

Testimony Of

Joanne Hovis

On Behalf Of

The National Association of Telecommunications Officers and Advisors
The National Association of Counties
The Government Finance Officers Association
The United States Conference of Mayors
The National League of Cities

Before the
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Commercial and Administrative Law

On
"Cell Tax Fairness Act of 2009"
(H.R. 1521)

June 9, 2009

2141 Rayburn House Office Building
Washington, D.C.

Statement of Joanne Hovis
Before the
Subcommittee on Commercial and Administrative Law
U.S. House of Representatives

H.R. 1521
“Cell Tax Fairness Act of 2009”

June 9, 2009

Chairman Cohen and distinguished members of the House Subcommittee on Commercial and Administrative Law:

My name is Joanne Hovis. I am the President of Columbia Telecommunications Corporation, a national, public interest, communications engineering and business consulting firm. CTC is a 26-year old company that advises state and local governments and non-profits regarding broadband communications, fiber and wireless network design, market analysis, and business planning. Our current clients include the cities of San Francisco, Seattle, Tucson, and Portland, Oregon; the District of Columbia; the Knight Center of Digital Excellence; the William Penn Foundation; the Institute for Next Generation Internet; the University of Illinois; Case Western Reserve University; and many others.

I serve as a member of the Board of Directors of the National Association of Telecommunications Officers and Advisors (NATOA), which represents local governments and promotes community interests in communications matters.

I am also a longtime advocate of the need for greater broadband communications deployment in the United States.

I appreciate the opportunity to appear before you today on behalf of NATOA, as well as the National Association of Counties (NACo), the Government Finance Officers Association (GFOA), the United States Conference of Mayors (USCM), and the National League of Cities (NLC).

I am here to correct some of the misunderstanding surrounding the economics of the wireless industry and the actual barriers to deployment of wireless broadband services to all areas of our country.

First and foremost, the current tax treatment of wireless services by federal, state, and local authorities has not hindered product innovation, service growth, or industry profitability.

The wireless communications industry is a strong and successful industry. Growth has been explosive in the high-density areas of the country where the carriers have chosen to invest and deploy networks. In 1995, there were 33.8 million cell phone subscribers in the United States; by 2008, that figure had jumped to 270.3 million, representing 87 percent of the nation's total population.

Indeed, it is wireless that represents the greatest growth and opportunity for the communications industry in a variety of ways: first, customers are acquiring wireless phones in addition to the landlines they have in their homes; second, a growing number of customers are dropping their landline phones in favor of having just one, wireless phone;¹ and third, wireless data services – that enable mobile email, text messaging, and Internet use – are growing exponentially.²

By its own account, the wireless industry is very strong. Verizon, the country's largest mobile service provider, posted profits of \$1.65 billion in the first quarter of 2009, representing wireless revenue growth of almost 30 percent.³ On June 12, 2008, in written testimony presented to the Federal Communications Commission, Verizon Executive Vice President Thomas Tauke stated: "The wireless marketplace is working well . . . for consumers and the American economy."

AT&T also clearly sees continued strength in its wireless data services. AT&T is not only attempting to double its wireless data network speeds, but also expanding from 350 to 370 metropolitan areas.⁴ Other major wireless carriers, including Verizon Wireless and Clearwire Corp., are also pursuing network technology upgrades in attempts to capture a larger share of the lucrative wireless data market.

Given the strength and profitability of the wireless industry, one wonders why these companies are seeking preferential tax treatment. Some believe that the wireless industry needs preferential tax treatment because such a benefit will help them deploy and provide affordable broadband access for all Americans.

Let me note that, in my experience, most local governments are actively involved in a range of activities designed to spur broadband communications deployment in their communities – for purposes of education, public safety, economic development, and digital literacy. Local government initiatives range from, in a few cases, seeking to build such networks themselves, to – in many more cases – petitioning and negotiating with

¹ A May 2009 survey released by the Centers for Disease Control and Prevention concludes that for the first time the number of households in the U.S. with only a cell phone exceeds the number of households in the U.S. with only a landline phone.

² In a news report after first-quarter earnings were released, an industry analyst pointed out that AT&T's first-quarter wireless-data revenue soared by almost 40 percent, with average revenue per user up two percent, because of increased wireless Web, e-mail, and text messaging use. <http://www.msnbc.msn.com/id/30431872/>, accessed June 8, 2009.

³ Associated Press, <http://www.msnbc.msn.com/id/30431872/>, accessed June 8, 2009.

⁴ "AT&T says to double mobile data speeds by 2011," Reuters, May 27, 2009, <http://www.reuters.com/article/technologyNews/idUSTRE54Q4TS20090527>

private communications companies to deploy networks in their jurisdictions. America's local governments have been at the forefront of advocating for more, better broadband for many years.

As I just discussed, the wireless voice and data industries are both profitable and growing at extraordinary rates in metropolitan areas of the United States. This is unfortunately not the case in many rural areas, and America's local governments are as concerned and troubled by this as is this Subcommittee. While I commend those who believe our nation should find new models for expanding deployment of wireless broadband in less densely-populated areas, it is important to understand the real economic reasons why we have not achieved the level of broadband wireless deployment we would ideally like.

State and local taxes of wireless service are not an obstacle to wireless broadband deployment. On the contrary, it is the broader economics of the wireless communications industry that is the reason for this slower (or nonexistent) deployment in rural areas. Deployment of communications networks is extremely costly; communications carriers are private, for-profit companies and they quite rationally allocate their investment resources to areas of the country where they are likely to achieve the highest return on investment – those areas that have relatively dense populations and thereby greater potential penetration and higher revenues per mile of construction.

This basic reality of the economics of this industry will not be changed by preemption of state or local taxes or, frankly, by removal of any single cost of doing business, such as a tax. Even in an environment of lower tax costs, the wireless carriers will, quite rationally, still invest their resources in the most potentially lucrative areas and will still set their prices at the highest aggregate rates they believe the market will bear. **Relieving them of local tax costs is unlikely to change investment choices and may simply serve to convert into carrier profits those funds that would otherwise have accrued to localities in this critical economic environment.**

Finally, let me point out that this legislation, to the extent it attempts to impact broadband deployment through one mechanism, is not timely and should await the results of a proceeding currently underway at the Federal Communications Commission. As directed by the American Recovery and Reinvestment Act, the FCC is currently engaged in an extensive, year-long proceeding to develop a National Broadband Plan. That Plan will be delivered to the Congress in February 2010. As part of this proceeding, the FCC's Notice of Inquiry indicates that it plans to evaluate contentions that taxes and other expenses may impact broadband deployment – as well as evaluating the many economic, financial and other factors that could be hindering broadband deployment in the United States. Public comments to the FCC were due just yesterday, and thousands of public, private, and non-profit entities throughout the country are participating in the proceeding by filing comments. Given the breadth and scope of the FCC's charge under the Recovery Act – as well as the February deadline by which it will report its findings to the Congress – this Subcommittee would be wise to wait to see the expert agency's conclusions before proceeding with this legislation.

Local governments and their associations have long advocated for a cohesive, nationwide broadband policy that would bring *affordable* broadband services to all Americans. At last, it appears that the nation is on the verge of achieving what has been necessary for so long – a coordinated federal, state, and local effort to ensure that advanced communications services are available to all. The charge to the FCC under the Recovery Act is a significant and impressive means to this goal.

I commend this Subcommittee for its attention to the essential issue of broadband deployment for all Americans, but I ask you to await the outcome of this important proceeding, and to refrain from a piecemeal attempt to stimulate broadband deployment with a tax policy that would shift a greater burden onto the backs of America's cities, towns, and counties.

Last September, a witness testified before this Subcommittee that “excessive new wireless taxes imposed piecemeal by thousands of state and local governments are a deterrent to new broadband network investments.” But a more accurate understanding of the economics of wireless broadband deployment demonstrates that this argument is actually smoke and mirrors, and that this argument for preferential tax treatment is more likely to benefit the wireless communications industry than to change investment decisions regarding wireless broadband.

I urge you to speak out against this measure.

Thank you for the opportunity to provide testimony before the Subcommittee today.