companies but not taxing comparable sales by "non-regulated" companies.

Such archaic definitions and distinctions need to be changed to clarify existing laws in light of the changing technological environment as well as to improve the laws through changes such as those we have proposed in this document. The states can and should take steps to eliminate the problems of arbitrariness and competitive inequality that exist under today's systems with the goal of treating all providers of equivalent or comparable services the same without regard to the nature of the entity providing the service. Laws and regulations must provide definitions that make absolutely clear how sales and use taxes apply to information highway transactions and service providers: what transactions and services are taxable, and which providers are responsible for collecting taxes. Providers should not be forced to play the "audit lottery" in meeting their sales tax responsibilities.

5. Tax Collection Issues

Finally, with regard to tax collection issues (which are separate from the level-playing field issues addressed above) we have recommendations that bear on the question of the appropriate approach that should be used to collect sales or use taxes on taxable information highway services provided by third-party service providers. States should not be allowed to use

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their tax collection mechanism to ignore the legal requirements of nexus or to impose a collection obligation on a party who merely facilitates a transaction via transmission, transport or billing of the information.

For example, states do not require transportation companies, such as Federal Express or United Parcel Service, that are simply facilitating purchases between vendors and purchasers by transporting the goods to the ultimate purchaser to collect sales tax for vendors' (shippers') sales, even if a purchase is on a COD basis. This is because the transportation companies are not the vendors; they simply represent the "medium" facilitating the transaction. Likewise, states do not require credit card companies that facilitate purchases between buyers and sellers to remit sales taxes for amounts billed to the buyer's credit card. Again, this is because the taxpayer is the vendor selling the goods, not the credit card company that facilitates the transaction.

However, a number of states have sought to impose a tax collection burden on telecommunications companies that transmit third-party information service from the information provider to the information provider's local consumer.[19] This is completely

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[19] At least two states have imposed this obligation by statute. New York requires that any person billing upon behalf of a vendor providing entertainment or information services by means of telephone service shall be deemed a vendor of such services liable for the obligation of collecting, reporting and

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inappropriate. In many instances, the transmission company will have no information regarding the bill for the information or other service provided by the remote information provider. It might, for example, be billed to a credit card number. Secondly, the local exchange company or interexchange carrier will generally have no knowledge as to the particular service or product being provided or its taxability, and it would be inappropriate for these companies to make arbitrary tax decisions. Incorrect taxing decisions will engender disputes by both information service providers and their customers. Moreover, even if the transmission company in some instances does have this information, saddling the transmission company with the tax collection responsibility is improper because it is not the taxpayer, and certainly will create competitive inequalities between those information services that are billed through telecommunications providers and those that are not.

Consequently, we believe that the only satisfactory solution to this problem is to require that the transmission company has no responsibility or liability for billing,

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remitting applicable sales taxes. N.Y.S. § 1101(b)(8))ii)(B) (McKinney 1994). Minnesota has imposed liability for collecting a tax on services provided by 900 service information providers on the person contracting with the information service provider to interconnect the information provider with its customer ("calling party") or otherwise on the person billing the customer (this would apparently apply to credit card companies as well). Minn. Stat. Ann. § 297A.136, Subd.3 (West 1995).

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collecting or remitting state and local taxes that apply to "content" based services or products sold over the information highway by third-party providers. The requirement to bill, collect and remit state and local taxes on these services or products should remain the responsibility of the selling vendor/provider, subject to federal requirements of nexus and due process. The transmission company should not be placed in the position of having to bill, collect or remit taxes simply because the information highway is the medium over which the transaction is facilitated through transmission, transport or billing of the information. Without a law absolutely limiting a state's ability to require the transmission company to bill, collect and remit taxes on third-party transactions, these companies will be placed in the untenable position of being subjected to enormous tax assessments on audit for taxes due or allegedly due with respect to another taxpayer's transactions.

States are already suggesting that because these transactions take place over a transmission company's facilities that some sort of agency relationship is created whereby transmission company has an agent's liability to collect and remit taxes for the principal, i.e., vendor. While this is not true, the fact is that when subjected to a huge jeopardy assessment by the state, the transmission company will be in the unenviable position of having to prove it is not the taxpayer.

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This risk of tax assessment for a third-party's tax could do more to stifle the development of the information highway than any other tax issue. A transmission company may feel it is risky to allow content providers to use their transmission facilities where there is the possibility that the transmission company may be liable for the content provider's taxes. For example, let us assume a transmission company sells transport to a content provider for $100 for 100 minutes of transmission time. Assume that a content provider in Los Angeles sells $100,000 of service or product over the highway during those 100 minutes of use. Assume further that the purchasers are all in Seattle, which has a combined sales tax rate of 8.2%. The potential sales tax liability of the transmission company would be $8,200, exclusive of penalties and interest, for a sale that gave the transmission company $100 of gross revenue and maybe $1 of profit. The potential tax liability simply dwarfs the expected income to the transmission company from the transaction. This threat is real. In fact, one of the Regional Bell Operating Companies[20] was recently assessed $1,000,000 in taxes for a third-party information company's tax liability, for which the RBOC generated about $75,000 in transmission and billing and collection revenue. Limiting a transmission company's

[20] U S WEST, Inc., with respect to 900 service tax imposed on third-party companies' 976 and 900 information services.

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responsibility and liability is a must if the information highway is to prosper. Accordingly, transmission companies should be given the same protection that now exists for credit card companies, banks, finance companies, Federal Express, common carriers, transportation companies and other firms that simply facilitate third-party transactions.

6. Expanding Vendor's Compensation for Administering Taxes.

In addition to the tax collection issues discussed in Subsection 5 above, telecommunications providers are faced with enormous financial costs and administrative burdens in billing, collecting and remitting state and local taxes on behalf of the states. These burdens are far in excess of what most vendors face because of the significant number of services that telecommunications companies provide to customers, many of which have vastly different tax treatment, and the large geographic areas that telecommunications companies cover. Most are at least city-wide, some are county-wide, state-wide, national and even international.

Very few states offer telecommunications companies that collect tax revenues on behalf of the taxing states compensation, generally known as "vendor's compensation," for the costs and burdens relating to their billing, collection and payment responsibilities. Those that do offer vendor's compensation generally cap the fee at a de minimis amount in relation to the

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administrative costs of billing, collecting and remitting the taxes.[21] In addition, some states even require the collecting companies to pay over the taxes before they have been received from the companies' customers. It is our recommendation that vendor's compensation fees be universally offered as a means of recompensing the collecting agent companies for the substantial costs and burdens of collecting taxes on behalf of governmental bodies.

C. INDUSTRY SPECIFIC TAXES - UTILITY GROSS RECEIPTS TAXES

Considerations of tax neutrality and tax equity, reinforced by the nation's policy toward the national information infrastructure, militate in favor of abolishing selective gross receipts taxes that a number of states impose on the telecommunications industry.[22] This is particularly true where

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[21] See, for example, Oklahoma law which allows 2.25% of taxes due, up to $3,300 per reporting period as a vendor's fee. Okla. Stat. Title 68, § 1410.1 (1994).

[22] Many states and localities have created tax systems and enacted levies applicable only to utilities. Thus, the telecommunications industry was subjected to state-wide utility gross receipts taxes and to local franchise fees or related levies as a quid pro quo for the special rights and privileges that states and localities granted to utilities (e.g., power of eminent domain, right to use public rights-of-way). These levies are typically only a part of the tax burden imposed on utilities doing business in the state, and are almost always imposed in addition to the retail sales and use tax on services provided by these industries. E.g., see generally Case, supra note 6. Only 5 states currently impose selective gross receipts taxes on the cable television industry. However, because the cable industry also enjoys special rights granted by local governments, it is often subjected to special local franchise and other special fees

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the taxes are in addition to taxes applied to the general taxpayer base or where they are "in-lieu" of other taxes (such as the property tax), but are far in excess of what a general business taxpayer would pay and where they are not imposed directly on the end-user customer or cannot be passed on to the end-user customer. We strongly urge that these industry specific taxes be repealed.[23] In many cases, these taxes may have been originally enacted as special taxes on utilities that were viewed as a quid pro quo for the special rights and privileges that the state granted to utilities. In light of the firm trend towards more deregulation of the telecommunications industry and significant competition by non-regulated vendors, the case for eliminating additional and/or specialized state-wide taxes that discriminate against the telecommunications and related industries in relation to the general taxpayer base is

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and taxes not imposed on other taxpayers. See, generally John F. Gibbs, State and Local Taxation Issues Regarding Cable Television (1994).

[23] Professor Karl Case, supra note 6, a commentator on state and local tax policy towards the telecommunications industry, recently observed that "[n]o good economic logic now justifies singling out telecommunications firms for special taxation." Professor Case concludes that "[t]he easiest way to eliminate the distortions and potential societal costs associated with specific taxes on telecommunications would be to discontinue those taxes and to tax all business enterprises under the same set of rules. General sales taxes and broad-based taxes on corporate profits, imposed on all firms at equal rates, would significantly reduce the inefficiencies that currently exist in the system." Id.

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compelling.[24] To the extent that industry specific taxes are not immediately eliminated, they should apply equally to all similarly situated providers and should include the option to pass-on the cost of the tax to the end-user customer as a separate line item on the bill.

D. PROPERTY TAXES

The telecommunications industry is frequently subject to a significantly heavier property tax burden than other taxpayers. This treatment is undeniably discriminatory and is contrary to the goal of eliminating governmental policies that will impede the development of the information highway. Accordingly, property tax discrimination should be eliminated.

Some forms of discrimination can easily be identified and eliminated since the discrimination appears on the face of the statute. For example, different assessment ratios sometimes apply to telecommunications property, causing this property to be taxed at a higher percentage of its fair market value than other properties (e.g., assessing telecommunications property at 60% of value and other property at 30% of value).[25] The statutes also

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[24] Indeed, a number of states have already recognized this conclusion, by reducing the number of selective gross receipts taxes on the telecommunications industry from 30 to 18 since 1986. More needs to be done in this area, however.

[25] For example, Ohio assesses personal property of utilities (including telecommunications providers) at 88% of fair market value while it assesses other industrial property at 25% of fair market value. Several states, including Oklahoma,

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may draw arbitrary distinctions between various telecommunications services, causing functionally similar property to be taxed differently.[26] In addition, some states, exempt certain types of property (e.g., various forms of personal property) from taxation, except when it is owned by a telecommunications company.[27] Again, this discriminatory treatment may cause functionally equivalent property to be treated differently. Since in most circumstances the rationale for treating telecommunications companies differently from other businesses no longer holds true, and since arbitrary distinctions between similar property creates competitive inequality, we recommend elimination of these forms of discrimination.

In this regard, we also recommend that intangible

Montana, Maryland, Alabama, Mississippi and Arizona, assess telecommunications property generally at a higher rate than other commercial and industrial property is assessed.

[26] The point is illustrated in the recent case of MCI Telecommunications Corp. v Limbach, 68 Ohio St. 3rd 195, 625 N.E. 2d 597 (1994), cert. denied sub nom Tracy v MCI Telecommunications Corp. 130 L.Ed.2d 31, 115 S.Ct. 77, 63 U.S. L.W. 3258 (1994). Ohio taxed tangible personal property of public utilities, including telephone companies, at 100% (today 88%) of its true value. Tangible personal property of resellers, however, was treated as general business property and taxed at only 31% (today 25%) of its true value. MCI sought to have the scheme invalidated on Equal Protection grounds. The court ruled that the scheme's discriminatory treatment was unconstitutional over the Ohio Tax Commissioner's argument that the reseller did not fit the definition of a phone company because it did not own equipment but only purchased and resold transmission service.

[27] NY Real Prop. Tax Law 102.12(d).

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property of telecommunications companies be treated in the same manner as intangible assets owned by other industrial and commercial taxpayers located within the state. Currently, in some states, intangible property may be exempt only when the owner is subject to local assessment.[28] Since a large percentage of telecommunications property is centrally assessed (valued as a unit by the applicable taxing authority), the differential treatment of intangibles has an extremely adverse effect on telecommunications property. In addition, this discriminatory treatment causes some telecommunications companies, i.e., those assessed at the state level, to bear a heavier burden than other telecommunications companies, i.e., those assessed at the local level. Therefore, intangibles should be treated equally regardless of whether the assessment occurs at the state or local level, and that treatment should be consistent with other industrial and commercial taxpayers.

Unfortunately, even in states that exempt the taxation of intangibles, some assessors nevertheless argue that they can tax the "enhancement" to the value of tangible property caused by intangible property, thus making taxable what is otherwise not

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[28] Colorado's property tax scheme expressly provides that intangible property is exempt from taxation. C.R.S. 39-3-118. However, when valuing the centrally assessed property and plant of public utilities, the Colorado Property Tax Administrator is permitted by statute to consider intangible property. C.R.S. 39-4-102.

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taxable.[29] Moreover, even though many states exempt intangibles for all taxpayers, telecommunications companies and other utility taxpayers find themselves subjected to intangibles taxation by virtue of the valuation methodology employed by the assessment community.[30] These excessive values related to intangibles

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[29] The notion that an assessor may tax "enhancement value" has created considerable confusion in the assessment community and the courts. See e.g., Freeport-McMoran Resources Partners v. County of Lake, 12 Cal. App. 4th 634 (1993) (effectively concluding that a valuable power purchase contract could be subject to property taxes under the enhancement doctrine). Also in Michigan Bell Telephone Co. v. Dept. of Treasury, 518 N.W.2d 808 (Mich. 1994), the Michigan Supreme Court, called on to decide whether the company's intangible personal property, consisting of the "going concern" value of the enterprise, was a proper component of the assessment process for telephone companies, ruled that the applicable statute's reference to the word "property" is expansive, and incorporates intangible property as well as its tangible counterpart, and is consistent with the long-established "unit concept" of valuing property owned by a utility. Finally, the court found no constitutional infirmities in application of the assessment provisions of Michigan property tax law to Michigan Bell's intangible personal property. But compare, GTE Sprint Communications Corporation v. Alameda, 32 Cal. Rptr.2d 882 (1994), where the California Court of Appeals struck down the Board of Equalization's unit valuation method because it failed to exclude from taxation the portion of unit value allocable to nontaxable intangible assets.

[30] The central assessment methodology generally utilizes three approaches to value when valuing the operating property of a telephone company: The cost approach (historic or replacement cost less depreciation); the income approach; and, the market approach (generally, the stock and debt approach). The income and market approaches are essentially "going-concern" type valuation methods, and necessarily value all of the assets of the target company - both tangible and intangible assets. When the cost less depreciation approach utilizes inordinately long depreciation lives (as used for regulatory purposes, for example) without any factor for obsolescence, it necessarily includes intangible values in the property value.

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should be carved out from the true value of the taxable tangible personal property.[31]

Many states have chosen to exempt intangible property from property taxes regardless of whether the taxpayer is state or locally assessed and, instead, have decided to tax the income produced by such property under the state income or franchise tax. This is appropriately a state by state decision. Irrespective of how the states deal with intangibles for property tax purposes, telecommunications companies' intangibles must not be treated more harshly than those of other commercial and industrial taxpayers.

As alluded to earlier, most telecommunications property is centrally assessed while the majority of all other business and residential property is locally assessed. Centrally assessed taxpayers almost universally agree that property subject to

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[31] This can be accomplished by the use of one of several assessment methods. One such method is the summation method whereby the assessor identifies the tangible assets to be assessed, values each asset (or category of asset) by an appropriate method and adds the resultant values to arrive at an overall assessment. This method, through the valuation of individual assets, tends to avoid the taxation of exempt intangibles altogether. See County of Orange v. Orange County Assessment Appeals Board No. 1, 13 Cal. App. 4th 524 (1993). Another method for implementing the exemption for intangibles involves removing the value of the intangible after a taxpayer's operation has been valued as a unit in a going concern. See Shuat v. Sutter County Assessment appeals Board No. 1, 13 Cal. App. 4th 794 (1993). Alternatively, unitary approaches could be balanced with non unitary approaches by having a utility's tangible assets valued separately and then adding a going concern component to reflect the assemblage value of the assets.

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central assessment is valued at a higher level than if it were locally assessed. It is our recommendation that traditional methods of central assessment of telecommunications property be replaced with an assessment approach using valuation principles applicable to all business property.

Finally, there is a need to address simplification of personal property taxation in the face of an explosion of end user equipment locations that are often mobile in nature. A de minimis exemption for small value equipment at any one location (e.g., car, home, remote office site) is appropriate to avoid property tax compliance that may cost as much as the tax itself and lacks the prospect of a reasonable ability to enforce.[32]

E. INCOME TAXES

Telecommunications companies do not receive significantly disproportionate treatment in the income tax area compared to other taxpayers. However, one area of concern is how telecommunications companies' property is treated for income tax depreciation purposes. Tax depreciation lives and methods used for the telecommunications industry should recognize the rapid technological changes that are occurring in the industry.

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[32] There is also a need to simplify withholding requirements for local income taxes in the face of employees working portions of their week at home and at a variety of off-site locations.

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F. LOCAL FRANCHISE FEES AND TAXES

1. Franchise Fees

Franchise fees typically are imposed by local jurisdictions on telecommunications companies for the right to use public streets and rights-of-way and in some cases for the right to conduct business in the jurisdiction.[33] In the case of franchise fees for the right to use city streets, the fees should be limited (as discussed below) to fees for the use of the streets and rights-of-way for those forms of service that require access to the streets and rights-of-way. Franchise fees paid for a franchise to conduct a telecommunications business should be repealed (as discussed below), or at a minimum be replaced with broad-based taxes that apply equally to all similarly situated providers.

a. Franchise Fees for the Use of City Streets.

A telecommunications company (or any other company) reasonably may be expected to obtain a franchise and pay a franchise fee in exchange for the right to use the streets and

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[33] According to the United States Supreme Court, a franchise is a "special privilege conferred by government upon individuals... which does not belong to the citizens of the county generally, of common right." Community Tele-Communications v. Heather Corp., 677 P.2d 330, 336 (1984) quoting Bank of Augusta v. Earle, 38 U.S. (13Pet.) 519 (1839). A franchise fee represents compensation for the grant of this privilege and the attendant benefits received. The fee should be equal to the value conveyed by the government. National Cable Television Ass'n Inc. v. United States et al., 415 U.S. 336, 340-343 (1974).

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rights-of-way if they do not otherwise have existing authority to use the public streets. However, if a telecommunications company does have existing authority to use the public streets and/or already pays compensation to a state or its political subdivisions (e.g., pursuant to a gross receipts tax which is payable essentially for the privilege of operating as a public utility in such state or local jurisdiction), additional compensation (a franchise fee) should not be payable to the local jurisdictions. Furthermore, if the telecommunications company does not have existing authority and the payment of a franchise fee is deemed to be appropriate, any such franchise fee should be limited to a reasonable estimate of the value of the streets and rights-of-way actually used by the franchisee, and the fee, where possible, should be a flat fee.[34] Because local jurisdictions have essentially monopoly power over this public resource, the value of this right should not be left to negotiation between the parties. Accordingly, a limitation on the fee should be imposed. Moreover, it would be preferable if statewide authority were granted covering the right to use public streets (assuming such a grant of statewide authority does not already exist), subject of

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[34] Some jurisdictions have enacted "fees" that in fact are taxes. One such "fee" enacted by the City of Little Rock, Arkansas is not based upon any estimate of the value of the right of way used but levies a per minute charge for all long distance telephone calls billed to a city service address. The ordinance was upheld in City of Little Rock v. AT&T Communications of the Southwest, 318 Ark 616 (Ark. Sup. Ct. 1994).

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course to the local jurisdiction's police powers, and only the fee should be imposed locally. There should be authority to pass on the cost of any fee to the consumer as a separate line item on the bill.

b. Franchise Fees to Conduct Business.

In contrast to franchise fees for the use of streets and rights-of-way, franchise fees (or privilege taxes) imposed for the right to conduct business are not justified to the extent they discriminate against telecommunications companies. In the past, franchise fees or privilege taxes, along with the various taxes and fees discussed elsewhere, imposed on telecommunications companies for the right to conduct business were justified by the fact that telecommunications companies were monopolies protected from competition. Today, the dramatic changes in the industry have eliminated the justification for industry specific taxes, and thus these taxes should be repealed. Additionally, as services become more interstate in nature and thus more likely to fall under the licensing authority of the FCC, local jurisdictions are less likely to have authority to require a franchise in order to conduct business in the jurisdiction. To the extent franchise fees to conduct business are not immediately removed, they must at a minimum, apply to all similarly situated providers and there should be authority to pass on the cost of the fees to customers as a separately stated item on the bill.

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2. Local Taxes

As suggested in the previous paragraphs, some telecommunications companies may be distinguished from other general businesses in that some of them use the streets and rights-of-way to lay cables and wires. As to all other aspects of the operations, we believe telecommunications companies are similarly situated to other businesses. We believe that this conclusion will become inescapable as the information highway grows and becomes particularly competitive. Accordingly, we believe that telecommunications companies should be taxed in the same manner and at the same rate as other commercial and industrial businesses operating in the relevant jurisdiction.

This means that no tax for the privilege of operating in a jurisdiction should be imposed on telecommunications companies that does not apply equally to general commercial and industrial businesses. Today, many taxes apply only to specific targeted industries, such as telecommunications. Moreover, the information highway and the telecommunications industry should not be viewed only as a revenue generator that can be taxed and taxed, which is apparently how some city representatives view the situation.[35] To the extent the information highway and the

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[35] See, for example, the article entitled, From Fancy New Phones, Big Local Revenue Possibilities, Governing Magazine, May 1994, at page 88. The first paragraph of this article is instructive: "If city governments get their acts together now, they can ensure that an innovative communications service

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telecommunications industry are viewed by local jurisdictions primarily as tax revenue generators, it will most certainly negatively affect the creation and development of the highway. Providers are going to focus on areas where the tax burden is comparable to that imposed on the general business taxpayer and shun those areas with oppressive tax burdens.

Where there is a decision to continue to impose local taxes on the telecommunications industry, at a minimum, the taxes must be imposed so that comparable services are taxed in a comparable manner, regardless of by whom provided. Thus, if a telephone company provides cable television services to end-user customers over its telephone system, the telephone company should bear a comparable tax burden to that imposed on cable television services. If no tax applies to cable television services provided by a cable television company, then no tax should apply to such services provided by a telephone company, and vice versa. Further, there must be no duplicate taxation of providers such that a provider would be taxed both as a telephone company and a cable television company for the same service. A local tax should apply no more than once to any one transaction.

Perhaps the preferred alternative to local taxes in

[Personal Communications Service or PCS] soon to appear throughout the country will do more than offer telephone service to people on the run. It also can make hefty annual contributions to municipal treasuries." (emphasis added.)

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those states having them, is to require that local taxes be imposed and collected at the state level in lieu of the imposition of separate local taxes in each taxing jurisdiction. Such uniform local taxes could be easily and accurately collected at the state level and distributed by the state by among its local jurisdictions under a formula developed by the state. For instance, tax revenues could be distributed on the basis of relative population or other formula currently in use for distribution of state or federal assistance program funds down to the local level.

Whether administered at the state or local level, the taxing provisions should contain situsing or sourcing rules (i.e., determining which jurisdiction is entitled to tax the revenues) which are at once practical for the companies to administer, easily understood, and uniform among states and localities, as well as representative in their allocation of revenue among the jurisdictions. For example, all revenues from a transmission might be sourced to the service address of the end-user customer paying for the transmission (generally, the physical location of the customer's telephone where dial tone is provided). In this way, taxes would be equalized among jurisdictions.

For wireless transmissions, such as cellular service, however, the service address is very difficult to determine

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because of the mobile nature of the customer. Unlike landline customers whose service is at the physical location of the telephone equipment where dial tone is provided, the cellular customer may have no fixed location from which he obtains service. The very nature of the service is mobility. The technology available to the cellular providers does not enable them to use a single methodology for sourcing their service. So long as there is full accountability for service provided it should be recognized that various methods of sourcing service are acceptable. For wireless, revenues might be sourced to the service address of the end user, defined as the billing address or the originating cell site. Tax reform that complies with constitutional requirements may be necessary to accomplish this. For calls involving wireless roaming charges, sourcing might be defined either as the location of the primary switch of the jurisdiction instrumental to providing roaming or the location of the originating cell site.[36]

With the significant growth that is occurring in the wireless communications industry, it is critical to have sensible sourcing rules. Unfortunately, the industry is operating under laws written prior to the existence of the new wireless

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[36] For roaming charges, the customer's home billing or service address location will be outside of the foreign metropolitan service area (MSA) or rural service area (RSA) providing the roaming service and thus revenue would be sourced to a jurisdiction that had no meaningful claim over the transaction.

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technologies. The result is that for the present sourcing rules are either nonexistent, wholly unclear, inapplicable or impractical as applied to the wireless industry. Current law simply generates unnecessary tax exposure for those placed in the position of having to administer the law. Solutions, such as those discussed above, are needed in order to provide a uniform and equitable platform that serves the needs of all concerned.

In the event taxes are not administered pursuant to a single state system, as recommended, local sourcing rules should nevertheless be consistent across jurisdictions. Further, the same sourcing rules should apply to all transaction taxes imposed. In any event, the local ordinances should contain a protocol for determining a credit for taxes already paid to another jurisdiction with respect to the same transaction or revenue item, and place the burden on competing jurisdictions, rather than the taxpayer/collecting agent, for resolving conflicts.

When a tax relies on the physical location of a customer's address or service to source transactions to a particular jurisdiction, the onus should be placed on state and local jurisdictions to advise taxpayers and tax collection agents affirmatively of the address ranges included within a taxing jurisdiction. Today, it is left up to the taxpayer or collection agent to determine whether a tax location is within or without a

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taxing jurisdiction. And if the taxpayer or collection agent chooses wrongly, they bear the burden of their choice. Tax jurisdictions should have to tell taxpayers what is in and what is out of the taxing jurisdiction.

In our view, a broad-based sales and use tax which conforms to a state-imposed sales tax is preferable to other types of taxes because the sales and use tax rules are relatively well developed and more effectively address such problems as double taxation and sourcing. If a gross receipts tax is adopted, it should apply equally to all similarly situated providers and should include the option to pass-on the cost of the tax to the end-user customer.

3. Miscellaneous Taxes, Fees and Surcharges.

There are a number of miscellaneous taxes, fees and surcharges that apply to telecommunications providers or their customers. For example, many states impose flat or percentage taxes or surcharges on providers or their customers to fund emergency communications services - so-called "E-911" services.[37] These taxes/surcharges generally are collected or paid only by LECs, and in some instances, cellular companies and can represent a significant percentage of the total customer bill.

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[37] See, for example Washington state's E-911 tax. Chapter 82.14B Revised Code of Washington.

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Similar taxes, fees or surcharges are imposed by many states to fund telephone relay services to provide telecommunication services to hearing impaired persons.[38] And, similar exactions are imposed to fund telephone assistance plans or so-called "lifeline" plans for qualifying indigent customers. Further, state public utility commission regulatory fees also apply to LECs service revenues, and in some case to the revenues of cellular and interexchange companies.[39] At the federal level, there is a universal service fund that is intended to insure that telephone service is universally available to all that want it.[40] It is funded by contributions only from the interexchange carriers.

These miscellaneous taxes, fees and surcharges represent significant additional burdens to telecommunications companies and their customers and impact the development of the information highway and should be reviewed to determine whether they are still appropriate.[41] Needed tax revenues might more

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[38] See, for example, in Washington, Revised Code of Washington 43.20A.720-730.

[39] See, for example, Oregon Revised Statutes Section 756.310.

[40] 47 CFR 36.601 et. seq.

[41] If this seems like a small matter, it is not. The amount and variety of taxes applied to telecommunications services can represent a significant part of the total bill for services. For example, in Washington state, ten different gross receipts taxes or flat fees can apply to the bill for telephone

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appropriately be generated through taxes having general application to all taxpayers, rather than specifically focused taxes that impact the information highway.

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service, with a total burden of over 20% of the bill for services. No other industry is so highly taxed.

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Similar taxes, fees or surcharges are imposed by many states to fund telephone relay services to provide telecommunication services to hearing impaired persons.[38] And, similar exactions are imposed to fund telephone assistance plans or so-called "lifeline" plans for qualifying indigent customers. Further, state public utility commission regulatory fees also apply to LECs service revenues, and in some case to the revenues of cellular and interexchange companies.[39] At the federal level, there is a universal service fund that is intended to insure that telephone service is universally available to all that want it.[40] It is funded by contributions only from the interexchange carriers.

These miscellaneous taxes, fees and surcharges represent significant additional burdens to telecommunications companies and their customers and impact the development of the information highway and should be reviewed to determine whether they are still appropriate.[41] Needed tax revenues might more

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[38] See, for example, in Washington, Revised Code of Washington 43.20A.720-730.

[39] See, for example, Oregon Revised Statutes Section 756.310.

[40] 47 CFR 36.601 et. seq.

[41] If this seems like a small matter, it is not. The amount and variety of taxes applied to telecommunications services can represent a significant part of the total bill for services. For example, in Washington state, ten different gross receipts taxes or flat fees can apply to the bill for telephone

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appropriately be generated through taxes having general application to all taxpayers, rather than specifically focused taxes that impact the information highway.

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