

**TESTIMONY OF REPRESENTATIVE MARA CANDELARIA REARDON  
INDIANA HOUSE DISTRICT 12**

**Hearing on H.R. 1521, the "Cell Tax Fairness Act of 2009"**

**House Committee on the Judiciary  
Subcommittee on Commercial and Administrative Law**

**June 9, 2009**

Chairman Cohen, Ranking Member Franks and members of the Subcommittee, my name is Mara Candelaria Reardon, and I have the honor of representing House District 12 in Northwest Indiana. I serve on the Environmental Affairs, Government and Regulatory Reform and Ways and Means Committees in Indiana's House of Representatives.

Thank you for the opportunity to appear before you this morning to offer my support for H.R. 1521, the "Cell Tax Fairness Act of 2009." The Cell Tax Fairness Act takes a thoughtful, pro-consumer, pro-broadband approach that will help to ensure affordable wireless services for my constituents and Indiana's nearly 4.7 million wireless subscribers.<sup>1</sup> Congresswoman Lofgren and Congressman Franks are to be commended for the broad bi-partisan support they have garnered with this legislation.

As a state legislator and particularly as a member of the Government and Regulatory Reform and Ways and Means Committees, any federal legislation that places parameters on a state's ability to tax is something that I believe should be done sparingly, judiciously and most importantly, does no harm. I believe that H.R. 1521 meets these criteria. Our system of Federalism grants state and local policymakers with the ability to determine how states should levy taxes on individuals and businesses that reside within their respective jurisdictions. As a member of Indiana's Ways and Means Committee, I am sensitive to preserving a state's taxing authority to fund government services.

But as a legislator tasked with writing Indiana's tax laws, I also believe that another important precept of our nation's tax structure is that taxes should be levied equitably on our citizens, particularly when multiple jurisdictions have the ability to tax. In Indiana, my constituents pay a 9.55% rate in state and local taxes, and a relatively modest combined rate of 13.74% in state, local and federal taxes, fees and surcharges for their wireless services as compared to the national average of 15.2%.

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<sup>5</sup> FCC's Local Competition Report, September 18, 2008

Nevertheless, Indiana's wireless consumers are now effectively taxed twice. They not only pay the state sales tax like consumers of other goods, but also included is the Utility Receipts Tax.

In several states, consumers pay taxes, fees and surcharges in excess of 18% on top of their monthly bills for their service. When tax rates reach those levels, as they do with alcohol and tobacco, the purpose is usually to inhibit use. Wireless services are no longer a luxury in our society; they have become a necessity. Preserving affordability should be an important public policy goal.

H.R. 1521 provides a measured approach by only precluding *new discriminatory* taxes and fees from being added on an already excessive level of taxation imposed upon wireless consumers. Importantly, the legislation recognizes the revenue needs of states and localities and *does not* take away any existing revenue from state or local governments. In fact, H.R. 1521 allows states and localities to raise wireless taxes if done in conjunction with an increase of taxes on other general goods and services.

My focus here this morning will be to provide some historical context as to how we got to where we are today and why I believe that taking a "time-out" from imposing new, additional discriminatory taxes on wireless services is important to American consumers and consistent with principles espoused by the National Conference of State Legislatures.

### **Historical Context Regarding Communications Taxes**

The tax structure imposed upon the communications industry today is a holdover from the days when the industry was operated by Ma Bell as a rate regulated utility. This tax structure was first instituted long before I entered public office and well before the first wireless call was ever made. As some may recall, as regulated utilities, telecommunication providers were subject to taxes under statutes applicable to "public utilities." The taxes imposed included gross receipts, franchise and other industry-specific taxes that were passed on to consumers in the rates as part of the regulatory rate setting process. The phone company never had to worry about the consumer looking for a cheaper alternative because there was no competition in the marketplace. State and local governments could tax telecommunication services at much higher rates than other goods and services without worrying about constituent backlash because the natural reaction was, "it's just the phone company raising my rates again."

Fast forward to today and the communications marketplace is drastically different than it was 20 years ago. Consumers have a myriad of options to choose from to be their communications provider, as well as voice and data plans to meet their individual needs. However, the legacy tax structure remains in place.

## Regressive Nature of Wireless Taxes

Our Federal and State income tax system is structured such that if you earn more, you pay more in taxes. That is not the case with respect to the payment of wireless taxes. As I mentioned previously, Indiana has approximately 4.7 million subscribers. Of that 4.7 million, nearly 14 percent of Indiana's households have "cut the cord" and are wireless only.<sup>2</sup> As of October of 2008, 45.7% of Indiana's wireless subscribers had income levels of less than \$50,000 and 67.1% had income levels less than \$75,000.<sup>3</sup> Regardless of whether someone is making \$25,000 annually or \$125,000 annually, they will pay the same tax rate on their purchases of wireless services. With a national average wireless tax rate of 15.2%, consumers who are of lower or moderate income levels pay disproportionately more for the same service than those with higher incomes.

Why is this important to bear in mind? Access to wireless services is no longer a luxury for a select few, but rather a vital necessity, particularly for those facing economic challenges. In preparing for this hearing, I took the opportunity to read an April 27<sup>th</sup> "Dear Colleague" circulated by Congresswoman Lofgren and Congressman Franks. The "Dear Colleague" highlighted a March 23<sup>rd</sup> *Washington Post* article chronicling how low-cost cell phones provide an essential lifeline to the homeless and those who are experiencing economic difficulty. The article clearly brings into focus what many of us take for granted, but for others provides some modicum of much needed normalcy.

**"Having a phone isn't a privilege anymore – it's a necessity," said Rommel McBride, who spent about six years on the streets before recently being placed in a city housing program...A cell phone is the only way you can call to keep up your food stamps, your housing application, your job. When you're living in a shelter or on the streets, it's your last line of communications with the world."**

When you consider how important wireless services have become to consumers today, taxing these services at such an excessive level is counterproductive. Mr. McBride happens to live here in Washington, D.C., but there are thousands, if not millions of people throughout this country who rely on their cell phones to assist in finding a job; locating a place to live; keeping in touch with loved ones and friends; protecting their personal safety; accessing the Internet as well as a variety of other uses. For many, their wireless phone is their lifeline.

## Federalism Perspective

As I mentioned earlier in my testimony, as a state legislator, I am very sensitive to the importance of preserving state and local government's ability to tax in order to fund government services. Current tax revenues in Indiana are down 8% from last year. But as policymakers, it's also important, as we finance public services, not to target one particular good or service for disparate tax treatment as compared to others.

<sup>2</sup> Centers for Disease Control NCHS March 11, 2009

<sup>3</sup> ComScore October 2008

For example, state and local wireless taxes and fees increased from 10.2% to 11% between 2003 and 2007 – this resulted in an increase in the rate of taxes on sales of wireless services that was four times the increase in the rate of taxes imposed on sales of other competitive goods and services.

Opponents of H.R. 1521 claim that this legislation drastically departs from longstanding principles of federalism and that it provides favorable tax treatment to the wireless industry. Under our Federalist system, the federal government is authorized to exercise only those powers which are expressly provided by the Constitution, with all other powers reserved to the states as set forth under the 10<sup>th</sup> Amendment. Thus, the federal government's powers are limited. However, under the Commerce Clause, Congress is expressly granted the power to regulate commerce among the states. Due to the mobile nature of wireless services and the ability to use such services across the country, the provision of wireless services is clearly interstate commerce and well within the power of Congress to “regulate commerce among the states.”

Additionally, the 14<sup>th</sup> Amendment provides that “...No State shall...deny to any person within its jurisdiction the equal protection of the laws” and further specifies under Section 5 that Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

In my opinion, H.R. 1521 does not dramatically depart from our federalist principles. In the mid 1970s, Congress passed the federal 4-R Act which precluded states from discriminatorily taxing the railroad industry. And more recently in 2007, this Subcommittee played a leading role in the extension of the Internet Tax Freedom Act.

It's my understanding that the primary beneficiary of this legislation is the American wireless consumer, not the wireless industry. In 2007, Indiana subscribers paid over \$326 million in wireless taxes and fees. The carriers remit these taxes to the state, but it is the consumers that pay the overwhelming majority of these taxes, not industry. I appreciate the temptation to try and obfuscate the issue, but if this legislation results in a five to ten dollar savings each month for my constituents, while at the same time, the state of Indiana continues to collect \$326 million or more annually in wireless tax revenues – I consider it a win-win.

Last year, wireless consumers across the country paid nearly \$21 billion in state, local and federal taxes and fees imposed on their wireless services to fund government services. By anyone's measure, that is a lot of money for one subset of consumers to pay for an essential service. H.R. 1521 does nothing to jeopardize that revenue stream. In all likelihood, state and local revenues from wireless services will continue to grow if this legislation is enacted.

H.R. 1521 provides a common sense solution to a growing problem. Clearly, it is a bill that has broad, bipartisan appeal, as evidenced by over 100 cosponsors, which

is why I strongly support the passage and enactment of H.R. 1521, the "Cell Tax Fairness Act of 2009."

Thank you again for this opportunity to offer my thoughts. I would be happy to answer any questions that you may have.