

SATELLITE RADIO FREEDOM ACT AND THE SATELLITE SERVICES ACT

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTH CONGRESS SECOND SESSION ON **H.R. 4869 and H.R. 5429**

SEPTEMBER 25, 2002

Serial No. 107

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.house.gov/judiciary>

U.S. GOVERNMENT PRINTING OFFICE

81-895 PDF

WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., WISCONSIN, *Chairman*

HENRY J. HYDE, Illinois	JOHN CONYERS, JR., Michigan
GEORGE W. GEKAS, Pennsylvania	BARNEY FRANK, Massachusetts
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICK BOUCHER, Virginia
ELTON GALLEGLY, California	JERROLD NADLER, New York
BOB GOODLATTE, Virginia	ROBERT C. SCOTT, Virginia
STEVE CHABOT, Ohio	MELVIN L. WATT, North Carolina
BOB BARR, Georgia	ZOE LOFGREN, California
WILLIAM L. JENKINS, Tennessee	SHEILA JACKSON LEE, Texas
CHRIS CANNON, Utah	MAXINE WATERS, California
LINDSEY O. GRAHAM, South Carolina	MARTIN T. MEEHAN, Massachusetts
SPENCER BACHUS, Alabama	WILLIAM D. DELAHUNT, Massachusetts
JOHN N. HOSTETTLER, Indiana	ROBERT WEXLER, Florida
MARK GREEN, Wisconsin	TAMMY BALDWIN, Wisconsin
RIC KELLER, Florida	ANTHONY D. WEINER, New York
DARRELL E. ISSA, California	ADAM B. SCHIFF, California
MELISSA A. HART, Pennsylvania	
JEFF FLAKE, Arizona	
MIKE PENCE, Indiana	
J. RANDY FORBES, Virginia	

PHILIP G. KIKO, *Chief of Staff-General Counsel*

PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

BOB BARR, Georgia, *Chairman*

JEFF FLAKE, Arizona, <i>Vice Chair</i>	MELVIN L. WATT, North Carolina
GEORGE W. GEKAS, Pennsylvania	JERROLD NADLER, New York
MARK GREEN, Wisconsin	TAMMY BALDWIN, Wisconsin
DARRELL E. ISSA, California	ANTHONY D. WEINER, New York
STEVE CHABOT, Ohio	MAXINE WATERS, California
MIKE PENCE, Indiana	

RAYMOND V. SMJETANKA, *Chief Counsel*

SUSAN JENSEN-CONKLIN, *Counsel*

DIANE TAYLOR, *Counsel*

PATRICIA DEMARCO, *Full Committee Counsel*

STEPHANIE MOORE, *Minority Counsel*

CONTENTS

SEPTEMBER 25, 2002

OPENING STATEMENT

	Page
The Honorable Bob Barr, a Representative in Congress From the State of Georgia, and Chairman, Subcommittee on Commercial and Administrative Law	1

WITNESSES

Honorable Tom Davis, Representative of the 11th District of Virginia	
Oral Testimony	3
Prepared Statement	4
Mr. Andrew Wright, President, Satellite Broadcasting and Communications Association	
Oral Testimony	9
Prepared Statement	11
Nicholas Miller, Esq., Miller & Van Eaton, P.L.L.C.	
Oral Testimony	12
Prepared Statement	14
Arthur Rosen, Esq., McDermott, Will & Emery	
Oral Testimony	19
Prepared Statement	21

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Witness Introductions	6
-----------------------------	---

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Additional Questions Presented to Andrew Wright by the Honorable Bob Barr	31
Responses to Additional Questions by Andrew Wright	33
Additional Questions Presented to Nicholas Miller, Esq. by the Honorable Bob Barr	34
Responses to Additional Questions by Nicholas Miller, Esq.	36
Additional Questions Presented to Arthur Rosen, Esq. by the Honorable Bob Barr	39
Responses to Additional Questions by Arthur Rosen, Esq.	41
Additional Views Submitted by Nicholas Miller, Esq., on behalf of the National League of Cities, U.S. Conference of Mayors, and TeleCommUnity Alliance	43
Additional Material Submitted by Nicholas Miller, Esq., on behalf of the National League of Cities, U.S. Conference of Mayors, and TeleCommUnity Alliance:	
Streamlined Sales Tax Project	57
Status of State Efforts on Streamlined Sales Tax Project	61
Uniform Sales and Use Tax Administration Act	64
Pub. L. 106-252, the "Mobile Telecommunications Sourcing Act"	105

SATELLITE RADIO FREEDOM ACT AND THE SATELLITE SERVICES ACT

WEDNESDAY, SEPTEMBER 25, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 12:47 p.m., in Room 2141, Rayburn House Office Building, Hon. Bob Barr [Chairman of the Subcommittee] presiding.

Mr. BARR. The Subcommittee will come to order.

We meet today to consider two bills, H.R. 4869 and H.R. 5429, which seek to achieve parity with respect to State and local taxation for a developing communications technology. In doing so, we must consider the best approach to balance several divergent interests. This is a challenge not unlike that which has confronted this Subcommittee many times before. State taxation of the Internet, of interstate business, and of individuals working and residing in different States all have been considered by this Subcommittee.

On June 5 of this year, my distinguished colleague from Virginia, Representative Tom Davis, introduced H.R. 4869, the "Satellite Radio Freedom Act." This bill prohibits local taxing authorities from imposing income and business taxes and fees on satellite radio programming. The satellite radio business is a growing industry, which broadcasts via satellite to their subscribers' satellite-ready radios located in cars, trucks, homes, and other locations across the Nation.¹ The operation of companies utilizing this technology resembles direct-to-home satellite television services, in that they both use satellites to transmit their programming signals directly to customers rather than employing public rights-of-way which have served as the rationale for the imposition of local taxation.

In 1996, direct-to-home satellite television service providers received a local tax exemption in the "Telecommunications Act of 1996." The rationale behind the exemption contained in that Act was to relieve a developing industry from the crushing administrative burden of collecting and remitting taxes in literally thousands of local jurisdictions. The focus instead could be on improving a new technology and enlarging an industry.

In light of the fact the 1996 Act provides an exemption only for "direct-to-home services," the mobile nature of satellite radio excludes it from the exemption provided under the Telecommuni-

cations Act. H.R. 4869 was introduced to achieve parity of treatment between satellite television and satellite radio.

H.R. 4869 raises some issues concerning scope, limitations on its exemption, and on a State's authority to impose taxes.

H.R. 5429, the Satellite Services Act, introduced on September 23rd of this year also by Representative Davis, on the other hand, broadens the application of the tax exemption to direct-to-subscriber satellite service providers rather than merely to satellite radio providers only. The language of H.R. 5429 exempts service providers from the collection or remittance of local taxes and fees, rather than imposing a restriction upon local taxing jurisdictions to impose such taxes.

Further, unlike H.R. 4869, the Satellite Services Act carves out no exceptions to the tax exemption. It should be noted neither bill restricts a State from taxing satellite service providers.

Thus, the two approaches of H.R. 4869 and H.R. 5429 are the basis of our discussion today, and hopefully the testimony from our witnesses will guide us in adopting a course that will encourage technological growth without detracting from reasonable concepts of State and local taxing prerogatives.

I would now yield to the distinguished Ranking Member from North Carolina, Mr. Watt, for any preliminary remarks he might make.

Mr. WATT. Thank you, Mr. Chairman. I just want to welcome my colleague Mr. Davis here and the other witnesses, and thank them for being here.

In the interest of time, I am hoping to be able to stay to hear all of the witnesses' testimony, even though I'm in a time bind. I'm not going to make an opening statement so that we can go directly to the witnesses, if possible, unless somebody else has some, of course. So I yield back.

Mr. BARR. I thank the distinguished Ranking Member.

Does the gentleman from Ohio, Mr. Chabot, have any opening statement?

Mr. CHABOT. Mr. Chairman, I'd just like to welcome the panel, and I and look forward to hearing their testimony, and thank you for holding this important hearing this afternoon.

Thank you.

Mr. BARR. Thank you, Mr. Chabot.

I'd like now to move to the introduction of our very distinguished panel of witnesses today, and then we will look forward to hearing from each one of the witnesses in order, moving from our left to right, beginning with Mr. Davis. And we would ask, if at all possible, for each of the witnesses to limit the oral portion of their testimony to 5 minutes.

The full record of their statements and any additional material, supplemental materials, they wish to submit for the record will, of course, be included, without objection, in the record.

Our first witness today will be our colleague from the Commonwealth of Virginia, Mr. Tom Davis, who introduced the two bills which are the subject of today's hearing. Mr. Davis is the Chairman of the Subcommittee on Technology and Procurement Policy of the Committee on Government Reform and is also a Member of

the Subcommittee on Telecommunications and the Internet of the Energy and Commerce Committee.

An active dedication to issues critical to the high-tech community has marked Mr. Davis' service in the United States Congress. He is the co-chair of the Information Technology Working Group, a group he founded to promote better understanding of issues important to the computer and technology industries.

Prior to his service in the Congress, Mr. Davis served as chairman of the Fairfax County Board of Supervisors. He was also the vice president and general counsel at PRC, Inc., a high-technology and professional services firm located in McLean, Virginia. Mr. Davis is an honors graduate of Amherst College and earned his law degree from the University of Virginia.

Tom, we're very grateful for your dedication to this important issue before us today and for your valuable testimony.

**STATEMENT OF THE HONORABLE TOM DAVIS,
REPRESENTATIVE OF THE 11TH DISTRICT OF VIRGINIA**

Mr. DAVIS. Thank you, Mr. Chairman. Thank you, Mr. Watt and Mr. Chabot, for being here. And I want to thank you for calling this hearing on local taxation of satellite services.

Using satellites to distribute programming and services, I think, holds great promise, largely because satellite signals can reach remote areas where there are few options offered by the traditional terrestrial services. Satellite television services have been with us for a number of years, and we're now seeing the emergence of satellite radio service providers.

With satellite radio, new benefits arise. Signals can be received by listeners in their vehicles, not only at home. In addition, since this service is available nationwide, it has the ability to aggregate small, dispersed listener populations, making niche educational, ethnic, religious, or specialized music programming economically feasible. Such benefits make it a matter of public interest to foster this emerging technology so it can be fully utilized to the benefit of all Americans.

There are significant barriers to entry in the satellite broadcasting field. Not everyone can put out their shingle or, in this case, throw up their satellite, and begin broadcasting. It is unlikely we will hear of any provider of satellite radio or other programming having constructed their first satellite in their garage. However, I believe there are steps we can take to facilitate the growth and expansion of this industry.

Satellite radio service, or other satellite programming services that may be dreamed up in the future, will share some general characteristics. Chiefly, they will involve programming being sent to a satellite from either a sole location or a small number of locations, but sent down to subscribers all over the country.

As I mentioned earlier, there are many advantages to such an approach. However, I believe there are also concerns that should be addressed. One such concern is the extraordinary administrative obstacle that would arise if such providers were forced to collect and remit local taxes in approximately 15,000 different jurisdictions. This reality has already been recognized in reference to satellite television, and appropriate legislative steps have been taken.

Section 602 of the Telecom Act provides a—exempts a provider of direct-to-home satellite service from the collection or remittance, or both, of any tax or fee imposed by a local taxing jurisdiction on direct-to-home satellite service. Direct-to-home satellite service is defined as programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite.

While the language in this section covers satellite television, I believe additional legislation is required to include satellite radio and certain other satellite programming services that can evolve in the future. Thus, the legislation I have introduced seeks to establish parity between such services to the greatest extent possible by requiring collection and remittance of taxes at the State level, but offering an exemption from doing so at the local level.

I recognize that differences between satellite services exist. For example, while satellite radio service may be used primarily at an individual's home, many subscribers will use this service in some form of vehicle, be it their privately owned conveyance or a truck they drive over-the-road in a professional capacity. Direct-to-home does not describe these scenarios.

My bill, therefore, establishes a definition of direct-to-subscriber satellite services that would cover programming received by both mobile and stationary equipment. It also clarifies that State taxes on such satellite programming subscriptions will be sourced from the subscriber's place of primary use, defined as either their home or their business address.

I admit that what began as a simple effort to bring parity to two seemingly similar forms of satellite media is, in fact, much more complicated. There are parallels not only with satellite television, but also mobile telecommunications services, Internet sales, and catalog sales.

I have worked hard to try to craft and even made some changes in the initial legislation to try to help the continued expansion of satellite programming services, while not granting a competitive advantage over their terrestrial counterparts. But I recognize that more work may be necessary. I am eager to hear the input of today's witnesses to this end and look forward to working with this Committee to try to bring about this new technology.

Thank you.

[The prepared statement of Mr. Davis follows:]

PREPARED STATEMENT OF THE HONORABLE TOM DAVIS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, I would like to thank you for calling this hearing on local taxation of satellite services.

Using satellites to distribute programming and services holds great promise, largely because satellite signals can reach remote areas where there are few options offered by traditional terrestrial services. Satellite television services have been with us for a number of years, and we are now seeing the emergence of satellite radio service providers. With satellite radio, new benefits arise. Signals can be received by listeners in their vehicles, not only at home. In addition, since this service is available nationwide, it has the ability to aggregate small, dispersed listener populations, making niche educational, ethnic, religious, or specialized music programming economically feasible. Such benefits make it a matter of public interest to foster this emerging technology, so it can be fully utilized to the benefit of all Americans.

There are significant barriers to entry in the satellite broadcasting field. Not everyone can put out their shingle, or in this case, throw up their satellite, and begin broadcasting. It is unlikely we will hear of any provider of satellite radio or other programming having constructed their first satellite in their garage. However, I believe there are steps we can take to facilitate the growth and expansion of this industry.

Satellite radio service, or other satellite programming services that may be dreamed up in the future, will share some general characteristics. Chiefly, they will involve programming being sent to a satellite from either a sole location or a small number of locations, but sent down to subscribers all over the country. As I mentioned earlier, there are many advantages to such an approach; however, I believe there are also concerns that must be addressed. One such concern is the extraordinary administrative obstacle that would arise if such providers were forced to collect and remit local taxes in approximately 15,000 different jurisdictions. This reality has already been recognized in reference to satellite television, and appropriate legislative steps have been taken.

Section 602 of the Telecom Act exempts a provider of direct-to-home satellite service from the collection or remittance, or both, of any tax or fee imposed by a local taxing jurisdiction on direct to home satellite service. Direct-to-home satellite service is defined as programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite.

While the language in this section covers satellite television, I believe additional legislation is required to include satellite radio and certain other satellite programming services that may evolve in the future. Thus, the legislation I have introduced seeks to establish parity between such services to the greatest extent possible by requiring collection and remittance of taxes at the state level, but offering an exemption from doing so at the local level.

I do recognize that differences between satellite services exist. For example, while satellite radio service may be used primarily at an individual's home, many subscribers will use this service in some form of vehicle, be it their privately owned conveyance or a truck they drive over-the-road in a professional capacity. "Direct-to-home" does not describe these scenarios. My bill therefore establishes a definition of direct-to-subscriber satellite services that would cover programming received by both mobile and stationary equipment. It also clarifies that state taxes on such satellite programming subscriptions will be sourced from the subscriber's place of primary use, defined as either their home or business address.

I will admit that what began as a simple effort to bring parity to two seemingly similar forms of satellite media is, in fact, more complicated. There are parallels not only with satellite television, but also mobile telecommunication services, Internet sales, and catalogue sales. I have worked hard to craft legislation to help the continued expansion of satellite programming services, while not granting a competitive advantage over their terrestrial counterparts. However, I recognize that more work may yet be necessary, and I am eager to hear the input of today's witnesses to this end.

Mr. BARR. Thank you very much for your testimony, Mr. Davis. The Members don't have any specific questions for you. We recognize the time constraints on your other congressional duties. But if you would be available to provide any additional material that Subcommittee Members might have and pose to you in writing and submit that for the record, we would appreciate it.

Mr. DAVIS. I would be happy to, and I thank you for the opportunity.

Mr. BARR. Thank you.

I would like to very briefly introduce our next three witnesses, and if you will forgive me for rushing through these so as not to take you all's time insofar as we were a little bit late getting started because there's some votes on the floor—but the full introductions will be included in the record.

[The material referred to follows:]

WITNESS INTRODUCTIONS

**Hearing of the Subcommittee of Commercial and Administrative Law
on H.R. 4869, the "Satellite Radio Freedom Act" and
H.R. 5429, the "Satellite Services Act."**

September 25, 2002

Representative Tom Davis

Our first witness is my colleague from the Commonwealth of Virginia, Tom Davis, who introduced the two bills which are the subject of today's hearing. Mr. Davis is the Chairman of the Subcommittee on Technology and Procurement Policy of the Committee on Government Reform, and a member of the Subcommittee on Telecommunications and the Internet of the Energy and Commerce Committee.

An active dedication to issues critical to the high-tech community has marked Mr. Davis' service in Congress. He is a co-chair of the Information Technology Working Group, a group he founded to promote better understanding of issues important to the computer and technology industries. Prior to his service in Congress, Mr. Davis was Chairman of the Fairfax County Board of Supervisors. He was also the Vice President and General Counsel of PRC, Inc., a high technology and professional services firm in McLean, Virginia.

Mr. Davis is an honors graduate of Amherst College and earned his law degree from the University of Virginia.

Tom, we are grateful for your dedication to the important issues before us today and for your valuable testimony.

Andrew Wright

Our next witness is Andrew Wright, president of the Satellite Broadcasting and Communications Association, a national trade association that represents all segments of the satellite consumer services industry.

Immediately prior to joining the SBCA, Mr. Wright was the Chief of Staff and Legislative Counsel for Congressman Rick Boucher. From 1989 to 1994, he served as Vice President of Federal Affairs for the American Insurance Association. Before coming to Washington, Mr. Wright was a partner in the law firm of Yeary, Tate and Wright in Abingdon, Virginia.

Mr. Wright is a graduate of the University of Virginia School of Law and received his undergraduate degree in from Emory and Henry College.

Mr. Wright, we appreciate you being with us here today and look forward to hearing your testimony.

Nicholas Miller

And our next witness is Nicholas P. Miller, partner with the Washington office of the law firm Miller & Van Eaton. Mr. Miller is a well-known expert on the law and policy governing cable television and telephone regulation. He served as counsel to the Senate Committee on Commerce and as a special consultant to the White House on telephone deregulation issues. He represents local governments and international agencies on telecommunications policy issues, and is widely recognized for his lobbying experience with the Cable Act of 1984, as well as the Telecommunications Act of 1996.

Mr. Miller was a founding partner of the Washington, D.C. law firm of Miller & Holbrooke, and is the former head of the telecommunications practice group of Miller, Canfield, Paddock & Stone. He received both his law degree and undergraduate degree from the University of Washington, where he was a member of the Washington Law Review.

Mr. Miller, thank you for being here with us today.

Arthur Rosen

Our next witness is Arthur Rosen, a partner in the New York City law office of the firm of McDermott, Will & Emery, where he chairs the firm's nationwide State and local tax practice. A graduate of New York University and St. John's University Law School, Mr. Rosen is a leading expert in the area of State and local taxation. He is a past chairman of the State and Local Tax Committee of the American Bar Associations' Tax Section, a member of the Executive Committee of the New York State Bar Association's Tax Section, and has served as co-chair of its committees on New York State, New York City, and local tax matters.

Mr. Rosen has served in State government as Deputy Counsel of the New York State Department of Taxation and Finance and Counsel to the Governor's Temporary Sales Tax Commission as well as holding executive tax management positions with the Xerox Corporation and AT&T.

Mr. Rosen has lectured extensively throughout the country on state and local tax issues, including before this Subcommittee last September regarding H.R. 2526, the "Internet Tax Fairness Act of 2001."

Mr. Rosen, we are delighted to welcome you back today and look forward to gaining valuable insight from your testimony.

Our next witness will be Andrew Wright, president of Satellite Broadcasting and Communications Association, which is a national trade association that represents all segments of the satellite consumer services industry. Mr. Wright, as with our first witness, Mr. Davis, has a very distinguished background, including also being a graduate of Mr. Davis' school, and that is the University of Virginia.

We very much appreciate and look forward to hearing from you, Mr. Wright, and appreciate your sharing your expertise with us today.

STATEMENT OF ANDREW WRIGHT, PRESIDENT, SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

Mr. WRIGHT. Thank you, Mr. Chairman. Mr. Chairman, Congressman Watt, Mr. Chabot, I'm Andy Wright, president of SBCA. We first thank Congressman Davis for introducing H.R. 5429 and thank you, Mr. Chairman, for calling a hearing on this important legislation—

Mr. BARR. Can you pull that microphone a little bit closer to you?

Mr. WRIGHT. Sorry, sir.

Mr. BARR. We're not—

Mr. WRIGHT. Is it on?

Mr. BARR. Yes.

Mr. WRIGHT. And for giving me the opportunity to testify today.

SBCA represents all segments of the consumer satellite services industry. Our membership includes direct broadcast satellite, C-band satellite, satellite broadband, satellite radio, and other consumer satellite service providers.

In addition, SBCA represents content providers; that is, programmers, equipment manufacturers, national and regional distributors, and hundreds of retailers from every State and several foreign countries.

Today, I am especially proud to have the opportunity to represent our newest member group, satellite radio. XM satellite radio launched its service across the country last fall, and Sirius satellite radio began offering service nationwide in July.

Both Sirius and XM offer 100 channels of digital quality music, news, sports, and entertainment for consumers to enjoy from anywhere in the United States without losing the radio signal as their vehicle moves across the country.

In less than a year, more than 200,000 consumers located throughout the continental United States have subscribed to satellite radio, mainly for their autos and trucks, but also for homes and businesses, making it the fastest growing audio product in the last two decades.

Mr. Chairman, I brought with me one of XM's new—what they call a plug-and-play unit. This is all that's required, along with this antenna, which goes on the top of the car, to operate this in your automobile. It plugs into a little cradle in the car. It can be pulled out, taken into the house, and then plugged in to use with your stereo system.

So we think that this is a tremendously exciting product, and I just thought you might be interested in seeing that.

Mr. BARR. Can we take a look at that while you're testifying?

Mr. WRIGHT. Yes, sir.

Mr. BARR. Thank you.

Mr. WRIGHT. This national service, clearly in its infancy, faces significant uncertainty because of potential tax collection and remittance responsibilities that could be imposed by more than 15,000 local jurisdictions across the country. If any significant number of these local taxing authorities impose new taxes on satellite radio consumers, and if satellite radio providers are forced to collect and remit those taxes, the immense administrative burden would severely damage satellite radio's ability to operate effectively, adding enormous complexity and cost to this new industry.

XM and Sirius subscribers activate their radios either online or through a toll-free telephone call, and the service is provided from a satellite directly to the subscriber. As a result, there is little or no contact with the infrastructure, such as streets, sidewalks, and rights of ways, of county, municipal, or other local governments.

The direct broadcast satellite industry's national satellite-provided point-to-multipoint television service provides a very similar service to consumers. DBS faced a similar problem when it was rolled out in 1994, and Congress successfully addressed the issue in the 1996 Telecommunications Act by providing DBS with an exemption from the collection and remittance of local taxes.

DBS's local tax exemption is now recognized as an important factor in allowing the service to grow from zero subscribers in 1994 to over 18.2 million households, over 48 million viewers today. A similar exemption is clearly warranted for satellite radio.

The local tax exemption we seek—and I want to be clear on this point—like the exemption enjoyed by DBS, would not exempt satellite radio from State taxes. It is in no way a free pass from paying taxes.

DBS providers today collect and remit at the State level in many States, and these taxes are often specifically allocated to or redistributed to localities. The exemption DBS enjoys and that that we seek for satellite radio is strictly a form of administrative relief for a national service that has little or no contact with local municipalities.

What we are saying is that the policy established by Congress for States to be the sole government entity entitled to collect taxes for subscribing to nationwide satellite services is a sound policy that should be extended to the providers of satellite radio.

This arrangement has been vital for the DBS industry, helping it to become more efficient and better able to provide new and advanced services to consumers, particularly rural consumers. Now, another new and promising satellite service is faced with the same dilemma. We ask that Congress provide a similar Federal preemption that would exempt satellite radio providers from the collection and remittance of local transaction taxes and fees that are imposed on consumers and elevate such tax responsibilities to the State level.

Mr. Chairman, satellite radio is quickly emerging as a bright spot among high technology consumer services, no small feat in today's difficult consumer market. XM and Sirius satellite radio have already invested more than \$3 billion to bring this exciting new service to consumers, and they can be expected to invest much

more, create more jobs, and provide more consumers with an exciting service as their businesses continue to grow.

I urge you to adopt Congressman Davis' legislation to provide the consumers of satellite radio with the same local tax exemption that has proved to be essential for the rapid growth of DBS.

Thank you, sir.

[The prepared statement of Mr. Wright follows:]

PREPARED STATEMENT OF ANDREW S. WRIGHT

MR. CHAIRMAN, CONGRESSMAN WATT, MEMBERS OF THE SUBCOMMITTEE, MY NAME IS ANDY WRIGHT, AND I AM PRESIDENT OF THE SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION (SBCA). THANK YOU FOR CALLING A HEARING ON THIS IMPORTANT LEGISLATION AND FORGIVING ME THE OPPORTUNITY TO TESTIFY TODAY.

SBCA REPRESENTS ALL SEGMENTS OF THE CONSUMER SATELLITE SERVICES INDUSTRY. OUR MEMBERSHIP INCLUDES DIRECT BROADCAST SATELLITE (DBS), C-BAND, SATELLITE BROADBAND, SATELLITE RADIO AND OTHER CONSUMER SATELLITE SERVICE PROVIDERS. IN ADDITION, SBCA REPRESENTS CONTENT PROVIDERS, EQUIPMENT MANUFACTURERS, RETAILERS, NATIONAL AND REGIONAL DISTRIBUTORS AND OTHER COMPANIES IN THE SATELLITE SERVICES INDUSTRY.

TODAY I AM PROUD TO HAVE THE OPPORTUNITY TO REPRESENT OUR NEWEST MEMBER GROUP, SATELLITE RADIO. XM SATELLITE RADIO LAUNCHED ITS SERVICE ACROSS THE COUNTRY LAST FALL, AND SIRIUS SATELLITE RADIO BEGAN OFFERING SERVICE NATIONWIDE IN JULY. BOTH SIRIUS AND XM OFFER 100 CHANNELS OF DIGITAL-QUALITY MUSIC, NEWS, SPORTS AND ENTERTAINMENT FOR CONSUMERS TO ENJOY FROM ANYWHERE IN THE UNITED STATES, WITHOUT LOSING THE RADIO SIGNAL AS THEIR VEHICLES MOVE ACROSS THE COUNTRY. IN LESS THAN A YEAR, MORE THAN 200,000 CONSUMERS LOCATED THROUGHOUT THE CONTINENTAL UNITED STATES HAVE SUBSCRIBED TO SATELLITE RADIO, MAINLY FOR THEIR AUTOS AND TRUCKS BUT ALSO FOR HOMES AND BUSINESSES, MAKING IT THE FASTEST GROWING AUDIO PRODUCT OF THE PAST TWO DECADES.

HOWEVER, THIS NATIONAL SERVICE—CLEARLY IN ITS INFANCY—FACES SIGNIFICANT UNCERTAINTY BECAUSE OF POTENTIAL TAX COLLECTION AND REMITTANCE RESPONSIBILITIES THAT COULD BE IMPOSED BY MORE THAN 13,000 LOCAL JURISDICTIONS ACROSS THE COUNTRY. IF SATELLITE RADIO PROVIDERS WERE FORCED TO COLLECT AND REMIT TAXES TO ANY SIGNIFICANT NUMBER OF THESE LOCALITIES, THE IMMENSE ADMINISTRATIVE BURDEN WOULD SEVERELY DAMAGE SATELLITE RADIO'S ABILITY TO OPERATE EFFECTIVELY, ADDING ENORMOUS COMPLEXITY AND COSTS FOR THIS NEW INDUSTRY.

XM AND SIRIUS SUBSCRIBERS ACTIVATE THEIR RADIOS EITHER ONLINE OR THROUGH A TOLL-FREE TELEPHONE CALL, AND, GENERALLY, THE SERVICE IS PROVIDED FROM THE SATELLITE DIRECTLY TO THE SUBSCRIBER. AS A RESULT, THERE IS LITTLE OR NO CONTACT WITH THE INFRASTRUCTURE (STREETS, SIDEWALKS OR OTHER RIGHT-OF-WAYS) OF COUNTY, MUNICIPAL OR OTHER LOCAL GOVERNMENTS.

THE DIRECT BROADCAST SATELLITE INDUSTRY'S NATIONAL SATELLITE PROVIDED POINT-TO-MULTIPOINT TELEVISION SERVICE PROVIDES A VERY SIMILAR SERVICE TO CONSUMERS. DBS FACED A SIMILAR PROBLEM WHEN IT WAS ROLLED OUT IN 1994, AND CONGRESS SUCCESSFULLY ADDRESSED THE ISSUE IN THE 1996 TELECOMMUNICATIONS ACT BY PROVIDING DBS WITH AN EXEMPTION FROM THE COLLECTION AND REMITTANCE OF LOCAL TAXES. DBS'S LOCAL TAX EXEMPTION IS NOW RECOGNIZED AS AN IMPORTANT FACTOR IN ALLOWING THE SERVICE TO GROW FROM 0 SUBSCRIBERS IN 1994 TO OVER 18.2 MILLION HOUSEHOLDS—OVER 48 MILLION VIEWERS—TODAY. A SIMILAR EXCEPTION IS CLEARLY WARRANTED FOR SATELLITE RADIO.

THE LOCAL TAX EXEMPTION WE SEEK—AND I WANT TO BE VERY CLEAR ON THIS POINT—LIKE THE EXEMPTION ENJOYED BY DBS—WOULD NOT EXEMPT SATELLITE RADIO FROM STATE TAXES. IT IS IN NO WAY A "FREE PASS" FROM PAYING TAXES. DBS PROVIDERS TODAY COLLECT AND REMIT TAXES AT THE STATE LEVEL IN MANY STATES, AND THESE TAXES ARE

OFTEN SPECIFICALLY ALLOCATED TO OR REDISTRIBUTED TO LOCALITIES. THE EXEMPTION DBS ENJOYS AND THAT WE SEEK FOR SATELLITE RADIO IS STRICTLY A FORM OF ADMINISTRATIVE RELIEF FOR A NATIONAL SERVICE THAT HAS LITTLE OR NO CONTACT WITH LOCAL MUNICIPALITIES.

WHAT WE ARE SAYING IS THAT THE POLICY ESTABLISHED BY CONGRESS FOR STATES TO BE THE SOLE GOVERNMENT ENTITY ENTITLED TO COLLECT TAXES FOR SUBSCRIBING TO NATIONWIDE SATELLITE SERVICES IS A SOUND POLICY THAT SHOULD BE EXTENDED TO PROVIDERS OF SATELLITE RADIO SERVICE.

THIS ARRANGEMENT HAS BEEN VITAL FOR THE DBS INDUSTRY, HELPING IT BECOME MORE EFFICIENT AND BETTER ABLE TO PROVIDE NEW AND ADVANCED SERVICES TO CONSUMERS. NOW, ANOTHER NEW AND PROMISING SATELLITE SERVICE IS FACED WITH THE SAME DILEMMA. WE ASK THAT CONGRESS PROVIDE A SIMILAR FEDERAL PREEMPTION THAT WOULD EXEMPT SATELLITE RADIO PROVIDERS FROM THE COLLECTION AND REMITTANCE OF LOCAL TRANSACTION TAXES AND FEES AND ELEVATE SUCH TAX RESPONSIBILITIES TO THE STATE LEVEL.

MR. CHAIRMAN, SATELLITE RADIO IS QUICKLY EMERGING AS A BRIGHT SPOT AMONG HIGH-TECHNOLOGY CONSUMER SERVICES, NO SMALL FEAT IN TODAY'S DIFFICULT CONSUMER MARKET. XM AND SIRIUS HAVE INVESTED MORE THAN \$3 BILLION THUS FAR TO BRING THIS EXCITING NEW SERVICE TO CONSUMERS, AND THEY CAN BE EXPECTED TO INVEST MUCH MORE, CREATE MORE JOBS, AND PROVIDE MORE CONSUMERS WITH AN EXCITING NEW SERVICE AS THEIR BUSINESSES CONTINUE TO GROW.

I URGE YOU TO PROVIDE SATELLITE RADIO WITH THE SAME LOCAL TAX EXEMPTION THAT HAS PROVED TO BE ESSENTIAL FOR THE RAPID GROWTH OF THE DBS INDUSTRY.

THANK YOU.

Mr. BARR. Thank you very much, Mr. Wright.

Our next witness will be Mr. Nicholas Miller, who is currently a partner with the Washington office of the law firm of Miller & Van Eaton. Mr. Miller is also a well-known expert on the law and policy governing cable television and telephone regulation, well known to Capitol Hill and well known in that portion, particularly of the legal profession here in Washington and across the country, that deals with such issues. His more extensive bio, very, very impressive, will be included in the record.

And, Mr. Miller, we're very happy and honored to have your testimony here today.

**STATEMENT OF NICHOLAS MILLER, ESQ.,
MILLER & VAN EATON, P.L.L.C.**

Mr. MILLER. Mr. Chairman, thank you very much. It is, indeed, an honor to appear before you and the Subcommittee.

I am actually appearing here today on behalf of the National League of Cities, the U.S. Conference of Mayors, and TeleCommUnity, which is an alliance of local governments that focuses specifically on technology and communications issues as they impact local governments.

I also want to issue—ask that the Committee recognize the terrific work of its counsel. Ms. Taylor was extraordinarily generous in allowing us, on very short notice, to get our testimony in and to participate, and we're very grateful to the Committee and to the Subcommittee.

Mr. BARR. Thank you very much.

Mr. MILLER. Mr. Chairman, I think I will summarize my comments as follows. Local government believes the burden is on the party that advocates a change when they propose Federal preemp-

tion, that this is a system of—you and so many of your colleagues have been champions of federalism and the need to keep the Federal Government out of intrusive directions and unfunded mandates for local and State governments.

That means that the burden is on the advocates of this legislation to show substantial benefits. And, in fact, when we look at the bills, we think not only are there no substantial benefits, but there are many problems. Let me review them quickly.

We don't think this is good tax policy. We don't think this is good federalism policy. We don't think this is good broadband policy. And then there are several specific issues in the bills themselves that are quite disturbing and hard to predict what the ultimate resolution would be when the courts begin to look at the legislation.

But let me review these in general terms. We think good Federal policy suggests that the decision to tax and the decision to spend should be located at the lowest level of government that's closest to the people wherever possible; that local communities are, in fact, in the best position to decide what services they need and what is the best way to pay for those services; that when you move the taxing decision to the governor's office, away from the mayor and city council's office, without moving the responsibility for delivering the services to the governor's office, you actually disconnect the political process that allows voters to hold their elected officials responsible for the tax burden that's being imposed on them.

Second, local governments right now are facing an enormous homeland security problem, and I'll give you two examples to illustrate that. In one 10-day period in March of this year, a bureaucrat at the Federal Communications Commission unilaterally made a decision that deprived local governments of \$500 million a year in income, when the head of the Media Bureau of the FCC volunteered that he thought an FCC decision meant the cable operators didn't have to pay franchise fees on cable modem services.

That was the same week that the Federal Government pulled the National Guard out of airports. That cost local governments another \$500 million, because now we have to put the cops into the airports.

No one is complaining about the need. No one is saying they aren't willing to deal with the need at the local government level. But you can't, on one hand, continually increase the burdens on local governments and, on the other hand, deprive them of the revenue base they have to have to deliver the services that are so essential, particularly at this point in our Nation's history.

Let me turn to tax policy. Every time we narrow the tax base by excluding a favored industry, we force the remaining tax burden up on those unfortunates that remain subject to taxes. Second, there is no good reason for the tax laws to distinguish between comparable services.

And I want to recognize Mr. Davis' efforts here, because I think there is—on our part, we recognize there is a problem with the Direct Broadcast Satellite Act. Our preference would be to repeal it, I admit. But, nevertheless, the concept that tax policy should apply equally to comparable technologies is one we adhere to wholeheartedly. This, we think, doesn't get there.

Finally, the idea of tax efficiency—the 5,000 taxing jurisdictions arguments that you hear—you cannot confuse tax efficiency, which we support, with tax eradication, which we do not. The local governments have worked progressively over the last year with State and Federal authorities to develop a method for sales tax collections that would greatly minimize and simplify the collection process, while leaving to the local taxpayer and the local elected official the discretion as to what the tax rate should be.

Let me turn to broadband policy. It is—we strongly recommend that the Subcommittee reject any proposal that different technologies be treated differently for tax purposes. It is unfair and bad economics to subsidize one form of technology over another. And if there is a decision to subsidize a technology, then tax subsidies are the least efficient method of rolling that subsidy into the industry.

And then, finally, I want to turn briefly to specific concerns with the act itself. The Satellite Services Act, we believe, as written, doesn't just apply to broadcast satellite services. We think, as written, it would pick up home satellite dishes, satellite master antenna services on multiunit apartment houses, multipoint distribution systems, ITFS systems, very small aperture satellite systems. We think it would also apply to 3G cellular mobile services as currently drafted, and we think it also applies to satellite Internet services as currently drafted.

Now, Mr. Davis' statement is reassuring, because it seems as if that's not what he's trying to do. But, in fact, that's the way we believe the language currently works. And when you look at the concept of primary use—that is, that the tax nexus, to the extent there is a tax nexus, would fall on the location of primary use—we think that that definition itself will badly discriminate against small States and against States that have large intrastate commuter traffic, because it will cause very, very difficult tax allocation and tax resources.

With that, Mr. Chairman, I want to conclude and say we ask—this Committee has been one of the strongest protectors of the Federal principle and the concept that local governments should control their own destinies free of Federal intrusion, and we ask that you continue to respect that principle.

Thank you, sir.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF NICHOLAS P. MILLER

EXECUTIVE SUMMARY

H.R. 5429, the Satellite Services Act of 2002 unnecessarily attempts to expand the current preemption of local taxation of direct-to-home satellite service, Section 602 of the Telecommunications Act of 1996, 47 U.S.C. § 152 nt, to preempt local taxation of direct-to-subscriber satellite service. H.R. 4869, the Satellite Radio Freedom Act, attempts to preempt local authority to tax satellite digital radio service.

TeleCommUnity, the National League of Cities, and the United States Conference of Mayors urge the Subcommittee to reject these bills. There is no rationale basis to create a special tax subsidy to benefit direct-to-subscriber satellite service providers. Competition in the satellite service market is robust, and there is no evidence at this time to support creation of federal tax subsidy that would provide satellite service providers with a competitive advantage over fiber optic, wireless terrestrial, ultrawideband, and other forms of broadband technology providers.

The SSA and the SRFA contain too many vague and undefined key terms to withstand judicial review, and would likely spawn lengthy and needless litigation. Both bills have the unintended consequence of creating disparate taxation schemes for

similarly situated providers, and both bills create unfunded mandates for local governments by depriving jurisdictions of lawful streams of revenue without providing replacement revenue.

We urge Congress to forgo the temptation to provide special tax breaks to small pockets of industry at the expense of local governments and competing industry technologies.

Thank you Mr. Chairman:

I. INTRODUCTION

It's an honor to be here today. My name is Nicholas P. Miller and I am testifying before the Subcommittee in my capacity as Legal Counsel to the TeleCommUnity Alliance, on behalf of TeleCommUnity, the National League of Cities, and the United States Conference of Mayors. TeleCommUnity is an alliance of local governments and their national associations which advocates for, and educates on behalf of, local governments interests on matters of federal telecommunications, broadband, and right-of-way legislation.

II. LOCAL GOVERNMENTS STRONGLY SUPPORT AND ENCOURAGE PROVISION OF SATELLITE SERVICES.

A. Local Governments Favor National Policies That Promote Expanded Deployment of Satellite Services.

Local government welcomes and encourages true competition in the provision of video, voice, data, information, and high-speed Internet access services to all Americans. Direct Broadcast Satellite service in particular has provided many consumers with a viable alternative to incumbent cable service, and in turn, competition from DBS providers has provided cable operators with a competitive incentive to offer a wider range of competitively priced services to cable subscribers. Promoting and encouraging greater deployment of all forms of broadband service continues to be a critical issue in our communities and we welcome the technical innovation and expanded broadband opportunities offered by wireless cable ("MMDS" or "MDS"), private cable ("SMATV"), and BlackBerry satellite service providers.

III. THERE IS NO RATIONAL BASIS TO SUPPORT ENACTMENT OF EITHER THE SATELLITE SERVICES ACT OR THE SATELLITE RADIO FREEDOM ACTS.

Local governments are pleased to be working with the distinguished members of this Subcommittee to develop effective national broadband policies. Unfortunately, we cannot support either of the bills that has emerged here today.

- *Neither bill explains why local governments should abandon our general philosophy to promote technology-neutral regulation in order to give support to two bills which would provide an exclusive tax subsidy and thus a competitive advantage to a single technology. Local governments support all means of delivering broadband service.* We are not aware of any evidence presented to this Subcommittee that would justify our support of a federal policy to use costly local tax subsidies to discriminatorily promote development of satellite service to the possible detriment of wireless terrestrial, fiber optic, and ultrawideband technologies.
- *Neither bill explains what if any critical problem has emerged in the waning days of this session that could or should be solved by further preempting the power of your constituents to influence tax and revenue decisions at the local level.* Local taxation of DBS service is already preempted by Section 602 of the 1996 Telecommunications Act, 47 U.S.C. § 152 nt. **Only three states, Florida, Tennessee, and North Carolina, tax direct-to-home satellite service, while two states, Pennsylvania and Virginia, prohibit such taxes.**
- *Neither bill contains any persuasive findings to explain why local taxpayers should continue to have to subsidize DBS service under Section 602, much less explains why this type of industry-exclusive subsidy should be expanded to subsidize other satellite services. Local governments would be interested in hearing your arguments as to why we should not seek legislation to sunset the preemption provision of Section 602.* Furthermore, why is this Subcommittee rashly trying to expand the direct-to-home satellite service subsidy to cover direct-to-subscriber satellite service with hastily drafted, last minute bills if the current direct-to-home satellite service subsidy has no sunset date?

- *We do not understand the basis for continuing to subsidize direct-to-home satellite service with local tax dollars.* DBS revenue for last year was projected to be \$12.1 BILLION dollars, up 37½% from 2000. Between 1997 and 2001, cable systems added 4.8 million subscribers while DBS added 11 million subscribers in the same period.¹ What can local government do to lessen the inequity of requiring a “mom and pop” TV shop to pay local business taxes as a condition of the privilege to sell TVs and operate a business in the community, while at the same time, the community must permit a billion dollar company to sell a \$45–\$90 a month service to those TV sets, but not require the billion dollar company to contribute a single tax dollar back to the community?

Quite frankly, we don’t understand why these bills are even being considered today. To put it bluntly, in this economy, in a time of record state budget shortfalls, when local government first responders must to do even more with even less, when billions are spent on homeland security while local governments at the front lines continue to wait to receive Dollar 1, we are at truly at a loss to understand why this Subcommittee is proposing to take even more money from local governments to subsidize a very successful satellite service industry.

IV. UNINTENDED CONSEQUENCES AND UNFUNDED MANDATES: WHY LOCAL GOVERNMENTS OPPOSE THE SSA AND SRFA.

As a general rule, bills that are hastily introduced in the waning days of the session while members are just trying to survive the appropriations process and get home for elections, usually lead to unintended consequences because members and their staff just did not have the time to hold hearings, vet the issues, and think the language through. I’m sorry to say the SSA and SRFA will not be the exceptions to the rule.

A. Both Bills Are Impermissibly Vague

If enacted, both statutes will certainly be challenged. Both bills are based on Section 602 of the 1996 Act, but neither bill has been submitted as an amendment to the Communications Act, so the Act’s definitions will not be considered by a reviewing court. Thus, a court would have to interpret the statutes based on the plain language of each bill, common usage, and possibly these hearings to guide the courts. For this reason alone, this Subcommittee should reject these bills.

B. Local Governments Cannot Ascertain Which Satellite Services Congress Intended to Include in the Direct-to-Subscriber Satellite Service Definition.

The SSA preempts local taxation of “Direct-to-Subscriber Satellite Service,” which is defined in relevant part as “the distribution or broadcasting of *programming* transmitted or broadcast by satellite directly to the satellite service subscriber’s *receiving equipment* . . .” and may use “*terrestrial repeater transmitters* to retransmit signals received from the provider’s operating satellites.”²

A key omission in the SSA bill is its failure to state what Congress intended “programming” to mean. A voice telephone call might not fit the definition, but video, data, music, pay-per-view movies and arguably Internet access could be included. In addition, neither “receiving equipment” nor “terrestrial repeater transmitter” is

¹In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighth Annual Report, 17 FCC Rcd. 1244 ¶¶57 (2002)(“8th Rept.”).

²Section 602(a) prohibits local taxation of direct-to-home satellite service. Section 602(b)(1) defines “direct-to-home satellite service” to mean:

only programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground receiving or distribution equipment, except at the subscribers’ premises or in the uplink process to the satellite.

Section 2(a) of the SSA prohibits local taxation of direct-to-subscriber satellite service. As a comparison, below, words omitted from the current definition of direct-to-home satellite service in Section 602(b)(1) are struck through, and new text in the SSA’s Section 4(1) definition of direct-to-subscriber satellite service are underscored. Section 4(1) defines “direct-to-subscriber satellite service” to mean:

only the distribution or broadcasting of programming transmitted or broadcast by satellite directly to the **subscribers’ premises** ~~satellite service subscriber’s receiving equipment~~ without the use of ~~the provider’s~~ ground receiving or distribution equipment, except ~~equipment~~ at the subscribers’ premises or in the uplink process to the satellite. *A service that otherwise qualifies as a direct-to-subscriber satellite service as defined in this paragraph, but that uses terrestrial repeater transmitters to retransmit signals received from the provider’s operating satellites, shall none the less be treated as a direct-to-subscriber satellite service.*

defined or limited in any way. Thus the SSA could be interpreted to exempt all of the following satellite-based services from all local taxation:

- **Direct Broadcast Satellite Service (“DBS”)**
- **Home Satellite Dishes (“HSDs”)**
- **Satellite Master Antenna Television (“SMATV”)**
- **Wireless Cable (Multichannel Multipoint Distribution Service “MMDS” and Multipoint Distribution Service “MDS”)**
- **Instruction Television Fixed Service (“ITFS”)**
- **Very Small Aperture Terminal Networks (“VSAT”)**
- **Satellite Digital Audio Radio (“Satellite DAR”)**
- **BlackBerry Service**
- **Satellite Transmission of Broadcast Network Feeds (from broadcasting centers, antenna farms and remote locations)**
- **Satellite Internet Service**³

The “direct-to-subscriber satellite service” definition is so broad that it theoretically could include any non-terrestrial service.⁴ However, courts could also interpret the term very narrowly because the bill provides almost no guidance as to which services Congress intended to exempt and why. Thus, there is the unpleasant possibility that after litigation, state and local governments may have different levels of authority under the SSA based on nothing more than the Appellate Circuit in which they happen to be based.

C. There Is No Rational Policy Basis to Justify the Disparate Tax Treatment Created By The Tax Definitions of the SSA and SRFA.

The tax definitions in both bills could be interpreted to broadly preempt local authority to require any tax or fee of general applicability, including local sales tax, income tax, business privilege taxes, franchise fees, and possibly property taxes and administrative regulatory fees.

Arguably, there may have been valid policy reasons to preempt local taxation of national DBS service under Section 602 of the Telecommunications Act. DBS service did not use the public rights-of-way, initially offered service only on a national basis, may have had very little to no local presence, and may have served a limited number of homes in any particular jurisdiction. The same cannot be said about the type of satellite services that be covered by the SSA.

- For example, a SMATV system usually operates in one community, and often extends over no more than a few buildings. There is no rational basis to justify why a coffee vender in a SMATV building pays a business privilege fee or a gross receipts tax, the coffee drinker pays a sales tax, the building owner pays property taxes, the telephone company pays utility and income taxes, and yet the single building SMATV would be exempt from paying any and all local taxes and fees solely because she receives the programming signal via satellite.
- Furthermore, unlike the DBS example, many of the direct-to-subscriber satellite service providers may have transmitters, antenna farms, or other facilities located in the public right-of-way or on public property. The SRFA contains an exemption that seemingly recognizes the inequity of exempting satellite service providers from having to pay rent or taxes on terrestrial equipment, but the SSA contains no such exemption. *There simply is no rationale basis to provide a discriminatory tax subsidy to a class of broadband providers that may be local in nature and make use of the right-of-way, simply because their transmissions originate from satellites instead of via terrestrial microwave.*

D. The Personal Use Definition Cannot Be Applied to Mobile Devices.

Both bills prohibit states from imposing taxes if the “place of primary use” of the service is not physically located within the State. Both bills define primary use as the business or residential address where use of direct-to-subscriber satellite service

³Most DBS providers offer Internet access using a terrestrial DSL up-link to the Internet and a satellite download. This type of Internet access service would not likely fall within the definition of direct-to-subscriber satellite service.

⁴Wireless terrestrial service typically uses fiber to transport a signal to a microwave where it is sent to the user, sent back via microwave and then transported via fiber. Examples include analog cellular, digital PCS, Palm Pilots, fixed wireless providers such as Teligent and WinStar.

primarily occurs. The text of both bills seems to overlook the fact that both bills are attempting to encompass wireless and mobile services.

- For example, if I listen to satellite DAR as I drive between my home in Maryland and my office in Washington DC, and use my BlackBerry primarily when I meet clients in Northern Virginia, where is my “primary place of use,” and which state has jurisdiction to tax me? I might not have to pay any tax, but the delivery driver who uses his BlackBerry and satellite DAR when driving 300 miles 4 times a week between Los Angeles and San Francisco could be required to pay a tax.

One of the unintended consequences of these bills is a disproportionate impact on smaller states and intrastate commuters.

E. Requiring States to Impose and Collect Taxes Imposes An Unfunded Mandate.

Stripping states of authority to require providers to remit certain taxes directly to local governments imposes an unfunded mandate on the state. Many large municipalities are well equipped to administer tax collection programs. By invalidating taxes if they are not both imposed by the state and collected by the state, both bills force states to shoulder a larger administrative burden if a state opts to exercise its right to impose a tax, and it deprives the state of the ability to make efficient use of local government resources. Localities and states have chosen different tax systems that reflect local traditions and needs. The federal government should not arbitrarily attempt to impose a single method of tax collection.

This concludes the written portion of comments submitted by Nicholas Miller. The following section is an excerpt from “The Impact of Electronic Commerce on State and Local Tax Systems: Building A Constructive Solution After The [Advisory Commission on Electronic Commerce] Commission’s Failure”, U.S. Conference of Mayors, May 2000, available at <http://usmayors.org/USCM/wash—update/documents/commission.htm>

V. THE FEDERAL GOVERNMENT IS UNDERESTIMATING THE IMPORTANCE OF LOCAL TAXES.

A. Sales Taxes Are An Essential Part Of The Tax Base For Many Cities.

As the report submitted to Congress in April 2000 by the Advisory Commission on Electronic Commerce stated:

State and local governments that levy sales taxes rely on them as a major source of revenue for their general funds. According to the U.S. Census Bureau, state and local governments collected approximately a total of \$237 billion in sales and use taxes in 1999, comprising 24.8% of all revenues generated that year.

For many local governments, sales taxes are an essential source of revenue. Of the 25 largest cities that collect general sales taxes, four cities (Albuquerque, Denver, Oklahoma City, and Tucson) rely on them for over half of all tax revenues. Another seven cities (Austin, El Paso, Nashville-Davidson Metro area, New Orleans, Phoenix, San Antonio, and San Diego) rely on them for between thirty and fifty percent of tax revenues. (U.S. Census, *Statistical Abstract of the United States: 1999*, p. 334, “City Governments—Revenue for Largest Cities: 1996”).

These are huge numbers. For most of these cities (Albuquerque, Austin, Denver, Nashville-Davidson Metro area, New Orleans, New York, Oklahoma City, San Diego, and Tucson), the amount collected in general sales taxes exceeds the amount that they spend on police protection. (U.S. Census, *Statistical Abstract of the United States: 1999*, compare p. 334, “City Governments—Revenue for Largest Cities: 1996” to p. 335, “City Governments—Expenditure and Debt for Largest Cities: 1996”).

Sales taxes also are an important source of a city’s local bonding capacity. Local governments use sales taxes to back bonds for many different purposes: local school district capital needs in Iowa and Louisiana, infrastructure in Texas and California, transportation in New York City, a jail in New Mexico, and municipal parking in Phoenix, for example. (*Standard & Poor’s CreditWeek Municipal*, August 16, 1999, p. 10).

B. Localities And States Have Chosen Different Tax Systems That Reflect Local Traditions And Needs.

The American federal system reflects democracy at its best. Localities and states choose the mix of taxes, and the level of taxes that best suits their preferences, traditions, and needs. Thousands of localities levy sales taxes while many others do not.

C. Local Governments Support Tax Fairness for Telecommunications Providers.

Local governments call for tax “fairness” which asks each business to pay for its share of local government services in a manner that does not bias the competitive marketplace. Local governments support a tax system at all levels of government that treats competitors the same when they engage in the same activity. It is true that current utility taxes often apply to the Bell Operating Companies and other traditional telephone and cable television companies in ways that do not apply to new telecommunications providers. This needs to be fixed. We should make sure that taxes apply to all the competitors.

Further, it is wrongheaded to assert that the tax rate for telecommunications providers must necessarily be same as the tax rate for other industries. This is a unique, community by community question. It is common, and appropriate, to ask that individual industries pay taxes that are related to the burden they place on the community’s infrastructure and services. A software development company does not place the same demands on the sewers, roads, or police as a major heavy manufacturing facility. It is fallacious public policy to suggest that all businesses, necessarily, should have exactly the same tax burden.

D. Local Governments Support Efficient Tax Administration—NOT Tax Eradication.

Local governments are firmly committed to finding more efficient and fair ways to administer their taxes. This is NOT the same as adopting a single tax-rate statewide, or adopting uniformity, which ignores necessary local differences.

It is self-evident that the business opportunity presented by access to mid-town Manhattan is different than by access to Sarasota Springs, NY. The tax rates in those two locations will—and must—be different. The cost of necessary municipal services in Manhattan is greater, just as the business opportunity is greater, than in Sarasota Springs. The tax system must produce the revenues needed to sustain the required LOCAL public services. Similarly, the difficulties of enforcement and auditing compliance are different in the two communities. One tax form will not fit all businesses and all circumstances.

VI. LOCAL GOVERNMENTS CONTINUE TO SUPPORT REASONABLE MANAGEMENT AND COMPENSATION FOR USE OF PUBLIC RIGHTS-OF-WAY.

Public rights-of-way are the most precious property interests held by local governments. Of course the telecommunications providers want free use of our streets and highways. Similarly, the oil companies want free oil leases on federal lands. But free use means over-use. And the daily commuter, the abutting shop-owner, and water system user will pay dearly if the rights-of-way they all depend on are not managed to achieve the highest and best use for all. Every business should pay the fair costs of its impact on others: inspection and oversight fees; adverse impacts on other rights-of-way users; shortened road life due to cuts to road surfaces; and fair-market value for the public resource permanently occupied.

Mr. BARR. Thank you very much, Mr. Miller.

The final witness we will hear from today is himself, as the other witnesses, a very distinguished expert in this area. It’s Mr. Arthur Rosen, who is currently a partner in the New York City law firm in the New York City law office of the firm of McDermott, Will & Emery, where he chairs the firm’s nationwide State and local tax practice. He has written and appeared widely in matters and cases involving telecommunications and tax policies, generally, both matters subject to the jurisdiction of this Subcommittee.

Mr. Rosen, we’re very happy to have you today and look forward to your testimony.

**STATEMENT OF ARTHUR ROSEN, ESQ.,
McDERMOTT, WILL & EMERY**

Mr. ROSEN. Thank you, Mr. Chairman, Members of the Subcommittee. Thank you for this opportunity to give my comments on the bills before you today.

I’m here today representing no interests in any industry or either side in the direct satellite business debate. I’m here based on my firm’s over 50 years of work in the area of State and local taxes

and my almost 30 years of practice solely in the area of State and local taxes.

It seems to me essential for Congress to enact one of the two bills or a similar bill to those under consideration today.

Current law concerning where and when transaction or business activity taxes can be imposed with respect to direct-to-subscriber satellite service and on those who provide such services is totally unclear. In connection with transaction taxes, usually imposed as sales and use taxes, direct-to-subscriber satellite services may not be taxable or may be taxable, depending not only on the specific statutes that are in effect in every locality in every State, but also dependent on the radically different interpretations given by the courts or tribunals in each of those jurisdictions.

As an added layer of complexity, the Supreme Court has told us that a State cannot impose a requirement on a seller to collect a sales tax unless that company has some unspecified amount of physical presence in the jurisdiction.

In the context of business activity taxes—those are taxes that are directly imposed on businesses, such as income and franchise taxes—the nexus requirement is totally unknown. The tribunals around the country, the courts around the country, have made no definitive ruling, and their decisions so far are taking dramatically different approaches.

Enactment of remedial legislation, such as those under consideration by Congress in H.R. 2526 that this Subcommittee reported out favorably in July, would greatly resolve this situation. Prior to that, it's important, I believe, that Congress look into situations in specific industries, especially those that are considered emerging businesses, such as under consideration today, and address those problems so those businesses are not overburdened.

From a business perspective, perfectly complying with the conflicting laws in thousands of jurisdictions is literally impossible, even for the largest of American businesses. Making matters worse are situations where a service business's customers travel; they're not stationary. When a business customer—when a business's customer is traveling through numerous jurisdictions who are receiving the service, there is absolutely no way the business can comply with each jurisdiction's tax laws.

I developed the idea that was ultimately adopted in the Mobile Telecom Sourcing Act because the cellular industry came to me to find a solution to a very complex situation. For example, if a New Yorker who subscribed to a New York cellular telephone service was driving through New Jersey, Delaware, and Maryland while on a telephone call with someone who was driving through Michigan, Illinois, and Indiana, and the caller was using roaming providers in each of those transient States, how much tax was owed to each jurisdiction, and who owed the tax? There is absolutely no right and no clear answer.

Trying to develop an algorithm to address this was beyond my intelligence. So seizing upon a concept adopted by the Supreme Court in *Jefferson Lines v. Oklahoma*, I took the simple, straightforward route of treating an entire month's cellular service as a single transaction, rather than analyzing each call or each minute of each call. Thus, consumers, service providers, and State and

local governments are now able to administer an otherwise inadministerable tax in an efficient and smooth manner. The same complexities and solutions apply to direct-to-subscriber satellite service.

An overarching concern in this area is the never-ending quest of State and local tax and revenue agencies to impose sales and use tax collection responsibilities and exposure, and direct taxes, on those who are outside its borders—good old-fashioned “taxation without representation.” It may be nice to dream of the States and localities being reasonable and cooperative in addressing such complex areas as direct-to-subscriber satellite service, but their insatiable desire for increased revenues seems always to prevail.

I urge this Subcommittee to favorably consider the two bills before it today.

I would like to add three comments in response to a couple of comments that Mr. Miller made, if I could. One, from our perspective, the idea of federalism does not mean that States have all the rights. My understanding, from 1789, going back to the Constitution—the reason we have a Constitution, the reason we have a Commerce Clause, is so we could have interstate commerce not burdened by State action.

And I think there are certain items that the Congress has decided, and the Supreme Court has agreed, that activities such as direct broadcast and activities that involve people traveling across States are perhaps the responsibility of Congress and the Federal Government. So this is an issue that should be resolved at the Federal level.

Second, this bill would not deprive local governments of any money at all. The States will be given total freedom, total flexibility, to impose taxes they have now, to raise rates, and share that revenue in any way they deem appropriate with their localities.

There would be no base erosion, either. Again, the State level could impose tax on anybody they want at any rate they want and share the revenue any way that the local governments and the States agree to do, utilizing the democratic representative process we have in this country.

Thank you.

[The prepared statement of Mr. Rosen follows:]

PREPARED STATEMENT OF ARTHUR R. ROSEN

Mr. Chairman, members of the Subcommittee, I thank you for this opportunity to offer my thoughts on H.R. 4869 and H.R. 5429. I am Arthur Rosen, a member of the law firm of McDermott, Will & Emery. Our firm has been deeply involved in state and local tax matters for over half a century and I have practiced solely in this area for almost 30 years.

It seems to me that it is essential for Congress to enact H.R. 4869 or H.R. 5429, or other legislation incorporating similar principles, for several reasons.

Current law concerning where and when transaction or business activity taxes can be imposed with respect to direct-to-subscriber satellite service and on those who provide such service is totally unclear. In connection with transaction taxes, usually imposed as sales and use taxes, direct-to-subscriber satellite services may or may not be taxable, depending not only on the specific statutes that are in effect in the thousands of taxing jurisdictions in the country, but also on the radically different interpretations given to those statutes by administrative tribunals and courts in those jurisdictions. As an added layer of complexity, the Supreme Court has told us that a state cannot require a seller to collect and remit any sales and use taxes that may, indeed, be due unless the seller has some unspecified amount of physical presence in the state.

In the context of business activity taxes, or those taxes that are levied directly on the seller of services such as corporate income and franchise taxes, the nexus requirement for states and localities to have the jurisdiction to impose such taxes is an unknown. The Supreme Court has made no definitive ruling, the state tribunals and courts are taking dramatically different approaches, and Congress has yet to enact clarifying legislation, such as that represented by H.R. 2526. Enactment of remedial legislation such as that under consideration today is a step in the right direction, but the entire subject of when a state or local jurisdiction should be able to place a burden on interstate commerce—especially in the context of new and emerging businesses and technologies—warrants, I believe, your most comprehensive attention.

From a business perspective, perfectly complying with the conflicting laws in thousands of jurisdictions is literally impossible—even for the largest of American businesses. Making matters even worse are situations when a service business' customer may not be stationary; when a business' customer is travelling through numerous jurisdictions while receiving the service, there is absolutely no way the business can comply with each jurisdiction's tax laws.

I developed the idea that was ultimately adopted in the Mobile Telecommunications Sourcing Act because the cellular telephone industry came to me to find a solution to a very complex situation. For example, if a New Yorker who subscribed to a New York cellular telephone service was driving through New Jersey, Delaware and Maryland while on a telephone call with someone who was driving through Michigan, Illinois, and Indiana, and the caller was actually using roaming carriers in each of the transient states, how much tax was owed to each jurisdiction, and by whom? There was absolutely no clear—or right—answer. Trying to develop an algorithm to address this was just beyond the scope of my intelligence. So, seizing upon a concept adopted by the Supreme Court in *Jefferson Lines v. Oklahoma*, I took the simple, straightforward route of treating an entire month's cellular service as a single transaction, rather than analyzing each call, or each minute of a call, separately. Thus, consumers, service providers, and state and local governments are now able to administer an otherwise unworkable tax in an efficient and smooth manner. The same complexities and solution apply to direct-to-subscriber satellite service.

An overarching concern in this area is the never-ending quest of state and local tax and revenue agencies to impose sales and use tax collection responsibilities and exposure, and direct taxes, on those who are outside its borders—good, old-fashioned “taxation without representation.” It may be nice to dream of the states and localities being reasonable and cooperative in addressing such complex areas as direct-to-subscriber satellite service, but their insatiable desire for increased revenues seems always to prevail.

In conclusion, I urge this Subcommittee to exercise Congress' Commerce Clause authority—and responsibility—and favorably consider H.R. 4869 or H.R. 5429.

Thank you.

Mr. BARR. Thank you very much, Mr. Rosen.

We'll now turn to questions from the Subcommittee, and I'd like to first recognize the distinguished Ranking Member, Mr. Watt, for any questions of the panel that he might have.

Mr. WATT. Yes, Mr. Chairman. Unfortunately, I am in a real time bind, and I'm going to have to leave. So I'm not going to ask questions. I yield back, and if any occur to me later, maybe I'll submit them in writing.

And I appreciate all of you gentlemen being here and participating today, and I'm happy I was at least able to stay and hear your oral testimony.

Thank you.

Mr. BARR. I thank you, Mr. Watt.

If each of you gentlemen—if the two options before you, no other options, are simply H.R. 4869 or H.R. 5429, which is preferable and why?

And, Mr. Wright, if you could address that first, and then Mr. Miller and Mr. Rosen.

Mr. WRIGHT. Well, Mr. Chairman, I think we would prefer slightly 5429, just simply because it enacts the policy—it extends the policy that Congress has already considered about how it's appropriate to tax a national satellite service, which has been so successful in DBS. It extends it to satellite radio, but it avoids some potential constitutional problems that the original legislation might have raised.

So we think it's—we think 5429 is the cleanest, easiest, most straightforward way to do this. We would certainly be happy to continue to work with Mr. Davis, you know, to adapt the legislation. But we think that 5429 does the job and is the quickest, easiest route to the correct policy.

Mr. BARR. Thank you.

Mr. Miller, would you have a preference? Again, I know you don't like either of them, but simply in terms of helping us, as sort of a starting point for—or to address these issues and make any changes, is one of the two bills preferable to the other, as that starting point?

Mr. MILLER. Mr. Chairman, it's a difficult question for me to respond to; 4869, in our view, is a much narrower exemption than the other bill, and so if we had to choose between disease and death, we choose disease. At the same time—and I think everybody on our side would concede that there is some merit to the radio.

The distinction between television broadcasting and radio broadcasting that seems to have been drawn by the FCC is something that should be—should and could be addressed, probably without legislation.

But we are very concerned that the way the bills are drafted, they truly create a large loophole. And if I could point to the—I apologize—the bill number is not coming immediately to mind—the 5429 bill, in particular—it has a phrase in it that says that there'll be no taxation of programming transmitted by satellite directly to a satellite subscriber's receiving equipment, and then has a provision that exempts or treats as qualifying for the tax exemption any service that uses terrestrial repeater transmitters.

That sounds to us like a SMATV operation, and let me describe what a SMATV operation is. It's an important and significant business that competes head-to-head with cable operators and brings significant competition to the marketplace and local government support. But it is an operator who comes to a large apartment-house owner and installs on the top of that apartment-house a satellite—a small cable head-in with a satellite dish.

This language sounds like that service would be exempt from local sales taxes. That's the problem we have with this bill.

The other bill, to the extent it is more carefully drafted to apply only to satellite radio services that are comparable to television services that are currently exempt, is more acceptable.

Mr. BARR. Thank you, Mr. Miller.

Mr. Rosen?

Mr. ROSEN. I have not spent time analyzing the substantive impact—differences between the two bills. From a technical or a technician's viewpoint, H.R. 5429, however, is much cleaner and much easier to follow and implement, I believe.

And I would also like to make the same offer as Mr. Wright did, that as a citizen, I'll be more than happy to devote more time working with your sterling staff in working on cleaning up these bills.

Mr. BARR. Thank you. We'll look forward to that.

Mr. Miller, could you go into just a little more detail, not great detail, but a little more detail about what sort of taxes we're talking about here that would—that you believe would be problematic for local governments and the magnitude of those dollar figures?

Mr. MILLER. Mr. Chairman, let me begin with a prefatory comment, because I agree with much of what Mr. Rosen said in terms of tax efficiency. I'd ask the Committee to keep clearly in mind the difference between tax—the efficiency of the collection process from the political decision of the tax burden.

And one of the problems we have with these bills is they truly garble those two decisions by saying it's now up to the governor to decide what the tax will be that local governments will collect. It's one thing to tell the governor, once the local government chooses what the tax should be, the governor should collect it. But it's another thing to say it's the governor's decision what the tax should be, which is what both of these bills do that is, I think, fundamentally flawed, and that's the confusion between the two.

And I'd point to the tax efficiency side—as the Chairman has followed, I think, fairly closely the Internet tax debate, as it's developed, and the Internet tax exemption debate, there is now a major initiative that's been adopted—Mr. Rosen would know. I don't know the exact number—by 32 or 33 States?

Mr. ROSEN. No one has adopted it yet, but there are 40 States working together to develop a streamlined system.

Mr. MILLER. A streamlined system of sales tax collection for these new technologies that is really intended to address the kind of problem that Mr. Rosen's testimony goes to, which is when you have this—there's this issue of where's the nexus of the activity that the tax should apply to, and how do you distribute the taxes. The local governments, the League of Cities, the Conference of Mayors, the Association of Counties are deeply involved in those discussions and have been cooperative, I think, and supportive of a lot of that work.

So that's a difficult, complicated problem. But it shouldn't be confused with providing tax exemptions for specific technologies that are trying to get a competitive edge on other technologies.

Mr. BARR. Is it in the—in the scenario that we're discussing here, is it the governor who would decide that or the legislature?

Mr. MILLER. Well, this puts to the State government the decision of what the tax would be. Both of the bills do.

Mr. BARR. And wouldn't it be fair to contemplate that—or anticipate that local governments would play a role in that process?

Mr. MILLER. Yes.

Mr. ROSEN. Under the current statutes, you're absolutely right, of course, that State statutes would have to be changed. So the senators and assemblymen from the State, representing all the localities, people in the localities, would have to make that change and could make that change in response. So it's not—an individual governor could not do that in any State.

Mr. MILLER. Mr. Chairman, let me expand on my answer, though, for a second. I want to come back to the point of the importance of putting the decision—for the tax burden being tied to the decision for the services that the government's going to be delivering.

My testimony lays out in some detail the amount of local government services that are currently dependent upon sales tax revenues. It is relatively easy—and the governor will remain unnamed, but use your imagination. It's relatively easy for a governor to favor reducing taxes for services the governor doesn't have to deliver. That's a different problem for the mayor, who has to deliver the services but no longer has control of the revenue base.

And it's one thing when you ask an elected official to stand for election based on "if you want me to do this, then I'm going to increase your taxes here." It's another thing to have a different elected official deal with the tax burden and that that's segregated and separated from the local official who has to decide—

Mr. BARR. Are we talking here about a reduction in an anticipated tax base or a reduction in an actual tax base?

Mr. MILLER. I think both. Again, my testimony lays out the growth that has occurred in DBS and SMATV services, and it's grown significantly. Those are currently subject to local taxes in many places, and this bill would preempt those local taxes. We anticipate those services are going to continue to grow, so it's also a future revenue issue.

Mr. ROSEN. May I make a few philosophical comments on federalism? It seems to me that to fortify and reinforce federalism, as Mr. Miller is describing it, this body of Congress should not be involved in or be concerned about the sharing of power between a local and State government.

The local governments are—they exist through the State government, whether by—there are a few States that have constitutional provisions setting up cities, but, generally, it's done through laws in the States. And the fact that a State has decided to delegate certain service delivery responsibilities to local government, and they—that same State may decide to have the revenue raising at a different level. It should not be a concern, I believe, to Congress.

Mr. BARR. Could a State currently do what these bills contemplate?

Mr. ROSEN. Yes, a State could exempt the administration paying tax at the local level and say they must be paid at a State level, absolutely. That could be done on a State-by-State basis.

Mr. BARR. Unless there were some prohibition in a State constitution?

Mr. ROSEN. Right. But in reality, we know that no two States would do it the same way.

Mr. WRIGHT. Mr. Chairman, if I could say, you know, I think that the delivery of satellite consumer services is unique, in that what you're doing is you're sending down a signal all over the Country, and our companies don't have local representatives. There's very few services that are involved, because, as I say, it's a national service. People aren't dealing with local representatives. They're dialing the 800 number or, you know, they may be buying from a local retailer, but those taxes would be paid.

We're not asking to be—we're not asking to get out of taxes. We're asking to get out of what Mr. Rosen described as a literally impossible compliance burden of trying to keep up with—and we don't have local representatives on the ground, so when local taxes are proposed, we don't have an opportunity to respond.

So it's fairly easy to tax a national service if you're a local government who isn't delivering any services to that company.

We don't have people on the ground to help us with the collection burdens, the filing burdens, the—you know, keeping up with all the paperwork that's involved. So Congress looked at this issue in 1996 and said, you know, the delivery of satellite services is unique, because it's a national service. It's not—doesn't have ties to the local community like, say, a local radio station or a local television station. So, therefore, in this case, we're going to move this—we're going to move the responsibility up one level to the State government, so that the companies only have to comply with 50 jurisdictions.

As Mr. Rosen also pointed out, the issue of nexus, the issue of whether or not a locality would have the right to tax the provision of this service—and let's be clear. It's the consumer who's paying this tax. This isn't a tax on XM and Sirius. It's a tax on the consumer. XM and Sirius are just simply going to be the tax collection agency. We're saying—so the question of nexus is a very complicated question that lawyers like these gentlemen could sit around and argue, I'm sure, for days.

What we're saying here is, let's put that aside. We will admit, or we will concede, that the States have the right to tax us. Move this taxing authority to the States in a way that we can keep up with it, we can comply with it, in a way that we couldn't if we were facing 15,000 local taxing jurisdictions.

Mr. BARR. Again, I go back to an earlier question. If we're talking about satellite radio, what taxes are we talking about that the consumer would have to pay?

Mr. WRIGHT. Well, basically, it's a tax on the provision of the service, Mr. Chairman, like a sales tax, a tax on the service—

Mr. BARR. On that box?

Mr. WRIGHT. No, sir. The tax on—you would pay a tax on the box. If you bought the box, there'd be a sales tax. You'd pay that. This is a tax on the provision of the service. So, every month, they get a bill for \$10. The locality would add, you know, 50 cents or a dollar to that, which XM and Sirius would then be required to collect.

Mr. BARR. Is the burden—would the burden be that impossible, since it's done by—presumably it could be done by computer as part of the billing process?

Mr. WRIGHT. No, Mr. Chairman. Unfortunately, it's not quite that simple. I mean, obviously, the computer systems that these companies use could not handle—currently, they could not handle anything like that burden. There's also local filing requirements. Just keeping up with all of the various taxes that might be imposed, being able to have some input in the local community to what the tax would be; they have no local jurisdiction.

You know, everything is always more complicated than just pushing a computer button. I mean, there's going to have to be—

you're going to have to have accountants. You're going to have to have tax people who look at each of these, decide whether or not it's a legitimate tax, decide whether or not there's nexus, perhaps challenge that, keep up with all the various forms that have to be filed, keep up with the changes that would be imposed over the months as, you know, the rate changed.

In a—for a national—for a local service, it's not that difficult. You're just dealing with one or two jurisdictions. For a national service, where you're trying to keep up with 15,000 jurisdictions, or some large number of those, it becomes just an administrative impossibility for our companies. They'd end up having nothing—no employees. They wouldn't be able to have the great disc jockeys that they have that do the great programming, because all their money would be tied up in accountants. And we'd end up with satellite radio being the same service, the same unacceptable service, that radio has become.

I mean, the advantage of satellite radio is that we have been able to focus in; we've been able to provide people with excitement in radio that people haven't had for years. And, you know, we don't want to turn our companies into just nests of accountants and tax lawyers.

Mr. MILLER. Mr. Chairman, may I add a comment? From the local government standpoint, we would distinguish a de minimis presence in the market from a substantial presence in the market in terms of the relative burden of administering and paying your taxes. There are many national corporations that have a presence in thousands of local jurisdictions that find it a burden but, nevertheless, comply with the local sales taxes. Home Depot is a good example, or Wal-Mart is another good example. It's a terrific burden on those companies to pay local sales taxes. There's no question about that. But as a relative percentage of their overall business, that administrative burden is not significant.

It's another thing—and one of the reasons why local governments in '96 were not inflamed by the DBS satellite exemption was a recognition that DBS was a relatively small, infant industry. And it was a significant problem to say you've got to, right out of the box, have a nationally compliant sales tax organization when you may only have two or three subscribers in a particular jurisdiction. But that's not where DBS is today.

In 1997, direct broadcast satellite had 5 million customers. Now they have 16 million customers nationwide, and that's to be compared to the cable television industry itself, which has only 69 million. In other words, this is no longer an infant industry that needs to be sheltered from the tax system.

You can have a separate argument about whether it's good tax policy to exclude them and to continue to give them the benefit. But the idea that this administrative burden is overwhelming for them just doesn't hold up in light of the—both the computer technology that's currently available, the services that are out there that are willing to bring you into compliance with the local sales tax, and the evidence from other industries.

Mr. WRIGHT. Mr. Chairman?

Mr. ROSEN. Mr. Chairman, one comment on the last two comments, if I may. Mr. Wright was talking about the complexities,

and I think there was one thing he failed to mention that exacerbates exponentially maybe those complexities—is the fact that the service is not delivered to one point. If it's in a vehicle that is mobile, you don't know which jurisdiction should get the tax. Where is that service actually being received at any 1 minute? So that can't be administered. An example of a brick-and-mortar—

Mr. BARR. Doesn't the bill have to be sent to a location?

Mr. ROSEN. Under current law, that's irrelevant for direct-to-subscriber satellite service. The State law would prevail, because there's no Federal law that has any effect on it. So under local law, it's where a service is provided, and that's why it is so complex. It's not where you get a bill.

This bill—these two bills before you would do that, would say it's where the bill is delivered. But without this law, it's wherever you happen to receive it. In the example of the brick-and-mortar retailers, Wal-Mart, they don't have that much complexity—

Mr. BARR. But couldn't we provide in legislation, if it's not the exact language in one of these two bills, some mechanism for identifying with some certainty where that location would be?

Mr. ROSEN. Well, that's what mobile telecom sourcing did, and that was a good model. But now, in a year—it's been developed, and now it's adopted by all the States except for one. People have seen there's new complexities with primary place of usage within a State, because is it really that somebody primarily use it at their home? Do they really use it at their office? Is it in between? So even—that's not that clear within a State, whereas within a State, it's clear where somebody is, and you have revenue-sharing possibilities a State can enact so there wouldn't be any harm to localities at all.

Mr. BARR. It makes it sound pretty simple, Mr. Miller.

Mr. MILLER. Someone once said, Mr. Chairman, you can have a fair tax code, or you can have a simple tax code. It's difficult to do them both.

The mobile sourcing—local government supports the concept of developing efficient ways of allocating nexus and simplifying the decision about nexus as to where the tax burden falls and who's responsible for paying it. And we're perfectly willing to work with the industry on that and bring proposals to the Committee if the Committee is interested in looking at that issue further.

As I say, our concern is not confusing that issue with the issue of the tax burden itself and who is the appropriate level of—which is the appropriate level of government to decide what the tax burden should be.

Mr. BARR. For the record, I disagree that you can't have a fair tax system that's simple. The national sales tax or a flat tax, I think, would be very fair and much simpler. [Laughter.]

Mr. MILLER. I understand.

Mr. BARR. Mr. Wright, you have the last word.

Mr. WRIGHT. Thank you, Mr. Chairman. I think Mr. Miller has admitted my case here, which is this is an infant industry. We have 200,000 subscribers. Neither of these companies is going to be profitable until they reach something like 3 to 5 million subscribers. And so you're talking about an infant industry that's just getting started.

Clearly—and I think Mr. Miller has admitted this. Clearly, the administrative burden of an industry of that size trying to keep up with and deal with the administrative burden that 15,000 taxing jurisdictions could place on it could significantly slow the development of this industry. And so what we're asking for—what this bill asks for, what Mr. Davis is asking for, what we're asking for, is simply giving us the opportunity to do our business, grow our business, and having the advantage of not having to deal with this burden would be a tremendous help to us.

Mr. BARR. Thank you very much, Mr. Wright, Mr. Miller, and Mr. Rosen for very, very enlightening testimony today. We appreciate your patience, not only in our lateness in getting started because of the floor votes, but also your patience in, you know, responding to the questions and getting on the record here something that's very helpful to me and I know other Members of the Subcommittee and the full Committee, some very worthwhile testimony, much of it in very simple, understandable terms, which we appreciate, given the fact, especially, that these are very complex issues. And this will help us in our deliberations and I know the deliberations of other Members as we move through resolution of this through this or perhaps other legislation.

Thank you all very much for taking the time to prepare for the hearing today and to be responsive. And, again, if you all have any additional material that you think would be helpful to the Subcommittee as part of the record in this case, the record will remain open for 5 days—7 days, 7 days. So please submit it within that time. And if there are any additional questions that Members of the Subcommittee might have, we'd appreciate your responsiveness to those questions should they write them to you.

Thank you, gentlemen, very much.

[Whereupon, at 1:44 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

F. JAMES GENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Rhode
GEORGE W. GORDON, Pennsylvania
HOWARD COBE, North Carolina
LARRY S. SMITH, Texas
ELTON GALLAGHER, California
BOB GOODLATTE, Virginia
ED BRYANT, Tennessee
STEVE CHABET, Ohio
BOB BAHR, Georgia
WILLIAM L. BENNETT, Tennessee
CHRIS CANNON, Utah
JIMMYE C. GRAHAM, South Carolina
SPENCER BACHUS, Alabama
JOHN W. MCINTOSH, Indiana
MARK OHLSEN, Wisconsin
MC KELLEY, Kansas
DARRELL E. GSA, California
MEUSULA A. HUNT, Tennessee
JEFF FLAKE, Arizona
MIKE FENCE, Indiana

ONE HUNDRED SEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6218
(202) 225-3951
<http://www.house.gov/judiciary>

JOHN CONYER, JR., Michigan
RANKING MEMBER

BARNEY FRANK, Massachusetts
HOWARD L. BERNARD, California
RICK BOUCHER, Virginia
JEROLD NADEAU, New York
ROBERT C. ROBERT, SCOTT, Virginia
MELVIN L. WATTS, North Carolina
ZOB LOUGHER, California
SHEILA JACKSON LEE, Texas
JACKIE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. JOSEPH, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALOWE, Wisconsin
ANTHONY D. WERNER, New York
ADAM B. SCHIFF, California

October 8, 2002

Andrew S. Wright, Esq.
President
Satellite Broadcasting and Communications Assn.
225 Reinekers Lane, Suite 600
Alexandria, Virginia 22314

Dear Mr. Wright:

Thank you for appearing before the Subcommittee on Commercial and Administrative Law on September 25, 2002. Your testimony, and the efforts you made to present it, are deeply appreciated and will help guide us in whatever action we take on the issue.

Attached is a copy of the official transcript of this hearing. We have provided this for your review. Please limit any corrections you make to technical, grammatical, and typographical errors. This transcript is substantially a verbatim account of remarks actually made during the hearing. No substantive changes are permitted.

In addition, in order to create a more comprehensive hearing record, please provide written responses to the following questions. Your responses will help inform subsequent legislative action on this important topic.

- Following the passage of the Telecommunications Act of 1996, this Subcommittee held a hearing on whether to extend the local tax exemption for DTH satellite services to wireless cable services. If we enact legislation for direct-to-subscriber satellite services, would that definition, in your opinion, encompass wireless cable? If not, should we consider doing so? Would H.R. 5429, in your opinion, encompass other technologies, such as SMATV and Blackberry? Should a local tax exemption be extended to these technologies?
- Regardless of the current state of affairs with respect to traditional broadcasters, do you view them ultimately as

Andrew S. Wright, Esq.
October 8, 2002
Page 2

partners in the growing of the satellite radio industry? Do you foresee, for example, licensing arrangements whereby broadcast stations would be carried over satellite services on a large scale?

- Have any localities sought to tax the services provided by your members? Does it appear they will?

Please submit your responses to these questions by Wednesday, October 23, 2002, to: Diane K. Taylor, Subcommittee on Commercial and Administrative Law, B353 Rayburn HOB, Washington, D.C. 20515. Your responses may also be submitted by e-mail to diane.taylor@mail.house.gov. If you have any questions, feel free to contact Diane K. Taylor at 202/225-2825. Thank you for your continued assistance.

With warm regards, I am,

very truly yours,



BOB BARR
Member of Congress
Chairman
Subcommittee on Commercial and Administrative Law

BB: cmb

RESPONSES TO ADDITIONAL QUESTIONS FROM ANDREW WRIGHT

1. Following the passage of the Telecommunications Act of 1996, the Subcommittee held a hearing on whether to extend the local tax exemption for DTH satellite services to wireless cable services. If we enact legislation for direct-to-subscriber satellite services, would that definition, in your opinion, encompass wireless cable? If not, should we consider doing so? Would H.R. 5429, in your opinion encompass other technologies, such as SMATV and Blackberry? Should a local tax exemption be extended to these technologies?

The definition for direct-to-subscriber satellite services does not encompass wireless cable, which is a terrestrial service regulated under a different section of the communications regulations.

H.R. 5429 will not encompass technologies that are not satellite services, such as SMATV and Blackberry.

SBCA has no opinion on whether local tax exemption should apply to terrestrial technologies.

2. Regardless of the current state of affairs with respect to traditional broadcasters, do you view them ultimately as partners in the growing of the satellite radio industry? Do you foresee, for example, licensing arrangements whereby broadcast stations would be carried over satellite services on a large scale?

Actually, SBCA's satellite radio members have a good relationship with broadcasters. It is the National Association of Broadcasters (NAB) that is concerned about a narrow issue of whether satellite radio providers will use their terrestrial repeaters to transmit something other than what is transmitted over the satellites. This issue was resolved in 1997, when the FCC proposed rules limiting DARS repeaters to only transmit the signal from the satellite. Some of the satellite radio companies' owners and providers of third party programming are also broadcasters.

The satellite radio providers do not envision carrying broadcast stations on a large scale. Terrestrial broadcasting's focus is local, and satellite radio's is national. Additionally, most of programming is genre specific, whereas terrestrial broadcasting station appeals to a wider local audience.

3. Have any localities sought to tax the services provided by your members? Does it appear they will?

Yes, they have.

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
SCOTT W. GIESEL, North Carolina
HOWARD COBLE, North Carolina
JAMES E. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
ED BRYANT, Tennessee
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
LINDSEY O. GRAHAM, South Carolina
SPENCER BACCHUS, Alabama
JOHN N. HOSTETLER, Indiana
JIMMIE GREEN, Wisconsin
RC KELLER, Florida
DANIELLE E. ISSA, California
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana

ONE HUNDRED SEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

(202) 225-3951
<http://www.house.gov/judiciary>

October 8, 2002

JOHN CONYERS, JR., Michigan
RANKING MEMBER

GARNEY FRANK, Massachusetts
HOWARD L. BERNMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. ROBERTS, SCOTT, Virginia
MELVIN L. WATT, North Carolina
JOE LUGGEN, California
SHELIA JACKSON LEE, Texas
WALTER RUTHERFORD, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT DANKLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California

Nicholas Miller, Esq.
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue, NW, Ste. 1000
Washington, D.C. 20036

Dear Mr. Miller:

Thank you for appearing before the Subcommittee on Commercial and Administrative Law on September 25, 2002. Your testimony, and the efforts you made to present it, are deeply appreciated and will help guide us in whatever action we take on the issue.

Attached is a copy of the official transcript of this hearing. We have provided this for your review. Please limit any corrections you make to technical, grammatical and typographical errors. This transcript is substantially a verbatim account of remarks actually made during the hearing. No substantive changes are permitted.

In addition, in order to create a more comprehensive hearing record, please provide written responses to the following questions. Your responses will help inform subsequent legislative action on this important topic.

- Is there not a positive effect on localities wrought by a vital and developing technology which compensates for foregoing tax revenues? In other words, would localities have more to gain from the growing of a satellite industry than it would from trying to impose transactional taxes upon it?
- In your estimation, would any income to local taxing authorities be foregone by an exemption for a new service such as satellite radio or other satellite-delivered service? If so, how much in your estimation? In your opinion, how could such local taxes be collected as a practical matter?

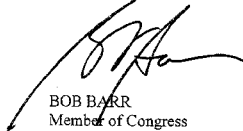
Nicholas Miller, Esq.
October 8, 2002
Page 2

- Have localities suffered from the taxing restrictions in the Telecommunications Act with respect to DTH satellite services? If so, could you quantify the lost revenue to these localities? Has there been an increase in economic activity that may have offset any losses?

Please submit your responses to these questions by Wednesday, October 23, 2002, to: Diane K. Taylor, Subcommittee on Commercial and Administrative Law, B353 Rayburn HOB, Washington, D.C. 20515. Your responses may also be submitted by e-mail to diane.taylor@mail.house.gov. If you have any questions, feel free to contact Diane K. Taylor at 202/225-2825. Thank you for your continued assistance.

With warm regards, I am,

very truly yours,



BOB BARR
Member of Congress

Chairman
Subcommittee on Commercial and Administrative Law

BB: cmb



1615 L Street NW Suite 520 • (202) 429-8855 • (202) 429-8857 fax

November 13, 2002

Honorable Bob Barr
Chairman
House Subcommittee on Commercial and Administrative Law
2138 Rayburn House Office Bldg.
Washington, DC 20515-6216

Dear Chairman Barr:

Thank you again for the opportunity to testify before the Subcommittee on Commercial and Administrative Law on September 25, 2002. Enclosed are my technical, grammatical, and typographical corrections to the official transcript of my testimony before the Subcommittee.

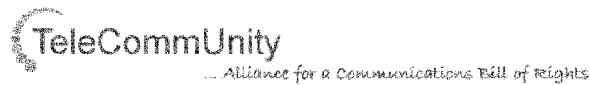
In response to the three additional questions you raised in your letter of October 8, 2002, I submit the following answers:

1. Is there not a positive effect on localities wrought by a vital and developing technology which compensates for foregoing tax revenues? In other words, would localities have more to gain from the growing of a satellite industry than it would from trying to impose transactional taxes upon it?

Every local community wants to encourage economic development. Individual communities may make individual decisions to forego certain revenues in the short term as an incentive to encourage major new economic activity. However, new economic development also creates an additional need for services that local governments must provide – e.g., new jobs require additional roads and mass transit to handle the additional workers, new housing requires additional schools and sewer system capacity, etc. Ultimately, the community pays for these additional services.

The local community must decide for itself whether the new economic activity will generate community benefits which outweigh the cost of the new burdens created. It is unfair for any level of government other than the local community to decide whether a tax holiday is warranted.

Local communities use tax revenues to provide local services. Unless the Federal government is



prepared to pay for local services, the Federal government should not decide which businesses and specific technologies are taxed at the local level.

2. In your estimation, would any income to local taxing authorities be foregone by an exemption for a new service such as satellite radio or other satellite-delivered service? If so, how much in your estimation? In your opinion, how could such local taxes be collected as a practical matter?

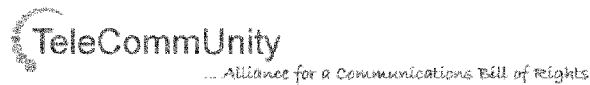
I am not aware of any specific survey or economic analysis of tax revenues foregone from by satellite-delivered services. However, a reasonable estimate of such revenues would be 5%-10% of the gross revenues of the consumer satellite-services industry. This estimate is based on average state and local sales tax rates.

As for collection of local sales taxes, the national associations representing the interests of local governments support the tax collection principles advocated by the Streamlined Sales Tax Project. That is, we support the adoption of rules to simplify and reduce the administrative burden on sellers to comply with taxes imposed by multiple taxing jurisdictions. Specific information about this project may be obtained at <http://www.geocities.com/streamlined2000>.

3. Have localities suffered from the taxing restrictions in the Telecommunications Act with respect to DTH satellite services? If so, could you quantify the lost revenue to these localities? Has there been an increase in economic activity that may have offset any losses?

Yes, local communities have suffered from taxing restrictions with respect to direct-to-home satellite services. Direct-to-home satellite services have increased the burdens on local communities and local governments, but have not contributed additional revenue necessary to fund these services, as do other businesses and residents in our communities. For example, satellite dish installers use the public roads for their trucks, may require local government inspection of installation work, may require local government intervention to correct improper installation, and direct-to-home satellite service consumers may utilize local government offices and courts to resolve service complaints.

Second, local community investment in municipal infrastructure helps to create a more lucrative market for direct-to-home satellite services. To the extent that direct-to-home satellite service benefits from the existence of the local community without paying any compensation, direct-to-home satellite service is being subsidized by other taxpayers within the local community. For example, the ability to provide local-into-local channels has boosted sales of DBS service. *See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eight Annual Report, CS Docket 01-129, 17 FCC Rcd. 1244 at ¶ 8 (2002) ("The continued growth of DBS is, in part attributable to the authority granted to DBS operators to distribute local broadcast television stations in their local markets by the Satellite Home Viewer Improvement Act of 1999 ("SHVIA")."). That is to say, DBS is selling more subscriptions within a specific local community because that community consolidates a large number of potential subscribers in dense locations and people within that community are willing to pay more to obtain more information about their own local community. But



DBS is exempted from having to pay the generally applicable local business taxes – e.g., “local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating or raising revenue for a local taxing jurisdiction” – that other businesses in the local community pay for the same privilege of doing business within the community. 47 U.S.C. § 152nt [Sec. 602(b)(5) of the 1996 Telecommunications Act, Preemption of Local Taxation With Respect to Direct-to-Home Satellite Services].

Direct-to-home satellite service providers enjoy the same local benefits as does a video rental store, movie theater, or other retailer within the community. Only the direct-to-home satellite service provider is exempted by Federal law from paying the local sales and business privilege taxes that these competitive retail businesses pay.

Local governments have not commissioned any formal study of the issues associated with tradeoffs between subscriber’s delivery for local services and reduced tax requirements.

Local governments again thank you and the Subcommittee for the opportunity to participate in this important debate. If I can be of further assistance, please do not hesitate to contact me personally at (202) 785-0600, nmiller@millervaneaton.com.

Sincerely,

/s Nicholas P. Miller
Legal Counsel, TeleCommUnity

cc: Stephanie Moore
Diane Taylor
Juan Otero, National League of Cities
Ron Thaniel, United States Conference of Mayors
Libby Beaty, National Association of Telecommunications Officers and Advisors

Enclosure
2419/01/WRH02268.DOC

F. JAMES BENEDEK, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
GEORGE W. GERALD, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGOS, California
BOB GOODLATTE, Virginia
ED BRYANT, Tennessee
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENNINGS, Tennessee
CHRIS CANNON, Utah
UNDERSTY O. GRAHAM, South Carolina
SPENCER RACHLS, Arizona
JOHN N. HOZETTER, Indiana
MARK OHLER, Wisconsin
RIC KELLER, Florida
CARROLL E. ROA, California
MELODY A. HEAT, Pennsylvania
JEFF FLAKE, Arizona
MICK PRICE, Indiana

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3961

<http://www.house.gov/judiciary>

October 8, 2002

JOHN CONYERS, JR., Michigan
RANKING MEMBER

GARNEY FRANK, Massachusetts
HOWARD L. BURNHAM, California
RICK BOUCHER, Virginia
RICHARD MILES, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN WATT, North Carolina
JOE LOPREN, California
SHEL A. JACKSON, Texas
MAGNUS WATERS, California
MARTIN J. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
TOMMY NIXON, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. VENIGES, New York
ADAM S. SCHIFF, California

Arthur Rosen, Esq.
Chairman, Coalition for Fair and Rational Taxation
McDermott, Will & Emery
50 Rockefeller Plaza
New York, New York 10020

Dear Mr. Rosen:

Thank you for appearing before the Subcommittee on Commercial and Administrative Law on September 25, 2002. Your testimony, and the efforts you made to present it, are deeply appreciated and will help guide us in whatever action we take on the issue.

Attached is a copy of the official transcript of this hearing. We have provided this for your review. Please limit any corrections you make to technical, grammatical and typographical errors. This transcript is substantially a verbatim account of remarks actually made during the hearing. No substantive changes are permitted.

In addition, in order to create a more comprehensive hearing record, please provide written responses to the following questions. Your responses will help inform subsequent legislative action on this important topic.

- How, in your opinion, should we treat services, current or future, which would not fall squarely within the definition of "direct-to-subscriber services" but which do not use public rights-of-way to operate? In other words, are there other slightly different services that might seek a similar exemption? Would they be justified?
- Under the Wireless Telecommunications Sourcing and Privacy Act of 2000, cell phone services are subjected to state and local taxation in the customer's place of primary use. No other

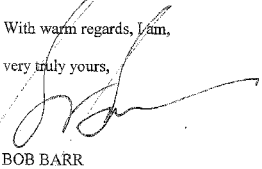
Arthur Rosen, Esq.
October 8, 2002
Page 2

taxing jurisdiction may impose taxes, charges or fees for cell phone service. Should we apply this paradigm to satellite services and direct satellite customers to pay state and local taxation in the customer's place of primary use? Would the administrative burdens be too great?

Please submit your responses to these questions by Wednesday, October 23, 2002, to: Diane K. Taylor, Subcommittee on Commercial and Administrative Law, B353 Rayburn HOB, Washington, D.C. 20515. Your responses may also be submitted by e-mail to diane.taylor@mail.house.gov. If you have any questions, feel free to contact Diane K. Taylor at 202/225-2825. Thank you for your continued assistance.

With warm regards, I am,

very truly yours,



BOB BARR
Chairman
Subcommittee on Commercial and Administrative Law

BB: cmb

*A Partnership Including
Professional Corporations*
50 Rockefeller Plaza
New York, NY 10020-1605
212-547-5400
Facsimile 212-547-5444
<http://www.mwc.com>

Boston
Chicago
London
Los Angeles
Miami
Munich
New York
Orange County
Silicon Valley
Washington, D.C.

MCDERMOTT, WILL & EMERY

November 14, 2002

By Email and Facsimile

Diane K. Taylor, Counsel
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
House of Representatives
B353 Rayburn HOB
Washington, DC 20515

Dear Ms. Taylor:

I am responding to Chairman Barr's letter dated October 8, 2002 in which he requested my response to two questions; those responses follow.

I believe that the questions relate to two distinct issues: (1) on whom should tax be imposed and (2) how great a burden should be placed on those who collect taxes as agents of a government unit.

The first issue, in the context of direct-to-subscriber services, focuses on whether a business that has no physical presence in a taxing jurisdiction (i.e., it does not even use public rights-of-way) should be liable for paying direct taxes (e.g., license taxes, income taxes, franchise taxes) to such a jurisdiction. Inasmuch as a business with no physical presence (i.e., no employees, agents, or tangible property) in a jurisdiction receives no benefits or protection from that government and is not part of that jurisdiction's "society," no direct tax should be payable; there would otherwise be "taxation without representation." Therefore, in direct response to the first question, any business without a physical presence in a jurisdiction (using the public rights-of-way could constitute such a presence) should similarly be "exempt" (although I do not believe that this truly is a tax exemption or a tax expenditure because the jurisdiction has no right to impose tax in the first place).

The second question focuses on administrability of tax collection responsibilities. I believe that if a business is otherwise subject to a state's taxing jurisdiction, imposing reasonable tax collection burdens on that business should be acceptable. What is a reasonable burden? An approach similar or identical to that taken in the Mobile Telecommunications Sourcing Act, whereby a sales or similar transaction tax may be imposed

November 14, 2002

Page 2

only with reference to the "place of primary use," is reasonable, assuming there is state-level administration of the tax and state-level uniform definitions applicable to the tax base.

I hope these responses are helpful. As always, I stand ready to assist the Subcommittee and you in any way I can.

Sincerely,

Arthur R. Rosen

ARR:jm

**Supplemental Material
In Support of Congressional Testimony**

**Presented in Opposition to
H.R. 5429 The Satellite Services Act of 2002 and
H.R. 4869 The Satellite Radio Freedom Act**

**to the House Subcommittee
on Commercial and Administrative Law
on September 25, 2002**

by

Nicholas P. Miller, Esq.
Legal Counsel for TeleCommUnity

on behalf of the

**National League of Cities
United States Conference of Mayors
and
TeleCommUnity Alliance**



www.telecommunityalliance.org



EXECUTIVE SUMMARY

Section 602 of the Telecommunications Act of 1996, 47 U.S.C. § 152 nt, preempted local government taxation of direct-to-home satellite service, but preserved the right of states to tax such services and the right of local governments to receive portions of such state taxes. H.R. 5429, the Satellite Services Act of 2002, would expand the preemption of local taxation authority to all direct-to-subscriber satellite service. H.R. 4869, the Satellite Radio Freedom Act, would preempt local taxation of satellite digital radio service, but preserve local government authority to tax or require fees for terrestrial transmitters physically located within their jurisdictions.

TeleCommUnity, the National League of Cities, and the United States Conference of Mayors presented testimony on September 25, 2002 to the House Subcommittee on Commercial and Administrative Law which asked the Subcommittee to reject H.R. 5429 and H.R. 4869 on the basis that they violate the principles of good tax policy, good federal policy, and good broadband policy.

- **Good Tax Policy:**
 - allows jurisdictions that must deliver services to be responsible for, and held accountable for, imposing the taxes necessary to pay for such services;
 - recognizes that removing elements from the tax base increases the tax burden on all other taxpayers; and
 - does not confuse tax efficiency with tax eradication.
- **Good Federal Policy:**
 - respects the sovereignty of other state and local elected governments;
 - places tax and spending decisions at the lowest level of government where voters have the greatest impact; and
 - avoids creating unfunded mandates.
- **Good Broadband Policy:**
 - does not use tax subsidizes to favor one form of technology over others; and
 - recognizes that tax subsidies are the least efficient form of subsidies to promote broadband deployment.

The Satellite Services Act in particular would have the unintended consequence of creating disparate taxation schemes for similarly situated providers. Competition in the satellite service market is robust, and there is no evidence at this time to support creation of federal tax subsidy that would provide satellite service providers with a competitive advantage over fiber optic, wireless terrestrial, ultrawideband, and other forms of broadband technology.

www.telecommunityalliance.org

H.R. 5429 and H.R. 4869 contain ambiguous definitions and fail to define key terms. As drafted, satellite service providers that have a strong local presence and almost no national presence, could unintentionally be exempted from paying almost all local taxes and regulatory fees, including tax and fees of generally applicability. Compliance and enforcement of either bill would be difficult, and a reviewing court would likely find either bill void for vagueness.

For these reasons, the National League of Cities, United States Conference of Mayors, and TeleCommUnity, urged Congress to forgo the temptation to provide special tax breaks to small pockets of industry at the expense of local governments and competing industry technologies.

September 25, 2002
TeleCommUnity



**Supplemental Material in Support of
Testimony of Nicholas P. Miller
Presented on September 25, 2002 to the
House Subcommittee on Commercial and Administrative Law**

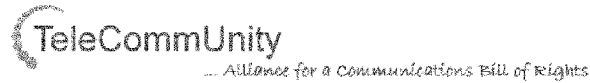
Nicholas Miller, Esq., is legal counsel to the TeleCommUnity, an alliance of local governments and their national associations which advocates for, and educates on behalf of, local government interests on matters of federal telecommunications, broadband, and right-of-way legislation. On September 25, 2002, Mr. Miller presented testimony before the House Subcommittee on Commercial and Administrative Law in opposition to H.R. 5429 and H.R. 4869 on behalf of TeleCommUnity, the National League of Cities, and the United States Conference of Mayors. The following are supplemental materials that provide legal, technical, and policy background information in support of Mr. Miller's testimony.

I. OVERVIEW

TeleCommUnity, the National League of Cities, and the United States Conference of Mayors urge the Subcommittee to reject H.R. 5429 and H.R. 4869 on the basis that they do not promote good tax policy, good federal policy, or good broadband policy.

- **Good Tax Policy:**
 - allows jurisdictions that must deliver services to be responsible for, and held accountable for, imposing the taxes necessary to fund such services;
 - recognizes that removing elements from the tax base increases the tax burden on all other taxpayers; and
 - does not confuse tax efficiency with tax eradication.
- **Good Federal Policy:**
 - respects the sovereignty of other state and local elected governments;
 - places tax and spending decisions at the lowest level of government where voters have the greatest impact; and
 - avoids creating unfunded mandates.
- **Good Broadband Policy:**
 - does not use tax subsidizes to favor one form of technology over others; and
 - recognizes that tax subsidies are the least efficient form of subsidies to promote broadband deployment.

Tax efficiency should not be confused with tax eradication. Local governments have been working with state governments to simplify and streamline tax collection. Progress is being made in the area of tax efficiency as a result of the "Streamlined Sales Tax Project." The SSTP is a voluntarily effort involving thirty-nine states and the District of Columbia, to among other things: (1) create uniform tax definitions and sourcing rules; and (2) legally and technically enable sellers to pay all local taxes to the state government with the state, and not sellers,



assuming the burden of distributing taxes back to local governments.¹ Local governments are working to simplify the administrative burden of tax compliance. As of June 2002, thirty-three states and District of Columbia have enacted tax simplification legislation and two states are considering pending legislation.²

Permitting local taxes to be paid to the state government, is not the same thing as permitting only the state and not local governments to levy taxes. The power of local voters to determine for themselves how their community will fund locally-provided services is significantly diluted if all tax decisions must require the approval of a majority of state legislators and the governor.

To put this discussion in context by pointing out the recent experiences of a few local governments in Texas. In the same week that bureaucrats at the Federal Communications Commission arbitrarily decided to strip local governments of \$500,000 in annual revenue (by mistakenly concluding that cable modem service is not cable service), the federal government decided to recall National Guard troops from airports, leaving local governments primarily responsible for paying for the increased airport security costs. Local governments are not questioning the need to provide additional services at additional expense, and local governments are not necessarily asking to be relieved of these new responsibilities – but local governments cannot continue to provide and pay for additional services if, at the same time, the federal government continues to shrink the tax base upon which local governments rely to fund the delivery of these vital services.

H.R. 5429 and H.R. 4869 are bad broadband policy. The specific terminology used in both bills creates a lot of legal ambiguity as addressed herein.

¹ For more information, visit <http://streamlinedsalestax.org>. <http://66.28.69.53/sline/124amdedactandagrmt.pdf>

² Streamlined Sales Tax Project, "Status of State Efforts on Streamlined Sales Tax Project (as of 6/16/02)," available at <http://66.28.69.53/sline/statestatus.pdf> (last visited 9/25/02), or by selecting "State Legislation Status" on the Streamlined Sales Tax Project homepage at <http://streamlinedsalestax.org>. See also "Uniform Sales and Use Tax Administration Act," available at <http://66.28.69.53/sline/124amdedactandagrmt.pdf> (last visited 9/25/02) (model tax simplification legislation), or by selecting "Act and Agreement as Amended 1/24/021" from "Library" on the Streamlined Sales Tax Project homepage.



II. LOCAL GOVERNMENTS STRONGLY SUPPORT NATIONAL POLICIES THAT WILL PROMOTE EXPANDED DEPLOYMENT OF SATELLITE SERVICES.

Local government welcomes and encourages true competition in the provision of video, voice, data, information, and high-speed Internet access services to all Americans. Direct Broadcast Satellite service in particular has provided many consumers with a viable alternative to incumbent cable service, and in turn, competition from DBS providers has provided cable operators with a competitive incentive to offer a wider range of competitively priced services to cable subscribers. Promoting and encouraging greater deployment of all forms of broadband service continues to be a critical issue in all communities and local governments welcome the technical innovation and expanded broadband opportunities offered by wireless cable ("MMDS" or "MDS"), private cable ("SMATV"), and satellite messaging service providers.

III. LOCAL GOVERNMENTS SUPPORT SOUND TAX POLICIES.

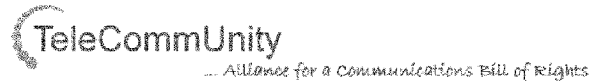
The following are excerpts from "The Impact of Electronic Commerce on State and Local Tax Systems: Building A Constructive Solution After The [Advisory Commission on Electronic Commerce] Commission's Failure", written by the U.S. Conference of Mayors, May 2000.³

The American federal system reflects democracy at its best. Localities and states choose the mix of taxes, and the level of taxes that best suits their preferences, traditions, and needs. Thousands of localities levy sales taxes while many others do not.

A. Local Governments Support Tax Fairness.

Local governments call for tax "fairness" which asks each business to pay for its share of local government services in a manner that does not bias the competitive marketplace. Local governments support a tax system at all levels of government that treats competitors the same when they engage in the same activity. It is true that current utility taxes often apply to the Bell Operating Companies and other traditional telephone and cable television companies in ways that do not apply to new telecommunications providers. This needs to be fixed. We should make sure that taxes apply to all the competitors.

³ The text of the entire article is available at http://usmayors.org/USCM/wash_update/documents/commission.htm.



Further, it is wrongheaded to assert that the tax rate for telecommunications providers must necessarily be same as the tax rate for other industries. This is a unique, community by community question. It is common, and appropriate, to ask that individual industries pay taxes that are related to the burden they place on the community's infrastructure and services. A software development company does not place the same demands on the sewers, roads, or police as a major heavy manufacturing facility. It is fallacious public policy to suggest that all businesses, necessarily, should have exactly the same tax burden.

B. Local Governments Support Efficient Tax Administration—NOT Tax Eradication.

Local governments are firmly committed to finding more efficient and fair ways to administer their taxes. This is NOT the same as adopting a single tax-rate statewide, or adopting uniformity, which ignores necessary local differences.

It is self-evident that the business opportunity presented by access to mid-town Manhattan is different than by access to Sarasota Springs, NY. The tax rates in those two locations will — and must — be different. The cost of necessary municipal services in Manhattan is greater, just as the business opportunity is greater, than in Sarasota Springs. The tax system must produce the revenues needed to sustain the required LOCAL public services. Similarly, the difficulties of enforcement and auditing compliance are different in the two communities. One tax form will not fit all businesses and all circumstances.

C. Sales Taxes Are an Essential Part of the Tax Base For Many Local Governments.

As the report submitted to Congress in April 2000 by the Advisory Commission on Electronic Commerce stated:

State and local governments that levy sales taxes rely on them as a major source of revenue for their general funds. According to the U.S. Census Bureau, state and local governments collected approximately a total of \$237 billion in sales and use taxes in 1999, comprising 24.8% of all revenues generated that year.

For many local governments, sales taxes are an essential source of revenue. Of the 25 largest cities that collect general sales taxes, four cities (Albuquerque, Denver, Oklahoma City, and Tucson) rely on them for over half of all tax revenues. Another seven cities (Austin, El Paso, Nashville-Davidson Metro area, New Orleans, Phoenix, San Antonio, and San Diego) rely on them for between thirty and fifty percent of tax revenues.

www.telecommunityalliance.org



... Alliance for a Communications Bill of Rights

(U.S. Census, Statistical Abstract of the United States: 1999, p. 334, "City Governments – Revenue for Largest Cities: 1996").

These are huge numbers. For most of these cities (Albuquerque, Austin, Denver, Nashville-Davidson Metro area, New Orleans, New York, Oklahoma City, San Diego, and Tucson), the amount collected in general sales taxes exceeds the amount that they spend on police protection. (U.S. Census, Statistical Abstract of the United States: 1999, compare p. 334, "City Governments – Revenue for Largest Cities: 1996" to p. 335, "City Governments – Expenditure and Debt for Largest Cities: 1996).

Sales taxes also are an important source of a city's local bonding capacity. Local governments use sales taxes to back bonds for many different purposes: local school district capital needs in Iowa and Louisiana, infrastructure in Texas and California, transportation in New York City, a jail in New Mexico, and municipal parking in Phoenix, for example. (Standard & Poor's CreditWeek Municipal, August 16, 1999, p. 10).

D. Local Governments Continue to Support Reasonable Management and Compensation for Use of Public Rights-of-Way.

Public rights-of-way are the most precious property interests held by local governments. Of course the telecommunications providers want free use of our streets and highways. Similarly, the oil companies want free oil leases on federal lands. But free use means over-use. And the daily commuter, the abutting shop-owner, and water system user will pay dearly if the rights-of-way they all depend on are not managed to achieve the highest and best use for all. Every business should pay the fair costs of its impact on others: inspection and oversight fees; adverse impacts on other rights-of-way users; shortened road life due to cuts to road surfaces; and fair-market value for the public resource permanently occupied.

IV. THERE IS NO RATIONAL BASIS TO SUPPORT ENACTMENT OF EITHER THE SATELLITE SERVICES ACT OR THE SATELLITE RADIO FREEDOM ACTS.

Local governments cannot support H.R. 5439, the Satellite Services Act, or H.R. 4869, the Satellite Radio Freedom Act.

- *Neither bill explains why local governments should abandon our general philosophy to promote technology-neutral regulation, and instead, support to two bills which would provide an exclusive tax subsidy and thus a competitive advantage to a single technology.*

www.telecommunityalliance.org



Local governments support all means of delivering broadband service. There has been no evidence presented to the Subcommittee that would justify local government support of a federal policy to use costly local tax subsidies to discriminatorily promote development of satellite service to the possible detriment of wireless terrestrial, fiber optic, and ultrawideband technologies.

- *Neither bill explains what if any critical problem has emerged that could or should be solved by further preempting the power of local constituents to influence tax and revenue decisions at the local level.* Local taxation of DBS service is already preempted by Section 602 of the 1996 Telecommunications Act, 47 U.S.C. § 152 nt. **Only three states, Florida, Tennessee, and North Carolina, tax direct-to-home satellite service, while two states, Pennsylvania and Virginia, prohibit such taxes.**
- *Neither bill contains any persuasive findings to explain why local taxpayers should continue to have to subsidize DBS service under Section 602, much less explains why this type of industry-exclusive subsidy should be expanded to subsidize other satellite services.* **Local governments believe the preemption provision of Section 602 should be sunsetted.** The exemption should not be *expanded* to cover direct-to-subscriber satellite service.
- *There is no basis for continuing to subsidize direct-to-home satellite service with local tax dollars. DBS is no longer a nascent industry with little to no local presence that lacks the resources to fully comply with local tax policies.*
 - DBS providers served 18.2% of the multichannel video market in 2001, as compared to the 6.85% they served in 1997 when Section 602 first took effect.⁴
 - Between 1997 and 2001, cable systems added 4.8 million subscribers **while DBS added over 11 million subscribers** over the same period. The Satellite Broadcasting and Communications Association stated that DBS is gaining over **8,500 subscribers per day**.⁵
 - DBS revenue for 2001 was projected to be **\$12.1 billion dollars**, up 37.5 % from 2000 revenues.⁶
 - DBS offers local broadcast channels in at least 41 markets. Direct-to-home satellite service has a 30% penetration rate in five states, more than a 20%

⁴ *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth Annual Report, 17 FCC Red. 1244, Appendix C, Table C-1 (2002) (“8th Rept.”).

⁵ *Id.* at Appendix C, Table C-1 and ¶ 57.

⁶ *Id.* at ¶ 57.



penetration rate in thirty states, and more than a 10% penetration rate in forty-five states.⁷

It is bad tax policy to require a “mom and pop” TV shop to pay local business taxes as a condition of the privilege to operate a business in the community and sell television subscription services, while a billion dollar company is permitted to sell comparable television subscription services without paying any local taxes.

V. UNINTENDED CONSEQUENCES AND UNFUNDED MANDATES: WHY LOCAL GOVERNMENTS OPPOSE H.R. 5429 AND H.R. 4869.

H.R. 5429 and H.R. 4869 are both impermissibly vague. If enacted, both statutes will certainly be challenged. Both bills are based on Section 602 of the 1996 Act, but neither bill has been submitted as an amendment to the Communications Act, so the Act’s definitions will not be considered by a reviewing court. Thus, a court would have to interpret the statutes based on the plain language of each bill, common usage, and possibly these hearings to guide the courts. For this reason alone, this Subcommittee should reject these bills.

A. The Definition of “Direct-to-Subscriber Satellite Service” in H.R. 5429 Would Exempt Many More Satellite Services From Local Taxation Than Congress Intended.

H.R. 5429 preempts local taxation of “Direct-to-Subscriber Satellite Service,” which is defined in relevant part as “the distribution or broadcasting *of programming* transmitted or broadcast by satellite directly to the satellite service subscriber’s *receiving equipment* without use of the provider’s ground receiving or distribution equipment . . .” The definition further permits a satellite service to use “*terrestrial repeater transmitters*” to retransmit signals received from the provider’s operating satellites” and still qualify for treatment as a “direct-to-subscriber satellite service.”⁸

⁷ *Id.* at ¶¶ 58-59.

⁸ Section 602(a) prohibits local taxation of direct-to-home satellite service. Section 602(b)(1) defines “direct-to-home satellite service” to mean:

only programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground receiving or distribution equipment, except at the subscribers’ premises or in the uplink process to the satellite.

Section 2(a) of H.R. 5429 prohibits local taxation of direct-to-subscriber satellite service. As a comparison, below, words omitted from the current definition of direct-to-home satellite



A key omission in H.R. 5429 is its failure to state what Congress intended “programming” to mean. A voice telephone call might not fit the definition, but video, data, music, pay-per-view movies and arguably Internet access could be included.

In addition, neither “receiving equipment” nor “terrestrial repeater transmitter” is defined or limited in any way. **The “direct-to-subscriber satellite service” definition is so broad and so vaguely defined that it theoretically could include any non-terrestrial service.** Terrestrial service may use a combination of wire, fiber or microwave to transmit information. For example, a wireless terrestrial service typically uses fiber to transport a signal to a transmitter, where the signal can be sent via microwave to a fixed or mobile user device. A satellite service uses a satellite to send a signal to a transmitter, where the signal can be sent via microwave to a fixed or mobile user device. Thus, H.R. 5429 would give satellite service providers a significant competitive advantage over comparable terrestrial service providers.

H.R. 5429 could be interpreted to unintentionally provide a significant tax subsidy to many satellite-based services. Local government believe that the following services may also intentionally, or unintentionally, be included in the definition of direct-to-subscriber satellite services:

- **Direct Broadcast Satellite Service (“DBS”)** (A signal is sent from a satellite to a small parabolic receiver or “dish”.)
- **Home Satellite Dish Service (“HSD” or “C-Band”)** (HSD customers receive satellite signals from multiple satellites in different orbits using a very large dish – typically 4 to 8 feet in diameter.)
- **Private Cable Systems, also known as Satellite Master Antenna Television (“SMATV”)** (A SMATV system delivers satellite signals to customers – usually a large-unit building or a closely-located group of buildings – typically without using the public

service in Section 602(b)(1) are struck through, and new text of H.R. 5429’s Section 4(1) definition of direct-to-subscriber satellite service are underscored. Section 4(1) defines “direct-to-subscriber satellite service” to mean:

only the distribution or broadcasting of programming transmitted or broadcast by satellite directly to the subscribers’ premises satellite service subscriber’s receiving equipment without the use of the provider’s ground receiving or distribution equipment, except equipment at the subscribers’ premises or in the uplink process to the satellite. A service that otherwise qualifies as a direct-to-subscriber satellite service as defined in this paragraph, but that uses terrestrial repeater transmitters to retransmit signals received from the provider’s operating satellites, shall none the less be treated as a direct-to-subscriber satellite service.

www.telecommunityalliance.org

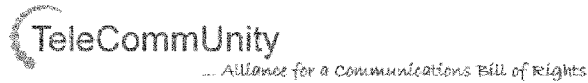


rights-of-way. Satellite receivers, processors and modulators are installed on a building rooftop to process signals from satellites, and hard wiring in the building is used to distribute service to units within the building. Some SMATV systems use microwave transmission to serve multiple buildings in a building complex. Most SMATVs do not serve more than one community.)

- **Wireless Cable or Multichannel Multipoint Distribution and Multipoint Distribution Service (“MMDS” or “MDS”)** (Satellite signals are beamed to a transmitter which then uses microwaves to distribute the signal to customer antennas and receivers. Line-of-sight between the transmitter and the receiver is required and the range of transmission depends on the transmitter’s power. It was named multipoint service because signals go from one point, the microwave transmitter, to multipoints, the customer receivers, and is commonly called wireless cable because the type programming is similar to franchised cable, but does not use wires to deliver a signal to customers.)
- **Instruction Television Fixed Service (“ITFS”)** (A minimum number of hours of education programming is distributed using wireless cable technology. ITFS is funded by leasing excess programming time to commercial wireless cable providers.)
- **Very Small Aperture Terminal Networks (“VSAT”)** (VSAT technology is typically used internally by very large corporations to transmit a single message to multiple receivers at the same time everyday. For example, the headquarters of national chain of retail stores may use VSAT to deliver price changes every morning to computers in every one of its stores. Or a very large company may use VSAT to deliver a daily message from the president to every employee.)
- **Satellite Digital Audio Radio (“Satellite DAR”)** (A national package of audio signals are transmitted to small, mobile, subscriber receivers. Satellite DAR service is funded by subscription fees instead of advertising.)
- **Satellite Transmission of Broadcast Television** (Signals are sent from a remote location to a satellite, then beamed back to a broadcasting center. Or, a large broadcast center send out several signals or feeds, and affiliate stations can choose which feeds to download directly to the broadcast station, or to nearby antenna farm.)
- **Satellite Internet Access Service** (two-way transmission of information that permits the user to store, transform and change the content of the information sent and received.)
- **Satellite-Based Message Service** (Any service that uses satellites to distribute voice, data, e-mail, electronic pages, or video to a subscriber device.)

Further, because the local tax exemption is extremely broad, H.R. 5429 could provide an incentive to deliver at least some portion of service via satellite, instead of via fiber optics, to take advantage of an unintended, yet significant, tax subsidy. So while most terrestrial-based 3G and cellular phone services would not fit the definition of “direct-to-subscriber satellite service,”

www.telecommunityalliance.org



H.R. 5429 is potentially providing an economic incentive to make new services meet this broad definition.

B. There Is No Rational Policy Basis to Justify the Disparate Tax Treatment Created By the Tax Definitions of H.R. 5429 and H.R. 4869.

The tax definitions in both bills could be interpreted to broadly preempt local authority to require any tax or fee of general applicability, including local sales tax, income tax, business privilege taxes, franchise fees, and possibly property taxes and administrative regulatory fees.

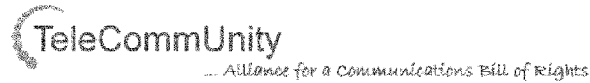
Arguably, there may have been valid policy reasons to preempt local taxation of national DBS service under Section 602 of the Telecommunications Act. DBS service did not use the public rights-of-way, initially offered service only on a national basis, may have had very little to no local presence, and may have served a limited number of homes in any particular jurisdiction. As discussed above, this is no longer the case for DBS, and these factors do not necessarily apply to the type of satellite services that would be exempted from local taxation by H.R. 5429.

- For example, a SMATV system usually operates in one community, and often extends over no more than a few buildings. The FCC stated, “the service area covered by a SMATV system usually includes only a small portion of a cable operator’s franchise area.”⁹ There is no rational basis to justify why a coffee vender in a SMATV building pays a business privilege fee or a gross receipts tax, the coffee drinker pays a sales tax, the building owner pays property taxes, the telephone company pays utility and income taxes, and yet the single building SMATV would be exempt from paying any and all local taxes and fees solely because she receives the programming signal via satellite.
- Furthermore, unlike the DBS example, many of the direct-to-subscriber satellite service providers may have transmitters, antenna farms, or other facilities located in the public right-of-way or on public property. H.R. 4869 contains an exemption that seemingly recognizes the inequity of exempting satellite service providers from having to pay rent or taxes on terrestrial equipment, but H.R. 5429 contains no such exemption. **There simply is no rationale basis to provide a discriminatory tax subsidy to a class of broadband providers that may be local in nature and make significant use of the right-of-way, simply because their transmissions originate from satellites instead of via terrestrial microwave.**

C. The Definition of “Primary Use” As Drafted Cannot Be Applied to Mobile Devices.

Both bills prohibit states from imposing taxes if the “place of primary use” of the service is not physically located within the state. Both bills use a circular logic definition to define

⁹ 8th Rept. at ¶ 121.



primary use as the business or residential address where use of direct-to-subscriber satellite service primarily occurs, and prohibit states from charging taxes if primary use does not occur within the physical boundaries of the state. Simply stating that the place of primary use is the place where a service is primarily used does not provide a meaningful definition. A more meaningful definition of primary use was contained in the Mobile Telecommunications Sourcing Act, Pub. Law 106-252, 114 Stat. 629 (2000).

Both bills seems to overlook the fact that both bills are attempting to encompass *mobile* services. One of the unintended consequence of these definitions as drafted is a disproportionate impact on smaller states and intrastate commuters, because these bills create a loophole for providers to challenge legitimate taxes, on the basis that a state has no authority to require a tax on service which does not primarily occur in a single state.

- For example, if a subscriber listens to satellite DAR as he drives between his home in Maryland and his office in Washington DC, where is his "primary place of use," and which state has jurisdiction to tax him? Maryland and DC may not be able to require the subscriber to pay a legitimate tax, but California would be able to tax the delivery driver who uses his satellite DAR when driving 300 miles 4 times a week between Los Angeles and San Francisco, or the commuter that drives 50 miles a day within a single county.

VI. CONCLUSION

For these reasons, the National League of Cities, the United States Conference of Mayors, and the TeleCommUnity Alliance urge Congress to forgo the temptation to provide special tax breaks to small pockets of industry at the expense of local governments and competing industry technologies.

211901\MRH02135.DOC



Streamlined Sales Tax Project

Executive Summary

July 2002

Steering Committee

Charles Collins
Co-Chair
North Carolina

Diane Hardt
Co-Chair
Wisconsin

Carol Fischer
Missouri

Harold Fox
New Jersey

Bruce Johnson
Utah

Eleanor Kim
Texas

Scott Peterson
South Dakota

Charlotte Quaries
Kentucky

Tom Kimmett
Pennsylvania

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project's proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection. The Project's proposals are focused on improving sales and use tax administration systems for both Main Street and remote sellers for all types of commerce.

Thirty-nine states and the District of Columbia are involved in the Project. Thirty-four states and the District of Columbia are voting participants in the Project because their legislators have enacted enabling legislation or their governors have issued executive orders or similar authorizations. Five states are non-voting participants in the work of the Project because they do not have the formal commitment of the state executive or legislative branches, but are still participating. Forty-five states and the District of Columbia impose a sales and use tax.

The Project was organized in March 2000. The Project is conducting its work through a steering committee with co-chairs, four work groups, and a number of sub-groups. Project participants are generally state revenue department administrators but there are also representatives of state legislatures and local governments. Businesses — including national retailers, trade associations, manufacturers, direct marketers, technology companies, and others — have actively participated in the project by offering expertise and input, reviewing proposals, suggesting language, and testifying at public hearings.

The goal of the Streamlined Sales Tax Project is to provide states with a Streamlined Sales Tax System that includes the following key features:

- Uniform definitions within tax laws. Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the Project's definitions, a certain amount of impact on state

revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through common definitions.

- Rate simplification. States will be allowed one state rate. Local jurisdictions will be allowed one local rate. A state or local government may not choose to tax food at one rate and all other items of tangible personal property or taxable services at another rate. State and local governments will accept responsibility for notice of rate and boundary changes at restricted times.
- State tax administration of all state and local taxes. Businesses will no longer file tax returns with each local government within which it conducts business in a state. States will be responsible for the administration of all state and local taxes and the distribution of the local taxes to the local governments. A state and its local governments will use common tax bases.
- Uniform sourcing rules. The states will have uniform and simple rules as to how they will source transactions to state and local governments. The uniform rules will be destination/delivery based and uniform for tangible personal property, digital property, and services.
- Simplified exemption administration for use- and entity-based exemptions. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for paying the tax, interest and penalties for claiming incorrect exemptions. States will have a uniform exemption certificate in paper and electronic form.
- Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.
- State funding of the system. To reduce the financial burdens on sellers, states will assume responsibility for funding some of the technology models. The states are also participating in a joint business – government study of the costs of collection on sellers.

The Project proposes that states change their sales and use tax laws to conform with the simplifications as proposed by the project. Thus, the simplifications would apply to all sellers. Participation in the Streamlined Sales Tax System is voluntary for sellers who do not have a physical presence or "nexus" with a state unless Congress chooses to require

collection from all sellers for all types of commerce. Also, registration by sellers to voluntarily collect sales and use taxes will not infer that the business must collect business activity taxes, such as the corporate franchise or income tax.

The Streamlined Sales Tax System will provide sellers the opportunity to use one of three technology models. A seller may use Model 1 where a Certified Service Provider, compensated by the states, will perform all of the seller's sales tax functions. A seller may use Model 2, a Certified Automated System, to perform only the tax calculation function. A larger seller with nationwide sales that has developed its own proprietary sales tax software may use Model 3 and have its own system certified by the states collectively. However, some sellers may choose to continue to use their current systems and still enjoy the benefits of the Project's simplifications.

The Streamlined Sales Tax Project envisions two components to the legislation necessary to accomplish the Project's goals. First, states would adopt enabling legislation referred to as the Uniform Sales and Use Tax Administration Act ("Act"). The Act allows the state to enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and all types of commerce. The Act does not require any amendments to a state's sales and use tax law.

Secondly, states would amend or modify their sales and use tax laws to achieve the simplifications and uniformity required by the participating states working together. The Project refers to this legislation as the Streamlined Sales and Use Tax Agreement ("Agreement"). Some states will require only minor changes to current law to implement the requirements of the Agreement. Other states with more complicated sales tax laws may require significant changes to current law to be in accord with the Agreement.

A certificate of compliance will document each state's compliance with the provisions of the Agreement and cite applicable statutes, regulations or other authorities supporting such compliance. Public notice and comment will be provided before a state becomes part of the interstate Agreement. A state is expected to be in compliance with the requirements of the Agreement and to never substantially deviate from the requirements of the Agreement. If a state does substantially deviate, it will not be accepted into the interstate Agreement or will be expelled by the other participating states. In a voluntary system, sellers who are voluntarily collecting sales taxes for participating states may decide to no longer collect for the expelled state. Also, that state would not have a vote on changes in the Agreement.

As of July 2002, thirty-five states and the District of Columbia have enacted the Act. These states are considered the "Implementing States" and will

control the provisions of the initial Agreement. Adoption of the Agreement will require an affirmative vote of three-fifths of the Implementing States. On all other matters (e.g., amendments to the Agreement), action is final by majority vote. Matters involving interpretation of the Agreement may be brought before the Implementing States acting jointly. The Implementing States acting jointly are empowered to issue an interpretation of the Agreement, subject to approval by a majority of the states. An advisory council, including representatives from business, will advise Implementing States.

It's anticipated that states that enact the provisions of the Agreement as approved by the Implementing States in the summer of 2002 will continue as the governing states of the interstate Agreement of the future.

The project website is www.streamlinedsalestax.org.

STATUS OF STATE EFFORTS ON STREAMLINED SALES TAX PROJECT
(as of 06/17/02)

(33 States and the District of Columbia have enacted simplification legislation; 2 States have introduced legislation pending consideration)

Ⓜ Indicates SSTP Version of Legislation; ... Indicates NCSL Version of Legislation; Ⓜ Indicates Modified Act; ... Indicates Legislative Enactment; ... Indicates No Sales Tax State

STATE	LEGISLATION, DATE OF INTRODUCTION, AND SPONSOR	LEGISLATIVE STATUS	REVENUE DEPARTMENT CONTACT	OTHER INFORMATION
Alabama	SB 185 (SSTP Act only) introduced on 01/08/02 by Sen. Samples	SB 185 signed by Gov. Siegelman on 01/16/02	Mike Mason 334-242-1175	
Alaska				
Arizona	HB 2170 (SSTP Act only) introduced on 02/27/01 by Rep. Fort and Sen. Alf	HB 2170 signed into law by Gov. Fustus on 04/04/01	Mary Cehneron 504-962-1933	
Arkansas				
California				
Colorado				
Connecticut				
Delaware	NO SALES TAX			
District of Columbia	Act 42-166 (Act and Agreement)	Approved by the City Council on 11/19/01	Jared James 202-442-6008	
Florida	SB 1636 and HB 1329 introduced week of 03/19/01	HB 21 incorporating provisions from SB 1636 and HB 1329 signed into law by Gov. Bush on 06/13/01		
Georgia				
Hawaii				
Idaho				
Illinois	SB 1644 (NCSL Act only) introduced by Sen. R. ...	SB 1644 signed into law by Gov. Ryan on 08/02/01	Jim Turner 317-231-1852	
Indiana	SB 269 (NCSL Act only) introduced on 01/10/01 by Sen. Bond	SB 269 signed into law by Gov. O'Banion on 05/02/01	David Casey 512-281-6163	
Iowa	97-403 (NCSL Act only) introduced 03/08/01 by Sen. McLean	SB 2324 (modified Act) signed into law by Gov. Wiesner on 05/10/02	Richard Cron 785-296-3081	
Kansas	SB 400 (Modified Act only) introduced in 2002	SB 540 introduced in the language of SB 472 was signed into law by Gov. Graves on 05/20/02	Charlene Quarles 502-562-6943	
Kentucky	HR 357 (SSTP Act) introduced on 02/20/01 by Rep. Mobley	HB 387 signed into law by Gov. Patton on 03/13/01	Adrian Tangrey 502-562-6943	
Louisiana	HB 994 (SSTP Act) introduced on 03/29/01 by Rep. ...	HB 994 signed by Gov. Foster on 05/02/01	Scott Murray 202-524-9032	
Maine	LD 1872 (SSTP Act) introduced in Feb. 2002 by Sen. Ogline and Rep. Gurn	Gov. King signed legislation into law on 03/01/02		
Maryland	HB 1364 (NCSL Act only) introduced on 02/23/01	HR 1364 approved by House on 03/18/01, approved by Senate on 04/04 signed by Gov. Gendelson on 05/18/01		

STATE	LEGISLATION, DATE OF INTRODUCTION, AND SPONSOR	LEGISLATIVE STATUS	REVENUE DEPARTMENT CONTACT	OTHER INFORMATION
Massachusetts	HB 527 (SSIF Act only) introduced on 01/03/01 by Rep. Travie	Referred to the Committee on Taxation and Finance. Scheduled for a hearing on 09/20/01.	Nancy Fallon 617-241-2714	
Michigan	SB 433 (Modified Act only) introduced on 04/28/01 by Sen. Ermonie; HB 5060 (Initially identical to SB 433) introduced in mid-September by Rep. Allen	09/20/01: approved by House on 10/04/01; Gov. Engler signed legislation on 10/05/01		
Minnesota	SB 1225 by Sen. Rest HB 1418 by Rep. Adams introduced on 09/08/01 (SSIF Act and Agreement)	Legislation approved as a part of H.R. 1 on 06/28/01; signed by Gov. Ventura on 06/29/01	Jerry Engel 855-275-3852	
Mississippi	HB 603 (NCSL Act) introduced on 02/15/01 by Reps. Gray and Hemley	HB 1150 containing the NCSL Act introduced into law by Gov. Rothen on June 14, 2002		
Montana	NO SALES TAX			
Nebraska	LB 172 (SSIF Act only) introduced on 01/19/01 by the Revenue Committee	Signed by Gov. Labaree on 05/01/01	Mary Jane Ely 402-471-5804	LB 172 made two changes to the Act—gives the Governor authority to enter into Agreement and requires notification of Agreement by the Legislature before state can participate
Nevada	AB 483 (modified Act only) introduced on 03/19/01 by Asst. Dir. Caldwell; Degastie & Freely and Sens. McGinness, Coffin and Bonner	Gov. Guinn signed AB 483 into law on 06/05/01		The agreement will fall upon the jurisdiction of the State's independent law. Any changes to definitions preempting gov. will require Gov. to take action before Legislature. This is a significant jurisdictional shift that will be required.
New Hampshire	NO SALES TAX			
New Jersey	A-4024 (introduced by Asst. Dir. Budgin & Larned and S-7770 (introduced by Sens. Inverso and Mathiasen) introduced week of 1/26/01; both bills approved by Finance and Appropriations committees on 12/13/01; further action could occur this week at 1/24/01	Gov. DiFrancesco signed A-4024 into law on 01/08/02	Nancy Fox 609-633-3723	
New Mexico				
New York	SB 144 (SSIF Act and Agreement) introduced on 02/14/01 by Sen. Kim	SB 144 signed by Gov. Casady on 09/03/01	Sabra Pares 919-750-0237	
North Carolina	SB 2435 (NCSL Act) introduced on 02/06/01 by Sen. Cook and Sen. Mathis	SB 2435 signed by Gov. Heaven on 04/23/01	Gail Anderson 701-228-3471 Wiles Voelberg 701-328-3011	
Ohio	SB 425 (NCSL Act) introduced by Sen. Gleason on 06/28/01	SB 425 signed by Gov. Taft on 03/22/02	Bill Heinenberger 514-466-4810	

STATE	LEGISLATION, DATE OF INTRODUCTION, AND SPONSOR	LEGISLATIVE STATUS	REVENUE DEPARTMENT CONTACT	OTHER INFORMATION
Oklahoma	SB 703 (NCSL Act) introduced by Sen. Mission	SB 588 signed by Gov. Keating on 05/24/01		
Oregon	HB 900 (NCSL Act) introduced on 03/14/01 by Rep. Stell	HB 900 referred to Intergovernmental Affairs Committee	Tom Armstrong 717-697-1959 or Tom Kinnett 717-787-1332	
Rhode Island	HB 5164 introduced on 08/05/01	HB 5164 signed by Gov. Altonis on 07/10/01	Bob Geruso 401-222-3050	
South Carolina		Legislation is being drafted and discussed, but introduction date not known	Meredith Cleland	
South Dakota	HB 1001 (SSRP Act) and conforming amendments introduced on 6/18/02	HB 1001 signed by Gov. Janklow on 02/25/02	Scott Peterson 605-773-3311	
Tennessee	HB 1459 (NCSL Act) introduced on 02/14/01 by Rep. Klaser; SB 1722 (NCSL Act) introduced on 02/14/01 by Sen. Cooper	HB 1459 signed by Gov. Sununu on 05/30/01	Loren Chumley 615-741-8436	
Texas	HB 1835 (NCSL Act) introduced on 02/21/01 by Rep. Olivera; SB 1182 introduced by Sen. Van de Harte on 04/15/01	HB 1835 signed by Gov. Perry on 05/15/01		
Utah	SB 174 introduced by Sen. Sullivan	SB 174 signed into law by Gov. Leavitt on 07/29/01	Bruce Johnson 801-226-5801	
Vermont	HB 571 (SSRP Act) introduced by Rep. Washburn 03/01/01	Provisions of the Uniform Act have been included in H 771, signed into law by Gov. Dean on 08/07/02	Chris Phillips 802-226-2532	
Virginia	SB 156 (Series of the Assembly voting participation in the SSRP) introduced in the legislature on 02/02	SB 588 signed into law by Gov. Warner on 04/02/02		
Washington	HB 2918 introduced on 01/22/02 by Rep. Sullivan; referred to Finance; SB 6342 introduced on 01/16/02 by Sen. Pullen	Legislation signed into law by Gov. Locke on 03/28/02	Terrance Smith 360-753-4186	
West Virginia	HB 1008 and SB 1535 (NCSL Act) introduced on 01/17/02	SB 1535 signed into law by Gov. Wise on 03/07/02	Dale Sledge 204-524-5325	
Wisconsin	HB 117 and SB 153 introduced by Joint Committee on Intergovernmental Policy; HB 317 introduced on 04/12/01; SB 152 introduced on 04/15/01	McCallum signed MFA lettered bill reintro. SSRP language into law on 08/30/01	808-269-6756	Gov. Deft. continuing meetings with stakeholders. Re: Deft. has put together talking points and information for insertion in business community newsletters - effort well received
Wyoming	HB 259 (SSRP Act and Agreement) introduced on 01/23/01 by Rep. Hines and Sen. Pelt	HB 259 signed into law by Gov. DeWing on 03/01/01, effective date of July 1, 2002	Dan Noble 307-777-5287	

**UNIFORM SALES AND USE TAX
ADMINISTRATION ACT
As Approved December 22, 2000
(Amended January 24, 2001)**

SECTION 1 TITLE

Section 1 through Section 9 shall be known as and referred to as the “Uniform Sales and Use Tax Administration Act.”

SECTION 2 DEFINITIONS

As used in this act:

- a. “Agreement” means the Streamlined Sales and Use Tax Agreement.
- b. “Certified Automated System” means software certified jointly by the states that are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.
- c. “Certified Service Provider” means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller’s sales tax functions.
- d. “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.
- e. “Sales Tax” means the tax levied under (CITE SPECIFIC STATUTE).
- f. “Seller” means any person making sales, leases, or rentals of personal property or services.
- g. “State” means any state of the United States and the District of Columbia.
- h. “Use Tax” means the tax levied under (CITE SPECIFIC STATUTE).

SECTION 3 LEGISLATIVE FINDING (OPTIONAL)

The (LEGISLATIVE BODY) finds that this State should enter into an agreement with one or more states to simplify and modernize sales and use

tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

SECTION 4 AUTHORITY TO ENTER AGREEMENT

The (STATE TAXING AUTHORITY) is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the Agreement, the (STATE TAXING AUTHORITY) is authorized to act jointly with other states that are members of the Agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The (STATE TAXING AUTHORITY) is further authorized to take other actions reasonably required to implement the provisions set forth in this Act. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The (STATE TAXING AUTHORITY) or the (AUTHORITY'S) designee is authorized to represent this state before the other states that are signatories to the Agreement.

SECTION 5 RELATIONSHIP TO STATE LAW

No provision of the Agreement authorized by this Act in whole or part invalidates or amends any provision of the law of this state. Adoption of the Agreement by this State does not amend or modify any law of this State. Implementation of any condition of the Agreement in this state, whether adopted before, at, or after membership of this state in the Agreement, must be by the action of this state.

SECTION 6 AGREEMENT REQUIREMENTS

The (STATE TAXING AUTHORITY) shall not enter into the Streamlined Sales and Use Tax Agreement unless the Agreement requires each state to abide by the following requirements:

- a. Uniform State Rate. The Agreement must set restrictions to achieve over time more uniform state rates through the following:
 - 1. Limiting the number of state rates.
 - 2. Limiting the application of maximums on the amount of state tax that is due on a transaction.
 - 3. Limiting the application of thresholds on the application of state tax.
- b. Uniform Standards. The Agreement must establish uniform standards for the following:
 - 1. The sourcing of transactions to taxing jurisdictions.
 - 2. The administration of exempt sales.
 - 3. The allowances a seller can take for bad debts.
 - 4. Sales and use tax returns and remittances.
- c. Uniform Definitions. The Agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.
- d. Central Registration. The Agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- e. No Nexus Attribution. The Agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- f. Local Sales and Use Taxes. The Agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:
 - 1. Restricting variances between the state and local tax bases.
 - 2. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to

- independent audits from local taxing jurisdictions.
- 3. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.
- 4. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.
- i. Monetary Allowances. The Agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.
- j. State Compliance. The Agreement must require each state to certify compliance with the terms of the Agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.
- k. Consumer Privacy. The Agreement must require each state to adopt a uniform policy for Certified Service Providers that protects the privacy of consumers and maintains the confidentiality of tax information.
- l. Advisory Councils. The Agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the Agreement.

SECTION 7 COOPERATING SOVEREIGNS

The Agreement authorized by this Act is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

SECTION 8 LIMITED BINDING AND BENEFICIAL EFFECT

- a. The Agreement authorized by this Act binds and inures only to the benefit of this State and the other member states. No person, other than a member state, is an intended beneficiary of the Agreement. Any benefit to a person other than a state is established by the law of this State and the other member states and not by the terms of the Agreement.
- b. Consistent with subsection (a), no person shall have any cause of action or defense under the Agreement or by virtue of this State's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this State, or any political subdivision of this State on the ground that the action or inaction is inconsistent with the Agreement.
- c. No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

SECTION 9 SELLER AND THIRD PARTY LIABILITY

- a. A Certified Service Provider is the agent of a seller, with whom the Certified Service Provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the Certified Service Provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

A seller that contracts with a Certified Service Provider is not liable to the state for sales or use tax due on transactions processed by the Certified Service Provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the Certified Service Provider. A seller is subject to audit for transactions not processed by the Certified Service Provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the Certified Service Provider's system is functioning properly and the extent to which the seller's transactions are being processed by the Certified Service Provider.

- b. A person that provides a Certified Automated System is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the Certified Automated System. A seller that uses a Certified Automated System remains responsible and is liable to the state for reporting and remitting tax.

- c. A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

SECTIONS 10 THROUGH ____

INDIVIDUAL STATE AMENDMENTS

These sections are reserved for each individual state to make statutory amendments necessary to bring it into compliance with the Streamlined Sales and Use Tax Agreement. Some examples would be amending the state's current sourcing rule to comply with the new uniform rule, making the effective dates of local rate changes to the first day of a calendar quarter and providing for a sixty (60) day notice, or enacting exemptions necessary to preserve, to the extent consistent with the uniform definitions, current non-taxability of various goods and services.

SECTION ____ EFFECTIVE DATE (OPTIONAL)

Sections 1 through 9 of this Act are effective upon ratification (or whatever phrase is used in the state to indicate that the act is effective immediately) or specific date.

Sections 10 through ____ of this Act becomes effective on the date this State becomes a member of the Streamlined Sales and Use Tax Agreement.

**STREAMLINED SALES AND USE TAX
AGREEMENT**

**AS APPROVED
DECEMBER 22, 2000**
(Amended January 24, 2001)

TABLE OF CONTENTS

Article I Purpose and Principle

100	Title	1
102	Fundamental Purpose	1
104	Application	1

Article II Definitions

200	Agent	2
202	Agreement	2
204	Certified Automated System (CAS)	2
206	Certified Service Provider (CSP)	2
208	Model 1 Seller	2
210	Model 2 Seller	2
212	Model 3 Seller	2
214	Person	3
216	Purchaser	3
218	Registered Under This Agreement	3
220	Seller	3
222	State	3

Article III Requirements Each State Must Accept to Participate

300	Compliance	4
302	State Administration	4
304	State and Local Tax Bases	4
306	Seller Registration	4
308	State and Local Tax Levies	5
310	Uniform Sourcing Rules	8
312	Uniform Definitions	9
314	Administration of Exemptions	15
316	Uniform Tax Returns	16
318	Uniform Rules for Deductions of Bad Debts	16
320	Uniform Rules for Remittances of Funds	17
322	Confidentiality and Privacy Protections	18

Article IV Seller Registration

400	Seller Participation	20
-----	----------------------	----

402	Amnesty for Registration	20
404	Method of Remittance	21
406	Registration by an Agent	21

Article V
Provider and System Certification

500	Certification of Service Providers and Automated Systems	22
-----	--	----

Article VI
Monetary Allowances for Participation

600	Monetary Allowances for CSPs and Sellers	23
602	Monetary Allowance Under Model 1	23
604	Monetary Allowance for Model 2 Sellers	23
606	Monetary Allowance for Model 3 Sellers and All Other Sellers Not Under Models 1 or 2	24

Article VII
State Entry and Withdrawal

700	Entry Into Agreement	25
702	Certification of Compliance	25
704	Initial Adopting States	25
706	Conditions for Membership	25
708	Agreement Administration	25
710	Withdrawal of Membership	26
712	Expulsion of Member States	26
714	Continued Role of Streamlined Sales Tax Project and State Advisory Committee	26
716	Effective Date	27

Article VIII
Amendments and Interpretations

800	Amendments to Agreement	28
802	Interpretations of Agreement	28

Article IX
Relationship of Agreement to Member States and Persons

900	Cooperating Sovereigns	29
902	Relationship to State Law	29
904	Limited Binding and Beneficial Effect	29

906	Final Determinations	29
-----	----------------------	----

ARTICLE X

Review of Costs and Benefits Associated with the System

1000	Review of Costs and Benefits	30
------	------------------------------	----

Appendix A

	Letter of Intent	31
--	------------------	----

STREAMLINED SALES AND USE TAX AGREEMENT

ARTICLE I PURPOSE AND PRINCIPLE

100 TITLE

This multistate Agreement shall be referred to, cited and known as the Streamlined Sales and Use Tax Agreement.

102 FUNDAMENTAL PURPOSE

It is the purpose of this Agreement to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

- a. State level administration of sales and use tax collections.
- b. Uniformity in the state and local tax bases.
- c. Central, electronic registration system for all member states.
- d. Simplification of state and local tax rates.
- e. Uniform sourcing rules for all taxable transactions.
- f. Uniform definitions within tax bases.
- g. Simplified administration of exemptions.
- h. Simplified tax returns.
- i. Uniform rules for deductions of bad debts.
- j. Simplification of tax remittances.
- k. Protection of consumer privacy.

104 APPLICATION

This Agreement applies only to the levy of sales and use taxes identified in the Uniform Sales and Use Tax Administration Act enacted by each member state.

ARTICLE II DEFINITIONS

The following definitions apply in this Agreement:

200 AGENT

A person appointed by a seller to represent the seller before the member states.

202 AGREEMENT

The Streamlined Sales and Use Tax Agreement and as subsequently amended.

204 CERTIFIED AUTOMATED SYSTEM (CAS)

Software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

206 CERTIFIED SERVICE PROVIDER (CSP)

An agent certified under the Agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

208 MODEL 1 SELLER

A seller that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

210 MODEL 2 SELLER

A seller that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

212 MODEL 3 SELLER

A seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars (or a lower amount which may be agreed to by the states acting jointly), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this section, a seller includes an affiliated group of sellers using the same proprietary system.

214 PERSON

An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

216 PURCHASER

A person to whom a sale of personal property is made or to whom a service is furnished.

218 REGISTERED UNDER THIS AGREEMENT

Registration by a seller with the member states under the central registration system provided in Article IV of this Agreement.

220 SELLER

A person making sales, leases, or rentals of personal property or services.

222 STATE

Any state of the United States and the District of Columbia.

**ARTICLE III
REQUIREMENTS EACH STATE MUST
ACCEPT TO PARTICIPATE**

300 COMPLIANCE

As a requisite to entering into and remaining a member of the Agreement, each State must comply with the provisions of this Agreement in accordance with the provisions of Article VII of this Agreement.

302 STATE ADMINISTRATION

Each State must provide state level administration of sales and use taxes. Sellers are only required to register with, file returns with, and remit funds to the state taxing authority. The State must collect any local taxes and distribute them to the appropriate taxing jurisdictions. Member states must conduct, or authorize others to conduct on their behalf, all audits of the sellers registered under this Agreement, and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered under this Agreement.

304 STATE AND LOCAL TAX BASES

- a. Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the State must have a common tax base. After December 31, 2005, the tax base for local jurisdictions must be identical to the state tax base, unless federal law prohibits the local jurisdictions from taxing a transaction taxed by the State.
- b. This section does not apply to sales or use taxes levied on the transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes.

306 SELLER REGISTRATION

Each State must participate in an online sales and use tax registration system in cooperation with the other member states. Under this system:

- a. A seller registering under the Agreement is registered in each of the member states.
- b. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a State in which the seller has no legal requirement to register.
- c. A written signature from the seller is not required.
- d. An agent may register a seller under uniform procedures adopted by the member states.

- e. A seller may cancel its registration under the system at any time under uniform procedures adopted by the member states. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

308 STATE AND LOCAL TAX LEVIES

a. To reduce the complexity and administrative burden of collecting sales and use taxes, all member states must:

1. Lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:
 - a. Provide sellers with as much advance notice as practicable of a rate change.
 - b. Limit the effective date of a rate change to the first day of a calendar quarter.
 - c. Notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.

Failure of a seller to receive notice or failure of a State to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.
2. Provide that the effective date of rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows:
 - a. For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date.
 - b. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.
3. Not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. A State may continue to have caps and thresholds until that date.
4. Not have multiple state tax rates on items of personal property or services after December 31, 2005. A State may continue to have a generally applicable state tax rate and additional state rates until that date.
5. Provide that the tax rate equals the combination of the state and local sales tax rates. In computing the tax to be collected as the result of any transaction, the tax amount must be carried to the third decimal place. Amounts of tax less than one-half of one cent shall be disregarded and amounts of tax of one-half cent or more shall be considered an additional cent. Sellers may elect to compute the tax due on transactions on an item or invoice basis.

6. The provisions of paragraphs (3) and (4) of this subsection do not apply to sales or use taxes levied on the transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes.
- b. Member states that have local jurisdictions that levy a sales or use tax must:
1. Not have more than one sales tax rate or more than one use tax rate per local taxing jurisdiction. If the local jurisdiction levies both a sales tax and a use tax, the rates must be identical.
 2. Not place caps or thresholds on the application of local sales or use tax rates or exemptions that are based on the value of the transaction or item.
 3. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty (60) days' notice to sellers.
 4. Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of 120 days notice to sellers.
 5. For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty (60) days notice to sellers.
 6. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database must include a description of the change and the effective date of the change for sales and use tax purposes.
 7. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the State. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined jointly by the member states.
 8. Provide and maintain a database that assigns each five (5) digit and nine (9) digit zip code within the State to the proper tax rates and jurisdictions. The State must apply the lowest combined tax rate imposed in the zip code area within the state if the area includes more than one tax rate in any level of taxing jurisdiction. If a nine (9) digit zip code designation is not available for a street address or if a seller is unable to determine the nine (9) digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five (5) digit zip code area. For the purposes of this section, there is a

rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine (9) digit zip code designation by utilizing software approved by the member states that makes this designation from the street address and the five (5) digit zip code of the purchaser.

9. Participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, at 4 U.S.C.A. § 119. At a future date, member states acting jointly may allow a member state to require sellers registered under this agreement to use an address-based system provided by that member state. If any State develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in paragraph 8 of this section.
10. The provisions of paragraphs (1) and (2) of this subsection do not apply to sales or use taxes levied on the transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes.

c. The member states must relieve sellers and Certified Service Providers from liability to the State or local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or Certified Service Provider relying on erroneous data provided by a State on tax rates, boundaries, or taxing jurisdiction assignments. A State that provides an address-based system for assigning taxing jurisdictions pursuant to paragraph (b)(9) of this section or pursuant to the federal Mobile Telecommunications Sourcing Act will not be required to provide liability relief for errors resulting from reliance on the information provided by the State under the provisions of paragraph (b)(8) of this section.

d. The electronic databases, provided for in paragraphs (b)(6), (b)(7), (b)(8), and (b)(9) of this section, must be in a downloadable format approved by the member states acting jointly.

e. The provisions of paragraphs (b)(8) and (b)(9) do not apply when the purchased product is received by the purchaser at the business location of the seller.

f. The databases provided by (b)(6), (b)(7), and (b)(8) are not a requirement of a State prior to entering into the Agreement. The effective dates for availability and use of the databases will be determined by the member states acting jointly.

g. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the State must not apply an exemption after December

31, 2003 unless the item exempted has been defined under the provisions of Section 312. Further, if the State provides local jurisdictions with the option of levying a sales or use tax, the State must provide notice of the exemption period at least sixty (60) days prior to the first day of the calendar quarter in which the exemption period will begin and apply the exemption to both state and local tax bases.

310 UNIFORM SOURCING RULES

The member states agree to require sellers to source the sale (including the lease or rental) of a product in accordance with the following provisions. These provisions apply regardless of the characterization of a product as tangible personal property, a digital good, or a service (excluding, for the present, telecommunications). These provisions only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of a product. These provisions do not affect the obligation of a seller as purchaser to remit tax on the use of the product to the taxing jurisdictions of that use.

- a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.
- c. When (a) and (b) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- d. When (a), (b), and (c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- e. When none of the previous rules of (a), (b), (c), or (d) apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).
- f. Notwithstanding the previously stated rules, a business purchaser that is not a holder of a direct pay permit that knows at the time of its

purchase of a digital good or a service that the digital good or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form).

1. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
 2. A purchaser delivering the MPU Exemption Form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.
 3. The MPU Exemption Form will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principle of subparagraph (f)(2) and the facts existing at the time of the sale) until it is revoked in writing.
 4. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form to the seller. A direct pay permit holder shall follow the provisions of subparagraph (f)(2) in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.
- g. The terms "receive" and "receipt" mean:
1. taking possession of tangible personal property,
 2. making first use of services, or
 3. taking possession or making first use of digital goods, whichever comes first.
- The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.
- h. This section is reserved for a specific sourcing rule applicable to telecommunications and possibly additional specific sourcing rules for other services as necessary to effect the intent of providing for uniform sourcing of transactions. Until the specific sourcing rule for telecommunications is adopted, the sourcing rules presently applicable to telecommunications will remain in effect in each State.
- i. This section does not apply to sales or use taxes levied on the transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes. These items must be sourced according to the requirements of each member state.

312 UNIFORM DEFINITIONS

A. Nothing in this Agreement shall be construed to require any State to tax or not tax any item or service, except that a State must use the definitions specified by the Agreement if it chooses to tax or not tax the items or services covered by those definitions. A State must include all items specifically listed within a definition as provided herein. A State may not vary from any definition except as otherwise specifically provided by this Agreement. The terms “includes” and “including” when used in a definition contained in this section does not exclude other things otherwise within the meaning of the term defined.

Notwithstanding the foregoing requirements of this subsection or any other provision of this Agreement, a State may maintain its tax treatment of food in a manner that differs from the definitions provided in paragraph (D) of this section, provided its taxation or exemption of food is based on a prohibition or requirement of that State's Constitution that exists on the effective date of this Agreement.

B. CLOTHING AND RELATED ITEMS

1. **“Clothing”** shall mean all human wearing apparel suitable for general use. The following list is intended to be examples and not an all inclusive list of possibilities.

a. Clothing shall include:

1. Aprons, household and shop
2. Athletic supporters
3. Baby receiving blankets
4. Bathing suits and caps
5. Beach capes and coats
6. Belts and suspenders
7. Boots
8. Coats and jackets
9. Costumes
10. Diapers (children and adults - including disposables)
11. Ear muffs
12. Footlets
13. Formal wear
14. Garters and garter belts
15. Girdles
16. Gloves and mittens for general use
17. Hats and caps
18. Hosiery
19. Insoles for shoes
20. Lab coats
21. Neckties
22. Overshoes
23. Pantyhose
24. Rainwear
25. Rubber pants

- 26. Sandals
- 27. Scarves
- 28. Shoes and shoe laces
- 29. Slippers
- 30. Sneakers
- 31. Socks and stockings
- 32. Steel toed shoes
- 33. Underwear
- 34. Uniforms, athletic and non-athletic
- 35. Wedding apparel

b. Clothing shall not include:

- 1. Belt buckles sold separately
- 2. Costume masks sold separately
- 3. Patches and emblems sold separately
- 4. Sewing equipment and supplies (knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, thimbles)
- 5. Sewing materials that become part of clothing (buttons, fabric, lace, thread, yarn, zippers)

2. The following definitions are mutually exclusive of "clothing" and each other.

- a. **"Clothing accessories or equipment"** shall mean incidental items worn on the person or in conjunction with clothing. The following list is intended to be examples and not an all inclusive list of possibilities.

Clothing accessories shall include:

- 1. Briefcases
- 2. Cosmetics
- 3. Hair notions, including barrettes, hair bows, hair nets, etc.
- 4. Handbags
- 5. Handkerchiefs
- 6. Jewelry
- 7. Sun glasses, non-prescription
- 8. Umbrellas
- 9. Wallets
- 10. Watches
- 11. Wigs and hair pieces

- b. **"Sport or recreational equipment"** shall mean items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. The following list is intended to be examples and not an all inclusive list of possibilities.

Sport or recreational equipment shall include:

1. Ballet and tap shoes
2. Cleated or spiked athletic shoes
3. Gloves (baseball, bowling, boxing, hockey, golf, etc.)
4. Goggles
5. Hand and elbow guards
6. Life preservers and vests
7. Mouth guards
8. Roller and ice skates
9. Shin guards
10. Shoulder pads
11. Ski boots
12. Waders
13. Wetsuits and fins

- c. **“Protective equipment”** shall mean items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. The following list is intended to be examples and not an all inclusive list of possibilities.

Protective equipment shall include:

1. Breathing masks
2. Clean room apparel and equipment
3. Ear and hearing protectors
4. Face shields
5. Finger guards
6. Hard hats
7. Helmets
8. Paint or dust respirators
9. Protective gloves
10. Safety glasses and goggles
11. Safety belts
12. Tool belts
13. Welders gloves and masks

C. **DELIVERY CHARGES**

“Delivery charges” means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

D. **FOOD AND FOOD INGREDIENTS**

1. **“Food and food ingredients”** means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include:
 - a. **“Alcoholic Beverages”** which means beverages that are suitable for human consumption and contain one-half of one per cent or more of alcohol by volume, and
 - b. **“Tobacco”** which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.
2. The following definitions are categories that can be excluded from the definition of the term “food and food ingredients” and are mutually exclusive of each other.
 - a. **“Candy”** means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.
 - b. **“Dietary supplement”** means any product, other than tobacco, intended to supplement the diet that:
 1. Contains one or more of the following dietary ingredients:
 - a. a vitamin;
 - b. a mineral;
 - c. an herb or other botanical;
 - d. an amino acid;
 - e. a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - f. a concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and
 2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
 3. Is required to be labeled as a dietary supplement, identifiable by the “Supplement Facts” box found on the label and as required pursuant to 21 C.F.R §101.36.
 - c. **“Soft drinks”** means non-alcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain:
 1. milk or milk products;
 2. soy, rice, or similar milk substitutes; or

3. greater than fifty percent of vegetable or fruit juice by volume.

3. The following definitions may also be excluded from the term "food and food ingredients":

- a. **"Food sold through vending machines"** means food dispensed from a machine or other mechanical device that accepts payment;
- b. **"Prepared food"** means:
 1. Food sold in a heated state or heated by the seller;
 2. Two or more food ingredients mixed or combined by the seller for sale as a single item; or
 3. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

"Prepared food" does not include food that is only sliced, repackaged, or pasteurized by the seller.

E. PURCHASE PRICE

"Purchase price" applies to the measure subject to use tax and has the same meaning as "sales price."

F. RETAIL SALE

"Retail sale" or **"sale at retail"** means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

G. SALES PRICE

1. **"Sales price"** applies to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- a. The seller's cost of the property sold;
- b. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- c. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- d. Delivery charges;
- e. Installation charges; and

- f. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.
2. States may exclude from the sales price the amounts received for charges included in paragraphs (c) through (f) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser.
3. "Sales price" shall not include:
- a. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
 - b. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and
 - c. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

314 ADMINISTRATION OF EXEMPTIONS

- a. To reduce the complexity and administrative burden of transactions exempt from sales or use tax, the following provisions must be followed when a purchaser claims an exemption:
- 1. The seller must obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the member states acting jointly.
 - 2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper certificate is used.
 - 3. The seller must use the standard form for claiming an exemption electronically as adopted jointly by the member states.
 - 4. The seller must obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
 - 5. A member state may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number which must be presented to the seller at the time of the sale.
 - 6. The seller must maintain proper records of exempt transactions and provide them to a member state when requested.

- b. The member states must relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax.

316 UNIFORM TAX RETURNS

To reduce the complexity and administrative burden of preparing and filing sales and use tax returns, all member states must:

- a. Require that only one return per taxing period per seller be filed for the State and all the taxing jurisdictions within the State.
- b. Require that returns be due no sooner than the 20th day of the month following the month in which the transaction occurred.
- c. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in a simplified format which does not include more data fields than permitted by the member states acting jointly. States may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed jointly by the member states.
- d. Allow any seller that is registered under this Agreement, which does not have a legal requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit its sales and use tax returns as follows:
 - 1. Upon registration, the State must provide to the seller the returns required by that State.
 - 2. A member state may require a seller to file a return anytime within one (1) year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.
 - 3. In addition to the returns required in paragraph (d)(2) of this section, a State may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for a State of \$1,000 or more.
- e. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.
- f. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2003.

318 UNIFORM RULES FOR DEDUCTIONS OF BAD DEBTS

In order to reduce the complexity and administrative burden of taking a deduction for bad debts incurred by a seller, the member states must:

- a. In computing the amount of tax due, allow a seller to deduct bad debts from the total amount upon which the tax is calculated for any return. Any deduction taken or refund paid which is attributed to bad debts shall not include interest.
- b. Define for purposes of this section, "bad debt" to mean any portion of the purchase price of a transaction that a seller has reported as taxable and for which the seller legally claims as a bad debt deduction for federal income tax purposes. Bad debts include, but are not limited to, worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to third parties for collection, and repossessed property.
- c. Allow bad debts to be deducted within twelve months following the month in which the bad debt has been charged off for federal income tax purposes. For purposes of this paragraph, "charged off for federal income tax purposes" includes the charging off of unpaid balances due on accounts as uncollectible, or declaring as uncollectible such unpaid balance due on accounts in the instance of a seller who is not required to file federal income tax returns.
- d. Require that, if a deduction is taken for a bad debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.
- e. Allow a seller to obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within a twelve month period defined by that bad debt.
- f. Where a seller's filing responsibilities have been assumed by a Certified Service Provider, allow the service provider to claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP must credit or refund the full amount of any bad debt allowance or refund received to the seller.
- g. Provide that, for the purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first to the price of the property or service and sales tax thereon, proportionally, and secondly to interest, service charges, and any other charges.

320 UNIFORM RULES FOR REMITTANCES OF FUNDS

To reduce the complexity and administrative burden of remitting funds to the states, the member states agree to:

- a. Require only one remittance per return except as provided in this paragraph. If any additional remittance is required, it may only be required from sellers that collect more than \$30,000 in sales and use taxes in the State during the preceding calendar year as provided herein. The amount of the additional remittance must be determined through a calculation method rather than actual collections and must not require the filing of an additional return.
- b. Require, at each member state's discretion, all remittances from sellers under Models 1, 2, and 3 to be remitted electronically.
- c. Allow for electronic payments by both ACH Credit and ACH Debit.
- d. Provide an alternative method for making "same day" payments if an electronic funds transfer fails.
- e. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are due to that state on the succeeding business day.
- f. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the member states acting jointly.

322 CONFIDENTIALITY AND PRIVACY PROTECTIONS

- a. The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with Model 1 sellers.
- b. As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges; the term "personally identifiable information" means information that identifies a person; and the term "anonymous data" means information that does not identify a person.
- c. The member states agree that a fundamental precept in Model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a Certified Service Provider must perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers. To preserve the privacy of consumers, member states agree that, with respect to Model 1:
 1. A Certified Service Provider's system must be designed and tested to ensure that the fundamental precept of anonymity is respected, and that personally identifiable information is only used when necessary for the administration of Model 1 and only when the Certified Service Provider has clear and conspicuous notice of its use.

2. Certified Service Providers must provide consumers clear and conspicuous notice of their information practice, including what information they collect, how they collect the information, how they use the information, and whether they disclose the information to member states.
 3. Certified Service Providers' retention of personally identifiable information will be limited to exemption claims by reason of a consumer's status or intended use of the goods or services purchased, to investigations of fraud, and to the extent necessary, to ensure the reliability of the Certified Service Providers' technology in Model 1.
 4. Certified Service Providers must provide such technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.
 5. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate authorities.
 6. When personally identifiable information is retained for limited purposes by or on behalf of the member states, in the absence of exigent circumstances, individuals should be provided with reasonable notification of such retention and should be afforded reasonable access to their own data and a right to correct inaccurately recorded data.
 7. If anyone other than a member state seeks to discover personally identifiable information, then, in the absence of exigent circumstances, a reasonable and timely effort should be made to notify the individual of such request.
- d. The member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this Agreement does not enlarge or limit the member states' authority to:
1. Conduct audits or other review as provided under this agreement and state law.
 2. Provide records pursuant to a member state's Freedom of Information Act, disclosure laws with governmental agencies, or other regulations.
 3. Prevent, consistent with state law, disclosures of confidential taxpayer information.
 4. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service.
 5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

- e. Without limitation, this privacy policy does not enlarge or limit any existing or future privacy policies of sellers in Model 1.

ARTICLE IV SELLER REGISTRATION

400 SELLER PARTICIPATION

- a. In order to simplify the seller registration process, the member states will provide an online registration system that will allow sellers to register in all the member states.
- b. By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into the member states, including member states joining after the seller's registration. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously collected on behalf of the State.
- c. In member states where the seller has a requirement to register prior to registering under this Agreement, the seller may be required to provide additional information to complete the registration process or the seller may choose to register directly with those states.
- d. Registration with the central registration system and the collection of sales and use taxes in the member states will not be used as a factor in determining whether the seller has nexus with a State for any tax.

402 AMNESTY FOR REGISTRATIONS

- a. Subject to the limitations stated below in this section and the following sections:
 - 1. A State participating in the Streamlined Sales and Use Tax Agreement will provide amnesty for uncollected or unpaid sales and/or use tax to a seller who registers to pay and/or to collect and remit applicable sales and/or use tax on sales made to purchasers in the State in accordance with the terms of the Agreement, provided that the seller was not so registered in that State in the twelve-month period preceding the commencement of the State's participation in the Agreement.
 - 2. The amnesty will preclude assessment for uncollected or unpaid sales and/or use tax together with penalty or interest for sales made during the period the seller was not registered in the State,

provided registration occurs within twelve months of the effective date of the State's participation in the Agreement.

3. Amnesty similarly will be provided by any additional State that joins the Agreement after the seller has registered.

- b. The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.
- c. The amnesty is not available for sales and/or use taxes already paid or remitted to the State or to taxes collected by the seller.
- d. The amnesty is fully effective absent the seller's fraud or intentional misrepresentation of a material fact as long as the seller continues registration and continues payment and/or collection and remittance of applicable sales and/or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability is tolled during this thirty-six month period.
- e. The amnesty is applicable only to sales and/or use taxes due from a seller in its capacity as a seller and not to sales and/or use taxes due from a seller in its capacity as a buyer.
- f. A State participating in the Agreement may allow amnesty on terms and conditions more favorable to a seller.

404 METHOD OF REMITTANCE

When registering, the seller may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

- a. MODEL 1 Seller selects a Certified Service Provider (CSP) as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.
- b. MODEL 2 Seller selects a Certified Automated System (CAS) to use which calculates the amount of tax due on a transaction.
- c. MODEL 3 Seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.

406 REGISTRATION BY AN AGENT

A seller may be registered by an agent. Such appointment must be in writing and submitted to a member state if requested by the member state.

**ARTICLE V
PROVIDER AND SYSTEM CERTIFICATION**

500 CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS

- a. In order to facilitate the provisions of this Agreement, the member states acting jointly will certify automated systems and service providers to aid in the administration of sale and use tax collections.
- b. The member states acting jointly may certify a person as a Certified Service Provider if the person meets all of the following requirements:
 - 1. The person uses a Certified Automated System.
 - 2. The person integrates its Certified Automated System with the system of a seller for whom the person collects tax so that the tax due on a sale is determined at the time of the sale.
 - 3. The person agrees to remit the taxes it collects at the time and in the manner specified by the member states.
 - 4. The person agrees to file returns on behalf of the sellers for whom it collects tax.
 - 5. The person agrees to protect the privacy of tax information it obtains.
 - 6. The person enters into a contract with the member states and agrees to comply with the terms of the contract.
- c. The member states acting jointly may certify a software program as a Certified Automated System if the member states determine that the program meets all of the following requirements:
 - 1. It determines the applicable state and local sales and use tax rate for a transaction, based on the uniform sourcing provision established under the Agreement.
 - 2. It determines whether or not an item is exempt from tax.
 - 3. It determines the amount of tax to be remitted for each taxpayer for a reporting period.
 - 4. It can generate reports and returns as required by the member states.
 - 5. It can meet any other requirement set by the member states.
- d. The member states acting jointly may establish one or more sales tax performance standards for multistate sellers that meet the eligibility criteria set by the member states and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

**ARTICLE VI
MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR
SALES TAX COLLECTION**

600 MONETARY ALLOWANCES FOR CSPs AND SELLERS

This Article addresses the monetary allowances to be provided by a member state to a CSP in Model 1 or to a seller in Model 2 or Model 3 for implementing new technological models. These allowances shall be subject to review by the member states as the efficiency of technology improves and economies of scale arise from increasing transaction volumes processed through these systems. The non-monetary benefits that accrue to all sellers that participate in the Agreement are addressed in other sections. These non-monetary benefits include limitations on the assessment of back taxes, reduced audit scope, uniform returns, and other methods of tax compliance simplification.

602 MONETARY ALLOWANCE UNDER MODEL 1

- a. The member states agree to provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract the member states sign with the CSP. The details of the monetary allowance are provided through the contract process. The allowance will be funded entirely from money collected in Model 1.
- b. The member states anticipate a monetary allowance to a CSP to be one or more of the following incentives:
 1. A base rate that applies to taxable transactions processed by the CSP.
 2. For a period not to exceed twenty-four (24) months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller. "Voluntary seller" means a seller that does not have a requirement to register to collect the tax for a member state.

604 MONETARY ALLOWANCE FOR MODEL 2 SELLERS

The member states initially anticipate that they will provide a monetary allowance to sellers under Model 2 based on the following:

- a. All sellers shall receive a base rate for a period not to exceed twenty-four (24) months following the commencement of participation by a seller. The base rate will be set after the base rate has been established for Model 1. This allowance will be in addition to any discount afforded by each member state at the time.

- b. The member states anticipate a monetary allowance to a Model 2 Seller based on the following:
 - 1. For a period not to exceed twenty-four (24) months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller. "Voluntary seller" means a seller that does not have a requirement to register to collect the tax for a member state.
 - 2. Following the conclusion of the twenty-four (24) month period, a seller will only be entitled to a vendor discount afforded under each member state's law at the time the base rate expires.

606 MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER SELLERS THAT ARE NOT UNDER MODELS 1 OR 2

The member states anticipate that they will provide a monetary allowance to sellers under Model 3 and to all other sellers that are not under Models 1 or 2 based on the following:

- 1. For a period not to exceed twenty-four (24) months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller. "Voluntary seller" means a seller that does not have a requirement to register to collect the tax for a member state.
- 2. Vendor discounts afforded under each member state's law.

**ARTICLE VII
STATE ENTRY AND WITHDRAWAL**

700 ENTRY INTO AGREEMENT

Any State may apply to become a party to this Agreement by executing an adopting resolution and specifying the proposed date of entry. The applying State shall agree to abide by all terms, conditions, and requirements of the Agreement, adopt the Uniform Sales and Use Tax Administration Act, and provide certification of compliance with the terms of the Agreement along with its adopting resolution. A copy of the adopting resolution and the certification of compliance shall be provided to each member state for the purpose of obtaining the required endorsement.

702 CERTIFICATION OF COMPLIANCE

The certification of compliance shall document compliance with the provisions of this Agreement and cite applicable statutes, regulations, or other authorities supporting such compliance. Each member state shall maintain and make the instrument available for public inspection.

704 INITIAL ADOPTING STATES

This Agreement shall become effective when five (5) states have completed the prescribed adopting resolution. An initial state shall be approved by being found in compliance with the requirements of this Agreement by a vote of three-fourths majority of the other initial states.

706 CONDITIONS FOR MEMBERSHIP

The member states shall vote whether the petitioning state is in compliance to accept its petition for membership. A three-fourths vote of all the member states is required. A State is in compliance if its laws, rules or regulations, and policies are consistent with this Agreement and do not substantially deviate from the requirements set forth in this Agreement. Public notice and opportunity for comment will be given before a State is allowed to participate in the Agreement.

708 AGREEMENT ADMINISTRATION

The member states must organize to govern compliance of each State participating in the Agreement and take other actions as may be necessary to administer and implement the provisions contained herein. The member states acting jointly must appoint an advisory council to consult with in the administration of the Agreement and on issues of individual state compliance.

Members of the advisory council shall include representatives from business and any other interested persons.

710 WITHDRAWAL OF MEMBERSHIP

This Agreement shall continue in full force and effect, after its original adoption, as to each State until withdrawn by the proper officials of a State. Such withdrawal shall not be effective until the first day of a calendar quarter after a minimum of sixty (60) days' notice. Such notification shall immediately be sent to the officials of the other member states of the Agreement. However, withdrawal by one State shall not affect the Agreement among other states. Notwithstanding the withdrawal, the obligations incurred by the withdrawing State shall survive the withdrawal during its membership.

712 EXPULSION OF MEMBER STATES

Any member state may request a resolution before the member states acting jointly to expel another member state which is not in compliance with the terms of this Agreement. A resolution expelling a member state from the Agreement shall require the affirmative vote of three-fourths of the total member states, excluding the State that is the subject of the resolution. The member state that is the subject of the resolution will not be allowed to vote. Failure of a member state to vote shall be deemed a vote against the resolution of expulsion.

714 CONTINUED ROLE OF STREAMLINED SALES TAX PROJECT AND STATE ADVISORY COMMITTEE

Until such time as this Agreement becomes effective pursuant to Section 704, it may be amended by the Streamlined Sales Tax Project pursuant to Operating Rules adopted by the Project. After this Agreement becomes effective pursuant to Section 704, all states that are participating members of the Streamlined Sales Tax Project pursuant to the Operating Rules of the Project shall become the State Advisory Committee to the member states. This Committee shall continue the work of the Streamlined Sales Tax Project and shall provide input to the member states on issues regarding the inclusion of additional states into membership. If additional states wish to join the Committee, they may do so pursuant to the Operating Rules adopted by the Project or by subsequent procedures adopted by the Committee. A state may choose to cease to participate at any time. Any state that is not a member of the Committee may participate fully in the work of the Committee except that they shall not have the right to vote.

The Project and, when effective, the Committee shall work on the following issues:

1. The continued development of uniform definitions;
2. The development of a simpler, more uniform tax return;
3. The development of product codes; and

4. Other issues as agreed upon by the Project and the Committee.

716 EFFECTIVE DATE

This Agreement shall become binding and take effect upon the signing by five (5) states and their respective filing of a Certificate of Compliance reflecting compliance with the provisions hereof, including citations to applicable statutes, regulations or other authorities supporting such compliance.

**ARTICLE VIII
AMENDMENTS AND INTERPRETATIONS**

800 AMENDMENTS TO AGREEMENT

This Agreement may be amended, subject to approval, by three-fourths of the member states acting through the officials thereof authorized to enter into this Agreement. Prior to the vote, the member states acting jointly shall give public notice of the proposed amendment and opportunity for public comment.

802 INTERPRETATIONS OF AGREEMENT

Matters involving interpretation of the Agreement may be brought before the member states acting jointly by any member state or any other person. The member states acting jointly are empowered to issue an interpretation of the Agreement, subject to approval by a majority of the voting states. All interpretations issued under this section shall be published in an appendix to the Agreement with footnotes under the appropriate sections of the Agreement.

ARTICLE IX
RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

900 COOPERATING SOVEREIGNS

This Agreement is among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

902 RELATIONSHIP TO STATE LAW

No provision of this Agreement in whole or part invalidates or amends any provision of the law of a member state. Adoption of the Agreement by a member state does not amend or modify any law of the State. Implementation of any condition of this Agreement in a member state, whether adopted before, at, or after membership of a State, must be by the action of the member state. All member states remain subject to Article VI, State Entry and Withdrawal.

904 LIMITED BINDING AND BENEFICIAL EFFECT

a. This Agreement binds and inures only to the benefit of the member states. No person, other than a member state, is an intended beneficiary of this Agreement. Any benefit to a person other than a State is established by the laws of the member states and not by the terms of this Agreement.

b. Consistent with subsection (a), no person shall have any cause of action or defense under the Agreement or by virtue of a member state's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of any member state, or any political subdivision of a member state on the ground that the action or inaction is inconsistent with this Agreement.

c. No law of a member state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with this Agreement.

906 FINAL DETERMINATIONS

The determinations pertaining to this Agreement that are made by the member states are final when rendered and are not subject to any protest, appeal, or review.

ARTICLE X
REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

1000 REVIEW OF COSTS AND BENEFITS

Representatives of the member states will review costs and benefits of administration and collection of sales and use taxes incurred by states and sellers under the existing sales and use tax laws at the time of adoption of this Agreement and the proposed Streamlined Sales Tax System.

APPENDIX A

**STREAMLINED SALES AND USE TAX AGREEMENT
LETTER OF INTENT**

WHEREAS, it is in the interest of the private sector and of state and local governments to simplify and modernize sales and use tax administration;

WHEREAS, such simplification and modernization will result in a substantial reduction in the costs and complexity for sellers of personal property and services in conducting their commercial enterprises;

WHEREAS, such simplification and modernization will also result in additional voluntary compliance with the sales and use tax laws; and

WHEREAS, such simplification and modernization of sales and use tax administration is best conducted in cooperation and coordination with other states.

NOW, the undersigned representative hereby executes this intent to sign the attached draft of the Streamlined Sales and Use Tax Agreement upon enactment of the Uniform Sales and Use Tax Administration Act.

NAME

TITLE
STATE OF _____

PUBLIC LAW 106-252—JULY 28, 2000

MOBILE TELECOMMUNICATIONS
SOURCING ACT

Public Law 106-252
106th Congress

An Act

July 28, 2000
[H.R. 4391]

To amend title 4 of the United States Code to establish sourcing requirements for State and local taxation of mobile telecommunication services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Mobile Tele-
communications
Sourcing Act.
4 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mobile Telecommunications Sourcing Act”.

SEC. 2. AMENDMENTS TO TITLE 4 OF THE UNITED STATES CODE.

(a) **AMENDMENT RELATING TO THE STATES.**—Chapter 4 of title 4 of the United States Code is amended by adding at the end the following:

“§116. Rules for determining State and local government treatment of charges related to mobile telecommunications services

“(a) **APPLICATION OF THIS SECTION THROUGH SECTION 126.**—This section through 126 of this title apply to any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.

“(b) **GENERAL EXCEPTIONS.**—This section through 126 of this title do not apply to—

“(1) any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service;

“(2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis;

“(3) any tax, charge, or fee that represents compensation for a mobile telecommunications service provider’s use of public rights of way or other public property, provided that such tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication services;

“(4) any generally applicable business and occupation tax that is imposed by a State, is applied to gross receipts or gross proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect

to use the sourcing method required in this section through 126 of this title;

“(5) any fee related to obligations under section 254 of the Communications Act of 1934; or

“(6) any tax, charge, or fee imposed by the Federal Communications Commission.

“(c) SPECIFIC EXCEPTIONS.—This section through 126 of this title—

“(1) do not apply to the determination of the taxing situs of prepaid telephone calling services;

“(2) do not affect the taxability of either the initial sale of mobile telecommunications services or subsequent resale of such services, whether as sales of such services alone or as a part of a bundled product, if the Internet Tax Freedom Act would preclude a taxing jurisdiction from subjecting the charges of the sale of such services to a tax, charge, or fee, but this section provides no evidence of the intent of Congress with respect to the applicability of the Internet Tax Freedom Act to such charges; and

“(3) do not apply to the determination of the taxing situs of air-ground radiotelephone service as defined in section 22.99 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

“§ 117. Sourcing rules

“(a) TREATMENT OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.—Notwithstanding the law of any State or political subdivision of any State, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer’s home service provider, shall be deemed to be provided by the customer’s home service provider.

“(b) JURISDICTION.—All charges for mobile telecommunications services that are deemed to be provided by the customer’s home service provider under sections 116 through 126 of this title are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer’s place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

“§ 118. Limitations

“Sections 116 through 126 of this title do not—

“(1) provide authority to a taxing jurisdiction to impose a tax, charge, or fee that the laws of such jurisdiction do not authorize such jurisdiction to impose; or

“(2) modify, impair, supersede, or authorize the modification, impairment, or supersession of the law of any taxing jurisdiction pertaining to taxation except as expressly provided in sections 116 through 126 of this title.

“§ 119. Electronic databases for nationwide standard numeric jurisdictional codes

“(a) ELECTRONIC DATABASE.—

“(1) PROVISION OF DATABASE.—A State may provide an electronic database to a home service provider or, if a State

does not provide such an electronic database to home service providers, then the designated database provider may provide an electronic database to a home service provider.

“(2) **FORMAT.**—(A) Such electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institute’s Accredited Standards Committee X12, that, allowing for de minimis deviations, designates for each street address in the State, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code.

“(B) Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions which are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.

“(C) The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission, or their successors. Each address shall be provided in standard postal format.

“(b) **NOTICE; UPDATES.**—A State or designated database provider that provides or maintains an electronic database described in subsection (a) shall provide notice of the availability of the then current electronic database, and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in such State.

“(c) **USER HELD HARMLESS.**—A home service provider using the data contained in an electronic database described in subsection (a) shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by a State or designated database provider. The home service provider shall reflect changes made to such database during a calendar quarter not later than 30 days after the end of such calendar quarter for each State that issues notice of the availability of an electronic database reflecting such changes under subsection (b).

Deadline.

“§ 120. Procedure if no electronic database provided

“(a) **SAFE HARBOR.**—If neither a State nor designated database provider provides an electronic database under section 119, a home service provider shall be held harmless from any tax, charge, or fee liability in such State that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to section 121, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider

must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 121 is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if such home service provider demonstrates that it has—

“(1) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

“(2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

“(3) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

“(b) TERMINATION OF SAFE HARBOR.—Subsection (a) applies to a home service provider that is in compliance with the requirements of subsection (a), with respect to a State for which an electronic database is not provided under section 119 until the later of—

Applicability.

“(1) 18 months after the nationwide standard numeric code described in section 119(a) has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

Deadline.

“(2) 6 months after such State or a designated database provider in such State provides such database as prescribed in section 119(a).

“§ 121. Correction of erroneous data for place of primary use

“(a) IN GENERAL.—A taxing jurisdiction, or a State on behalf of any taxing jurisdiction or taxing jurisdictions within such State, may—

“(1) determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use in section 124(8) and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination if—

“(A) if the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

“(B) before the taxing jurisdiction gives such notice of determination, the customer is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the address is the customer's place of primary use;

“(2) determine that the assignment of a taxing jurisdiction by a home service provider under section 120 does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if—

“(A) if the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

“(B) the home service provider is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

“§ 122. Determination of place of primary use

“(a) **PLACE OF PRIMARY USE.**—A home service provider shall be responsible for obtaining and maintaining the customer’s place of primary use (as defined in section 124). Subject to section 121, and if the home service provider’s reliance on information provided by its customer is in good faith, a taxing jurisdiction shall—

“(1) allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider’s customer; and

“(2) not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.

Effective date.

“(b) **ADDRESS UNDER EXISTING AGREEMENTS.**—Except as provided in section 121, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect 2 years after the date of the enactment of the Mobile Telecommunications Sourcing Act as that customer’s place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

“§ 123. Scope; special rules

“(a) **ACT DOES NOT SUPERSEDE CUSTOMER’S LIABILITY TO TAXING JURISDICTION.**—Nothing in sections 116 through 126 modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of, any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

“(b) **ADDITIONAL TAXABLE CHARGES.**—If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to such tax, charge, or fee from its books and records that are kept in the regular course of business.

“(c) **NONTAXABLE CHARGES.**—If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer’s home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home

service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

“§ 124. Definitions

“In sections 116 through 126 of this title:

“(1) **CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.**—The term ‘charges for mobile telecommunications services’ means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

“(2) **CUSTOMER.**—

“(A) **IN GENERAL.**—The term ‘customer’ means—

“(i) the person or entity that contracts with the home service provider for mobile telecommunications services; or

“(ii) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service, but this clause applies only for the purpose of determining the place of primary use.

“(B) The term ‘customer’ does not include—

“(i) a reseller of mobile telecommunications service; or

“(ii) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

“(3) **DESIGNATED DATABASE PROVIDER.**—The term ‘designated database provider’ means a corporation, association, or other entity representing all the political subdivisions of a State that is—

“(A) responsible for providing an electronic database prescribed in section 119(a) if the State has not provided such electronic database; and

“(B) approved by municipal and county associations or leagues of the State whose responsibility it would otherwise be to provide such database prescribed by sections 116 through 126 of this title.

“(4) **ENHANCED ZIP CODE.**—The term ‘enhanced zip code’ means a United States postal zip code of 9 or more digits.

“(5) **HOME SERVICE PROVIDER.**—The term ‘home service provider’ means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

“(6) **LICENSED SERVICE AREA.**—The term ‘licensed service area’ means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

“(7) MOBILE TELECOMMUNICATIONS SERVICE.—The term ‘mobile telecommunications service’ means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

“(8) PLACE OF PRIMARY USE.—The term ‘place of primary use’ means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, which must be—

“(A) the residential street address or the primary business street address of the customer; and

“(B) within the licensed service area of the home service provider.

“(9) PREPAID TELEPHONE CALLING SERVICES.—The term ‘prepaid telephone calling service’ means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

“(10) RESELLER.—The term ‘reseller’—

“(A) means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and

“(B) does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

“(11) SERVING CARRIER.—The term ‘serving carrier’ means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed service area.

“(12) TAXING JURISDICTION.—The term ‘taxing jurisdiction’ means any of the several States, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

“§ 125. Nonseverability

“If a court of competent jurisdiction enters a final judgment on the merits that—

“(1) is based on Federal law;

“(2) is no longer subject to appeal; and

“(3) substantially limits or impairs the essential elements of sections 116 through 126 of this title,

then sections 116 through 126 of this title are invalid and have no legal effect as of the date of entry of such judgment.

“§ 126. No inference

“(a) INTERNET TAX FREEDOM ACT.—Nothing in sections 116 through this section of this title shall be construed as bearing on Congressional intent in enacting the Internet Tax Freedom Act or to modify or supersede the operation of such Act.

“(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing in sections 116 through this section of this title shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 or the amendments made by such Act.”.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 4 of title 4, United States Code, is amended by adding the following after the item relating to section 115:

“116. Rules for determining State and local government treatment of charges related to mobile telecommunications services.

“117. Sourcing rules.

“118. Limitations.

“119. Electronic databases for nationwide standard numeric jurisdictional codes.

“120. Procedure if no electronic database provided.

“121. Correction of erroneous data for place of primary use.

“122. Determination of place of primary use.

“123. Scope; special rules.

“124. Definitions.

“125. Nonseverability.

“126. No inference.”.

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENT.

4 USC 116 note.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendment made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF ACT.—The amendment made by this Act shall apply only to customer bills issued after the first day of the first month beginning more than 2 years after the date of the enactment of this Act.

Approved July 28, 2000.

LEGISLATIVE HISTORY—H.R. 4391 (S. 1755):

HOUSE REPORTS: No. 106–719 (Comm. on the Judiciary).

SENATE REPORTS: No. 106–326 accompanying S. 1755 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 146 (2000):

July 11, considered and passed House.

July 14, considered and passed Senate.

○

○