AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 660

106th Congress 2d Session	SENATE	REPORT 106–326

MOBILE TELECOMMUNICATIONS SOURCING ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

on

S. 1755

JUNE 30, 2000.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
79–010 WASHINGTON : 2000

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

JOHN McCAIN, Arizona, *Chairman*

TED STEVENS, Alaska
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi
KAY BAILEY HUTCHISON, Texas
OLYMPIA SNOWE, Maine
JOHN ASHCROFT, Missouri
BILL FRIST, Tennessee
SPENCER ABRAHAM, Michigan
SAM BROWNBACK, Kansas

ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
JOHN D. ROCKEFELLER IV, West Virginia
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RICHARD H. BRYAN, Nevada
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
MAX CLELAND, Georgia

MARK BUSE, *Staff Director*
ANN H. CHOINIERE, *General Counsel*
KEVIN D. KAYES, *Democratic Staff Director*
MOSES BOYD, *Democratic Chief Counsel*
GREGG ELIAS, *Democratic General Counsel*

(II)

Calendar No. 660

106TH CONGRESS, 2d Session | SENATE | REPORT 106–326

MOBILE TELECOMMUNICATIONS SOURCING ACT

JUNE 30, 2000.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1755]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1755) to amend the Communications Act of 1934 to regulate interstate commerce in the use of mobile telephones, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the bill is to amend the Communications Act of 1934 to provide for a uniform national rule for determining the location from which mobile telecommunications services are provided in order to properly apply state and local taxes, charges, and fees.

BACKGROUND AND NEEDS

Many states and localities impose transactional taxes, such as sales and use taxes, on the provision of mobile telecommunications services. A transactional tax for these purposes is a tax that is measured by the amounts charged to the customer for the service. Such taxes necessarily require a determination of where the services are used, so that the correct state and local tax rates and rules can be applied.

There are two primary reasons that a uniform rule for determining the situs of mobile telecommunications is needed. First, the mobile nature of these services vastly complicates the task of determining the location of a particular transaction for tax purposes. Unlike fixed-location telecommunications services, there is no single address at which the customer's mobile telecommunications equipment is located. Moreover, a customer may travel through

multiple taxing jurisdictions in the course of a single telephone call. Consequently, a variety of different methodologies are used by the industry and by taxing jurisdictions to determine the situs of the transaction for tax purposes, such as originating cell site, billing address, originating switch location and others. The use of different methodologies results in inconsistent application of state and local taxes and, in many cases, more than one taxing jurisdiction claiming the right to tax the same transaction.

The other reason that a uniform sourcing method is needed stems from the current trend in the way consumers purchase mobile telecommunications services. Until recently, most calls placed or received by a mobile customer while outside of the home service provider's local calling area were billed to the customer at a certain rate per minute depending on where the call was placed or received. Now, however, a large and increasing number of customers are subscribing to mobile service pricing plans that allow the customer to place or receive calls anywhere for a set price per month. The set price applies to all calls up to a certain number of minutes of use, with each additional minute being billed at a per-minute rate. These plans are often referred to as bucket of minutes or bundled billing plans.

The new bucket of minutes billing plans substantially increase the difficulty, complexity and expense of correctly applying state and local taxes to mobile telecommunications services under the methodologies in use today. Since the service is billed at a set price per month, unless the customer uses exactly the number of minutes specified in the plan each month (which is highly unlikely), it is virtually impossible to determine the portion of that price charged for individual calls, each of which may be subject to tax by a different jurisdiction. Consequently, absent some allocation of the total monthly charge over the number of minutes actually used during the month, it is impossible to determine the amount of revenues to which each of the various state and local transaction taxes should be applied. In order to accommodate these bucket of minutes plans, carriers must implement costly enhancements to their billing systems. Even after implementing such enhancements, however, there is no guarantee that any of the various state and local taxing jurisdictions will accept the resulting allocations, and carriers will continue to face significant audit exposure.

Another shortcoming of the current system for taxing mobile telecommunications is the difficulty and inaccuracy inherent in determining the proper taxing jurisdiction in which a certain address is located. Once the situs of the call for tax purposes is known, it is still necessary to determine the correct jurisdiction or jurisdictions in which that address is located. This determination is particularly difficult with respect to local taxes for a number of reasons. First, local jurisdictional boundaries frequently change as the result of annexations and incorporations of developments into municipalities with taxing authority. In addition, jurisdictional boundaries do not completely correspond to U.S. five-digit postal zip codes.

The current system of taxing mobile telecommunications is costly for companies to administer, costly for state and local governments to monitor, and confusing for consumers to understand. For more than three years, representatives of the mobile telecommunications industry and state and local government organizations engaged in

negotiations to develop compromise legislative language for a national framework for the taxation of mobile telecommunications services. The agreement crafted by these parties represented a practical solution to many of the problems inherent in the current system of taxing mobile communications services.

LEGISLATIVE HISTORY

S. 1755, the Mobile Telecommunications Sourcing Act of 1999, was introduced by Senator Brownback and Senator Dorgan on October 20, 1999, and referred to the Committee on Commerce, Science, and Transportation. A full Committee hearing was held on the bill on March 7, 2000. By a unanimous vote on April 13, 2000, the Committee ordered S. 1755 reported to the Senate with an amendment in the nature of a substitute.

SUMMARY OF MAJOR PROVISIONS

This bill establishes one methodology for determining the location of a mobile telecommunications service for the purposes of assigning which state and local taxing authorities may appropriately impose a tax, charge, or fee (tax) on the mobile telecommunications service. The bill determines the location of mobile telecommunications services for certain state and local tax purposes but does not itself impose any tax. The bill specifies which states and localities may apply their taxes to wireless telecommunications services, based on the location of the customer's place of primary use. The bill permits transactional taxes to be imposed only by the taxing jurisdiction(s) whose territorial limits encompass the customer's place of primary use. The bill prohibits any other state or local jurisdiction from imposing transaction taxes on that customer's mobile service.

For purposes of applying state and local transaction taxes, the bill eliminates the need to determine the precise location of each mobile telecommunications transmission, or call. In place of locating each call, the bill provides that all of a customer's mobile telecommunications services are deemed to be provided by the customer's home service provider and authorizes only the taxing jurisdictions whose territorial limits encompass the customer's place of primary use to impose transaction taxes on the charges for such services. Place of primary use is defined in the bill to mean either the street address of the customer's residence or primary business location, which is within the licensed service area of the home service provider. By limiting a customer's place of primary use to one of these two locations, the bill minimizes the opportunity for tax planning that could occur through the selection of a tax situs solely for its tax climate. Home service provider is defined in the bill to mean the facilities-based carrier or reseller with which the customer contracts for mobile telecommunications services.

A home service provider is responsible for obtaining from the customer and maintaining updated records on the customer's place of primary use. If the home service provider' relies in good faith on the residential or business street address supplied to it by the customer, the home service provider is not liable for any additional taxes based on a different determination of the place of primary use. With respect to customers having a service agreement in effect

on the effective date of the bill, the home service provider may treat the existing address used for tax purposes as the place of primary use for the remaining term of the service agreement, excluding any extensions or renewals. A taxing jurisdiction, or the state on behalf of a taxing jurisdiction, however, may determine that an address used as the customer's place of primary use is not representative of the customer's residence or primary business location, and propose to change the customer's place of primary use, on a prospective basis. A proposed change of this nature will not become effective until (1) all affected taxing jurisdictions within the state consent to the change and (2) the customer is given the opportunity to demonstrate that the address given by the customer is the correct place of primary use.

The bill provides that a state or a designated data base provider may make available to mobile service providers an electronic database that designates for each street address in the state the applicable taxing jurisdiction(s). A designated database provider may be a corporation, association, or other entity that represents all of the political subdivisions of a state and is sanctioned by the municipal and county associations or leagues of that state, which is responsible for providing the electronic database if the database is not provided by the state.

The bill requires that the database be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12 and that it provide an appropriate code identifying each taxing jurisdiction and level of taxing jurisdiction located within a state. In recognition of the fact that many service providers have operations in multiple states, the bill also directs that the numeric codes utilized in the databases contain the same number of numeric digits, and that each digit or combination of digits refer to the same level of taxing jurisdiction throughout the United States. For example, the first two digits might refer to the state, while the next three might refer to the counties within that state, and so on, until all levels of jurisdiction are accommodated. To assist in the development of consistent coding, the bill requires that the database use a format similar to FIPS 55–3, or some other appropriate format approved by the Federation of Tax Administrators and the Multistate Tax Commission.

The bill provides that the state or the designated database provider must furnish notice of the availability of the database, as well as any subsequent revisions thereof, by publication in the manner normally employed for publication of informational tax, charge or fee notices to taxpayers in the particular state. The home service provider is required by the bill to reflect changes that have been made to the database during a calendar quarter no later than 30 days after the end of such calendar quarter for each state that publishes notice of the update in the prescribed manner. If the mobile service provider uses the database and timely reflects changes thereto, the provider will not be held liable for taxes that were not paid solely as a result of errors or omissions in the database.

Alternatively, if neither a state nor designated database provider elects to provide the database described above, the home service provider may use an enhanced zip code matching system to determine the applicable taxing jurisdiction(s). An enhanced zip code is defined as a U.S. Postal zip code of nine or more digits. If the home

service provider uses the enhanced zip code system and exercises due diligence in assigning the enhanced zip codes to the appropriate taxing jurisdictions, the provider will not be liable for additional taxes that might otherwise be due as the result of an incorrect assignment of a street address to the correct taxing jurisdiction. The home service provider is presumed to have exercised due diligence if the home service provider demonstrates that it has expended reasonable resources to implement and maintain an appropriately detailed database of street address assignments to taxing jurisdictions, implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses, and used all reasonably obtainable and useable data pertaining to changes in jurisdictional boundaries that would materially impact the accuracy of the database.

A state or local jurisdiction may determine that the assignment of a taxing jurisdiction by the home service provider does not reflect the correct taxing jurisdiction. If such a determination is made, the home service provider may be required to change the assignment on a prospective basis. Before any change in assignment is finalized, the consent of all affected taxing jurisdictions must be obtained, and the home service provider must be given an opportunity to demonstrate that the original assignment was correct, in accordance with applicable administrative procedures.

The Committee recognizes that the sourcing rules contained in the bill are appropriate only for taxes based on the transaction between a mobile telecommunications service provider and its customer, and that such rules are not appropriate for determining the situs of business receipts, expenditures or property for purposes of other types of taxes, such as income, franchise and other business activity taxes. Accordingly, the bill expressly provides that its sourcing methodology is applicable only to transaction taxes, i.e., taxes, charges or fees levied as a fixed amount per customer or measured by the amounts charged to customers of mobile telecommunications services. The bill further provides that it does not apply to income, capital stock, property and other taxes not based on the transaction between the home service provider and the customer.

The bill provides that if the final judgment of a court substantially limits or impairs the essential elements of the bill on federal statutory or constitutional grounds, all of the provisions of the bill shall be null and void and of no effect. This nonseverability is a critical feature of the bill, because the provisions of the bill supersede and replace the existing state tax system with respect to the application of transaction taxes to mobile telecommunications services. The nonseverability provision provides a mechanism for automatically returning to the status quo ante in the event that the tax system authorized by the bill is overturned by the courts.

CONSTITUTIONAL ANALYSIS

Under the Commerce Clause of the Constitution, Congress has the ability "to regulate Commerce * * * among the several States." U.S. Const. art. I, section 8, cl. 3. In the absence of federal legislation, the U.S. Supreme Court has interpreted the Commerce Clause to mean that states may levy a tax on interstate commerce as long as the tax (1) is applied to an activity having a substantial nexus

with the state, (2) the tax is fairly apportioned, (3) the tax does not discriminate against interstate commerce, and (4) the tax is fairly related to the services provided by the taxing state. *Complete Auto Transit, Inc.* v. *Brady,* 430 U.S. 274 (1977). In *Goldberg* v. *Sweet,* 488 U.S. 252, 263 (1989), the U.S. Supreme Court explained which states had jurisdiction to apply a transactional tax to interstate telecommunications. Jurisdiction rested with the state or states from which the telecommunications originated or in which the telecommunications terminated, provided that the state also was the state of the service address (address of the equipment to which the telecommunications was charged) or the billing address.

The place of primary use rule provided in the bill does not follow the taxing model upheld in *Goldberg* v. *Sweet.* The Committee recognizes, however, that Congress's power under the Commerce Clause includes the ability to regulate taxation and that Congress may alter or abolish judicially created rules regarding the imposition of taxes by states. *See Northwestern Portland Cement Co.* v. *Minnesota,* 358 U.S. 450 (1959); *Gwin, White & Prince, Inc.* v. *Henneford,* 305 U.S. 434 (1939).

The Committee also believes that the taxing model authorized by the bill satisfies the Due Process Clause of the Constitution. In the context of transaction taxes subject to the provisions of the bill, the Due Process Clause essentially requires only that there be some minimum connection between the taxing state and the persons and transactions sought to be taxed. The Committee believes that the customer's intentional use of the service primarily in a particular state (i.e., the place of primary use) should be substantially more than the minimum connection between that state and the customer necessary to satisfy the Due Process Clause. Similarly, the home service provider's agreement with the customer, which reflects the purposeful direction of its economic activity and maintenance of a market in that state, also creates more than the minimum connection between the state and the home service provider necessary to satisfy the Due Process Clause.

Finally, the bill does not require state or local governments to take any action in furtherance of a federal program in violation of the Tenth Amendment. The Committee believes that the provisions of this bill are more appropriately characterized as an authorization by Congress for the states to tax wireless communications services in a way that they otherwise could not absent the bill, rather than a mandate that the states adopt a particular regulatory scheme. Cf. *United States* v. *Printz,* 521 U.S. 898 (1997); *New York* v. *United States,* 505 U.S. 144 (1992).

The Committee believes that the bill is a constitutionally sound and practical approach to burdensome and otherwise insoluble problems of multi-jurisdictional commerce.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 2000.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1755, 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), Hester Grippando (for revenues), and Shelley Finlayson (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1755—Mobile Telecommunications Sourcing Act

Summary: Two years after enactment, S. 1755 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 S. 1755 could affect direct spending and receipts, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be negligible.

S. 1755 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 a 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 legislation does not contain any new private-sector mandates as defined by 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, S. 1755 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 and receipts. As noted above, S. 1755 could affect direct spending and receipts, but CBO estimates that any such effects would be negligible.

Estimated impact on state, local, and tribal governments: S. 1755 would preempt state and local government laws by prohibiting jurisdictions from taxing mobile telecommunications services unless the jurisdictions contain a customer's place of primary use. Such a preemption would be a mandate as defined in 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 determining which jurisdictions may tax mobile telecommunications services.

Because the current system of taxing mobile telecommunications services is very complex, it is unclear what effect 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: This bill contains no new private-sector mandates as defined by UMRA.

Estimate prepared by: Federal Costs: Mark Hadley; Revenues: Hester Grippando; Impact on State, Local, and Tribal Governments: Shelley Finlayson; Impact on the Private Sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The Committee believes that the bill will not subject any individuals or businesses affected by the bill to any additional regulation.

ECONOMIC IMPACT

After full implementation of the bill, individuals, governmental authorities, and businesses will benefit from greater simplification of the manner in which mobile telecommunications services are taxed. Consumers will avoid the possibility of having a mobile telecommunications service taxed by competing taxing authorities. The audit and oversight complexities of the taxation of mobile telecommunications transactions will be simplified for state and local governments, reducing their costs. In addition, mobile telecommunications carriers will avoid the administrative costs of having to administer the tax laws and regulations in the dozens of state and local taxing authorities that each individual mobile telecommunications consumer may be located in while making or receiving calls during the course of each monthly billing period, reducing their costs as well. All told, costs will be reduced for consumers, taxpayers, state and local governments and the mobile telecommunications industry.

PRIVACY

There will be no impact on personal privacy as a result of this legislation.

PAPERWORK

The paperwork resulting from this legislation will be primarily related to the notice and updates to home service providers regarding electronic databases provided by the states.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The title of the Act is the "Mobile Telecommunications Sourcing Act."

Section 2. Findings

The findings describe the problem of applying state and local transactional taxes to mobile telecommunications services and the competing value of preserving viable state and local governments in our federal system. The findings also acknowledge the need for a practical solution in the area of state and local taxation of mobile telecommunications services.

Section 3. Amendments to the Communications Act of 1934

Section 3 reflects the fact that the legislation is structured as an amendment to the Communications Act because the Mobile Telecommunications Sourcing Act is a matter of interstate telecommunications policy rather than a revenue-raising or revenue-cutting measure. Section 3 therefore adds title VIII to the Communications Act.

Section 801(a) provides that the legislation applies to any tax, charge, or fee imposed by any taxing authority as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services. The legal imposition of the tax, charge, or fee does not matter.

Section 801(b) identifies general taxes that are not subject to the provisions of the title. Taxes excluded from the title include, among others, income taxes and taxes assessed on an equitably apportioned amount that is not determined on a transactional basis.

Section 801(c)(1) provides that the title does not apply to the determination of the taxing situs of prepaid telephone calling services.

Section 801(c)(2) provides that the title does not affect the taxability of either the initial sale or subsequent resale of mobile services where the Internet Tax Freedom Act would preclude a taxing jurisdiction from imposing a tax, charge, or fee on such mobile telecommunications services.

Section 801(c)(3) provides that the title does not apply to air-ground radiotelephone services as defined in 47 CFR 22.99 as of June 1, 1999.

Section 802 provides that mobile telecommunications services can only be subjected to a tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. The rule only applies to charges for mobile telecommunications services for which charges are billed by or for the home service provider with which the customer contracts. This section authorizes states and localities to impose taxes based upon the place of primary use and prohibits them from imposing taxes on mobile telecommunications services on any other basis.

Section 803 clarifies that the title does not give taxing jurisdictions any authority that they do not already possess to impose a tax, charge, or fee. This section also clarifies that the title does not modify, impair, or supersede any current authority possessed by state and local taxing jurisdictions except as expressly provided in this title.

Section 804 establishes a mechanism through which home service providers can determine the appropriate taxing authorities for a customer's place of primary use. It allows the states to provide home service providers with an electronic database containing such information in a uniform format. The database would match street addresses (in standard postal format) within the state to the applicable taxing jurisdictions. Section 804 also permits a designated database provider to provide an electronic database if a state does not provide such a database.

Section 804 also provides that a home service provider that relies on the information contained in an electronic database will be held harmless from any tax, charge, or fee that otherwise would be due solely as a result of an error or omission in the database.

Section 805 provides that a home service provider would be held harmless from any tax, charge, or fee that would otherwise be due if the database described in Section 804 does not exist in a state and the home service provider uses an enhanced zip code to determine the taxing jurisdictions associated with a customer's place of primary use. A home service provider must exercise due diligence when assigning taxing jurisdictions using the enhanced zip code method for the provisions of this section to apply. Additional requirements are set forth in this section regarding the use of the enhanced zip code method.

Section 806 provides that a taxing jurisdiction under specified procedures can require a home service provider to change prospectively the customer's place of primary use or require the home service provider to change prospectively the applicable taxing jurisdiction(s) assigned to a customer's place of primary use.

Section 807(a) establishes that a home service provider has the principal responsibility for obtaining and maintaining updated records on a customer's place of primary use. A home service provider may rely on information provided by the customer if such reliance is made in good faith. Section 807(a) also provides that, with respect to taxes customarily itemized and passed through on the customer's bills, the home service provider is not generally responsible for taxes subsequently determined to have been sourced in error.

Section 807(b) provides that in the case of a contract existing prior to the effective date of the Act a home service provider may rely on its previous determination of the applicable taxing jurisdiction(s) for the remainder of the contract, excluding extensions or renewals of the contract.

Section 808(a) provides that the title does not modify, impair, or supersede any law that authorizes a state or local taxing jurisdiction to collect a tax, charge, or fee from a customer who has failed to provide its place of primary use.

Section 808(b) states that a home service provider must treat charges that reflect a bundled product, only part of which is taxable, as fully taxable, unless reasonable identification of the non-taxable charges is possible from the home service provider's business records kept in the regular course of business.

Section 808(c) limits non-taxability of mobile telecommunications services in a jurisdiction where mobile telecommunications services are not taxable. A customer must treat charges as taxable unless the home service provider separately states the non-taxable charges or provides verifiable data from its business records kept in the regular course of business that reasonably identifies the non-taxable charges.

Section 809 provides definitions specific to the title.

Section 809(1) defines "charges for mobile telecommunications services."

Section 809(2) defines "taxing jurisdiction."

Section 809(3) defines "place of primary use" as the customer's business or residential street address in the licensed service area of the home service provider. Place of primary use is used to determine the taxing jurisdiction(s) that may tax the provision of mobile telecommunications services. If a home service provider has a national or regional service area, the place of primary use is still limited to the customer's business or residential street address within that larger service area.

Section 809(4) defines "licensed service area."

Section 809(5) defines "home service provider."

Section 809(6) defines "customer." Under a special rule, customers include employees (the end users) of businesses that contract for mobile telecommunications services. Customers do not include (i) resellers or (ii) a serving carrier providing wireless services for a customer who is outside the customer's home service provider's licensed service area.

Section 809(7) defines "designated database provider."

Section 809(8) defines "prepaid telephone calling services."

Section 809(9) defines "reseller." A reseller does not include a serving carrier providing mobile telecommunications services for a customer who is outside the customer's home service provider's licensed service area.

Section 809(10) defines "serving carrier."

Section 809(11) defines "mobile telecommunications services" as commercial mobile radio service as defined in 47 CFR 20.3 as of June 1, 1999.

Section 809(12) defines "enhanced zip code," a term that refers to zip+4 or a zip code exceeding nine digits.

Section 810 provides that the FCC has no jurisdiction over the interpretation, implementation, or enforcement of this title.

Section 811 provides for nonseverability in the event of a judicial determination that the title is unconstitutional or otherwise substantially impaired from accomplishing its objective.

Section 812(a) provides that nothing in the title is intended to reflect upon the intent of Congress in enacting the Internet Tax Freedom Act.

Section 812(b) provides that nothing in the title impacts the implementation of the Telecommunications Act of 1996 or the amendments made by that Act.

Sec 4. Effective date

Section 4 establishes an effective date of the first day of the first month beginning more than two years after enactment. The transitional delay allows both business and tax administrators to gear up for a change in their existing systems, including the possible use of the database authorized by section 804.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE VIII—STATE AND LOCAL TREATMENT OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.

SEC. 801. APPLICATION OF TITLE.

(a) IN GENERAL.—This title 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 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 title does 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 State-imposed business and occupation tax—

(A) that is applied to gross receipts or gross proceeds;

(B) that is the legal liability of the carrier; and

(C) under which the carrier may elect to use the sourcing rules under this title; or

(5) any fee related to obligations under section 254 of this Act."

(c) SPECIFIC EXCEPTIONS.—This title—

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

(2) does not affect the taxability of either the initial sale of mobile telecommunications services or subsequent resale, whether as sales of the service alone or as a part of a bundled product, where the Internet Tax Freedom Act would preclude a taxing jurisdiction from subjecting the charges of the sale of these mobile telecommunications 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) does not apply to the determination of the taxing situs of air-ground radiotelephone service as defined in section 22.99 of the Commission's regulations (47 CFR 22.99).

SEC. 802. SOURCING RULES.

(a) IN GENERAL.—Notwithstanding the law of any State or political subdivision thereof to the contrary, 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) JURISIDICTION.—All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under 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.

SEC. 803. LIMITATIONS.

This title does not—

(1) provide authority to a taxing jurisdiction to impose a tax, charge, or fee that the laws of the jurisdiction do not authorize the 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 this title.

SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE STANDARD NUMERIC JURISDICTIONAL CODES.

(a) ELECTRONIC 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. The 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. The 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. 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 that State.

(c) USER HELD HARMLESS.—A home service provider using the data contained in the 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 the electronic database provided by a State or designated database provider. The home service provider shall reflect changes made to the electronic database during a calendar quarter no later than 30 days after the end of that calendar quarter for each State that issues notice of the availability of an electronic database reflecting such changes under subsection (b).

SEC. 805. PROCEDURE WHERE NO ELECTRONIC DATABASE PROVIDED.

(a) IN GENERAL.—If neither a State nor designated database provider provides an electronic database under section 804, a home service provider shall be held harmless from any tax, charge, or fee liability in that 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 806, 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. Where 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 that enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 806 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 the electronic 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 804 until the later of—

(1) 18 months after the nationwide standard numeric code described in section 804(a) has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

(2) 6 months after that State or a designated database provider in that State provides the electronic database as prescribed in section 804(a).

SEC. 806. 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 809(3) 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) where 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 customer is given an opportunity, prior to such notice of determination, 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 805 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) where 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.

SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING PLACE OF PRIMARY USE.

(a) PLACE OF PRIMARY USE.—A home service provider is responsible for obtaining and maintaining the customer's place of primary use (as defined in section 809). Subject to section 806, and if the home service provider's reliance on information provided by its customer is in good faith, a home service provider—

(1) may rely on the applicable residential or business street address supplied by the home service provider's customer; and

(2) is not 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 806, a home service provider may 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.

SEC. 808. SCOPE; SPECIAL RULES.

(a) TITLE DOES NOT SUPERSEDE CUSTOMER'S LIABILITY TO TAXING JURISDICTION.—Nothing in this title 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 otherwise non-taxable 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) NON-TAXABLE CHARGES.—If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the non-taxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for non-taxable 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 non-taxable charges.

(d) REFERENCES TO REGULATIONS.—Any reference in this title to the Commission's regulations is a reference to those regulations as they were in effect on June 1, 1999.

SEC. 809. DEFINITIONS.

In 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 the Commission's regulations (47 CFR 20.3), 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) 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.

(3) 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) either 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.

(4) 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.

(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) 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) where 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.

(7) 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 the electronic database prescribed in section 804(a) if the State has not provided such electronic database; and

(B) sanctioned by municipal and county associations or leagues of the State whose responsibility it would otherwise be to provide the electronic database prescribed by this title.

(8) 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.

(9) 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; but

(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.

(10) 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.

(11) MOBILE TELECOMMUNICATIONS SERVICE.—The term "mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3 of the Commission's regulations (47 CFR 20.3).

(12) ENHANCED ZIP CODE.—The term "enhanced zip code" means a United States postal zip code of 9 or more digits.

SEC. 810. COMMISSION NOT TO HAVE JURISDICTION OF TITLE.

Notwithstanding any other provision of this Act, the Commission shall have no jurisdiction over the interpretation, implementation, or enforcement of this title.

SEC. 811. NONSEVERABILITY.

If a court of competent jurisdiction enters a final judgment on the merits that is no longer subject to appeal, which substantially limits

or impairs the essential elements of this title based on federal statutory or federal Constitutional grounds, or which determines that this title violates the United States Constitution, then the provisions of this title are null and void and of no effect.

SEC. 812. NO INFERENCE.

(a) INTERNET TAX FREEDOM ACT.—Nothing in this title may be construed as bearing on Congressional intent in enacting the Internet Tax Freedom Act or as affecting that Act in any way.

(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing in this title shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 or the amendments made by that Act."

○