

105TH CONGRESS
2D SESSION

H. R. 3849

To amend the Communications Act of 1934 to establish a national policy against Federal and State regulation of Internet access and online services, and to exercise congressional jurisdiction over interstate and foreign commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce conducted over the Internet, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1998

Mr. COX of California (for himself and Mr. WHITE) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Ways and Means, the Judiciary, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Communications Act of 1934 to establish a national policy against Federal and State regulation of Internet access and online services, and to exercise congressional jurisdiction over interstate and foreign commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce conducted over the Internet, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Internet Tax Freedom
3 Act”.

4 **SEC. 2. PROVISION OF INTERNET ACCESS AND ONLINE**
5 **SERVICES.**

6 Title II of the Communications Act of 1934 is
7 amended by inserting after section 230 (47 U.S.C. 230)
8 the following new section:

9 **“SEC. 231. PROHIBITION ON REGULATION OF INTERNET AC-**
10 **CESS AND ONLINE SERVICES.**

11 “(a) The Commission shall have no authority or juris-
12 diction under this title or section 4(i) of the Communica-
13 tions Act of 1934, as amended (47 U.S.C. 154(i)), nor
14 shall any State commission have any authority or jurisdic-
15 tion, to regulate the prices or charges paid by subscribers
16 for Internet access or online services.

17 “(b) **PRESERVATION OF AUTHORITY.**—Nothing in
18 this subsection shall limit or otherwise affect—

19 “(1) the Commission’s or State Commission’s
20 implementation of the Telecommunications Act of
21 1996 (Public Law 104–104) or the amendments
22 made by such Act; and

23 “(2) the Commission’s or State Commission’s
24 authority to regulate common carriers that offer
25 Internet access or online services in conjunction with
26 the provision of any telephone toll, telephone ex-

1 change, or exchange access services as such terms
2 are defined in title I.

3 “(c) DEFINITIONS.—As used in this section:

4 “(1) INTERNET.—The term ‘Internet’ means
5 the combination of computer facilities and electro-
6 magnetic transmission media, and related equipment
7 and software, comprising the interconnected world-
8 wide network of computer networks that employ the
9 Transmission Control Protocol/Internet Protocol, or
10 any predecessor or successor protocol, to transmit
11 information.

12 “(2) INTERNET ACCESS.—The term ‘Internet
13 access’ means a service that enables users to access
14 content, information, and other services offered over
15 the Internet.

16 “(3) ONLINE SERVICE.—The term ‘online serv-
17 ice’ means the offering or provision of content or in-
18 formation services to a user as part of a package of
19 services that are combined with Internet access.”.

20 **SEC. 3. FEDERAL REGULATORY FEES.**

21 (a) NO REGULATORY FEES.—Title II of the Commu-
22 nications Act of 1934 is amended by inserting in section
23 9(h) (47 U.S.C. 159(h)) after “47 C.F.R. Part 97” “; or
24 (3) providers of Internet access or online service”.

1 (b) CONFORMING AMENDMENT.—Section 9(h) of the
2 Communications Act of 1934 (47 U.S.C. 159(h)) is
3 amended by striking “or” that appears before “(2)”.

4 (c) DETERMINATION.—Not later than 1 year after
5 the date of the enactment of this Act, the National Tele-
6 communications and Information Administration shall de-
7 termine whether any direct or indirect Federal regulatory
8 fees, other than the fees identified in subsection (a), are
9 imposed on providers of Internet access or online services,
10 and if so, make recommendations to the Congress regard-
11 ing whether such fees should be modified or eliminated.

12 **SEC. 4. REPORT ON FOREIGN COMMERCE.**

13 (a) CONTENTS OF REPORT.—In order to promote
14 electronic commerce, the Secretary of Commerce, in con-
15 sultation with appropriate committees of the Congress,
16 shall undertake an examination of—

17 (1) barriers imposed in foreign markets on
18 United States providers of property, goods, services,
19 or information engaged in electronic commerce and
20 on United States providers of telecommunications
21 services;

22 (2) how the imposition of such barriers will af-
23 fect United States consumers, the competitiveness of
24 United States citizens providing property, goods,

1 service, or information in foreign markets, and the
2 growth and maturing of the Internet; and

3 (3) what measures the Government should pur-
4 sue to foster, promote, and develop electronic com-
5 merce in the United States and in foreign markets.

6 (b) PUBLIC COMMENT.—For purposes of this section,
7 the Secretary of Commerce shall give all interested per-
8 sons an opportunity to comment on the matters identified
9 in subsection (a) through written or oral presentations of
10 data, views, or arguments.

11 (c) TRANSMITTAL TO THE PRESIDENT.—Not later
12 than 18 months after the date of the enactment of this
13 Act, the Secretary of Commerce shall transmit to the
14 President a report containing the results of the examina-
15 tion undertaken in accordance with subsection (a).

16 (d) RECOMMENDATIONS OF THE PRESIDENT.—Not
17 later than 2 years and 45 days after the date of the enact-
18 ment of this Act, the President shall review the report de-
19 scribed in subsection (c) and submit to the appropriate
20 committees of Congress such policy recommendations as
21 the President deems necessary or expedient.

22 **SEC. 5. MORATORIUM ON CERTAIN TAXES.**

23 (a) MORATORIUM.—For a period of 3 years following
24 the date of the enactment of this Act, neither any State,

1 nor any political subdivision thereof, shall impose, assess,
2 collect, or attempt to collect—

3 (1) taxes on Internet access or online services;

4 (2) bit taxes; or

5 (3) multiple or discriminatory taxes on elec-
6 tronic commerce.

7 (b) EXCEPTION TO MORATORIUM.—(1) The morato-
8 rium in subsection (a)(1) shall not apply to taxes on Inter-
9 net access or online services generally imposed and actu-
10 ally enforced under State law before March 1, 1998.

11 (2) Subsection (b)(1) shall be enforceable only if a
12 State enacts a law to expressly impose such tax within
13 one year from the date of enactment. Failure of a State
14 to act does not affect liabilities for taxes accrued and en-
15 forced prior to March 1, 1998 nor does it affect ongoing
16 litigation relating to such assessments.

17 (c) APPLICATION OF MORATORIUM.—Subsection (a)
18 shall not apply with respect to the provision of Internet
19 access or online services that are offered for sale as part
20 of a package of services that includes services other than
21 Internet access or online services, unless the service pro-
22 vider separately states that portion of the billing that ap-
23 plies to such services on the user's bill.

1 **SEC. 6. ADVISORY COMMISSION ON ELECTRONIC COM-**
2 **MERCE.**

3 (a) ESTABLISHMENT OF COMMISSION.—There is es-
4 tablished a temporary commission to be known as the Ad-
5 visory Commission on Electronic Commerce (in this Act
6 referred to as the “Commission”). The Commission
7 shall—

8 (1) be composed of 29 members, which includes
9 2 chairpersons selected in accordance with sub-
10 section (b); and

11 (2) conduct its business in accordance with the
12 provisions of this Act.

13 (b) MEMBERSHIP.—

14 (1) IN GENERAL.—The Commissioners shall
15 serve for the life of the Commission. The member-
16 ship of the Commission shall be as follows:

17 (A) Two representatives from the Federal
18 Government comprised of the Secretary Of
19 Commerce and the Secretary of the Treasury,
20 or their respective representatives.

21 (B) Fourteen representatives from State,
22 local, and county governments comprised of 2
23 representatives each from the National gov-
24 ernors’ Association, the National Conference of
25 State Legislatures, the Council of State Govern-
26 ments, the National Association of Counties,

1 the National League of Cities, and the United
2 States Conferences of Mayors; and 1 represent-
3 ative each from the International City/County
4 Managers Association and the American Legis-
5 lative Exchange Council.

6 (C) Thirteen representatives of taxpayers
7 and business, of which 3 shall be appointed by
8 the President and 2 each shall be appointed by
9 the Senate majority leader, the Senate minority
10 leader, the Speaker of the House, the House
11 majority leader, and the house minority leader.

12 (2) CHAIRPERSON.—The Commission shall have
13 2 chairpersons to serve as co-chairpersons. One of
14 the Chairpersons shall be a representative selected
15 by the National Governors Association from 1 of the
16 groups identified in subsection (b)(1)(B). The other
17 Chairperson shall be a representative selected jointly
18 by the Speaker of the house of Representatives and
19 the majority leader of the Senate from 1 of the
20 groups identified in subsection (b)(1)(C).

21 (3) APPOINTMENTS.—Appointments to the
22 Commission shall be made not later than 45 days
23 after the date of enactment of this Act. The Chair-
24 persons shall be appointed not later than 60 days
25 after the date of the enactment of this Act.

1 (c) ACCEPTANCE OF GIFTS AND GRANTS.—The Com-
2 mission may accept, use, and dispose of gifts or grants
3 of services or property, both real and personal, for pur-
4 poses of aiding or facilitating the work of the Commission.
5 Gifts or grants not used at the expiration of the Commis-
6 sion shall be returned to the donor or grantor.

7 (d) OTHER RESOURCES.—The Commission shall
8 have reasonable access to materials, resources, data, and
9 other information from the Department of Commerce and
10 the Department of the Treasury. The Commission shall
11 also have reasonable access to use the facilities of the De-
12 partment of the Commerce and Department of the Treas-
13 ury for purposes of conducting meetings.

14 (e) SUNSET.—The existence of the Commission shall
15 terminate—

16 (1) when the last of the committees of jurisdic-
17 tion referred to in section 8 concludes consideration
18 of the legislation proposed under section 7; or

19 (2) 3 years after the date of the enactment of
20 this Act;

21 whichever occurs first.

22 (f) RULES OF THE COMMISSION.—

23 (1) Fifteen members of the Commission shall
24 constitute a quorum for conducting the business of
25 the Commission.

1 (2) Any meetings held by the Commission shall
2 be duly noticed at least 14 days in advance and shall
3 be open to the public.

4 (3) The Commission may adopt other rules as
5 needed.

6 (g) DUTIES OF THE COMMISSION.—The Commission,
7 in consultation with the National Tax Association Commu-
8 nications and Electronic Commerce Tax Project, and other
9 interested parties, shall—

10 (1) identify the taxes, fees, and charges im-
11 posed on electronic commerce within the United
12 States that could impede the development of such
13 commerce;

14 (2) propose a uniform system of definitions of
15 electronic commerce that may be subject to sales
16 and use tax within each State;

17 (3) propose a simplified system for sales and
18 use tax for electronic commerce that would provide
19 for a single statewide sales or use tax rate (which
20 rate may be zero), and would establish a method of
21 distributing to political subdivisions within each
22 State their proportionate share of such taxes;

23 (4) examine ways to simplify the interstate ad-
24 ministration of sales and use tax on electronic com-
25 merce, including a review of the need for a single or

1 uniform tax registration, single or uniform tax re-
2 turns, simplified remittance requirements, and sim-
3 plified administrative procedures;

4 (5) examine the need for an independent third
5 party collection system that would utilize the Inter-
6 net to further simplify sales and use tax administra-
7 tion and collection;

8 (6) examine the level of contacts sufficient to
9 permit a State to impose a sales or use tax on elec-
10 tronic commerce that would subject a remote seller
11 to collection obligations imposed by the State, in-
12 cluding the definition of a level of contacts below
13 which a State may not impose collection obligations
14 on a remote seller;

15 (7) examine the level of contacts sufficient to
16 permit a State to impose sales or use tax on trans-
17 actions not involving electronic commerce, and
18 whether collection obligations imposed by a State are
19 applied in a nondiscriminatory manner with respect
20 to electronic commerce and such transactions;

21 (8) examine ways to simplify State and local
22 taxes imposed on the provision of telecommuni-
23 cations services; and

24 (9) examine other issues that the Commission
25 determines to be relevant.

1 (h) FEDERAL ADVISORY COMMITTEE ACT.—The
2 Federal Advisory Committee Act (5 U.S.C. App.) shall not
3 apply with respect to the Commission.

4 **SEC. 7. LEGISLATIVE RECOMMENDATIONS.**

5 (a) TRANSMISSION OF PROPOSED LEGISLATION.—
6 Not later than 2 years after the date of the enactment
7 of this Act, the Commission described in section 6 shall
8 transmit to the President and the Congress proposed legis-
9 lation reflecting any findings concerning the matters de-
10 scribed in such section.

11 (b) CONTENTS OF PROPOSED LEGISLATION.—The
12 proposed legislation submitted under subsection (a) by the
13 Commission shall have been agreed to by at least 18 mem-
14 bers of the Commission and shall—

15 (1) define with particularity the level of con-
16 tacts between a State and remote seller that the
17 Commission considers should be sufficient to permit
18 a State to impose collection obligations on the re-
19 mote seller;

20 (2) provide that if, and only if, a State has
21 adopted a single sales and use tax rate for electronic
22 commerce, and adopted simplified procedures for the
23 administration of its sales and use taxes, including
24 uniform registration, tax returns, remittance re-
25 quirements, and filing procedures, then such State

1 should be authorized to impose on remote sellers a
2 duty to collect sales or use tax on electronic com-
3 merce;

4 (3) provide that, effective upon the expiration
5 of a 4-year period beginning on the date of the en-
6 actment of such legislation, a State that does not
7 have in effect a single sales and use tax rate and
8 simplified administrative procedures shall be deemed
9 to have in effect a sales and use tax rate on elec-
10 tronic commerce equal to zero, until such time as
11 such State does adopt a single sales and use tax rate
12 and simplified administrative procedures;

13 (4) include uniform definitions of categories of
14 property, goods, services, or information subject to,
15 or exempt from, sales and use taxes;

16 (5) make permanent the temporary moratorium
17 described in section 5 with respect to Internet access
18 and online services, as well as such other taxes (in-
19 cluding those described in section 5) that the Com-
20 mission deems appropriate;

21 (6) provide a mechanism for the resolution of
22 disputes between States regarding matters involving
23 multiple taxation; and

24 (7) include other provisions that the Commis-
25 sion deems necessary.

1 (c) RECOMMENDATIONS OF THE PRESIDENT.—Not
2 later than 45 days after the receipt of the Commission’s
3 legislative proposals, the President shall review such pro-
4 posals and submit to the appropriate committees of the
5 Congress such policy recommendations as the President
6 deems necessary or expedient.

7 **SEC. 8. EXPEDITED CONSIDERATION OF LEGISLATIVE REC-**
8 **COMMENDATIONS.**

9 (a) Not later than 90 legislative days after the trans-
10 mission to the Congress of the proposed legislation de-
11 scribed in section 7, such legislation shall be considered
12 by the respective committees of jurisdiction within the
13 House of Representatives and the Senate, and, if reported,
14 shall be referred to the proper calendar on the floor of
15 each House for final action.

16 (b) For purposes of this section, the 90-day period
17 shall be computed by excluding—

18 (1) the days on which either House is not in
19 session because of an adjournment of more than 3
20 days to a day certain or an adjournment of the Con-
21 gress sine die; and

22 (2) any Saturday and Sunday, not excluded
23 under paragraph (1), when either House is not in
24 session.

1 **SEC. 9. DECLARATION THAT THE INTERNET SHOULD BE**
2 **FREE OF FOREIGN TARIFFS, TRADE BAR-**
3 **RIERS, AND OTHER RESTRICTIONS.**

4 It is the sense of the Congress that the President
5 should seek bilateral and multilateral agreements through
6 the World Trade Organization, the Organization for Eco-
7 nomic Cooperation and Development, the International
8 Telecommunications Union, the Asia Pacific Economic
9 Cooperation Council, the Free Trade Area of the Ameri-
10 cas, and other appropriate international fora. Such agree-
11 ments should require, inter alia, that the provision of
12 Internet access or online services be free from undue and
13 discriminatory regulation by foreign governments and that
14 electronic commercial transactions between United States
15 and foreign providers of property, goods, services, and in-
16 formation be free from undue and discriminatory regula-
17 tion, international tariffs, and discriminatory taxation.

18 **SEC. 10. DEFINITIONS.**

19 For the purposes of this Act:

20 (1) BIT TAX.—The term “bit tax” means any
21 tax on electronic commerce expressly imposed on or
22 measured by the volume of digital information trans-
23 mitted electronically, or the volume of digital infor-
24 mation per unit of time transmitted electronically,
25 but does not include taxes imposed on the provision
26 of telecommunications services.

1 (2) COMPUTER SERVER.—The term “computer
2 server” means a computer that functions as a cen-
3 tralized provider of information and services to mul-
4 tiple recipients.

5 (3) DISCRIMINATORY TAX.—The term “dis-
6 criminatory tax” means—

7 (A) any tax imposed by a State or political
8 subdivision thereof on electronic commerce
9 that—

10 (i) is not generally imposed and le-
11 gally collectible by such State or such polit-
12 ical subdivision on transactions involving
13 similar property, goods, services, or infor-
14 mation accomplished through other means;

15 (ii) is not generally imposed and le-
16 gally collectible at the same rate by such
17 State or such political subdivision on
18 transactions involving similar property,
19 goods, services, or information accom-
20 plished through other means;

21 (iii) imposes an obligation to collect or
22 pay the tax on a different person or entity
23 than in the case of transactions involving
24 similar property, goods, services, or infor-
25 mation accomplished through other means;

1 (iv) establishes a classification of
2 Internet access provider or online service
3 provider for purposes of establishing a
4 higher tax rate to be imposed on such pro-
5 viders than the tax rate generally applied
6 to providers of similar information services
7 delivered through other means; or

8 (B) any tax imposed by a State or political
9 subdivision thereof, if—

10 (i) the use of a computer server by a
11 remote seller to create or maintain a site
12 on the Internet is considered a factor in
13 determining a remote seller's tax collection
14 obligation; or

15 (ii) a provider of Internet access or
16 online services is deemed to be the agent of
17 a remote seller for determining tax collec-
18 tion obligations as a result of—

19 (I) the provider displaying a re-
20 mote seller's information or content
21 on such provider's computer server; or

22 (II) the provider maintaining or
23 taking orders through such provider's
24 computer server.

1 (4) ELECTRONIC COMMERCE.—The term “elec-
2 tronic commerce” means any transaction conducted
3 over the Internet or an online service, comprising
4 the sale, lease, license, offer, or delivery of property,
5 goods, services, or information, whether or not for
6 consideration, and includes the provision of Internet
7 access and online services.

8 (5) INFORMATION SERVICES.—The term “infor-
9 mation services” has the meaning given such term in
10 section 3(20) of the Communications Act of 1934
11 (47 U.S.C. 3(20)) as amended from time to time.

12 (6) INTERNET.—The term “Internet” means
13 the combination of computer facilities and electro-
14 magnetic transmission media, and related equipment
15 and software, comprising the interconnected world-
16 wide network of computer networks that employ the
17 Transmission Control Protocol/Internet Protocol, or
18 any predecessor or successor protocol, to transmit
19 information.

20 (7) INTERNET ACCESS.—The term “Internet
21 access” means a service that enable users to access
22 content, information, and other services offered over
23 the Internet.

24 (8) MULTIPLE TAX.—The term “multiple tax”
25 means—

1 (A) any tax that is imposed by one State
2 or political subdivision thereof on the same or
3 essentially the same electronic commerce that is
4 also taxed by any other (or the same State, ex-
5 cept in the case of sales taxes) State or political
6 subdivision thereof whether or not at the same
7 rate or on the same basis without an offsetting
8 credit for taxes paid in other jurisdictions or
9 other similar mechanisms for avoiding double
10 taxation of the same transaction; or

11 (B) any tax on Internet access or online
12 services if the State or political subdivision
13 thereof classifies such services as telecommuni-
14 cations or communications services under State
15 law and such State or political subdivision
16 thereof has already imposed a tax on the under-
17 lying telecommunications services that are used
18 to provide such services without allowing a
19 credit for other taxes paid, a sale for resale ex-
20 emption, or other mechanism for eliminating
21 duplicate taxation.

22 (9) ONLINE SERVICE.—The term “online serv-
23 ice” means the offering or provision of content or in-
24 formation services to a user as part of a package of
25 services that are combined with Internet access.

1 (10) REMOTE SELLER.—The term “remote seller”
2 means a person who sells, leases, licenses, offers,
3 or delivers property, goods, services, or information
4 from one State to a purchaser in another State
5 using the Internet.

6 (11) STATE.—The term “State” means any of
7 the several States, the District of Columbia, or any
8 territory or possession of the United States.

9 (12) TAX.—The term “tax” means—

10 (A) any levy, fee, or charge imposed under
11 governmental authority by any governmental
12 entity; or

13 (B) the imposition of or obligation to col-
14 lect and to remit to a governmental entity any
15 such levy, fee, or charge imposed by a govern-
16 mental entity.

17 Such term does not include any franchise fees or
18 similar fees imposed by a State or local franchising
19 authority, pursuant to section 622 or 653 of the
20 Communications Act of 1934 (47 U.S.C. 542, 573),
21 as amended.

22 (13) TELECOMMUNICATIONS SERVICES.—The
23 term “telecommunications services” has the meaning
24 given such term in section 3(46) of the Communica-
25 tions Act of 1934 (47 U.S.C. 3(46)).

1 **SEC. 11. NO EXPANSION OF TAX AUTHORITY.**

2 Nothing in this Act shall be construed to expand the
3 power of any State or political subdivision thereof to col-
4 lect taxes on Internet access, online services, bits, or elec-
5 tronic commerce beyond the power that existed on March
6 1, 1998.

7 **SEC. 12. PRESERVATION OF AUTHORITY.**

8 Nothing in this Act shall limit or otherwise affect the
9 implementation of the Telecommunications Act of 1996
10 (Public Law 104–104) or amendments made by such Act.

○