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*Senate*

## INTERNET TAX NONDISCRIMINATION ACT— MOTION TO PROCEED

Mr. CARPER. Mr. President, I thank the Senator from Tennessee for yielding the time. Let me say how much I enjoyed the opportunity to work with the Senator on this issue and, frankly, on a number of other issues. I think he has shown a lot of courage, and I am grateful to him. I thank him for the opportunity to be his partner.

I take some time this morning to address one of the important arguments made by our colleagues on the other side of this debate. Proponents of the legislation argue the only way to encourage broadband deployment is to provide subsidies to telecommunication industries with no strings attached. Furthermore, they argue the only way to create such subsidies is to pass a large, new, unfunded Federal mandate. I submit if what all of us here want to do is determine the taxes and spending policies of our State governments, then we should do what Senator Alexander did, what Senator Voinovich did, what Senator Hollings, I, and others did. We ran for Governor. We were elected. As a result we had the opportunity—in my case for 8 years—to decide what the taxing and spending policies

of our States' governments should be. That is what we did.

The authority we are granted here in the Senate by the Constitution is to decide the taxes and spending policies of the Federal Government, not the taxing and spending policies of the State governments, and not the spending and taxing policies of local governments. Our job is to determine the taxing and spending policies of the Federal Government.

That being said, it is not as if we the Senate are somehow without the power to create incentives for industries to encourage certain activities we deem to be desirable. Senator Alexander mentioned a couple of areas where we are involved with tax policies in other cases and with spending policies to encourage the development of fuel cell vehicles, or to develop the creation of leaner burning diesel vehicles, or to incentivize creation of coal-fired plants that don't pollute a great deal. We have that spending and taxing authority, and we are using it—some would argue not to great effect, but that is our responsibility. We have the authority, after all, of a Federal budget. It is over \$2 trillion.

If we believe telecommunications companies need more money to build and

market their broadband networks, and if we believe we can do better than the private sector in providing that money, then there are any number of ways we can provide money at the Federal level. After we do that, first of all, we could provide Federal grants. We can provide Federal tax breaks. We can provide loan guarantees. We can provide additional spectrum for unlicensed use. The only reason not to provide the money in these ways, if it is needed, is because Congress would have to find a way to pay for it rather than simply sending the bill to our friends in our State and local governments. If we pass a new unfunded mandate this week or next week, it will be a matter of choice rather than a matter of necessity.

In case anyone doubts that, I would like to bring to the attention of our colleagues here in the Senate a few of the many bills that have been introduced in the Congress to create Federal incentives for broadband deployment. These bills have already been written. These bills have already been introduced. Many of them have a rather broad cosponsorship. If we wanted to, we could bring one or several of them to the floor today, debate them, and perhaps pass them.

I will mention a number of those bills. I want to start first with bills that have been introduced by Senators who have joined us in opposing the unfunded Federal mandate we are debating here today. I do so because there has been some suggestion made by our colleague on the other side of this issue that those of us who oppose unfunded mandates also oppose the Internet, or oppose efforts to encourage the development of broadband. That is not true. While I doubt many of our colleagues believe this to be the case, I do believe it is important we clarify matters for the record.

Let me start with a bill authored by Senator Hollings, a distinguished ranking member of the Commerce Committee. One year ago, Senator Hollings introduced the Broadband Deployment Act. It is a true Federal broadband bill, and as such it would be a much more appropriate piece of legislation for us to be debating here today. Instead of handing State and local governments an unfunded mandate, Senator Hollings' bill would provide broadband to support State and local broadband initiatives. Rather than being unfunded, Senator Hollings' proposal would be financed by moneys from the Federal telephone access tax.

Besides block grants, Senator Hollings' bill would also provide direct grants for broadband deployment. It would also support university research on next-generation broadband technology and pilot projects deploying new wireless broadband technology. I think that sounds like a worthwhile proposal.

However, for Senators who are opposed to providing outright grants, perhaps we should consider another proposal; that is, one by Senator Dorgan.

His proposal is to make low-interest loans available to companies that are deploying broadband technologies in rural areas such as North Dakota. We have rural areas in Kentucky. There are rural areas in Tennessee. Believe it or not, we still have rural areas in Delaware. That proposal might be of some interest to a lot of us, and I suspect to other of our colleagues.

On the other hand, if Senators would rather provide tax incentives and either grants or loans, then perhaps we should be debating Senator Rockefeller's Broadband Internet Access Act. Senator Rockefeller's

legislation would provide tax credits for companies investing in broadband equipment. It would provide a 10-percent tax credit for investments in so-called “current generation” broadband services.

For investment in higher speeds for next-generation broadband services, his bill would provide a 20-percent tax credit.

If it is a Republican tax proposal my colleagues are looking for, we could always turn to Montana and Senator Burns’ proposal to allow the expensing of broadband investments by companies. That might work. I find that attractive.

If party affiliation is not the hangup, but Senators are uncomfortable with providing tax incentives directly to companies, perhaps they would prefer the approach suggested by our colleague from New York, Senator Clinton. She proposes a different approach. She proposes providing an income tax credit to holders of bonds that are used to finance the deployment of broadband technology.

Finally, if Senators don’t want to provide grants, loans, or tax incentives, they can consider an approach advocated by one of our colleagues who happens to represent, among other places in California, Silicon Valley; that is, Senator Boxer. Senator Boxer has proposed we allocate additional spectrum for unlicensed use by wireless broadband devices.

Those are only a few of the proposals that have been made, introduced, discussed, and in some cases subject to hearings, and which have cosponsors.

Those are a sampling of the things we can do as Federal legislators in a proactive way if we are interested in strengthening the

ability of companies to market and extend their broadband systems.

What I think this array of proposals indicates is there is no limit to the ways in which we could act, if we wanted to, to encourage broadband deployment at the Federal level. The Senators I have mentioned—I mentioned five of them—span the ideological spectrum, from liberal to conservative. They come from different parts of our country. Their proposals reflect their ideological diversity. Some would increase spending; others would cut taxes. Some would finance their proposals by reallocating existing resources; others would add to the deficit.

But what is clear is all these proposals are harder to pass here in Washington than an unfunded mandate because we would have to pay the bill ourselves. We could not stick anyone else with the tab. We would have to pay the tab.

Admittedly, at a time when our Federal budget deficit is out of control, I have to confess passing the buck does have a certain amount of appeal. But it is not as though State and local governments are in much better shape financially than we are. State and local governments are struggling to cope with the worst financial crisis they have faced, I am told, since World War II. Classrooms are becoming overcrowded as school budgets are cut. Prisoners are being released from jails as correction budgets are cut. Governors and mayors are pushing through unpopular and frequently regressive tax increases.

New industry subsidies can be created for all sorts of wonderful purposes, but if they are conceived in Washington, and then the cost of those subsidies is passed on to State

and local governments, what it all amounts to is political welfare. We spend, they pay.

If we are going to pass on our costs to our friends in State and local governments, we ought to at the very least have the courtesy to tell them how much expense we are planning to run up on their tab. Perhaps the worst part about this new unfunded Federal mandate we are proposing is we cannot honestly look our Governors in the eye, we cannot honestly look our mayors in the eye, we cannot honestly look our State legislators in the eye, and even tell them how much this unfunded mandate is going to cost them and their State or their city or their county. We cannot do that because, in truth, we have no idea.

I would ask how my colleagues would react to the following proposal from me: Suppose I proposed a bill to create new Federal subsidies for the poultry industry.

The poultry industry is big in our State and the entire Delmarva Peninsula. In fact, for every person living in Delaware, there are 300 chickens. Let's say I proposed a bill to create new Federal subsidies for the poultry industry, or any industry, for that matter. Suppose these subsidies would be provided in the form of mandatory spending outside the control of annual appropriations. Suppose CBO evaluated my proposal and indicated they could not estimate, they could not even guess how much my proposal would cost, except to say: We believe it could grow to be large. We believe it could grow to be large.

That is what CBO has said about S. 150: We believe its cost to State and local governments could grow to be large. But they are unable to say how large and how soon.

If I proposed some kind of proposal that helped our poultry industry, and CBO said, "We don't know how much this is going to cost," would my colleagues in the Senate pass that kind of a proposal? Would they even allow it to be considered on the floor of the Senate? As convincing as I might be, I do not think they would. Yet this is exactly what we are asking our Governors to accept from us. This is why the Governors united—Republican and Democrat alike—in opposing the subsidies in the underlying bill we are debating today.

If my colleagues have not yet read CBO's analysis of this bill, I urge they do so. The Congressional Budget Office tells us this legislation is written in a way that is so broad and so vague they cannot even give us a rough estimate of what its effect will be on State and local governments, except to say: We expect it to grow to be large. They say the language in this legislation is so confusing that lawyers will ultimately have to get involved, and we will not know what the implications for State and local budgets will be until it all gets sorted out in the courts.

My friends, that is unacceptable. It is beneath us as the world's greatest deliberative body. It is an abdication of our responsibility as the body our Founders created in part to protect the interests of the respective States of our Union.

We can do better. We all agree the current moratorium on Internet access taxes should be extended. I say "the current moratorium." It is a moratorium that was in place for 5 years and expired last November. But we agree the moratorium should be restored. We disagree, though, on what should be done beyond that. But we all agree the moratorium should be extended.

If we are going to write this bill on the floor rather than negotiating a compromise everyone can live with, we ought to begin with what we can all agree on, and debate what to do beyond that. We ought to call up a bill that simply extends the old moratorium.

I want to expand that moratorium to make it technology neutral. Along with Senator Alexander, I expect to offer an amendment to do that. If others want to add billions in new subsidies to the bill on top of that, then they can offer their own amendments. If we want to propose ways to pay for such subsidies, as others may propose, and to do so here at the Federal level rather than passing the bill to the States, then we should put our proposals forward. If others want to propose different inducements to industries, such as low-interest loans or allocations of spectrum, then they should bring those proposals forward as well.

That seems, to me at least, to be the fairest way to proceed. If the goal is to have a genuine debate on this issue and to let the Senate work its will, we would welcome that. On the other hand, if the intention is to proceed to a fundamentally flawed bill, and then immediately file cloture to close off debate, we have no choice but to use every procedure available to us to protect our rights and to protect the interests of our States.

My hope is we will still be able to work this one out and reach an acceptable compromise, one that extends the moratorium and makes it neutral with respect to technology, but also one that first does no harm to State and local governments, that are struggling to cope, as I said earlier, with their worst financial crisis since World War II.

In 1995, when the Senate debated and, along with the House of Representatives, passed the unfunded mandates law, I was not working in the Senate. I had been a Member of the House of Representatives, but I left at the end of 1992. Former Governor Mike Castle and I sort of swapped jobs. He became a Congressman from Delaware, and I was privileged to become its Governor.

Starting in 1993, my first year as Governor, I began working with other Governors, including Senator Voinovich. What we sought to do was to work actually initially with a bunch of Republicans who were part of the so-called "Gingrich Revolution" which was able to capture the majorities in the House and Senate in 1994. One of the platforms of the "Gingrich Revolution" was the Federal Government should not tell the State and local governments what to spend their money on, and then not provide that money; nor should the Federal Government tell State and local governments what they could or could not tax without providing some offset if we cut their revenue base.

One of the first laws enacted in the year 1995, signed by then-President Clinton, is one that said: Unfunded mandates are wrong, whether they are on the spending side or on the revenue side.

In 1998, the Congress passed an unfunded mandate, not a big one but a little bitty one. The reason they did it, they said, was to make sure the Internet has an opportunity to get up on its feet and successful because we think it could mean good things for our economy. It has.

At a time when State and local governments were beginning to put taxes or fees in place on access to the Internet, the

Congress and President Clinton said: State and local governments, if you are already imposing some kind of tax on access to the Internet or some fees on access to the Internet, essentially your AOL bills of consumers, if you already have one in place, you may keep it in place, but if you haven't done it, you are not going to be able to do so. So a moratorium was put in place in 1998. Most people thought it was a good idea. States went along with it. They were not crazy about the idea, but they went along with it.

After 3 years the moratorium was supposed to expire. When it was about to expire, it was extended, almost by acclamation, in 2001. The States were not crazy about the idea, but there was not a whole lot of push back. Then late last year, that 2-year extension expired.

With Senators ALEXANDER, VOINOVICH, GRAHAM of Florida, FEINSTEIN, DORGAN, ENZI, HOLLINGS and I, and others opposing the underlying bill, I don't believe you would see that kind of opposition if some things were different.

If there had never been an unfunded mandates law in 1995, we may not feel so strongly, although the idea that the Federal Government is telling the States what to do and to pay for it, the Federal Government is taking away the revenue base of the States and not making up the difference, that still rubs me the wrong way. I find it galling. But if there were no unfunded mandates law, we would probably not be making this kind of fuss today over this issue.

If the Internet were still in its infancy, still struggling to hit its stride, not yet making the impact it does today in our economy here and around the world, we probably

wouldn't be making the fuss we are today in opposition to the underlying bill.

If States today were awash in money and not facing the largest fiscal crisis they have faced in over 50 years, we probably would not be making the kind of noise we are in opposition to the underlying bill.

If telecom companies were not beginning to enjoy very decent profits as they are today—and the prospect is for more of the same—then we might not be making the kind of fuss we are in opposition to the underlying bill.

As it turns out, there is an unfunded mandate law, and even if there were not, what we are seeking to do in my judgment is morally wrong. The Internet is no longer in its infancy. It is a grown child, not just trying to walk or crawl. This grown child is running at full speed. The States are not awash in money. They are hurting. They are hurting in ways we have not seen in a long time.

It is not just the classrooms that are crowded. It is not just the prison doors being opened to let people out who frankly should still be incarcerated in many cases. It is not just the caseload burdens of folks whose job it is to work with families in trouble. All of those problems are facing State and local governments, and they do not have the revenues to cope with them in many cases.

The telecoms are doing pretty well these days. They went through a tough patch, but they seem to be coming through it.

I don't know if Senator Alexander still has to go somewhere or not. Is he able to stay on the floor a bit longer?

Mr. ALEXANDER. I am going to leave within 4 or 5 minutes.

Mr. CARPER. Let me yield before the Senator leaves, if he would like to make some comments. I have a few more things I would like to say.

Mr. ALEXANDER. I have been listening to the Senator from Delaware carefully.

Mr. CARPER. You have heard some of this before.

Mr. ALEXANDER. What was going through my mind was: I don't recall a time when I was Governor of Tennessee that I ever saw the Congress do anything like this. There were unfunded Federal mandates that we didn't like. Back in the early 1970s, before I was Governor, Congress said: We ought to help children with disabilities. We will pay for a certain percentage of it, but they never did. I hear about that all the time from local school boards and local people. But I cannot remember a time when the Congress passed a law saying: We have come up with a great idea here, and we are going to give a State tax break to somebody to pay for it. I think we would have laughed about that.

Then we would have gotten really mad about it. It is so farfetched.

We are having a very serious debate about this in the Congress. Everybody is going through the motions, making bills doing all these things. But what we are doing is, U.S. Senators are passing State laws. That is what we are doing.

If I had known that I could have run for the Senate in 2002, I could have probably been elected by a big margin in Tennessee. I could have said: When I get to Washington,

I am going to pass a Federal law abolishing the State income tax, in case you ever pass it, making it illegal for Tennessee to pass a State income tax. We don't have one and people don't want one, although they may get one, if this bill passes. Or I could say, as we have said a little earlier, hybrid cars are a great invention. I think I will pass a Federal law telling Tennessee, Kentucky, and Delaware they can't tax cars. Car taxes are hated. Or obesity is a national problem. I think I will pass a Federal law saying: No sales taxes on low-carb or low-fat food.

Housing is important to all of us in the United States and in the Senate, but we don't pass a Federal law lowering local property taxes in Louisville or Nashville or Wilmington in order to encourage housing. Why don't we do that? It is because we have a Federal system. We are not Belgium. We are not France. We have Governors. We have mayors. This is America. It is a part of the American character that we like to make our decisions at home.

When I go to a Lincoln Day dinner—I don't go to the Democratic meetings—I always say something about local control. If I were to go to any Republican meeting in Tennessee and say, I especially don't like it when a Congressman gets up and passes a Federal law and takes credit for the idea and sends the bill to the Governor or the mayor, I would get a big round of applause for that because we believe that in the Republican Party in Tennessee, and most Tennesseans do as well.

I was enjoying the remarks of the Senator, and that was going through my mind. I wish I could think of some way to convey to my colleagues that we are talking out of the box here. We are not talking about Federal taxes, Federal subsidies, or Federal programs; we are talking about State programs. That is

what we are doing here. It is totally inappropriate, against the spirit of the tenth amendment and Ronald Reagan and everything else we stood for on the Republican side in the Contract with America. It is offensive to that spirit. That is why I am here today.

Mr. CARPER. Mr. President, it is ironic. The Senator talks about some of us here who would like to almost usurp the responsibilities of our State and local officials.

I always describe myself, when people ask what I do, as a "recovering Governor." Although I love being in the Senate and working with particularly the folks we are engaged with on this particular issue, we are not Governors, we are not mayors, we are not county executives, and we are not State legislators; we are Federal legislators. We have the ability, the power, through the Federal purse, through our appropriations process, to offer grants and provide tax credits. We are in a position to nurture industries, promote them. We have talked about some of them today. This is one industry that should be nurtured and strengthened. We can do that and we should do that on our dime.

I see the Senator from New Hampshire on his feet. I will make one more comment and then I will yield the floor.

Senators ALEXANDER, VOINOVICH, and I just returned from a press conference upstairs a couple minutes ago. We were asked about the proposal Senator McCain has offered. I have a huge respect for him. We were colleagues in the House together, and we served in the Navy at about the same time. I believe what he submitted is a proposal made in good faith. However, I also ask my colleagues to keep this in mind.

Whether you look at the underlying bill, S. 150, considering the alternative Senator Alexander and I offered, also on behalf of other colleagues, and consider what Senator McCain offered and other proposals that may come to the floor, there are really four areas of contention. They include, No. 1, and maybe most important, what is the definition of what is tax exempt under the moratorium? I will say that again. The first area of contention may be the most important. It is the definition of what is tax exempt under whatever moratorium is being proposed.

Other areas of contention, though I think not as important, include the duration of the moratorium. Should it be 15 months, 2 years, 3 years, or 4 years? That is an area of contention. But it is not as critical as the definition of what is tax exempt under whatever moratorium is being proposed.

The third area of contention is, what is the duration of the grandfather clauses for State and local governments which would be deprived of revenue that they currently collect?

Finally, what is the application of the moratorium to traditional taxable voice communications, when those communications are routed over the Internet? Those are really the four areas of contention.

If you look carefully at the proposal submitted by Senator McCain, the definition of what is tax exempt under his proposal looks a whole lot like that which is included in the bill authored by Senators ALLEN and WYDEN. While the duration of the moratorium is a little different, it is shorter. That, in my judgment, is not really the key factor here. Of interest, though, is the duration of the grandfather clause. I think

the moratorium under the McCain proposal is 4 years, but the grandfather clause protecting State and local governments is only for 3 years. There appears to be, superficially, an effort in the McCain bill to address the issue of the application of the moratorium to traditional taxable voice communications when those forms of communications are routed over the Internet. On the one hand, the legislation appears to address, with some sensitivity, that concern. But on the other hand, it takes it back. We have to look at the entire language as it pertains to this provision.

These are not easy issues to understand. I have spent a fair amount of time on them and they are not easy for me. For those of us not on the Commerce Committee and have not had the benefit of the extensive hearings, these are not easy issues. I have tried to come up to speed on these issues, and the rest of us in this body have struggled to come up to speed. I want to make sure we use the time before us this week, and maybe next week, to provide the kind of primer that I have been privileged to have for others of our colleagues, so that at the end of the day, when we vote, we are casting an informed vote.

I yield back my time.