

A motion by Oklahoma, Kansas and Washington to amend the SSUTA relating to other taxes, charge and fee on communications services:

- A. Except as specifically otherwise provided in this section, the provision of the Agreement and the Library of Definitions shall apply separately to each “other tax, charge and fee on communications services” in the same manner and to the same extent as such provisions and definitions apply to sales and use taxes.
- B. The following are exceptions to the application of the Agreement and the Library of Definitions to each “other tax, charge and fee on communications services”.
1. When a provision of the Agreement or Library of Definitions, excluding Article III, is clearly not applicable to such taxes or fees as determined by a three fourths vote of the Governing Board.
 2. When a specific provision of the Agreement or Library of Definitions related to such taxes, charges or fees conflicts with a general provision of the Agreement or Library of Definitions.
 3. The following provisions of the Agreement shall be applied to other taxes, charges and fees on communications services differently than to sales and use taxes as follows:
 - a. The requirement in Section 301 for a member state to provide state level administration of sales and use taxes is modified to allow a designated agent to provide for the administration of each other tax, charge and fee on communications services.
 - b. The requirement of Section 318 for one uniform return for each state and all the taxing jurisdictions within the member state for sales and use taxes is modified to provide that there shall be one State-specific uniform return for each type of other tax, charge and fee on communications services.
 - c. The provisions of Section 308 for rate simplification for sales and use taxes are modified to require that each taxing jurisdiction shall have only one rate for each type of other tax, charge or fee on communications services. ~~In addition, a State may take into account all State and political subdivision taxes on communications services that are imposed on a similar product when~~ When applying the last sentence of Section 308A, ~~as currently drafted, a state may not take into account any tax, charge or fee that represents, in part or in whole, compensation for use of public rights of way or other public property. The prohibition contained in the preceding sentence shall not apply to any tax imposed in its current form before January 1, 2010, provided however, that nothing in the Agreement shall preclude any such tax, charge or fee from being ruled discriminatory or otherwise illegal on any basis, including under the Commerce Clause or Equal Protection Clause of the U.S. Constitution.~~
 - d. The requirement for tax base uniformity in Section 302 of the Agreement shall apply to each type of other tax, charge or fee on communications services within a state, but shall not be construed to require that the ~~tax~~-base for each type of other tax, charge or fee on communications services must be identical to the tax base for sales and use taxes imposed on communications services. In addition, if a state does not impose a particular type of tax on other communications services that is imposed by more than one locality

in such state, Section 302 shall be construed to require that all local taxes have the same tax base.

- e. The requirement of Sections 303 and 401 for a centralized registration system for sales and use taxes is modified to permit a centralized, one-stop, registration system at the state-level for taxes, charges and fees imposed on communications services and administered solely within the state. Sellers shall also be allowed to register directly with localities.
- f. The provisions of Section 806 of the Agreement relating to joint audits are modified to provide for a single audit at the state level for each type of other tax, charge and fee on communications services within a state.
- g. Nothing in the Agreement shall be construed as creating a state-level imposition of locally-imposed, but state administered, taxes, charges, or fees on communications services.

C. For purposes of this section the term “other taxes, charges and fees on communications services” means any tax, charge or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for communications services, regardless of whether such tax, charge or fee is imposed on the vendor or customer or the service and regardless of the terminology used to describe the tax, charge, or fee. The term “other taxes on communications services” shall include any tax, charge or fee that is a payment obligation to a state enabled under subsection 254(f) of the communications Act of 1934.

D. The term “other taxes on communications services” does not apply to:

- 1. any tax, charge or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of communication services;
- 2. any tax, charge or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis;
- 3. any tax, charge or fee that represents compensation for a communications service provider’s use of public rights of way or other public property, ~~provided that such tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or is in any way measured by gross amounts charged to customers or gross revenue for communications services; or~~ or
- 4. any generally applicable business and occupations tax that is imposed by a State, is applied to gross receipts or gross proceeds, is the legal liability of the seller of communications services and that statutorily allows the seller of communications services to elect to use the sourcing method required under the Agreement.

E. The term ‘communications services’ ~~includes~~ means the following:

- 1. Telecommunications services as defined in Part II of the Library of Definitions; ~~or~~
- 2. Video programming services - the offering, transmission, conveyance or routing of radio and television audio and video programming services for purchase by subscribers or customers, regardless of the medium, technology or method of display, including the furnishing of transmission, conveyance and routing of such services by the video programming distributor. This clause (~~#~~1) shall include, but not be limited to, “cable service” as defined in 47 U.S.C. § 522(6), interactive on-demand service as defined in 47 U.S.C. § 522(12), the provision of “video programming” by a “multichannel video program distributor” as defined in 47 U.S.C. § 522(20), (13), and the distribution of audio and video programming by

providers of “commercial mobile radio service” as defined in 47 C.F.R. § 20.3, when such services are offered for purchase by subscribers or customers of such service; and
3. Ancillary services as defined in Part II of the Library of Definitions.

F. Definition of terms in this section, except to the extent such term is defined in part II of the Library of Definitions shall not be used to restrict or affect the taxation or exemption from taxation of any product pursuant to Section 316 or 327 of the Agreement.

G. A Member State shall not be required to comply with the provisions of this section in order to meet the requirements for Member State status under the Agreement or to have the authority to compel remote sellers to collect sales and use taxes, when such authority is granted, until the date federal legislation requires such compliance.

H. This section shall not be construed as affecting franchise agreements entered into by Member States or localities with providers of multichannel video programming services, except that any provision in any such agreement that relates to the imposition or collection of a tax, charge or fee on communications services shall be subject to the minimum simplification requirements of the Agreement as modified by this section.