

TELECOMMUNICATIONS TAX STUDY

As prepared by the WV Telecommunications Tax Study Workgroup

July 1, 2011

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Executive Summary

The West Virginia Legislature enacted Committee Substitute for Senate Bill 345 on March 9, 2010 in response to both concerns of the telecommunications industry and a tax reform recommendation by then Governor Manchin's Tax Modernization Committee. The provisions of this newly enacted Law required a study of the Telecommunications Tax and any other consumption tax or fee pertaining to telecommunications service in West Virginia. The new Law included Legislative findings that the Telecommunications Tax "fails to account for modern business models, operational structures, technologies and fundamental economics of the business of telecommunications." Most current tax laws related to the telecommunications sector were initially created when the industry was organized as a public utility monopoly. As the industry evolved, changes to taxation policies for emerging technologies and emerging business practices were either not altered or were enacted in piecemeal style with both inefficient and inequitable tax policy results. The new Statute required a tax reform final report by the State Tax Commissioner with recommendations to be submitted to the Legislature on or before July 1, 2011. This document constitutes the final report of the State Tax Commissioner.

Under the direction of the State Tax Commissioner, the Telecommunications Tax Study became a project of the Tax Modernization Committee. The Committee formed a telecommunications business tax subgroup including participants from industry, academia, local government and the Tax Department.¹ The initial meeting of the group occurred in the midst of a public hearing on Tax Modernization held on August 5, 2010. At this gathering, the group decided upon the parameters for an informational tax return requirement seeking revenue and tax information for the 2009 tax year from all telecommunications businesses with business activity in West Virginia. During a subsequent meeting held on May 25, 2011, the group received information related to the results of the informational return filings, witnessed a presentation from Scott Mackey, KSE Partners LLP on the results of similar tax reform efforts in Virginia, North Carolina and Georgia (See Appendix A), and debated policy reform options for

¹ Members of the subgroup included Craig Griffith, WV State Tax Commissioner; Tramell Alexander, Verizon Wireless; Jack Bowden, WVE-911 Council; Bill Chambers, CPA Brown Edwards & Company LLP; Scott Cosco, Frontier Communications; Lisa Dooley, WV Municipal League; Dave Ellis, WV Public Service Commission; Andy Feeney, AT&T; Michael Fletcher, WV Public Service Commission; John Golden, Verizon; Patti Hamilton, WV Association of Counties; Amy Higginbotham, West Virginia University; Chris Howard, WV Public Service Commission; Kathy Lawson, WV Department of Revenue; Gary Lindsey, AT&T; Randy Lowe, WVE-911 Council; Scott Mackey, KSE Partners LLP; Mark Morton, WV State Tax Department; Mark Muchow, WV Department of Revenue; Vivian Parsons, WV County Commissioners Association; Debbie Phillips, The Arnold Agency; Mark Polen, The Arnold Agency; Steve Stockton, Robinson & McElwee, PLLC; and Tom Witt, West Virginia University.

West Virginia. After some discussion, there was general agreement on the following recommendations:

- Repeal the current State Telecommunications Tax
- Replace the current E-911 fee system with either a consumption tax on revenues or a combination of a consumption tax on sales of telecommunications services and a much smaller and uniform statewide E-911 fee on all telecommunications services with a revenue distribution formula that holds municipal governments harmless based on actual total dollar revenues for year one of the reform, and, based on a percentage allocation share in succeeding years.
- Replace the current 2% municipal excise tax on local telecommunications services with a state imposed consumption tax on sales of telecommunications services with a revenue distribution formula that holds municipal governments harmless based on actual total dollar revenues for year one of the reform, and, based on a percentage allocation share in succeeding years.
- Due to the convergence of technology phenomenon, consider further study of the cable and satellite television industries with an objective toward a more uniform communications tax structure.
- Any resulting consumption tax should be imposed at a rate that does not exceed the general state sales tax rate. Based upon current industry revenue data, a 6 percent sales tax should produce a net revenue yield that closely approximates total State and local consumption tax and fee revenues realized under current Laws.

During subsequent meetings on June 14 and June 27, 2011, the group approved the final contents of this report to the Legislature. The full report follows with greater detail.

Telecommunications Tax Study

Introduction

The Telecommunications Tax Study contains the findings and recommendations of a Tax Modernization Committee subgroup related to West Virginia's state and local consumption taxes and fees imposed on the telecommunications industry. The study includes a summary of the features of the current tax system including its strengths and weaknesses. The summary includes numerous statistics and some additional analysis associated with revenue and tax data collected from informational tax returns and other sources for the 2009 tax year. There are comparisons involving traditional wire-line carriers, voice over internet protocol (VOIP) service providers, traditional long distance service providers and wireless service providers. In addition, the study includes some comparative E-911 fee information across Public Safety Answering Points (PSAPs) within West Virginia and across neighboring states. The study also explores the results of recent telecommunications tax reform efforts in Virginia, North Carolina and Georgia. Finally, the study includes the subgroup's recommendations for both reform and further study.

Informational Tax Return Results

Most of the data for this study comes from a 2009 informational return filed by each telecommunications company conducting business in West Virginia (See Appendix B). With input from industry representatives, the Tax Department designed the information returns and distributed them to the necessary stakeholders in September 2010 with a filing deadline of December 15, 2010. Of the 199 informational returns received back by the Tax Department, 92 returns had reported income. There were 8 returns from incumbent local exchange carriers² (ILEC), 27 returns from competitive local exchange carriers³ (CLEC), 44 returns from interchange

² Incumbent Local Exchange Carriers (ILEC) are local telephone companies that were in existence at the time of the breakup of AT&T into the Regional Bell Operating companies.

³ Competitive Local Exchange Carriers (CLEC) are telecommunications provider companies that compete with other, already established carriers (generally the incumbent local exchange carrier).

long distance carriers⁴ (IXC) and 24 returns from wireless carriers. A few carriers reported some activity under more than one of the above mentioned sub-groups.

The overall effective consumption tax rates varied from a low of 0.7 percent for the IXC subgroup to a high of more than 6.6 percent for the wireless subgroup. The overall average effective tax rate was slightly more than 4.3 percent. Both a statistical summary and graphical summary of results follows on the next page. The industry generated more than \$1.32 billion in revenue from West Virginia business activities in 2009 and paid roughly \$57.1 million in taxes and fees to the State and various local government bodies. Ancillary revenues from services

Industry Survey Results

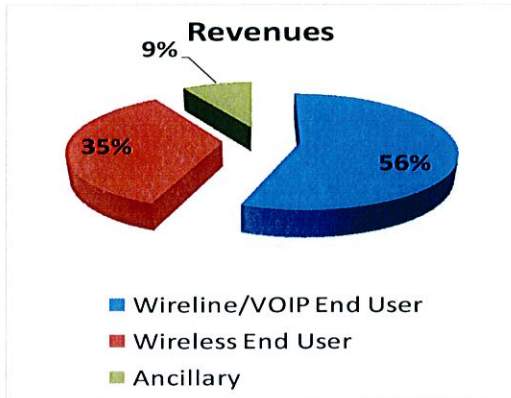
199 Surveys Received – 92 With WV Income

<u>Type of Provider</u>	<u>#</u>	<u>Revenues</u>	<u>Tax/Fees</u>
• ILEC:	8	• \$ 648.5	\$ 17.2
• CLEC:	27	• \$ 124.3	5.2
• IXC:	44	• \$ 25.9	0.2
• Wireless:	24	• \$ 522.5	32.7
• No Activity:	96		
• Total:	199	• \$1,321.3	\$57.1

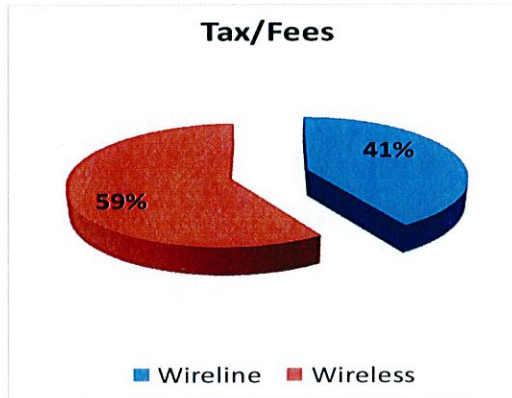
⁴ Interexchange Carriers (IXC) are telecommunications companies that provide inter-LATA (Local Access and Transport Area) communication. The IXCs, commonly called long-distance companies, carry traffic between telephone exchanges.

WV Telecommunications Industry Industry Revenue Distribution & Tax Distribution

\$1.32 Billion in Revenues



\$57.1 Million in Taxes/Fees



such as call waiting, call forwarding, caller identification and voice mail accounted for 9 percent of total revenues with the revenue split nearly even between wireless customers and wire-line customers. More than half of the end-user revenues were attributable to wire-line and VOIP customers. However, due to a higher than average effective tax rate, wireless activities accounted for 59 percent of total taxes and fees. There was also significant effective tax rate variance both between wireless carriers and between wire-line carriers. A discussion of the current tax structure follows.

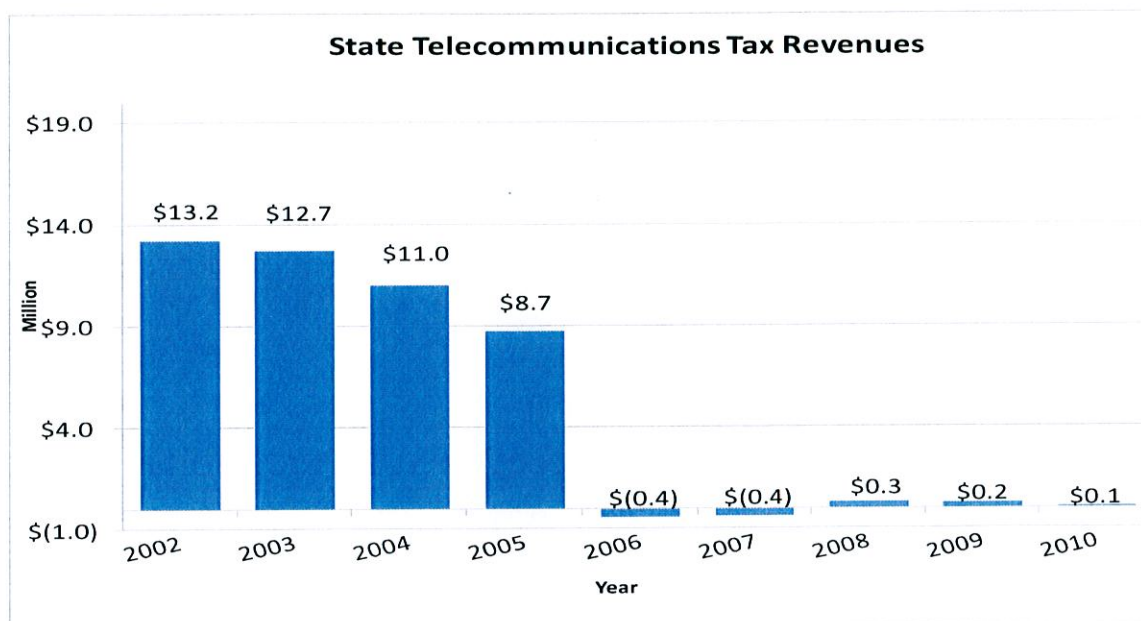
Current West Virginia State and Local Telecommunications Tax Structure

There are three general taxes or fees that apply to at least some telecommunications services, the Telecommunications Tax, Emergency 911 Fees and optional municipal taxes, including the Municipal Utility Excise Tax. The collective yield from these taxes and fees is more than \$57 million per year on industry revenues of more than \$1.32 billion with an overall effective tax rate of 4.3 percent. In addition, pre-paid wireless services are subject to the Consumer Sales and Use Tax in lieu of payment of the Emergency 911 Fee. Cable and satellite television services are also subject to the Consumer Sales and Use Tax. Cable companies are also subject to local municipal occupation taxes and franchise fees. A more detailed discussion of these taxes and fees follows.

Telecommunications Tax

The State imposes the Telecommunications Tax, a 4 percent gross receipts tax. The tax has been in effect since July 1, 1987 when enacted as a replacement to the long standing Carrier Income Tax, a tax on intrastate gross receipts and apportioned interstate net income. As a result of an amended Law first effective as of July 1, 1988, the base of this tax is now limited to services determined not to be subject to competition as a result of an annual finding of the West Virginia Public Service Commission (PSC).

After peaking at more than \$18 million in receipts in Fiscal Year 1987-88, Telecommunications Tax collections fell to \$13.3 million in Fiscal Year 1988-89 and to slightly less than \$10 million in Fiscal Year 1989-90. The trend of decrease in revenues was attributable to changes in the telecommunications industry involving a migration away from a regulated public utility environment to an environment of emerging technologies and converging technologies offered by alternative providers. For example, a number of users migrated away from landline services in favor of wireless services in recent years. According to an official with the PSC, the number of landlines shrank from more than 1,000,000 a few years ago to just roughly 700,000 today. Over time, the PSC certified list of competitive services subject to competition grew in number and the list of remaining taxable services dwindled in size. The following chart further illustrates the trend of decline in State Telecommunications Tax revenues. Current collections average no more than \$100,000 per year. These revenues mostly



come from traditional landline customers located in isolated rural areas of the State. The tax fails to provide State government with adequate revenues and is generally inefficient and inequitable. In addition to the normal administrative and compliance costs associated with the collection of a tax, there are additional administrative costs for both industry and the PSC each year in the determination of the annual list of tax exempt services subject to competition. In the latest PSC order dated October 6, 2010, the list of competitive services totals 71 different items (See Appendix C).

Sales Tax Exclusion for Services

The State of West Virginia excludes telecommunications services from the base of its general Consumer Sales Service and Use Tax through a provision in effect since the early beginnings of the general consumer sales tax in the 1930s. There is no specific sales tax exemption in the West Virginia Code for telephone or telecommunications services. However, Section 11-15-8 of the West Virginia Code originally provided a sales tax base exclusion for “those services furnished by corporations subject to the control of the public service commission.” An amendment enacted in 2003 broadened the exclusion language to include “those services furnished by businesses subject to the control of the public service commission when the service or the manner in which it is delivered is subject to regulation by the public service commission” partly in an effort to keep up with a changing de-regulated telecommunications sector under less control from the PSC.

Cable Subject to Sales Tax

The exclusion of telecommunications services from the general consumer sales tax does not extend to cable television and direct broadcast satellite television (DBS) services. These services are subject to the sales tax with most proceeds going to the State General Revenue Fund. This study does not focus upon this sector of the communications industry. However, given the movement toward converging technologies, some consideration should be given toward the inclusion of both cable television and satellite television in a communications tax reform project involving the telecommunications sector. In addition, municipal governments in West Virginia that do not impose municipal occupation taxes are now allowed to impose local option sales taxes administered by the State. Williamstown is the first municipal government to impose such a tax beginning as of October 1, 2011. Beginning in 1996, federal law prohibits local governments from imposing taxes or fees on multichannel video services delivered by DBS providers. As a result, the local sales tax imposed by Williamstown applies to cable television services but not to competitive DBS services. Some states have since enacted reforms to eliminate local sales taxes on cable television services in favor of a state imposed communications service tax on both cable and DBS services with some proceeds allocated back to local governments. Other states have authorized the state and local governments to retain primary authority for managing rights-of-way and requiring "fair and reasonable" compensation from all providers.

Pre-Paid Wireless Subject to Sales Tax

As of July 1, 2008, pre-paid wireless calling services are no longer excluded from the consumer sales tax under the PSC regulated service exclusion. The 6 percent sales tax applies in lieu of an E-911 fee. The PSC receives monthly transfers of sales tax revenue attributable to pre-paid wireless services based upon their estimate of annual revenues from such services. The proceeds are then mixed in with the statewide wireless E-911 fees collected by the PSC for distribution back to the local PSAPs based upon the statutory distribution formula for such wireless fees. Pre-paid wireless service sales tax transfers totaled slightly more than \$1.3 million in Fiscal Year 2009-2010.

Direct Use of Business Inputs

Sales of services, machinery, supplies and materials directly used or consumed in the activities of communication are exempt from the consumer sales and use tax. West Virginia is one of a few states with such an exemption for business inputs. In a number of other states such as North Carolina, telecommunications tax reform efforts include provisions to reduce or eliminate tax on such business inputs. The current direct use sales tax exemption for the

communications industry places West Virginia at a competitive advantage with a number of other states. No changes are recommended with regard to this policy.

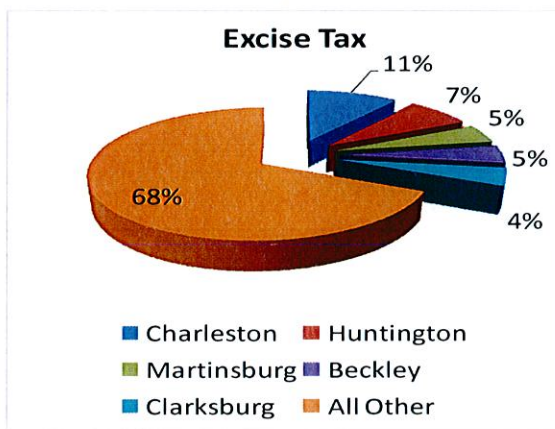
Municipal Excise Tax

Municipal governments have the capacity to levy a 2 percent excise tax on public utility services including local telecommunications services originating within the jurisdiction. The tax base covers basic charges including federal subscriber line charges. Data from informational returns for the 2009 tax year indicate total statewide municipal excise tax collections from telecommunications services of more than \$3.65 million for 176 separate municipalities. This tax source accounts for nearly 7 percent of total consumption taxes and fees imposed upon the telecommunications sector in West Virginia. The following graph illustrates the distribution of taxes among large municipalities and per capita tax collections for a select group of municipalities. Average per capita tax collections are \$5.70 but there is significant variance from

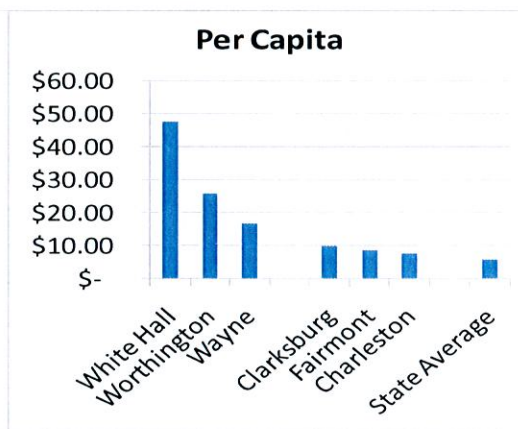
Municipal Excise Tax Collections

\$3.7 Million Yield – 2% [176 Municipalities]

Distribution by Municipality



Per Capita Yield Variance



one jurisdiction to the next. Per capita collections vary from \$0 for municipalities that choose not to levy such tax (e.g., Parkersburg) to \$47.79 for the Town of White Hall. The median amount of revenue collected for all municipalities electing to impose this tax is just \$5,624. Some service providers must file more than 100 periodic local tax West Virginia tax returns to account for their municipal excise tax collections.

Municipal Business and Occupation Tax

Telephone and telegraph companies are exempt from municipal business and occupation taxes while cable television services are exempt from the municipal public utility excise tax. Cable television services are subject to municipal business and occupation taxes and local franchise fees.

E-911 Fees

In addition to the aforementioned pre-paid wireless sales tax contributions to local E-911 programs, there are two additional types of E-911 fees imposed in West Virginia. The 55 county commissions impose E-911 fees on land-line services and VOIP services. The State PSC imposes a statewide \$3.00 per month E-911 fee per wireless telecommunications service device. The sum total of these fees is roughly \$54.7 million in 2009, including nearly \$20.7 million in county wire-line fee collections, nearly \$32.7 million in wireless fee collections by the PSC and more than \$1.3 million in pre-paid wireless sales tax collections. E-911 fees collectively account for roughly 94 percent of all consumption taxes and fees imposed upon the telecommunications sector in West Virginia. Even though wireless service revenues account for just 40 percent of the \$1.32 billion (2009) in total telecommunications sector revenues in West Virginia, E-911 fees on wireless services account for more than 62 percent of total E-911 fee collections.

Wireless E-911 Fees – Revenue Distribution

The PSC distributes more than 88 percent of the combined \$34 million in wireless fee proceeds to the counties through a formula with roughly half of the funds distributed equally to all counties and half of the funds distributed on a per capita basis using the most recent decennial census data. Per requirements of the codified distribution formula, the PSC distributes remaining wireless E-911 funds that are not distributed to counties to the West Virginia State Police for emergency equipment upgrades (3.33% of proceeds or \$1.14 million in FY2010), the Enhanced 911 Wireless Tower Access Assistance Fund⁵ (\$1.0 million per year or roughly 2.9 percent) and the West Virginia Interoperable Radio Project Fund⁶ (5.0% of proceeds or \$1.71 million in FY2010).

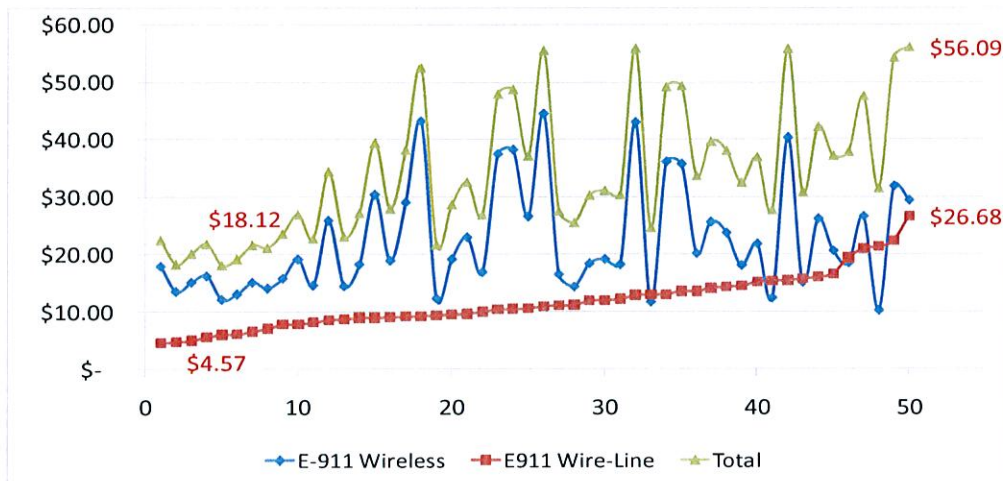
There is some incentive for two or more counties to combine their E-911 programs. Counties with a combined-system receive an equal share of 1.0 percent of total wireless E-911 funds while all other counties receive an equal share of 0.85 percent of total wireless E-911

⁵ The Wireless Tower Access Assistance Fund is generally used to provide financial assistance loans or grants to State agencies, political subdivisions and wireless telephone carriers for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage and which would not be available otherwise due to marginal financial viability of the applicable tower coverage area.

⁶ The West Virginia Interoperable Radio Project promotes a collaborative effort of State agencies, local entities and the federal government for sharing microwave communications.

funds. Due to economies of scale, there is some trend toward consolidation of E-911 PSAPs. West Virginia currently has 50 operating PSAPs. The following graph illustrates per capita collections by PSAP for wire-line fees, wireless fee distributions and total E-911 fee revenue. Per

Per Capita E-911 Revenues by 911 Jurisdiction
2000 Census Data



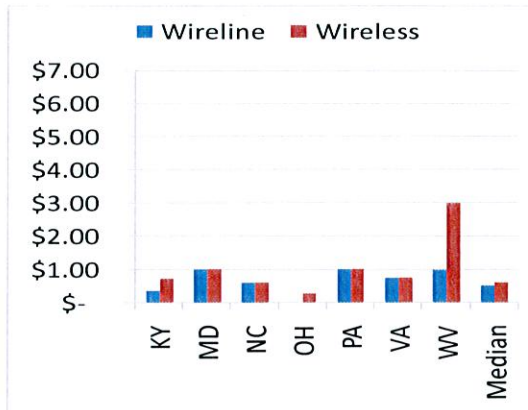
capita wire-line fee revenues range from a low of \$4.57 in Preston County to a high of \$26.68 in Hardy County. Total per capita E-911 fee revenue ranges from a low of \$18.12 in Monongalia County to a high of \$56.09 in Hardy County. Most of the larger PSAPs operate on lower than average per capita revenues and most of the smaller PSAPs operate on above average per capita revenues. In addition to imposing higher than average wire-line fees, the smaller PSAPs also benefit from a State wireless fee distribution formula that allocates roughly 50 percent of available funds in equal amounts to each county.

Enhanced emergency 911 services tend to cost more per resident in West Virginia than in most other states. The following graph illustrates minimum and maximum E-911 fees for both wire-line service and wireless service for West Virginia and surrounding states. West Virginia imposes higher than average E-911 wire-

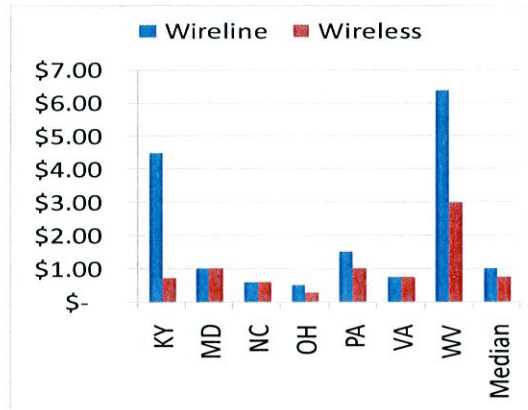
Comparative E-911 Fees by State & Type

Sources: National Emergency Number Association, March 2011 Survey
West Virginia Association of Counties Survey

Minimum E-911 Fees



Maximum E-911 Fees



line fees and the highest E-911 wireless fees among all states. Nationally, the median monthly E-911 wire-line fee is \$1.00 or less, and the median monthly E-911 wireless fee is \$0.75 or less⁷. In West Virginia, the median county monthly E-911 wire-line fee is \$2.00 and the statewide monthly E-911 wireless fee is \$3.00. Residential E-911 wire-line fees vary from a low of \$0.98 in Harrison County to a high of \$4.65 in Monroe County⁸. In Kanawha County, residential E-911 wire-line fees are \$4.00 per month and business wire-line fees are \$6.40 per month. There is less variance between wire-line E-911 fees and wireless E-911 fees in surrounding states. The monthly E-911 fees in Maryland, North Carolina and Virginia are a uniform \$1.00, \$0.60 and \$0.75, respectively, for both wire-line and wireless services. In Pennsylvania, the monthly E-911 wire-line fee varies between \$1.00 and \$1.50 and the wireless fee is \$1.00 statewide. This study did not research reasons why costs are higher than average in West Virginia.

Even though West Virginia imposes higher than average E-911 fees, the total telecommunications tax and fee burden of 4.31 percent is below average in comparison to most other states. In West Virginia, E-911 fees account for roughly 94 percent of total consumption taxes and fees paid by the telecommunications industry. In other states, the share of total telecommunications consumption taxes and fees attributable to the E-911 program tends to be far less. A below average tax burden should serve to enhance the possibility of developing a revenue neutral tax reform plan in West Virginia.

⁷ National Emergency Number Association Survey (March 2011)

⁸ West Virginia Association of Counties survey by Patti Hamilton (2010)

West Virginia's significant reliance upon telecommunications industry fees over consumption taxation tends to favor high cost services over lower cost services because the fee is the same regardless of the price of service. Based upon the 2009 informational returns, the average E-911 effective tax rate varies from 0.4 percent for Interchange Carriers (IXC), to 2.4 percent for Incumbent Local Exchange Carriers (ILEC), to 3.4 percent for Competitive Local Exchange Carriers (CLEC), and to 6.4 percent for Wireless Carriers. The effective tax rate for certain voice over internet protocol (VOIP) providers is much higher yet. Certain VOIP service providers charge as little as \$20 and \$40 per year for service that piggybacks off of Internet service. A median West Virginia wire-line fee of \$2.00 per month yields an effective tax or fee rate of 60 percent or more on such telecommunications service. The federal ban on taxation of Internet access service charges is a contributing factor to this outcome given that the low cost service is totally dependent upon high speed Internet access with additional monthly costs to consumers. However, a consumption tax based upon price of service, either in isolation or in combination with significantly lower E-911 fees, would still result in greater tax equity.

Telecommunications Tax Reform Experiences in Other States

Over the past five years, Virginia and North Carolina enacted comprehensive communications tax reform plans and Georgia came very close to enacting its own plan. The following is a brief summary of these reform efforts.

Virginia

Prior to reform, the Virginia telecommunications industry was subject to up to ten different state and local consumption taxes and fees. According to information presented in a recent article written by Scott Mackey, the old Virginia tax and fee structure included the following features:⁹

- Wireline telecommunications were subject to local franchise fees, local consumer utility taxes, and 911 fees that were among the highest in the nation, comprising nearly 30 percent of the local phone bill.
- Interstate long distance charges, if separately stated, were exempt from taxation.

⁹ *A Revenue Analysis of Virginia Communications Tax Reform*, by Scott Mackey, Tax Analysts, April 25, 2011, pp. 249-252.

- Wireless telephone service was subject to a local \$3 monthly tax on each bill in most local jurisdictions.
- Cable video programming service was subject to a local franchise fee of up to 5 percent of the monthly bill, while satellite video programming was exempt from all state and local taxes.

The Virginia tax system was highly inequitable with similar services taxed at very different effective rates or in some cases not taxed at all. Long-term revenue stability was in doubt because of changes in industry service delivery patterns away from traditional wire-line services, and moving toward wireless services involving family packages (e.g., multiple phones on a single billing plan) and a growing market share for tax exempt satellite video programming services. In addition, the industry was required to file numerous local government tax returns associated with the various fees and taxes imposed in a number of local jurisdictions in the Commonwealth.

A multi-year reform project culminated in a Virginia tax reform law, effective for communications services provided on or after January 1, 2007. The new tax structure included a broad-based statewide 5 percent communications services tax levied at the same rate as the general sales tax, a statewide 75 cent per month 911 fee on wire-line and wireless telecommunications and a cost-based state-administered right-of-way fee on providers that place equipment in the public right-of-way. Ten different state and local taxes and fees were consolidated into three state administered taxes and fees. The new law contained a provision requiring the State to deposit collections in a non-reverting fund and a requirement that local governments receive the same amount of money in the first year of enactment that they would have received under the previous tax system. With the help of data from both the Virginia Auditor of Public Accounts and the Virginia State Corporation Commission, Mr. Mackey compared actual tax revenues under current Law for the Fiscal 2007 through Fiscal 2009 years with estimated revenues under the old tax structure. Local revenues under prior Law would have decreased from \$393.2 million in Fiscal 2006 to an estimated \$360.3 million in Fiscal 2009 due to changes in the tax base associated with changes in industry service delivery patterns (e.g., fewer wire-line customers). Actual local revenues under the new Law rose from \$393.2 million in the year prior to the change, to \$424.5 million in Fiscal 2009 -- a net difference of more than \$64 million or nearly 18 percent. Revenues from the new tax structure, with a broad-base and lower tax rates, grew with changes in the economy, while the old system produced a trend of declining revenues due to various structural inefficiencies. In his article, Mr. Mackey concludes that the Virginia reform effort was an unqualified success.

North Carolina

In North Carolina, separate reform bills were enacted over time beginning in 2002 that eliminated franchise taxes and local utility taxes in favor of a statewide sales and use tax imposed at a rate equal to the average state and local sales tax rate. In addition, a uniform statewide 911 fee was applied to both wire-line and wireless providers at a rate of 60 cents per month. The sales tax on the communications industry's network equipment and machinery was also repealed. A local government distribution formula is in place to replace revenues associated with the repealed local taxes.

Georgia

The latest proposed communications tax reform plan in Georgia includes a proposed 7 percent broad-based statewide communications service tax, the elimination of all local taxes and fees except 911 fees, and a sales tax exemption for purchase of industry machinery and equipment. A revenue distribution formula would be in place to guarantee revenue neutrality for local governments in the first year.

Conclusions and Recommendations

The Telecommunications Tax Study seeks to examine current tax and fee policies to determine the State's strengths and weaknesses in regard to tax policy and to make recommendations for improvement and further study. This study examines possible alternative ways to more efficiently tax telecommunications services to reduce tax rates, broaden the base and provide revenues necessary for essential services.

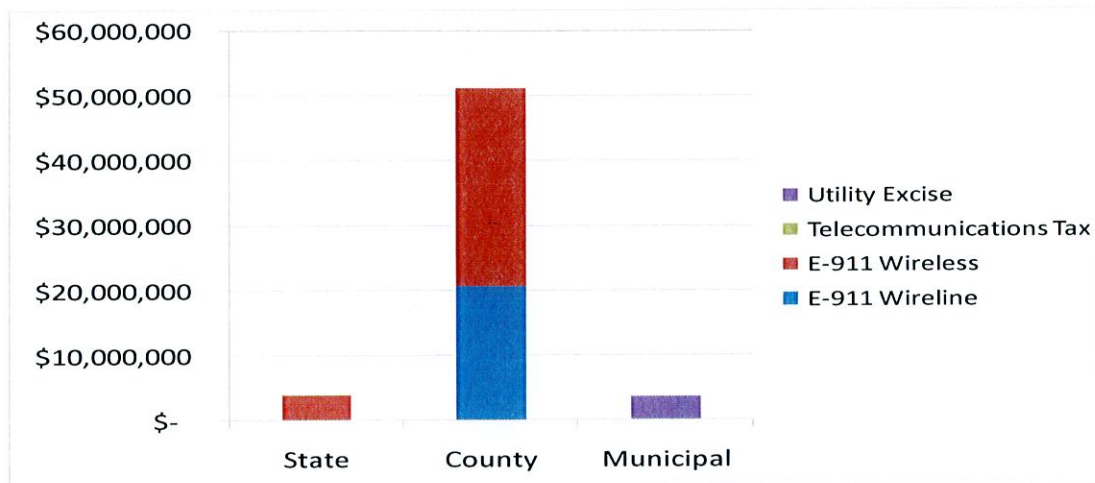
Current telecommunications tax policies in West Virginia include myriad tax policies developed over many years with some policies dating back to the 1930s. Several policies were developed when the industry consisted of a single regulated public utility monopoly. Additional fees were added in recent years to fund local E-911 emergency services. These programs impose significant filing requirements upon multiple deregulated service providers in an ever changing service delivery environment with new technologies and converging technologies. Land-line fee revenues, a major source of funding for the E-911 program, are decreasing over time as the number of wire-lines decreases in favor of wireless services. Some counties are responding to this revenue problem by imposing even higher fees on remaining wire-line customers. The State collects a Telecommunications Tax that currently yields no more than \$100,000 per year and includes a requirement for an annual inquiry and determination by the State Public Service Commission of a list of services exempt from tax due to those services being subject to competition.

During a meeting held on May 25, 2011 and a subsequent meeting held on June 14, 2011, the Telecommunications Tax Study Group viewed the results of the data gathered from informational tax returns filed by 92 businesses engaged in providing telecommunications services in West Virginia. The Group also witnessed a presentation on successful communications tax reform projects in other states by Scott Mackey, an economist and partner at the government and public relations firm of KSE Partners LLP in Montpelier, Vermont. Following these presentations, there was a group discussion about possible telecommunications tax reform in West Virginia. Without too much debate, the Group unanimously decided to recommend repeal of the State Telecommunications Tax. Although not included in the original study, representatives of the local cable television provider industry expressed some desire to be included in future discussions about tax reform. In addition to local franchise fees, this industry is currently subject to the regular consumers sales tax and use tax. The satellite video programming industry is also subject to the general state sales tax, but is exempt from local sales taxes and municipal business and occupation taxes due to a federal prohibition against such taxes. The remainder of the discussion focused on local taxes and fees and the possibility of eliminating such programs in favor of a statewide tax with proceeds generally allocated back to local governments.

The current Telecommunications Tax system largely involves local taxes as opposed to state taxes. The table on the following page illustrates the current distribution of taxes between State and local government units in West Virginia. Other than \$100,000 in annual Telecommunications Tax revenues and roughly \$3.9 million in allocated E-911 fees (from the \$3 per month state imposed E-911 wireless fee), all remaining revenues are local government revenues. These local revenues account for roughly 93 percent of total telecommunications tax revenues. The major focus of reform involves a revenue distribution system that preserves local revenues. However, if the tax reform project is broadened to include cable and satellite video programming services, the State would also be interested in retaining the \$40 million or more in general sales tax revenues that are collected under current Law.

The Group generally agreed that further study of a possible statewide consumption tax and uniform E-911 fee to replace current local taxes and fees, with a revenue neutral revenue sharing formula should be explored. Without any exemptions, a 6 percent consumption tax on \$1.32 billion in telecommunications industry revenues would yield more than \$79 million in revenues, as compared to total current revenues of approximately \$57.1 million. However, a

Current Distribution of Taxes/Fees



consumption tax would include mandatory exemptions for purchases of telecommunications services by governmental agencies. The general sales tax also includes exemptions for a variety of other groups including educational organizations, religious organizations and other non-profit organizations. These types of exemptions could reduce the potential tax base by 20 percent or more. Revenue neutrality may be achieved as long as the potential consumption tax base does not shrink by more than 28 percent due to tax exemptions. There was also some discussion about the possibility of retaining a much smaller but more uniform E-911 fee in addition to a broad-based consumption tax, with some view that everyone should participate in paying some portion of the cost of supporting the E-911 communications system.

Local government representatives expressed some concern over the potential loss of autonomy over a locally controlled tax system, as opposed to a state controlled and administered system, with revenues distributed back to local government units. The concern expressed was that future revenues could theoretically be siphoned away and used for State purposes, to the detriment of local governments. Local representatives also expressed some concern over the structure of a revenue neutral guarantee provision. If the new tax structure produces higher revenue growth over time relative to the current tax structure, as is the case in Virginia, then such concerns over a revenue neutral formula may dissipate.

The Telecommunications Tax Study group recommends further study of a reform plan that imposes a statewide consumption tax at a rate no higher than the 6 percent general sales

tax rate with the possibility of a much smaller but more uniform statewide E-911 fee, to be collected by the State, with a “hold harmless” revenue distribution formula directing revenues back to local governments that guarantees:

- (1) Dollar for dollar revenue neutrality in the first year, and
- (2) A percentage share of total revenues distributed back to each local government, based on the pro rata percentage established in the first year distribution.

This system would replace all existing consumption taxes and fees imposed on the telecommunications industry. More data collection efforts may also be necessary if the telecommunications reform plan is expanded to a communications tax reform plan including cable and satellite video programming services. Additional time and study would be necessary to iron out the details of such reform package.

APPENDIX A

Communications Tax Reform: State Experiences

Scott Mackey

KSE Partners LLP
Montpelier, VT

Charleston, WV
May 25, 2011

Overview

- **What issues are driving state reforms?**
- **Issues raised during reform efforts**
- **Reform process**
- **Comparison of reforms enacted in Virginia and North Carolina, and proposed Georgia reform**

Issues Driving State Reforms



- **Convergence of technologies**
 - ◆ Telecoms
 - ◆ Video providers
 - ◆ Internet-based providers
- **Economic development**
 - ◆ Role of communications infrastructure in job growth
 - ◆ Competition for investment
- **Excessive rates on certain providers**
 - ◆ Legacy of monopoly phone company era

Issues Driving State Reforms



- **Revenues**
 - ◆ Impact of antiquated laws on competition
 - ◆ Excessive rates driving consumers to untaxed / undertaxed services, exacerbating revenue problems
- **Congress and the FCC?**
- **Organizations of elected officials (NCSL, NGA, local governments)**

Reform Issues



- States starting at different places due to history, politics
- No single “formula” or “model” for states

Reform Issues



- State revenues
 - ◆ Short and long term impact
 - ◆ General fund vs. earmarked programs
- Local revenues
 - ◆ Disproportionate local reliance on communications taxes
 - ◆ Right of way fee vs tax debate
 - ◆ Distrust of state collection on local behalf
 - ◆ Locals not getting revenues on newer services

Reform Issues

- Right of way component for providers using public property
- Federal law prohibition on local taxes on DBS
- Nexus for over-the-top providers
- VOIP and historically regulated telecoms

Reform Process

- Many stakeholders
 - ◆ Governments (state, cities, counties, 911 districts, etc.)
 - ◆ Industry (wireless, traditional wireline, cable, DBS, “over the top”)
 - ◆ Consumers and business users of services

Reform Process

- Importance of setting up a process to work through issues of multiple stakeholders
- NCSL model reform process legislation

State Reforms: Virginia

- Process
 - ◆ Multi-year negotiation process (2002 to 2006)
 - ◆ Reform bill passed in 2006
 - ◆ All stakeholders involved
 - ◆ Data gathered by state auditor
- Enacted tax structure
 - ◆ Single statewide tax
 - ◆ Separate, uniform statewide 911 fee
 - ◆ Includes “right of way” component for providers using public ROW

Virginia

■ Tax rates

- ◆ 5% rate imposed on all communications services
- ◆ 75-cent 911 fee on telecommunications customers
- ◆ Additional "rights-of-way use" fee adjusted annually (currently at \$.76; applies to cable and wireline telecom)

■ Administration

- ◆ State collected, funds distributed to locals by formula
- ◆ "Hold harmless" revenue guarantee for locals

Virginia

■ Politics

- ◆ Reform hailed as national model
- ◆ State did not raid local funds even during huge state shortfalls

■ Economic development

- ◆ State successful in attracting investment

State Reforms: North Carolina

■ Process

- ◆ Separate reform bills enacted over time beginning in 2002
- ◆ Video and telecommunications taxes evolved into uniform rate

■ Enacted Tax Structure

- ◆ Franchise and local utility taxes eliminated
- ◆ Statewide tax at average combined state-local sales tax rate
- ◆ Uniform statewide 911 fee on wireless and wireline
- ◆ No additional tax/fee for providers using public right of way
- ◆ No tax imposed on communications providers' network equipment

North Carolina

■ Tax rates

- ◆ All communications services taxed at statewide rate that approximates state-local sales tax average (current rate is 8%; will decrease to 7% on July 1, 2011)
- ◆ Separate uniform statewide 911 fee (currently at \$.60)

■ Administration

- ◆ State allocates revenues from sales tax to locals by formula to replace repealed local taxes
- ◆ No sales tax imposed on communications providers' network investments
- ◆ 911 fees remitted to NC 911 Board for distribution

North Carolina

- **Politics**
 - ◆ Recognized as a successful model of communications tax reform
- **Economic Development**
 - State successful in attracting investment

State Reforms: Georgia

- **Process**
 - ◆ Tax reform commission established in 2010
 - ◆ Law required up or down vote on recommendations
 - ◆ Bill included telecommunications and other business, consumer tax reforms
 - ◆ Bill failed to pass in 2011

Georgia

- **Proposed tax structure**
 - ◆ Single state communications tax
 - ◆ Elimination of all local taxes / fees except 911
 - ◆ Sales tax exemption for network investments
 - ◆ Include DBS in tax base

- **Proposed tax rate**
 - ◆ 7% statewide on all services

Georgia

- **Proposed Administration**
 - ◆ Money distributed to locals on formula
 - ◆ Hold harmless for first year

- **Politics**
 - ◆ Locals recognized benefits of base broadening, but were concerned about loss of autonomy
 - ◆ Bill ultimately failed because of personal income tax changes, not communications tax provisions

Conclusion



- **Successful models exist, but no two states are alike**
- **Process is very important**
- **Reform is necessary due to changes in technology and the marketplace – revenue disruptions will occur even if states do nothing**

Contact information



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APPENDIX B

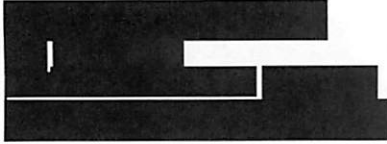


STATE OF WEST VIRGINIA
State Tax Department, Research & Development
Bldg 1, Rm. W-417, State Capitol Complex
Charleston, WV 25305



Joe Manchin III, Governor

Craig A. Griffith, Tax Commissioner



Letter Id: [REDACTED]
Issued: 09/15/2010
Account #: [REDACTED]

West Virginia Telecommunications Service Business Information Return

General Instructions

The West Virginia Tax Commissioner is required by law to conduct a study of West Virginia state and local telecommunications taxes and fees and to recommend tax reforms. The final recommendations are to be submitted to the Governor and Legislature no later than July 1, 2011. As part of this Study, Section 11-13B-19 of the West Virginia Code authorizes the State Tax Commissioner to order disclosure of financial information and other data necessary for the Study. This information is mandated by law to be held as confidential, and is not subject to Freedom Of Information Act disclosure. Information is used only for the Study, and is otherwise subject to the same confidentiality restrictions as a tax return. Penalties for improper disclosure of the information by a state employee or study participant include criminal sanctions.

As a telecommunications provider, you are required to complete the enclosed West Virginia Tax Data Worksheet with jurisdictional schedules and return the requested information by no later than December 15, 2010. We encourage you to file this information on-line at <https://mytaxes.wvtax.gov/>. The information requested pertains to your telecommunications-related business activities conducted in West Virginia during calendar year 2009. Telecommunications-related business activities include wire line services, voice over Internet protocol (VOIP) services and wireless services. If you conducted any telecommunications service related activities in West Virginia, complete all sections of the form and submit necessary supporting worksheets of activity by political subdivision. If you had no telecommunications-related business activity in the State in 2009, then you are still required to complete the "Part 1: Service Revenues" section of this form.

There is a statutory penalty of \$25,000 for failure to submit the requested information within 90 days of receipt plus an additional \$1,000 per day for each additional day late beyond the 90 day filing period.

If you have any questions regarding the requirements for this informational return filing, please feel free to contact us at (304)558-8730.



MyTaxes Telecommunication Service Business Information Return

If you are not currently registered to file and pay using MyTaxes, use the information below to register and file the Telecommunication Service Business Information Return. If previously registered on MyTaxes and access for the Telecommunication Tax account has been established, please proceed to File Information Return.

What you will need:

- Tax Identification Number (FEIN, SSN etc.)
- 8 digit Tax Account Id (found on correspondence and returns)
- Business/Legal Name
- E-mail Address

How to Register

Maneuver to <http://MyTaxes.WVTax.gov> and click Register Now/Log In hyperlink

- Click Register for MyTaxes hyperlink
- Create User Id - must be 6 to 12 characters
- Create & Confirm Password - must be 6 to 12 alpha/numeric combination (case sensitive)
- Id number type & Id Number - type of Id & 9 digit Id for business purposes
- Business/Legal Name - Business/Legal name
- Contact E-mail Address & Confirm - E-mail address for contact purposes (An Authorization Code will be sent to the e-mail address provided; this will be needed for first time login.)
- Secret Question & Answer - select a question from the drop down and enter answer
- Add an account at this time? - select YES from the drop down and click Proceed
- Account Type - select Telecommunications Tax from the drop down
- Account Id - 8 digit account id (found on the instruction page, upper right corner.)
- Zip Code - zip code of the location of the account
- Add another account? - select NO from the drop down and click Proceed
- Are you sure you want to submit this request? - select YES.
- Web Login Thank You - print for your records and click OK to Continue.

An e-mail from TAXMyTaxes@wv.gov with an authorization code will be sent to the contact e-mail provided (please do not respond to this e-mail.) Use the link in this e-mail to maneuver to MyTaxes

- User Id & Password - case sensitive
- Authorization Code - enter code from e-mail and click Login

File Information Return

From the Home Page/My Accounts section:

- Select the Id hyperlink for the Telecom Tax
- Select the Id hyperlink for the Telecommunication Survey



Letter Id: 
 Issued: 09/15/2010
 Account #: 

Telecommunications Service Business Information Return

West Virginia Tax Data Worksheet - Calendar Year 2009 Data

Company:

FEIN:

Contact:

Phone:

Email:

Part 1: Service Revenues

CY 2009 Carrier Revenues \$\$

Wireline/VOIP Telecommunications End User Revenues	<input type="text"/>
Wireline/VOIP Ancillary Service Revenues	<input type="text"/>
Wireless Telecommunications End User Revenues	<input type="text"/>
Wireless Ancillary Service Revenues	<input type="text"/>

Note: exclude revenue from sale of Tangible Personal Property
Note: exclude sale for resale and wholesale revenues

Part 2: Local Remittances

CY 2009 Municipal Excise Tax \$\$

Local Excise Tax Remitted (statewide amount) Attach remittance schedule by jurisdiction	<input type="text"/>
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Part 3: 911 fees

CY 2009 911 Fees \$\$

Landline/VOIP Local 911 fees remitted (statewide amount) Attach remittance schedule by jurisdiction	<input type="text"/>
Statewide wireless 911 fees remitted (postpaid wireless)	<input type="text"/>

Note: exclude prepaid wireless sales taxes remitted

MAIL TO: WEST VIRGINIA STATE TAX DEPARTMENT
 Research & Development
 Bldg 1, Rm. W-417, Charleston, WV 25305
 For questions call (304) 558-8730
 File online at <https://mytaxes.wvtax.gov>

Company:		FEIN:
Jurisdiction	911 Fees	Notes
Barbour		
Berkeley		
Boone		
Braxton		
Brooke		
Cabell		
Calhoun		
Clay		
Doddridge		
Fayette		
Gilmer		
Grant		
Greenbrier		
Hampshire		
Hancock		
Hardy		
Harrison		
Jackson		
Kanawha		
Lewis		
Lincoln		
Logan		
Marion		
Marshall		
Mason		
McDowell		
Mercer		
Mineral		
Mingo		
Monongalia		
Monroe		
Morgan		
Nicholas		
Ohio		
Pendleton		
Pleasants		
Pocahontas		
Preston		
Putnam		
Raleigh		
Randolph		
Ritchie		
Roane		
Summers		
Taylor		
Tucker		
Tyler		
Upshur		
Wayne		
Webster		
Wetzel		
Wirt		
Wood		
Wyoming		

FIPS Code	Jurisdiction Name	Rate	FIPS Code	Jurisdiction Name	Rate	FIPS Code	Jurisdiction Name	Rate
5407700748	Albright	0.000	5403315628	Clarksburg	0.000	5408335092	Harman	0.000
5402500772	Alderson - Greenbrier	0.000	5401515676	Clay	0.000	5403735284	Harpers Ferry	0.000
5406300772	Alderson - Monroe	0.000	5401500000	Clay County	0.000	5403300000	Harrison County	0.000
5404701780	Anawalt	0.000	5406915916	Clearview	0.000	5408535428	Harrisville	0.000
5403301900	Anmoore	0.000	5403916012	Clendenin	0.000	5405335500	Hartford City	0.000
5401901996	Ansted	0.000	5408316708	Coalton	0.000	5400336220	Hedgesville	0.000
5405503292	Athens	0.000	5410118412	Cowen	0.000	5405336436	Henderson	0.000
5408503364	Auburn	0.000	5400520212	Danville	0.000	5409336460	Hendricks	0.000
5407904204	Bancroft	0.000	5409320428	Davis	0.000	5407537372	Hillsboro	0.000
5400100000	Barbour County	0.000	5404720500	Davy	0.000	5408937636	Hinton	0.000
5401104276	Barboursville	0.000	5405920980	Delbarton	0.000	5410339340	Hundred	0.000
5404904612	Barrackville	0.000	5401700000	Doddridge County	0.000	5401139460	Huntington - Cabell	0.000
5402304924	Bayard	0.000	5403922564	Dunbar	0.000	5409939460	Huntington - Wayne	0.000
5408105332	Beckley	0.000	5407522852	Durbin	0.000	5407939532	Hurricane	0.000
5400905452	Beech Bottom	0.000	5403923092	East Bank	0.000	5408339628	Huttonsville	0.000
5400105788	Belington	0.000	5407924292	Eleanor	0.000	5404739652	Jaeger	0.000
5403905836	Belle	0.000	5410524364	Elizabeth	0.000	5403500000	Jackson County	0.000
5407306004	Belmont	0.000	5405724484	Elk Garden	0.000	5404140828	Jane Lew	0.000
5405106340	Benwood	0.000	5408324580	Elkins	0.000	5403700000	Jefferson County	0.000
5400300000	Berkeley County	0.000	5408524844	Ellenboro	0.000	5400142244	Junior	0.000
5406506508	Berkeley Springs	0.000	5404926452	Fairmont	0.000	5403900000	Kanawha County	0.000
5400906844	Bethany	0.000	5404926524	Fairview	0.000	5409943180	Kenova	0.000
5406906940	Bethlehem	0.000	5402526692	Falling Spring	0.000	5405943300	Kermit	0.000
5408306988	Beverly	0.000	5404926932	Farmington	0.000	5405743492	Keyser	0.000
5406108092	Blacksville	0.000	5401900000	Fayette County	0.000	5404743516	Keystone	0.000
5405508524	Bluefield	0.000	5401927028	Fayetteville	0.000	5404743780	Kimball	0.000
5403708932	Bolivar	0.000	5400727868	Flatwoods	0.000	5407744044	Kingwood	0.000
5400500000	Boone County	0.000	5409127940	Flemington	0.000	5405346300	Leon	0.000
5404709700	Bradshaw	0.000	5400928204	Follansbee	0.000	5408146468	Lester	0.000
5405509796	Bramwell	0.000	5409928516	Fort Gay	0.000	5404100000	Lewis County	0.000
5407709844	Brandonville	0.000	5407129044	Franklin	0.000	5402546636	Lewisburg	0.000
5400700000	Braxton County	0.000	5409529404	Friendly	0.000	5404300000	Lincoln County	0.000
5403310180	Bridgeport	0.000	5404730196	Gary	0.000	5404548148	Logan	0.000
5400900000	Brooke County	0.000	5400730220	Gassaway	0.000	5404500000	Logan County	0.000
5407710852	Bruceton Mills	0.000	5401930364	Gauley Bridge	0.000	5403348748	Lost Creek	0.000
5409711188	Buckhannon	0.000	5405930772	Gilbert	0.000	5403349252	Lumberport	0.000
5407911284	Buffalo	0.000	5402100000	Gilmer County	0.000	5408149492	Mabscott	0.000
5400711716	Burnsville	0.000	5403931324	Glasgow	0.000	5400550524	Madison	0.000
5401100000	Cabell County	0.000	5405131492	Glendale	0.000	5404550932	Man	0.000
5408512124	Cairo	0.000	5402132044	Glenville	0.000	5404951100	Mannington	0.000
5401300000	Calhoun County	0.000	5409132716	Grafton	0.000	5404900000	Marion County	0.000
5410112412	Camden on Gauley	0.000	5402300000	Grant County	0.000	5407551676	Marlinton	0.000
5405112484	Cameron	0.000	5404932908	Grant Town	0.000	5403951724	Marmet	0.000
5402713108	Capon Bridge	0.000	5401332884	Grantsville	0.000	5405100000	Marshall County	0.000
5405713525	Carpendale	0.000	5406132932	Granville	0.000	5400352060	Martinsburg	0.000
5403913924	Cedar Grove	0.000	5402500000	Greenbrier County	0.000	5405352180	Mason	0.000
5409914308	Ceredo	0.000	5409334492	Hambleton	0.000	5405300000	Mason County	0.000
5404514524	Chapmanville	0.000	5404334516	Hamlin	0.000	5407752228	Masontown	0.000
5403714610	Charles Town	0.000	5402700000	Hampshire County	0.000	5405952324	Matewan	0.000
5403914600	Charleston	0.000	5402900000	Hancock County	0.000	5405552420	Matoaka	0.000
5403915028	Chesapeake	0.000	5403934756	Handley	0.000	5404700000	McDowell County	0.000
5402915076	Chester	0.000	5403100000	Hardy County	0.000	5405150260	McMechen	0.000

5401952780	Meadow Bridge	0.000	5405364708	Point Pleasant	0.000	5409700000	Upshur County	0.000
5405500000	Mercer County	0.000	5403965356	Pratt	0.000	5406982732	Valley Grove	0.000
5409553572	Middlebourne	0.000	5407700000	Preston County	0.000	5410783500	Vienna	0.000
5408354100	Mill Creek	0.000	5405565692	Princeton	0.000	5404784484	War	0.000
5401154484	Milton	0.000	5408565956	Pullman	0.000	5403184580	Wardensville	0.000
5405700000	Mineral County	0.000	5407900000	Putnam County	0.000	5409984940	Wayne	0.000
5405900000	Mingo County	0.000	5402566412	Quinwood	0.000	5409900000	Wayne County	0.000
5404554892	Mitchell Heights	0.000	5402566652	Rainelle	0.000	5410100000	Webster County	0.000
5404955276	Monongah	0.000	5408100000	Raleigh County	0.000	5410185084	Webster Springs	0.000
5406100000	Monongalia County	0.000	5408300000	Randolph County	0.000	5400985156	Weirton - Brooke	0.000
5406300000	Monroe County	0.000	5403766988	Ranson	0.000	5402985156	Weirton - Hancock	0.000
5401955468	Montgomery - Fayette	0.000	5403567108	Ravenswood	0.000	5404785228	Welch	0.000
5403955468	Montgomery - Kanawha	0.000	5407767636	Reedsville	0.000	5400985324	Wellsburg	0.000
5408355540	Montrose	0.000	5408767660	Reedy	0.000	5404385804	West Hamlin	0.000
5403155588	Moorefield	0.000	5408167996	Rhodell	0.000	5406985876	West Liberty	0.000
5406500000	Morgan County	0.000	5406768116	Richwood	0.000	5404585900	West Logan	0.000
5406155756	Morgantown	0.000	5405768260	Ridgeley	0.000	5403385924	West Milford	0.000
5405156020	Moundsville	0.000	5403568596	Ripley	0.000	5401786116	West Union	0.000
5401956404	Mount Hope	0.000	5408500000	Ritchie County	0.000	5404185972	Weston	0.000
5410957148	Mullens	0.000	5404968908	Rivesville	0.000	5406185996	Westover	0.000
5402958372	New Cumberland	0.000	5408700000	Roane County	0.000	5410300000	Wetzel County	0.000
5405358564	New Haven	0.000	5402770084	Romney	0.000	5406986452	Wheeling	0.000
5410358684	New Martinsville	0.000	5402570156	Ronceverte	0.000	5402586812	White Sulphur Springs	0.000
5407758300	Newburg	0.000	5407770588	Rowlesburg	0.000	5404986620	Whitehall	0.000
5406700000	Nicholas County	0.000	5402570828	Rupert	0.000	5400586836	Whitesville	0.000
5403959068	Nitro - Kanawha	0.000	5403971212	Saint Albans	0.000	5405987508	Williamson	0.000
5407959068	Nitro - Putnam	0.000	5407371356	Saint Marys	0.000	5410787556	Williamstown	0.000
5410759458	North Hills	0.000	5403371380	Salem	0.000	5400987892	Windsor Heights	0.000
5404759428	Northfork	0.000	5402171620	Sand Fork	0.000	5407987988	Winfield	0.000
5403359836	Nutter Fort	0.000	5403773468	Shepherdstown	0.000	5410500000	Wirt County	0.000
5401960028	Oak Hill	0.000	5403373636	Shinnston	0.000	5410700000	Wood County	0.000
5405560196	Oakvale	0.000	5409574380	Sistersville	0.000	5404988708	Worthington	0.000
5410960364	Oceana	0.000	5401974740	Smithers	0.000	5410900000	Wyoming County	0.000
5406900000	Ohio County	0.000	5410374788	Smithfield	0.000			
5409561636	Paden City - Tyler	0.000	5408175172	Sophia	0.000			
5410361636	Paden City - Wetzel	0.000	5403975292	South Charleston	0.000			
5410762140	Parkersburg	0.000	5408775820	Spencer	0.000			
5409362284	Parsons	0.000	5406176516	Star City	0.000			
5406562332	Paw Paw	0.000	5403377188	Stonewood	0.000			
5401962356	Pax	0.000	5408900000	Summers County	0.000			
5407100000	Pendleton County	0.000	5406777980	Summersville	0.000			
5408562764	Pennsboro	0.000	5400778580	Sutton	0.000			
5402362956	Petersburg	0.000	5400578964	Sylvester	0.000			
5406363052	Peterstown	0.000	5409100000	Taylor County	0.000			
5400163292	Philippi	0.000	5407779708	Terra Alta	0.000			
5405763604	Piedmont	0.000	5409380020	Thomas	0.000			
5410363892	Pine Grove	0.000	5401980284	Thurmond	0.000			
5410963940	Pineville	0.000	5406980932	Triadelphia	0.000			
5404964228	Pleasant Valley	0.000	5409300000	Tucker County	0.000			
5407300000	Pleasants County	0.000	5407781268	Tunnelton	0.000			
5407964516	Poca	0.000	5409500000	Tyler County	0.000			
5407500000	Pocahontas County	0.000	5406381940	Union	0.000			

APPENDIX C

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 6th day of October 2010.

CASE NO. 10-1021-T-GI

Institution of General Investigation into the Certification of Competitive Telecommunications Services pursuant to W.Va. Code §11-13B-2(b)(5).

COMMISSION ORDER

The Commission makes its annual designation of the telecommunications services provided in West Virginia that are subject to competition.

BACKGROUND

Effective July 1, 1987, the Legislature imposed an annual privilege tax on telecommunications business engaged in or conducted within the State of West Virginia. The amount of tax due is determined by applying the tax rate against gross income. W.Va. Code §11-13B-3.

After July 1, 1988, however, W.Va. Code §11-13B-2(b)(5) excludes gross income derived from providing commodities or services subject to competition from taxation. This provision also requires the Commission to submit on or before December 31 of each calendar year a listing of commodities or services that the Commission has determined to be subject to competition to the State Tax Commissioner.

On October 9, 2009, in Case Number 09-1106-T-GI, the Commission certified seventy-one telecommunications services as competitive services for the 2009 tax year.

On July 12, 2010, the Commission initiated a general investigation to formulate a listing of competitive telecommunications services for the 2010 tax year, established a comment schedule, and required certain information to be filed.

In response to the July 12, 2010 Commission Order, three telecommunications entities filed comments including (i) Frontier West Virginia Inc., and Citizens Telecommunications Company of West Virginia (together Frontier); (ii) Verizon Long Distance, LLC, Verizon Enterprise Solutions, LLC, MCI Metro Access Transmission Services, LLC dba Verizon

Access Transmission Services and MCI Communications Services Inc., dba Verizon Business Services (together Verizon) and (iii) AT&T Communications of West Virginia, Inc., TCG Virginia and SBC Long Distance, LLC dba SBC Long Distance and dba AT&T Long Distance and New Cingular Wireless PCS, LLC dba AT&T Mobility (together AT&T). Frontier, Verizon and AT&T recommended that the Commission certify the same listing as last year. They stated that telecommunications competition has continued to increase in the last year, including telephone offerings by cable corporations and wireless carriers. Verizon noted that wireless handsets now substantially exceed the number of wirelines in West Virginia. See, Initial Comments.

On September 9, 2010, Commission Staff filed a Final Joint Staff Memorandum recommending that the Commission certify the same seventy-one services that the Commission identified as competitive in the 2009 proceeding.

No party filed reply comments.

DISCUSSION

The commenting parties agreed that the Commission should certify all of the services that it certified as competitive for tax year 2009 this year because those services are subject to competition in the marketplace with other carriers and services from cable companies or wireless providers. The Commission agrees with that conclusion. Therefore, the Commission will again certify the seventy-one telecommunications services listed below as competitive to the State Tax Commissioner.

FINDINGS OF FACT

1. The Commission initiated a general investigation into the certification of telecommunications services subject to competition and sought comments from the telecommunications industry. July 12, 2010 Commission Order.

2. Frontier, Verizon and AT&T recommended that the Commission certify all of the services that it certified as competitive for the 2009 tax year again this year. See, Initial Comments.

3. Staff recommended that the Commission recertify all telecommunications services that the Commission certified competitive for the 2009 tax year. September 9, 2010 Staff Memorandum.

CONCLUSION OF LAW

The Commission should certify all of the services that were certified last year for the 2010 tax year because those services continue to be offered by other providers.

ORDER

IT IS THEREFORE ORDERED that the following telecommunications services are certified as being subject to competition for the 2010 tax year and that a listing of such services be submitted to the West Virginia Tax Commissioner pursuant to W.Va Code §11-13B-2(b)(5). (No new services are certified this year.)

- (1) Single or multi-line speed calling;
- (2) Multi-line conference calling;
- (3) Multi-line call waiting;
- (4) Multi-line call forwarding;
- (5) Time and temperature;
- (6) Directory advertising;
- (7) Inside wiring services;
- (8) Customer premises equipment;
- (9) Alarm couplers;
- (10) Apartment door answering service;
- (11) Paging services;
- (12) Telephone booths;
- (13) 911 equipment;
- (14) Jacks and network interface devices other than demarcation point devices;
- (15) Mobile and portable telephone service, including all services provided by cellular and personal communications service (PCS) carriers (also known as commercial mobile radio service (CMRS) carriers) as such carriers are defined by the Federal Communications Commission;
- (16) Power station protection equipment;
- (17) Billing and collecting;
- (18) Select-a-station service;
- (19) Telemetry alarm bridge service;
- (20) InterLATA toll services, including interLATA call completion/operator services;
- (21) IntraLATA toll services including message toll, operator assistance, private line, LD conference, 800 service, toll-free INWATS, special reverse charge, OUTWATS and channel conditioning;
- (22) Residence service variety package;
- (23) Interstate, intraLATA toll services;
- (24) CENTREX and VersaLine services (excluding Access);
- (25) Coin telephone services (excluding access-related revenues);
- (26) Repeat call;
- (27) Multi-line three-way calling;
- (28) Frame relay service;
- (29) Prepaid calling service;
- (30) "Call54" service ("reverse directory assistance");
- (31) Connect request service;


- (32) IntelliLinQ PRI;
- (33) Directory assistance (intrastate only);
- (34) National directory assistance ("NDA" or National "411");
- (35) PBX Trunks (including associated local usage and features);
- (36) Digital data services and high capacity services (DS1, DS2, DS3 and T-1);
- (37) CENTREX service (including access);
- (38) Private Line Local Service, including dedicated loop or transportation facilities running between points determined by the customer, including electronics necessary to digitize signals transmitted over the digital channels;
- (39) Asynchronous Transfer Mode (ATM) Service;
- (40) Internet Protocol Routing Service (IPRS);
- (41) Big Deal;
- (42) Bonus Discount Plan;
- (43) Business Link Rewards;
- (44) Call Gate;
- (45) Conference Service (Local);
- (46) Direct Inward Dialing (DID);
- (47) Easy Voice Dialing (Speech Recognition);
- (48) Home Intercom;
- (49) Intercom Extra;
- (50) ISDN BRI;
- (51) Residential ISDN;
- (52) Rewarding Connections;
- (53) Special Billing Number Service;
- (54) Switched Multi-megabit Data Service (SMDS);
- (55) Switched Redirect Service;
- (56) Uniform Call Distribution Services;
- (57) Usage Charges associated with PTNL Lines;
- (58) Virtual Private Network Service (VPN);
- (59) Wired Music;
- (60) WorkSmart;
- (61) List Service;
- (62) Three-Way Call Transfer;
- (63) Local Business Service, including associated vertical services;
- (64) Packaged services offered in response to competition;
- (65) Local residential service where a competitive local exchange carrier uses its own switching facilities and loops, or leases switching facilities and loops;
- (66) Local residential and business service where at least one telecommunications carrier, in addition to the incumbent, has been designated an eligible telecommunications carrier;
- (67) Directory Listing, including additional, alternate number, foreign directory, non-listed, and non-published listings;
- (68) Easy Number Service;
- (69) Late Payment Charge;

- (70) Dishonored Check Charge; and
- (71) Outpulsing Facilities.

IT IS FURTHER ORDERED that this case be removed from the Commission docket of active cases.

IT IS FURTHER ORDERED that the Commission Executive Secretary serve a copy of this Order by electronic service on all parties requesting that service, on the State Tax Commissioner and all other parties by United States First Class Mail and on Staff by hand delivery.

A True Copy. Teste:


Sandra Squire
Executive Secretary

MJM/ldd
101021ca.wpd

APPENDIX D

1 **H. B. \2012-8 Telecommunications Tax Repeal**

2

3 (By Delegate **KEYBOARD([ENTER DELEGATE NAME])**)

4 [Introduced ; referred to the

5 Committee on .]

6

7

8

9

10 A BILL to repeal §11-13B-1, §11-13B-2, §11-13B-3, §11-13B-4, §11-
11 13B-5, §11-13B-6, §11-13B-7, §11-13B-8, §11-13B-9, §11-13B-10,
12 §11-13B-10a, §11-13B-11, §11-13B-12, §11-13B-13, §11-13B-14,
13 §11-13B-15, §11-13B-16, §11-13B-17, §11-13B-18, and §11-13B-
14 19, of the Code of West Virginia, 1931, as amended, relating
15 to the West Virginia Telecommunications Tax Act.

16 *Be it enacted by the Legislature of West Virginia:*

17 **§1. Repeal of article creating the West Virginia telecommunications**
18 **tax.**

19 §11-13B-1, §11-13B-2, §11-13B-3, §11-13B-4, §11-13B-5, §11-
20 13B-6, §11-13B-7, §11-13B-8, §11-13B-9, §11-13B-10, §11-13B-10a,
21 §11-13B-11, §11-13B-12, §11-13B-13, §11-13B-14, §11-13B-15, §11-
22 13B-16, §11-13B-17, §11-13B-18, and §11-13B-19, of the Code of West
23 Virginia, 1931, as amended, are hereby repealed.

2009RKEYBOARD ([ENTER CBD NUMBER])

NOTE: The purpose of this bill is to repeal the West Virginia telecommunications tax.

The article has been completely repealed; therefore, strike-throughs and underscoring have been omitted.