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State and Local Advisory Council One-way Paging

In the course of reviewing Member States' 2009 petitions for recertification, the Compliance Review and Interpretation Committee (CRIC) identified an issue that came up in more than one state. Because there was disagreement on how to apply the issue it was determined it needed to be discussed by all the member states before CRIC could consider it when determining a state's compliance with the Agreement. Specifically, does paging, which is a telecommunications service, include one-way paging which does not allow for both sending and receiving messages. This issue paper is in response to the request from CRIC for information and study regarding the telecommunications definition of paging and one-way paging.

This issue was referred to the State and Local Advisory Council (SLAC) by the Governing Board in September, 2009.

Issue: "Does an exemption for one-way paging conflict with the Agreement's definition of "paging"?"

Background

The Agreement defines "paging service" as "a 'telecommunications service' that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds." The Agreement does not contain a definition for "one-way paging."

Governing Board Rule 327.2, Part D provides that with respect to telecommunications, partial exclusion of a definition is prohibited. A member state choosing to tax telecommunication services shall use applicable definitions contained in the Streamlined Sales and Use Tax Agreement and shall not exclude from imposition a part of any definition or any item included in such a definition unless the Streamlined Sales and Use Tax Agreement specifically permits such a variation.

The CRIC's 2009 Compliance Review Report to the Governing Board (CI09056, dated 12/4/09) identified three states (Michigan, North Dakota and Wyoming) that had exemptions for "one-way paging." That issue was not considered by the CRIC in determining a state's compliance with the Agreement, at least in part because there was disagreement on how to apply it. During SLAC discussions Iowa identified itself as also having the issue of using the undefined term one-way paging.

Subsequent discussion, involving representatives of both states and the business community, raised the question of whether such a thing as "one-way paging" currently exists, as most transmissions considered as paging now include some capacity for direct

response (such as a text message). Apparently true “one-way” paging (where there is no ability to directly respond to the paging transmission) continues to exist, though perhaps on a very limited basis.

Telecommunications industry representatives expressed the position that Member States must use the Agreement’s definition of “paging service” and either tax or exempt all paging services, including one-way paging. The states identified in the CRIC’s 2009 Compliance Review Report have expressed their intent to address this matter within their states (administratively or legislatively, as appropriate) so that all paging services in those states (including one-way paging) are either taxed or exempt.

Proposed Recommendation:

SLAC has determined that paging, as defined under the Agreement, includes both one-way paging and two-way paging.

SLAC suggests that CRIC prepare an interpretation of the definition of paging specifying that the definition of paging includes both one-way and two-way paging and that pursuant to Section 327.2.D, partial exclusion of items within a telecommunication defined term is prohibited unless the SSUTA specifically permits such a variation. There is no such variation allowed in the definition of paging.