

S. 1755, THE MOBILE TELECOMMUNICATIONS SOURCING ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

MARCH 7, 2000

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

78-320 PDF

WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

JOHN McCAIN, Arizona, *Chairman*

| | |
|-----------------------------|---------------------------------------|
| TED STEVENS, Alaska | ERNEST F. HOLLINGS, South Carolina |
| CONRAD BURNS, Montana | DANIEL K. INOUE, Hawaii |
| SLADE GORTON, Washington | JOHN D. ROCKEFELLER IV, West Virginia |
| TRENT LOTT, Mississippi | JOHN F. KERRY, Massachusetts |
| KAY BAILEY HUTCHISON, Texas | JOHN B. BREAUX, Louisiana |
| OLYMPIA J. SNOWE, Maine | RICHARD H. BRYAN, Nevada |
| JOHN ASHCROFT, Missouri | BYRON L. DORGAN, North Dakota |
| BILL FRIST, Tennessee | RON WYDEN, Oregon |
| SPENCER ABRAHAM, Michigan | MAX CLELAND, Georgia |
| SAM BROWNBACK, Kansas | |

MARK BUSE, *Republican Staff Director*
MARTHA P. ALLBRIGHT, *Republican General Counsel*
KEVIN D. KAYES, *Democratic Staff Director*
MOSES BOYD, *Democratic Chief Counsel*

CONTENTS

| | |
|--------------------------------------|-----------|
| Hearing held on March 7, 2000 | Page 1 |
| Statement of Senator Brownback | 1 |
| Statement of Senator Dorgan | 3 |
| Statement of Senator Gorton | 4 |

WITNESSES

| | |
|---|----|
| Bucks, Dan R., Executive Director, Multistate Tax Commission | 12 |
| Prepared statement | 14 |
| French, Irene, Mayor of Merriam, Kansas | 5 |
| Prepared statement | 7 |
| Scheppach, Raymond, Executive Director, National Governors' Association | 9 |
| Prepared statement | 10 |
| Wheeler, Tom, President, Cellular Telecommunications Industry Association .. | 20 |
| Prepared statement | 22 |

S. 1755, THE MOBILE TELECOMMUNICATIONS SOURCING ACT

TUESDAY, MARCH 7, 2000

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:36 a.m., in room SR-253, Russell Senate Office Building, Hon. Sam Brownback presiding.

Staff members assigned to this hearing: Lauren Belvin, Republican Senior Counsel; Paula Ford, Democratic Senior Counsel; and Al Mottur, Democratic Counsel.

OPENING STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

Senator BROWNBACK. Then we will call the Committee meeting to order.

I am glad to see so many people here. With the Chairman of this Committee involved in a little tussle today, I am impressed we have anybody here. So I thank you all for coming out today.

The Committee today will hear testimony on S. 1755, The Mobile Telecommunications Sourcing Act of 1999. It was introduced by Senator Dorgan and myself in October.

And I am also pleased to announce today that we have Senators Lott, Ashcroft, Cleland, and Kerry who have also co-sponsored the bill.

The legislation will create a uniform national framework for the taxation of wireless calls. The Mobile Telecommunications Sourcing Act is a product of more than 3 years of negotiations between Governors, cities, state and local tax authorities and the wireless industry. They have worked long and hard to bring this bill to the point where it is today.

The legislation represents a historic agreement between state and local governments and the wireless industry to bring sanity to the manner in which wireless telecommunication services are taxed.

Wireless telecommunications has caught fire in the United States. The United States now has more than 12 times the number of wireless subscribers than it had in 1990. Almost 1 in 3 people in the United States currently have a cell phone. And my guess is in this room, it is one in one person has a cell phone.

Wireless telecommunications is expected to grow at a rate of 18 percent per year over the next several years. By 2004, wireless services in the United States are expected to achieve a penetration

rate of 70 percent, which would mean that there would be 200 million wireless subscribers in the U.S. alone.

But for as long as we have had wireless telecommunications in this country, we have had a taxation system that is incredibly complex for carriers and costly for consumers.

Today, there are several different methodologies that determine whether a taxing jurisdiction may tax a wireless call. If a call originates at a cell site located in a jurisdiction, it may impose a tax. If the call originates at a switch in the jurisdiction, a tax may be imposed. And if the billing address is in the jurisdiction, a tax can be imposed.

As a result, many different taxing authorities can tax the same wireless call. The further you travel during a call, the greater the number of taxes that can be imposed upon it.

For example—and we have this example on a chart here, that you might want to turn a little bit so people can see. A businesswoman from Kansas makes 3 wireless calls on the way 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 to Seattle where she picks up a car to drive to Tacoma.

In the round trip between the Seattle airport and Tacoma, she makes another 19 wireless calls. She makes her final wireless call of the day on the drive home from the Kansas City airport.

During this one business day, and this is a real-life example, 39 wireless calls have been made, which require her wireless carrier to keep track of the tax rates and rules in 26 different state and local taxing jurisdictions; 26, 1 day.

This system is simply not sustainable, as wireless calls represent an increasing portion of the total number of calls made throughout the United States.

To reduce the cost of making wireless calls, Senator Dorgan and I introduced this legislation, The Mobile Telecommunications Sourcing Act which has two primary components. First, the bill eliminates the multiple taxing problems of our current system. Only the state, local and sub-local authorities in a consumer's place of primary use can impose a tax on a wireless call, regardless of where the call originates, terminates, or passes through. The place of primary use is either defined as the customer's home or business address.

Second, the legislation establishes a mechanism for creating databases to determine the appropriate taxing jurisdictions for a customer's place of primary use.

By creating this uniform system, Congress would greatly simplify the taxation and billing of wireless calls. The wireless industry would not have to keep track of countless tax laws for each wireless transaction.

State and local taxing authorities would be relieved of burdensome audit and oversight responsibilities without losing the authority to tax wireless calls. And most importantly, consumers would see reduced wireless rates and fewer billing headaches. It is good news for all of us.

In the example that I mentioned earlier, under our legislation—and we have got another chart which shows what it would be after this legislation would pass—the 39 wireless calls that my con-

stituent made before would, for tax purposes, be deemed to have all taken place from her Kansas City address.

As a result, only 3 taxing jurisdictions, Kansas City, Wyandotte County, and the State of Kansas, in which her business address is located, would have the authority to tax the 39 calls. So it would go down from the 27 to those 3.

The Mobile Telecommunications Sourcing Act is a win-win-win. It is a win for industry; a win for government; and a win for consumers.

I thank Senator Dorgan for working with me in crafting this bill, and most of all, I thank the groups represented here today for coming together and reaching an agreement on this important issue.

We will introduce the panels to make a presentation on this. But first, I would like to turn to Senator Dorgan, who has co-sponsored this legislation and been a leader in trying to simplify this arcane situation.

**STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Senator Brownback, thank you very much. I appreciate your leadership and work on this issue.

And this will be an unusual sight for those who watch the legislative process. We are actually trying to solve problems and doing so in a way that simplifies an issue in a manner that allows government and industry to come together to view a real problem and find a sensible, thoughtful solution to it.

Mr. Dan Bucks is here representing the Multistate Tax Commission, and I was chairman of that commission for a couple of terms some years ago. And when I was chairman, we created offices in New York and Chicago and began a program called Joint Auditing.

And the reason we did that was as businesses in this country began more and more to do business in many states, the question became: How do you divide up their income for purposes of taxation? What portion of a business's income should be attributable to this state versus that state?

Some states wanted to overreach and claim more income than was justifiable. And some businesses wanted to hide their income from all states. So you had both sides coming at it in a way that was kind of disingenuous.

We decided, let us find a sensible way to apportion income that is fair to business and fair to state and local governments.

This is very much the same kind of issue. With the growth of cellular telephone service, we have the kind of circumstances you described in your opening statement, where a telephone call can create so many different opportunities for state and local governments to claim nexus or jurisdiction for imposing some kind of a tax. That does not make any sense for the industry. It does not make any sense to have that kind of a murky situation exist for state and local governments.

I want to say, especially, to Tom Wheeler from the Cellular Telecommunications Industry Association that when you approached the Congress a couple of years ago and said, "We have a very practical problem, and we want to solve it. We are not interested in

avoiding taxes anywhere at any time. We just want to solve a problem.”

Our visits with state and local governments led us to understand they wanted exactly the same thing. They wanted to solve a problem and create some clarity. They did not want to overreach. They just wanted definition.

I think that approach from you, Mr. Wheeler, gave us the nudge that was necessary to begin working with all of you who are here today to say, “Let us find a simple, thoughtful, straightforward approach that solves this problem.”

I believe that the legislation we introduced late last year does exactly that. My hope is that we will have a hearing today in which we have supporting testimony, and then we will be able to move this out of the Committee and through the Congress.

My expectation is this legislation should be one of those few pieces of legislation that moves without great controversy, because it is so eminently sensible.

Let me thank the League of Cities, the Governors’ Association, the Multistate Tax Commission, and the CTIA.

I have to speak on the floor at 10 o’clock, and I will be gone for about 20 minutes and then return, so let me apologize for not listening to all the testimony, but I shall return. That is a famous phrase, is it not, “I shall return”?

Senator BROWNBACK. I shall return.

[Laughter.]

Senator DORGAN. But again, let me conclude by saying, Senator Brownback, your leadership here has been very important. I appreciate the opportunity to work with you on something this important.

Senator BROWNBACK. Thank you, Senator Dorgan.

Senator Gorton, do you have an opening statement to make?

**STATEMENT OF HON. SLADE GORTON,
U.S. SENATOR FROM WASHINGTON**

Senator GORTON. Well, I, too, only have a very few minutes, and I would rather listen to the witnesses.

Senator BROWNBACK. Good enough. Thank you both for joining us.

I would like to welcome all our witnesses today. They are Tom Wheeler, President of the Cellular Telecommunications Industry Association; Raymond Scheppach, the Executive Director of the National Governors’ Association; Dan Bucks, Executive Director of the Multistate Tax Commission; and in particular, I would really like to welcome the Mayor of Merriam, Kansas, Irene French, who I rode in on a plane with last night. Welcome, to our panelists.

And I believe, Mr. Wheeler, we will—are we starting with you, or are we starting—

Mr. WHEELER. Why do we not let the mayor go first?

Senator BROWNBACK. Yes.

Mayor French, welcome to the Committee.

**STATEMENT OF IRENE FRENCH, MAYOR OF MERRIAM,
KANSAS**

Ms. FRENCH. Thank you so much. I could say ditto to your opening statement and get up and leave.

[Laughter.]

That was very eloquent and thank you for saying those things.

Mr. Chairman and members of the Committee, the National League of Cities is pleased to have this opportunity to share our views on the Mobile Telecommunications Sourcing Act.

My name is Irene French. And I am the mayor of Merriam, Kansas, and the Chairwomen of the National League of Cities Finance, Administration and Intergovernmental Relations Steering Committee.

The National League of Cities represents 135,000 mayors and local elected officials from cities and towns across the country. NLC member cities and towns range in size from our nation's very largest cities of Los Angeles and New York, to the very 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.

Senator BROWNBACK. Without objection.

Ms. FRENCH. On behalf of the National League of Cities, I would like to express my gratitude to Senator Brownback and Senator Dorgan for introducing this Act.

Your leadership on the issue clearly shows your respect for the principles of federalism and your confidence in state and local government's ability to resolve complex telecommunications issues with industry at the local level, without the need to preempt our traditional municipality 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 provide important public safety benefits.

As we enter the 21st Century, however, the telecommunications industry and state and local governments have been wrestling with the numerous difficult taxation issues presented by the changing marketplace and the technology.

This bill is proof positive that local governments and industry can work together to forge solutions that address both the critical fiscal needs of our cities and business needs of the telecommunications industry.

NLC welcomes the opportunity to develop a partnership with you, Mr. Chairman and the members of the Committee, to address this Act, and other joint efforts of local governments and industry relating to meaningful telecommunications tax simplification that maintains respect for local governments' fiscal needs and autonomy.

In my testimony today, I want to voice the National League of Cities' strong support for this Act. This legislation is a culmination of a 3-year cooperative effort between wireless industry, the NLC, the National Governors' Association, the Federation of Tax Administrators, and the Multistate Tax Commission, which is most unusual.

Working with our industry and our state partners, we have developed a measure that, we believe, provides a straightforward solution to a very complicated problem that, as things now stand, poses unresolved questions for both state and local governments and for the industry.

From NLC's perspective, this legislation is a win-win-win for consumers, state and local governments and the wireless industry.

The application of local taxes to wireless services presents unique and difficult problems both for local governments and for the wireless service providers.

There has been considerable debate among industry and state and local governments, as well as legal scholars, as to which jurisdictions have the right to tax wireless calls.

Is it the city, the county, the state from where the call originated, where the call terminated, where the wireless provider's transmission facility is located, or is it some combination of these, subject to apportionment or offsets?

The Act answers these questions and others like it in a way that respects traditional notions of state and local sovereignty with respect to taxation that are essential to our idea of federalism.

It is important to note that the bill does not create any new taxes, nor does it require that state or local governments impose any new taxes.

The bill leaves the decision as to whether to impose a local tax on wireless service where it currently is, and where it properly belongs—the local government.

The mayors and councils of NLC member cities have widely divergent views about whether to impose taxes on wireless services. Some have imposed such taxes, while many have not.

Much, of course, depends on the budgetary requirements of each local government, the level of demands placed on it by residents for essential public service, and the scope of its taxing authority under state law.

In our system of federalism, these are difficult balancing matters that are best left to local elected officials who are closest to the people. Wisely, we believe this bill does not seek to alter that balance.

The bill is generally revenue-neutral among local governments, equitable among carriers and taxing jurisdictions, and considerably easier for carriers to comply with and for local government to administer and audit.

For local government as well as industry, the bill addresses and clearly resolves several important issues—taxing nexus, collection and remittance of existing taxes due, and, of course, simplification and uniformity.

The bill does not mandate any expenditure of state or local funding. The bill bolsters the ability of state and local governments to collect those taxes they choose to impose on wireless providers while, at the same time, greatly simplifying wireless providers' job of determining which taxes apply to them, and remitting those taxes to the proper taxing authority.

The bill removes any doubt as to a local taxing jurisdiction's ability to impose an existing tax on wireless services by expressly recognizing the authority of those taxing districts whose boundaries encompass the customer's place of primary use, and preventing the

exercise of taxing authority by any other local taxing jurisdictions that do not encompass the customer's place of primary use.

The critical component of the bill is the concept of a customer's place of primary use. This must be either a customer's residential address or a customer's primary business address.

By restricting tax authority to a single location and by allowing those taxing authorities where the customer's place of primary use is located to tax a customer's entire bill, the Act serves the twin objectives of simplicity and avoidance of conflicting tax claims.

In addition to preserving our revenues, the 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 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 violating standards of tax fairness, depriving local governments of needed tax revenues to pay for vital services they provide, such as police, fire and emergency services.

The Act would ease much of the local taxing authorities' current costs and burdens associated with audits, tax enforcement under our present law.

And, of course, the bill would relieve both industry, state and local governments of high litigation costs resolving—trying to resolve unanswered and difficult legal questions posed by our current tax regime.

The bill's new method of sourcing wireless revenue for state and 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.

The bill represents a public, private partnership that shows that state and local governments and the wireless industry can work together to produce beneficial results.

Mr. Chairman and members of the Committee, I greatly appreciate your leadership on this issue and look forward to working with you on this crucial piece of legislation, and hope that it moves through passage, and is accepted by all.

And we are very appreciative to you, Senator Brownback, for leading this result.

[The prepared statement of Ms. French follows:]

PREPARED STATEMENT OF IRENE FRENCH, MAYOR OF MERRIAM, KANSAS

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 Mobile Telecommunications Sourcing Act (MTSA). My name is Irene French, and I am the Mayor of Merriam, Kansas, and the Chairwoman of NLC's Finance, Administration & Intergovernmental Relations Steering Committee.

The National League of Cities represents 135,000 mayors and local elected officials from cities and towns across the country. NLC member cities and towns range in size from our nation's largest cities of Los Angeles and New York to the 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 Senators Brownback and Dorgan for introducing the Mobile Telecommunications Sourcing Act (S. 1755). Your leadership on this issue clearly shows your respect for principles of federalism, and your confidence in state and local governments' ability to resolve complex telecommunications issues with industry at the local level without the need to preempt our 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 provide important public safety benefits. As we enter the 21st Century, however, the telecommunications industry and state and local governments have been wrestling with numerous difficult taxation issues presented by the changing marketplace and technology. This bill is proof positive that local governments and industry can work together to forge solutions that address both the critical fiscal needs of cities and business needs of the telecommunications industry. NLC welcomes the opportunity to develop a partnership with you, Mr. Chairman, and the Commerce Committee, to address the Mobile Telecommunications Sourcing Act and other joint efforts of local governments and industry relating to meaningful telecommunications tax simplification that maintains respect for local governments' fiscal needs and autonomy.

In my testimony today, I want to voice the National League of Cities' strong support for the Mobile Telecommunications Sourcing Act. This legislation is the culmination of a 3-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 that, as things now stand, poses unresolved questions for both state and local governments and for industry. From the National League of Cities' perspective, this legislation is a "win-win-win" for consumers, state and local governments, and the wireless industry.

The application of local taxes to 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 well as legal scholars, as to which jurisdictions have the right to tax wireless calls. Is it the city, county and state from which the call originated? Where the call terminated? Where the wireless provider's transmission facility is located? Or is it some combination of these, subject to apportionment or offsets?

The Mobile Telecommunications Sourcing Act answers these questions and others like it in a way that respects traditional notions of state and local sovereignty with respect to taxation that are essential to our system of federalism. It is important to note that the bill does not create any new taxes, nor does it require that state or local governments impose any new taxes. The bill leaves the decision as to whether to impose a local tax on wireless service where it currently is, and where it properly belongs: the local government. The mayors and councils of NLC member cities have widely divergent views about whether to impose taxes on wireless services; some have imposed such taxes, while many others have not. Much, of course, depends on the budgetary requirements of each local government, the level of demands placed on it by residents for essential public services, and the scope of its taxing authority under state law. In our system of federalism, these are difficult balancing matters that are best left to local elected officials who are closest to the people. Wisely, we believe, the bill does not seek to alter that balance.

The bill is generally revenue-neutral among local governments, equitable among carriers and taxing jurisdictions, and considerably easier for carriers to comply with and for local government to administer and audit. For local government as well as industry, the bill addresses and clearly resolves several important issues—taxing nexus, collection and remittance of existing taxes due, and, of course, simplification and uniformity. The bill does not mandate any expenditure of state or local funding.

The bill bolsters the ability of state and local governments to collect those taxes they choose to impose on wireless providers while, at the same time, greatly simplifying wireless providers' job of determining which taxes apply to them, and remitting those taxes to the proper taxing authority. The bill removes any doubt as to a local taxing jurisdiction's ability to impose an existing tax on wireless services by expressly recognizing the authority of those taxing jurisdictions whose boundaries encompass the customer's place of primary use, and preventing the exercise of taxing authority by any other local taxing jurisdictions that do not encompass the customer's place of primary use.

The critical component of the bill is the concept of a customer's place of primary use. This must be either a customer's residential address or a customer's primary business address. By restricting taxing authority to a single location, and by allow-

ing those taxing authorities where the customer's place of primary use is located to tax the customer's entire bill, the Act serves the twin objectives of simplicity and avoidance of conflicting tax claims.

In addition to preserving state and local government revenues, the Mobile Telecommunications Sourcing 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 violating standards of tax fairness and depriving local governments of needed tax revenues to pay for the vital services they provide, such as police and fire, and emergency services. The Mobile Telecommunications Sourcing Act would ease much of local taxing authorities' current costs and burdens associated with audits and tax enforcement under present tax regimes while, at the same time, preserving local authority to tax wireless calls. And, of course, the bill would relieve both industry and state and local governments of the high litigation costs of resolving the difficult and unanswered legal questions posed by the current tax regime.

The measure would allow, but not require, states and municipalities to develop databases that assign each address to the relevant taxing jurisdictions. If such databases are not provided, carriers may develop their own, as long as they rely on nine-digit zip codes. From the National League of Cities perspective, this matter is not controversial. This measure provides much needed relief for state and local governments without impinging upon the essential responsibility of local taxing authority.

The bill puts local governments and service providers on a level playing field by sparing them from the arduous task and expense of determining the taxability of every individual call included in a wireless service bill, including calls that crossed taxing jurisdictions multiple times during the same call. The bill accomplishes this by establishing a uniform standard—the place of primary use—for sourcing all wireless telecommunications services for all state and local governments that tax these activities. For local governments, uniformity that respects local autonomy is important, because it simplifies compliance for our cities and avoids multiple taxation.

The bill's new method of sourcing wireless revenues for state and 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. The bill represents a public-private partnership that shows that state and local governments and the wireless industry can work together to produce beneficial results both for themselves and, perhaps most importantly, for the consumers who are our constituents and industry's customers.

Mr. Chairman and Members of the Commerce Committee, 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. We are appreciative of the continued federal recognition of the role of local governments in telecommunications and taxation. I would be happy to answer any questions that the subcommittee may have at the appropriate time.

Senator BROWNBACK. Thank you very much, Mayor French, and thank you for coming to town to testify on behalf of the organization and on behalf of your community as well.

We look forward to some questions to discuss the issue with you too.

I would like to call Mr. Scheppach, who is with the National Governors Association, and who will present testimony on behalf of the NGA.

STATEMENT OF RAYMOND SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS ASSOCIATION

Mr. SCHEPPACH. Thank you, Senator. I appreciate you inviting NGA to testify on S. 1755, The Mobile Telecommunications Sourcing Act.

I would like to submit my full statement for the record. And I will just take about 2 minutes to summarize it quickly.

Let me first thank you and Senator Dorgan for your leadership in sponsoring this legislation.

Second, I would say that the Nation's Governors are in strong support of this legislation. We know that the maze of different state and local taxes has created a significant burden on the industry, with their different tax approaches; some with respect to taxing at the cell site, some at the billing address, and others at the originating switch.

The current system of taxes was obviously created for copper-wired home telephones, not for mobile cell phones. Not only did it impose significant costs on the industry, but it was also confusing to consumers, and it created a significant amount of burden on state and local government to essentially monitor it.

We appreciate the industry coming to us to negotiate this. And we do believe it is a win for the industry, for customers and for state and local government.

What the bill does is simplify the bill as if all calls originate at the place of primary use. What this Act would do is as follows: First, it would provide customers with a simpler billing system.

Second, it would preserve state and local tax authority.

Third, it would reduce potential double taxation.

Fourth, it would simplify and reduce costs on state and local government.

Fifth, it would do a similar reduction of costs on the industry.

And sixth, it would assist the transition to bucket of minutes billing.

The Act would not impose any new taxes, would not reduce any overall tax obligation, meaning that the sum total would be neutral, and it does not mandate any additional state and local spending.

Mr. Chairman, we look at this really as a model. We do realize that with technology changing and the new economy coming at us very, very quickly, that more and more we are going to have to be willing to sit down with the industry and negotiate out and—and solve problems. So we would like to also work in other areas.

In summary, Mr. Chairman, the Nation's Governors are strongly in support of this legislation, and we hope that you will schedule an early markup and move the bill.

[The prepared statement of Mr. Scheppach follows:]

PREPARED STATEMENT OF RAYMOND SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS ASSOCIATION

Senator Brownback and other members of the committee, thank you for inviting me to testify on S. 1755, the Mobile Telecommunications Sourcing 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, Senator Brownback and Senator Dorgan, for your leadership and sponsorship of the Mobile Telecommunications Sourcing 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's 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're 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 Mobile Telecommunications Sourcing 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 the Mobile Telecommunications Sourcing Act 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 Mobile Telecommunications Sourcing 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 Mobile Telecommunications Sourcing 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 House, and the other groups represented here today to achieve passage of this important legislation. I would welcome any questions you might have.

Senator BROWNBACK. And that is certainly our intent to do that, to try to move it through both houses and get it to the President as soon as possible.

Mr. Bucks, thank you for joining us. Dan Bucks is Executive Director of the Multistate Tax Commission. I look forward to your testimony.

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

Mr. BUCKS. Thank you, Mr. Chairman. Mr. Chairman, members of the Committee, good morning.

I am Dan Bucks. I am the Executive Director of the Multistate Tax Commission. The Commission is an organization of state governments that works with taxpayers to administer equitably and efficiently the tax laws that apply to interstate and international commerce.

Forty-four states, including the District of Columbia, participate in various programs of the Commission.

I will be submitting as well a written statement for the record. And I would—

Senator BROWNBACK. Without objection.

Mr. BUCKS. I am pleased to be here today to offer the Commission's enthusiastic support for S. 1755, The Mobile Telecommunications Sourcing Act, and am pleased to join with the Governors and the cities and the industry that are here today in support of this.

The legislation does represent a common-sense approach to resolving a difficult issue involving the imposition of transactional taxes on mobile telecommunications services.

I want to address the significant amount of work and cooperation that went into developing this legislation. Some years ago, the telecommunication industry approached state and local governments and asked state and local governments to address a number of—of critical issues. They continue to ask us to address a number of these issues.

And this question of the situs and collection responsibilities for taxes assessed on mobile telecommunications services rose to the top and became the focal point of the early discussions—cooperative discussions between the industry and state and local governments.

And so over the course of approximately 3 years and not without some disagreement from time to time, the industry and state and

local governments worked cooperatively to develop the proposal that which is embodied in S. 1755.

Now, one might ask, what is the—why is the Multistate Tax Commission—which is an organization of State governments that is very concerned with the protection of State sovereignty, why is the Multistate Tax Commission committed to working toward passage of Federal legislation affecting state taxing authority?

Well, I think the answer is simple. And Senator Dorgan in—the press conference introducing this legislation emphasized the importance of protecting the Constitutional authority of the state and local governments, but also noted the unique circumstances affecting this industry and the—unique situations and complexities involved.

And Senator Brownback, you have described very well and in great detail, the kinds of complexities and challenges involved where you have a mobile customer and a multiplicity of service providers and the challenges that the companies faced in terms of calculating the tax in these circumstances.

In these unique kind of situations, the Federal Government, because of its power to regulate interstate commerce and solve issues of federalism, can assist state and local governments and the industry to achieve an efficient and equitable result. And that is what this legislation embodies.

Now, let us—I would like to take just a few minutes to note some of the key characteristics of—of this legislation.

First of all, its impact on state sovereignty: States retain the right to determine whether or not they wish to tax telecommunications services including mobile telecommunications.

This legislation neither mandates nor prohibits such taxes. It only makes these taxes work better in the unique circumstances of mobile telecommunications where customers travel and make calls from several locations.

If anything, the legislation reinforces state sovereignty by making state and local taxation work better in the context of this industry.

Uniformity: Now, the key feature of this legislation is to provide a consistent rule for deciding where calls made by a wireless phone customer are taxable.

And the rule provides for a place of primary use as the basis for taxation and this consistent rule of situsing for tax purposes leads to substantial simplifications and efficiencies that several have noted this morning.

The use of technology to solve a technological problem is another characteristic of this particular piece of legislation.

The legislation breaks new ground in terms of harnessing modern technology to help solve a problem that is created by modern technology. And specifically that is in terms of the use of certified tax rates for specific address localities that is embodied in this particular legislation.

The use of technology as a part of the solution to tax problems arising from new ways of doing business due to new technology is something that I think will have wider applicability in other tax areas far and beyond the case of wireless telecommunications.

But this is the—this is a—a ground-breaking use of it in the case of this legislation.

The non-severability clause in this legislation is absolutely critical. Without that clause, the legislation could create an incentive for unfortunate litigation that would seek to convert this legislation from being of mutual benefit to states, localities and industries, to legislation that would, in fact, preempt state taxing authority and undermine state sovereignty.

So the non-severability clause is a critical feature of this particular legislation.

Now, I need to mention the fact that there are two technical points in the—in section 3 of the legislation that have been brought to our attention that we would like to correct via an amendment when the legislation is brought up for consideration. And these amendments are consistent with making national legislation compatible with our system of federalism.

First, there will—there will be a technical amendment that will conform the Federal legislation to unique circumstances in one state's Constitution to allow telecommunications companies operating within that state that are subject to that state's business and occupations tax to calculate this tax base according to separate provisions that are required by that state's Constitution.

Second, there will be an amendment to exempt one state's single business tax from inclusion of—under the legislation because of the differences in the way the tax is calculated between the legislation—the legislation and that tax.

These changes are technical in nature, but they are important to make national legislation consistent with our system of federalism.

We believe that our experience with working with industry on this legislation is an important step in continuing discussions to resolve other issues, and it is a great model for the future in terms of resolving those other issues.

We want to thank you very much, Senator Brownback and Senator Dorgan, for your leadership in introducing—this legislation, guiding it through the Senate, and for your continued support of state and local governments.

Thank you.

[The prepared statement of Mr. 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.

S. 1755, the *Mobile Telecommunications Sourcing Act of 1999* 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, S. 1755 preserves their sovereignty and taxing authority over state and local telecommunications tax structures.

The Multistate Tax Commission is pleased to offer its support for S. 1755. A copy of the Commission's resolution supporting this legislation is attached to this statement.

II. The Proposal. In practical and general terms, S. 1755, the *Mobile Telecommunications Sourcing 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.

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 *Mobile Telecommunications Sourcing 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.

¹There 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.

(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. 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 pro-

vider, 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.

C. Sec. 4 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.

VI. 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 Mobile Telecommunications Sourcing 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 rela-

tionship 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.

Senator BROWNBACK. I am happy to do so and thank you for your statement, Mr. Bucks.

And now, Mr. Wheeler, we were going to start with you, and we will finish with you.

Tom Wheeler, President of the Cellular Telecommunications Industry Association. Welcome.

STATEMENT OF TOM WHEELER, PRESIDENT, CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Mr. WHEELER. Thank you very much, Senator Brownback, and good morning. Thank you for the leadership that you and Senator Dorgan have been providing on this issue.

I want to associate myself with my colleagues here who have uniformly been praising you and Senator Dorgan.

And I also would like to associate myself with you and Senator Dorgan who have been uniformly praising my colleagues up here, because as Dan Bucks just said, this was a 3-year process.

Things that are easy do not take 3 years to resolve. This has been an arduous exercise in good faith by both parties that has—by all parties that has created something that I think really moves the ball forward and, as has been said previously, creates a significant new milestone for this kind of policy issue.

Let me reiterate what you have heard, that nothing that we are talking about in this legislation has any impact on any jurisdiction's tax powers; rather, that it establishes a common sense plan for the administration of those powers, a plan that reflects the fact that we are now a mobile society.

The taxing power that local and state governments today exercise grew out of a sedentary society. If I walked down to Main Street and went to the hardware store, you knew where the taxable transaction occurred. If I picked up my telephone at home and made a call, you knew where the taxable transaction occurred.

Wireless has stretched that model, however. The airwaves do not respect state boundaries, and mobility has taken the phone out of that fixed position across state and local governmental boundaries.

The government has tried to deal with this as best they could, using the previous model, but things got confusing real fast.

For instance, in Senator Dorgan's State of North Dakota, the taxing situs is the cell site from which the wireless call is made. Across the border in the State of South Dakota, the taxing situs is the switch that translates the call from one point to another.

I am going to show you an example as to what that means. Here is a situation where you have a call being made down here in Town A, picked up by an antenna in Town B, and switched by a switching facility in Town C. Now, who collects the tax?

Another example, if you get on I-95 and you drive 104 miles from Baltimore to Philadelphia, you go through 12 distinct state and local taxing jurisdictions.

You are making calls all along the way. It takes you a couple of hours to make the drive. And you are making calls all along the way. How do localities sort out who gets the tax? How do the carriers sort out who gets the tax?

And imagine the consumer at the end of the month when they get a bill that has a line item on there that says state and local taxes, and this month it is wholly different from the previous month, because of the fact that they went to Philadelphia, instead of going to Harrisburg, or something like this.

And so what this bill does is to create a common approach. Let us go back to your peripatetic business woman example that you gave at the outset, if we can look at that. Actually, let us look at the second one. Let us look at the "after" one.

The significant thing here is that all 39 calls remain being taxed. And as a matter of fact, in this instance, as you pointed out in your statement, they are taxed with stacked taxes. The city has a tax. Wyandotte County has a tax. And the state has a tax that applies to all 39 of those calls.

But it is one location. It is simpler for the consumer. It is simpler for the state and local governments. It is simpler for the carriers to enforce.

And obviously if we pick any other point—somebody comes from Senator Gorton's State of Washington and goes to the other way around the triangle, the same kinds of concepts would apply.

The airwaves cannot be taught to respect political borders. And Americans are a mobile society. That leaves us with two choices. Either we can develop very complex procedures that run up the cost to government to taxpayers and run up the cost of service to consumers; or we can enact the Brownback/Dorgan common-sense plan that eliminates headaches, and saves everyone a bundle.

One final aspect, Mr. Chairman, is the determination of the taxing authority in which the PPU, the place of primary usage resides. There are two solutions to that in the bill.

One, state and local governments may develop—may, underline, develop their own database using zip codes. If they do not, the carriers can develop a database.

There is going to be a couple-of-years period after enactment where this can be worked out among the carriers and the states as to how they want to phase in.

But what is significant here is that really for the first time, both local governments and carriers are going to know the impact of an annexation that has changed the taxing jurisdiction, or other kinds of changes that happen along the way.

Finally, on the question of the Federal nature of this, this is clearly a Federal issue. The problem today is a lack of uniformity. That is why the cities, the legislatures and the Governors along with the industry all support this common-sense approach and are grateful to you for your leadership.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wheeler follows:]

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

Mr. Chairman and Members of the Committee:

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 Omnibus 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.

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

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 percent of the U.S. population.

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 Senator Brownback's home state of 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 Proposal, S. 1755, the Mobile Telecommunications Sourcing 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 3 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 Senators Brownback and Dorgan, we were able to come together to forge this proposal. Senators Brownback and Dorgan have introduced legislation—S. 1755—that implements the ideas we have worked so long to craft. With the leadership and assistance of Chairman McCain, Telecommunications Subcommittee Chairman Burns, Senator Hollings and all members of this committee, 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 effect whether a jurisdiction may tax, it only prescribes how it may tax.

Which Taxes Are Covered?

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 Mobile Telecommunications Sourcing 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 com-

pliment 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 are 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 3 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.

Conclusion

In conclusion, the Mobile Telecommunications Sourcing Act 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.

I am honored to represent the wireless industry today and to pass along to you the wireless industry’s enthusiastic endorsement of the Mobile Telecommunications Sourcing 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 Senators Brownback, Dorgan and the other members of this Committee for turning our proposal into the legislation we discuss today. The wireless industry stands ready to participate in more of these partnerships, helping to create new systems of governance for the 21st century.

Thank you for your consideration of our views.

Senator BROWNBACK. I thank you, Mr. Wheeler.

And thanks to all of you for working so hard and diligently over the 3 years to try to solve a—a pretty vexing problem, where everybody had to look and see what they could do best to help—help solve it.

And this is an unusual situation where we have so many people here in agreement on a bill and nobody in disagreement, which is what it is going to take this year, I think, to move things through. There is just going to have to be a lot of agreement.

Let me ask each of you a couple of questions, if I could. First, Ms. French, I am wondering if in Merriam or the National League of Cities in general, if they have quantified the cost savings that local governments would achieve by eliminating the current cost and burdens associated—such as auditing and tax enforcement functions that are related to these wireless transactions.

I did not know if you had—you had mentioned in your testimony about the burdensome cost of—of enforcing the current system, if the League of Cities or—

Ms. FRENCH. I do not have a dollar figure, Senator. It varies from city to city. But I can get that dollar cost to you from our staff.

Senator BROWNBAC. That would be good to have, because I would think that this would be a very burdensome tax to carry out as currently situated and as it currently operates.

Ms. FRENCH. Absolutely.

Senator BROWNBAC. Mr. Wheeler, can you quantify the amount of money that wireless carriers would save if this legislation became law, putting in a simpler approach to taxation?

Mr. WHEELER. I agree with the mayor. It is very difficult to get down and give you a rock hard number because of so many nuances along the way. We are clearly, however, talking about some substantial administrative costs, both for carriers and local governments.

What is really significant, though, I think, Mr. Chairman, is that this situation is not going to get better. It is only going to get worse. It is only going to get more expensive as there is a growth in the number of wireless subscribers as you indicated in your opening remarks.

And as "one-rate," national roaming becomes a reality, where you take your phone anywhere.

So this is a situation that you are actually nipping in the bud. It is a substantial administrative challenge today and burden. It has substantial costs and those costs are only going to get worse.

Senator BROWNBAC. Mr. Bucks, how difficult will it be for the states to design and maintain their own database systems to implement this legislation if we went—if we went that route?

Mr. BUCKS. Well, the difficulty is not excessive or not—not an overwhelming challenge. States—some states, such as the State of Washington, have already pioneered this kind of tax—tax—tax database of rates for their local governments in that particular state.

And it is not an overwhelming task. It is—it is a tax that—to be done well, does impose an upfront challenge to state governments, but it is not an overwhelming one.

And the payoff in the long term is—is substantial for both—for all the parties involved, state and local governments and for the industry. In other words, it will be a wise investment.

But the technology is there, and it has already been pioneered in the State of Washington is what I am trying to say here.

Senator BROWNBAC. So you do not think it will be a difficult thing to develop, the database?

Mr. BUCKS. Well, there is—there are the software methods that—we know that the software technology is there. We know that there are information—methods of gathering the information.

In fact, what we are discovering is that in many instances, state governments have had for some time information about local taxing jurisdictions in their property tax systems that need—that can be drawn upon to be utilized over here in the context of transactional taxes.

So the information is there. The technology is there, and I think the commitment is there. And that is—that is what you need, and so I think with the combination of the 3 things, we can move forward on this.

Senator BROWNBACK. Mr. Scheppach, do you have any comment on that, on the sense of how many states will create their own databases to deal with this law and this situation?

Mr. SCHEPPACH. Not really. I would rely on Dan, who—who deals more directly with the tax people, so——

Senator BROWNBACK. Okay.

Mr. Wheeler, I want to take you back to an earlier statement. But I want to make something clear, as I did at the press conference when we announced this bill.

Mr. Bucks, you were kind of mentioning that this might be a template for other difficult taxing issues that we have when we go from—I do not think I want to put it quite like taxing a sedentary society. That sounds like a society of couch potatoes.

[Laughter.]

But anyway, we continue to move to a more mobile society and an aggressively mobile society. We are not trying to design this will for future issues or for future tax transactions. That is a whole other kettle of fish. And I do not know how long that is going to take to work out. It could take some period of time.

I appreciate your support for the bill and statement of that regard. I am just saying, as a sponsor, that is not what we are trying to get at.

We want to pass this bill this year. We think it makes good sense for the industry and for the nation, and not necessarily as saying, “This is the way you figure out these other difficult taxing problems.”

So I do not want to have any of my colleagues think that this is step one of moving forward on some other issues that we are hearing a lot about from other people.

Mr. Wheeler, you talked about, you know, when you have these approaches where you have a bucket of minutes that you buy and the billing plan impacts determination of the proper taxing jurisdiction.

How do you see this particular piece of legislation impacting that situation as we go increasingly toward those bucket of minutes approaches?

Mr. WHEELER. That is a really good question. And it is going to facilitate the growth of these bucket plans. And we all know that the impact that these bucket plans have had is to lower the cost to consumers.

But let us take a specific example. A consumer buys 1,000 minutes of use. It costs him \$100. It is 10 cents a minute. The 1,001 minute costs him 25 cents. They use 1,005 minutes for the course of the month. So their total bill is \$101.25.

Was the minute that was used the 10-cent minute used in their home area, or was it one used in an outside area? How do you determine when you have this reality of, “Well, here are some 10-cent minutes and here are some 25-cent minutes,” and who gets the right to tax a 25-cent minute, and who does not? Did I use that 25-cent minute when I was across the border, or did I use it here at home? And how do you prove that?

And so it becomes incredibly complex and a hindrance to this kind of price lowering, pro-consumer marketplace—competitive-marketplace driven innovation of the industry.

So what your bill does is really simple. It says, "We will not worry about where." The answer is: It is at the place of primary use. That is where it will get taxed.

We do not worry about "Was it a 25-cent minute here and a 10-cent minute there," or whatever the case may be. It is one place that we tax, and we tax the full number.

Senator BROWNBAC. And that may not sound like much to some people, but the total value of wireless calls made in America today, do you—do you have a rough number?

Mr. WHEELER. About \$40 billion.

Senator BROWNBAC. Today?

Mr. WHEELER. Today.

Senator BROWNBAC. Of value of wireless calls. And what are you projecting that to be in 5 years? Is there—are there industry projections?

Mr. WHEELER. It depends upon who you listen to, but a lot larger.

[Laughter.]

Senator BROWNBAC. Particularly as you get Internet access over wireless.

Mr. WHEELER. And what we are seeing is an increased minutes of use. I mean, as the price goes down, usage goes up. It only makes sense.

What that does, however, is trigger exactly the question you raised. And that is, "Oh, my goodness. I have gone over my big bucket into something else now. How does that additional fee get taxed and who gets to claim it?"

That is a real—

Senator BROWNBAC. Nightmare, is it not?

Mr. WHEELER. Right.

Senator BROWNBAC. What was it 5 years ago, the total value of wireless calls in the country, if it is \$40 billion today? Just to give us some perspective on how that is going.

Mr. WHEELER. Five years ago, I would say we were probably at about \$15 billion. I mean, it has had—there is a significant growth curve.

We are Mr. Chairman, we are adding one new subscriber every two and a half seconds, 24 hours a day, 365 days a year.

And when those people sign up under this bill, they will be asked, "What is your place of primary use," and that—at that point in time we will solve all these issues that we are up here trying to wrestle with. That is progress.

Senator BROWNBAC. And they are—you are not only getting more subscribers, but they are also using their cell phone far more per subscriber than they were 5 years ago.

Mr. WHEELER. Yes, sir.

Senator BROWNBAC. Do you have any average numbers on that by per-subscriber use?

Mr. WHEELER. Yes. It used to be that the rule of thumb was about 100 minutes a month. And now what we are seeing—

Senator BROWNBAC. A 100 minutes a month.

Mr. WHEELER. A 100 minutes a month. Now, what we are seeing—

Senator BROWNBAC. That is almost a laughable amount, now.

Mr. WHEELER. What we are seeing is 300 and 400 minutes a month averages not being atypical. And what is significant there, Senator, is that your average residential subscriber uses about 1,200 minutes a month.

So we are now talking about 25 to 30 percent of the total minutes of use, they are now moving over into a wireless environment and triggering this problem.

Senator BROWNBAC. And then when you have more Internet access on the wireless, you anticipate, I would say, presume, a large increase then in the usage and the time on?

Mr. WHEELER. Yes, sir. As a matter of fact, in 5 minutes one of the investment banking houses on Wall Street is holding a conference call on that very issue and what is going to be the impact of the Internet on wireless usage.

And projections are a significant increase. And that, again, just messes up this whole situation even more, unless we do something about it today.

Senator BROWNBAC. Are there projections on the impact on the wireless industry of readily available and economically available Internet access?

Mr. WHEELER. Yes. I will be happy to give you a for instance. Lehman Brothers just came out with a very good analysis of this, and they are now projecting that, I believe, Senator, it is by 2007, 50 percent of wireless subscribers will be accessing the Internet wirelessly.

Senator BROWNBAC. They will be on wireless to access the Internet.

Mr. WHEELER. One of the services you will be able to get on your wireless phone is to access the Internet.

Senator BROWNBAC. But you are saying that 50 percent of the wireless access will be for Internet by 2007?

Mr. WHEELER. No, the projections are that 50 percent of wireless consumers will have wireless Internet access.

Senator BROWNBAC. I saw a guy who was in my office the other day that had his Internet access phone, I guess you would call it—I mean, what do you call them now? What—what is it? It is not a phone, but—

Mr. WHEELER. It is a—well, there is a—there are numerous devices. You can call it a phone. You can call it a PDA, a personal digital assistant. You can call them Internet access device. We have not quite got the names down yet.

Senator BROWNBAC. PDA, Okay. I had not heard that one yet. I will have to get my PDA.

[Laughter.]

But he was pulling up my weather in Topeka, Kansas from here. I had not thought about where he was being taxed, because he was from New York. He was in Washington, and he was calling up Topeka information.

So I at least hoped at that time, he was being taxed in Topeka. But under this bill, he would be taxed in New York.

And I just think, you know, as we go forward, hopefully, we can move this legislation this year to solve a problem, because when you are talking about \$40 billion now, going up to 80 million or 90 million subscribers, and its not just the number of subscribers, but

the number of minutes that they will have, so I think passing this bill is one of the key things that we can do to try to hold costs down as much as possible within the taxation system.

That is what this legislation is aimed at being able to do, and also making it simpler for cities and for Governors in being able to tax in a sensible fashion, but not having to track down everybody that is using a wireless system going and passing through your state or through your taxing jurisdiction of a community or of a county of government.

Do any of you have anything additional you would like to add to your testimony or responses to other questions that have come up? Anybody else?

[No response.]

Senator BROWNBAC. Mr. Wheeler, one other question I want to ask you. What impact would this legislation have on the line-item charges that currently appear on consumer bills? What will it look like after this legislation?

Mr. WHEELER. I think that the impact on consumers of this is going to be to simplify and make more understandable what those line item charges are.

As I indicated a minute ago, there is normally a line on the bill that says state and local taxes. Now, that number can today gyrate all over the place depending—

Senator BROWNBAC. And does.

Mr. WHEELER.—and does, depending on where you have been and what taxing authorities and this sort of thing.

What this is going to do to consumers is to remove the, “My goodness, this does not make any sense. Last month it was this. This month it is that. Why is it?”

Senator BROWNBAC. And I use the same amount of calls. My total telephone bill, absent taxes, was virtually the same.

Mr. WHEELER. Right, exactly.

And so they call us, and they say, “Well, why is this?” And—and—and we would say, “It all depends on where you go.”

“Well, why?”

“Well, because it depends on whether it is the cell site in one place, or the switch in another place,” or—and all of these kind of things, and that does not compute to consumers.

Okay. Consumers want to know, “What is it going to cost me. Can I expect some stability in that? Does it make sense?” And that is what this bill does. It creates simplicity and creates understandability for that line item on the bill.

Senator BROWNBAC. Mr. Bucks, amongst the various taxing authorities across the nation, has this been an area of great dispute between various taxing jurisdictions, or has it just been mostly a headache to date?

Mr. BUCKS. I would put it in the latter category of—of primarily an administrative burden for the industry. I do not think it has been the source of—of major disputes, certainly not at the state level. I am not sure if there have been some disputes at the—at the local level or not.

But I think it is just the administrative—the perception of—of state and local governments is that the current situation just creates an administrative burden and some confusion and complexity

that is not needed to make the tax system work sensibly. And that is, I think, the—the major perception out there.

Senator BROWNBACK. Do you—do you have numbers, or could you provide them to the Committee, of the amount of taxation revenue that is generated currently from the wireless industry to state and local authorities? Do you—do you have those available today?

Mr. BUCKS. I do not have those available right here, but we will submit what information we have on that subject in terms of the tax revenues involved.

Senator BROWNBACK. If—if you could, and if you have projections of what those will be in, you know, the upcoming years, if you have any of those, I would appreciate those for the record as well, because I am certain we are not talking about a small amount of taxation revenue that is—that is coming in. So I would like to be able to have that for the record. And it is going to be growing substantially.

Good. Well, I want to thank each of you for coming. I am certain Mr. Dorgan regrets not being here. He, unfortunately, was called to the floor and had a presentation that he had to make on the floor.

We will keep the record open for the requisite amount of time, so Senator Dorgan may be submitting some post hearing questions to you. And as I stated previously, we are going to try to move this legislation as rapidly as possible.

Senator Lott has signed on as a co-sponsor of the bill. That is always a good sign on moving legislation. When you get the majority leader to co-sponsor a bill, it makes eminent sense.

The current taxing situation is a big problem now. It is going to be a bigger problem in the future. We have got uniformity of agreement of the various taxation entities and the industry. This just makes good sense to move on forward, so we are going to try to press forward as rapidly as we can.

With that, thank you all very much for your informed testimony. Good day.

[Whereupon, at 10:30 a.m., the hearing was adjourned.]