

A motion by Oklahoma relating to other communication taxes in proposed federal legislation:

SEC. 7. MINIMUM SIMPLIFICATION REQUIREMENTS.

(a) In General- The minimum simplification requirements for the Agreement are as follows:

(20) Application of Simplification Requirements to Taxes on Communications Services

(A) In General - Each Member State shall apply the simplification requirements of this Section 7 to sales and use taxes on communications services.

(B) Other Taxes, Charges and Fees On Communications Services – Not later than the first day of the calendar quarter beginning on or after the third anniversary of the enactment of this Act, each Member State shall apply the simplification requirements of this Section 7, as modified by subparagraph (E) of this paragraph, to taxes, charges and fees on communications services, other than sales and use taxes. Such simplification requirements shall be applied separately to each type of tax, charge or fee on communications services within a State and, for purposes of applying such requirements to each type of tax, charge or fee other than sales and use tax, references in paragraphs (1) through (19) to sales and use taxes shall be treated as referring to such other type of tax, charge or fee.

(C) Grant of Authority – Each Member State found to be in compliance by the Governing board with the provisions of the Agreement corresponding to subparagraph (B) of this paragraph is authorized, subject to the requirements of Section 4, to require all sellers not qualifying for a small seller exception, to collect and remit such other taxes, charges and fees on communications services with respect to remote sales sourced to that Member State under the Agreement on the first day of a calendar quarter at least 6 months after the date the Governing Board certifies such state's compliance with this provision.

(D) Termination – A state that has failed to be found in compliance, or that is found to be out of compliance with subparagraph (B) shall no longer possess or exercise with respect to any tax, charge or fee the authority granted to Member States under Section 4(a) until such Member State is found to be in compliance with subparagraph (B). The State shall still be considered a Member State for purposes of Section 4(a)(2)(A), notwithstanding the loss of authority.

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- (E) Modifications – In applying the simplifications of this section 7 to taxes, charges and fees on communications services, other than sales and use taxes on communication services, the following modifications shall apply:
- (1) The requirement in Section 7(a)(1) is modified to permit a centralized, one-stop, registration system at the state-level for taxes, charges and fees administered solely within the state. Sellers shall also be allowed to elect to register directly with localities.
 - (2) The requirement in Section 7(a)(2) for tax base uniformity shall apply to each type of tax, charge and fee on communications services within a State, but shall not be construed to require that the ~~tax~~-base for different types of taxes, charges and fees 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, charge or fee on communications services that is imposed by more than one locality in such state, Section 7(a)(2) shall be construed to require that all such local taxes, charges and fees have the same ~~tax~~-base.
 - (3) The requirement in Section 7(a)(6) is modified to permit one State-specific uniform return for each type of tax, charge or fee on communications services.
 - (4) The requirement in Section 7(a)(9) is modified to require that each taxing jurisdiction shall have only one rate for each type of tax, charge or fee on communications services. ~~In addition, a State may take into account all State and political subdivision taxes on communication services that are imposed on a similar product when~~ When applying the last sentence of ~~section~~Section 308A, ~~as amended through the date of enactment of this Act~~ 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.
 - (5) The requirement in Section 7(a)(13) is modified to require a single audit conducted at the state level for each type of tax, charge or fee on communications services within the state.

SEC. 8. LIMITATION.

(a) In General- -Nothing in this Act shall be construed as—

- (1) subjecting a seller to taxes, charges, franchise fees/~~taxes~~, income taxes, property taxes or licensing requirements of a Member State or political subdivision thereof; or
 - (2) affecting the application of such ~~fees/taxes,~~ charges, fees or requirements or enlarging or reducing the authority of any Member State to impose such ~~fees/taxes,~~ charges, fees or requirements; or
 - (3) 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 (as defined in section 10 of this Act) shall be subject to the minimum simplification requirements as set out in this Act; or
 - (4) bearing on Congressional intent in enacting the Mobile Telecommunications Sourcing Act or to modify or supersede the operation of such Act.
- (5) Nothing in this Act or the Agreement shall be construed as creating a state-level imposition of locally-imposed, but state administered, taxes, charges, or fees on communications services.

SEC. 10. DEFINITIONS.

For the purposes of this Act the following definitions apply:

- ~~(11) TAX ON TELECOMMUNICATIONS SERVICES—The term ‘tax on telecommunications services’ or ‘taxes on telecommunication services’ shall encompass the same taxes, charges, or fees as are included in section 116 of title 4, United States Code, except that ‘telecommunication services’ shall replace ‘mobile telecommunications services’ whenever such term appears.~~
- ~~(12) TELECOMMUNICATIONS SERVICE—~~
- ~~(A) IN GENERAL—The term ‘telecommunications service’ means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.~~
- ~~(B) INCLUSION—The term ‘telecommunication service’—~~
- ~~(i) includes transmission services in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such services are referred to as voice over Internet protocol services or are classified by the Federal Communications Commission as enhanced or value added services; and~~
- ~~(ii) does not include the data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a~~

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~~purchaser where the primary purpose of such purchaser for the underlying transaction is the processed data or information.~~

(10) TAX ON COMMUNICATIONS SERVICES-

- (A) The ~~term `tax on communications`~~terms `tax, charge or fee on telecommunications` services' or ~~`taxes on communications, charges or fees on telecommunication`~~ 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 ~~communication~~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. ~~A tax.~~ 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~~communications Act of 1934.
- (B) The ~~term~~terms 'tax, charge or fee on communication services' or 'taxes, charges, or fees on communication 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 service;
 - (2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determine 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 communication services;~~ or
 - (4) any generally applicable business and occupation 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;

(11) COMMUNICATIONS SERVICES-

- (A) IN GENERAL- The term `communications services' includes:
- (1) ~~telecommunications services' and ancillary services' as defined in the Agreement and 'video programming services'.~~
 - (2) video programming services - the offering, transmission, conveyance or routing of radio and television audio and

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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 the Agreement.