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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 15, 312a, 702, 721, 741, 765, 765b, 921, 923, 925, 926, 1108 of this title; title 7 section 923; title 15 sections 44, 79z-5c, 5625, 5656; title 17 section 119; title 18 section 2511; title 22 section 1465bb; title 40 section 17708; title 41 sections 43, 356; title 49 section 70117.

SUBCHAPTER I—GENERAL PROVISIONS

§ 151. Purposes of chapter; Federal Communications Commission created

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of

the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

(June 19, 1934, ch. 652, title I, §1, 48 Stat. 1064; May 20, 1937, ch. 229, §1, 50 Stat. 189; Pub. L. 104-104, title I, §104, Feb. 8, 1996, 110 Stat. 86.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104-104 inserted "without discrimination on the basis of race, color, religion, national origin, or sex," after "to all the people of the United States".

1937—Act May 20, 1937, inserted "for the purpose of promoting safety of life and property through the use of wire and radio communication".

MORATORIUM ON INTERNET TAXES

Pub. L. 105-277, div. C, title XI, Oct. 21, 1998, 112 Stat. 2681-719, as amended by Pub. L. 107-75, §2, Nov. 28, 2001, 115 Stat. 703, provided that:

"SEC. 1100. SHORT TITLE.

"This title may be cited as the 'Internet Tax Freedom Act'.

"SEC. 1101. MORATORIUM.

"(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending on November 1, 2003—

"(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and

"(2) multiple or discriminatory taxes on electronic commerce.

"(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this title shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act [Oct. 21, 1998].

"(c) LIABILITIES AND PENDING CASES.—Nothing in this title affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this title affect ongoing litigation relating to such taxes.

"(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

"(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

"(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

"(e) EXCEPTION TO MORATORIUM.—

"(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors unless such person or entity has restricted access by minors to material that is harmful to minors—

"(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;

"(B) by accepting a digital certificate that verifies age; or

"(C) by any other reasonable measures that are feasible under available technology.

"(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to [be] making a communication for commercial purposes of material to the extent that the person is—

"(A) a telecommunications carrier engaged in the provision of a telecommunications service;

"(B) a person engaged in the business of providing an Internet access service;

"(C) a person engaged in the business of providing an Internet information location tool; or

"(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

"(3) DEFINITIONS.—In this subsection:

"(A) BY MEANS OF THE WORLD WIDE WEB.—The term 'by means of the World Wide Web' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

"(B) COMMERCIAL PURPOSES; ENGAGED IN THE BUSINESS.—

"(i) COMMERCIAL PURPOSES.—A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

"(ii) ENGAGED IN THE BUSINESS.—The term 'engaged in the business' means that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person's sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

"(C) INTERNET.—The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

"(D) INTERNET ACCESS SERVICE.—The term 'Internet access service' means a service that enables

users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

“(E) INTERNET INFORMATION LOCATION TOOL.—The term ‘Internet information location tool’ means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

“(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term ‘material that is harmful to minors’ means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

“(i) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

“(ii) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

“(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

“(G) MINOR.—The term ‘minor’ means any person under 17 years of age.

“(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS SERVICE.—The terms ‘telecommunications carrier’ and ‘telecommunications service’ have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

“(f) ADDITIONAL EXCEPTION TO MORATORIUM.—

“(1) IN GENERAL.—Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is designed to permit the customer to limit access to material on the Internet that is harmful to minors.

“(2) DEFINITIONS.—In this subsection:

“(A) INTERNET ACCESS PROVIDER.—The term ‘Internet access provider’ means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

“(B) INTERNET ACCESS SERVICES.—The term ‘Internet access services’ means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

“(C) SCREENING SOFTWARE.—The term ‘screening software’ means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

“(3) APPLICABILITY.—Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act [Oct. 21, 1998].

“SEC. 1102. ADVISORY COMMISSION ON ELECTRONIC COMMERCE.

“(a) ESTABLISHMENT OF COMMISSION.—There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the ‘Commission’). The Commission shall—

“(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

“(2) conduct its business in accordance with the provisions of this title.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

“(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

“(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose an income tax).

“(C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of—

“(i) 5 individuals appointed by the Majority Leader of the Senate;

“(ii) 3 individuals appointed by the Minority Leader of the Senate;

“(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

“(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

“(2) APPOINTMENTS.—Appointments to the Commission shall be made not later than 45 days after the date of the enactment of this Act [Oct. 21, 1998]. The chairperson shall be selected not later than 60 days after the date of the enactment of this Act.

“(3) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

“(c) ACCEPTANCE OF GIFTS AND GRANTS.—The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

“(d) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to use the facilities of any such Department or Office for purposes of conducting meetings.

“(e) SUNSET.—The Commission shall terminate 18 months after the date of the enactment of this Act [Oct. 21, 1998].

“(f) RULES OF THE COMMISSION.—

“(1) QUORUM.—Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

“(2) MEETINGS.—Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

“(3) OPPORTUNITIES TO TESTIFY.—The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.

“(4) ADDITIONAL RULES.—The Commission may adopt other rules as needed.

“(g) DUTIES OF THE COMMISSION.—

“(1) IN GENERAL.—The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities.

“(2) ISSUES TO BE STUDIED.—The Commission may include in the study under subsection (a)—

“(A) an examination of—

“(i) barriers imposed in foreign markets on United States providers of property, goods, services, or information engaged in electronic com-

merce and on United States providers of telecommunications services; and

“(ii) how the imposition of such barriers will affect United States consumers, the competitiveness of United States citizens providing property, goods, services, or information in foreign markets, and the growth and maturing of the Internet;

“(B) an examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, and the impact of such collection on the global economy, including an examination of the relationship between the collection and administration of such taxes when the transaction uses the Internet and when it does not;

“(C) an examination of the impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986 [26 U.S.C. 4251];

“(D) an examination of model State legislation that—

“(i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and

“(ii) would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales;

“(E) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers; and

“(F) the examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services.

“(3) EFFECT ON THE COMMUNICATIONS ACT OF 1934.—Nothing in this section shall include an examination of any fees or charges imposed by the Federal Communications Commission or States related to—

“(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

“(B) the implementation of the Telecommunications Act of 1996 [Pub. L. 104–104, see Short Title of 1996 Amendment note set out under section 609 of this title] (or of amendments made by that Act).

“(h) NATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT.—The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

“SEC. 1103. REPORT.

“Not later than 18 months after the date of the enactment of this Act [Oct. 21, 1998], the Commission shall transmit to Congress for its consideration a report reflecting the results, including such legislative recommendations as required to address the findings of the Commission’s study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

“SEC. 1104. DEFINITIONS.

“For the purposes of this title:

“(1) BIT TAX.—The term ‘bit tax’ means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital infor-

mation per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services.

“(2) DISCRIMINATORY TAX.—The term ‘discriminatory tax’ means—

“(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

“(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

“(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

“(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

“(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

“(B) any tax imposed by a State or political subdivision thereof, if—

“(i) except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998, the sole ability to access a site on a remote seller’s out-of-State computer server is considered a factor in determining a remote seller’s tax collection obligation; or

“(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

“(I) the display of a remote seller’s information or content on the out-of-State computer server of a provider of Internet access service or online services; or

“(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

“(3) ELECTRONIC COMMERCE.—The term ‘electronic commerce’ means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

“(4) INTERNET.—The term ‘Internet’ means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

“(5) INTERNET ACCESS.—The term ‘Internet access’ means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services.

“(6) MULTIPLE TAX.—

“(A) IN GENERAL.—The term ‘multiple tax’ means any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same

rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

“(B) EXCEPTION.—Such term shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon.

“(C) SALES OR USE TAX.—For purposes of subparagraph (B), the term ‘sales or use tax’ means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service.

“(7) STATE.—The term ‘State’ means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

“(8) TAX.—

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

“(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

“(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

“(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

“(9) TELECOMMUNICATIONS SERVICE.—The term ‘telecommunications service’ has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 [26 U.S.C. 4251]).

“(10) TAX ON INTERNET ACCESS.—The term ‘tax on Internet access’ means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services unless such tax was generally imposed and actually enforced prior to October 1, 1998.”

STYLISTIC CONSISTENCY

Section 101(c) of title I of Pub. L. 104–104 provided that: “The Act [Communications Act of 1934 (47 U.S.C. 151 et seq.)] is amended so that—

“(1) the designation and heading of each title of the Act shall be in the form and typeface of the designation and heading of this title of this Act [110 Stat. 61]; and

“(2) the designation and heading of each part of each title of the Act shall be in the form and typeface of the designation and heading of part I of title II of the Act [110 Stat. 61], as amended by subsection (a).”

STUDY OF TELECOMMUNICATIONS AND INFORMATION GOALS

Pub. L. 97–259, title II, § 202, Sept. 13, 1982, 96 Stat. 1099, provided that:

“(a) The National Telecommunications and Information Administration shall conduct a comprehensive study of the long-range international telecommunications and information goals of the United States, the specific international telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieves them. The Administration shall further conduct a review of the structures, procedures, and mechanisms which are utilized by the United States to de-

velop international telecommunications and information policy.

“(b) In any study or review conducted pursuant to this section, the National Telecommunications and Information Administration shall not make public information regarding usage or traffic patterns which would damage United States commercial interests. Any such study or review shall be limited to international telecommunications policies or to domestic telecommunications issues which *directly* affect such policies.”

COMMISSION ON GOVERNMENTAL USE OF INTERNATIONAL TELECOMMUNICATIONS

Act July 29, 1954, ch. 647, 68 Stat. 587, established the Commission on Governmental Use of International Telecommunications to examine, study and report on the objectives, operations, and effectiveness of information programs with respect to the prompt development of techniques, methods, and programs for greatly expanded and far more effective operations in this vital area of foreign policy through the use of foreign telecommunications. The Commission was required to make a report of its findings and recommendations on or before Dec. 31, 1954, and the Commission ceased to exist 90 days after submission of its report to the Congress.

COMMUNICATION PRIVILEGES TO PARTICIPANTS IN WORLD TELECOMMUNICATION CONFERENCES

Act May 13, 1947, ch. 51, 61 Stat. 83, provided that nothing in this chapter, or in any other provision of law should be construed to prohibit United States communication common carriers from rendering free communication services to official participants in the world telecommunications conferences which were held in the United States in 1947.

EXECUTIVE ORDER NO. 10460

Ex. Ord. No. 10460, eff. June 18, 1953, 18 F.R. 3513, as amended by Ex. Ord. No. 10773, eff. July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, eff. Sept. 8, 1958, 23 F.R. 6971, which related to the performance of telecommunication functions by Director of the Office of Civil and Defense Mobilization, was revoked by section 4 of Ex. Ord. No. 10995, eff. Feb. 16, 1962, 27 F.R. 1519.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 225, 309, 332, 607, 925 of this title.

§ 152. Application of chapter

(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone. The provisions of this chapter shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in subchapter V–A.

(b) Except as provided in sections 223 through 227 of this title, inclusive, and section 332 of this title, and subject to the provisions of section 301 of this title and subchapter V–A of this chapter, nothing in this chapter shall be construed to