

Subj: Digital Divide: Perspectives of Americans For Tax Reform
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Americans For Tax Reform (ATR)
To: Internet Caucus Advisory Committee

**Tear down the barriers to Internet access:
Repeal the federal excise tax on telecommunications**

Submitted to the Advisory Commission on Electronic Commerce by the e-Freedom Coalition on November 15, 1999.

The federal 3% excise tax on telecommunications is an anachronism that should be repealed immediately and in its entirety.

The FET was first established in 1898 as a temporary tax to help finance the Spanish-American War, and then continued as a "luxury" tax to help pay for World War I. Today, the FET is third behind alcohol and tobacco as the largest general fund excise tax in the Federal budget, raising nearly \$5 billion in FY 1998. When state and local taxes are taken into account, the average tax rate on telecommunications services in the U.S. is over 18 percent.

Taxes on telecommunications are, inevitably, taxes on the Internet. Whether through dial-up access or Digital Subscriber Lines (DSL), over cable modems or wireless ones, access to the Internet takes place over the telecommunications network. Indeed, over 50 percent of the traffic on the public switched telephone network is now comprised of data rather than voice. Thus, high telecommunications taxes slow the spread of Internet access and discourage deployment of the broadband networks needed for the next generation of Internet growth. They raise the costs of electronic commerce for every business, big or small, and raise the price of Internet access for every household, rich or poor.

Studies by the Joint Committee on Taxation, the Congressional Budget Office and the Treasury Department's Office of Tax Analysis have all concluded that the FET is the most regressive of all federal taxes. A recent study by The Progress & Freedom Foundation estimates that at least 165,000 U.S. households are priced out of the market for fast Internet access due to high telecom taxes, with the impact falling disproportionately on low-income and rural households.

The FET also discriminates against the very sector of the U.S. economy that is driving economic growth. While the information technology sector of the economy accounts for less than 10 percent of Gross Domestic Product, it has produced over 40 percent of GDP growth in recent years. Jobs created by the IT sector are among the highest paying jobs in the U.S. economy, with average annual wages in excess of \$52,000, as compared with an economy-wide average of less than \$37,000.

Prohibit the discriminatory taxation of interstate telecommunications

As discussed above, excessive taxes on telecommunications ultimately restricts access to the Internet, either through higher costs to users or under-investment telecommunications infrastructure. Available and affordable Internet access requires a nondiscriminatory tax burden on telecommunications service providers.

Discriminatory property taxation usually takes two forms. First, as part of the concept of unit valuation, many states tax the intangible assets of public utilities while not taxing the same assets held by other businesses. These intangible assets, which include assets as diverse as federal operating licenses to an assembled work force, are often the most valuable portion of the utility's business. Second, states often apply a higher tax rate to the tangible personal property held by utility companies than that held by other business taxpayers generally. A recent study by the Committee On State Taxation (COST) illustrates this fact. The study found 15 states tax telecommunications' tangible personal property at a higher rate than other business property, and 14 states levy an ad valorem tax on telecommunications intangible property at a higher rate than other business intangibles.

The impact of discriminatory property taxation victimizes customers in several ways. Costs are exported to non-resident customers, driving up nationally-set long distance rates. As discriminatory taxes are eventually

passed to the consumer, they constitute a regressive tax aimed at the nation's less fortunate citizens, who tend to spend a higher portion of their incomes on utilities than wealthier Americans.

Even if a strong case against a discriminatory property tax could be made, current federal law severely curtails such challenges being heard in federal court unless an extremely high showing is made that the taxpayer has no "plain, speedy and efficient remedy" available. As a result, these taxpayers must file an appeal in the state court system and perhaps multiple local administrative agencies often composed of the same people who assess the property, thus making it more difficult to gain a fair hearing. Without federal protections, telecommunications companies are forced to pay the discriminatory taxes before seeking judicial review.

The net result of all of these factors is a danger that telecommunications companies will make inadequate investment in the infrastructure backbone that is essential to the development of the Internet. Discriminatory taxation of telecommunications property reduces return on such property and investment in the Internet backbone is diminished as a result. Improved customer access to the Internet, the World Wide Web and electronic commerce will only come through lower costs associated with increased competition and adequate investment. Discriminatory property taxation of telecommunications companies stands squarely in the way.

A legislative proposal to extend federal protections against discriminatory property tax treatment to telecommunications carriers engaged in interstate commerce is sorely needed to protect investment in the Internet backbone, and to protect consumers from the higher costs that result from such practices. This proposal affords telecommunications companies the same tax treatment as their competitors for property tax purposes. Tax discrimination will be eliminated and increased investment encouraged. Ultimately, this policy will result in expansion of the Internet and improved access for all Americans.

Scrap Internet tolls: No above-cost fees for the installation of telecommunications cable along rights-of-way.

State and local governments are using strained interpretations of the 1996 Telecommunications Act to impose "Internet tolls" in the form of new "franchise taxes" of up to 5% on business and consumer telecommunications use. With an average 18.2% transaction tax burden already being paid by consumers, these new taxes and related special "fees" could easily make telecommunications the most highly taxed product or service in the United States. Consumers need these services to access the Internet, making such new taxes a true impediment to widespread access to the Internet. The Advisory Commission on Electronic Commerce should urge Congress to take remedial action immediately to clarify the Telecommunications Act of 1996 and to ensure state and local government tax policy is not a major contributor to the digital divide evident today.

Section 253(c) of the Telecommunications Act of 1996 states that: "[n]othing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government." Unfortunately, state and local governments are routinely interpreting this language as granting them authority to impose a whole new regime of taxation on telecommunications providers and ultimately, consumers.

Clearly, as found in a number of recent federal district court cases,² Congress intended this term "compensation" to bear a direct relationship to the actual costs incurred by state and local jurisdictions in managing telecommunications facilities located in the public rights-of-way. Clarification by Congress of what is meant by "fair and reasonable compensation" is critical lest providers will continue to incur years of costly litigation as state and local governments repeatedly attempt to impose new taxes never intended by Congress in adopting Section 253(c).

Specifically, Section 253(c) should be amended to make clear that state and local governments should be reimbursed only for their actual and direct incremental expenses incurred in managing the telecommunications providers' presence in the public rights-of-way. Clearly, telecommunications providers and

their customers should be responsible for those expenses state and local governments incur in managing the placement of facilities in the public rights-of-way. And, just as clearly, Congress never intended state and local government to create a new tax regime that creates barriers to entry, discourages the development of facilities-based competitors and makes it much more expensive for both businesses and consumers to enjoy the benefits of advanced telecommunications services and access to the Internet. Accordingly, this new and detrimental form of taxation must be halted – this type of costly taxation can only have the effect of slowing the growth of high-speed access to the Internet.

Local governments have also misinterpreted Section 253(c)'s language regarding "authority . . . to manage the public rights-of-way" as providing them with authority to introduce a third tier of regulatory oversight. These attempts at local level regulatory oversight of telecommunications services always result in the telecommunications provider bearing significant and unnecessary costs. Local governments have repeatedly attempted to impose regulatory/management requirements on telecommunications providers that translate into increased costs of doing business in the local jurisdictions. Of course, these increased costs are passed along to business and consumer users of telecommunications in the form of increased rates – a hidden tax. These new local regulatory/management requirements, e.g. mapping requirements, facilities planning reports, provision of in-kind services, undergrounding of facilities, do not constitute "manag[ing]. . . the public rights-of-way" as envisioned by Section 253(c). Instead, as with new "franchise" taxes, these new local regulatory/management requirements have the effect of creating additional barriers to entry, discouraging the development of facilities-based competitors and making telecommunications services more expensive for consumers. Congress should clarify Section 253(c) to bar this third tier of regulation.

Section 253(c) of the Telecommunications Act was never intended to be the vehicle for erecting tolls on the information superhighway. The Commission should urge Congress to clarify the law to ensure that this abuse of telecommunications consumers is ended.

Simplify state and local telecommunications taxes, filing and auditing procedures.

State and local telecommunications taxes are too high, too complicated, and too numerous. Consumers are burdened by multiple and often regressive taxes on telecommunications while providers must cope with complex filing and auditing procedures and in turn pass compliance costs along to consumers.

The Commission should consider several ideas to reduce and simplify state and local taxes on telecommunications. States and localities that choose to tax telecommunications should impose only a single tax (one for state, one for localities), with one low rate and base applying across the state using uniform definitions representing the components of taxable and exempt transactions and customers. Providers should be required to file only a single return to the state, representing funds collected for state and local taxes, after which the state should distribute funds back to localities. To further reduce compliance costs, only one audit per state should be permitted for any taxable period.

Additional means of simplifying state and local telecommunications taxes should be considered, but only when such simplification will not ultimately increase the net tax burden, or rates, for consumers.

Subj: Digital Divide: Perspectives of San Francisco Bay Area Network on Disability (SF BAND)
From: Jean Nandi <jeannandi@aol.com>
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To: Internet Caucus Advisory Committee

1) TAXES - sales taxes --

[These remarks apply equally to use taxes]

Through the Internet, persons with disabilities are finally becoming freer of the service paradigm. We can make real choices and compare information outside the service perimeters. In 1960, most workers with mobility disabilities worked in sheltered workshops--a step above making license plates. Today, we can go to the Internet to buy stuff, from innovative adaptive equipment to prescriptions. Why is this important to the poorest group of people in the country? Well if I wanted the factory cane holder on a wheelchair, I might pay \$160 for the durable medical equipment one. With the Internet, I might be able to find a wheelchair accessory that made my life easier for under \$30.

Shopping on-line is imperative for me. This saves immeasurable energy and costs. It is often cheaper to shop on-line. Taxing products sold on-line is unthinkable! Saving the tax dollar by shopping on-line is the same as ordering by mail order and not paying the tax. On one product alone I save \$150 by buying on line. This was not a medical product...however, ALL medical products sold on-line should NEVER be taxed. If cash is spent at a medical supplier the tax is exempt...so should the Internet sale be waived.

2) TAXES - access taxes--

Access taxation is just one more unfair tax, and it will affect poor people and people with disabilities disproportionately. An informed public should have more than one way to find out about needed information and services. Taxing those efforts would enrich the taxing agencies, but would do little for the persons using the access resource.

As a blind person, it takes me a much longer time to locate and search out information on the web. This is because I use speech output from the screen and am therefore forced to listen to a great deal of information before deciding on what I want or need. Sighted people on the other hand, can just "Point and click" there mouse on what they are looking for. This additional time, online, if taxed, would be in my opinion, a most blatant form of discrimination. I would imagine that people with other types of disabilities would have similar opinions about this. Additionally, since much of what goes on the internet involves academic research, to tax that is also a grave injustice and should be discouraged at all cost!

Should it ever be considered to charge for the time spent on-line other than the basic cost of paying server fees is so abhorrent. At last, I can afford to pay for groceries rather than telephone bills! This is a meager existence, living on benefits however, I feel now that I am on equal footing with the rest of the world. On the internet my disability doesn't show...people are not leery of my purchases and wonder if I can pay the bill...I am just another consumer who is purchasing an item for their own need or their business need...the on-line shopping power is incredible. Many of the stores where I used to shop are not accessible or I could not reach the shelves...now, on-line the only reaching I have to do is to the keyboard. The only access I need is Plain Text options. However, access standards are also critically important, as most disabled people still do not have use of a computer or on-line shopping for poverty reasons.

3) FAIRNESS/"LEVEL PLAYING FIELD"

As it stands now, as far as I can tell, if you live in the state where the company you are purchasing from lives, you pay sales tax. However, you do not have to pay sales taxes if you buy from companies in other states. If we were traveling and purchased something from a company in another state, we would pay the tax of that state. Now the question arises, should we pay the tax of the state the company is in or the tax of the state we live in or nothing at all? I think, nothing at all - at least until they put the same tax proposal on things like infomercials, catalog sales, and shopping channels on television. These usually have interstate sales and should be regulated in the same way internet sales are. In addition, I have seen international sales through catalogs and stuff like newspaper insert ads (check your coupon sections of the Sunday paper). If the government is going to add tariffs or whatever to international internet sales, the same should be fair for ALL international sales.

Apparently in Europe a "value-added" tax is added to ALL sales, regardless of whether they are internet/catalog sales or elsewhere. Should we adopt such a system, services or block grants provided by the Federal government could then go back to the states based on such federal excise taxes. This would, of course, mean altering the taxation system overall, not just on the Internet, which would probably be the only way to secure fairness for business throughout the country.

4) ECONOMIC IMPACT - for the individual-

Even if taxes are not paid directly by the end user, they will be passed on in the form of higher prices. The last increase in Social Security was pretty nice, yet within 60 days, my bank added more charges to my accounts, the grocery prices are higher, gasoline prices are outrageous, and nothing has stayed the same in pricing for clothing or medical supplies and prescriptions. The only justification for these increases is the greed factor. The employees in the various companies are not getting huge wage increases. The CEO and high level managers are making fabulous salaries and perks that will never be seen by most of us. [In other words, there is an economic impact on employees as well as customers.]

What's the point? In the end, we will be taxed for something else or we will be charged higher prices so that the providers can cover the cost of the taxes they pay.

5) ECONOMIC IMPACT - on sales-

How is the government to collect the tax? Is an expensive screening process established so only people with full time staff or advanced experience can set up a legal reporting system? Monitor credit cards? The most healthy set-up in business would be to support a diversity of sizes. We have to reward and support free lance innovation because it will give us the creative edge in the long run. Will we drive innovators and creative people out of this market place place?

6) REAL WORLD EXAMPLES OF IMPACT ON BUSINESS

Are we killing the golden goose? Will we drive the innovators and creative people out of the market place or to another place? We do not live in an age characterized by picking up a shoe box, going on a street corner, and polishing shoes to get started on the road to wealth. While I am a strong supporter of urban planning, today it would take an investment with permits and leases just to polish shoes on a street corner.

The Internet is one of the few places that the little guy can get a start. Supporting home-based businesses is one answer to the huge unemployment (over 70%) rate of workers with disabilities. Although home based working is not for everyone; there are many societal benefits derived from encouraging a number of responsible adults to be in a residential setting. But will taxing these businesses push them over the edge of nonperformance?

7) DIGITAL DIVIDE

One prominent advocate from our network stated: "The Internet has opened a new world to people with disabilities. There are many reasons to say that now is not the time to stifle or mess with a good thing that has many other benefits that generate wealth and taxes." Another added that "I think we have more than enough taxes to pay now. While I understand that the federal and state governments are always looking for revenue sources, I think they need to look to those who can afford to pay higher taxes."

Telecommunicating is something that many of us [persons with disabilities] want/need to work. Therefore, a careful approach on designing policy and regulations is essential.

Taxing the Internet for any reason, as with any tax, will open the door for more and continued taxation. Prior to the California 1978 Jarvis/Gaines-Proposition 13 when property taxes were so high, whenever a governing body wanted more revenue they just added another tax on real estate. If there is an internet tax, it must be capped and controlled in some manner--limited. As a disabled person living on disability benefits, it would be a hardship for me to pay a tax. The Internet is my lifeline as I am mostly housebound. If a tax were levied, a discount of some sort as is done with PacBell and PG&E should be given to low-income and disabled/elderly people. [And then, next question, how would that be achieved? -- J. Nandi]

As a person with a disability, I am already fed up with the lack of enforcement of laws concerning us. The laws are on the books and are either unenforced or the letter of the law is adhered to so closely as to make the spirit of the law invisible. Regardless of what it is called, discrimination is any act, overt or covert, that results in a person with a disability or a member of any minority group appear to have less right to anything that any other person can get without effort or by simply showing up to get it. [Internet taxes would end up being discriminatory.]