Internet access" actually mean? Cities, counties, and States believe it means they won't be able to tax telecommunications services, which they currently can, to the tune of \$2 to \$9 billion annually all across the United States. So that is really what is at stake.

Let me read what the Center on Budget and Policy Priorities says about the definition contained in Allen-Wyden:

"The ban on State and local taxation of telecommunications services used to provide Internet access would effectively eliminate billions of dollars' worth of taxes on voice telephone service as the provision of that service is migrated to the Internet, a process that is well underway."

Then it goes on and it says there will be substantial revenue losses for State and local governments. It points out that 11 States would lose between \$80 million to \$120 million: Colorado, Hawaii, New Hampshire, New Mexico, North Dakota, South Dakota, Ohio, Tennessee, Texas, Washington, and Wisconsin. It says 28 States and the District of Columbia would lose \$70 million annually. Let me quickly mention which ones they are: Alabama, Alaska, Arizona, Colorado, Connecticut, DC, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky,

Louisiana, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Washington, and Wisconsin.

A lot of States stand to lose. It goes on to say many more State and local governments would lose their ability to tax telecommunications services purchased by Internet access providers, such as the high-speed lines providers use to link to the backbone of the Internet.

A lot of States stand to lose. Now, you can talk to authors of the bill and they will say, oh, no, that really is not true. But the fact is that even CBO cannot give you a real estimate because companies don't maintain records; but cities, interestingly enough, have retained specialists to estimate for them.

Let me read from one of those specialists. His name is William T. Fujioka. He is the administrative officer

for the city of Los Angeles. He points out that:

“In California, the utility user tax has been applied to telecommunications services on a technology-neutral basis for over 30 years. With 150 cities receiving over \$830 million –”

I have been over that. He goes on to say:

“For the city of Los Angeles, our telecommunication's utility user tax covers local exchange service, long distance, and wireless, which total \$260 million. S. 150 places all of these revenues in jeopardy. The loss would come from:

1, the migration of traditional telephone services to Internet-based telephone services, or Voice over Internet Protocol; and

2, the application of S. 150 to local exchange and wireless services that also provide voice and Internet access (in the same manner as DSL and cable modem), which would prevent the

city of Los Angeles from taxing these services.”

He then goes on to point out:

“The migration of telecommunication services to the Internet is not just speculation. AT&T, SBC, Verizon, and Time-Warner have all announced their intent to introduce Internet telephone service in California this year.”

It is important to note that currently, DSL and cable modem are not subject to the Federal excise tax, or UUT, utility user tax, because until recently these broadband communication services were not used for voice and were properly deemed private communication services.

Now, the Ninth Circuit Court of Appeals has changed even that and is essentially saying that both cable and DSL can be taxed. That just came out. I am told that it will take another 18 months to 2 years just to straighten that out and to see if there is an appeal on a writ of certiorari to the U.S. Supreme Court.

So this whole area is in flux and it could change dramatically. It makes no sense to do a permanent piece of legislation at this point in time, in my view, particularly with this Ninth Circuit case recently coming down.

If Allen-Wyden is approved, phone services, which are currently taxable, will become tax exempt. This means local jurisdictions will lose revenues they can collect today. In turn, this means less revenue to pay for local priorities.

I support making business and residential access to the Internet tax free. There are primarily three ways to access the Internet today: dial-up service; cable modem; and DSL, digital subscriber lines. Under the recently expired moratorium, two of these methods -- dial-up service providers and cable modem -- were exempted from taxation. The third, DSL, could be taxed, though many jurisdictions, including California, didn't tax that. But, as I have just told you the Ninth Circuit

has just made a change by saying that you can now tax cable modem.

Alexander-Carper -- the bill I support -- would level the playing field and make DSL tax exempt, except in those jurisdictions which already taxed it. This grandfather would last for 2 years. And, it would grandfather access taxes in place in 1998 -- again for 2 years. It is hoped that this will ensure that the Internet could continue to mature.

I must say, also, it is my understanding that Senator Enzi is going to introduce a bill that will be a simple extension of the 2-year moratorium, which expired a few months ago. If the Alexander-Carper bill isn't successful, I will support this solution.

I really believe that is the solution -- that we should simply extend it, let the Ninth Circuit case go up to the Supreme Court, and let the Supreme Court speak. Or we should add an amendment to S. 150 that says that all present taxes remain unaffected, so that cities, counties, and States, so your State, Madam

President, and my State, as well as every other State, can know with certainty that the revenues they have counted on they can continue to count on.

If you ask people whether they want police and fire, the answer is yes. If you ask them whether they want local services, the answer is clearly yes. To pass a bill that ends the method of revenue collection and funds up to 15 percent of these local services in many jurisdictions, I think, is an unconscionable thing to do.

Much like the tax cuts, they explode in outer years. So while Members that vote for that may be popular for a short period of time, to be able to go home and say they are assuring their local jurisdiction that they are protecting their revenue sources, they cannot do that by voting for S. 150. Just too much is unknown.

Fifteen percent means layoffs, and it could mean major cuts in service. It could mean higher local taxes.

The cities that have contacted me, large and small, are like San Francisco, Los Angeles, Sacramento, LaVerne, San Leandro, and Santo Rosa.

Let me quote from the comptroller of the City of San Francisco, Ed Harrington. Again, this is a technical person writing:

“For the city of San Francisco, our telecommunications UUT - utility users tax -- covers local exchange service, long distance, and wireless, which totals \$32 million a year. S. 150 -- that is Allen-Wyden -- places all of these revenues in jeopardy.”

The loss would come, again, from the migration of traditional telephone services to the Internet-based telephone services or Voice Over Internet Protocol; and, 2, the application of S. 150 to local exchange and wireless services that also provide voice and Internet access, which would prevent the city of San Francisco from taxing these services.

That is the same as Los Angeles.

So you have two of the major cities in the State and their technical and financial people both saying the same thing.

The League of Cities, which represents all of California's 478 cities, its county administrators, its police officer associations, its firefighter associations, all oppose this bill.

In the city I served as mayor for 9 years, the current definition of telecom services could lead to a loss of \$32 million annually. This translates into 300 police and firefighters.

I want to also cite the city of Pasadena. Mayor Bill Bogaard wrote my office to protest that his city would lose \$11.4 million under Allen-Wyden, and he writes:

“By using vague language to include broadband Internet under the moratorium, we fear that the bill will allow telephone and cable companies to use that

protection to avoid paying local franchise or utility fees.”

Which is exactly what is going to happen.

He goes on to state:

“It is our understanding that it was not the intent of the bill sponsors to endanger local franchising authority, but the legislation has yet to be changed to correct these unintended consequences.”

Virtually every technical person who looks at this bill -- the Center for Budget and Policy Priorities, as well as every controller, technical professional employee of cities and counties -- says the same thing: The definition is flawed, it is vague, and under that definition, any number of things can happen.

Madam President, 150 cities in my State levy a utility user tax. That includes telephone and cable television services. These taxes provide the contribution that I mentioned of approximately 15 percent

in general purpose revenues. So they make a utility user's tax vital in helping fund critical city services.

I know why telephone companies do not want this. They do not want to be bothered by local taxes. But on the other hand, why not say that present taxes are excepted, present taxes would not be covered? Cities can continue those taxes where they are.

I believe that because of the determination that this bill is an unfunded mandate and other reasons, S. 150 is subject to a point of order when it is under consideration, and I fully expect that this point of order will be raised. For this Senate to pass a bill that further ties the hands of local government I think will be unfortunate just at a time when so many States face budget deficits and so many cities have the same situation.

In short, the problem with Allen-Wyden is that it changes the definition of

Internet access in the recently expired Internet tax moratorium in such a way that cities lose billions nationally, that this escalates over time, and that this will lead to reduced preparedness of our cities, to fewer firefighters, and to fewer police officers.

Anyone who has ever done a city budget knows you cannot lose up to 15 percent of your revenue and keep services at the same level.

I am hopeful that as the days go on and as we consider amendments to the bill, there will be a straight amendment that will just simply extend a 2-year moratorium to give the Supreme Court case *Brand X Internet Services v. the FCC* the opportunity to go up on appeal, hopefully for the Supreme Court to take it up, or else to leave in place the appellate court opinion which makes very clear that States will be able to tax cable modem service since the 1996 act allows

States to tax telecommunications services.

One of the most disturbing aspects about the bill is some people think that it imposes Internet sales taxes when this is not true at all. These taxes are all at the point where the Internet comes in to the home, and yet they reach back in the chain as various services come together substantially before the Internet reaches the house. I think if that currently taxable aspect of the service is made unavailable to local communities that have very few revenue sources, it is going to present a substantial hardship for the quality of life of the people we care about in our cities and in our States.

I will oppose S. 150. I will vote for the Alexander-Carper bill and will also vote for Senator Enzi's bill should he make that available.

I reserve the remainder of my time and yield the floor.