

TIME WARNER

Richard D. Parsons
President

Serving on the Advisory Commission on Electronic Commerce has been a privilege and honor, as well as quite a learning experience. Congress assigned to us an important, and daunting task. Nineteen Commission members publicly asked for input from every conceivable quarter and the public inundated us with replies. The Commission, and their staffs, studied the data and opinions, and labored hard and long to find a common pathway to an ill-defined goal. That ethereal goal is an equitable and workable taxation policy for the 21st century given the explosive growth of electronic commerce and digital distribution.

At times, our job seemed like trying to hit an invisible moving target with an unguided missile. There was no initial consensus as to what problems we were trying to solve, much less how to formulate solutions. Despite its incredible growth, Ecommerce is still a business baby in the cradle. It is a very big baby. One may question how much and how fast the baby will grow, but no one questioned that Ecommerce will grow quickly into a giant. We are trying to solve today a taxation problem that does not exist today. Congress gave us the task of trying to fix a very leaky tax roof while the revenue sun is still shining. The storm looms.

I believe there are three fundamental issues:

- 1) Internet access
- 2) Privacy
- 3) A level tax playing field for all sellers

Internet access charges and taxes, excise taxes on communication services, inequitable state and local telecommunication taxes and compliance burdens all limit fair universal access to the dynamic economic growth engine of the age - the Internet. Commissioners reached a very clear directional consensus about these issues.

The public is sharply focused on the issue of online privacy rights. However, the relationship of this issue to tax policy is not widely understood. Under current law, for a tax jurisdiction to impose sales or use

tax on a buyer it has to know who and where the buyer is. As the mobile, anonymous laptop environment of today's world merges with the increasingly digital nature of goods and services of tomorrow's world, how will tax authorities get answers to such tax sourcing questions - who, what and where - without invading online privacy? I believe that there was a strong, and correct consensus among Commissioners that when tax policy and online privacy rights conflict - privacy must win. As to details, the business group was prepared to accept any other reasonable proposal for taxation of digitized goods that recognized the absolute primacy of online privacy rights.

Finally, we come to the most contentious arena, the so-called level playing field. This issue single-handedly stopped the Commission from reaching a super-majority consensus supporting a formal recommendation to Congress. It seems almost un-American to be against a level playing field. Accordingly, everyone is for it. It just means different things to different people.

Subsumed in this level-playing field concept are vital issues:

- a) The states' desire, and perhaps future need, for the ability to collect sales or use tax from remote vendors.
- b) The fundamental fairness question. Should equitable tax policy allow remote and main street vendors to be taxed differently?
- c) The paramount need for uniformity and dramatic simplification of state and local tax systems.
- d) The nexus question. When is someone doing business in a state for tax purposes?
- e) The tax revenue neutrality question. How does one fix the existing uneven playing field without imposing an unintended net tax increase?

These are complex issues. Courts and tax policy groups have struggled over them for decades. I find it discouraging that the Commission's work brought us so very close to a workable compromise on all these questions just as the clock ran out. The Commissioners felt keenly, at the Dallas "final meeting," the nearness of the gold ring compromise. We voted

a rule change creating overtime for one last-chance conference call finale. Unfortunately, but not surprisingly, without the time-pressure group dynamic of the Dallas setting this brief overtime did not get us there.

There are good, reasonable ideas in the business caucus proposal, which attained a Commission majority vote. However, that proposal was put forth as a model, not, in my view, as a suggestion for final law. The alternative compromise, which almost achieved strong super-majority Commission support, would have stood as a compelling model for congressional action. Without such a workable compromise, I fear that, despite all the good work and reasonable end product of the Commission efforts, we have left on the table - unsolved - the single most compelling tax issue. Why was this tax issue left unresolved?

It would perhaps be more sensible to ask how the Commission ever came so close to resolving such contentious, longstanding, seemingly insoluble, tax issues. We came close only because all the Commissioners - eschewing the trichotomous labels as pro-tax, anti-tax, and the business swing vote - worked conscientiously to bridge real conceptual and political chasms. I believe we can still get there. Congress, if it so chooses, can take up the work of the Commission, not at the starting point of our wide differences, or even at the majority sanctioned business caucus proposal, but at the inch wide gap that was left in the good compromise at hand.

I hope Congress pays as much attention to the attainable work of a bold compromise solution as it does to the Commission's final report. To do this, Congress and the Administration will need to put aside the pro-tax, anti-tax spin. Congress and the Administration, if they choose, can advance the work of this Commission to the most sweeping, and useful, piece of tax simplification legislation in our lifetime. If they do that, then I will consider my participation in this process not only a privilege and honor, but also as one of the most fulfilling and important undertakings of my professional life. I hope a year from now I will be able to make just such an affirmative statement.

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