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# Compliance Review 2009

## Washington Response to CRIC

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**Introduction** This document addresses the two comments made by the Compliance Review and Interpretations Committee (CRIC) during its 2009 compliance recertification review of Washington regarding prepaid wireless and the “local service” exemption.

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### Prepaid calling services

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**CRIC comment** “The statute sourcing prepaid calling and prepaid wireless calling services only refers to prepaid calling service in the rules for receipt at seller’s place of business and for receipt at the location delivered to the customer.”

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**Washington response** We understand the comments regarding prepaid wireless calling services. Because RCW 82.32.520(c)(i) & (ii) fall within RCW 82.32.520(c) that clearly references both “prepaid calling” and “prepaid wireless,” we believe Washington is substantially in compliance with the SSUTA. However, the term was inadvertently left out of portions of our telecom sourcing statute when it was enacted in 2007. That is, RCW 82.32.520(3)(c) clearly provides:

- (c) A sale of **prepaid calling service** or a sale of a **prepaid wireless calling service** is sourced as follows:..[.]

However, two of the subsequent statutory sourcing rules explicitly reference "prepaid calling service" but not "prepaid wireless calling service":

- (i) When a **prepaid calling service** is received by the purchaser at a business location of the seller, the sale is sourced to that business location;
- (ii) When a **prepaid calling service** is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

The remaining three sourcing rules reference neither "prepaid calling service" nor "prepaid wireless calling service", except to describe special treatment for "prepaid wireless calling service" in RCW 82.32.520(3)(c)(vi):

- (iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;
- (iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;
- (v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;
- (vi) In the case of a sale of **prepaid wireless calling service, (c)(v)** of this subsection shall include as an option the location associated with the mobile telephone number.

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**Resolution:**

RCW 82.32.520(3)(c) already provides that sourcing rules (i) - (ii) above apply in the context of prepaid calling services and prepaid wireless calling services consistent with existing SSUTA rules. Therefore, the Department currently sources prepaid wireless calling services consistently with the SSUTA and Washington is substantially in compliance with the SSUTA.

Nonetheless, we intend to propose legislation that would put the term into RCW 82.32.520(3)(c)(i) and (ii) to resolve any possible confusion.

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## “Local services” exemption

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**CRIC  
comment**

“The statute excludes local service from the tax on telecommunications service. Local service is defined to mean ancillary service and telecommunications service excluding toll service. The taxability matrix shows all telecommunications services as being taxable other than local service and coin operated telephone service. The Agreement does not define toll service. Other than the services traditionally thought of as toll service, telecommunications service includes local private communications service, prepaid calling service, prepaid wireless calling service, mobile wireless service, fixed wireless service, paging service and value-added non-voice data service. Are all these included in the definition of local service?”

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**Washington  
response**

- Washington’s “local service” exemption is compliant with the SSUTA. Because RCW 82.08.0289 is compliant with the SSUTA, no compliance issues are raised.
  - While the CRIC’s comment does not raise any compliance issues, Washington provides the following for informational purposes:
    - (1) The authority for the “local service” exemption.
    - (2) Services included in the “local service” exemption.
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**“Local service” exemption authority**

**Introduction:**

This section describes the authority under which Washington’s “local service” exemption operates.

**Legal references:**

The following table lists the relevant authorities:

<b>Relevant Authorities</b>	<b>Relevant Language</b>
SSUTA Appendix C Library of Definitions, Part II Product definitions “telecommunications”	A member state that specifically imposes tax on, or exempts from tax, local telephone or local telecommunications service may define "local service" in any manner in accordance with section 327 of the Agreement, except as limited by other sections of this Agreement.
SSUTA Section 327	Except as specifically provided in Sections 316 and 332 and the Library of Definitions, a member state shall impose a sales or use tax on all products or services included within each Part II or Part III(B) definition or exempt from sales or use tax all products or services within each such definition.
SSUTA Section 316(C)(3)	A member state may enact an entity-based exemption for an item if Part II of the Library of Definitions does not have a definition for such item but has a definition for a product that includes such item.
RCW 82.08.0289(1) (a) & (2)(a)	The tax levied by RCW 82.08.020 shall not apply to sales of: (a) local service;..[.]  "Local service" means ancillary services and telecommunications service, as those terms are defined in RCW 82.04.065, other than toll service, provided to an individual subscribing to a residential class of telephone service.

**Discussion:**

Washington imposes sales tax all telecommunications and ancillary services as those terms are defined in the SSUTA’s Library of Definitions. However, RCW 82.08.0289 provides an exemption for “local service.”

The Agreement allows member states to define “local service” in any manner in accordance with SSUTA Section 327 for exemption purposes. Section 327 requires a member state to impose or exempt from sales or use tax all products or services included within each Part II or Part III(B) definition, except as provided in Sections 316 and 332.

Section 316(C)(3) authorizes exemptions that meet the following requirements:

- The exemption must be entity based.
- Part II of the SSUTA Library of Definitions must not have a definition for the exempt item.
- Part II of the SSUTA Library of Definitions has a definition for a product that includes the exempt item.

An entity based exemption refers to an exemption determined by who purchases a product or service.

Washington’s “local service” exemption is compliant with Section 316(C)(3) because:

- The exemption is entity based as it is provided to an “individual subscribing to a residential class of telephone service.”
- The exempt “local service” is not defined in Part II.
- Part II has definitions for telecommunications service and ancillary service and these are services in which “local service” is included pursuant to the language of RCW 82.08.0289.

Based upon the forgoing, Washington’s “local service” exemption is compliant with the SSUTA.

*Note:*

*In enacting RCW 82.08.0289, Washington clearly identified RCW 82.08.0289(1)(a) as an exemption that applies to “local service.” This should not be confused with “residential telecommunication service,” a different term defined in Appendix C Library of Definitions, Part II Product definitions “Residential Telecommunications Service.”*

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**Services included in the “local service” exemption**

**Introduction:**

CRIC requested that the Department clarify how the “local service” exemption applies in Washington. Because RCW 82.08.0289 is compliant with the SSUTA, no compliance issues are raised relative to this request and no further action is needed. That said, the following explains how the “local service exemption applies.

**Legal references:**

The following table lists the relevant statutory language for the “local services” exemption both before and after Washington became an SSUTA member state.

<b>Statutory Reference</b>	<b>Effective Period</b>	<b>Relevant Language</b>
RCW 82.08.0289(1)(a) & (2)(a)	1983 through 2007	The tax levied by RCW 82.08.020 shall not apply to sales of: (a) network telephone service, other than toll service, to residential customers;  "Residential customer" means an individual subscribing to a residential class of telephone service.
RCW 82.08.0289(1)(a) & (2)(a)	2007 to present	The tax levied by RCW 82.08.020 shall not apply to sales of: (a) local service;..[.]  "Local service" means ancillary services and telecommunications service, as those terms are defined in RCW 82.04.065 other than toll service, provided to an individual subscribing to a residential class of telephone service.

**Discussion:**

As enacted in 1983, RCW 82.08.0289 exempted network telephone service, other than toll service, to “residential customers,” who were defined as individuals “subscribing to a residential class of telephone service.” This definition reflected the then-customary division of all telephone service into separate “residential” and “business” classifications, as defined by regulatory tariffs filed by telephone companies.

These separate classes were mandated by state regulatory approval of telephone rates, and telephone carriers filed separate tariffs with the Washington Utilities and Transportation Commission (WUTC) governing each class of service. Land-line telephone carriers file such tariffs with the WUTC to the present day. It is these WUTC tariffed services to which RCW 82.08.0289 applies.

In 2007, before Washington applied for membership in the SSUTA, Washington amended RCW 82.08.0289. There were two primary changes made to RCW 82.08.0289. First “local service” replaced the term “residential customer.” Second, “ancillary services and telecommunications services” replaced the term “network telephone service.” These changes did not alter the substantive qualifications for exemption under RCW 82.08.0289. Accordingly, RCW 82.08.0289 continues to apply in the same manner as initially enacted in 1983.

Based upon the forgoing, the “local services” exemption applies to those services provided to an individual subscribing to a residential class of service. That is, the exemption is limited to those services defined by regulatory tariffs with the WUTC as residential. “Local service” does not include charges relating to “toll services” per the statutory language.

Regarding the specific question about "local private communications service, prepaid calling service, prepaid wireless calling service, mobile wireless service, fixed wireless service, paging service and value-added non-voice data service", our response is that these items are not exempt. None of the services are defined by regulatory tariffs by the WUTC.

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**Resolution:** None required.

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