AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–719

MOBILE TELECOMMUNICATIONS SOURCING ACT

JULY 10, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEKAS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4391]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4391) amending title 4 of the United States Code to establish nexus requirements for State and local taxation of mobile telecommunication services, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

TABLE OF CONTENTS

	Page
The Amendments	2
Purpose and Summary	6
Background and Need for the Legislation	7
Hearings	9
Committee Consideration	9
Vote of the Committee	9
Committee Oversight Findings	9
Committee on Government Reform Findings	9
New Budget Authority and Tax Expenditures	10
Congressional Budget Office Cost Estimate	10
Constitutional Authority Statement	12
Section-by-Section Analysis and Discussion	12
Changes in Existing Law Made by the Bill, as Reported	15

79–006

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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).

"§ 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—

"(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

"(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.

"(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 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.

(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 1st day of the 1st month beginning more than 2 years after the date of enactment of this Act.

Amend the title so as to read:

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

PURPOSE AND SUMMARY

H.R. 4391, the Mobile Telecommunications Sourcing Act, provides a uniform method for fairly and simply determining how State and local jurisdictions may tax wireless telecommunications. Among its goals are to provide customers with simpler billing statements, reduce the chances of double taxation of wireless tele-

communications services, and simplify and reduce the costs of tax administration for carriers and State and local governments.

BACKGROUND AND NEED FOR THE LEGISLATION

Over the last decade there has been an explosion of growth in the wireless telecommunications industry. Wireless subscribership has increased from approximately 4 million customers in 1990 to more than 80 million today. Revenues for the wireless carriers have grown three-fold over this time period, while the price per minute for wireless service has dropped substantially. The popularity of wireless services has placed a spotlight on the method by which wireless telephone calls are taxed by State and local governments.

Many States and localities levy taxes on the consumption of wireless services that occur within their respective jurisdictions. For instance, States and localities might require a wireless telephone subscriber to pay a tax on the total wireless service "used" within their jurisdictions. In these circumstances, wireless service providers act on behalf of the State and localities to collect the taxes from end-users. Usually, wireless service providers will provide a line-item on the customer's bill identifying the State or locality imposed tax that has been collected and remitted to the taxing jurisdiction.

The nature of wireless telecommunications makes the collection of these taxes complicated and expensive for the carriers, and difficult for the taxing authorities to monitor. This is in part because different taxing jurisdictions use different methods for determining when a tax is due. Some tax all calls made by customers whose billing address falls within their jurisdiction; others tax calls originated in their jurisdiction. Determining the proper tax will at a minimum require the carrier to first determine where the sale and purchase of the mobile service was made. Having identified that location, the carrier must then correctly match the location to the boundaries of the various local taxing jurisdictions in a State that permits local taxation of wireless telecommunications. While making these determinations is technically possible, it entails considerable expense both for the carrier and the taxing authority, which must audit the carrier's remittance obligations. This issue may become even more complex as the use of wireless service increases and new calling plans are developed to meet consumer demand (e.g., flat rate calling plans vs. per minute fees). For example, the new calling plans featuring block time calling options (e.g., 500 minutes for a set price) decrease the ability to apportion the cost of each wireless call, making it more difficult properly to determine and collect traditional taxes.

In addition to these difficulties in accurately determining a tax collection obligation, the current taxing system can result in multiple jurisdictions claiming authority to tax the same wireless transaction, while other transactions may be subject to no taxation. Take, for example, the circumstance where a customer whose billing address is within a jurisdiction which taxes all calls billed to that address originates a call through a cell tower in a jurisdiction which taxes all calls originated on cells within the jurisdiction, but the switch that first directs the call is located in a jurisdiction which taxes all calls originating through a switch in the jurisdic-

tion. Because wireless service providers are currently required to bill their subscribers based on each of these differing methodologies, the entire value of the customer's call will be taxed by all three jurisdictions.

The Proposed Solution

Given these and other practical difficulties, the wireless industry sought development of a taxing system that would lessen the burden of having to determine the location of sale and purchase of each wireless call and the taxes applicable to each call. This effort captured the attention of State and local tax administrators who desire to have existing tax systems better match current business practices and reality. They jointly developed a proposed solution which is reflected in this legislation.

In a nutshell, the industry/government proposal would identify the mobile telephone customer's "place of primary use" and require that taxation of calls made by that customer be imposed only by the taxing authorities which have jurisdiction in that location. It would also facilitate the creation and maintenance of a database which would indicate for each location what taxes apply. Using this system, it would no longer be necessary to determine where the call was placed.

Need for Congressional Action

Unfortunately, while efficient and practical, this scheme is constitutionally suspect under current Supreme Court jurisprudence. Article I, section 8, clause 3 of the Constitution expressly authorizes Congress to "regulate Commerce with foreign Nations, and among the several States." This clause has also been held to prohibit certain State actions that interfere with interstate commerce. *South Carolina State Highway Dept.* v. *Barnwell Brothers, Inc.*, 303 U.S. 177, 185 (1938). A State tax will withstand scrutiny under the Commerce Clause if the tax: (1) is applied to an activity with a substantial nexus with the taxing State; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the State. *Complete Auto Transit, Inc.* v. *Brady*, 430 U.S. 274 (1977). A tax that does not meet this test would be considered to impose an undue burden on interstate commerce, which only Congress may do.

In *Goldberg* v. *Sweet*, 488 U.S. 252 (1989), the Supreme Court applied the *Complete Auto Transit* test to State taxation of interstate telecommunication services. It held that taxing authority rested with a State from which a telecommunication originated or terminated, provided that State was also the State of the service address or the billing address. *Id.* at 263–64. While the Court did not deny the possibility that taxing nexus might arise in other ways, it did specifically note that a State through which the telecommunication merely passes or in which the telecommunication merely terminates lacks sufficient contacts to tax the telecommunication service. *Id.* at 263.

H.R. 4391's proposed scheme would permit a State to tax a mobile telecommunication which neither originated nor terminated within its jurisdiction. Thus, it would not meet the *Goldberg* test of origination/termination *and* service or billing address, bringing into question whether it would be considered an unconstitutional

burden on interstate commerce. This, of course, does not mean that the taxing jurisdiction in which the customer's "primary place of use" is located would not meet the *Complete Auto Transit* test. The courts could find alternatively that the "substantial nexus" prong of the analysis is satisfied because the taxing jurisdiction is the place where the contractual obligation arises which in effect allows the customer to make the call which originates and terminates elsewhere. The committee does not pretend to predict how the judicial branch might view such an argument, and expresses no view on its merits. Instead, the committee believes that enactment of this legislation is appropriate, as it will constitute Congressional consent to a State taxation scheme that might otherwise violate the Commerce Clause. The Supreme Court has clearly held that such consent is effective. See *Prudential Ins. Co.* v. *Benjamin*, 328 U.S. 408, 434 (1946).

HEARINGS

The committee's Subcommittee on Commercial and Administrative Law held a hearing on H.R. 3489, legislation addressing similar subject matter, on May 4, 2000. Testimony was received from Congressman Chip Pickering, principal sponsor of that bill; Ray Scheppach, on behalf of the National Governors' Association; Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association; Harley Duncan, on behalf of the Federation of Tax Administrators; and Joseph Brooks, representing the National League of Cities.

COMMITTEE CONSIDERATION

On May 11, 2000, the Subcommittee on Commercial and Administrative Law met in open session and ordered favorably reported the bill H.R. 4391, as amended, by a voice vote, a quorum being present. On May 24, 2000, the committee met in open session and ordered favorably reported the bill H.R. 4391 with amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes held during the consideration of H.R. 4391 by the committee.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 4391, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 5, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4391, the Mobile Telecommunications Sourcing Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), who can be reached at 226–2860, Hester Grippando (for revenues), who can be reached at 226–2720, Shelley Finlayson (for the state and local impact), who can be reached at 225–3220, and Jean Wooster (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

DAN L. CRIPPEN, *Director.*

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 4391—Mobile Telecommunications Sourcing Act.

SUMMARY

CBO estimates that enactment of H.R. 4391 would have a negligible effect on the federal budget. Two years after enactment, H.R. 4391 would prohibit state and local governments from taxing mobile telecommunications calls unless a customer's place of primary telephone use is within the taxing jurisdiction of the state or local government. The bill would encourage states to provide mobile telephone companies with a database that shows which addresses fall within which taxing jurisdictions. Mobile telephone companies would be held harmless for any mistakes in taxes collected because of errors in the database, or from errors they might make before a state provides such a database.

Certain charges imposed on telecommunications services either by states or the federal government under the Telecommunications Act of 1996 to support universal service are recorded in the federal budget. (Universal Service is a program intended to promote the availability of telecommunications services at affordable rates.) Because H.R. 4391 could affect direct spending and receipts, pay-as-

you-go procedures would apply, but CBO estimates that any such effects would be negligible.

H.R. 4391 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), because it would preempt state and local government laws by prohibiting jurisdictions from taxing mobile telecommunication services unless the jurisdictions contain the customer's place of primary use. While data are limited, CBO estimates the mandate would not impose significant net costs on state or local governments and would not exceed the threshold established in UMRA ($55 million in 2000, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Under the Universal Service Fund established by the Telecommunications Act of 1996, the Federal Communications Commission (FCC) seeks to provide universal access to telecommunications services through various charges to some telephone companies and payments to others. The 1996 act also permits states to establish additional collections and payments to preserve and advance universal service, so long as these mechanisms are not inconsistent with federal law.

The Universal Service Fund records these transactions on the federal budget as governmental receipts and direct spending. To the extent that states choose to use charges on mobile telecommunications service to support universal service, H.R. 4391 could result in reduced revenues collected and lower direct spending. But based on information from the FCC and the Universal Service Administrative Company, CBO estimates that any change in revenues and direct spending as a result of enacting this legislation would be negligible. The costs of this legislation fall within budget function 370 (commerce and housing credit).

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. As noted above, H.R. 4391 could affect direct spending and receipts, but CBO estimates that any such effects would be negligible.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 4391 would preempt state and local government laws by prohibiting jurisdictions from taxing mobile telecommunication services unless the jurisdictions contain the customer's place of primary use. Such a preemption would be a mandate as defined by UMRA. This change could initially benefit some taxing jurisdictions and harm others depending on the number of customers with places of primary use within each jurisdiction. The bill would not require or prohibit state and local governments from taxing telecommunications services or affect the rate at which such services could be taxed. It would, however, require a uniform basis for determinating which jurisdictions may tax mobile telecommunications services.

Because the current system of taxing mobile telecommunications services is very complex, it is unclear what affect this change may have on revenues from such taxes. Based on information from groups representing the affected state and local governments, however, CBO estimates that the bill would, in total, be approximately revenue neutral across the country, although the distribution of revenues among jurisdictions would likely change.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

The bill contains no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATES

On May 22, 2000, CBO transmitted a cost estimate of H.R. 3489, the Wireless Telecommunications Sourcing Act, as ordered reported by the House Committee on Commerce on May 17, 2000. On May 9, 2000, CBO transmitted a cost estimate of S. 1755, the Mobile Telecommunications Sourcing Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 13, 2000. H.R. 4391 is nearly identical to S. 1755 and to the provisions of the Commerce Committee version of H.R. 3489 that concern state taxation of mobile telephone services, and our cost estimates are the same for these provisions. H.R. 3489, as ordered reported by the House Committee on Commerce, also contains provisions concerning electronic eavesdropping.

ESTIMATE PREPARED BY:

Federal Costs: Mark Hadley (226–2860)
Revenues: Hester Grippando (226–2720)
Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220)
Impact on the Private Sector: Jean Wooster (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, clause 8, section 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1 of the Act contains the short title, the Mobile Telecommunications Sourcing Act.

Section 2 of the Act contains the operative portions of the bill. It amends Title 4 of the U.S. Code to add the following new sections:

Section 116. Application of title. Generally, the bill applies 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," regardless of whether the charge is imposed upon the vendor or the customer, and regardless of how the charge is

named or described. As the bill is intended to apply to transactional taxes, taxes measured by net income, capital stock, net worth or property value are excluded, as are taxes "applied to an equitably apportioned gross amount that is not determined on a transactional basis."

Section 116(c) provides that the situsing of prepaid calling card services and air-to-ground radiotelephone services is not covered by the bill, and that the taxability of sales or resales of cellular services where the Internet Tax Freedom Act would preclude the taxation of charges for cellular services is not affected by the bill.

Section 117. Sourcing rules. This section provides that cellular services may be taxed by "the taxing jurisdictions whose territorial limits encompass the customer's place of primary use," regardless of where the calls originate, terminate or pass through, and that no other taxing jurisdictions may tax that service. Thus, if a customer, whose place of primary use is in Pittsburgh, Pa., initiates a call to California while driving in Virginia, and during the call also drives through Washington, D.C. and into Maryland, that call, along with all the other cellular calls included within the customer's bill from his cellular provider, could be taxed only by the taxing jurisdictions representing that customer's place of primary use in Pittsburgh.

Section 118. Limitations. The bill is not intended to expand the authority of States to tax, or to preempt the States' authority to tax, except as expressly provided in the bill. As this section provides that this bill does not authorize a taxing jurisdiction to impose a tax that the laws of the jurisdiction do not authorize the jurisdiction to impose, it is anticipated that States will have to adjust their laws accordingly, e.g., if a State's laws do not permit the taxation of calls that neither originate nor terminate within the State.

Section 119. Electronic databases for nationwide standard numeric jurisdictional codes. This section provides that States (or a designated entity acting on behalf of local taxing jurisdictions) may provide vendors with an electronic database that designates, for every street address in the State, the appropriate taxing jurisdictions encompassing that address, and that vendors will be held harmless for errors in assigning taxing jurisdictions resulting from the use of such a database provided by a State. The section also delineates the technological standards that a State-provided database must meet, and provides requirements to be met by States and vendors when there are changes to the database.

Section 120. Procedure where no electronic database provided. If a State does not provide the electronic database described in section 119, a vendor could still be held harmless for errors resulting from the misassignment of taxing jurisdictions if the vendor employs an "enhanced zip code," i.e., a zip code of nine or more digits, to assign street addresses to taxing jurisdictions, and does so with due diligence. The bill contains a rebuttable presumption that a vendor has exercised due diligence in its use of enhanced zip codes if the vendor can demonstrate that it (1) expended reasonable resources to maintain a database of assignments to taxing jurisdictions, (2) maintained reasonable internal controls to correct misassignments, and (3) used all reasonably obtainable data pertaining to municipal annexations and other changes in boundaries that affect the accuracy of the database.

Section 120(b) provides that, if a vendor has been entitled to the hold harmless for its use of enhanced zip codes under section 120(a), and a State then provides an electronic database under section 119, that vendor will continue to be held harmless while diligently using the enhanced zip codes, until the later of 18 months after a nationwide numeric code has been approved as required under the bill, or 6 months after the State has provided the database.

Section 121. Correction of erroneous data for place of primary use. This section addresses situations in which taxing jurisdictions discover errors in designations of place of primary use or assignments of taxing jurisdictions. If a taxing jurisdiction determines that an address provided as the place of primary use does not meet the statutory definition of that term, the jurisdiction may give binding notice to the vendor to correct that place of primary use on a prospective basis, provided that the customer in question is given an opportunity to demonstrate that the supplied address is actually the correct place of primary use, and that, when it is a local taxing jurisdiction that makes the determination of an incorrect place of primary use, that jurisdiction must obtain the consent of all other affected taxing jurisdictions. Also, when a taxing jurisdiction determines that the assignment of a taxing jurisdiction by a vendor using enhanced zip codes is incorrect, the jurisdiction can give binding notice to the vendor to make the change on a prospective basis, under the same provisos regarding consent of other local jurisdictions and giving the vendor an opportunity to show that its original assignment was actually correct.

Section 122. Duty of home service provider regarding place of primary use. Subsection (a) provides that a vendor is responsible for obtaining and maintaining its customers' place of primary use, and that, if a vendor's reliance on information provided by a customer regarding the customer's place of primary use is in good faith, the vendor would not be liable for any additional taxes based on a different determination of the customer's place of primary use for taxes "that are customarily passed on to the customer as a separate itemized charge."

Subsection (b) includes a grandfathering provision, which allows a vendor to treat an address it has been using for a customer, under a contract in effect 2 years after the date of the enactment of this act, as that customer's place of primary use for the remaining term of the contract, excluding extensions or renewals.

Section 123. Scope; special rules. This section contains a few special rules, the more important of which include the following: (a) That nothing in the bill prevents taxing jurisdictions from collecting a tax from a customer that has failed to provide the correct place of primary use; and (b) that, if a jurisdiction does not tax cellular service, but the cellular service is bundled with other taxable services, the cellular service "may be" subjected to tax, unless the vendor can identify the nontaxable services from its books and records.

Section 124. Definitions. Section 124 provides definitions for various terms used in the operative section of the bill, including the following:

Charges for Mobile Telecommunications Services. While calls from airplanes are not covered by the bill (see section

116(c)(3)), calls employing satellites would be, as the Federal regulatory definition of "commercial mobile radio service" referred to in section 124(1) includes calls employing both satellites alone and satellites in conjunction with earth stations.

Place of primary use. The place of primary use will be a street address, either a residential street address or a business street address, whichever is "representative" of where the customer's use primarily occurs. This language reflects that many, if not most, cell phones are used in transit from one place to another, perhaps from home to work, so that the place of primary use should represent the primary use, as between the customer's residence and primary business address. As noted above, section 122(a) allows a vendor to rely on the place of primary use provided by the customer, if the vendor does so in good faith.

Reseller. The bill is not intended to source cellular services provided to entities that resell those services. The definition of "customer" excludes resellers, and "reseller" is defined in the bill essentially as a provider who purchases telecommunications services from another telecommunications service provider and then resells those services.

Section 125. Nonseverability. This section provides essentially that, if a court enters a final, non-appealable judgment on the merits, based on Federal law, that "substantially limits or impairs the essential elements of this title," the whole act would become null and void as of the time of the entry of the final judgment. Thus, for example, if the sourcing provision of the bill is determined to be unconstitutional, the hold-harmless provisions would not remain in effect.

Section 126. No inference. This section provides that the bill does not affect the Internet Tax Freedom Act or the Telecommunications Act of 1996.

Section 3 of the Act contains the effective date for the legislation. The bill would apply to customers' bills issued after the first day of the first month beginning more than 2 years after the date of enactment. This provision was intended to give States time to develop the electronic databases, if they choose to do so.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHAPTER 4 OF TITLE 4, UNITED STATES CODE

CHAPTER 4—THE STATES

Sec.
101. Oath by members of legislatures and officers.

* * * * * * *

115. Limitation on State authority to tax compensation paid to individuals performing services at Fort Campbell, Kentucky.

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.

* * * * * * *

§ 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 pre-

clude 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).

§ 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—

(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

(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.

(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 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.

○