

THE WIRELESS TELECOMMUNICATIONS SOURCING AND PRIVACY ACT

HEARING BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION OF THE COMMITTEE ON COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS SECOND SESSION

ON

H.R. 3489

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CONTENTS

	Page
Testimony of:	
Brooks, Joseph E., Councilman, City of Richmond	5
Bucks, Dan R., Executive Director, Multistate Tax Commission	11
Scheppach, Raymond C., Executive Director, Office of State Federal Relations, National Governor's Association	9
Wheeler, Thomas E., President and CEO, Cellular Telecommunications Industry Association	19

(III)

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THURSDAY, APRIL 6, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:04 p.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin, (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Shimkus, Pickering, and Markey.

Staff present: Mike O'Rielly, professional staff member; Cliff Riccio, legislative analyst; and Andy Levin, minority counsel.

Mr. TAUZIN. We'll turn our attention today to the taxation of another popular communications medium, the wireless telecommunications medium.

H.R. 3489 introduced by Messrs. Pickering, Markey, Mrs. Wilson, Mr. Largent and myself, is a strong bill that enjoys clear, bipartisan support of this committee and makes common sense for consumers and to State and local taxing municipalities and cellular providers.

Mobility Wireless Telecomm has always made the determination of which State and local taxes apply to any particular wireless call, a very complicated and expensive task. The problem is that there are many methodologies—originating cell site, billing addresses, location and others, which give rise to multiple claims on the tax revenue. Double taxation and other administration problems obviously arise.

Because these existing methodologies all have their shortcomings, many States and localities have developed a new methodology together with the industry, assigning all State and local telecommunication taxes imposed on consumers to one location—the consumer's place of primary use. The bill before us seeks to codify this method as the only method, and as a result provide a uniform method of fairly and simply determining how State and local jurisdictions tax wireless communications.

H.R. 3489 will provide consumers will simpler billing, and God knows they need that. It preserves State and local authority to tax wireless services. It reduces the changes for double taxation from competing jurisdictions, and God knows we need and would enjoy that. The bill does not, on the other hand, impose any new taxes,

reduce tax obligations for the wireless industry, or mandate any expenditure of State or local funding.

The bill is a good bill I urge you to support, and the Chair would now yield back time and ask if any other members have opening statements.

I have none. I hear none. I see none. The Chair is very please now to welcome our witnesses before the committee. Our witnesses include Tom Wheeler, president and CEO of Cellular Telecommunications Industry; Dan Bucks, executive director of Multi-State Tax Commission; Mr. Raymond Scheppach—I hope I pronounced that right, Raymond.

Mr. SCHEPPACH. Scheppach.

Mr. TAUZIN. Scheppach. C'est Francais? Scheppach. Mr. Raymond Scheppach, executive director of the Office of State Federal Relations; and Joseph Brooks, the councilman of the city of Richmond, Virginia, representing the National League of Cities. I wonder why we picked Richmond for this, but anyway, Mr. Joseph Brooks.

Mr. Pickering, I understand, has an opening statement, and he is the author of the bill, and we are pleased to welcome him and recognize him for an opening statement.

Mr. PICKERING. Thank you, Mr. Chairman, and I want to thank you for having this hearing today on the Wireless Telecommunications Sourcing and Privacy Act. I would also like to thank the members of this subcommittee who joined me in introducing this bill, Mr. Markey, Mrs. Wilson, Mr. Largent, and our great and good chairman, Mr. Tauzin. In addition, I would like to thank Mr. Dingell, Mr. Oxley, Mr. Fossella, Mr. Stearns, and Ms. Cubin for co-sponsoring this bill.

Today, over 80 million Americans are wireless users and more and more of them are using their wireless telephones as their sole means of making telephone calls. Just a few years ago, wireless phones were a novelty item for a privileged few. Today they are an accessory and for many, a necessity. This legislation is specifically targeted to address several key issues that affect wireless telecommunications. At its core, this bill offers a new framework to simplify how State and local jurisdictions administer existing taxes on wireless calls. Under this legislation, all of the customers' State and local wireless taxes would be assigned to one address—the customer's place of primary use, which must either be the customer's home or business address.

The current system relies on several different addresses, a real nightmare for America's 84 million wireless customers, and there are some very real, practical problems that can arise in the administration of the various State and local taxes. Different jurisdictions may follow different methodologies, making the determination of the correct taxation very difficult, depending on this or what particular methodology.

A call could be taxed in the city where the customer is located, in the town where the wireless antenna is located, or even in the city where the wireless switch is located. The bottom line is it is confusing, it's costly, and it's a problem that we can fix with this legislation. Let me be very clear. This legislation is about how the

wireless industry administers State and local taxes. It does not reduce or change the industry's or consumer's tax obligations.

Furthermore, I'd like my colleagues to know that extensive discussions and negotiations have taken place over the last few years among several State and local government organizations, including the National Governor's Association, the National League of Cities, the Multistate State Tax Commission the Federation of Tax Administrators and others, along with the Cellular Telecommunications Industry Association. Together they have developed a new methodology for dealing with a complex problem, and that new methodology is embodied in this legislation. This new method offers certainty and consistency in the application of tax law and does so in a way that does not change the ability of State and localities to tax these revenues.

The second provision of this bill includes the language of a bill introduced and led through the Congress by my colleague, Ms. Wilson. Her bill, H.R. 514, improves the privacy protections afforded to users of wireless communication devices, and it overwhelmingly passed the house last year.

Finally, the bill requires a GAO study to examine the FCC's implementation of provisions of current law which require the telecommunications industry to pay fees to recoup costs of regulatory functions. There has been concern that these fees have not and are not being properly assessed. While I have not taken a position on this matter, I do think it's important to get a thorough examination of the issue. The GAO study will provide such a review.

Mr. Chairman, I believe the provisions in this legislation take us a long way to improving wireless services for consumers. Simplifying their monthly bills, improving their privacy, and reducing the possibility of double or even triple taxation.

In closing I would like to thank the witnesses for appearing today, for their hard work in negotiating the new methodology that is included in this bill, and I look forward to hearing their testimony and working with them for the passage of this legislation and for the signature into law. I look forward to today's testimony.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. MICHAEL G. OXLEY, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

Thank you, Mr. Chairman.

I look forward to the testimony of our witnesses on the issue of wireless sourcing.

As a consumer, you really have no idea of the patchwork quilt of taxes that kick into effect when you make a wireless telephone call. You also have no certainty about what you're going to have to pay for that telephone call as a result.

I'm proud to be a cosponsor of H.R. 3489, and I think this Committee has an interest and a responsibility to do what it can to simplify in this area. With new technologies coming into the marketplace, it makes sense to look at this issue now.

I want to commend the gentleman from Mississippi, Mr. Pickering, for his leadership in introducing H.R. 3489.

I yield back the balance of my time.

PREPARED STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA

Mr. Chairman, thank you for holding this hearing on H.R. 3489, the Wireless Telecommunications Sourcing and Privacy Act, and examining how state and local-ity transactional taxes affect wireless providers and consumers. I am proud to be

a cosponsor of this legislation and congratulate industry, and state and local governments for their hard work in simplifying the manner in which telecommunications providers are taxed. The legislation offered by Congressman Pickering will create a nationwide, uniform system, greatly simplifying the taxation and billing of wireless calls, all the while reducing costs and frustrations for consumers.

The wireless industry is growing at an astounding rate, being one of the most competitive industries, consumers can realize the benefits of competition through dropping rates and improving wireless coverage and technologies. A year ago, there were 60 million wireless subscribers in America. In less than one year, that number has jumped to more than 87 million U.S. wireless subscribers, with further estimates indicating that within the next several years, there will be over 200 million wireless users in the U.S. alone.

Mr. Chairman, I, too, am one those connected to the world through my wireless phone, whether it be in Washington or the 6th District of Florida. When in Florida, I usually fly into the airport in Orlando and drive over a 100 miles to Ocala. During my drive, I pass through numerous county and city taxing jurisdictions. In the two hours it takes me to drive between Orlando and Ocala, I usually place several wireless calls. Under the current scheme, I may be taxed for calls based on the cell site my calls are originating from, I may be taxed if my calls originate at a switch in one of those jurisdictions, or I may be taxed based on my roaming, or my billing address. And often at times, I may be taxed more than once for the same phone call. Not only is the current system of taxing wireless calls incredibly complex for carriers, but it is also costly for consumers, often times resulting in headaches.

H.R. 3489 before us today, reduces the costs of administrating taxes for carriers and governments, while providing consumers with simplified billing. This bill assigns a consumer's primary residence or business as the taxing jurisdiction for the purposes of taxing roaming and other charges that are subject to state and local taxation.

The legislation we have before us brings order and common sense to the manner in which wireless telecommunications services are taxed. It benefits consumers, industry, and government. I urge my colleagues to support and ensure passage of this legislation.

Thank you.

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WYOMING

Thank you, Mr. Chairman, for scheduling this important legislative hearing on a bill that I am a proud cosponsor of, H.R. 3489, the Wireless Telecommunications Sourcing and Privacy Act.

I commend Congressman Pickering for putting forth this very important piece of legislation and am pleased to see that a section of the bill includes Congresswoman Wilson's privacy language which I supported in the form of H.R. 514.

Very quickly I want to express my support for clarifying and simplifying the complex web of taxes that apply to wireless phone calls.

Confusion over these taxes—that quite literally transcend human comprehension—make life for both wireless providers and their customers miserable.

The wireless industry as well as local government groups deserve a considerable amount of praise for their efforts in coming to the compromise we see in front of us today.

Again, Mr. Chairman, thank you for bringing this legislation before the subcommittee in such an expedient manner.

I yield back the balance of my time.

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you, Mr. Chairman.

I want to thank my good friend from Mississippi, Mr. Pickering, for his leadership on this issue. He has done fine work to bring this issue to our attention. He also has been a leader on wireless issues in general and I look forward to any additional work he does in this area.

This bill contains a number of provisions affecting wireless services, but let me focus on the heart of the legislation. Section 3 of the bill sets forth a compromise on taxation of certain wireless services.

Through hard work and tough negotiations, the differing parties—including those that will testify today—were able to reach agreement on how best to tax consumers' use of wireless services.

The current problem this bill will solve is monumental. Today, the various taxing jurisdictions have enacted a myriad of differing approaches to taxing wireless services. These differing systems often overlap and contradict each other. This can lead to double taxes.

Under the current law, the wireless carriers are forced to determine for *each wireless call* which tax-man should get a piece of the pie. Think of the paperwork and hours wasted on such a task.

The compromise contained in section 3 is an attempt to bring some common sense to the issue. And the benefits should be staggering—for all parties involved. Most importantly, consumers will benefit from a law to simplify their bills and prevent extra taxes.

I must admit, however, that this debate is a tad off the mark. The real question should be—Is it sound policy to put a *consumption* tax on wireless calls? These types of consumer taxes increase consumer cost and therefore have an effect on how much wireless systems are used.

This bill will codify a system that allows for states and localities to impose a *disincentive* to use one of the most innovative and convenient technologies today. The wireless industry has accepted this fate and in effect, tied consumers to this result as well.

I would hope that if we had to do it all over again and as we look at this type issue in another context, we would discuss whether this type of taxation is necessary at all, rather than how to simplify it.

With that said, I will support the approach in the bill because it leans in the right direction.

Mr. TAUZIN. Thank the gentleman, and the Chair is now please to welcome our witnesses. Mr. Brooks, you're not related to the former Chairman Brooks of the judiciary committee, are you?

Mr. BROOKS. No, I am not. I resemble him. I hope you thought highly of him, too. He's a good friend.

Mr. TAUZIN. Guys, you know the drill. Your written statements by unanimous consent and made a part of the record as well as all the written statements of all the members of the subcommittee. Mr. Wheeler, you've been here many times before. We'll begin with you, if you would in 5 minutes summarize the important testimony you brought to us today. Mr. Wheeler?

STATEMENTS OF THOMAS E. WHEELER, PRESIDENT AND CEO, CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION; JOSEPH E. BROOKS, COUNCILMAN, CITY OF RICHMOND; RAYMOND C. SCHEPPACH, EXECUTIVE DIRECTOR, OFFICE OF STATE FEDERAL RELATIONS, NATIONAL GOVERNOR'S ASSOCIATION; AND DAN R. BUCKS, EXECUTIVE DIRECTOR, MULTISTATE TAX COMMISSION

Mr. WHEELER. Mr. Chairman, we're kind of the fourth wheel on this wagon, and with all due respect, perhaps Councilman Brooks can start the ball rolling here.

Mr. TAUZIN. Not a problem. We'll go to you, Mr. Brooks, and I appreciate your summary of your testimony, sir.

STATEMENT OF JOSEPH E. BROOKS

Mr. BROOKS. Mr. Chairman, thank you very much. It's always nice to follow another Virginian, I guess I could say. I attended the meeting this morning.

Mr. Chairman and members of the subcommittee the National League of Cities is pleased to have this opportunity to share our views on the Wireless Telecommunication and Privacy Act. As you've already stated, I am Joe Brooks. I'm a member of the City

Council of the city of Richmond. I also currently serve on the board of directors of the National League of Cities.

The National League of Cities represents approximately 135,000 mayors and local elected officials from cities, towns, and villages across America. They range in population from our Nation's largest cities of Los Angeles, New York, to its smallest towns. We are the nation's oldest association representing municipal interest in Washington. At this time, as you have indicated, the written testimony is a part of the record.

On behalf of the National League of Cities, I would like to express my gratitude to Representative Pickering for introducing the Wireless Telecommunications Sourcing and Privacy Act. His leadership on this issue clearly shows his confidence in State and local government's ability to resolve complex telecommunication issues without Federal preemption of traditional municipal authority. The mobility afforded to millions of American consumers by mobile telecommunication services has helped transform the American economy, facilitate the development of the information superhighway, and provides important public safety benefit.

As we enter the 21st century, however, the telecommunication industry and State and local governments have been wrestling over numerous taxation issues. This measure is positive proof that we can afford solutions that address the critical needs of cities and foster the growth of telecommunication industries. This cooperative effort is how we believe other issues involving telecommunication industry can be resolved. This stands in sharp contrast to the procedures of the ACEC that we heard this morning.

NLC welcomes the opportunity to develop a partnership with you, Mr. Chairman, and members of the subcommittee to address the Wireless Telecommunications Sourcing and Privacy Act and other Federal efforts relating to meaningful telecommunications tax simplification that respects local governments, fiscal needs and autonomy.

In my testimony today, I want to voice the National League of Cities' strong support for the Wireless Telecommunication Sourcing and Privacy Act. This legislation is the accumulation of a 3-year cooperative effort between the wireless industry, and National League of Cities, the National Governor's Association, the Federation of Tax Administrators and the Multistate Tax Commission. Working with industry and our State partners, we have developed a measure that we believe provides a straightforward solution to a very complicated problem. From the National League of Cities perspective, this legislation benefits consumers, State and local governments, and the wireless industry.

The application of local taxes on wireless services presents unique and difficult problems, both for local governments and for wireless service providers. There's been considerable debate among industry and State and local governments as to which jurisdiction should have the right to tax wireless calls. Is it the town, county, or State from which the call originated? Is it where the call terminated or where some element of the wireless provider's transmission facility is located?

The Act answers this question and others like it in a way that upholds and adheres to traditional notions of State and local sov-

ereignty with respect to taxation. The measure does not change the ability of States and localities to tax the telecommunications services. It is generally revenue neutral among the local governments, equitable among carriers and taxing jurisdictions and considerably easier to administer.

For the local government, the measure addresses several important issues—nexus, collection, and remittance of existing taxes due, and of course, simplification and uniformity. The measure bolsters the ability of State and local governments to collect those taxes they choose to impose on wireless providers while simplifying wireless provider's job of determining which taxes apply to them. The measure removes any doubt as to a local taxing jurisdiction's ability to impose an existing tax on cellular services by expressly recognizing the authority of the taxing jurisdictions indicated by the customer's place of primary use. It prevents the exercise of additional authority by any other local taxing jurisdictions.

The measure does not mandate any expenditure of State or local funding. In addition to preserving State and local government revenues, the Wireless Telecommunication Sourcing and Privacy Act lowers the cost of collecting taxes that are owed. I cannot stress enough that the current system is an accounting nightmare and a drain on local governments. Overall, the existing system is administrative burdens for governments and costly for consumers.

State and local taxes that are not consistently based can result in some telecommunication revenues inadvertently escaping local taxation altogether, thereby depriving local governments of needed tax revenues to pay for vital functions they provide, such as police, fire, emergency service. The Wireless Telecommunications Sourcing and Privacy Act would relieve local taxing authorities of burdensome orders and oversight responsibilities without losing the authority to tax wireless calls. The measure puts local governments and service providers on a level playing field by sparing them the arduous task and expense of determining the taxability of every individual cellular call included in the bill, including calls that cross taxing jurisdictions multiple times during the same call. The measure establishes a uniform standard for sourcing cellular telecommunications for all State and local governments that tax these activities.

The measure's new method of sourcing wireless revenue for local tax purpose is needed to avoid the potential, as the chairman indicated, of double or no taxation. To provide carriers, taxing jurisdictions, consumers with an environment of certainty and consistency in the application of tax law. The measure's public and private partnership shows that the State and local governments in the wireless industry can work together to produce beneficial results for all stakeholders.

The local government's uniformity that respects local autonomy is important because it simplifies the compliance for our cities. The measure provides much needed relieve for State and local governments that are impinging upon the essential responsibility of local taxing authority.

Mr. Chairman and members of the subcommittee, I greatly appreciate your leadership on this issue and look forward to working with you as this crucial piece of legislation moves forward to a final

passage. I'll be happy to answer any questions that the subcommittee may have at the appropriate time.

[The prepared statement of Joseph E. Brooks follows:]

PREPARED STATEMENT OF JOSEPH E. BROOKS, COUNCIL MEMBER, RICHMOND,
VIRGINIA ON BEHALF OF THE NATIONAL LEAGUE OF CITIES

Mr. Chairman and Members of the Subcommittee, the National League of Cities (NLC) is pleased to have this opportunity to share our views on the Wireless Telecommunications Sourcing and Privacy Act. My name is Joseph E. Brooks and I am a City Council Member from Richmond, Virginia. I also currently serve on the National League of Cities' Board of Directors.

The National League of Cities represents 135,000 mayors and local elected officials from cities and towns across the country that range in population from our nation's largest cities of Los Angeles and New York to its smallest towns. NLC is the nation's oldest national association representing municipal interests in Washington. At this time, I ask that my written testimony be submitted for the record.

On behalf of the National League of Cities I would like to express my gratitude to Representative Pickering for introducing the Wireless Telecommunications Sourcing and Privacy Act (H.R. 3489). His leadership on this issue clearly shows his confidence in state and local governments' ability to resolve complex telecommunications issues without federal preemption of traditional municipal authority.

The mobility afforded to millions of American consumers by mobile telecommunications services has helped transform the American economy, facilitate the development of the information superhighway and provides important public safety benefits. As we enter the 21st Century, however, the telecommunications industry and state and local governments have been wrestling over numerous taxation issues. This measure is positive proof that we can forge solutions that address the critical needs of cities and foster the growth of the telecommunications industry. NLC welcomes the opportunity to develop a partnership with you, Mr. Chairman, and the members of the Subcommittee, to address the Wireless Telecommunications Sourcing and Privacy Act and other federal efforts relating to meaningful telecommunications tax simplification that respects local governments' fiscal needs and autonomy.

In my testimony today, I want voice the National League of Cities' strong support for the Wireless Telecommunications Sourcing and Privacy Act. This legislation is the culmination of a three-year cooperative effort between the wireless industry, the National League of Cities, the National Governors' Association, the Federation of Tax Administrators, and the Multi-State Tax Commission. Working with industry and our state partners, we have developed a measure that, we believe, provides a straightforward solution to a very complicated problem. From the National League of Cities' perspective, this legislation benefits consumers, state and local governments and the wireless industry.

The application of local taxes on wireless services presents unique and difficult problems both for local governments and for wireless service providers. There has been considerable debate among industry and state and local governments as to which jurisdictions should have the right to tax wireless calls. Is it the town, county or state from which the call originated? Is it where the call terminated or where some element of the wireless provider's transmission facility is located?

The Wireless Telecommunications Sourcing and Privacy Act answers this question and others like it in a way that upholds and adheres to traditional notions of state and local sovereignty with respect to taxation. The measure does not change the ability of states and localities to tax telecommunications services. It is generally revenue-neutral among local governments, equitable among carriers and taxing jurisdictions, and considerably easier to administer. For local government, the measure addresses several important issues—nexus, collection and remittance of existing taxes due, and of course, simplification and uniformity.

The measure bolsters the ability of state and local governments to collect those taxes they choose to impose on wireless providers while simplifying wireless providers' job of determining which taxes apply to them. The measure removes any doubt as to a local taxing jurisdiction's ability to impose an existing tax on cellular services by expressly recognizing the authority of the taxing jurisdictions indicated by the customer's place of primary use, and preventing the exercise of additional authority by any other local taxing jurisdictions. The measure does not mandate any expenditure of state or local funding.

In addition to preserving state and local government revenues, the Wireless Telecommunications Sourcing and Privacy Act lowers the cost of collecting taxes that

are owed. I cannot stress enough, that the current system is an accounting nightmare and a drain on local governments. Overall, the existing system is administratively burdensome for local governments and costly for consumers. State and local taxes that are not consistently based can result in some telecommunications revenues inadvertently escaping local taxation altogether, thereby depriving local governments of needed tax revenues to pay for the vital functions they provide such as police and fire, and emergency services. The Wireless Telecommunications Sourcing and Privacy Act would relieve local taxing authorities of burdensome audits and oversight responsibilities without losing the authority to tax wireless calls. The measure puts local governments and service providers on a level playing field by sparing them the arduous task and expense of determining the taxability of every individual cellular call included in a bill, including calls that crossed taxing jurisdictions multiple times during the same call. The measure establishes a uniform standard for sourcing cellular telecommunications for all state and local governments that tax these activities.

The measure's new method of sourcing wireless revenues for local tax purposes is needed to avoid the potential for double or no taxation; and to provide carriers, taxing jurisdictions and consumers with an environment of certainty and consistency in the application of tax law. For local governments, uniformity that respects local autonomy is important, because it simplifies compliance for our cities and avoids multiple taxation. This measure provides much needed relief for state and local governments without impinging upon the essential responsibility of local taxing authority.

The measure's public-private partnership shows that the state and local governments and the wireless industry can work together to produce beneficial results for all stakeholders.

Mr. Chairman and Members of the Subcommittee, I greatly appreciate your leadership on this issue and look forward to working with you as this crucial piece of legislation moves forward toward final passage. I would be happy to answer any questions that the Subcommittee may have at the appropriate time.

Mr. TAUZIN. Thank you, Mr. Brooks. Who wants to go next? Mr. Scheppach is next.

STATEMENT OF RAYMOND C. SCHEPPACH

Mr. SCHEPPACH. Thank you, Mr. Chairman. I appreciate your inviting me here to testify on behalf of the nation's Governors. I'll submit the full statement, and I'll really only take a minute or 2 to summarize it very, very quickly.

First let me say that the NGA is in full support of H.R. 3489, the Wireless Telecommunication Sourcing and Privacy Act. Second, I'd like to say I very much appreciate the willingness of this industry to sit down and negotiate out this bill. We really look at it as a potential model because we're all going to be dealing with some further major economic changes in the future, and we hope that rather than preemption by the Federal Government, that we're allowed to work out our problems with the industry.

In terms of the provisions on this bill, it's fairly straightforward. No. 1, it simplifies the billing system. It simplifies it for consumers, for government and for business, and therefore it should lead to some fairly significant cost reductions.

Second of all, it's revenue neutral. It does not have any Federal mandate with respect to State spending, and most of all it protects State sovereignty. There is no preemption of State authority. So, those provisions are very good. They're straightforward. We support the bill, and we would urge you to move quickly to mark up and go to the Floor, and I'd be happy to answer any questions.

[The prepared statement of Raymond C. Scheppach follows:]

PREPARED STATEMENT OF RAYMOND C. SCHEPPACH, EXECUTIVE DIRECTOR, OFFICE
OF STATE FEDERAL REGULATIONS, THE NATIONAL GOVERNORS' ASSOCIATION

Chairman Tauzin and other members of the committee, thank you for inviting me to testify on H.R. 3489, the Wireless Telecommunications Sourcing and Privacy Act. I am Ray Scheppach, executive director of the National Governors' Association, and I am testifying today on behalf of the association.

First let me thank you and Mr. Pickering and the other cosponsors for your leadership and sponsorship of the Wireless Telecommunications Sourcing and Privacy Act. The National Governors' Association is very excited about this legislation, particularly about the process that led to its creation and introduction at the end of last year. The wireless industry approached NGA and other state and local organizations slightly more than two years ago to bring an issue to our attention.

The issue was state and local taxation of wireless phone services. The wireless industry had originally approached Congress to solve their problems, but since the issue was by its very nature a state and local issue, you asked them to come to us first to see if we could work out a mutually acceptable solution. And that is exactly what we have done during the past two years. The solution that we reached is reflected in the legislation that we are discussing today.

We are hopeful that this approach can serve as a model for similar issues in the future. By working collaboratively, government and industry can develop solutions that end up working better for everybody than solutions that are developed unilaterally. This applies not just to collaboration between one level of government—such as state government—and industry, but also to collaboration between the different levels of federal, state, and local government. Part of what makes this legislation so exciting from our perspective is this unique cooperative approach between all affected parties.

You are going to hear about a lot of the details of this legislation from the other witnesses today, so I would like to address the legislation from a slightly broader perspective. Many state and local telecommunications taxes and tax systems were created before the advent of wireless phones. The result of this is that we have tax systems in place that really are not appropriate for mobile telecommunications and consequently create a lot of administrative headaches and even financial liability for the companies in this industry. Fundamentally, we have a 20th century tax system that applies to a 21st century industry.

Let me just give you a few examples of what I mean. Some state and local tax jurisdictions require phone companies to tax telecommunications services where they occur. This is easy to do when I pick up a landline phone in my office or my home and make a call. It becomes a little more complicated when I pick up my cell phone and make a call.

Should the service be taxed by the jurisdiction where I am physically located at the time I am making the call? How does the phone company figure out where I am? What if I am driving between my home in Virginia and my office in the District of Columbia? What if the cellular tower that is transmitting the call happens to be located in a different tax jurisdiction than the one in which I am physically standing?

As you can clearly see, the issue becomes very complicated very quickly. And this list of questions applies only to one scenario of how a state or local tax jurisdiction requires the tax to be applied. The list may grow exponentially when you consider that different jurisdictions have different rules for determining how calls should be taxed. Some places tax telecommunications services based on where the call physically takes place, other places apply taxes based on a customer's billing address, and others still determine taxes using the originating cell site, tower, or switch. It is simply unreasonable and incredibly burdensome to expect the phone companies to be able to figure out all these variables and then collect and remit taxes on behalf of all the appropriate jurisdictions.

These issues alone are sufficient to require a solution, but the problems go further than just figuring out the location of a call for tax purposes. The marketplace for cellular telecommunications services is evolving in ways that the existing tax system is not designed for and cannot accommodate. Just as the task of figuring out exactly where a call takes place for tax purposes has become increasingly complex in the wireless era, so has the task of figuring out exactly how much a call costs. Wireless services are often sold in buckets or bundles of minutes, so it is very difficult for the phone companies to assign a specific cost to each phone call or each minute of service for that matter. When you add this complicating wrinkle to the already difficult chore of figuring out which combination of state and local jurisdictions have the authority to tax a call, it becomes readily apparent why it is so important to overhaul the state and local tax system for wireless telecommunications services.

I touched on this point earlier, but I would like to emphasize again how remarkable and significant it is that different levels of government have worked so successfully with industry to reach a mutually acceptable solution. Rather than seeking to avoid existing tax collection responsibilities, industry approached state and local governments to help them develop a uniform and sensible approach to fulfilling these responsibilities on behalf of state and local governments. The Wireless Telecommunications Sourcing and Privacy Act does not seek to expand or reduce any company's tax collection responsibilities, nor does it seek to determine or change whether a state or local jurisdiction does or does not tax wireless services or at what rate they choose to do so.

The act creates a uniform method for determining where wireless services are deemed to occur for purposes of taxation. In those states where wireless services are taxed today, they will continue to be taxed under this bill. For those states that have chosen not to tax wireless services, they will continue not to be taxed. Furthermore, state and local governments will retain the authority that they have today to make future changes as their governors and legislatures decide regarding the taxability of these services and what rates apply to them.

The bottom line is that this mobile telecommunications sourcing legislation does what it needs to do in the way that it needs to be done. It establishes uniformity across state and local jurisdictions in the way that they determine which jurisdictions have the authority to tax a particular call. This provides the simplicity and consistency that industry needs. But the Wireless Telecommunications Sourcing and Privacy Act also preserves the ability of state and local governments to make fundamental decisions about how to raise the revenues they need to provide essential public services ranging from educating children to building roads to providing police and fire safety. We appreciate the hard work of industry to address these issues in a fair and mutually beneficial manner and think that these efforts and the interests of industry, state and local governments, and consumers are well reflected in the Wireless Telecommunications Sourcing and Privacy Act.

Thank you again for inviting me to testify today on behalf of the National Governors' Association. We look forward to continue working with you, your colleagues in the Senate, and the other groups represented here today to achieve passage of this important legislation. I would welcome any questions you might have.

Mr. TAUZIN. Thank you very much, sir. The buck stops here, Mr. Bucks.

STATEMENT OF DAN R. BUCKS

Mr. BUCKS. Okay, thank you. Mr. Chairman, members of the committee, it's a pleasure to be here. We thank you for this opportunity to both comment and to submit written testimony which we've done, so I'm Dan Bucks. I'm the executive director of the Multistate Tax Commission, which is an organization of State governments that works with taxpayers to administer equitably and efficiently tax laws that apply to multistate and multinational enterprises. We're pleased here to join in strong support of H.R. 3849.

As the other speakers have noted, we join as well in the applause for the efforts of cooperation between industry and State and local governments that put this legislation together, and it really is, we hope, a model for a broader dialog in other areas as well.

Now, one might ask, and I've had to ask myself why is the Multistate Tax Commission that's an organization of State governments so committed to working for the passage of Federal legislation governing an issue that's normally a matter of State sovereignty. The answer here is I think simple. We share the views of several Members of Congress that it is essential that the Constitutional authority of State and local governments to decide on the tax policies affecting their citizens to be protected and not preempted by the Federal Government.

In this case, what we don't have here is we don't have the kind of preemption that creates winners or losers among States or local-

ities or among different categories of taxpayers. We don't have that. What we have instead is an opportunity for the Federal Government to work with the States and localities using their power to regulate interstate commerce and to resolve issues of federalism in a way that is of mutual benefit to State and local governments and the industry to achieve an efficient and equitable result, and that's why this is one of the reasons why this is a good piece of legislation.

I want to comment on three of the principles that are embodied here in the legislation, as some others have noted as well. The bill protects State sovereignty. States retain the right to determine whether or not they wish to tax telecommunications services, including mobile telecommunications, and this legislation neither mandates nor prohibits such taxes. It just makes a more efficient system possible.

With regard to uniformity, as others have already noted, there's a uniform rule here for the siting of phone calls that is the core of the principles in this legislation, and that's what makes this thing work.

The other component that has not been commented on is the use of technology, and this is another innovative feature of the legislation. The legislation breaks new ground in terms of harnessing modern technology to help solve a tax issue that was created by modern technology, and this technology in this case involves the States providing a data base of certified tax rates for specific address localities upon which the industry can rely for the calculation of the tax.

Now, I might comment that the use of technology in this particular case is of particular benefit to the consumers and industries operating in Louisiana because of the robust system of local sales taxation in Louisiana, Mr. Chairman, and this data base will be particularly helpful in the context of your State.

Mr. TAUZIN. There's a lot of robustness in Louisiana.

Mr. BUCKS. We concur. With regard to—and one other provision that's very important is the non-severability clause in this legislation. It's absolutely critical. Without that clause, the legislation could create an incentive for litigation that would unfortunately convert this legislation from being of mutual benefit to all the parties that you see here to something that would, in fact, preempt State taxing authority and undermine State sovereignty.

Now, I want to mention two technical points in section three of the legislation that have been brought to our attention that we would like to correct by amendment when the legislation is brought up for consideration. There will be first a technical amendment that will conform the Federal legislation to a unique circumstance in one State's constitution to allow telecommunications companies operating within that State that are currently subject to the State's business and occupational tax to calculate this business tax base according to separate provisions. It's really required by that State's constitution.

Second, there will be an amendment to exempt one State's single business tax from inclusion under this legislation. These changes are technical in nature. They do not affect States other than those

that they address, and they do not impact the intent of the legislation.

Again, we've enjoyed the opportunity to work with the industry with the other organizations here at the table to bring about what we think is an efficient and equitable solution to an otherwise vexing problem in terms of the operation of these taxes in the modern economy. Thank you.

[The prepared statement of Dan R. Bucks follows:]

PREPARED STATEMENT OF DAN R. BUCKS, EXECUTIVE DIRECTOR, MULTISTATE TAX COMMISSION

I. The Multistate Tax Commission. The Multistate Tax Commission is an organization of state governments that works with taxpayers to administer, equitably and efficiently, tax laws that apply to multistate and multinational enterprises. Created by an interstate compact, the Commission:

- encourages tax practices that reduce administrative costs for taxpayers and States alike;
- develops and recommends uniform laws and regulations that promote proper state taxation of multistate and multinational enterprises;
- encourages proper business compliance with state tax laws through education, negotiation and compliance activities; and
- protects state fiscal authority in Congress and the courts.

Forty-four States (including the District of Columbia) participate in various programs of the Commission.

Mobile telecommunications have transformed our way of life. In the present day, it is common, sometimes preferred, to conduct business or converse with friends and family on a wireless telephone while moving about the city, the state, the country, or the world. This new mobility presents challenges for consumers, telecommunications service providers, and, in particular, local, state, and federal governments that must regulate both the service and use of mobile telecommunications.

HR 3489, the *Wireless Telecommunications Sourcing and Privacy Act* is the product of several years of earnest negotiations between the states and telecommunications providers to resolve the difficult issue of providing a uniform rule for determining the location of mobile telecommunications services and assigning a taxing jurisdiction to those services. This effort is unique. Rarely, have states and industry collaborated in this manner. The result of this effort has produced a dramatic simplification in telecommunications taxes that protects consumers, streamlines tax reporting mechanisms for telecommunications providers, and prevents potential double tax assessments by states upon consumers. Most importantly for states and localities, HR 3489 preserves their sovereignty and taxing authority over state and local telecommunications tax structures.

The Multistate Tax Commission is pleased to offer its support for HR 3489. A copy of the Commission's resolution supporting this legislation is attached to this statement.

II. The Proposal. In practical and general terms, HR 3489, the *Wireless Telecommunications Sourcing and Privacy Act* (the "Act") provides a uniform rule for determining the location of the sale and purchase of mobile telecommunications (wireless) services when that determination is necessary for the proper application of a state or local tax. The uniform rule of the proposal is that only the taxing jurisdiction or jurisdictions may impose the telecommunications taxes covered by the proposal¹ whose territorial limits encompass the wireless customer's place of primary use. This defined location in practical effect establishes where the sale and purchase subject to the state or local tax is occurring. The uniform rule also necessarily identifies the taxing jurisdictions that may impose a tax collection and/or payment obligation and the wireless providers to which the obligation pertains.

III. Reasons for the Proposal. States and localities impose transactional taxes, like sales and use taxes, on the provision of mobile telecommunications services. A transactional tax for these purposes is a tax that necessarily requires a determination of where the services are sold and purchased in order to apply the taxes applicable to that location. It can be difficult to determine the precise location of the sale and purchase of wireless services. Consequently, it can also be difficult to determine the precise taxes that are applicable to the provision of wireless services.

¹ There may be more than a single jurisdiction, because in some States telecommunications taxes coming within the terms of the proposal are imposed by local jurisdictions.

Difficulty in determining the precise location can arise from the mobile character of the services. Thus, for example, a wireless call can come from and go to any location and the location can even change during the course of the call. Further, wireless companies offer billing plans that significantly reduce at the retail level the business need to identify the precise location of the retail sale and purchase. One example of this trend is a nationwide subscription plan that permits wireless calling without roaming charges or long-distance charges from any location, provided a certain specified number of minutes of use per month is not exceeded.

It can also be difficult to determine all the taxes that are applicable to the precise location where a wireless call is sold and purchased. This difficulty can arise from having to match correctly each identified location to the boundaries of the various local taxing jurisdictions in a State that permits local taxation of wireless telecommunications. Given these and other practical difficulties, the wireless industry sought development of taxing systems that lessened the burden of having to determine the location of the sale and purchase of *each* wireless call and the taxes applicable to *each* call. This effort captured the attention of state and local tax administrators who desire to have existing tax systems better match current business practices and reality. Representatives of the wireless industry and state and local tax administrators jointly developed the proposed *Wireless Telecommunications Sourcing and Privacy Act* (July 21, 1999, version) (the "Act").

IV. Conceptual Structure of Proposal. (1) *Taxes Subject to Act*—This remedial legislation is applicable only to a limited set of state and local taxes for which the demands of sourcing require amelioration. The taxes that come within the scope of the Act are those for which it is necessary to determine the location of the sale and purchase of mobile telecommunications services in order to apply the tax.

(2) *Sourcing*—The Act eliminates the need to determine the precise location of the sale and purchase of mobile telecommunications services where charges are billed by or for the wireless provider with which the customer contracts for services. In place of locating the sale and purchase, the Act provides that wireless calls will be located for tax purposes in the jurisdiction(s) of the customer's *place of primary use*. Place of primary use for these purposes means either the customer's residence or primary business location that is within the licensed service area of the wireless provider with which the customer contracts for wireless services. Limiting a place of primary use to one of these two choices minimizes the opportunity for tax planning that could occur through the selection of a taxing situs solely for its tax climate.

In implementing this sourcing rule, the Act contains both a congressional authorization and prohibition. First, the Act *authorizes* States and localities to apply their taxes to wireless telecommunications on the basis of the place of primary use concept regardless of the origination, termination, or passage of the telecommunications being taxed. Second, the Act prohibits any other State and locality from taxing the telecommunications.

(3) *Identification of Tax Jurisdiction(s)*—Additionally, the Act provides that a State can elect, from time to time, to make a database available to wireless providers that would match a specific street address to the applicable taxing jurisdiction(s). This match would then permit wireless providers to determine the applicable taxes of the jurisdiction(s). If the wireless provider uses a database provided by a State, the State may not assess the provider for taxes not paid as a result of errors or omissions in the database. Alternatively, if a State elects not to provide the database, the provider may use an enhanced zip code (zip + 4 or a zip of more than nine digits) matching system to determine the applicable taxing jurisdiction(s). A provider may not be assessed for taxes not paid under the enhanced zip system as long as the provider uses due diligence in completing the match.

(4) *Nonseverability Clause*—The Act provides that if subsequent litigation determines that the Act violates federal law or the Constitution or that federal law or the Constitution substantially impairs the Act, the entire Act falls. This nonseverability is a critical feature of the Act, because the States are giving up an existing state tax system with one set of jurisdictional understandings in favor of a different taxing system with a different jurisdictional understanding. Without that clause, the legislation could create an incentive for litigation that would, unfortunately, seek to convert this legislation from being of mutual benefit to states, localities and the industry to legislation that would, in fact, preempt state taxing authority and undermine state sovereignty. If the new system is lost, the States want an unrestricted ability to return to the status quo ante.

V. Proposed Annual Review of Regulatory Fees. The Act contains provisions relating to a proposed annual review by the U.S. Comptroller General regarding annual regulatory fees collected by the Federal Communications Commission. The Commission takes no position on this provision.

VI. Provisions Regarding Commerce in Electronic Eavesdropping Devices. The Act contains provisions relating to the tampering of electronic communication devices and penalties that may be assessed for the unauthorized publication of electronic communications. The Commission takes no position on these provisions.

VII. Outline of Provisions. The provisions of the Act are as follows—

- a. The findings of *Sec. 2* describe the problem of applying state and local transactional taxes to wireless telecommunications and the competing value of preserving viable state and local governments in our federal system. The findings also acknowledge the need for a practical solution in the area of state and local taxation of mobile telecommunications services.
- B. *Sec. 3* directs classification of the provisions of the Act to a position in title 47, United States Code. Thus, title 47 is amended by adding new Sec. 801 thru 812 with provisions as follows:
 1. *Sec. 801(a)* describes the taxes subject to the sourcing rules of the Act. By definition of inclusion and exclusion the affected taxes are limited to transactional taxes where it is necessary to identify the location of the sale and purchase of the mobile telecommunications services.
 2. *Sec. 801(b)* excludes the applicability of the Act to certain specified taxes. The exclusion means that the Act applies to taxes whose application is dependent upon locating the place of sale and purchase of wireless telecommunications. Taxes excluded from the Act include, among others, income taxes and taxes on an equitably apportioned gross or net amount that is not determined on a transactional basis.
 3. *Sec. 801(c)(1)* provides that the place of primary use sourcing rule of the Act does not apply to prepaid telephone calling services. See Sec. 3(m)(8) that defines these services.
 4. *Sec. 801(c)(2)* clarifies the application of the provision in the Act that resellers are not customers when the Internet Tax Freedom Act (Title XI of Pub. L. 105-277) precludes taxability of either a sale or resale of mobile telecommunications services. If the Internet Tax Freedom Act prohibits taxation of either the sale or resale, a State is not restricted under the Act from taxing the sale (in case of a restriction against taxation of the resale) or the resale (in the case of a restriction against taxation of the sale) wireless telecommunications services.
 5. *Sec. 801(c)(3)* provides that the place of primary use sourcing rule of the Act does not apply to air-ground radiotelephone service as defined in 47 C.F.R. § 22.99 as of June 1, 1999.
 6. *Sec. 802* establishes the rule of taxation that wireless telecommunications are taxable by jurisdiction(s) in which the place of primary use is located. The rule only applies to charges for wireless services for which charges are billed by or for the wireless provider with which the customer contracts. See Sec. 809(5).
 7. *Sec. 802(b)* authorizes States and localities to impose taxes based upon the place of primary use and prohibits them from imposing taxes on a different basis.
 8. *Sec. 803* limits the effect of the Act to its express terms.
 9. *Sec. 804* allows a State or a designated database provider to make a database available in a uniform format. The database will match street addresses (in standard postal format) within the State to the applicable taxing jurisdictions. A wireless provider using the database is generally protected against assessment for errors or omissions in the database.
 10. *Sec. 805(a)* authorizes a wireless provider to use a system that matches enhanced zip codes (zip + 4 or zip codes of more than nine digits) to the applicable taxing jurisdictions, when a State elects not to provide the database described in Sec. 804. Specified conventions apply to the use of the enhanced zip system. A wireless provider is protected against assessment for an erroneous matching of a street address to the applicable taxing jurisdiction(s) where the provider can show it exercised due diligence.
 11. *Sec. 805(b)* continues the qualified protection against assessment for wireless providers that are using the enhanced zip system for a defined transitional period following the taxing State's provision of a database that meets the requirements of Sec. 804.
 12. *Sec. 806(a)* provides that a taxing jurisdiction under specified procedures can require (through an audit-like action after meeting certain standards) a wireless provider to change prospectively the customer's place of primary use or require the wireless provider to change prospectively the applicable taxing jurisdiction(s). The affected customer or the wireless provider is afforded the opportunity of administrative review, if desired.

13. *Sec. 807(a)* notes that initial designation of the place of primary use is principally the responsibility of the customer. A customer's designation is subject to possible audit. See *Sec. 806(a)* discussed above. *Sec. 806(a)(2)* states that, with respect to taxes customarily itemized and passed through on the customer's bills, the wireless provider is not generally responsible for taxes subsequently determined to have been sourced in error. However, these rules are subject to the wireless provider's obligation of good faith.
14. *Sec. 806(b)* provides that in the case of a contract existing prior to the effective date of the Act a wireless provider may rely on its previous determination of the applicable taxing jurisdiction(s) for the remainder of the contract, excluding extensions or renewals of the contract.
15. *Sec. 808(a)* contemplates that a taxing jurisdiction may proceed, if authorized by its law, to collect unpaid taxes from a customer not supplying a place of primary use that meets the requirements of the Act.
16. *Sec. 808(b)* states that a wireless provider must treat charges that reflect a bundled product, only part of which is taxable, as fully taxable, unless reasonable identification of the non-taxable charges is possible from the wireless provider's business records kept in the regular course of business.
17. *Sec. 808(c)* limits non-taxability of wireless telecommunications in a jurisdiction where wireless services are not taxable. A customer must treat charges as taxable unless the wireless provider separately states the non-taxable charges or provides verifiable data from its business records kept in the regular course of business that reasonably identifies the non-taxable charges.
18. *Section 809* defines the terms of art of the Act:
 - a. *Sec. 809(1)* defines "charges for mobile telecommunications services".
 - b. *Sec. 809(2)* defines "taxing jurisdiction."
 - c. *Sec. 809(3)* defines "place of primary use" as the customer's business or residential street address in the licensed service area of the wireless provider. Place of primary use is used to determine the taxing jurisdiction(s) that may tax the provision of mobile telecommunications services. If a wireless provider has a national or regional service area, like a satellite provider, the place of primary use is still limited to the customer's business or residential street address within that larger service area.
 - d. *Sec. 809(4)* defines "licensed service area."
 - e. *Sec. 809(5)* defines "home service provider."
 - f. *Sec. 809(6)* defines "customer." Under a special rule, customers include employees (the end users) of businesses that contract for mobile telecommunications services. Customers do not include (i) resellers, except resellers where the Internet Tax Freedom Act would prohibit taxation of wireless services sold by a reseller (see item Q, above); and (ii) a serving carrier providing wireless services for a customer who is outside the customer's contractual provider's licensed service area.
 - g. *Sec. 809(8)* defines "prepaid telephone calling services."
 - h. *Sec. 809(9)* defines "reseller." A reseller does not include a serving carrier providing wireless services for a customer who is outside the customer's contractual provider's licensed service area.
 - i. *Sec. 809(10)* defines "serving carrier."
 - j. *Sec. 809(7)* defines "designated database provider."
 - k. *Sec. 809(11)* defines "mobile telecommunications services" as commercial mobile radio service as defined in 47 C.F.R. § 20.3 as of June 1, 1999. This definition includes wireless services that are furnished by a satellite provider.
 - l. *Sec. 809(12)* defines "enhanced zip code," a term that refers to zip +4 or a zip code exceeding nine digits.
19. *Sec. 810* negates FCC jurisdiction over the Act, thereby avoiding the anomalous circumstance of a non-elected federal regulatory body having administrative responsibility over a provision going to the core of state sovereignty in our federal system of government.
20. *Sec. 811* expressly provides for nonseverability in the event of a judicial determination that the Act is unconstitutional or otherwise substantially impaired from accomplishing its objective.
21. *Sec. 812* establishes an effective date of the first month following two years after enactment. The transitional delay allows both business and tax administrators to gear up for a change in their existing systems, including the possible use of the database authorized by *Sec. 804*. Further, *Sec. 812* provides that nothing in the Act affects the intent or implementation of either the *Internet Tax Freedom Act* or *Telecommunications Act of 1996*.

- V. Sec. 4 directs the U.S. Comptroller General to review the annual regulatory fees collected by the FCC to determine whether such fees have been accurately assessed since their inception, and report its review to Congress.
- W. Sec. 5 amends the Communications Act of 1934 to prohibit modifying any electronic communication device, equipment, or system in a manner that causes it to fail to comply with regulations governing electronic eavesdropping devices.
- X. Sec. 6 applies penalties for the unauthorized publication or use of electronic communications to the unauthorized recipient, intentional interception, or intentional divulgence of any such communication. The section also directs the FCC to investigate alleged violations and proceed to initiate action to impose forfeiture penalties.

VIII. Legal Issues. (1) *Constitutionality*—In *Goldberg v. Sweet*, 488 U.S. 252, 263 (1989), the U.S. Supreme Court explained what States had jurisdiction to apply a transactional tax to interstate telecommunications. Jurisdiction rested with the State or States from which the telecommunications originated or in which the telecommunications terminated, provided that that State also was the State of the service address (address of the equipment to which the telecommunications was charged) or the billing address. The Supreme Court has not generally denied the possibility of jurisdiction in other States, except that the Court has specifically noted a State through which the telecommunications passes or in which the telecommunications terminates lacks sufficient contacts to tax the telecommunications. See 488 U.S. at 263.

The *place of primary use* rule provided in the Act does not follow the prescription of *Goldberg v. Sweet*. Some may question therefore whether a State (or a local jurisdiction of a State) of the place of primary use has sufficient basis for asserting jurisdiction to impose a transactional tax in all instances contemplated by the Act. This alleged deficiency is best illustrated by the taxation of a mobile telecommunications event occurring in two States, neither of which is the State of the place of primary use, e.g., a subscriber of mobile telecommunications services in the State of A, travels to State B and places a wireless call to a location in State C. Under the Act, State A would be the only State with authority to tax this call.

The justification for permitting State A to tax the illustrated call is that State A is the State in which the contractual relationship is established that in effect sponsors the customer to make the State B to State C call. Clearly State A has a significant contact with the provision of mobile telecommunications services, no matter where the call is made. State A's contact is especially compelling support of jurisdiction, if the call is made pursuant to the provider's wireless plan that allows the subscriber to make the call that involves other States utilizing the provider's own system, but in separate licensed service areas. Similarly, State A would have strong contact where the provider's billing plan is a flat rate plan that generally ignores the location from which calls are made as long as certain time limits are not exceeded. In this latter case, the provider could be characterized as selling wireless access and not selling specific mobile telecommunications events.

But even without these kinds of strong contacts, as where the call originating in State B and terminating in State C incurs roaming and/or long-distance charges; State A's connection to the call is nevertheless substantial. It is the subscriber's existing contractual relationship to the State A provider that allows the subscriber to enter the wireless system to make, and incur charges related to, the State B to State C call. That kind of connection seems more than sufficient to support State A's jurisdiction to tax the call, even though it does not meet the origination/termination and service/billing address rule of *Goldberg v. Sweet*.

Yet this faith in the jurisdiction of State A is unproven. And one must face the prospect that a constitutional challenge may be mounted under the Due Process Clause and the Commerce Clause against allowing State A to tax the call. One would suppose a challenge under the Commerce Clause would be easily rebuffed, since Congress can consent to state taxation that would otherwise violate the Commerce Clause. *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 434 (1946). The harder question is whether Congress can consent to state taxation that would otherwise violate the Due Process Clause. Thus, to the extent the *Goldberg v. Sweet* rule is grounded in the jurisprudence of the Due Process Clause, something a close reading of the Supreme Court cases does not clearly disclose, this other question must be answered. The States and local governments and congressional legislators will want to weigh, before enactment of the *Wireless Telecommunications Sourcing and Privacy Act*, the strength of the alternative argument that a congressionally authorized plan of taxation overcomes Due Process Clause objections in certain circumstances.

Scholars have addressed the question about congressional power to override Due Process Clause restrictions on state power. William Cohen, *Congressional Power to Validate Unconstitutional State Laws: A Forgotten Solution to an Old Enigma*, 35

STAN. L. REV. 387 (1983); William Cohen, *Congressional Power to Interpret Due Process and Equal Protection*, 27 STAN. L. REV. 603 (1975); Walter Hellerstein, *State Taxation of Electronic Commerce*, 52 TAX L. REV. 425 (1997). The consensus seems to be that Congress' power to consent to state violations otherwise occurring under the Due Process Clause does not extend to violations of individual rights but does extend to violations arising out of our federal form of government. Any other conclusion would place our federal form of government at the mercy of requiring a constitutional amendment to cure issues of federalism that could otherwise be solved by congressional adoption of practical solutions to intractable problems. Institutionally speaking, this kind of outcome from the U.S. Supreme Court is a rare result reserved for only the most fundamental of issues arising under our Constitution. State and local taxation of wireless telecommunications under a congressionally-sanctioned, practical convention sought by the industry to solve an intractable problem and developed cooperatively with governmental assistance hardly falls into that category.

To prevent the legislation from creating an incentive for litigation, the Act contains a nonseverability provision. Act Sec. 3(b). This provision ensures that if the congressionally-sanctioned, practical convention fails so will the newly established restrictions that have been placed against state taxing power by the Act. Act Sec. 3(a)(2) (*last clause*). States that conform their law to the new taxing convention of the Act may also provide for a back-up tax that is based upon the assumption of the old taxing system remaining non-operational as long as the new convention remains valid and in effect. A back-up tax of this type will discourage adventuresome litigation to see what might be gained by attacking the constitutionality of the new system.

(2) *Open Mobile Telecommunications Systems*—The solution developed under the Act presupposes a wireless telecommunications infrastructure that operates based upon a contractual relationship between the subscriber and the home service provider that has a license service area for the location of the subscriber's business or residence. While it is never possible to predict where a form of commerce may eventually go, there are indications that wireless communications may eventually become open. An open infrastructure would mean that all one needed for connecting into the wireless channels of telecommunications would be a handset. Billing for use of the wireless channels of telecommunications in an open system would be triggered by actual use based upon information transmitted at the time of the placement of the call.

If an open system eventually develops for the most part, and there is no assurance that it will, the utility of the solution offered by the Act becomes limited. The Act to some extent acknowledges the impracticality of the solution of the Act in an open system by excluding the prepaid calling card system. But the Act's definition of the term prepaid calling services is restrictive enough not to exclude an open system from the operation of the Act. Nevertheless, it would seem an open system by practical necessity is excluded from the operation of the Act. The contractual relationship that is described in the Act's concept of a home service provider would seem to be missing. In addition, on-site billings that are presupposed by an open system would seem to lessen the need for the practical place of primary use solution of the Act. Finally, the coincidence of a residence or an office with the licensed service area of the connecting provider in an open system would seem to be in most instances a rare occurrence. But if an open system is excluded from the operation of the Act, it remains an unanswered question whether it is appropriate for the Act to anticipate an open system in wireless telecommunications and to provide a solution for this possible development also.

(3) *Freezing definitions in time*—Some key concepts of the Act are frozen in time by legal understandings that exist as of a date certain, June 1, 1999. These concepts are air-ground radiotelephone service and commercial mobile radio service. Freezing central concepts in time has the potential to permit the legislation to lose its practicality. Yet it is also difficult to propose a solution that would work regardless of whether the concepts develop over time. There is no easy answer to the dilemma posed and perhaps the approach of the Act is best. After all, if the Act loses its vitality due to evolutionary or even revolutionary change, both industry and state and local tax administrators are equally faced with the challenge of bringing their respective systems into a synchronous relationship.

Mr. TAUZIN. Thank you, Mr. Bucks, and finally, Mr. Wheeler.

STATEMENT OF THOMAS E. WHEELER

Mr. WHEELER. Thank you, Mr. Chairman. I'm here to echo the other witnesses, which is what I essentially said at the outset here, and to thank them all for 3 years of good faith hard work coming to this result. Also to thank Mr. Pickering, you, Mr. Chairman, Mr. Oxley, Mr. Markey and other members of the committee who have moved to seize upon that to hopefully make it the kind of Presidential activity that the previous witnesses had just talked about.

Let me reiterate one thing, though, and that is that there is nothing in this legislation that changes any jurisdiction's taxation powers. What it does is to establish a common sense plan for those taxing powers to be administered in a mobile society. Our tax structure is a sedentary structure. It grew up in a non-mobile society, if you will. In the telephone at home, you know where it is. You know where to tax it, but the airwaves don't respect political boundaries, and likewise, consumers take their phones across political boundaries. Governments have tried the best they can to deal with this new reality, but as you have already indicated, they end up doing it in a hodgepodge of different ways. Determining that the call originates from the originating cell or the originating switch or the billing address or the telephone number, there is no continuity in this.

Let me show you an example over here on this chart as to just what this means. Consider a call from town A, which is that orange area, that is picked up by a cell in town B and is switched, it's carried to a switch where it's switched in town C. Now, who collects if those three measures are traditionally what's being used today?

Let me show you another example. We've all driven up 95 past Baltimore to Philadelphia. 104 Miles from Baltimore to Philadelphia, you go through 12 State and local jurisdictions. You're making calls continuously along the way. How do the localities sort out who gets the taxes from the call? How do the carriers sort it out, and to your point, Mr. Chairman, imagine the consumer's confusion on the bottom line when the numbers on the State and local taxes line this month are different than they were last month simply because of the fact that the travel pattern was different.

Let me show you another example of how the common sense solution solves this problems. Consider a peripatetic business woman who lives in Kansas City, and she gets on the plane early in the morning, and she flies to Denver, has a meeting, flies to Seattle, has another meeting, turns around and flies back. It's not a great quality of life, but it's a typical kind of experience. Three cities, 39 calls, 26 jurisdictions. Now, look at the burden to the governments involved, to the carriers to sort it out, and to the consumer, who doesn't understand all these different taxes that finally end up on her bill.

Now, if you enact this piece of legislation, here's what the experience will be. The same peripatetic life, the same three cities, the same 39 calls, but one place of primary use for taxation. That will simplify things for the governments. That will simplify things for the industry, and that will clearly make things simpler for the consumer. The airwaves simply can't be trained to respect political borders, and Americans are a mobile society. We have a couple of choices. We either develop complex procedures that run up the cost

of government to the taxpayers, or run up the cost of business to consumers, or we enact the common sense solution for the mobile age that eliminates headaches and saves the consumer a bundle twice.

One final aspect of this, Mr. Chairman. The determination of the taxing authority in which the place of primary use resides, there are two solutions in this bill. One is State and local governments may develop a data base using zip codes, and the other is absent that, the companies may do that. There is a 2-year transition period where we can continue the kind of good faith work that brought us to this point.

Finally, quick reference to the two other issues in the bill. The privacy legislation, this committee has been a champion of this, and this house has been a champion of this. Twice by over 400 yeas, the House has passed this piece of legislation. We hope that, once again, you will step forward and close down the loopholes that allow electronic stalking.

Last, the GAO report on the FCC's calculation of fees. This is something that is moving across the board. The technique is constantly changing. It is well worth the Congress taking a look.

Mr. Chairman, as I sat here and I listened to these individuals and I saw Mr. Shimkus sitting down here, it dawned on me that this committee with this piece of legislation has an opportunity to twice in this Congress deal with how do you make sure that the laws of the land keep up with changes in technology. Mr. Shimkus' leadership and this committee's leadership made the E911 bill law, and we certainly hope that as a result of the common effort here by all of the parties and your continued leadership that this could be the second example of how we keep pace with the technological changes. Thank you, Mr. Chairman.

[The prepared statement of Thomas E. Wheeler follows:]

PREPARED STATEMENT OF TOM WHEELER, PRESIDENT AND CEO, CELLULAR
TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to appear before you today to present the wireless industry's views on legislation that would create a uniform method of sourcing wireless revenues for state and local tax purposes. I am Tom Wheeler, President and CEO of the Cellular Telecommunications Industry Association (CTIA), representing all categories of commercial wireless telecommunications carriers, including cellular and personal communications services (PCS).¹

The wireless industry is founded on innovation, competition and safety. With the key support of members of this Committee, these principles have unleashed a telecommunications revolution in the past decade. More than 80 million Americans were wireless subscribers in 1999, an astounding leap from just 4 million in 1990. Wireless competition has accelerated to the point that 238 million Americans can today choose from among 3 or more wireless providers. And, more than 165 million Americans live in areas where they can choose from among five or more wireless providers. Throughout this growth, prices for wireless service have fallen dramatically because of increased competition—the average per minute rate has dropped by roughly 50 percent since 1990 in markets throughout America. Indeed, these enhanced services, available to millions of Americans, testify to the power and correctness of the policy judgements made by the members of this Committee in the Omni-

¹ CTIA is the international organization which represents all elements of the Commercial Mobile Radio Service (CMRS) industry, including cellular, personal communications services, wireless data. CTIA has over 750 total members including domestic and international carriers, resellers, and manufacturers of wireless telecommunications equipment. CTIA's members provide services in all 734 cellular markets in the United States and personal communications services in all 50 major trading areas, which together cover 95% of the U.S. population.

bus Budget Reconciliation Act of 1993 and the 1996 Telecommunications Act. But, with this revolutionary growth of wireless telecommunications, it is not surprising that from time to time it becomes apparent that laws or regulations that worked for more traditional telecommunications services simply do not translate well to wireless communications.

I am here today to discuss with this Committee the work on one such area—the assignment of wireless services to their proper taxing jurisdiction. My testimony will also address the other important items included in H.R.3489—the Wireless Telecommunications Sourcing & Privacy Act. I would note with appreciation that this legislation has been introduced and co-sponsored by many members of this Subcommittee, including: Mr. Pickering, Chairman Tauzin, Subcommittee Ranking Member Markey, Mrs. Wilson, Mr. Largent, Committee Ranking Member Dingell, Mrs. Cubin, Mr. Oxley, and Mr. Fossella, Mr. Stearns, as well as Mr. Sununu.

UNIFORM SOURCING PROVISIONS—DESCRIPTION OF THE PROBLEM

It is the mobile nature of wireless telecommunications that makes the assignment of wireless services and revenues for tax purposes so complicated. Chart 1 illustrates some of the practical problems. If I make a phone call from my back yard, located in Town A, and that call is picked up at the closest cell site, in Town B, and routed to the nearest switch in Town C—*where should the call be taxed?* States and localities have adopted a variety of methodologies to answer that question, including: siting the taxes to the location of the originating cell site, the originating switch, or the billing address of the customer, which may or may not be a home address. All of these methodologies are legitimate and were adopted in good faith by state and local officials, but all have their shortfalls. For example, both the originating cell site and the originating switch in my illustration are outside the taxing jurisdiction from which I am making the call. To complicate matters further, Towns A, B, and C may all be using different methodologies, and that could result in multiple claims on the same revenue for taxation. These are just some of the issues that the tax departments of wireless carriers must deal with daily at the local level.

Chart 2 offers some real-life illustrations of what the current system means to consumers. Suppose a businessman is driving from Baltimore, MD, to Philadelphia, PA, making phone calls throughout the two-hour drive. During the course of this trip, the consumer will have passed through 12 state and local tax jurisdictions, each with their own telecommunications tax rates and rules. Even if there were not competing methodologies complicating the picture, the administrative difficulty for the wireless carrier of correctly determining tax rates and rules for 12 different jurisdictions, passed through in just a few hours, is tremendous. Likewise, the administrative difficulties for the 12 taxing jurisdictions in monitoring compliance with their laws are severe.

The administrative burdens of the current system are even more striking when viewed at the national level (Chart 3). Let's use as an example, a businesswoman living in Kansas. In one day of business travel, she makes 3 wireless calls on the drive to the airport; flies to Denver where she makes 16 calls during her cab rides from the airport to her meeting and back; then flies on to Seattle where she picks up a car to drive to Tacoma. In the roundtrip between the Seattle Airport and the Tacoma meeting site, our businesswoman makes another 19 wireless calls, before catching the dinner flight back to Kansas City. The poor woman makes her final call of the day on the drive home from the airport to tell her family she'll be there soon. During this one harried business day, 39 wireless calls have been made, which requires her wireless carrier to keep track of the tax rates and rules in 26 different state and local taxing jurisdictions.

But as difficult as all this is for industry to complete and for state and local governments to monitor—think what the consumer faces. From month to month, depending on where the consumer travels, the consumer's state and local tax bill will change. This rightly leaves customers scratching their heads. If enacted, this uniform sourcing legislation will go a long way towards solving this problem for consumers.

Let me also add that all these problems face even greater challenges in the near future, challenges posed by home calling areas that are growing and the latest ways consumers are buying wireless service. Larger home service areas may encompass more and more state and local taxing jurisdictions. And the new "bucket of minutes" billing plans fundamentally complicate proper tax determination—particularly of roaming—as the allocation of minutes to calls and revenues becomes unclear. In short, Mr. Chairman, the current system doesn't work for consumers, industry or state and local governments—and these problems will only get worse in the months and years ahead.

UNIFORM SOURCING PROVISIONS OF H.R. 3489, THE WIRELESS TELECOMMUNICATIONS
SOURCING & PRIVACY ACT

A new method of sourcing wireless revenues for state and local tax purposes is needed to provide carriers, taxing jurisdictions and consumers with an environment of certainty and consistency in the application of tax law; and to do so in a way which does not change the ability of states and localities to tax these revenues. After more than three years of discussions, CTIA and representatives from the National Governors' Association, the National League of Cities, the Federation of Tax Administrators, the Multistate Tax Commission, the National Conference of State Legislatures, and other state and local leaders have worked to develop a nationwide, uniform method of sourcing and taxing wireless revenues.

Under the leadership of Mr. Pickering, Chairman Tauzin, Mr. Markey and other members of this Subcommittee, we were able to come together to forge this proposal. Many of you are co-sponsors of the legislation—H.R. 3489—that implements the ideas we have worked so long to craft. With the leadership and assistance of Chairman Bliley, Telecommunications Subcommittee Chairman Tauzin, Subcommittee Ranking Member Markey and Committee Ranking Member Dingell and all members of this Subcommittee, it is our hope that this legislation will soon become the law.

It is important to stress that this legislation does not change the ability of states and localities to tax wireless revenues—it leaves the determination of the tax rate and base to the state and local taxing authorities. In other words, this proposal does not address, change or affect *whether* a jurisdiction may tax, it only prescribes *how* it may tax.

WHICH TAXES ARE COVERED BY UNIFORM SOURCING PROVISIONS?

It is important to distinguish which taxes would be sourced to a “place of primary use.” To state it most simply, uniform sourcing applies only to “transaction taxes”—or those paid by the consumer, typically itemized on a customer's bill, and collected by wireless companies. The Wireless Telecommunications Sourcing & Privacy Act has no impact on federal taxes or fees, such as the Federal Excise Tax or the Federal Universal Service Fee. These federal taxes and fees are not included in the scope of this legislation because they apply throughout the nation—unlike state and local taxes which apply only in their particular geographic area.

I would emphasize that this legislation addresses the taxes paid by the consumer. Our industry is acting as the administrator of these taxes, imposed on consumers by literally thousands of state and local jurisdictions. So, I would again like to compliment the state and local officials who have worked so hard to develop this proposal to simplify the administrative duties of our industry. I believe the legislation will also make it easier for the state and local officials who monitor our industry to make sure we do the job right. But, great credit is due these state and local officials for working so closely with us on this important issue.

HOW THE UNIFORM SOURCING LEGISLATION WORKS

Place of Primary Use (PPU)

There are two major components to the uniform sourcing legislation—the “*place of primary use*” and state by state databases identifying state and local taxing jurisdictions. Let me start with “*the place of primary use*.” This legislation defines that for the purposes of state and local taxation, the consumer's purchase of taxable wireless telecommunications services, including charges while roaming anywhere in the United States, have taken place from a single address—a “*place of primary use*.” Then, only the taxing jurisdictions in which that address is located may tax the charges. I would note that there is often more than one taxing jurisdiction for any particular address, given the multiple layers of state and local governance (such as, the school district, city, county, and state.) The “*place of primary use*” is defined as the street address most representative of where the customer's use of mobile telecommunications services primarily occurs. It must be either the residential street address or the primary business street address of the customer. That address also must be within the licensed service area of their home service provider. Customers will be asked to provide their “*place of primary use*” when they sign up for service or renew their contracts.

For the convenience of the consumer, after the effective date of the legislation (two years after passage to allow for necessary changes in state laws and regulations) the legislation allows carriers to treat the address they have been using for tax purposes as the “*place of primary use*” for the remaining term of any existing

service contract. After that, when the service contract is extended, renewed, or changed, the customer provides their “place of primary use.”

Customers may also change their “place of primary use” designation if they find that their use of the wireless phone changes. And, similar to any other tax situation in which the party being taxed (in this case, the consumer) specifies an address for tax purposes—should there be any dispute over whether the customer has designated the appropriate address as the “*place of primary use*,” the legislation provides state and local governments the authority to review its accuracy, and change it if necessary.

To illustrate how the “*place of primary use*” works let’s go back to our harried businesswoman from Kansas City. Because this was her business wireless phone, the street address of her company is her “*place of primary use*.” Under this legislation, the 39 wireless calls she made in one day of business travel, would, for tax purposes, be deemed to have all taken place from her Kansas City address. So, only the three taxing jurisdictions—city, county and state—in which her business address is located would have the authority to tax the 39 calls.

State by State Databases of Taxing Jurisdictions

Today, even after wireless carriers have identified which address is going to be used for tax purposes, it is often difficult to determine the appropriate taxing jurisdictions for that address. Annexations of unincorporated areas and shifting local boundaries are a frequent cause of this difficulty. And, as a result, the second major piece of this legislation is the provision of state-level databases which assign each address within that state to the appropriate taxing jurisdictions. So, that all carriers can use the database, and so the same code does not refer to more than one taxing jurisdiction, the legislation provides for a nationwide standard numeric format for codes. The format must be approved by the Federation of Tax Administrators and the Multistate Tax Commission, organizations representing the state and local officials who administer taxes.

A state or the local jurisdictions within the state *may*, but are not required to, develop these electronic databases. If a carrier utilizes the state database, and if there is an error due to a mistake in the database (e.g., the database indicated our businesswoman’s address was in Overland Park, Kansas, when, in fact, the address is in Kansas City, Kansas), the database is corrected and the carrier utilizes the corrected database. What this legislation avoids is the costly and difficult process of going back, figuring out the amount of taxes paid to the wrong jurisdiction, then figuring out where they should have been paid. Instead, this legislation applies some practical common sense.

Only if a state chooses not to provide a database, a carrier may develop a database that assigns taxing jurisdictions based on a zip code of nine or more digits. The carrier is required to exercise due diligence in creating this database. The legislation specifies that the carrier must expend a reasonable amount of resources to create and maintain the database, use all reasonably attainable data, and apply internal controls to promptly correct mis-assignments. If such standards are met, the same processes that apply if a state-created database contains an error, apply to the carrier-created database.

I emphasize that state and local governments maintain authority over both the “*place of primary use*” and the database. Any taxing jurisdiction may request the carrier to make prospective changes to a customer’s “*place of primary use*” if it feels the one provided by the customer doesn’t meet the required definition. The affected taxing jurisdictions simply get together, determine the correct place of primary use, then notify the carrier. Likewise, if taxing jurisdictions determine that an address has been mis-assigned to the wrong taxing jurisdiction, the taxing jurisdictions simply notify carriers of the error, and it is our responsibility to make the correction.

For this proposal to work, it will ultimately require the implementation of the uniform sourcing rules by all states, in order to eliminate the problems that would result if only some states “uniformly sourced” the wireless calls made by their residents in other states. It is for this reason—the need for a standard and nationwide approach—that government groups and industry began to look for a solution to the problems of taxing wireless calls. Only federal legislation can accomplish this, but because this legislation recognizes that individual state and local tax laws and regulations might need to be changed to conform to the federal law, the effective date of this legislation is not until two years after enactment.

UNIFORM SOURCING PROVISIONS—SUMMARY & CONCLUDING POINTS

In conclusion, the uniform sourcing provisions of H.R. 3489 would not impose any new taxes or change state or local authority to tax wireless telecommunications; nor would it mandate any expenditure of state or local funding or in any way reduce

the tax obligations of the wireless industry. Instead, it would ensure that wireless telecommunications services are taxed in a fair and efficient manner, one that benefits all concerned—consumers, state and local governments, and industry.

WIRELESS PRIVACY ENHANCEMENT PROVISIONS OF H.R. 3489

I would also like to express my strong support for two other important elements of H.R. 3489. One such element is the incorporation of the text of H.R. 514, the Wireless Privacy Enhancement Act, legislation lead by Congresswoman Wilson which passed the full House, most recently by a vote of 403-3 on February 25th, 1999. (I would note as an aside, that this legislation was introduced in the other body last week.) This component of the legislation will further encourage the growth and development of wireless services by deterring eavesdropping and affording subscribers even more privacy protection than they have under current law.

Since the early days of wireless communications, Congress has tried to protect the privacy rights of wireless communications. The original Communications Act of 1934 made it illegal to intercept and divulge the contents of any radio communications without authorization. Over the years, Congress strengthened the laws governing wireless privacy when it became apparent that existing protection was insufficient. For example, in 1986 the Electronic Communications Privacy Act (herein, "ECPA") made it a crime to intentionally intercept wireless conversations or to disclose the contents of those conversations. ECPA also made it a crime to manufacture, sell, or possess a device that the person knows is primarily useful for intercepting wireless communications. In 1992, Congress amended the Communications Act to prohibit the manufacture and importation of cellular frequency radio scanners.

Unfortunately, despite Congress's efforts to protect wireless privacy, electronic eavesdroppers have found loopholes in the law. For example, one case was lost after prosecutors were unable to prove that the eavesdroppers had "intended" to intercept wireless conversations and another because the eavesdropper had not "disclosed" the contents of a conversation. Other cases were lost because the ability of the scanners to also scan non-cellular frequencies or perform other permissible functions made it difficult to prove that the device was "primarily useful" for scanning cellular frequencies. Moreover, because current law only covers scanners used to eavesdrop on "cellular frequencies," it does not clearly prohibit equipment that can intercept signals from newer PCS phones.

Emboldened by these loopholes in current law, hackers have developed a "gray market" for modified and modifiable wireless scanners. Some of these outlaws even advertise in magazines and on Internet web sites that their scanners have cellular frequency blocking components that can be easily overcome with minor alterations. The information and equipment necessary to make these modifications are also widely advertised, sometimes with blatant offers to unblock the cellular frequencies after the equipment is purchased.

The Wireless Privacy Enhancement provisions attacks these problems from several fronts. *First*, they expand the definition of the frequencies that may not be scanned to include digital PCS frequencies as well as cellular. I am pleased to say that this provision reflects a compromise between CTIA and the amateur radio community and it ensures that citizens are not prevented from listening to non-commercial radio frequencies like those in the emergency or public safety bands.

Second, they clarify that it is just as illegal to modify scanners for the purpose of eavesdropping as it is to manufacture or import them. It also directs the FCC to modify its rules to reflect this change. This provision will help reduce the growing "gray market" in modified and readily modifiable cellular and PCS scanners and digital decoders.

Third, they clarify that the Communications Act prohibits the interception or the divulgence of wireless communications, either one standing alone is prohibited.

Fourth, they increase the penalties under the Communications Act to make them consistent with the penalties for violating the Electronic Communications Privacy Act. Under the new penalty provisions, violators will be subject to a fine of \$2,000, six months in jail, or both for a willful violation, and these penalties increase for repeat violations.

Finally, they require the FCC to investigate and take action regarding wireless privacy violations under the Communications Act, regardless of any other investigative or enforcement action by any other federal agency. This provision will help ensure that these newly strengthened privacy protections are fully enforced in the future.

The millions of Americans who use wireless communications deserve to have their privacy protected. CTIA supports your efforts to improve the security of wireless

telephone calls, and again I commend Mrs. Wilson and this Subcommittee for your work on the Wireless Privacy Enhancement issue.

GAO STUDY OF FCC REGULATORY FEES PROVISION OF H.R. 3489

I would also like to indicate CTIA's support of Section 4 of the bill—which directs the GAO to conduct a full review of how the Federal Communications Commission has been assessing annual regulatory fees. CTIA believes that such a study is long-overdue. For more than a year, CTIA has been concerned with fundamental problems with the way the FCC is assessing annual regulatory fees.

Most glaring is that for the wireless industry, the FCC bases fee assessments on the number of wireless subscribers. Sounds reasonable, but here's the flaw—the FCC has never figured out a methodology to give itself an accurate way to determine the number of wireless subscribers. Let me illustrate the problem in just one year—FY1999. The FCC estimated the number of wireless subscribers at 55 million, exactly the same number it estimated for FY1998 (even though the FCC acknowledged the growth in wireless subscribers.) A little long division led the FCC to send wireless carriers a bill for about 32 cents per subscriber for FY1999. But, when our industry calculates the bill, we have to use the actual number of subscribers—which was not 55 million, but 69 million. Multiply the 32 cents by 69 million users, and that alone means that the FCC has collected about \$5 million more than they should have. And, this is but one of many flaws in the FCC's assessment methodology that leads to overpayment—and in our competitive wireless industry, that means additional costs of wireless consumers.

It is my hope that working together, FCC and CTIA can figure out better way for the FCC to follow the specific Congressional direction on fee assessment. But, I strongly believe that “sunshine is the best disinfectant”—and CTIA supports the call for a GAO study of the FCC's regulatory fee assessment.

CONCLUSION

I am honored to represent the wireless industry today and to pass along to you the wireless industry's enthusiastic endorsement of the Wireless Telecommunications Sourcing & Privacy Act. The telecommunications industry is truly reshaping our world—which brings new challenges and opportunities every day. I am proud of the cooperative effort among state and local governments and industry on this proposal. And, I again compliment the leadership of Congressmen Pickering, Tauzin, Markey, Wilson and the other members of this Subcommittee for turning our proposal into the legislation we discuss today. We thank the Subcommittee for its work, and we hope that you are able to turn this legislation into law before the Congress adjourns in the Fall.

Mr. TAUZIN. Thank you, Mr. Wheeler. The Chair recognizes himself for 5 minutes. Let me first thank Mr. Pickering for his fine work here and also thank him for including in the bill the provisions of the Wilson bill, which as you know, has already passed this committee, dealing with privacy and cellular phones.

You remember Mr.—how many years ago was it, Tom, that we had this demonstration in this room and we demonstrated how easy it was to compromise people's privacy. I think we even intercepted a call—it was 4 years ago?—intercepted a call from Mr. Markey trying to take over this committee, remember, by a coup d'etat, and we were able to prevent it because we were intercept that cellular phone call. Here we are at this point still trying to enact that legislation. I want to thank Mr. Pickering for including it.

Let me ask you the basic question. Why does Congress need to enact this legislation? Why can't it be agreed upon by all of the parties and enacted by all the States the way uniform commercial codes and other such agreements are acted upon? What's the requirement for us to codify this agreement? Anyone? Mr. Bucks.

Mr. BUCKS. Mr. Chairman, members of the committee, the reason is is because it's not clear that the States have the authority to agree upon this rule of the primary place of use. There is—it ap-

pears as though that the only Constitutional authority to make that determination rests with Congress under their commerce clause power. Otherwise, there is a question as to whether or not the States have the authority to do that themselves. It appears to be beyond their authority.

Mr. TAUZIN. And we are essentially talking about consumer taxes here. The consumers end up paying these taxes, and they have a right to some protection uniformly under the Interstate Commerce Clause.

Let me ask you this, too. Obviously section three of the bill allows the States but does not mandate the electronic data base. It allows the provider to establish a data base if the State does not, and then it imposes upon the provider the duty of due diligence in assuring that the data base is updated and correct. What are the subscriber's rights? As a subscriber, I'm going to pay taxes. If I'm listed wrong, if my primary locality is wrong, do I have any recourse to make sure that it's corrected? Do I do that through the provider? How is that going to work, Mr. Wheeler?

Mr. WHEELER. Mr. Chairman, I'm flashing back to Mr. Shimkus' point in the previous witness where he was talking about being a tax collector and how he was constantly hearing from consumers about this.

Mr. TAUZIN. Yes.

Mr. WHEELER. So, I think that there are two answers to the question, and that is that the consumer could go to both of the parties. Now, the companies—when the consumer goes to the company, the company has the ability then to work with the local government in that regard to update. Similarly, the local government has the right to turn to the company and say you have to update the data base this way. So, it's a two-way—

Mr. TAUZIN. So I could complain to the government or I could complain to the provider. Either way, I should be able to get some relief?

Mr. WHEELER. Yes, sir.

Mr. TAUZIN. Now, let me ask you with reference to your obligation of due diligence. What if you fail to update the provider fields to adequately update the base and some government loses money as a result? Does the bill at all cover that, or is there any provision dealing with that in the agreement?

Mr. WHEELER. I believe there is a provision that requires making whole, if there is this kind of a grievous oversight, Mr. Chairman, but again, what we're trying to do is to build a new paradigm, if you will. This bill is a result of 3 years of work by these parties. We believe that that work can continue and that the bill empowers the States and the localities, for instance, to say to the carrier, here is a problem in the data base that you have developed. It likewise empowers the carrier an opportunity to say to the State or locality, here is a problem in the data base that you have developed.

Mr. TAUZIN. Okay, but the concern I have is simply how those rights are balanced. If the State establish—if Louisiana establishes an electronic data base and providers don't do a good job of keeping it up, it looks like it's their job to keep it up. What happens?

Mr. WHEELER. There's a hold harmless clause in here that only works if you have done the due diligence to keep it up. You have every incentive——

Mr. TAUZIN. So you don't have the benefit of the hold harmless——

Mr. WHEELER. You have every incentive in the world.

Mr. TAUZIN. [continuing] unless you have done due diligence.

Mr. WHEELER. Yes, sir.

Mr. TAUZIN. Thank you very much. The Chair yields to Mr. Markey.

Mr. MARKEY. Thank you very much. Well, congratulations to you all. The industry, multistate tax, commission, Governors, municipal officials, you should have been the internet tax commission. It would have been very helpful, I think, if we had sent you to the work in those issues to a closure because obviously you've figured out something here that's good for the municipalities, good for the States, good for the industry, good for the consumer. You know, creates, you know, one point of nexus that everyone can rely upon, and gives everyone confidence that there's going to be cooperation on all fronts. I want to really praise you for reaching this agreement because as we saw on the last panel, it's pretty easy to come up with a lot of disagreements as well and make that the conclusion that is presented to the Congress.

So, I hope that we can move this legislation as expeditiously as possible through Congress. I want to congratulate Congressman Pickering for his leadership in helping us to focus on this issue and to get it on the fast track, and thank you, Mr. Chairman, for putting together this very timely hearing.

I'd like to raise a couple of issues, if I could, partly related to the bill before us, but I think something that we need to start thinking about in terms of repercussions in the industry. The cellular industry is in the midst of an exciting evolution. Increasingly, wireless consumers are going to be able to get the internet on their wireless devices—news, weather, sports, stock quotes, web pages. They'll all become standard feature from wireless devices. We have wireless rates plummeting over the last few years with many consumers opting for flat rate pricing, with ever increasing buckets of minutes that are advertised on a daily basis on every television and cable channel in America.

Given the fact that we have in place an access charge exemption for internet service providers from per minute access charges, how will we handle cellular internet access issues?

Mr. WHEELER. Mr. Chairman, this bill deals with the nexus between the consumer and the company and the taxing authority. It does not deal with any transaction issues associated with the net, and there are larger issues, as you point out, insofar as access fees, et cetera, that are unassociated with this piece of legislation.

Mr. MARKEY. Anyone else like to take that?

Mr. SCHEPPACH. I'll jump in, Mr. Chairman. This is obviously one of the concerns that the States have with respect to extending the moratorium. Right now, it's relatively clean and we know what the technology is that we're dealing with, but there are two problems on the horizon. One is telephony that I think 2 to 3 percent of telephone calls are, in fact, beginning to go over the internet,

which means that those current telephone taxes will be avoided. Second of all, I think we're all moving toward a bundling of services so that you're going to have one line into your household that you will pay for internet, telephone, content and the ball of wax at one time.

So, I think that this is a potential problem. The technology is going so quickly, and yet we have very high taxes on telephone and none on the internet. So, we are beginning to dramatically bias our economic decisions. So, I just say that the current moratorium on access fees is in place now for I guess it's 2001 in November when it would run out. As I say, there's probably little problem between now and then, but I would argue that almost any extension of that would begin to bias some of these decisions fairly dramatically.

Mr. MARKEY. So what happens when you're an internet service provider and a telecom provider at the same time? Governor Gilmore suggests that there should be an exemption for the internet provider. How do we handle that issue?

Mr. SCHEPPACH. Mr. Bucks probably knows better, but I think under the current legislation, it's difficult to determine that with respect to the language, and I think that you'd probably end up in the court to try and determine whether it's discriminatory or not or whether it's an internet fee or a telephone fee.

Mr. MARKEY. And how do we handle the universal service charges that cell phone companies will be paying but AOL won't be paying in order to maintain this whole seamless—how do we handle that issue?

Mr. SCHEPPACH. I don't know. I mean, you clearly, if you could step back from this issue, what it seems to me you want is equality, and you probably would get that by lowering telephone taxes quite dramatically because it's true that they're probably 15 to 18 percent, and increasing the internet access because those are the two that are going to be competing with each other.

Mr. MARKEY. It's not fair to the cell phone industry right now the way it's constructed. Do you agree with that, Mr. Wheeler?

Mr. WHEELER. Yes, sir.

Mr. MARKEY. That's a leading question. Mr. Brooks?

Mr. BROOKS. You have the ability to ask those kind of questions. Your question prompts me back to some notes that I made this morning having to do with the very questions you were asking, having to do with tax policy for the 21st century. Mr. Cox brought up the fact that we had to look at tax policy for the 21st century, and when you look at what we're trying to accomplish from a telecommunications standpoint, it sort of hits me between the eyes that if some of the same recommendations were made in 1900, that we have a moratorium on all changes in a tax structure, as we look at new economy, we look at new means of doing business, we would not have access to a lot of the revenue streams that we have today from what developed during the 20th century.

I think that what I would like to emphasize from a local standpoint is that we do not have the answers to all of the questions that are being asked, but I do believe that the work on this particular piece of legislation drives home the fact that if we as a community of business, local, State level, Federal level, will keep an open mind and work together, we can come to a resolution of many

of the problems that face us. So, your questions are to the point, and I don't know that we will ever be able, you know, at this point, to——

Mr. MARKEY. I appreciate that. You know what, it would be a very boring hearing if I didn't ask these questions because you guys have done such a fabulous job, you've teased all of the controversy out of this issue. You have absolutely solved all of the, you know, the conflicts that exist in the areas that you're treating, and so we're here, basically in the middle of the afternoon trying to justify our existence, so I'm asking a few questions that can maybe tee up some other issues which are ultimately going to be central to this revolution which the cell phone industry is driving.

In other words, at the bottom of all this is the question of if AOL and the cell industry provide the exact same services, which they will, should there be one set of fees on the cell industry and a non-existing set of fees on AOL? I don't think so.

Mr. WHEELER. And Mr. Chairman, having had you help me answer the previous question, what I tried to say in my summation is that the challenge is how do we keep up. It is an incremental process. What's terrific about this piece of legislation is that it addresses how do you keep up with these changes. It doesn't address the whether the taxation should occur, but you can't have one without the other.

So, the interesting thing that has happened here, if this becomes law, is that it at least addresses a piece of the challenge and creates a new paradigm for a piece of the challenge that you are going to have to deal with, and in that regard, this is significant progress.

Mr. MARKEY. Well, I want to compliment you. Again, the dirty little secret of the subcommittee is that we're very glad that there are not very many more panels like this that appear before our committee because then we wouldn't be necessary up here. So, we compliment you but we also recognize you as an anomaly, and one that deserves a great credit.

Mr. TAUZIN. And you have asked a good question, Mr. Markey. Where was your moratorium when you needed it? Thank you, Mr. Markey. You are fully justified in existing.

The Chair now yields to the vice chairman of the subcommittee, Mr. Oxley, for a round of questions, and we'll place Mr. Pickering in the chair, as I have another assignment. Mr. Pickering.

Mr. OXLEY. Thank you, Mr. Chairman. I've not heard so many softball questions from my friend from Massachusetts since I've been on the committee. I don't know whether he's changed his stripes or just simply mellowed with age, but he did point out, though, the issue of nexus, and this came up—some of you may have been here for Governor Gilmore's testimony—the point that he made was the necessity to focus in on the nexus issue as it related to taxation, and those points that you made, I think, also go for the internet commission and that somewhat elusive goal of trying to nail down this whole nexus issue.

So, I would say that, my friend from Massachusetts, I thought it was a good start by the Governor in his testimony, specifically on the nexus issue, which is somewhat similar to what these gentlemen were able to accomplish.

Mr. BUCKS, you mentioned the exceptions for one State, the single business tax. Is that Michigan?

Mr. BUCKS. Yes, that is Michigan.

Mr. OXLEY. I just wanted to clear that up. I'd like to ask each one of you, as you know, Chairman Bliley and Chairman Tauzin have introduced truth in the telephone billing legislation that would provide for itemization of the customer's taxes on their phone bills. Would that be an appropriate application to wireless charges as well?

Mr. WHEELER. Well, I think that the issue—what's going on here is what is in that line that says State and local taxes. There are various legislative proposals saying it should be a line, it should be multiple lines, what should be the components and this sort of thing. What this tries to do is make it a constant line so that it is the same this month as it was last month, regardless of where you have been. In that regard, it is very much a step toward full understanding and disclosure of what is in the tax line on the consumer's bill.

Mr. OXLEY. But the question was should that wireless tax, if this bill were successful, should the concept of this bill apply to the wireless tax, even though it is constant? In other words, should the consumer have that as an itemized provision along with the rest of his other billing information?

Mr. WHEELER. I believe that it is. That already is on the bill today, and what we're trying to do is to make sure that what is on the bill today is a constant.

Mr. OXLEY. Anybody else?

Mr. BUCKS. We would have no position on the larger issue of raising, but I concur that what happens here is that because of this bill, what appears on the line will be much more understandable to the consumer because it will always be or should be as a result of this legislation a constant percentage of the charge and won't vary, depending upon where they have been traveling in the last month or so, which is going to—having—without this legislation, even if you have the item on the line, if they check from 1 month to the other, they're going to see that the percentage has changed and they're going to wonder why. Because of this legislation, it should be a constant percentage unless they change their place of primary use. So, I think in some sense, they work together, although we would have no position on the larger issue that she raised. We certainly would have no objection to that. We think people ought to know about the taxes they pay.

Mr. OXLEY. Thank you. Mr. Brooks, you stated in your testimony the existing system is administratively burdensome and costly for consumers. I think we can all agree to that. If we are successful with the new system of lowering costs to the local and State governments, is there any likelihood that the State and local governments could pass those savings on to the consumer? Would the consumer benefit in that regard?

Mr. BROOKS. I would certainly think they would. If this current system stays in place, you're going to see a continuing increase, you know, from the standpoint of trying to bring all of this together from the burdensome standpoint. Really, when you look at how taxes and costs are passed on, it never ceases to amaze me that

when a certain item has to go on the bill, particularly from a city's standpoint, it seems that the higher levels of government will say you have to pass this as an ordinance within your city, which then becomes a local official who has imposed a tax rather than some level of cost that has been associated with it.

I would certainly hope that as we look at the efficiencies of trying to look at revenue streams, that certainly we want to pass on savings that are not needed from a government standpoint back to the consumer. I think we should all do that.

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. PICKERING. To my good friend from Massachusetts who is expressing how boring this hearing is or how difficult it is to celebrate the finding of a solution or making peace, and I guess it is, for a town which too often celebrates conflict and controversy, it is a great day for us to be able to come together as a committee on a bipartisan basis with an industry and with all other levels of government to celebrate what has been a long, arduous process of getting here.

I think if any of you have read the great literary work Leadership Lessons from the Civil War by Mr. Wheeler, you have adopted his principles of being bold, innovative, and adapting to the change that is occurring. We've gone since 1994, 20 million users of cellular or wireless telecommunications now to 88 million, and a \$30 billion industry. For a State like mine, Mississippi, the potential in the future, I think, lies primarily or disproportionately on the wireless side. So, this is one other step that will only accelerate and advance the great applications, the benefits, and I hope the cost savings that as we see the rapid deployment that have started over the last 4 to 5 years continue. We all on this committee, who represent constituents, celebrate the benefits that you are bringing.

After saying all those nice things, let me see if I can find a question or two, and my other objective here. Although Mr. Markey may talk about internet taxation, it is my objective to stay out of that fight for this legislation, get it through, and see it signed into law and to maintain our focus.

To put this in context, my understanding is that there are 30,000 taxing jurisdictions. Could any of you tell me how many States and localities impose a tax on wireless costs, just so that we can have an understanding of the scope of simplification that we're enacting.

Mr. WHEELER. We're all getting coached from behind here, Mr. Pickering.

Mr. BUCKS. If you have the information, would you provide it to us?

Mr. WHEELER. 55,000 Is the number that we were just given.

Mr. PICKERING. Oh, 55,000.

Mr. WHEELER. Yes, sir.

Mr. PICKERING. Okay, and do they now currently, do all 55,000, or what percentage of those would impose a tax on cellular telecommunications?

Mr. WHEELER. Okay, I'm sorry. It's the other way around. It's 55,000 total, of which about 36,000, give or take, impose on wireless.

Mr. PICKERING. Okay. Now, you all represent the consensus and the unity. Is there anyone in State or local government or in industry that is opposing this agreement, to your knowledge?

Mr. SCHEPPACH. No, not to our knowledge.

Mr. WHEELER. I don't think so.

Mr. SCHEPPACH. As long as you make the two technical amendments.

Mr. PICKERING. And that is my follow-up question. Mr. Bucks, I think that you had mentioned the need to amend section three. Is there any opposition to that technical or conforming amendment in relation to that one particular State?

Mr. BUCKS. Not to my knowledge. I think those are acceptable. They don't affect other States. In fact, there are two States that are involved total here in the two provisions that I called to your attention.

Mr. WHEELER. Let me be real specific, Mr. Pickering, and from the industry side. Since these amendments were proposed by the government side, the answer to your question is no, there are no differences. Yes, we do support these amendments.

Mr. PICKERING. The piece is complete. Let me ask just one other question. The data bases, if you could for all of our benefit, explain how those will work, who will be responsible, who will administer the respective data bases. Mr. Wheeler, if you would start.

Mr. WHEELER. Well, there is a structure here where there is essentially a 2-year window to figure out the answer to that question, okay, and I'm sure that it will vary from State to State. The party to whom you look first is the State, and because they have the best information and they are the taxing authority.

The bill provides that if they do not, then the carrier may step forward and develop a data base in lieu thereof, and there's a 2-year window. It's very important. This 2-year window is a critical component of the legislation because it allows us to then begin us collectively to begin implementing this whole new approach.

Mr. PICKERING. Anyone care to add?

Mr. BUCKS. I concur with Mr. Wheeler as to how the structure works, and I just might add that there's already work done in this area by the State of Washington with regard to their entire sales and use tax structure in terms of developing a data base of their local rates and making it available, both in downloadable files as well as on the internet of their local sales tax rates within that particular State. This is technology that is available. It is doable. Yes, it requires some effort by the States. If the States don't choose to do it, the private sector can do it instead. So, it's not a mandate on the States. It may be preferable for the States to go ahead and do it, and we think that this is very workable.

Again, the State of Washington has already pioneered this technology with regard to their entire sales and local sales and use tax system in that particular State.

Mr. BROOKS. Mr. Pickering, you see what you've created. You've created a group of people who are willing to work together, and if one doesn't do it, the other one says we'll step in and do it. So, it seems to me that you have set a model from the standpoint of looking at how are we going to as a Nation approach a restructuring

of a revenue stream for government. You should be proud of yourself for doing that, and we are willing to work with you there.

Mr. PICKERING. I wish I could take credit here. You all have done the work. It is a dangerous precedent for this town, but we will celebrate today this model that you have established.

I would like to take a moment to ask unanimous consent to submit for the record a letter in support of this legislation on behalf of the National Conference of State Legislatures. One final question, Mr. Markey, if you have additional questions, I will defer to you.

Mr. MARKEY. I thank you, Mr. Chairman. First of all for the record, Mr. Oxley raised a piece of legislation which was introduced by the chairman of this committee and the subcommittee which is entitled the Truth in Billing Act of the year 2000 which deals with all the fees and taxes that are paid by telephone users, but in the interest of full disclosure, you should know that I've also introduced a bill which is entitled The Rest of the Truths in Billing Act of the year 2000, which would also include all of the subsidies that rural America receives from urban American, which would be a highly illuminating that many, many people in my district—

Mr. PICKERING. If the gentleman from Massachusetts would yield, you can't just leave well enough alone.

Mr. MARKEY. No, I'm having a good time. We're here alone, you know? Being from a rural district—you know what I was about—I was about to actually compliment the, you know, the gentleman from Mississippi and the author of the book on the Civil War. His central point is that if Bill McGowan or Craig McCaw was a southern general, you know, grits would be the food of preference in Boston today, and what the lessons that they bring to us is that you try to start out where you're going to be forced to wind up because it's a lot prettier that way. It looks good. Everyone wins, you know, and this is an excellent model here for a peaceful resolution. We'll think of this as like the Compromise of 1820 or 1850. We'll leave that internet taxation issue to some subsequent point in time which might not be resolvable in a peaceable fashion.

I'd like to just ask one final question if I could, and that's back to Mr. Tauzin's earlier question. If a wireless carrier does not exercise due diligence in maintaining its data base, you stated that the company would not be held harmless from tax liability. What about its customers? Would they pay the tax?

Mr. WHEELER. The reality here, Mr. Markey, is that the customer was always getting stuck with this tax. What we're trying to do is to figure out what is a better mechanism for making sure the right tax gets put on the right place, and I think that what the answer, although I turn to Mr. Bucks here for a second, but the issue is not specifically addressed to my knowledge in the legislation.

Mr. MARKEY. Mr. Bucks is using up your last life line.

Mr. WHEELER. There is the relationship between the consumer and the taxing authority.

Mr. BUCKS. Mr. Chairman, or Representative Markey, our understanding is that if the due diligence requirements are not met, the consumer still has recourse, that the hold harmless doesn't apply unless the due diligence standards are met so that the consumer

still has recourse if those due diligence standards are not abided by.

Mr. MARKEY. Thank you all very much. Thank you, Mr. Chairman.

Mr. PICKERING. I believe that if we were to put this in simple terms, if we were to use that last life line, a call to a friend, if we called over the internet, it would be tax free. If we called over a cellular or wireless phone, it would be under a uniform simplified standard at this point in time.

Let me ask one final question and then I'll move to adjourn our hearing. Are there any winners and losers in this whenever you debate tax policy? That is always the question. Are there some municipalities that could lose under this situation? What does the community that you represent of State and local governments project and predict as far as any winners or losers?

Mr. BROOKS. Mr. Chairman, are you speaking specifically of this bill or as a general statement?

Mr. PICKERING. No, of this bill.

Mr. BUCKS. Mr. Chairman—I'm sorry, if you want to proceed, Joe.

Mr. BROOKS. No, go ahead, that's okay.

Mr. BUCKS. As a general matter among the States, this is viewed as largely revenue neutral and a wash. That is also generally true with regard to local governments, but the situation with regard to local governments is a little more complicated, and there could be exceptions to that rule, but what one needs to understand is that you might calculate that there may be revenue gains or losses on a local level, but that assumes a couple of things. No. 1, that the world remains the same in terms of where people are located and where they're making calls from. No. 2, it assumes that the tax system is in fact viewed as workable over time. We came to the judgment that with regard to wireless telecommunications, this system of taxation wasn't really workable and sustainable over time unless we simplified it.

So, in general, we do not believe that there are major gains or losses across the country, certainly at the State level. There may be some gains or losses at the local level that cannot be entirely predicted, but that presumes that everything stays the same out there at the local level and that the tax system is workable, and we're not convinced that, quite frankly, absent this legislation, that that's a fair assumption, going forward for a long period of time.

Mr. PICKERING. Mr. Brooks.

Mr. BROOKS. Well, from a local standpoint, much of our revenue stream, particularly in Virginia, as we are a Dillon Rule State, it is determined at the State level. So, what we have to do is to make sure that any legislation that, you know, comes out of this particular bill, does make it, you know, a revenue balancing situation, and this committee does not have a real easy job before it to do a lot of these things, but we certainly hope that we will begin to have a better relationship between local, State, and Federal officials as we look at this whole structure of revenue from one end to the other. We appreciate your effort.

Mr. PICKERING. Mr. Scheppach?

Mr. SCHEPPACH. We—I second basically what Dan had said, that we ran the actual numbers by States. There are some small winners and losers of several million dollars here or there, but it's not a very significant percentage of their total revenue, so pretty much the States signed off on it.

Mr. PICKERING. My sense of the question is that as you simplify this, it will only accelerate the explosion of cellular wireless, and those revenues that we're now seeing double in the last 5 years will continue, which bottom line, that everyone will benefit, and we'll see increased revenues both in the private sector and to States and local governments. So, it's a good thing. You all have done great work. I predict that this legislation will pass the House and the Senate. It will be signed into law, maybe one of the few telecommunications accomplishments of this Congress, but it is very significant.

Because there is no controversy, we should not say that it is not without substance or significance, and this is a great accomplishment. It is due to your work and your foresight, and I commend you all, look forward to working with you.

I would ask unanimous consent, and hearing none, that I will keep the record open for 30 days for any additional questions. With that, the hearing is adjourned.

[Whereupon, at 2:07 p.m., the subcommittee was adjourned.]