

**TESTIMONY OF REPRESENTATIVE JOSEPH A. GIBBONS
FLORIDA STATE REPRESENTATIVE (DISTRICT 105)**

Hearing on HR 1521, the Cell Tax Fairness Act of 2009

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

June 9th, 2009

Chairman Cohen, Ranking Member Franks and members of the Subcommittee, my name is Joe Gibbons and I am a member of the Florida House of Representatives representing the 105th District which incorporates parts of Broward County including all or parts of Hollywood, Hallandale Beach, Miramar, Pembroke Pines, Pembroke Park and Westpark. My current responsibilities in the state legislature include participation on the Transportation & Economic Development Appropriations Committee, the Energy & Utilities Policy Committee, the Full Appropriations Council on Education & Economic Development and the Joint Legislative Budget Committee. Thank you for the opportunity to testify today on H.R. 1521, the "Cell Tax Fairness Act of 2009."

While federal legislators recognized the need to prevent excessive and discriminatory taxes on the Internet by passing the Internet Tax Freedom Act Amendments Act of 2007 and federal and state policymakers embrace the desire to accelerate the deployment of broadband services the fact remains that the current level of state and local taxation of telecommunications services is misguided and directly counter to economic prosperity and continued deployment of advanced mobile services across the country. Ultimately, unless the tax policies of the past are reformed to reflect the highly dynamic nature of the communications industry today, many of my constituents will be priced out of the ability to have affordable access to the most advanced wireless broadband services. HR. 1521 is a necessary first step to prevent further expansion of new discriminatory taxes on wireless services while simultaneously it is incumbent on legislators like myself to advance the needed reforms to the current tax structure at home so that this critical technology, a lifeline in the eyes of my constituents, is not taxed at rates in excess of 20% of their monthly bill.

My Constituents Would Benefit from Reform

My district is a diverse, multi-ethnic urban area which is one of the fastest growing areas in the state of Florida. The impact of the current level of taxation on wireless consumers is significant for the high level of seniors, African American and Hispanic consumers who, as a group, have shown a high adoption rate and significant use of both wireless voice and data services:

- For use of non-voice data applications on handhelds, Hispanics and African Americans lead the way relative to caucasian Americans. Half of African Americans and 56% of English-speaking Latinos with cell phones, on a typical day, do at least one of 10 non-voice data applications such as taking pictures, accessing the internet for news, playing music, or texting. By contrast, 38% of caucasians do these kinds of activities on a wireless handheld device on the average day. ¹
- Mobile access builds on the cell phone, a device that is easier to use and more affordable than a computer. Adoption patterns have therefore been very different for the device, which is a key platform for “on the go” information access. Cell phone users are more likely to be found in groups that have generally lagged in internet adoption, such as senior citizens, blacks, and Latinos. ²

All of the data points above are reflective of the broad demographics that make my district the center of diversity in the state and the impetus for the need of federal, state and local focus on the issue of taxation of wireless consumers. Florida undertook comprehensive measures in 2000, to "simplify" the taxes & fees imposed upon communication services. At the state level, legislation was passed that replaced 11 different impositions into one consolidated communications services tax. The base was expanded, to specifically include wireless, even though several of the old impositions were for uses of the Right of Way or other public utility impositions. Although simplification was accomplished, the excessive level of taxation remains. The state still has one of the highest rates on communication services in the country at over 20%. Recent efforts to reduce the rate imposed upon all communication services have failed but no time is better than the present to drive attention to this issue and create momentum for reform of the existing level of taxation of these services. What is clear though is that we shouldn't allow the situation to get worse at the same time we are trying to fix the current system and the situation in Florida provides a prime example of that rationale. Once the state and local jurisdictions become dependent upon receiving the revenues from these excess taxes it is very hard to work to take it away, even when policymakers might agree that it is the right policy to pursue. That is the genesis of what H.R. 1521 will help accomplish, stopping the current tax situation from getting worse for wireless consumers.

Furthermore, as a small business owner, I am profoundly aware of the impact of mobile communications on the level of productivity, the increased speed at which to react to customers needs and the cost of tools that enhance and add to the bottom line. State and local tax policy that discourages use and adoption by small businesses also drives away investment in infrastructure. The most effective means to encourage investment in the state relative to investment is to eliminate the high level of discriminatory taxes that retard infrastructure investment and drive up prices. The current tax policy in Florida is

¹ Pew Internet & American Life Project, *Seeding the Cloud: What Mobile Access Means fir Usage and Online Content*, March 2008,

² Pew Internet & American Life Project, *Seeding the Cloud: What Mobile Access Means fir Usage and Online Content*, March 2008

counterproductive to the thousands of small entrepreneurs that make up my district, companies that add significantly to the local and state economy.

Regressive nature of telecom taxation

The high wireless tax burden on Floridians is a major concern but the burden on those Americans, regardless of ethnic identification, that can least afford telecommunications services is a primary concern. The following statistics from the Center for Disease Control's annual survey illustrates the concern of high taxes on wireless service:

- Adults living in poverty (21.6%) were more likely than higher income adults to be living in households with only wireless telephones.³
- The percentage without health insurance coverage at the time of the interview among wireless-only adults (28.8%) was twice as high as the percentage among adults living in landline households (14.1%).⁴

As a former City Commissioner and Vice-Chair of the Broward League of Cities Diversity Committee, I am intimately aware of the need for revenue to fund critical government programs but there needs to be a fine balance in how revenues are obtained so that one service is not so heavily burdened with taxes that it effectively discourages the use of such services, pricing them out of reach for a segment of the population that arguably relies upon them the most. Clearly that is the case with cell phone taxation and as a result those that can least afford the onerous burden are impacted the most. Ironically and to my point, relative to taxation of their cell phone bill my wealthiest constituents contribute at the same level as my poorest. And according to statistics, my poorest constituents are more likely to have only a cell phone as opposed to having both a land line phone and a cell phone. Taxation should not punish disproportionately those who can least afford it and in Florida that is the system in place today. I reach out to Congress today to help steer the course to telecommunications tax reform for all my constituents especially those that use their cell phone as a lifeline.

Policy Double-Speak so to Speak

As wireless service continues to evolve and becomes more about services other than voice, it is critical to recognize that consumers in this emerging environment are not the same individuals that could afford the expensive Internet experience through the desktop computer. As pointed out by the Pew Internet & American Life Project "groups that have in the past trailed in "traditional" internet access are in a better position to shape cyberspace as the internet becomes more accessible using wireless devices." For broadband to become available to the greatest number of American consumers, it's

³ CDC, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January – June 2007

⁴ (CDC, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January – June 2007

incumbent on policymakers to make wireless services affordable through reasonable tax policy, thus lowering a significant cost barrier.

- In 2005, the percentage of African Americans with broadband service in the home was 14%; the percentage of all African Americans was 30 percent. In 2007, the percentage of African Americans increased to 40%, nearly tripling in number; the percentage of all Americans was 47%.⁵

Broadband is critical to my community and communities across the State of Florida and the nation. The federal government has taken bold steps in recent months to stimulate the deployment of broadband services to all Americans. However on the flip side, policymakers are still seeking to tax wireless services to the point where the services are simply unaffordable. Taxation of products at rates close to the 20% level like those imposed upon alcohol and tobacco makes sense to most from a policy perspective because the intent is to discourage the use of such product(s) through the high level of taxes imposed. Conversely, taxation of wireless services, services that lawmakers want to ensure all constituents have affordable access to, at a 20% rate, makes absolutely no policy or economic sense. These high levels of taxation will stifle demand for such services, which in turn will also slow investment in critical broadband infrastructure so many policymakers continue to seek. We need to fix the existing problem as it is counterintuitive to many of our existing public policy goals of expanding the reach and affordability of broadband services.

State Sovereignty

Like any state policymaker, I take any federal intervention into state taxing authority very seriously. However, I believe that H.R. 1521 carefully walks that fine line of when federal intervention makes sense. This bill does not preclude my ability to tax wireless consumers or the industry in a rational way. It only precludes my state from targeting these consumers for additional excess taxes. As we have already heard, Florida is already asking these consumers to bear more than their fair share of the state and local tax burden and we shouldn't allow that to get any worse. Certainly not for a service that is critical to the overall health and productivity of our Nation's economy.

I strongly support H.R. 1521, the "Cell Tax Fairness Act" and its pro-consumer, pro-broadband intent. I welcome any questions you may have.

⁵ Pew Internet & American Life Project, June 2007