

NO. 38347-1-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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SPRINT INTERNATIONAL COMMUNICATIONS CORP,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

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**BRIEF OF RESPONDENT**

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ROBERT M. MCKENNA  
Attorney General

Brett S. Durbin, WSBA No. 35781  
Assistant Attorney General  
Cameron G. Comfort, WSBA No. 15188  
Sr. Assistant Attorney General  
P.O. Box 40123  
Olympia, WA 98504-0123  
(360) 753-5528

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## I. INTRODUCTION

In Washington, telecommunications services are subject to retail sales tax. From 1989 to 1994, Sprint sold data communication services that were primarily used to transmit customers' data over its telecommunications networks. According to Sprint:

The core of SprintNet services ... has long been recognized as an extremely flexible, cost-effective and reliable way to transmit information between geographically dispersed locations. Countries and multinational organizations, from financial institutions to manufacturers to service providers have chosen X.25 for data transport for nearly two decades.

CP 973 (Sprint Sales Kit (1994) at 2).

During this time frame, taxable "network telephone services" included "providing telephonic, video, data, or similar communications or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system." Former RCW 82.04.065 (1983). Because Sprint's data communication services primarily provided customers data transmission for hire, the Department and the trial court properly classified Sprint's services as "network telephone services." Accordingly, the Department respectfully requests that this Court affirm the trial court's order granting the Department summary judgment.

## II. STATEMENT OF THE CASE

### A. Statement Of Facts

During the late 1980s and early 1990s Sprint sold two main types of data transmission services, SprintNet and Frame Relay.<sup>1</sup> These services transmitted customers' data over Sprint's X.25 and frame relay networks and were mainly used by corporations that needed to transmit data between office locations or corporate data centers. CP 317-20 (Stip. Facts ¶¶ 40-60); CP 1228 (Elliott at 52:6-14). Sprint's customers included banks and financial institutions, information service providers such as America Online and Westlaw, trucking companies, and computer companies. CP 317 (Stip. Facts ¶ 40).

During this period, most of Sprint's customers transmitted their data over Sprint's packet switched X.25 network, SprintNet. CP 1317 (Brennan at 30:1-2). The SprintNet network consisted of telecommunications circuits<sup>2</sup> purchased from other telecommunications companies and Sprint's X.25 packet switches. CP 315 (Stip. Facts ¶¶ 22, 26). The switches were referred to as X.25 packet switches because they

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<sup>1</sup> CP 315 (Parties' Corrected Stipulation Of Agreed Facts And Exhibits, Agreed Facts (Stip. Facts) ¶ 22).

<sup>2</sup> In order to efficiently use the cables or microwaves transmitting the signals across a telecommunications network, transmission equipment in the network divides the signals into specific frequencies or time intervals. These time intervals are referred to as channels or circuits. CP 313 (Stip. Facts ¶¶ 3-4).

used the X.25 transmission protocol, versus the frame relay or internet transmission protocols. CP 354 ¶ 12; CP 1231 (Elliott at 64:5-9).

**1. Packet Switched Networks.**

Packet switched networks transmit data by breaking up the data into “packets” that contain address information indicating the packet’s origin and destination. CP 314 (Stip. Facts ¶ 16). This process is similar to placing individual pages of a book into many envelopes, each with an address label, and mailing the envelopes one at a time. The process of breaking the signal up into packets with address information is called “packetizing.” CP 1286 (Brennan at 22:1-18) However, this process does not alter the information sent by the user. CP 1300 (Brennan at 79:10-23). It only places the information in a packet or frame, just as placing a page of a book in an envelope does not change the words or pictures on the page. *Id.* “Packetizing” the signal allows a packet switch to read the address information at the start of the signal and then route the signal to the next cable or circuit needed to reach the destination, similar to a postal employee reading the address on an envelope and routing it to the appropriate post office. CP 314 (Stip. Facts ¶ 17); see also CP 587 (attached in Appendix as A-63).<sup>3</sup>

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<sup>3</sup> This is an illustrative diagram prepared by the Department and presented to the trial court as an appendix to a brief. It is based on the description provided by Sprint’s expert Mr. Brennan. CP 1330-31 (Brennan at 85-89).

## **2. Sprint's X.25 Network Service.**

During the audit period, Sprint offered several different products related to its SprintNet network. These products offered different features and pricing structures to meet different needs. These included the DataCall family of products, Global Data Connection, MultiDrop and Custom Link. CP 318-19 (Stip. Facts ¶¶ 44-53).

The Global Data Connection product provided a dedicated connection to the SprintNet network and was used to transmit data between mainframes and to allow a company's dial-in users to access the company's mainframe computers. CP 318 (Stip. Facts ¶ 44). The MultiDrop and Custom Link services were used by customers to transmit data between corporate data centers and mainframes. CP 319 (Stip. Facts ¶¶ 51-52).

The DataCall family of products was used by companies to transmit data via dial-in connections, often from remote or mobile locations. CP 319 (Stip. Facts ¶ 49). To use this service, users typically dialed into the SprintNet network, where a packet assembler/disassembler ("PAD") would receive the signal from the user's modem and put it into an X.25 packet.<sup>4</sup> CP 319 (Stip. Facts ¶ 53). Personal computers and data

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<sup>4</sup> Sprint also provided an X.25 dial-in service that allowed users to avoid using the PAD and directly access the SprintNet network if the user owned equipment that transmitted signals in X.25 packets. CP 1330 (Brennan at 84).

terminals often transmit information in an “asynchronous” protocol. CP 319 (Stip. Facts ¶ 54). A protocol is a specific way in which information is communicated, devices using asynchronous and X.25 protocols break the data up in different ways, and therefore they are different protocols. CP 319 (Stip. Facts ¶¶ 55-56). Because the asynchronous and X.25 protocols are different, the PAD must convert the asynchronous signals into an X.25 packet in order to transmit the user’s information over the X.25 network. Protocol Waiver Order, 100 F.C.C.2d 1057 ¶ 22 (1985), CP 356; CP 319-20 (Stip. Facts ¶¶ 53-59). However, this process only places the information in an X.25 packet, it does not change the user’s information. CP 1300 (Brennan at 79:10-23).

Once the signal is put in the X.25 packet, it is transmitted across the X.25 network to the intended destination, where the information is either removed from the X.25 packet by another PAD and transmitted asynchronously to the customer’s location, or in the case of a dedicated connection, transmitted to the customer’s synchronous mainframe computer system as an X.25 packet. CP 320 (Stip. Facts ¶ 59).

The MultiDrop and Custom Link services were dedicated connection services used to provide mainframe-to-mainframe connectivity and did not convert the signal from asynchronous to synchronous or vice

versa. The signal typically stayed in a X.25 format from start to finish.

CP 320 (Stip. Facts ¶ 60).

In addition to the X.25 transmission services, Sprint also sold SprintMail, an electronic messaging service similar to e-mail, and protocol conversion software products that allowed different types of IBM mainframes, terminals and PCs to communicate with each other. CP 689-90 (Stip. Ex. 2-56-57); CP 1243 (Elliot at 112:9-16); CP 1264 (Elliot at 196:9-10); CP 1330 (Brennan at 83:8-12). However, these products were sold separately from the transmission services and customers had to pay additional fees to obtain these products. *Id.* Also, the record does not show that the Department imposed retail sales tax on Sprint's sales of its SprintMail product. Nor did Sprint allege that the Department improperly imposed retail sales tax on its sales of SprintMail in its complaint, its summary judgment motion, or its response to the Department's summary judgment motion. CP 4-10; CP 46-78; CP 389-409.

### **3. Sprint's Frame Relay Service.**

During the audit period, Sprint also provided a service called Frame Relay. This service allowed customers to transmit data over Sprint's frame relay network. The frame relay network consisted of telecommunications circuits purchased from other telecommunications companies and frame relay packet switches. CP 320 (Stip. Facts ¶ 62).

The frame relay network also did not convert asynchronous protocol signals to synchronous protocol signals or allow dial in connections. CP 321 (Stip. Facts ¶¶ 65, 68-69). The primary reason customers purchased the Frame Relay service was to obtain a dedicated network connection for mainframe-to-mainframe data transmission. CP 321 (Stip. Facts ¶ 66).

**B. Statement of Procedure/Standard of Review**

In 1995, the Department conducted an audit of Sprint covering January 1, 1989 to December 31, 1993. CP 469. As a result of the audit, the Department issued an assessment for \$1,248,344. Id. Most of the assessment related to Sprint's failure to collect and remit retail sales tax on the sales of its SprintNet and Frame Relay data communication services. Id. Sprint objected to the assessment and petitioned the Department's Appeals Division for a correction of the assessment. Id. In 2001, the Appeals Division issued a determination denying the petition and affirming the assessment. CP 483.

Sprint paid the assessment in 2001 and, four years later, timely filed the current refund action in December 2005. The Department and Sprint both moved for summary judgment in January 2008. CP 10, 55. In August 2008, the trial court granted the Department's motion for summary judgment and denied Sprint's. CP 611. Afterward, Sprint timely filed a notice of appeal. CP 613.

The appellate court reviews the trial court's summary judgment order de novo. Western Telepage v. City of Tacoma, 140 Wn.2d 599, 607, 998 P.2d 884 (2000). In a tax refund lawsuit under RCW 82.32.180, the taxpayer must prove that the amount of the tax is incorrect and establish the proper amount of the tax.

### **III. ARGUMENT**

The trial court properly granted summary judgment to the Department in this case. Sprint's data communication services, X.25 and Frame Relay, were primarily used to transmit data for hire over a telecommunications system and therefore they are "network telephone services" under Former RCW 82.04.065 (1983).

Sprint attempts to avoid this result by reading the Federal Communications Commission's ("FCC") regulatory distinctions into the statute. Opening Br. at 22. However, the FCC's distinctions are only relevant in the regulatory context and bear little or no relationship to the state tax statutes. Further, incorporating the FCC's regulatory distinctions would result in arbitrary, shifting and discriminatory taxation of telecommunications services, contrary to the plain language and legislative intent of the statute.

Sprint also maintains that the 1997 and 2007 amendments to RCW 82.04.065 show that its service is not a "network telephone service."

However, Sprint's argument ignores key aspects of these amendments and relies on unsupported factual assertions.

Contrary to Sprint's position, the 1997 and 2007 amendments only serve to clarify the distinction between "telecommunications" or "network telephone services" that primarily provide a medium of electronic communication and "information" or "internet services" that primarily provide the substance of the communications. As Sprint's services primarily provided a medium of data transmission, this Court should affirm the trial court's order granting summary judgment to the Department.

**A. Sprint's X.25 And Frame Relay Services Qualify As "Network Telephone Service" Because They Provide Data Transmission For Hire Via A Telecommunications System.**

During the audit period, 1989 to 1993, the Legislature imposed retail sales tax on the sale of "network telephone service." RCW 82.04.065 (1983); RCW 82.04.050(5) (1983). Former RCW 82.04.065 defined "network telephone service" in relevant part as:

the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

RCW 82.04.065(2) (1983) (emphasis added).<sup>5</sup>

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<sup>5</sup> In 1997, 2002, and 2007 the Legislature amended RCW 82.04.065(2). The 1997 amendment added an exemption for "internet service" as defined in RCW

As the plain language of the statute demonstrates, the Legislature broadly defined “network telephone service.” Western Telepage, 140 Wn.2d at 611. While the terms telephonic, video, and data are very broad and would by themselves seem to encompass any form of electronic communication, the Legislature also included any “similar communication or transmission.” In addition, the terms “via a telephone network, toll line or channel, cable, microwave” appear to encompass all the types of electronic transmission systems. But again, the Legislature also included any “similar communication or transmission system,” emphasizing its intent to broadly define “network telephone service.”

Sprint’s X.25 and Frame Relay services both provided data transmission for hire. The primary purpose of these services was to allow Sprint’s customers to transmit data over its telecommunications network.

In Sprint’s own words:

The core of SprintNet services -- X.25 services (also referred to as packet switching) has long been recognized as an extremely flexible, cost-effective and reliable way to transmit information between geographically dispersed locations. Countries and multinational organizations, from financial institutions to manufacturers to service providers have chosen X.25 for data transport for nearly two decades. And, SprintNet, formerly called Telenet, has been there all

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82.04.297 and clarified that transmission to and from the site of an internet service provider is “network telephone service.” Infra, at 14. The 2002 amendment implemented the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 114 Stat. 626 (2000), and is not relevant to this case. The 2007 amendment updated the definitions to comply with the Streamline Sales and Use Tax Agreement. Infra, at 19.

along. In fact, we were the world's first packet (or public) data network (PDN) and today, can boast to being the world's largest!

CP 973 (Sprint Sales Kit (1994) at 2).

To provide its X.25 and Frame Relay data communication services Sprint purchased telecommunications circuits or channels to transmit its customer's information between points on its telecommunications networks. CP 315, 319 (Stip. Facts ¶ 26, 62). As such, Sprint provided "data ... or similar communications or transmission for hire, via a ... channel ... or similar communication or transmission system." Thus, Sprint's services fall squarely within the definition of "network telephone service."

**B. The History of RCW 82.04.065 Confirms That Services Used Primarily To Provide A Medium Communication Are Taxable As "Network Telephone Service."**

The portion of the "network telephone service" definition at issue in this case was first enacted as part of a bill to equalize the tax treatment between regulated and unregulated telecommunications companies.<sup>6</sup> Prior to 1981, the revenues of regulated telecommunications companies,

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<sup>6</sup> Compare former RCW 82.04.065 (1983) ("network telephone service' means ...the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system") with former RCW 82.16.010 (1981) ("Telephone business' means the business of providing telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, long distance line or channel, or similar communication or transmission system.")

including equipment sales, were subject to public utilities tax, RCW 82.16. Laws of 1981, ch. 144, § 1 (“1981 Act”) (A-2). In the 1970s, unregulated telecommunications companies began selling telephone equipment and long distance services. Id. Because they were unregulated, these companies were not subject to public utilities tax. Id.

**1. The 1981 Act expanded the definition of “telephone business” to equalize the tax treatment between regulated and unregulated companies.**

In order to equalize the tax treatment between regulated and unregulated telecommunications companies, the Legislature passed SHB 61 in 1981. Laws of 1981, ch. 144, § 1 (A-1). The 1981 Act distinguished between two classes of telecommunications revenues: “telephone business,” which included services that transmit voice, video and data for hire; and “competitive telephone service,” which included the sale, instillation, maintenance and repair of telephone equipment. Under the 1981 Act, providing voice video or data for hire over a telecommunications system was subject to public utilities tax regardless of whether the company was regulated or unregulated. Similarly, sales of telephone equipment along with installation and repair services were subject to retail sales tax regardless of whether or not the company was regulated or unregulated.

In order to capture likely competitors of the regulated telephone companies, the language used to describe telephone business was extremely broad. See Laws of 1981, ch. 144, § 2 (A-3) (“‘Telephone business’ means the business of providing telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, long distance line or channel, or similar communication or transmission system.”). The the term “or similar communication or transmission system” also contemplated the use of different or new technologies to provide telecommunication services.<sup>7</sup>

The bill file reflects the changing nature of telecommunications technology in 1981. In his testimony before the Legislature regarding the passage of the 1981 Act, Ralph Dickey, representing General Telephone Company of the Northwest (GTE), stated:

[AT&T and GTE] have just recently been granted permission by the FCC to launch two communications satellites for our own use in video and voice communication. Our [GTE’s] subsidiary, Telenet [predecessor to Sprint International] is offering electronic mail service and high speed electronic switching packages. Continental Telephone Company has also been granted permission to launch two satellites and several of the other independents are already competitive in the area of terminal gear within the state, the independent telephone companies are determined to become aggressive competitors.

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<sup>7</sup> “Telecommunication” is “the science and technology of communication by electronic transmission of impulses, as by telegraphy, cable, telephone, radio or television.” Webster’s II New Riverside University Dictionary 1189 (1988).

CP 41.

The broad language in the statute and the Legislative history support the conclusion that the Legislature intended to craft an expansive definition of “telephone business” to capture services that provide a medium of electronic communication that was not tied to any specific transmission method or technology.

**2. The 1983 Act moved telecommunications service taxation from public utilities tax to retail sales tax.**

As part of a revenue enhancement bill in 1983, the Legislature removed “telephone business” from public utility tax and subjected it to retail sales tax. It renamed “telephone business” as “network telephone service” and added language to clarify the application of the tax to specific telecommunications products.<sup>8</sup> Laws of 1983, 2nd Ex. Sess., ch. 3, § 24 (A-19).

**3. In 1997, the Legislature expressly ratified the Department’s distinction between information and transmission services.**

The definition of “network telephone service” is so broad it seems to encompass all services that transmit information electronically.

However, the Legislature made a key distinction when it adopted the

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<sup>8</sup> Providing access to the enumerated networks in former RCW 82.04.065 (1983) falls within the scope of providing “telephonic, video or data or similar communication or transmission for hire, via a local telephone network, long distance line or channel, or similar communication or transmission system.” Therefore, the enumeration was not strictly necessary.

definition of “network telephone service.” It stated that the service must provide “transmission for hire.” By using this term, the Legislature excluded services that sell access to information and merely distribute the information electronically. Former RCW 82.04.065 further cements this distinction by expressly excluding television and radio broadcasters along with cable television providers.

As enacted in 1983, former RCW 82.04.065 contained no definition of “information services” and there was no Internet as we know it today.<sup>9</sup> In 1985, the Department revised WAC 458-20-155 (Rule 155) to clarify the taxation of information and computer services. In Rule 155, the Department defined an “information service” as “an activity process or function by which a person transfer, transmits, or conveys data, facts, knowledge procedures and the like to any user of such information through a tangible or intangible medium.” WAC 458-20-155. However, the Department expressly excluded “network telephone service” from the definition. *Id.* Therefore, to the extent that a service could be classified as a “network telephone service” it was not an “information service.”

By excluding “network telephone service” from the definition of “information service,” the Department drew “a distinction between those persons who are engaged in the business of furnishing a particular medium

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<sup>9</sup> The Internet was not commercially available until 1994. CP 1264 (Elliott at 196:19-20).

over which data is transmitted and those furnishing the data or information services being transmitted.” Det. No. 90-128, 9 Washington Tax Determination 280-1 at 4 (1990), CP 47. This interpretation of RCW 82.04.065 ties in well with the language and intent of the statute. It recognizes the distinction between companies that transmit information for hire and those that distribute information electronically, such as radio and television companies.

As part of a revenue enhancement measure in 1993, the Legislature increased the Business & Occupation (“B&O”) tax rate on “selected business services” such as “information services.” The Legislature defined “information services” as:

Information services, including but not limited to electronic data retrieval or research that entails furnishing financial or legal information, data or research, general or specialized news, or current information unless such news or current information is furnished to a newspaper publisher or to a radio or television station licensed by the federal communications commission.

Laws of 1993, Ex. Sess., ch 25, §201 (former RCW 82.04.055(1)(c) (1993)).

Similar to the Department’s Rule 155, the definition of “information services” in RCW 82.04.055 did not limit the scope of the “network telephone services” definition. See Former RCW 82.04.290(1) (1994) (B&O tax imposed on business of providing “selected business

services” other than or in addition to taxes enumerated in RCW 82.04.250 [retailing], such as “network telephone services”).

In applying this new tax rate, the Department concluded that services such as Westlaw, America Online, CompuServe, and Dow Jones were “information services” because they provided customers with access to information and did not provide transmission of voice, video, or data for hire. In other words, these services furnished the actual data or information being transmitted, not a medium of transmission.

In 1997, the Legislature added an exemption for “internet service” to RCW 82.04.065 in response to the City of Tacoma’s attempt to tax services provided by internet service providers as “network telephone service.” Laws of 1997, ch. 304 (“1997 Act”), A-37; H.B. Rep. on Substitute SB 5763, 55th Leg., 1997 Reg. Sess. (Wash. 1997) (A-39). The 1997 Act created a two-year moratorium on municipal taxation of “internet services.” The Legislature also expressly ratified the Department’s prior treatment of internet and information service providers with respect to B&O and retail sales taxes.<sup>10</sup> Laws of 1997, ch. 304, §§ 1, 2 (A-41).

In the 1997 Act, the definition of “internet service” focused on access to information and processed data, consistent with the distinction

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<sup>10</sup> The Department assessed retail sales tax on Sprint’s X.25 and Frame Relay services in 1995. CP 469.

the Department had drawn between “network telephone service” and “information service” providers. See RCW 82.04.297 (“‘Internet service’ ... provides the user with additional or restructured information ... ‘Internet service’ includes provision of ... access to the internet for information retrieval, and hosting of information for retrieval over the internet.”) By including “internet service” within the definition of “information service” in former RCW 82.04.055 (1993), the Legislature further demonstrated that “internet service” under RCW 82.04.297 provides users with access to information, and is not merely a method of transmitting information. See Laws of 1997, ch. 304, § 3(1).

When the Legislature clarified that “internet service” was not a “network telephone service” it also clarified that “[n]etwork telephone service’ includes the provision of transmission to and from the site of an internet provider.” Former RCW 82.04.065(2) (1997). Thus, the transmission services, such as frame relay services, that internet service providers purchase as part of providing “internet service” to their customers are taxable as “network telephone service.” ETA 2029.04.245 (2006) (CP 348; A-48).

**4. The 2007 amendments to RCW 82.04.065 further support the Department’s distinction between information and transmission services.**

In 2007, the Legislature updated the telecommunications definitions in RCW 82.04.065 to comply with the Streamlined Sales and Use Tax Agreement (“Streamlined Agreement”).<sup>11</sup> Laws of 2007, ch. 6, § 105. While the Streamlined Agreement required Washington to adopt the standard telecommunications definitions, it did not require Washington to change the scope of its telecommunications taxes. Streamlined Sales Tax Project, Issue Paper: Telecommunications and Related Definitions at 2 (April 18, 2005) (A-51). When the Legislature adopted the Streamlined Agreement’s telecommunications definitions it did not intend to change the taxation of telecommunications services, but merely to align Washington’s existing definitions with those contained in the Streamlined Agreement. Final Senate Bill Report on Substitute S.B. 5089, 60<sup>th</sup> Leg, Laws of 2007, ch. 6, at 3 (A-60). Under the Streamlined Agreement “telecommunications service” is defined as:

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  
“Telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol

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<sup>11</sup> The Streamlined Agreement is an agreement between states aimed at simplifying and standardizing the collection of sales and use taxes. Laws of 2007, ch. 6, § 105.

of the content for purposes of transmission, conveyance, or routing...

RCW 82.04.065(8). However, “telecommunications service” does not include data processing and information services delivered by electronic transmission where the primary purpose for the underlying transaction is to obtain the processed data or information. RCW 82.04.065(8)(a).

Just as in prior amendments to the statute, the Legislature in 2007 reaffirmed its long-standing distinction between services that are used to transmit information for hire, and those that provide the content of the transmission. Under RCW 82.04.065 (2007), it is clear that where a person primarily provides a method of transmitting information the service is a “telecommunications” or “network telephone service,” even if the service processes the data for purposes other than transmission. RCW 82.04.065(8). Only where the customer is primarily purchasing the service for the content of the transmission is the transaction excluded from the definition of “telecommunications service.” RCW 82.04.065(8)(a).

Thus, the Legislative history and subsequent amendments to the statute confirm that the services that primarily provide a medium of communication fall within the definition of “network telephone service.”

**C. Private Line Service, And By Extension Sprint's Frame Relay Service, Falls Within The Definition Of "Network Telephone Service."**

Sprint argues that its Frame Relay service is not included in the definition of "network telephone service" because it is similar to private line services that provide transmission between fixed points. Opening Br. at 2. Sprint argues that private line services are not within the definition of "network telephone service" because they are not part of the "public telecommunications network." Opening Br. at 37. Sprint's argument contains three major flaws and therefore should be rejected.

First, Sprint's argument ignores the catchall provision in the statute, which defines "network telephones service" as any service that provides "telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system." Former RCW 82.04.065(2) (1983) (emphasis added). Sprint has not shown how the Frame Relay service does not fall within the catchall provision, nor can it based on the undisputed facts. See Part A above.

Second, there is no indication that "network telephone service" is limited to services provided as part of the "public telecommunications network." The statute only requires that the service provide "transmission for hire." Also, the Legislature did not use the word "public" to describe

any of the networks listed in the definition of “network telephone service.”<sup>12</sup> The statute unambiguously states that providing data transmission “via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system,” falls within the definition. Former RCW 82.04.065(2) (1983) (emphasis added). Even if the terms “local telephone network” and “toll line” could be read as limited to the “public telecommunications network” the definition also includes any networks that are similar to the “public telecommunications network.” Nothing in the statute to implies a limitation to the “public telecommunications network.”<sup>13</sup>

“Courts should assume the Legislature means exactly what it says” in a statute and apply it as written. Densley v. Department of Retirement Systems, 162 Wn.2d 210, 219, 173 P.3d 885 (2007). Statutory construction cannot be used to read additional words into the statute. Id.

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<sup>12</sup> “‘Network telephone service’ means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.” Former RCW 82.04.065(2) (1983).

<sup>13</sup> Sprint offers no definition of “public telecommunications network” and cites no authoritative source for a definition. Sprint simply argues a conclusion based on what it thinks of as the “public telecommunications network.” Also, Sprint does not cite any evidence or authority supporting its claim that private line services are not part of the “public telecommunications network” because they were separately tariffed. Opening Br. at 39. Accordingly, Sprint’s argument that private line services are not part of the “public telecommunications network” should be rejected.

Therefore, Sprint's attempt to insert words into the statute should be rejected.

Sprint reliance on the Pacific Northwest Bell tariffs and federal excise tax definitions is also inapt. There is no mention of the "public telecommunications network" in the tariff or the federal excise tax definitions cited by Sprint. Nor is there even a statement that local, toll and private line services were provided on different telecommunications networks. Additionally, the tariffs were descriptions of the services offered by Pacific Northwest Bell in Washington and filed with the Washington Utilities and Transportation Commission for regulatory purposes. RCW 80.36.100; RCW 80.36.140. Nothing in the statute shows that tariffs filed for regulatory purposes influenced the scope of the tax. Likewise the federal excise tax distinctions are not referenced in former RCW 82.04.065 (1983).

Third, even if there were some ambiguity in the statute the legislative history confirms that Sprint's Frame Relay service falls within the definition. As part of the Legislative hearings on the 1981 Act, Pacific Northwest Bell submitted an analysis regarding the impacts of SHB 61 to the Legislature. The analysis specifically stated that private line services were subject to the public utility tax prior to 1981 and would continue to be so under SHB 61. H.B. 61 Bill File, PNB at 2-3, 47<sup>th</sup> Leg., 2nd Ex.

Sess., (Wash. 1981) (A-15-16). This shows, contrary to Sprint’s statement,<sup>14</sup> that Pacific Northwest Bell thought private line services fell within the definition of that later became “network telephone service.”

Since private line services were subject to public utilities tax, the Legislature’s use of the same language when it imposed retail sales tax on the sales of “network telephone service” and repealed the public utilities tax on “telephone business” shows that the Legislature intended to impose retail sales tax on private line services. Laws of 1983, 2nd Ex. Sess., ch. 3, §§ 24, 32 (A-19, A26). As Sprint’s Frame Relay services are similar to private line services, the Legislative history confirms that they fall within the definition of “network telephone service.”

For these reasons, the Court should reject Sprint’s argument that private line services, and by extension its Frame Relay service, are excluded from the definition of “network telephone service.”

**D. Sprint’s X.25 Service Is Not An “Information” or “Internet Service” Because It Is Primarily Used To Transmit Data, Not To Obtain Information Or Processed Data.**

Sprint argues that its X.25 service was an “information” or “internet service” under RCW 82.04.297, and therefore not subject to retail sales tax. Opening Br. 22-24. However, Sprint’s arguments ignore the long-standing distinction between “network telephone services,” which

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<sup>14</sup> “Had PNB meant to subject private lines to the retail sales tax, it clearly knew how to write a definition that included the private service.” Opening Br. at 40.

provide a medium of communication, and “information” or “internet services,” which primarily provide access to information or processed data. Because Sprint’s X.25 service primarily provides a medium for customers to transmit their data, and does not provide users with additional or restructured information, it is a “network telephone service” not an “information” or “internet service” under RCW 82.04.297.

**1. Sprint’s X.25 service primarily provides a medium of communication.**

The undisputed facts show that Sprint’s service primarily provided customers a way to transmit information between different locations. While Sprint alleges that its X.25 service did more than provide pure transmission it does not appear to dispute that its service was primarily transmitting information for hire. As noted above, “[t]he core of SprintNet services ... has long been recognized as an extremely flexible, cost-effective and reliable way to transmit information between geographically dispersed locations.” CP 973 (Sprint Sales Kit 1994 at 2). Most of Sprint’s customers used the X.25 service to connect remote locations to the customers’ own mainframe computers. CP 319 (Stip. Fact ¶ 50); CP 1264 (Elliot at 196:25-197:9); CP 1313 (Brennan at 15:9 – 16:2). Sprint’s X.25 service did not provide users with access to information as part of the service. CP 1313-14 (Brennan at 17:25 – 18:6);

CP 316 (Stip. Fact ¶ 38). The customers had to supply their own information or purchase access to the information from a third party. CP 1264 (Elliot at 196:25-197:9). Therefore, Sprint's customers were not purchasing the X.25 service to get access to information from Sprint, but rather in order to transport their own information.

Sprint's X.25 service was most analogous to a long distance service. It provided customer's a way to transmit their information between remote or mobile offices and mainframe computers. CP 1264 (Elliot at 196:25-197:9). Indeed, statements by Sprint's own expert and its sales kit show that the dial-in X.25 service was a substitute for long-distance or 1-(800) services remote users used to access mainframe computers. See CP 1239 (Elliott at 96:1-98:3) (X.25 saves long distance costs and customers wouldn't necessarily purchase if just need to access to computer within local calling area.); CP 1002-03 (Sprint Sales Kit comparing X.25 DataCall service to 1-(800) service).

Thus, Sprint's X.25 services were primarily used to provide a method for transmitting information between the customer's different locations. Because Sprint's X.25 service primarily provided a medium for customers to transmit their data they fall within the definition of "network telephone service."

**2. “Value-added nonvoice data services” are included in the definition of “telecommunications service.”**

Sprint argues that “value-added nonvoice data services” were excluded from the definition of “telecommunications service” in 2007 and by extension, excluded from the definition of “network telephone service” during the 1989 to 1993 tax period. Opening Br. at 24-25. Putting aside the awkwardness of using the 2007 definition to interpret the 1983 statute, Sprint’s argument is not supported by the language of the 2007 Act. Moreover, its construction of the 2007 Act would create absurd results and is expressly contradicted by the Legislative history of the 2007 Act.

Contrary to Sprint’s assertion, Washington did not exempt “value-added nonvoice data services” in 2007. The Legislature merely defined the term as part of adopting the telecommunications definitions in the Streamlined Sales and Use Tax Agreement. See Laws of 2007, ch. 6, § 1002(17). The Streamlined Agreement contains a common set of telecommunications definitions that states had to adopt as part of the Streamlined Agreement. Issue Paper: Telecommunications and Related Definitions at 1 (A-50). Washington adopted these definitions merely to comply with the Streamlined Agreement, not to change the taxation of telecommunications services. Final Senate Bill Report on Substitute S.B. 5089, 60<sup>th</sup> Leg. (Wash. 2007) Laws of 2007, ch. 6, at 3 (A-57).

Since “value-added nonvoice data services” otherwise meet the definition of “telecommunications service,” they are taxable as “telecommunications services” unless they are specifically exempted.<sup>15</sup> The Issue Paper adopted by the Streamline Sales Tax Project, the group that drafted and governs the Streamlined Agreement, states:

States that impose tax on telecommunications services but wish to exempt value-added nonvoice data services, such as encryption, ... that otherwise meet the definition of telecommunications service, will have to specifically provide an exemption in their law using the definition of “value-added nonvoice data service” in the library of definitions.

Issue Paper: Telecommunications and Related Definitions at 3 (emphasis added) (A-52).

However, Washington did not create an exemption for “value-added nonvoice data services.” See Laws of 2007, ch. 6 (Term only defined, was not used in any other sections or specifically excluded from “telecommunications service”). Sprint argues that by defining the term “value-added nonvoice data services” the Legislature intended to carve it out of the definition of “telecommunications service.” Sprint’s attempt to infer an exemption for “value-added nonvoice data service” should be

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<sup>15</sup> “‘Value-added nonvoice data service’ means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.” RCW 82.04.065(17) (emphasis added).

rejected. Exemptions must be expressly stated and cannot be created by implication. Belas v. Kiga, 135 Wn.2d 913, 932-34, 959 P.2d 1037 (1998). Furthermore, adopting Sprint's interpretation would significantly alter the scope of the telecommunications taxes contrary to the Legislative intent.

For example, part of adopting the telecommunications definitions in the Streamlined Agreement, the Legislature also separately defined "paging service" and "mobile wireless service." RCW 82.04.065(12)-(13). If Sprint's interpretation were correct, these services would also be exempt because RCW 82.04.050(5) does not explicitly state that "paging services" and "mobile wireless services" are subject to sales tax.

However, in Western Telepage the Supreme Court found that paging services were unambiguously within the scope of the "network telephone service" definition. Western Telepage, 140 Wn.2d at 610. Thus, Sprint's interpretation is plainly incorrect.

Additionally, because "value added nonvoice data services" are included in the definition of "telecommunications service," Sprint implicitly admits that its X.25 service is primarily used to transmit data, and not purchased primarily to obtain data processing or information services. Otherwise, Sprint would argue that its services did not qualify as "telecommunications services" under RCW 82.04.065(8)(a), which states:

“Telecommunications service” does not include: (a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information

RCW 82.04.065(8)(a) (emphasis added).

Because “value-added nonvoice data services” fall within the definition of “telecommunications services,” they are subject to retail sales tax just as “paging services” and “mobile wireless services” are taxable as “telecommunications services.” Therefore, even if Sprint’s X.25 service were a “value-added nonvoice data service” it would still be taxable as a “telecommunications service.” Also, because new definitions are merely updates to the terminology, this further demonstrates that Sprint’s X.25 service qualifies as a “network telephone service” under former RCW 82.04.065.

**3. Sprint’s X.25 service is not a “value-added nonvoice data service” because the protocol conversion is done for purposes of transmission conveyance and routing.**

Even if “value added nonvoice data services” were excluded from the definition of “telecommunications service,” Sprint’s X.25 service would still be taxable as a “telecommunications” or “network telephone service” as it only performs protocol conversion for the purpose of

transmission, conveyance or routing.<sup>16</sup> Opening Br. at 24-27. A “value-added nonvoice data service” is defined as:

a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

RCW 82.04.065(17) (emphasis added). The undisputed facts show that the asynchronous-to-X.25 protocol conversion was done for purposes of transmitting, conveying and routing information from asynchronous terminals and PCs across its X.25 network. As such, Sprint’s X.25 service was not a “value-added nonvoice data service.”

The only protocol conversion provided to customers as part of the X.25 service was asynchronous-to-X.25 protocol conversion. CP 1329 (Brennan at 78:17-23).<sup>17</sup> This conversion was done to allow devices such as asynchronous terminals and PCs to transmit information over the X.25 network.<sup>18</sup> Without this conversion PCs would not be able to transmit

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<sup>16</sup> On appeal, Sprint describes the addition of the “value-added non-voice data service” definition, but does not actually assert that its X.25 service is a “value-added non-voice data service.” Opening Br. at 24-27.

<sup>17</sup> Sprint did sell other software products that provided protocol conversion, but like SprintMail, these were sold separately. See CP 687-91(Stip. Ex. 2-54-58).

<sup>18</sup> See In re the Matter of Independent Data Communications Mfr. Ass’n, 10 FCC Rcd. 13717 ¶ 4 (1995), CP 590. (“data communicated under asynchronous protocols must be converted to data employing synchronous X.25 protocol in order to be transmitted over a packet-switched network.”); see also CP 1327 (Brennan at 73:17-23) (“[W]ithin the network itself, the only conversion that was made was from the PAD, [ ] the packet assembler/disassembler, and that could be for asynchronous communication converted to synchronous communication to be transmitted across to the host.”)

information over the network as there would be no address or routing information for the X.25 packet switches to read. It did not matter if customers wanted two asynchronous devices to communicate with each other – the signal still had to be converted into an X.25 packet.

As noted above, this conversion or “packetization” placed information from asynchronous machines in an X.25 packet much the same as someone placing a page from a book in an envelope. The X.25 packet contained a header with address information that the packet switches used to route the information through the network. Without this address information the packet switches would not know where to send the information, much the same as the Post Office would not know where to send a page from a book unless it was in an envelope with address information on the outside.

Because the asynchronous-to-X.25 protocol conversion was done to allow PCs and asynchronous terminals to send information over Sprint’s X.25 network, the conversion was done primarily for the purpose of transmitting, conveying, and routing the information through the network.<sup>19</sup> Accordingly, Sprint’s X.25 service is not a “value-added

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<sup>19</sup> At the trial court level, Sprint stated the Department had not shown that the conversion was done primarily for purposes of transmission, conveyance or routing. However, the FCC and Sprint’s own experts stated that the conversion must be done to transmit asynchronous signals across the X.25 network. As such, the conversion is essential for transmission conveyance and routing and therefore the primary purpose of

nonvoice data service.” Therefore, even if “value-added nonvoice data services” were included in the definition of “telecommunications service” Sprint’s X.25 service would still be taxable.

**4. Sprint’s X.25 service did not provide users with additional or restructured information and was primarily used as a method of transmitting information.**

Sprint maintains that its X.25 service allowed customers to interact with stored information. Opening Br. at 28. However, the undisputed facts show that customers did not purchase the service to get access to information; rather, they were purchasing a way to transport information between different locations. See Part A.3, above.

Sprint asserts that the SprintNet service included SprintMail and Bulletin Board applications that provided users with additional or restructured information. Opening Br. at 28. However, the Bulletin Board application was part of the SprintMail product that was sold separately. CP 921 (Stip. Ex. 2-288); CP 1243 (Elliot at 112:9-16); CP 1264 (Elliot at 196:9-10); CP 1330 (Brennan at 83:8-12). Customers did not get access to SprintMail simply by purchasing the X.25 service. Id. To the extent Sprint contends its separate SprintMail product changes the taxability of its X.25 service, this position was rejected in Community Telecable of

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the conversion. Further, X.25 is a transmission protocol, CP 354 ¶ 11, and Sprint has not shown that the conversion was done for any purpose other than transmission conveyance and routing.

Seattle v. City of Seattle, 164 Wn.2d 35, 45, 186 P.3d 1032 (2008)

(offering Internet services does not affect taxability of separate telephone services). Therefore, Sprint's sale of the separate SprintMail service does not show that customers purchased the Sprint's X.25 service to obtain additional or restructured information.<sup>20</sup>

Also, the protocol conversions done by Sprint's X.25 network did not provide users with restructured information.<sup>21</sup> The asynchronous-to-X.25 protocol conversion was done to allow PCs and asynchronous terminals to send and receive information over the X.25 network.

Protocol Waiver Order, 100 F.C.C.2d 1057 (1985) ¶ 21-22, CP 355-56; CP 319-20 (Stip. Facts ¶ 53-59). Because Sprint's X.25 network was a packet switched network, the asynchronous information had to be placed in an X.25 packet containing the routing information, just as a page from a book would need to be placed in an envelope to mail it. CP 314 (Stip. Facts ¶ 15-17). It did not matter if the customer wanted to communicate

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<sup>20</sup> Sprint has not shown or even alleged that the Department improperly assessed retail sales tax on sales of SprintMail. As such, to the extent it makes this claim in its Opening Brief Sprint cannot raise this issue for the first time on appeal. Fischer-McReynolds v. Quasim, 101 Wn App. 801, 814, 6 P.3d 30 (2000) ("failure to raise an issue before the trial court precludes a party from raising it on appeal"). Further, the record is silent on whether the Department even assessed retail sales tax on sales of the SprintMail.

<sup>21</sup> To the extent Sprint asserts that the protocol conversion software it sold separately provided restructured information, these sales do not affect the taxability of the X.25 service as they are separate products. CP 689-90 (Stip. Ex. 2-56-57). Also, sales of prewritten computer software and hardware are subject to retail sales tax. WAC 458-20-155 (1990); RCW 82.04.050(6).

between two asynchronous devices; the asynchronous signal had to be converted into an X.25 packet to transmit the data over the network. Protocol Waiver Order, 100 F.C.C. 2d 1057 ¶ 22, CP 356; CP 1329 (Brennan at 78:17-23).<sup>22</sup>

The process of “packetizing” asynchronous information in an X.25 packet is similar to placing a page from a book into an envelope with an address on the outside of the envelope. See CP 587. Just as placing the page of a book in an envelope does not alter the words or pictures on the page, the asynchronous-to-X.25 protocol conversion did not alter or restructure the customer’s information. CP 1316, 1329-30 (Brennan at 27:4-8, 79:14-16, 85:4-9). Sprint’s expert confirmed this in a deposition:

Q: And neither the X.25 or the frame relay modify the message at all?

A: No. There’s no -- what you give me is what you get and if I do modify it, it’s a corrupt packet and it gets discarded or thrown away.

CP 1316 (Brennan at 27:4-8). Likewise, in the FCC decision allowing the Bell Operating Companies (“BOCs”) to offer asynchronous to synchronous protocol conversion as part of their X.25 service, the FCC stated:

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<sup>22</sup> “[W]ithin the network itself, the only conversion that was made was from the PAD, [ ] the packet assembler/disassembler, and that could be for asynchronous communication converted to synchronous communication to be transmitted across to the host and then to be broken back out to asynchronous so the host would understand it.” CP 1329 (Brennan at 78:17-23).

The BOCs are proposing to collocate only protocol conversion [asynchronous to synchronous] capabilities in their central offices. Their proposals involve neither processing that creates, deletes or changes information itself, nor subscriber interaction with stored information.

Protocol Waiver Order, 100 F.C.C. 2d 1057 ¶ 101, Appendix C-19

(emphasis added). Thus, the undisputed facts show that Sprint's X.25 service does not provide users with access to additional or restructured information.<sup>23</sup> Accordingly, the primary purpose of Sprint's X.25 service was to provide its customers with a way to transmit their data electronically, and not provide them with additional or restructured information. Sprint's X.25 service therefore, is a "network telephone service" not an "information" or "internet service."

- a. **Sprint's argument that its X.25 service is functionally equivalent to "other internet services" misses the relevant distinction in the statutes.**

Sprint alleges that its X.25 service was functionally equivalent to Internet service.<sup>24</sup> However, as noted above, the relevant distinction

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<sup>23</sup> If the Court were to somehow find that this transmission protocol conversion exempts Sprints service from the definition of "network telephone service," there are genuine issues of material fact regarding the amount of the assessment related to services that provided this protocol conversion. See CP 320 (Stip. Facts ¶ 60) (X.25 Dial, CustomLink and MultiDrop did not provide protocol conversion).

<sup>24</sup> Sprint inserted an equal protection claim in its complaint but did not assert it in the cross-motions for summary judgment. Likewise, Sprint's Opening Brief makes an assignment of error based on equal protection grounds, but Sprint did not provide argument or analysis on this point. Therefore, this Court should not consider Sprint's equal protection assignment of error. See *City of Tacoma v. Price*, 137 Wn. App. 187, 201, 152 P.3d 357 (2007) (parties raising constitutional issues must present considered

between “network telephone service” and “information” or “internet service” is whether the customer is purchasing a medium of communication or access to information or processed data. The definition of “internet service” enacted in 1997 clearly references access to information as the main component of the service. RCW 82.04.297 (“‘Internet service’ includes provision of ... access to the internet for information retrieval.”)

The legislative history of the 1997 Act also shows Internet access primarily gave users access to information:

Internet users can access or provide a wide variety of information, purchase goods and services, and communicate with other users electronically. Some information on the Internet is available at no charge, while other information is available only if the user pays a subscription or use fee.

House Bill Report, 1997 SSB 5763; A-37 (emphasis added).

The Internet is unique from other telecommunications networks, in that there is a substantial amount of information available on the network free of charge, and the Internet is used to share or broadcast information, not just to transmit information from point A to point B. Thus, customers purchasing Internet access obtain access to a considerable amount of information, not just a method for transmitting data (hence the name

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arguments to this court); Bercier v. Kiga, 127 Wn. App. 809, 824, 103 P.3d 232 (2004) (without argument or authority to support it, appellant waived assignment of error). Further, Sprint cannot argue this for the first time on appeal in its Reply Brief. See Fischer-McReynolds, 101 Wn. App. at 814; RAP 10.3(c)

“information superhighway”). These aspects of Internet service support the conclusion that customers purchase Internet service for access to information, i.e., the substance of the communication.

Sprint’s X.25 network, on the other hand, did not provide users access to information as part of the service. Nor has Sprint shown that customers purchased the service primarily to get access to third-party information. In this regard the Internet is functionally different than Sprint’s X.25 network.

Rather than being significant as Sprint argues, the technical similarities between Sprint’s X.25 network and the Internet are irrelevant. If providing the ability to transmit information between network users were the relevant function, all telecommunications networks would be functionally equivalent to the Internet. By thier very nature all telecommunications networks allow users to interact with devices attached to the network, be it a phone, a computer or some other device. Sprint states that it charges customer fees for “interactive access to host computers connected to the network.” Opening Br. at 32. However, this statement is misleading. The host computers are the customers’ computers, not Sprint’s. CP 1264 (Elliott at 196:25-197:9). Thus, the

customers are purchasing the X.25 service to transmit information between their own computers, not to obtain new information.<sup>25</sup>

Sprint's interpretation should also be rejected because it creates strained and absurd results.<sup>26</sup> Under Sprint's interpretation, the public telephone network is also functionally equivalent to the Internet because it allows "interactive access" with phones and computers connected to the network. A person with a modem can interact with a computer connected to the telephone network by a modem just the same as a person with an X.25 connection can interact with a computer connected to the X.25 network. See CP 1002-3 (Showing SprintNet as alternative to 800 (voice) service). Thus, if Sprint's argument were accepted, the "internet service" exemption would swallow the "network telephone service" definition. Because this result is plainly contrary to the language and intent of the statutes, it should be rejected.

**b. Sprint is not an "internet service" provider under RCW 82.04.297.**

Sprint maintains that it is an internet services provider under RCW 82.04.297 because it is an "internet." Opening Br. at 27-30. Sprint appears to contend for the first time on appeal that its X.25 network is an

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<sup>25</sup> See CP 1230 (Elliott at 61:17-62:22) (Describing how company would purchase X.25 service to transmit data between computers at different office locations).

<sup>26</sup> When interpreting statutes, courts should give effect to legislative intent and should interpret the language to avoid absurd results. Johanson v. Dep't of Social and Health Services, 91 Wn. App. 737, 749, 959 P.2d 1166 (1998).

internet, and therefore, providing access to its X.25 network is the same as providing Internet access. Id. Sprint appears to argue that by using a small “i” versus a capital “I” the Legislature intended to include any interoperable packet switched network in the definition of “internet” in RCW 82.04.297. Opening Br. at 29. The reason Sprint is compelled to make this strained argument is because Sprint stipulated that “[d]uring the Audit Period SprintNet was not part of the Internet.” CP 315 (Stip. Fact ¶ 24).

While Sprint’s argument is novel, it ignores the plain language of the statute. In RCW 82.04.297, the term “internet” is defined as:

the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

RCW 82.04.297(2) (emphasis added). Contrary to Sprint’s assertion, the Legislature did not define “internet” as “an international computer network” but “the international computer network.” Thus, the Legislature limited the definition to its common interpretation of the one and only global interoperable internet protocol based computer network, the

Internet. Additionally, the statute always refers to “the internet” not “an internet.”<sup>27</sup>

In addition to being contrary to the language of the statute, Sprint’s interpretation would lead to significant problems in applying the “network telephone service” definition. For instance, a telephone company that used packet switches to route voice, video or data across its network and connected with other telephone companies would become an “internet service” provider. This would read a technological standard into the definition of “network telephone service” that is not there. As noted above, the intent of the 1997 Act was to clarify the taxation of internet service providers providing access to “the internet,” not to change the taxation of telecommunications companies using packet switches to transmit information.

Because Sprint is “not part of the Internet,”<sup>28</sup> it does not provide “access to the internet for information retrieval”<sup>29</sup> and therefore, cannot use that provision as a basis for asserting it is an “internet service” provider.

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<sup>27</sup> See RCW 82.04.297 (“interact with stored information through the internet”; “access to the internet for information retrieval”; “hosting of information for retrieval over the internet”).

<sup>28</sup> CP 315 (Stip. Fact ¶ 24)

<sup>29</sup> RCW 82.04.297(2)

c. **Community Telecable does not exclude Sprint's sales of its X.25 service to internet service providers from retail sales tax.**

Sprint argues that when “an internet service provider purchases dial up access services from SprintNet permitting users to access the internet, that dialup access is internet access.”<sup>30</sup> Opening Br. at 31. This argument misconstrues the holding in Community Telecable. In that case the City of Seattle attempted to split the internet service Comcast sold to its customers into two components and tax the data transmission component of the service. Community Telecable, 164 Wn.2d at 45. The Court held that when a company sells “internet service” it is selling one service, and the City could not artificially break out the data transmission component of the service and tax that separately. Id.

The Court expressly distinguished the situation where a company like Sprint sells “network telephone services” such as frame relay and X.25 to internet service providers, such as AOL and MSN, who use those services to provide internet service. Community Telecable, 164 Wn.2d at 44. fn.2. In this situation there are two sales; (1) the sale of “network telephone service” to the internet service provider, and (2) the sale of “internet service” to the end customer. In Community Telecable, there

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<sup>30</sup> As a technical matter, during the audit period the “internet service” providers would only be purchasing Sprint's X.25 service to provide access to their own proprietary subscriber networks. The Internet was not commercially available until 1994, a year after the audit period ended. CP 1264 (Elliott at 196:19-20).

was only one sale, the sale of “internet service,” which the Court concluded the City could not artificially break up into two different sales for tax purposes. Community Telecable, 164 Wn.2d at 45.

Nothing in the statutes exempts the sale of “network telephone service” to an internet service provider from retail sales tax. Further, the 1997 Act explicitly stated that “the provision of transmission to and from the site of an internet provider” was taxable as a “network telephone service.” Laws of 1997, ch. 304, § 5(2). Therefore, Sprint’s sales of X.25 service remain subject to retail sales tax even if they were made to internet service providers.<sup>31</sup>

**d. The definitions in the 1997 and 2007 Acts can only be applied retroactively if they do not create substantive changes.**

While the 1997 and 2007 Acts confirm the distinction that the Department drew in 1985, the only statutory language that is at issue in this case is the definition of “network telephone service” enacted in 1983. “[T]he fact that amendments, or their legislative history, state that, by enacting them, the legislature intended to ‘clarify’ the law does not, in and of itself, make the amendments curative. If a change effected by an amendment is substantive, the general rule of prospective application

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<sup>31</sup> According to Sprint’s expert, internet service providers (known as information service providers before the Internet was commercially available) only accounted for about 20-25% of Sprint’s customers. CP 1313 (Brennan at 14:24 – 15:1)

applies.” In re Personal Restraint of Stewart, 115 Wn. App. 319, 340 75 P.3d 521 (2003) (citations omitted). Neither the 1997 or 2007 acts are expressly retroactive. As such, to the extent the 1997 or 2007 Acts could be read as changing the scope of the 1983 “network telephone service,” definition those changes would be prospective only and not relevant to this case.

**5. The definition of “network telephone service” does not exclude services classified by the FCC as enhanced or value-added services.**

Sprint argues that the taxation of telecommunications in Washington parallels the regulation of telecommunications services by the FCC. Opening Br. at 22. However, this argument is unsupported by the language of the statute in effect during the tax period and is flatly contradicted by subsequent amendments and clarifications to the statute.

The definition of “network telephone service” in former RCW 82.04.065 makes no reference to the Federal Communication Commission’s regulatory classifications. The language of former RCW 82.04.065 is plain and unambiguous, and therefore the words used by the Legislature should be given their ordinary meaning and interpreted without reference to federal regulations. In re F.D. Processing, Inc., 119 Wn.2d 452, 458, 832 P.2d 130 (1992) (“A legislative definition prevails over a dictionary definition or common understanding of any given

term.”); Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles, 148 Wn.2d 224, 239, 59 P.3d 655 (2002) (“If the statute is unambiguous, its meaning is to be derived from the plain language of the statute alone.”).

Even if the language were ambiguous, the legislative history shows that the definition of “network telephone service” was adopted to equalize the tax treatment of services provided by regulated and unregulated telecommunications carriers. Laws of 1981, ch. 144, § 1.<sup>32</sup> Therefore, interpreting the definition to incorporate the FCC’s regulatory distinctions contradicts the Legislature’s intent.

Furthermore, the 2007 amendments to the definitions in RCW 82.04.065 expressly contradict Sprint’s position that the tax classifications parallel the regulatory classifications. Opening Br. at 22. The definition of “telecommunications service,” which replaced the definition of “network telephone service,” explicitly states that the FCC’s classification of a service as enhanced or value added is irrelevant to determining whether or not the service qualifies as a “telecommunications service.”<sup>33</sup>

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<sup>32</sup> “Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors. To remedy this situation, it is the intent of the Legislature to place telephone companies on an equal excise tax bases with regarded to the providing of similar goods and services.” Laws of 1981 ch. 144 § 1 (A-2).

<sup>33</sup> “‘Telecommunications service’ includes such transmission, conveyance, or routing ... without regard to whether such service is ... classified by the federal communications commission as enhanced or value added.” RCW 82.04.065(8).

Thus, Sprint's focus on the FCC regulatory classification of its services as enhanced or value-added is misplaced.

Even without the express statement in the 2007 Act, using the FCC classifications would be inappropriate. The distinctions the FCC draws between value-added services and telecommunications services depend in large part on whether or not there is adequate competition among the service providers and the market strength of the various companies. See In re the Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, First Report and Order, 11 F.C.C.R. 21905, ¶ 105 (1996). (“Because market for protocol processing services is highly competitive, such regulation is unnecessary to promote competition, and would likely result in a significant burden to small independent ISPs that provide protocol processing services. Thus, policy considerations support our conclusion that end-to-end protocol processing services are information services.”); In re Independent Data Communications Mfr. Ass'n., (“IDCMA”) 10 F.C.C.R. 13717 ¶ 18, 42 (1995), CP 593, 97 (The contamination theory, that converts an entire service to an enhanced service if it provides protocol conversion, does not apply to facilities based carriers.).

The distinctions the FCC draws also may not even be the best interpretation of the statutory language. In National Cable &

Telecommunications Assoc. v. Brand X Internet Services, 545 U.S. 967, 125 S.Ct. 2688 (2005). the United States Supreme Court reviewed the FCC’s decision to classify cable modem service as an ‘information service’ under the Telecommunications Act of 1996 (“1996 Telecom Act”), 47 U.S.C. §§ 251-276, even though the Ninth Circuit Court of Appeals had held it was a “telecommunications service” in AT&T Corp. v. Portland, 216 F.3d 871 (C.A. 9 2000). In upholding the FCC’s decision on grounds of agency deference, the Supreme Court noted the Ninth Circuit’s prior decision in Portland “held only that the *best* reading of §153(46) was that cable modem service was a ‘telecommunications service,’ not that it was the *only permissible* reading of the statute.” Brand X, 545 U.S. at 984 (italics in original).

Also, the FCC’s distinctions change based on the specific context in which the regulation is being applied. Under the Communications Assistance for Law Enforcement Act (“CALEA”), 47 U.S.C. §§1001-1010, the FCC determined broadband Internet access, such as cable modem service, was not exempt from CALEA as an “information service,” even though the definition in CALEA was identical to the “information service” definition in the 1996 Telecom Act. American Council on Education v. FCC, 451 F.3d 226, 227, 234 (Fed. Cir. 2006).

These FCC decisions and cases show the regulatory distinctions the FCC employs to further federal antitrust policies bear little or no relationship to the language in former RCW 82.04.065 and contradict the legislative intent. To include or exempt a service from the definition of “network telephone service” based on whether or not there is adequate competition for the particular service would require the definition of “network telephone service” to be totally rewritten. The Legislature cast the definition in terms of providing an electronic medium to transmit information for hire in order to equalize the tax treatment of regulated and unregulated telecommunications service providers. Laws of 1981, ch. 144, § 1. Therefore, there is no basis to read regulatory distinctions into the statute.

Moreover, exempting a service because it contains a small amount of protocol conversion while a similar service without the protocol conversion remains taxable, ignores the intent that “similar” telecommunications services be taxed the same. Former RCW 82.04.065 (1983). Furthermore, the FCC distinguishes between different types of protocol conversions: those done between a subscriber and the network itself, those done to allow new equipment to connect to the network, and

those done within the network itself that do not result in a “net protocol conversion.”<sup>34</sup> IDCMA ¶ 14-16, CP 592.

Additionally, the FCC has changed its mind on the classification of certain services as the competitive nature of the services changed. See Brand X, 125 U.S. at 1001-1002 (FCC tentatively reclassifying DSL services as information services instead of telecommunications services). Sprint even notes in its brief that the FCC considered its X.25 service an “augmented transmission data service” and regulated it until 1980. Opening Br. at 16. Therefore, using the FCC’s regulatory distinctions would result in an inconsistent and shifting tax treatment based on the competitive position of the service providers and minor technological distinctions between the services.

Since this result is contrary to the language of the statute and the Legislative intent to equalize the treatment between regulated and unregulated telecommunication service providers, this Court should reject Sprint’s suggestion to rely on FCC regulatory distinctions to interpret RCW 82.04.065.

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<sup>34</sup> It is also unclear what the FCC really considers “net” protocol conversion. Regular telephone calls can start off as analogue signals and terminate as digital signals. Similarly, cell phones use different protocols such as CDMA and GSM to transmit calls that undergo a net protocol conversion if they terminate on a network using the other protocol. Annabel Z. Dodd, *The Essential Guide to Telecommunications*, 343-44 (2d Ed. 2000). But the FCC still considers these to be “telecommunications” services.

#### IV. CONCLUSION

The statutes and Legislative history clearly delineate between “network telephone services” that provide a medium of transmission and “information” or “internet services” that provide the substance of the transmission. While the operation of Sprint’s X.25 and frame relay networks may be complex, this does not change the primary nature of the services Sprint provided during the audit period – the transmission of data for hire over a telecommunications network. As such, these services fall squarely within the definition of “network telephone service” in former RCW 82.04.065 (1983). Accordingly, the Department respectfully requests that this Court affirm the trial court’s order granting the Department summary judgment.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of February, 2009.

ROBERT M. MCKENNA  
Attorney General

  
BRETT S. DURBIN, WSBA #35781  
Assistant Attorney General  
CAMERON G. COMFORT,  
WSBA #15188  
Sr. Assistant Attorney General  
Attorneys for the Respondent  
(360) 753-5528

WASHINGTON LAWS, 1981

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CHAPTER 144

[Substitute House Bill No. 61]

TELEPHONE BUSINESS TAXATION

AN ACT Relating to telecommunications; amending section 82.16.010, chapter 15, Laws of 1961 as last amended by section 20, chapter 173, Laws of 1965 ex. sess. and RCW 82.16.010; amending section 1, chapter 8, Laws of 1970 ex. sess. as last amended by section 5, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.04.050; amending section 3, chapter 94, Laws of 1970 ex. sess. and RCW 82.14.020; amending section 80.04.270, chapter 14, Laws of 1961 and RCW 80.04.270; amending section 6, chapter 134, Laws of 1972 ex. sess. and RCW 35.21.710; amending section 7, chapter 134, Laws of 1972 ex. sess. and RCW 35A.82.050; adding new sections to chapter 35.21 RCW; adding new sections to chapter 35A.82 RCW; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The legislature recognizes that there have been significant changes in the nature of the telephone business in recent

years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service.

Sec. 2. Section 82.16.010, chapter 15, Laws of 1961 as last amended by section 20, chapter 173, Laws of 1965 ex. sess. and RCW 82.16.010 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business(;;).

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business(;;).

(3) "Railroad car business" means the business of renting, leasing or operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale(;;).

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale(;;).

(6) "Telephone business" means the business of ~~((operating or managing any telephone line or part of a telephone line and exchange or exchanges used in the conduct of the business of affording telephonic communication for hire))~~ providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or providing telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange~~((:)).~~ "Telephone business" does not include the providing of competitive telephone service, nor the providing of cable television service.

(7) "Telegraph business" means the business of affording telegraphic communication for hire~~((:)).~~

(8) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural~~((:)).~~

(9) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(10) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property~~((:)).~~

(11) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), (9), and (10) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry,

log patrol, pipe line, warehouse, toll bridge, toll logging road, water transportation and wharf businesses(;;).

(12) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire(;;).

(13) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses(;;).

(14) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

(15) "Competitive telephone service" means the providing by any person of telephone equipment, apparatus, or service, other than toll service, which is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

Sec. 3. Section 1, chapter 8, Laws of 1970 ex. sess. as last amended by section 5, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.04.050 are each amended to read as follows:

"Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, or (b) installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person, or (c) purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale, or (d) purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.16.010. The term shall include every sale of tangible personal property which is used or consumed or to be used

or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), ~~((or))~~ (c), or (d) above following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280, subsections (2) and (7) and RCW 82.04.290.

The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following: (a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house, trailer camp or tourist camp for the exclusive use of the tenants thereof, and also excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects; (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture; (c) the sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting; (d) the sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW; (e) the sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same; (f) the sale of or charge made for tangible personal property, labor and services to persons taxable under (a),

(b), (c), (d), and (e) above when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this paragraph shall be construed to modify the first paragraph of this section and nothing contained in the first paragraph of this section shall be construed to modify this paragraph.

The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal business or professional services, including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities; (a) amusement and recreation businesses including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows and others; (b) abstract, title insurance and escrow businesses; (c) credit bureau businesses; (d) automobile parking and storage garage businesses.

The term shall also include the renting or leasing of tangible personal property to consumers.

The term shall also include the providing of competitive telephone service as defined in RCW 82.16.010.

The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind, nor shall it include sales of feed, seed, fertilizer, and spray materials to persons for the purpose of producing for sale any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects but only when such production and subsequent sale are exempt from tax under RCW 82.04.330, nor shall it include sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the

moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority.

Sec. 4. Section 3, chapter 94, Laws of 1970 ex. sess. and RCW 82.14-.020 are each amended to read as follows:

For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of the second paragraph of RCW 82.04.050, and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing to a consumer of competitive telephone service, as defined in RCW 82.16.010, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section, shall be deemed to have occurred at the situs of the primary telephone or other instrument through which the competitive telephone service is rendered;

(6) "City" means a city or town;

~~((6))~~ (7) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

~~((7))~~ (8) "Taxable event" shall mean any retail sale, or any use of an article of tangible personal property, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended.

Sec. 5. Section 80.04.270, chapter 14, Laws of 1961 and RCW 80.04-.270 are each amended to read as follows:

Any public service company engaging in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business shall not constitute a part of the fair value of said company.

property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating revenues and expenses of said company as a public service company. For purposes of this section, the providing of competitive telephone service, as defined in RCW 82.16.010, shall not constitute the sale of merchandise, appliances, or equipment, unless the commission determines that it would be in the public interest to hold otherwise.

Sec. 6. Section 6, chapter 134, Laws of 1972 ex. sess. and RCW 35.21-.710 are each amended to read as follows:

Any city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in RCW 82.16.010, shall be deemed to be the retail sale of tangible personal property.

Sec. 7. Section 7, chapter 134, Laws of 1972 ex. sess. and RCW 35A-82.050 are each amended to read as follows:

Any city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in RCW 82.16.010, shall be deemed to be the retail sale of tangible personal property.

**NEW SECTION.** Sec. 8. There is added to chapter 35.21 RCW a new section to read as follows:

Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.16.010, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.16.010.

**NEW SECTION.** Sec. 9. There is added to chapter 35A.82 RCW a new section to read as follows:

Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.16.010, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the code city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.16.010.

NEW SECTION. Sec. 10. There is added to chapter 35.21 RCW a new section to read as follows:

Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.16.010, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from toll telephone services subject to the fee or tax.

NEW SECTION. Sec. 11. There is added to chapter 35A.82 RCW a new section to read as follows:

Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.16.010, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from toll telephone services subject to the fee or tax.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13. This act shall take effect on January 1, 1982.

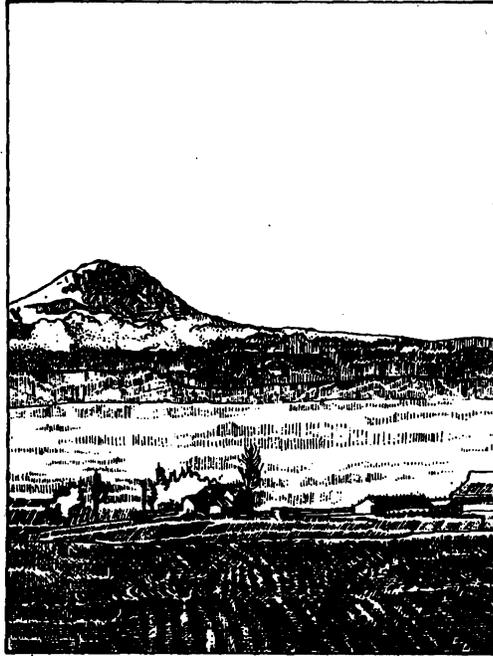
Passed the House April 23, 1981.

Passed the Senate April 22, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.

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# **1981**

## **FINAL LEGISLATIVE REPORT**

**Forty-Seventh  
Legislature of  
Washington State  
Regular and  
Special Sessions**

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**SHB 49**

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records which may be needed for executive and legislative evaluation, instead of a central cross index.

The Governor may specifically delegate program responsibility under agreements with state agencies. The definition of public records is clarified. The Public Records Law which pertains to preservation of public records, no longer applies to blank forms and other non-record material.

Agency forms management representatives must complete a forms management training course approved by the Forms Management Center within three months of appointment.

State record preservation of certain physical materials must be approved by the State Archivist rather than a non-existent forms committee referred to in current law.

**VOTES ON FINAL PASSAGE:**

House	95	0
Senate	46	0

**EFFECTIVE:** July 26, 1981**PARTIAL VETO SUMMARY:**

The partial veto would appear to have little, if any, substantive effect. It will allow sections 1 through 3 of the act to be codified as the Code Reviser desires. (See VETO MESSAGE)

**HB 52**

C 36 L 81

**BRIEF TITLE:** Giving school administrators authority to order those persons appearing under the influence of alcohol or drugs off school property.**SPONSORS:** Representatives Vander Stoep, Galloway, Taylor, Winsley, Cantu, Patrick, Williams and Houchen**HOUSE COMMITTEE:** Education**SENATE COMMITTEE:** Education**BACKGROUND:**

Public intoxication is no longer illegal. School personnel have complained that they cannot legally order intoxicated people from school property if they are not creating a disturbance.

**SUMMARY:**

It is unlawful for a person under the influence of alcohol or drugs to disobey willfully the order of a designated school official to leave school property.

The order is valid if the designated school official reasonably believes the person ordered to leave is under the influence of alcohol or drugs, is committing certain prohibited acts, or is creating a disturbance.

**VOTES ON FINAL PASSAGE:**

House	94	0
Senate	44	0

**EFFECTIVE:** July 26, 1981**SHB 61**

C 144 L 81

**BRIEF TITLE:** Placing telephone companies and their competitors on an equal excise tax basis.**SPONSORS:** House Committee on Revenue (Originally Sponsored By Representatives Flanagan, Brown, Galloway, Greengo, Sommers, Hastings, Garson and Fiske)**HOUSE COMMITTEE:** Revenue**SENATE COMMITTEE:** Ways and Means**BACKGROUND:**

State and local excise taxes applied to some products and/or services offered by telephone companies, regulated by the Utilities and Transportation Commission, differ from those borne by non-regulated competitors. In many of the cities where demand for communications equipment and services is concentrated, telephone companies pay higher combined state and local excise tax rates than are paid by other firms. State-wide, combined state and local excise tax rates applied to message transmission services provided by the telephone companies can exceed rates on such services when supplied by non-regulated firms.

**SUMMARY:**

Differences in the excise tax rates paid by regulated telephone companies and their competitors in communications services and equipment markets are reduced. Two major changes in taxation are made. First, telephone equipment supplied to customers by

telephone companies in conjunction with telephone services will be subject to the state and local retail sales tax and B&O taxes on retailing activities. Regulated telephone companies presently pay state and city utility taxes while competing firms pay the retail sales tax and B&O retailing taxes. Second, intra-state long distance and other "telephone" services provided by competitors of the regulated telephone companies will be subject to the 3.6 percent state public utility tax and to those city utility taxes that are applied to these services when provided by regulated telephone companies. Regulated telephone companies presently pay the 3.6 percent public utility tax, while competing firms may be taxed at lower rates.

**VOTES ON FINAL PASSAGE:**

House 93 0  
 Senate 41 5 (Senate amended)  
 House 92 0 (House concurred)

**EFFECTIVE:** January 1, 1982

**HB 66**

C 49 L 81

**BRIEF TITLE:** Transferring the Auburn game farm to the parks and recreation commission.

**SPONSORS:** Representatives Warnke, Grimm, Walk, Garrett, North, Eberle and Patrick

**INITIAL HOUSE COMMITTEE:** Natural Resources and Environmental Affairs

**ADDITIONAL HOUSE COMMITTEE:** Appropriations-General Government

**SENATE COMMITTEE:** Parks and Ecology

**BACKGROUND:**

The State Department of Game owns approximately 165 acres of land within the city limits of Auburn, Washington. This land and the structures on it have been used for the purpose of rearing game birds while also serving as a repair shop for Game Department vehicles. Due to funding problems, the department has ceased using a large portion of this land. Use of the land for a park would blend with the urban parks program established by the Legislature.

**SUMMARY:**

Ownership of the land is hereby transferred from the State Game Commission to the Parks and Recreation

Commission. \$1,500,000 is transferred from the General Fund's Outdoor Recreation Account to the Game Fund. Further, the Parks and Recreation Commission is relieved from having to assume any debts on the property that may not yet have been satisfied by the Game Department.

**Appropriation:** \$1,500,000 is appropriated from the outdoor recreation account in the general fund to the State Game Commission.

**VOTES ON FINAL PASSAGE:**

House 98 0  
 Senate 45 3

**EFFECTIVE:** July 1, 1981

**HB 75**

C 59 L 81

**BRIEF TITLE:** Directing the transportation commission to prepare its own budget request, independent of the department.

**SPONSORS:** Representatives Martinis, Wilson, Burns, Garrett, Sherman, Walk, Garson, Bender, Erak, Clayton, Sprague, McCormick, Gallagher and Pruitt

**HOUSE COMMITTEE:** Transportation

**SENATE COMMITTEE:** Transportation

**BACKGROUND:**

The Transportation Commission is formally responsible for submitting a budget proposal which includes provision for the operation of both the Commission and the Department of Transportation. However, the Department of Transportation actually prepares the entire budget proposal and provides the Commission with staff, clerical support, and legal counsel. Many persons argue that the Commission should enjoy greater autonomy in the employment and retention of staff and the control of its budget.

**SUMMARY:**

The Transportation Commission is required to submit to the Governor and to the Legislature a proposed biennial budget for operation of the Commission. This budget is to be separate from the budget that the Commission now recommends for operation of the department. The Commission shall employ staff as

HOUSE BILL 61

BILL DOCUMENTS	In File	Date of Document	Date Received	Date Requested
Printed Copy of Bill	XX			
Original Bill	Copy			
Substitute Bill				
2nd Substitute Bill				
Bill Report				
Standing Committee Report Form	XX	3/3		
Roll Call Vote Sheet	XX	3/3		
Amendments	(1)			

BACKGROUND MATERIAL

Bill Digest	XX XX	1st Sub HB 61		
Bill Analysis	XX	2/9		
Fiscal Note	XX	2/10		
Fiscal Note ( <i>Revised</i> )	XX	4/3		
Fiscal Note ( <i>Revised</i> )				

Testimony: Ralph Dickey, Washington Independent Telephone Association.

CONTENTS: - MEMO of February 18, 1981, RE: Telephone Company Tax Equalization  
 - Letter from Ed Tveden, Department of Revenue (2-12)  
 - Pacific Northwest Bell, RE: Proposed Telephone Tax Legislation

INFO: Substitute House Bill 61 passed out of committee on 3/3/81.  
 PUBLIC HEARING on 2/10/81.

AMENDMENT ATTACHED.

1

Proposed Telephone Tax Legislation - Washington State

Objectives of Legislation

H. B. 61 would:

1. Tax all transactions of competitive telephone services under the retailing portion of the state and local B & O taxes and retail sales taxes.
  - A. These transactions would be taxable whether provided by a regulated telephone company or a non-regulated competitor. Telephone companies would be treated as a normal retailer with respect to this business.
2. Tax all non-competitive type services offered by regulated telephone companies and intrastate toll in the same manner that they are taxed today - under the state public utility tax and the respective city utility taxes.
  - A. All providers of toll service would be taxable under state and local utility taxes.
  - B. Allow cities to tax 100% of intrastate toll rather than the current 20%.
  - C. Allow cities to increase tax rates on this non-competitive service to prevent any tax shortfall.

PNB 2-10-1

WASHINGTON STATE EXCISE TAX

Tax Treatment of Revenues From The Telephone Business  
Current Law

Representative Items Subject to Public Utility Tax:

- Local telephone switching (monthly service charge)
- \* Residential and business main telephones
- \* Extension telephones
- Custom calling features (call waiting, forwarding, etc.)
- \* Mobile telephone equipment
- Coin telephone revenues
- Trunk lines
- \* Key telephone systems
- \* Private branch exchanges (PBX)
- \* Centrex systems
- Private line services
- \* Bells, buzzers, and special equipment
- Toll telephone service
  - MTS Toll (standard long distance service)
  - WATS Toll (wide area toll service)
    - in WATS (800 numbers)
    - out WATS
  - Private line toll
- Directory assistance

Representative Items Subject to Retailing or Service B&O Tax:

- Directory advertising
- Rent revenues
- Lease of street directories
- Custom work orders
- Sale of Design Line telephones
- Sale of retired capital assets
- Toll services provided by competitors

\* Competitive Telephone Service

2/5/81

WASHINGTON STATE EXCISE TAX

Tax Treatment of Revenues From The Telephone Business

Under House Bill No. 61

Representative Items Subject to Public Utility Tax:

- Local telephone switching (monthly service charge)
- Custom calling features (call waiting, forwarding, etc.)
- Coin telephone revenues
- Trunk Lines
- Private line services
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  - WATS Toll (wide area toll service)
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- Sale of Design Line telephones
- Sale of retired capital assets

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CHAPTER 3

[2nd Reengrossed Senate Bill No. 3909]

TAXES—GENERAL REVISIONS—BORDER COUNTIES—TELEPHONE  
SERVICES—AIRCRAFTS—BOATS—TIMBER

AN ACT Relating to revenue and taxation; amending section 3, chapter 65, Laws of 1970 ex. sess. as amended by section 1, chapter 9, Laws of 1983 and RCW 82.04.255; amending section 82.04.290, chapter 15, Laws of 1961 as last amended by section 2, chapter 9, Laws of 1983 and RCW 82.04.290; amending section 3, chapter 9, Laws of 1983 and RCW 82.04.290; amending section 3, chapter 130, Laws of 1975-76 2nd ex. sess. as last amended by section 4, chapter 9, Laws of 1983 and RCW 82.04.2901; reenacting and amending section 16, chapter 10, Laws of 1982 as last amended by section 4, chapter \_\_\_\_ (SSB 3244), Laws of 1983 1st ex. sess. and by section 4, chapter \_\_\_\_ (SHB 72), Laws of 1983 1st ex. sess. and RCW 82.04.260; amending section 31, chapter 35, Laws of 1982 1st ex. sess. as last amended by section 8, chapter 7, Laws of 1983 and RCW 82.02.030; amending section 14.02, chapter 79, Laws of 1947 as last amended by section 1, chapter 10, Laws of 1982 2nd ex. sess. and RCW 48.14.020; amending section 2, chapter 278, Laws of 1957 as last amended by section 18, chapter 35, Laws of 1982 1st ex. sess. and RCW 54.28.020; amending section 6, chapter 366, Laws of 1977 ex. sess. as amended by section 19, chapter 35, Laws of 1982 1st ex. sess. and RCW 54.28.025; amending section 24-A added to chapter 62, Laws of 1933 ex. sess. by section 3, chapter 158, Laws of 1935 as last amended by section 23, chapter 35, Laws of 1982 1st ex. sess. and RCW 66.24.210; amending section 24, chapter 62, Laws of 1933 ex. sess. as last amended by section 24, chapter 35, Laws of 1982 1st ex. sess. and RCW 66.24.290; amending section 82.08.150, chapter 15, Laws of 1961 as last amended by section 3, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.08.150; amending section 82.16.020, chapter 15, Laws of 1961 as last

(1120)

amended by section 1, chapter 5, Laws of 1982 2nd ex. sess. and RCW 82.16.020; amending section 82.20.010, chapter 15, Laws of 1961 as amended by section 7, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.20.010; amending section 82.24.020, chapter 15, Laws of 1961 as last amended by section 8, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.24.020; amending section 82.26.020, chapter 15, Laws of 1961 as last amended by section 9, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.26.020; amending section 2, chapter 98, Laws of 1980 as last amended by section 6, chapter 284, Laws of 1983 and RCW 82.27.020; amending section 3, chapter 61, Laws of 1975-'76 2nd ex. sess. as amended by section 11, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.29A.030; amending section 82.44.020, chapter 15, Laws of 1961 as last amended by section 2, chapter 14, Laws of 1982 2nd ex. sess. and RCW 82.44.020; amending section 28A.45-.060, chapter 223, Laws of 1969 ex. sess. as last amended by section 14, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.45.060; amending section 82.48.010, chapter 15, Laws of 1961 as last amended by section 239, chapter 158, Laws of 1979 and RCW 82.48.010 amending section 82.48.030, chapter 15, Laws of 1961 as last amended by section 3, chapter 9, Laws of 1967 ex. sess. and RCW 82.48.030 amending section 82.32.090, chapter 15, Laws of 1961 as last amended by section 32, chapter 7, Laws of 1983 and RCW 82.32.090; amending section 1, chapter 8, Laws of 1970 ex. sess. as last amended by section 3, chapter 144, Laws of 1981 and RCW 82.04.050; amending section 82.04.060, chapter 15, Laws of 1961 and RCW 82.04.060; amending section 82.04.190, chapter 15, Laws of 1961 as last amended by section 2, chapter 90, Laws of 1975 1st ex. sess. and RCW 82.04.190; amending section 82.04.460, chapter 15, Laws of 1961 as amended by section 9, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.04.460; amending section 82.04.470, chapter 15, Laws of 1961 as amended by section 43, chapter 278, Laws of 1975 1st ex. sess. and RCW 82.04.470; amending section 3, chapter 94, Laws of 1970 ex. sess. as last amended by section 1, chapter 211, Laws of 1982 and RCW 82.14.020; amending section 82.16.010, chapter 15, Laws of 1961 as last amended by section 1, chapter 9, Laws of 1982 2nd ex. sess. and RCW 82.16.010; amending section 6, chapter 134, Laws of 1972 ex. sess. as last amended by section 7, chapter 99, Laws of 1983 and RCW 35.21.710; amending section 7, chapter 134, Laws of 1972 ex. sess. as amended by section 7, chapter 144, Laws of 1981 and RCW 35A.82.050; amending section 8, chapter 144, Laws of 1981 and RCW 35.21.712; amending section 9, chapter 144, Laws of 1981 and RCW 35A.82.055; amending section 10, chapter 144, Laws of 1981 and RCW 35-.21.714; amending section 11, chapter 144, Laws of 1981 and RCW 35A.82.060; amending section 2, chapter 49, Laws of 1982 1st ex. sess. and RCW 35.21.860; amending section 80.04.270, chapter 14, Laws of 1961 as amended by section 5, chapter 144, Laws of 1981 and RCW 80.04.270; amending section 82.08.020, chapter 15, Laws of 1961 as last amended by section 6, chapter 7, Laws of 1983 and RCW 82.08.020; amending section 9, chapter 7, Laws of 1983 and RCW 82.\_\_\_\_; amending section 16, chapter 7, Laws of 1983 and RCW 88.\_\_\_\_; amending section 18, chapter 7, Laws of 1983 and RCW 88.\_\_\_\_; amending section 15, chapter 7, Laws of 1983 and RCW 88.\_\_\_\_; amending section 22, chapter 7, Laws of 1983 and RCW 88.\_\_\_\_; amending section 84.36.080, chapter 15, Laws of 1961 as amended by section 23, chapter 7, Laws of 1983 and RCW 84.36.080; amending section 33, chapter 7, Laws of 1983 and RCW 82.32.\_\_\_\_; amending section 1, chapter 347, Laws of 1977 ex. sess. as last amended by section 2, chapter 4, Laws of 1982 2nd ex. sess. and RCW 84.33.071; amending section 3, chapter 130, Laws of 1975-'76 2nd ex. sess. as last amended by section 4 of this 1983 act and RCW 82.04.2901; amending section 82.08.020, chapter 15, Laws of 1961 as last amended by section 41 of this 1983 act and RCW 82.08.020; amending section 1, chapter 7, Laws of 1981 as last amended by section 27, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.32.045; adding a new section to chapter 39.64 RCW; adding a new section to chapter 43.06 RCW; adding a new section to chapter 43.51 RCW; adding new sections to chapter 82.\_\_\_\_ RCW (sections 9 through 13, chapter 7, Laws of 1983); adding new sections to chapter 88.\_\_\_\_ RCW (sections 14 through 22, chapter 7, Laws of 1983); adding a new section to chapter 82.02 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 84.09 RCW; repealing section 10, chapter 172, Laws of 1981 and RCW 82.04.265; making an appropriation; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

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An aircraft shall be deemed registered for the first time in this state when such aircraft was not previously registered by this state for the year immediately preceding the year in which application for registration is made.

Sec. 23. Section 82.32.090, chapter 15, Laws of 1961 as last amended by section 32, chapter 7, Laws of 1983 and RCW 82.32.090 are each amended to read as follows:

If payment of any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than two dollars.

If payment of any tax is received within the first ten days of the month next succeeding the month in which the tax is payable, the amount of such payment shall be credited to, and shall be treated for all purposes as having been collected during, the fiscal year which includes the month preceding the month in which such due date falls. Effective June 30, 1985, and thereafter if the payment of any tax is received during the first ten days in ~~((the month in which the tax is payable))~~ July, the amount of such payment shall be credited to, and shall be treated for all purposes as having been collected during, the preceding fiscal year ~~((which includes the month preceding the month in which such due date falls))~~.

If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than five dollars.

Notwithstanding the foregoing, the aggregate of penalties imposed under this chapter for failure to file a return, late payment of any tax, increase, or penalty, or issuance of a warrant shall not exceed twenty-five percent of the tax due, or seven dollars, whichever is greater.

NEW SECTION. Sec. 24. There is added to chapter 82.04 RCW a new section to read as follows:

(1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Network telephone service" means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local

telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

(3) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in subsections (1) and (2) of this section.

(4) "Telephone business" means the business of providing network telephone service, as defined in subsection (2) of this section. It includes cooperative or farmer line telephone companies or associations operating an exchange.

Sec. 25. Section 1, chapter 8, Laws of 1970 ex. sess. as last amended by section 3, chapter 144, Laws of 1981 and RCW 82.04.050 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, or (b) installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person, or (c) purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale, or (d) purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in ((RCW 82.16.010)) section 24 of this 1983 act. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), or (d) above following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280, subsections (2) and (7) and RCW 82.04.290.

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(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following: (a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house, trailer camp or tourist camp for the exclusive use of the tenants thereof, and also excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects; (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture; (c) the sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting; (d) the sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW; (e) the sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same; (f) the sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), and (e) above when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this paragraph shall be

construed to modify the first paragraph of this section and nothing contained in the first paragraph of this section shall be construed to modify this paragraph.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal business or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities((:)); (a) Amusement and recreation businesses including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows and others; (b) abstract, title insurance and escrow businesses; (c) credit bureau businesses; (d) automobile parking and storage garage businesses.

(4) The term shall also include the renting or leasing of tangible personal property to consumers.

(5) The term shall also include the providing of ((competitive)) telephone service, as defined in ((RCW 82.16.010)) section 24 of this 1983 act, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind, nor shall it include sales of feed, seed, fertilizer, and spray materials to persons for the purpose of producing for sale any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects but only when such production and subsequent sale are exempt from tax under RCW 82.04.330, nor shall it include sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority.

Sec. 26. Section 82.04.060, chapter 15, Laws of 1961 and RCW 82.04.060 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, or any sale of telephone service as defined in section 24 of this 1983 act, which is not a sale at retail and means any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED, That the term "real or personal property" as used in this section shall not include any natural products named in RCW 82.04.100.

Sec. 27. Section 82.04.190, chapter 15, Laws of 1961 as last amended by section 2, chapter 90, Laws of 1975 1st ex. sess. and RCW 82.04.190 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of ((his)) the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale;

(2) Any person engaged in any business activity taxable under RCW 82.04.290 and any person who purchases, acquires, or uses any telephone service as defined in section 24 of this 1983 act, other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway,

easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person.

Sec. 28. Section 82.04.460, chapter 15, Laws of 1961 as amended by section 9, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.04.460 are each amended to read as follows:

(1) Any person rendering services taxable under RCW 82.04.290 and maintaining places of business both within and without this state which contribute to the rendition of such services shall, for the purpose of computing tax liability under RCW 82.04.290, apportion to this state that portion of his gross income which is derived from services rendered within this state. Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of his total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.

(2) Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010(8) (relating to amounts charged for granting the right or privilege to make deferred or installment payments) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW (relating

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to city taxes on financial institutions) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.

(3) The department shall by rule provide a method or methods of apportioning or allocating gross income derived from sales of telephone services taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. The rules shall be, so far as feasible, consistent with the methods of apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the services.

Sec. 29. Section 82.04.470, chapter 15, Laws of 1961 as amended by section 43, chapter 278, Laws of 1975 1st ex. sess. and RCW 82.04.470 are each amended to read as follows:

Unless a seller has taken from the purchaser a resale certificate signed by, and bearing the name and address and registration number of the purchaser to the effect that the property or service was purchased for resale, or unless the nature of the transaction is clearly shown as a sale at wholesale by the books and records of the taxpayer in such other manner as the department of revenue shall by regulation provide, the burden of proving that a sale of tangible personal property, or of telephone service as defined in section 24 of this 1983 act, was not a sale at retail shall be upon the person who made it.

NEW SECTION. Sec. 30. There is added to chapter 82.08 RCW a new section to read as follows:

(1) 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.

(b) Network telephone service which is paid for by inserting coins in coin-operated telephones.

(2) As used in this section:

(a) "Network telephone service" has the meaning given in section 24 of this act.

(b) "Residential customer" means an individual subscribing to a residential class of telephone service.

(c) "Toll service" does not include customer access line charges for access to a toll calling network.

Sec. 31. Section 3, chapter 94, Laws of 1970 ex. sess. as last amended by section 1, chapter 211, Laws of 1982 and RCW 82.14.020 are each amended to read as follows:

For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of the second paragraph of RCW 82.04.050, and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing to a consumer of ~~((competitive))~~ telephone service, as defined in ~~((RCW 82.16.010))~~ section 24 of this 1983 act, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section, shall be deemed to have occurred at the situs of the ~~((primary))~~ telephone or other instrument through which the ~~((competitive))~~ telephone service is rendered;

(6) "City" means a city or town;

(7) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(8) "Taxable event" shall mean any retail sale, or any use of an article of tangible personal property, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(9) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city.

Sec. 32. Section 82.16.010, chapter 15, Laws of 1961 as last amended by section 1, chapter 9, Laws of 1982 2nd ex. sess and RCW 82.16.010 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

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(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of renting, leasing or operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale.

(6) (~~"Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or providing telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service, nor the providing of cable television service.~~)

(7)). "Telegraph business" means the business of affording telegraphic communication for hire.

((8)) (7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

((9)) (8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

((10)) (9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate

limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

~~((11))~~ (10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9)~~((-and (10)))~~ or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in section 24 of this 1983 act. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, log patrol, pipe line, warehouse, toll bridge, toll logging road, water transportation and wharf businesses.

~~((12))~~ (11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

~~((13))~~ (12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved; including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses: PROVIDED, That gross income of a light and power business means those amounts or value accruing to a taxpayer from the last distribution of electrical energy which is a taxable event within this state.

~~((14))~~ (13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

~~((15))~~ "Competitive telephone service" means the providing by any person of telephone equipment, apparatus, or service, other than toll service, which is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made:))

Sec. 33. Section 6, chapter 134, Laws of 1972 ex. sess. as last amended by section 7, chapter 99, Laws of 1983 and RCW 35.21.710 are each amended to read as follows:

Any city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which

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are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. The taxing authority granted to cities for taxes upon business activities measured by gross receipts or gross income from sales shall not exceed a rate of .0020; except that any city with an adopted ordinance at a higher rate, as of January 1, 1982 shall be limited to a maximum increase of ten percent of the January 1982 rate, not to exceed an annual incremental increase of two percent of current rate: PROVIDED, That any adopted ordinance which classifies according to different types of business or services shall be subject to both the ten percent and the two percent annual incremental increase limitation on each tax rate: PROVIDED FURTHER, That all surtaxes on business and occupation classifications in effect as of January 1, 1982, shall expire no later than December 31, 1982, or by expiration date established by local ordinance. Cities which impose a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales shall be required to submit an annual report to the state auditor identifying the rate established and the revenues received from each fee or tax. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in ~~((RCW 82.16.010))~~ section 24 of this 1983 act, shall be deemed to be the retail sale of tangible personal property.

Sec. 34. Section 7, chapter 134, Laws of 1972 ex. sess. as amended by section 7, chapter 144, Laws of 1981 and RCW 35A.82.050 are each amended to read as follows:

Any code city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in ~~((RCW 82.16.010))~~ section 24 of this 1983 act, shall be deemed to be the retail sale of tangible personal property.

Sec. 35. Section 8, chapter 144, Laws of 1981 and RCW 35.21.712 are each amended to read as follows:

Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in ~~((RCW 82.16.010))~~ section 24 of this 1983 act, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the city.

This section does not apply to the providing of competitive telephone service as defined in ~~((RCW 82.16.010))~~ section 24 of this 1983 act.

Sec. 36. Section 9, chapter 144, Laws of 1981 and RCW 35A.82.055 are each amended to read as follows:

Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in (~~RCW 82.16.010~~) section 24 of this 1983 act, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the code city.

This section does not apply to the providing of competitive telephone service as defined in (~~RCW 82.16.010~~) section 24 of this 1983 act.

Sec. 37. Section 10, chapter 144, Laws of 1981 and RCW 35.21.714 are each amended to read as follows:

Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in (~~RCW 82.16.010~~) section 24 of this 1983 act, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax; PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service, as defined in section 24 of this 1983 act, which represents access to, or charges for, interstate services for which rates are contained in tariffs filed with the federal communications commission.

Sec. 38. Section 11, chapter 144, Laws of 1981 and RCW 35A.82.060 are each amended to read as follows:

Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in (~~RCW 82.16.010~~) section 24 of this 1983 act, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax; PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service, as defined in section 24 of this 1983 act, which represents access to, or charges for, interstate services for which rates are contained in tariffs filed with the federal communications commission.

Sec. 39. Section 2, chapter 49, Laws of 1982 1st ex. sess. and RCW 35.21.860 are each amended to read as follows:

(1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, (~~telephone~~) or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in section 24 of this 1983 act, except that (a) a tax authorized by RCW 35.21.865 may be imposed and (b) a fee may be charged to such businesses that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving

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a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the costs allowable under subsection (1) of this section.

Sec. 40. Section 80.04.270, chapter 14, Laws of 1961 as amended by section 5, chapter 144, Laws of 1981 and RCW 80.04.270 are each amended to read as follows:

Any public service company engaging in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business shall not constitute a part of the fair value of said company's property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating revenues and expenses of said company as a public service company. For purposes of this section, the providing of competitive telephone service, as defined in ~~((RCW 82.16.010))~~ section 24 of this 1983 act, shall not constitute the sale of merchandise, appliances, or equipment, unless the commission determines that it would be in the public interest to hold otherwise.

Sec. 41. Section 82.08.020, chapter 15, Laws of 1961 as last amended by section 6, chapter 7, Laws of 1983 and RCW 82.08.020 are each amended to read as follows:

(1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price: PROVIDED, That for retail sales other than retail sales of telephone services, as defined in section 24 of this 1983 act, such tax shall be levied and collected in border counties in an amount equal to five and four-tenths percent of the selling price.

(2) The tax imposed under this chapter shall apply to successive retail sales of the same property.

(3) The rate provided in this section applies to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 42. Section 9, chapter 7, Laws of 1983 and RCW 82. \_\_\_ are each amended to read as follows:

An excise tax is imposed for the privilege of using a vessel ~~((for which registration is required under chapter 88. \_\_\_ RCW (sections 14 through 22 of this act)))~~ upon the waters of this state, except vessels ((covered by a dealer's registration number under this chapter)) exempt under section 43 of this 1983 act. The annual amount of the excise tax is one-half of one

~~Each taxpayer filing an estimated return shall file a separate quarterly return on the last day of the month after the end of each calendar quarter. Each quarterly return shall be on forms prescribed by the department, include such information as the department may require to correctly determine tax liability during the quarter, and be accompanied by a remittance of the balance of the tax actually due for the quarter.~~

~~(3))~~ The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

~~((4))~~ (3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

NEW SECTION. Sec. 64. There is appropriated from the general fund to the parks and recreation commission for the fiscal year ending June 30, 1984, the sum of seventy-nine thousand dollars, or so much thereof as may be necessary, for the operation of a boating safety and education program established under section 52 of this act.

NEW SECTION. Sec. 65. This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections.

NEW SECTION. Sec. 66. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 67. (1) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect July 1, 1983, except that:

(a) Sections 42 through 50, and 52, 53, 65, and 66 of this act shall take effect June 30, 1983;

(b) Sections 1 through 4 of this act shall take effect July 1, 1983, except as provided in subsection (2) of this section;

(c) Sections 21, 22, and 51 of this act shall take effect January 1, 1984. Section 51 of this act shall be effective for property taxes levied in 1983 and due in 1984, and thereafter; and

(d) Section 63 of this act shall take effect April 1, 1985, and shall be effective in respect to taxable activities occurring on and after April 1, 1985; and

(e) The extension under this act of the retail sales tax to certain sales of telephone service shall apply to telephone service billed on or after July 1, 1983, whether or not such service was rendered before that date.

(f) Sections 61 and 62 of this act shall take effect on the day either of the following events occurs, whichever is earlier:

(i) A temporary or permanent injunction or order becomes effective which prohibits in whole or in part the collection of taxes at the rates specified in section 6, chapter 7, Laws of 1983; or

(ii) A decision of a court in this state invalidating in whole or in part section 6, chapter 7, Laws of 1983, becomes final.

(2) The legislature finds that the amendments contained in sections 1 through 4 of this act constitute an integrated and inseparable entity and if any one or more of those sections does not become law, the remaining sections shall not take effect. If sections 1 through 4 of this act do not become law, the governor shall in that event reduce approved allotments under RCW 43.88.110 for the 1983-85 biennium by four percent.

Passed the Senate May 25, 1983.

Passed the House May 25, 1983.

Approved by the Governor June 15, 1983, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State June 15, 1983.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to subsections 44(7), 49(3), and 53(1) of Senate Bill-3909 entitled:

"AN ACT Relating to revenue and taxation."

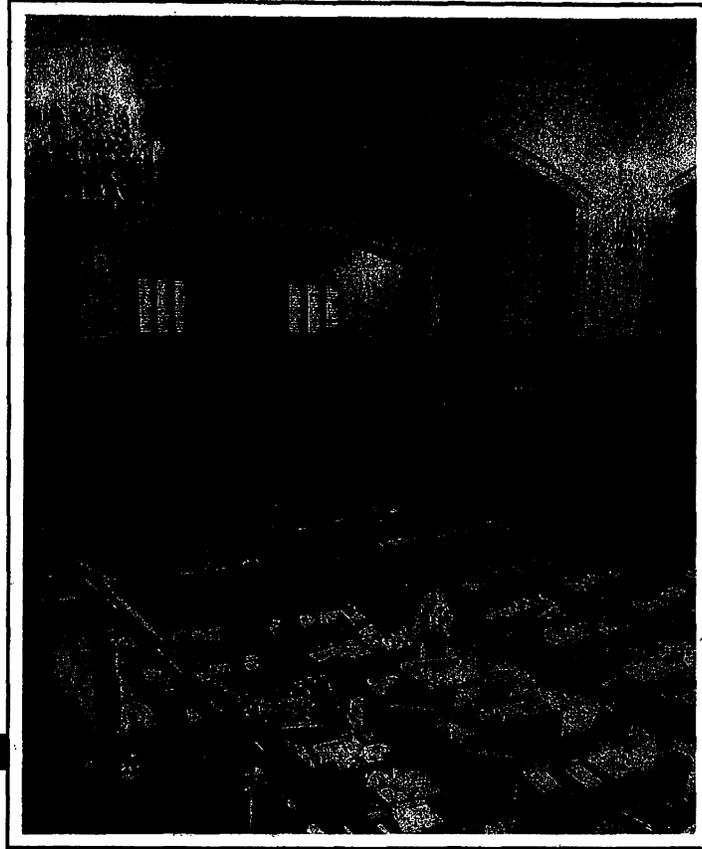
Subsection 44(7) amends the existing law that defines certain exemptions to the boat tax. Existing law appropriately exempts all vessels under 16 feet in length. This subsection would exempt only those boats under 16 feet in length that have no motors, but tax those boats within that length limitation that have motors. In order to provide for equity and ease of administration, I have vetoed subsection 44(7). The result of my action is a simple exemption for all boats under 16 feet in length.

Subsection 49(3) provides that any local option boat tax shall be payable to the Department of Licensing. A program of state collection and distribution of a non-uniform local option tax is fraught with administrative problems for both state and local governments. I have vetoed this subsection so that the collection of any local option boat tax becomes the responsibility of local government.

Subsection 53(1) requires that one-half of any boat tax paid under existing law (SB 3258; now Chapter 7, Laws of 1983) be applied as a credit against the taxes now due under this measure. The existing law, by its own terms, will not become effective until June 30, 1983. This measure negates the tax specified by that law. Because some boat owners have already tendered payment for that tax, which will not now come into effect, they should receive a refund of their entire payment, rather than just a credit for one-half of that payment. The Departments of Revenue and Licensing can make the necessary refunds pursuant to RCW 43.01.072.

With the exceptions noted above, Senate Bill 3909 is approved."

**FINAL**



# **LEGISLATIVE REPORT**

**1 ♦ 9 ♦ 8 ♦ 3**

**FORTY-EIGHTH LEGISLATURE OF WASHINGTON STATE**

**Regular, First and Second Special Sessions**

**SB 3909**

**PARTIAL VETO**

C 3 L 83 E2

By Senator McDermott

Relating to revenue and taxation.

Senate Committee on Ways and Means

House Committee on Ways and Means

**BACKGROUND:**

To meet the expenses of the 1983-85 biennium operating budget, additional revenues need to be raised.

**SUMMARY:**

The B&O tax on services is increased from 1.0 percent to 1.5 percent. The B&O surcharge on businesses (except services and retailers) is set at 10 percent. The B&O surcharge on retailers (except "border county" retailers) is set at 7 percent. The B&O surcharge on border county retailers is set at 32 percent. The basic excise tax surcharge is set at 7 percent (except insurance premiums at 4 percent, liquor at 14 percent, and cigarettes at 15 percent). The sales tax is extended to telephone services. The timber excise tax is extended at 6.5 percent for one year (6/30/84). The aircraft excise tax is increased. The boat tax is changed to an annual registration fee of \$6 plus one-half of 1 percent annual excise tax on value. The special B&O tax rate for aluminum companies is repealed. Tax exemptions are to be studied on a biennial basis.

**Appropriation:** \$79,000 (for the Department of Parks and Recreation).

**Revenue:** Various taxes on various activities are increased.

**VOTES ON FINAL PASSAGE:**

First Special Session

Senate 25 14

House 50 48 (House amended)

Second Special Session

Senate 26 22

House 51 43 (House amended)

Senate (Senate concurred in part)

House (House refused to recede)

Senate (Senate insisted on position)

House (House insisted on position)

Senate 25 16 (Senate concurred)

**EFFECTIVE:** July 1, 1983 (with exceptions)

**PARTIAL VETO SUMMARY:**

The subsection requiring (1) all motorized vessels and (2) all other vessels over 16 feet to register and pay the excise tax was vetoed. The result is that (1) all vessels (including motorized) under 16 feet and (2) those vessels 16 feet or over whose primary propulsion is human power are exempt from state registration and excise taxes. Two other minor provisions (subsections 49(3) and 53(1)) were also vetoed. (See VETO MESSAGE)

**SB 3991**

**FULL VETO**

By Senators Conner, Peterson and Bottiger

Establishing procedures for reducing and ending tolls on the Hood Canal Bridge.

Senate Committee on Transportation

House Committee on Transportation

**BACKGROUND:**

Motorists using the Hood Canal Bridge, when it was opened in 1961, originally paid \$1.30 per car and driver plus 30 cents per passenger. In 1974, the toll was revised to \$1.50 per car. This toll continued until February 13, 1979, when the Hood Canal Bridge sunk during a severe storm.

At its September 1982 meeting, the Transportation Commission adopted a \$2.50 basic toll with discounts for frequent users and others. This higher toll is expected to generate substantially more revenue than the actual cost of debt service on outstanding revenue bonds issued to finance the original construction of the bridge plus maintenance and operations costs. Surplus toll revenues from the bridge are used to pay operating costs of the Washington State Ferry System.

# HOUSE BILL REPORT

## SSB 5763

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### As Passed House-Amended:

April 10, 1997

**Title:** An act relating to prohibiting the taxation of Internet service providers as network telephone services providers.

**Brief Description:** Prohibiting the taxation of Internet service providers as network telephone service providers.

**Sponsors:** Senate Committee on Energy & Utilities (originally sponsored by Senators Finkbeiner, Brown, Rossi, McAuliffe, Roach, Kohl, Jacobsen, Hochstatter, Haugen, Goings and West).

### Brief History:

#### Committee Activity:

Energy & Utilities: 3/26/97 [DPA];

Finance: 4/3/97 [DPA(EN)].

#### Floor Activity:

Passed House-Amended: 4/10/97, 98-0.

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### HOUSE COMMITTEE ON ENERGY & UTILITIES

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Crouse, Chairman; DeBolt, Vice Chairman; Mastin, Vice Chairman; Poulsen, Ranking Minority Member; Morris, Assistant Ranking Minority Member; Bush; Cooper; Honeyford; Kastama; Kessler; Mielke; Mulliken and B. Thomas.

**Staff:** Margaret Allen (786-7110).

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass as amended by Committee on Energy & Utilities. Signed by 13 members: Representatives B. Thomas, Chairman; Carrell, Vice Chairman; Mulliken, Vice Chairman; Dunshee, Ranking Minority Member; Dickerson, Assistant Ranking Minority Member; Boldt; Butler; Conway; Kastama; Morris; Pennington; Thompson and Van Luven.

**Staff:** Bob Longman (786-7139).

**Background:** The Internet is an international network of computer networks, that interconnect computers which range from simple personal computers to sophisticated mainframes. It is a dynamic, open-ended aggregation of computer networks, rather than a physical entity. Internet users can access or provide a wide variety of information, purchase goods and services, and communicate with other users electronically. Some information on the Internet is available at no charge, while other information is available only if the user pays a subscription or use fee.

Definitions. The Telecommunications Act of 1996 defined the Internet as the international computer network of both federal and nonfederal interoperable packet switched data networks.— Interoperable— means the computers and systems can communicate with each other. The phrase packet switched data networks— means unstructured data signals are electronically wrapped and addressed in packets— for efficient transmission through the network.

The world wide web— (web), a widely used subnetwork of the Internet, is a network of computers using web application software. Before the web was developed, only text was available over the Internet. Web browsing software has made it possible to transfer sound, video and colors, as well as text, over the Internet. Consequently, the web is described as being graphical.—

Access to the Internet and Proprietary Networks. Some companies are in the business of providing access to the Internet via computers that are directly linked to the Internet by telecommunications facilities. Using a computer, a modem, and software that allows access to the Internet, a customer dials a local or 800 telephone number to reach the access provider's computer, which then connects the user's computer to the Internet.

Other companies, often referred to as on-line service providers,— provide access to a proprietary subscriber network, and may also provide access to the Internet.

Internet access and on-line service providers (collectively referred to as access providers—) generally charge their customers subscription or usage fees.

Taxation. Since Internet access requires the use of telecommunications facilities, largely the telephone network, the issue has been raised of whether Internet access should be taxed as a network telephone service— or as a business service.—

Local Taxes. Unless the voters approve a higher rate of taxation, cities may impose a 6 percent tax on the gross receipts of a telephone service, and a 0.2 percent tax on the gross receipts of a business service.

State Taxes. The state's primary tax on business is the business and occupation (B&O) tax. The tax is imposed on the gross income of a business from activities conducted within the state. The tax rate varies for different kinds of businesses.

The B&O tax rate for selected business services is 2.0 percent. Examples of selected business services include computer services, data processing services, information services (such as electronic data retrieval), legal services, and engineering services. According to the Department of Revenue, Internet access is currently taxed at the selected business services rate. The current B&O tax rate for other services is 1.83 percent. When a temporary surcharge expires June 30, 1997, the tax rate on other services will be 1.75 percent.

**Summary of Bill:** The Legislature finds that the newly emerging business of providing Internet service is beneficial to all levels of society. The Legislature further finds that the business is important to the continued growth of the high-technology sector of the state's economy, and should not be burdened by new taxes that might be inappropriate for the kind of service being provided.

Definitions. Internet is defined as the international computer network of both federal and non-federal interoperable packet switched data networks, including the graphical subnetwork called the World Wide Web.

Internet service is defined as a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the Internet or a proprietary subscriber network. Internet service includes provision of Internet electronic mail, access to the Internet for information retrieval, and hosting of information for retrieval over the Internet or the graphical subnetwork called the World Wide Web.

Local Taxes. Until July 1, 1999, a city or town may not impose any new taxes or fees specific to Internet service providers. A city or town may impose general business taxes on Internet service providers, at a rate not to exceed 0.2 percent unless a higher rate is approved by the voters.

State Taxes. An existing statute is amended to clarify that Internet service is to be taxed at the selected business services tax rate. If the selected business service tax classification is repealed, the provision of Internet service will be taxed as a general service.

An additional statute is amended to clarify that the provision of Internet service is not network telephone service, although the provision of transmission to and from the site of an Internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication transmission system, is network telephone service.

If any provision of the act is found to be invalid, the finding of invalidity does not affect the other provisions.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** (Energy & Utilities) Some cities are looking at taxing the provision of Internet access. The underlying transmission services provided by telecommunications companies are already taxed at the state and local levels. Although telecommunications-like services may be a very small component of Internet and online services, Internet and online services are not themselves telecommunications services. Tax policy should not be developed in a vacuum, as often happens with new businesses. This bill is an attempt to let the industry grow and to encourage people to use the Internet while a comprehensive tax policy is developed. Current telecommunications tax laws are inconsistent; a temporary moratorium so there is time to study the issues is appropriate. A moratorium means software companies already in the state will be more likely to remain in this state.

(Finance) The city of Tacoma considered taxing Internet access providers as utilities last fall. This would be inappropriate because these providers are not telecommunications companies. This industry did not exist a few years ago. The whole area of telecommunication taxation will be reviewed in the near future. The cities are not opposed to this bill in principle, but the changes to the definition of network telephone service should be sun

**Testimony Against:** (Energy & Utilities) None.

(Finance) None.

**Testified:** (Energy & Utilities) (Pro) Gary Gardner, Washington Association of Internet Service Providers; Steve Duncan and Kathy Wilcox, Washington Software Association; and Matt Lampe, city of Seattle.

(Finance) Gary Gardner, Washington Association of Internet Service Providers; Steve Duncan, Washington Software Association; Barry Murphy, Microsoft Corporation; and Victoria Lincoln, Association of Washington Cities (all pro).

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5763**

Chapter 304, Laws of 1997

55th Legislature  
1997 Regular Session

PROHIBITING TAXATION OF INTERNET SERVICE PROVIDERS AS TELEPHONE  
SERVICES PROVIDERS

EFFECTIVE DATE: 5/9/97

Passed by the Senate April 19, 1997  
YEAS 44 NAYS 0

BRAD OWEN  
**President of the Senate**

Passed by the House April 10, 1997  
YEAS 97 NAYS 1

CLYDE BALLARD  
**Speaker of the  
House of Representatives**

Approved May 9, 1997

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5763** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL  
**Secretary**

FILED

May 9, 1997 - 1:51 p.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5763**

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AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

**State of Washington                      55th Legislature                      1997 Regular Session**

**By** Senate Committee on Energy & Utilities (originally sponsored by Senators Finkbeiner, Brown, Rossi, McAuliffe, Roach, Kohl, Jacobsen, Hochstatter, Haugen, Goings and West)

Read first time 02/27/97.

1            AN ACT Relating to prohibiting the taxation of internet service  
2 providers as network telephone services providers; amending RCW  
3 82.04.055 and 82.04.065; adding a new section to chapter 35.21 RCW;  
4 adding a new section to chapter 82.04 RCW; creating a new section; and  
5 declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.**    The legislature finds that the newly  
8 emerging business of providing internet service is providing widespread  
9 benefits to all levels of society. The legislature further finds that  
10 this business is important to our state's continued growth in the high-  
11 technology sector of the economy and that, as this industry emerges, it  
12 should not be burdened by new taxes that might not be appropriate for  
13 the type of service being provided. The legislature further finds that  
14 there is no clear statutory guidance as to how internet services should  
15 be classified for tax purposes and intends to ratify the state's  
16 current treatment of such services.

17            NEW SECTION.    **Sec. 2.**    A new section is added to chapter 35.21 RCW  
18 to read as follows:

1       Until July 1, 1999, a city or town may not impose any new taxes or  
2 fees specific to internet service providers. A city or town may tax  
3 internet service providers under generally applicable business taxes or  
4 fees, at a rate not to exceed the rate applied to a general service  
5 classification. For the purposes of this section, "internet service"  
6 has the same meaning as in section 4 of this act.

7       **Sec. 3.** RCW 82.04.055 and 1993 sp.s. c 25 s 201 are each amended  
8 to read as follows:

9       (1) "Selected business services" means:

10       (a) Stenographic, secretarial, and clerical services.

11       (b) Computer services, including but not limited to computer  
12 programming, custom software modification, custom software  
13 installation, custom software maintenance, custom software repair,  
14 training in the use of custom software, computer systems design, and  
15 custom software update services.

16       (c) Data processing services, including but not limited to word  
17 processing, data entry, data retrieval, data search, information  
18 compilation, payroll processing, business accounts processing, data  
19 production, and other computerized data and information storage or  
20 manipulation. Data processing services also includes the use of a  
21 computer or computer time for data processing whether the processing is  
22 performed by the provider of the computer or by the purchaser or other  
23 beneficiary of the service.

24       (d) Information services, including but not limited to electronic  
25 data retrieval or research that entails furnishing financial or legal  
26 information, data or research, internet service as defined in section  
27 4 of this act, general or specialized news, or current information  
28 unless such news or current information is furnished to a newspaper  
29 publisher or to a radio or television station licensed by the federal  
30 communications commission.

31       (e) Legal, arbitration, and mediation services, including but not  
32 limited to paralegal services, legal research services, and court  
33 reporting services.

34       (f) Accounting, auditing, actuarial, bookkeeping, tax preparation,  
35 and similar services.

36       (g) Design services whether or not performed by persons licensed or  
37 certified, including but not limited to the following:

1 (i) Engineering services, including civil, electrical, mechanical,  
2 petroleum, marine, nuclear, and design engineering, machine designing,  
3 machine tool designing, and sewage disposal system designing;

4 (ii) Architectural services, including but not limited to:  
5 Structural or landscape design or architecture, interior design,  
6 building design, building program management, and space planning.

7 (h) Business consulting services. Business consulting services are  
8 those primarily providing operating counsel, advice, or assistance to  
9 the management or owner of any business, private, nonprofit, or public  
10 organization, including but not limited to those in the following  
11 areas: Administrative management consulting, general management  
12 consulting, human resource consulting or training, management  
13 engineering consulting, management information systems consulting,  
14 manufacturing management consulting, marketing consulting, operations  
15 research consulting, personnel management consulting, physical  
16 distribution consulting, site location consulting, economic consulting,  
17 motel, hotel, and resort consulting, restaurant consulting, government  
18 affairs consulting, and lobbying.

19 (i) Business management services, including but not limited to  
20 administrative management, business management, and office management,  
21 but not including property management or property leasing, motel,  
22 hotel, and resort management, or automobile parking management.

23 (j) Protective services, including but not limited to detective  
24 agency services and private investigating services, armored car  
25 services, guard or protective services, lie detection or polygraph  
26 services, and security system, burglar, or fire alarm monitoring and  
27 maintenance services.

28 (k) Public relations or advertising services, including but not  
29 limited to layout, art direction, graphic design, copy writing,  
30 mechanical preparation, opinion research, marketing research,  
31 marketing, or production supervision, but excluding services provided  
32 as part of broadcast or print advertising.

33 (l) Aerial and land surveying, geological consulting, and real  
34 estate appraising.

35 (2) Subsection (1) of this section notwithstanding, the term  
36 "selected business services" does not include:

37 (a) The provision of either permanent or temporary employees.

1 (b) Services provided by a public benefit nonprofit organization,  
2 as defined in RCW 82.04.366, to the state of Washington, its political  
3 subdivisions, municipal corporations, or quasi-municipal corporations.

4 (c) Services related to the identification, investigation, or  
5 cleanup arising out of the release or threatened release of hazardous  
6 substances when the services are remedial or response actions performed  
7 under federal or state law, or when the services are performed to  
8 determine if a release of hazardous substances has occurred or is  
9 likely to occur.

10 (d) Services provided to or performed for, on behalf of, or for the  
11 benefit of a collective investment fund such as: (i) A mutual fund or  
12 other regulated investment company as defined in section 851(a) of the  
13 Internal Revenue Code of 1986, as amended; (ii) an "investment company"  
14 as that term is used in section 3(a) of the Investment Company Act of  
15 1940 as well as an entity that would be an investment company under  
16 section 3(a) of the Investment Company Act of 1940 except for the  
17 section 3(c)(1) or (11) exemptions, or except that it is a foreign  
18 investment company organized under laws of a foreign country; (iii) an  
19 "employee benefit plan," which includes any plan, trust, commingled  
20 employee benefit trusts, or custodial arrangement that is subject to  
21 the Employee Retirement Income Security Act of 1974, as amended, 29  
22 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401,  
23 403, 408, 457, and 501(c)(9) and (17) through (23) of the Internal  
24 Revenue Code of 1986, as amended, or similar plan maintained by state  
25 or local governments, or plans, trusts, or custodial arrangements  
26 established to self-insure benefits required by federal, state, or  
27 local law; (iv) a fund maintained by a tax exempt organization as  
28 defined in section 501(c)(3) or 509(a) of the Internal Revenue Code of  
29 1986, as amended, for operating, quasi-endowment, or endowment  
30 purposes; or (v) funds that are established for the benefit of such tax  
31 exempt organization such as charitable remainder trusts, charitable  
32 lead trusts, charitable annuity trusts, or other similar trusts.

33 (e) Research or experimental services eligible for expense  
34 treatment under section 174 of the Internal Revenue Code of 1986, as  
35 amended.

36 (f) Financial services provided by a financial institution. The  
37 term "financial institution" means a corporation, partnership, or other  
38 business organization chartered under Title 30, 31, 32, or 33 RCW, or  
39 under the National Bank Act, as amended, the Homeowners Loan Act, as

1 amended, or the Federal Credit Union Act, as amended, or a holding  
2 company of any such business organization that is subject to the Bank  
3 Holding Company Act, as amended, or the Homeowners Loan Act, as  
4 amended, or a subsidiary or affiliate wholly owned or controlled by one  
5 or more financial institutions, as well as a lender approved by the  
6 United States secretary of housing and urban development for  
7 participation in any mortgage insurance program under the National  
8 Housing Act, as amended. The term "financial services" means those  
9 activities authorized by the laws cited in this subsection (2)(f) and  
10 includes services such as mortgage servicing, contract collection  
11 servicing, finance leasing, and services provided in a fiduciary  
12 capacity to a trust or estate.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04 RCW  
14 to read as follows:

15 (1) The provision of internet services is a selected business  
16 service activity and subject to tax under RCW 82.04.290(1), but if RCW  
17 82.04.055 is repealed then the provision of internet services is  
18 taxable under the general service business and occupation tax  
19 classification of RCW 82.04.290.

20 (2) "Internet" means the international computer network of both  
21 federal and nonfederal interoperable packet switched data networks,  
22 including the graphical subnetwork called the world wide web.

23 (3) "Internet service" means a service that includes computer  
24 processing applications; provides the user with additional or  
25 restructured information, or permits the user to interact with stored  
26 information through the internet or a proprietary subscriber network.  
27 "Internet service" includes provision of internet electronic mail,  
28 access to the internet for information retrieval, and hosting of  
29 information for retrieval over the internet or the graphical subnetwork  
30 called the world wide web.

31 **Sec. 5.** RCW 82.04.065 and 1983 2nd ex.s. c 3 s 24 are each amended  
32 to read as follows:

33 (1) "Competitive telephone service" means the providing by any  
34 person of telecommunications equipment or apparatus, or service related  
35 to that equipment or apparatus such as repair or maintenance service,  
36 if the equipment or apparatus is of a type which can be provided by

1 persons that are not subject to regulation as telephone companies under  
2 Title 80 RCW and for which a separate charge is made.

3 (2) "Network telephone service" means the providing by any person  
4 of access to a local telephone network, local telephone network  
5 switching service, toll service, or coin telephone services, or the  
6 providing of telephonic, video, data, or similar communication or  
7 transmission for hire, via a local telephone network, toll line or  
8 channel, cable, microwave, or similar communication or transmission  
9 system. "Network telephone service" includes interstate service,  
10 including toll service, originating from or received on  
11 telecommunications equipment or apparatus in this state if the charge  
12 for the service is billed to a person in this state. "Network  
13 telephone service" includes the provision of transmission to and from  
14 the site of an internet provider via a local telephone network, toll  
15 line or channel, cable, microwave, or similar communication or  
16 transmission system. "Network telephone service" does not include the  
17 providing of competitive telephone service, the providing of cable  
18 television service, (~~nor~~) the providing of broadcast services by  
19 radio or television stations, nor the provision of internet service as  
20 defined in section 4 of this act, including the reception of dial-in  
21 connection, provided at the site of the internet service provider.

22 (3) "Telephone service" means competitive telephone service or  
23 network telephone service, or both, as defined in subsections (1) and  
24 (2) of this section.

25 (4) "Telephone business" means the business of providing network  
26 telephone service, as defined in subsection (2) of this section. It  
27 includes cooperative or farmer line telephone companies or associations  
28 operating an exchange.

29 NEW SECTION. **Sec. 6.** If any provision of this act or its  
30 application to any person or circumstance is held invalid, the  
31 remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
34 preservation of the public peace, health, or safety, or support of the  
35 state government and its existing public institutions, and takes effect  
36 immediately.

Passed the Senate April 19, 1997.  
Passed the House April 10, 1997.  
Approved by the Governor May 9, 1997.  
Filed in Office of Secretary of State May 9, 1997.



# Excise Tax Advisory

Excise Tax Advisories (ETAs) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

Number: 2029.04.245

Issue Date: February 24, 2006

## Taxation of network telephone service used to provide Internet access services

On December 3, 2004, President Bush signed the Internet Tax Nondiscrimination Act of 2004, P.L. 108-435. This legislation reinstated and extended the moratorium on taxes on Internet access by amending the Internet Tax Freedom Act (ITFA). The legislation expanded the definition of tax-exempt Internet access by including telecommunications services that are purchased, used, or sold by an Internet service provider (ISP) to provide Internet access to its customers. This expanded definition of Internet access is thought by some taxpayers to include the type of services provided by network telephone service businesses to ISPs and their customers. This includes services used to connect an ISP to the Internet backbone or to ISP customer locations, such as the provision of transmission capacity over dial-up connections, coaxial cables, fiber optic cables, T-1 lines, frame relay service, digital subscriber lines (DSL), wireless technologies, or other means.

Washington has traditionally taxed the sale of these network telephone services to a consumer under the retailing classification of the business and occupation (B&O) tax and required the seller to collect retail sales tax. In 1997, RCW 82.04.065 was amended to explicitly include "the provision of transmission to and from the site of an internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system" as taxable network telephone service. To the extent that these services are included within the federal definition of "Internet access" (see below), ITFA appears to preempt the State's authority to apply B&O and retail sales taxes to the purchase of network telephone service used to provide Internet access, as well as the ISP's provision of traditional Internet access itself.

However, P.L. 108-435 also included two relevant grandfather clauses in section 3 of the Act. The first clause (subsection (a)(1)) grandfathers a state's right to continue assessing taxes on Internet access that were imposed and actually enforced as of October 1, 1998 if the tax was authorized by statute and the State had issued a public proclamation that such taxes were being imposed **or** the state generally collected tax on Internet access. This right continues through November 1, 2007, the date the moratorium is scheduled to end. P.L. 108-435 also included a second grandfather clause (subsection (b)) that applies to taxes imposed and enforced as of November 1, 2003. It grandfathers a state's right to continue imposing such taxes if the state had issued a public proclamation that taxes on Internet access were being imposed **and** the state generally collected such taxes. The right to continue imposing taxes under the second grandfather clause expires November 1, 2005. The language in the two grandfather clauses is substantively identical except for the different time periods (the first applies to pre-October 1998 taxes and the second applies to pre-November 2003 taxes) and the fact that the two provisos are written in the disjunctive for the first clause and in the conjunctive in the second clause.

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Some taxpayers believe that the second grandfather clause applies – to the exclusion of the first grandfather clause – to all taxes imposed on network telephone service used to provide Internet access services. These taxpayers point to statements made in the Congressional record that suggest that members of Congress thought that all state taxation of DSL services used to provide Internet access would cease as of November 1, 2005. Therefore, these taxpayers believe that they no longer need to collect and remit retail sales tax on sales of network telephone service used for Internet access after November 1, 2005.

The actual statutory language of ITFA does not, however, support this interpretation of the law. The first grandfather clause, effective until November 1, 2007, applies to any "tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998." The term "Internet access service" is defined to include "telecommunications services . . . purchased, used, or sold by a provider of Internet access to provide Internet access." To the extent this modified definition includes purchased telecommunications used to provide Internet access, the first grandfather clause clearly applies to allow Washington State's taxation of these telecommunications services used to provide Internet access, because these taxes were imposed and enforced before October 1998. There is no indication in the statutory language that Congress intended the separate clauses to apply to different types of services, as opposed to covering taxes imposed in different time periods -- the language describing the applicable service is identical in both clauses. The applicable rule of statutory interpretation is that if the statutory language is unambiguous, a court will not consider the legislative history of the statute to reach a contrary conclusion. *Whitfield v. U.S.*, 543 U.S. 209, 215 (2005). Even if a court were to look to the legislative history of the act, however, the record is far from definitive and contains statements that could be seen to support either reading of the statute.

Finally, Washington meets the technical requirements of the first grandfather clause. In Washington, B&O and retail sales taxes on the sale of network telephone service used to provide Internet access were generally imposed and actually enforced prior to October 1, 1998. Taxpayers also had a reasonable opportunity to know of this practice due to the fact that RCW 82.04.065 explicitly stated that "the provision of transmission to and from the site of an internet provider via a local telephone network . . . or similar communication or transmission system" was taxable as network telephone service. Finally, the State generally collected B&O and retail sales taxes on the purchase of such network telephone service.

For these reasons, Washington's taxation of network telephone service used to provide Internet access qualifies under the first grandfather clause of ITFA and will continue as described above until at least November 1, 2007. This conclusion makes it unnecessary for the department to adopt a position with respect to the interpretation of the term "Internet access" advanced in the January 2006 Government Accountability Office report "Internet Access Tax Moratorium: Revenue Impacts Will Vary by State." The department may, before the expiration of the grandfather period, consider whether the amended definition allows the continued taxation of telecommunications services used to provide Internet access services, but does not do so at this time.

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On April 14, 2005, the Streamlined Sales Tax Project approved this paper. The definitions in Attachment 1 were approved by the Project in a teleconference on April 7, 2005. Implementing States approved the definitions and issue paper on April 16, 2005. After December 31, 2007, all member states should use the uniform definitions.

**Streamlined Sales Tax Project  
Issue Paper  
April 18, 2005  
Telecommunications and Related Definitions**

**Proposed Definitions of Telecommunications Terms**

The Streamlined Sales Tax Project developed a series of uniform definitions, which were ultimately contained in the "Library of Definitions" in the Streamlined Sales and Use Tax Agreement (as amended November 16, 2004; hereinafter referred to as the "Streamlined Agreement"). Although the Streamlined Agreement provides sourcing rules for telecommunications services and definitions of certain terms applicable to those rules, uniform definitions of "telecommunications services" and other related terms have not yet been established for purposes of imposition and exemption. The Project Steering Committee invited industry participants to submit suggestions for definitions to include in the Streamlined Agreement to allow states to match their existing sales tax bases as precisely as possible. The industry members of the Telecommunications Tax Reform Initiative<sup>1</sup> voluntarily submitted proposed definitions to the Project in response to their invitation.

When the Project first began discussing telecommunications definitions, it explored two approaches to sales taxation: (1) a broad definition of "telecommunications services," with states excluding certain specified services from taxation, and (2) a restrictive definition of "telecommunications services," with additional services, defined separately, that states could choose to impose tax on independently from "telecommunications services." A work group of the Project agreed with industry to work with the latter approach in making its recommendations to the Project.

Attachment 1 includes the model definitions being recommended to the Project, as revised after review and input from the states. Any terms used in these definitions that have been already defined in the Streamlined Agreement (e.g., electronic) have the same meaning as provided in the Streamlined Agreement.

The definitions for telecommunications service and related services to be used by states in imposing sales and use taxes would be those proposed in this paper and ultimately included in the Streamlined Agreement. Telecommunications service definitions used for other state or

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<sup>1</sup> The Telecommunications Tax Reform Initiative was a joint industry/government effort to develop ways to simplify and modernize taxation of telecommunications services, property and providers. Government representation included individuals from multistate organizations as well as individual states. Industry participants represented a broad range of telecommunications service providers.

local taxes, state or local regulatory purposes, or federal purposes would not apply for purposes of state sales and use taxation of telecommunications services, unless such definition is specifically referenced in the Streamlined Agreement.

This paper does not address bundling specifically for telecommunications services, as this issue is being handled separately with other bundling issues.

### **Using the Uniform Definitions**

The effort for uniform definitions is NOT an effort for uniform sales tax bases across states. Defined terms will have the same meaning across the states, yet the definitions are intended to allow states to mirror their current treatment as closely as possible by enabling states to choose to tax or exempt specific services.

The proposed definitions are product-based. Being consistent with Section 316 of the Streamlined Agreement as it applies to exemptions, because telecommunications service and certain related services would be defined, a state choosing to tax such services must use the definitions in the library and cannot exclude from imposition a part of the items included within a definition unless the Streamlined Agreement sets out definitions for part of the items as an acceptable variation. Incorporating the definitions of telecommunications services and related services does not restrict the application of “use-based” or “entity based” exemptions. For example, there is nothing in the Streamlined Agreement or the proposed definitions that prohibits a state from providing or denying a resale exemption for telecommunications used in providing other services.

The definitions in Attachment 1 are formatted as main terms and subsets of those terms. The main terms — ancillary services and telecommunications services — are shown at the left margin. The subsets of those terms are indented under the main term. The main term includes all of its subsets.

The enumerated definitions may be used for both sales tax imposition purposes and sales tax exemption purposes as described below:

- If a state chooses to broadly impose tax on telecommunications services, it must use the definition of “telecommunications services” in Attachment 1. By doing so, the state will impose tax on all telecommunications services including residential telecommunications service, telegraph service, value-added non-voice data service and Voice over Internet Protocol, as well as 800 service, 900 service, fixed wireless service, local service, mobile wireless service, paging service, and private communications service, unless the state provides a specific exclusion or exemption for one or more of such services. Such an exclusion or exemption must be one of the defined terms in Attachment 1. Only if an exclusion or exemption is needed would the state need to define one of the subsets of “telecommunications services.” For example, a state that wishes to tax telecommunications services but exempt 800 service, 900 service, paging service, and private communications service would impose tax on “telecommunications services except 800 service, 900 service, paging service, and private communications service” and adopt the definitions of telecommunications service, 800 service, 900 service, paging service, and private communications service. A state that chooses to impose tax on telecommunications services cannot exclude or exempt from tax an item that is a telecommunications service if there is no definition in the Streamlined Agreement, except as provided for local

telecommunications service. It is expected that the Streamlined Agreement may require updating as new services are developed.

- Alternatively, if a state chooses to tax only limited types of telecommunications services, rather than the broad category with exceptions, it would impose tax only on these limited types of services and it must use the defined terms in Attachment 1. For example, a state can choose to tax only 900 or 800 services, because those terms are defined.
- A state imposing tax on a broader group of services that includes telecommunications must use the definition of "telecommunications services" in Attachment 1. As an example, a state imposing tax on "communication services," must include language stating such communication services include telecommunications services (and ancillary services if a state wishes to tax them as a part of communication services).
- A state that currently imposes sales tax on telecommunications services only if they originate and terminate in a state would amend its law to impose the tax on "intrastate" telecommunications services only, and adopt the definition of "intrastate" services in Attachment 1. A state that currently imposes sales and use tax on telecommunications services that originate or terminate in a state would amend its law to impose the tax on both "intrastate" and "interstate" services (and "international," if applicable), and adopt the definitions of "intrastate" and "interstate" (and international, if applicable) services in Attachment 1.
- A state can limit the imposition or exemption on telecommunications services to a specific use (e.g., residential),.
- A state can choose to impose tax on any one or all of the ancillary services, which are not telecommunications services. It may, for example, impose tax on "ancillary services, except detailed telecommunications billing service and directory assistance." Or, instead of imposing tax on "ancillary services," in general, a state may impose tax on any one or more of the specific ancillary services (for example, voice mail services).
- States that impose sales tax on telecommunications services, but provide exemptions for services furnished through the use of pay telephones, will have to specifically provide these exemptions in their laws using the definitions in the library (pay telephone service or coin operated telephone service).
- States that impose tax on telecommunications services but wish to exempt value-added nonvoice data services, such as encryption, device management, security authentication or data monitoring services that otherwise meet the definition of telecommunications service, will have to specifically provide an exemption in their law using the definition of "value-added nonvoice data service" in the library of definitions.

"Telecommunications services" does not include telephone answering services. Although the service may involve transmission of information (e.g., the person answering the telephone may transmit a message to the customer via telecommunications and separately have paid any tax on the use of that service), the primary purpose of the transaction is the answering service rather than the transmission of the message. Therefore, if a state chose to tax both "telecommunications services" and telephone answering services, it would specifically impose tax on telephone answering services. There is nothing in the Streamlined Sales and Use Tax Agreement to prohibit a state from imposing sales or use tax on services that are outside the

scope of the telecommunications-related definitions. For example, a state could impose tax on additional services such as radio and television audio and video programming services because these services are excluded from the definition of "telecommunications services".

The definitions proposed in this paper are not distinguished by who sells the service. For example, there is no provision in the definition of "telecommunications service" that limits the product to only transmission services sold by a telephone company. However, a state may choose to limit the imposition of sales tax on telecommunications services to those services provided by certain entities or by providing an entity-based exemption. For example, a state may deem the transfer of telecommunications services by a hotel not to be a retail sale because it deems the hotel to be the consumer of the telecommunications services. Alternatively, a state could deem the hotel to be making a retail sale when it separately charges for making telephone calls, in which case such charges are for telecommunications services regardless of whether charged on a call-by-call, per-minute, or other basis.

**Caution:** It is understood that states will make every effort to use these definitions in imposing sales or use tax and not create a new excise or other taxes to circumvent them. There is nothing in the Agreement or these proposed definitions that requires states with existing excise taxes on telecommunications and related service to modify their excise tax definitions.

**PART II**

**Product Definitions**

**TELECOMMUNICATIONS**

**Tax Base/Exemption Terms**

The terms “ancillary services” and “telecommunications service” are defined as a broad range of services. The terms “ancillary services” and “telecommunications service” are broader than the sum of the subcategories. Definitions of subcategories of ancillary services and telecommunications service can be used by a member state alone or in combination with other subcategories to define a narrower tax base than the definitions of ancillary services and telecommunications service would imply. The subcategories can also be used by a member state to provide exemptions for certain subcategories of the more broadly defined terms.

**“Ancillary services”** means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

**“Conference bridging service”** means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

**“Detailed telecommunications billing service”** means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

**“Directory assistance”** means an ancillary service of providing telephone number information, and/or address information.

**“Vertical service”** means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

**“Voice mail service”** means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

**“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. The term “telecommunications service” includes such transmission, conveyance, or routing 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 service is referred to as voice over Internet protocol services or is classified by the Federal

Communications Commission as enhanced or value added. Telecommunications service does not include:

- A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;
- B. Installation or maintenance of wiring or equipment on a customer's premises;
- C. Tangible personal property;
- D. Advertising, including but not limited to directory advertising.
- E. Billing and collection services provided to third parties;
- F. Internet access service;
- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- H. Ancillary services; or
- I. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

**"800 service"** means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

**"900 service"** means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

**"Fixed wireless service"** means a telecommunications service that provides radio communication between fixed points.

**"Mobile wireless service"** means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

**“Paging service”** means 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.

**“Prepaid calling service”** means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

**“Prepaid wireless calling service”** means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

**“Private communications service”** means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

**“Value-added non-voice data service”** means a service, which otherwise meets the definition of telecommunications service, in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

#### **Modifiers of Sales Tax Base/Exemption Terms**

The following terms can be used to further delineate the type of telecommunications service to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

**“Coin-operated telephone service”** means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

**“International”** means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

**“Interstate”** means a telecommunications service that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

**“Intrastate”** means a telecommunications service that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

**“Pay telephone service”** means a telecommunications service provided through any pay telephone.

**“Residential telecommunications service”** means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.

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.

**Modifiers to Definitions of Sales Price and Purchase Price**

**“Telecommunications nonrecurring charges”** means an amount billed for the installation, connection, change or initiation of telecommunications service received by the customer.

Note: For purposes of this definition, the Agreement must not only be amended to add this definition, but the definitions of sales price and purchase price must be amended to allow this exclusion (i.e., part C of the definitions must be amended to allow an exception for telecommunications nonrecurring charges).

# FINAL BILL REPORT

## SSB 5089

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Synopsis as Enacted

**Brief Description:** Conforming Washington's tax structure to the streamlined sales and use tax agreement.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Regala, Zarelli, Eide, Shin, Franklin, Keiser, Rockefeller, Weinstein, Pridemore, Marr, Hobbs, Rasmussen, Murray, Prentice, Fairley, Fraser, Spanel, Berkey, Tom, Kohl-Welles, McAuliffe and Kline; by request of Governor Gregoire).

**Senate Committee on Ways & Means**

**House Committee on Finance**

**Background:** Washington and 45 other states impose retail sales and use taxes. These taxes are imposed on the retail sale or use of most items of tangible personal property and some services. The rates, definitions, and administrative provisions relating to sales and use taxes vary greatly among the 7,500 state and local taxing jurisdictions. This variety is one reason cited in *Quill v. North Dakota*, 112 S.Ct. 1904 (1992), where the United States Supreme Court held that the federal commerce clause prohibits a state from requiring mail-order, and by extension internet, firms to collect sales tax unless they have a physical presence in the state.

An effort was started in early 2000, by the Federation of Tax Administrators, the Multistate Tax Commission, the National Conference of State Legislatures, and the National Governors Association, to simplify and modernize sales and use tax collection and administration nation-wide. The effort is known as the Streamlined Sales Tax Project (SSTP).

In the 2002 Legislative Session, the Legislature adopted the Simplified Sales and Use Tax Administration Act, which authorized the Department of Revenue (DOR) to be a voting member in the SSTP. Many other states have also authorized such participation, and representatives have met to develop an agreement to govern the implementation of the SSTP. This agreement, called the Streamlined Sales and Use Tax Agreement (SSUTA), was adopted by 34 states and Washington, D.C., in November 2002.

During the 2003 Legislative Session, the Legislature enacted legislation at the request of the DOR to implement the uniform definitions and administrative provisions of the SSUTA. However, the legislation did not implement several provisions that are necessary for the state to conform fully to the SSUTA, including a provision that would require the state to change its local sales and use tax sourcing rules.

Under the sales and use tax laws in Washington, local sales and use taxes are sourced on an origin based system according to the following rules:

- Sales tax from the sale of goods is sourced to the retail outlet at or from which delivery is made;

- Sales tax from the sale of a service, with or without a sale of goods, is sourced to the place where the service is primarily performed; and
- Sales tax from the lease or rental of goods is sourced to the place of first use. In the case of short-term rentals, this is the place of business of the lessor. In the case of rentals or leases involving periodic payments, this is the primary place of use by the renter or lessee for each payment period.

On October 1, 2005, the SSUTA went into effect with 13 full members of the agreement. To date, there are 15 full members of the SSUTA and six associate members. Full members are those states that have fully complied with the agreement and associate members are those states that are expected to comply by January 1, 2008.

**Summary:** Provisions are included that would allow the state to conform fully to the SSUTA.

Monetary Allowances and Vendor Compensation: DOR is required to adopt rules providing for monetary allowances for sellers who use certified service providers, tax compliance software, or another means of collecting and remitting tax that is authorized under the SSUTA. In addition, DOR may adopt rules to provide vendor compensation for sellers who collect and remit sales and use taxes to the state; but, this authority is contingent upon action by Congress or the courts that would allow states to require remote sellers to collect sales or use taxes. Monetary allowances and vendor compensation must be funded only from state sales and use taxes.

Amnesty: DOR is prohibited from making assessments for past uncollected sales and use taxes against an unregistered seller who, within 12 months of the effective date of the state's membership in the SSUTA, registers under the agreement and then collects and remits sales and use taxes to the state for a period of at least 36 months. This amnesty does not apply if the seller has already received an audit notice from DOR, with respect to sales and use taxes collected but not remitted by a seller, or with respect to sales or use taxes that are the seller's liability in its capacity as a buyer or consumer.

Sourcing: The sales and use tax sourcing rules are changed to a destination based system and become effective July 1, 2008. The rules provide:

- 1) If a good or service is received by the purchaser at the business location of the seller, the sales tax is sourced to that business location.
- 2) If the good is not received by the purchaser at the business location of the seller, the sales tax is sourced to the location where receipt occurs, if known by the seller.
- 3) If neither of the first two rules apply, the sales tax is sourced to the address indicated for the purchaser in records normally maintained by the seller, if the use of this address by the seller does not constitute bad faith.
- 4) If none of the first three rules apply, the sales tax is sourced to the address for the purchaser obtained during the consummation of the sale, including the address of the purchaser's payment instrument, if the use of this address by the seller does not constitute bad faith. and
- 5) If none of the first four rules apply, the sales tax is sourced to the address from which delivery is made.

The general sourcing rules do not apply to purchases of motor vehicles, aircrafts, watercrafts, modular homes, manufactured homes, and mobile homes. In such purchases, the tax is sourced to the location from which delivery was made.

**Mitigation:** The streamline sales and use tax mitigation account is created to mitigate the effect of the change in sourcing rules to negatively impacted local jurisdictions. On July 1, 2008, the State Treasurer must transfer \$31.6 million into the account from the General Fund. Each July 1 thereafter, the Treasurer must transfer an amount determined by the DOR to fully mitigate negatively impacted local jurisdictions. Mitigation for the first year will be determined by DOR from tax reporting data to determine actual losses less gains from voluntarily registered sellers. Beginning December 31, 2008, distributions from the account will be made quarterly. After the first year, DOR will determine each local jurisdiction's annual losses. Distributions will be made quarterly representing one-fourth of a jurisdiction's annual loss less voluntary compliance revenue from the previous quarter.

DOR must convene an oversight committee comprised of positively and negatively impacted local jurisdictions to assist in determining losses to be mitigated.

Public facility districts whose tax revenue is taken as a credit against the state sales tax may raise their tax up to .004 percent if their revenues have been reduced at least 0.5 percent. The district may only raise its tax by the least amount necessary to mitigate the reduction in sales and use tax collections.

**Confidentiality:** Protections are provided with respect to confidentiality and privacy for businesses that use certified service providers under the SSUTA. Certified service providers are required to perform tax calculations, remittance, and reporting functions and may not retain the personally identifiable information of consumers, with very limited exceptions. Personally identifiable information will not be retained any longer than required to ensure the validity of exemptions.

DOR is required to complete a taxability matrix and will provide notice of changes in the taxability of products or services listed in the matrix. Sellers and certified service providers are relieved from liability to the state and to local jurisdictions for having charged or collected the incorrect amount of sales or use tax if the error resulted from reliance on erroneous information provided by DOR in the matrix.

**Definitions:** The taxability of delivery charges is changed to allow sellers to apportion their delivery charges between taxable and nontaxable property within a shipment, and to apply tax to only the portion that represents delivery charges for taxable property.

Several telecommunication definitions recently incorporated into the SSUTA are adopted. These are changes to terminology in current law, but do not change current law regarding taxability and exemptions.

The current sales tax exemption for prosthetic devices is extended to the component parts of prosthetic devices to conform with the SSUTA definition. For nebulizers, a device that converts liquid medication into a mist to be inhaled, a process is created for purchasers to receive a refund of sales and use tax paid. These items are currently exempt from sales and use tax in Washington.

"Bundled transactions" are defined as the retail sale of two or more products where the products are distinct and identifiable and the products are sold for one non-itemized price.

Excluded from the definition are:

- sales of tangible personal property and a service where the true object of the transaction is the service and the tangible personal property is essential to the use of the service;
- the sale of two services where the true object is the second service and the first service is essential to use of the second service;
- the sale of taxable and nontaxable products where the value of the taxable products is de minimis – de minimis means 10 percent or less of the value of the bundled products; and
- the sale of taxable and exempt tangible personal property that includes food, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies where the value of the taxable tangible personal property is 50 percent or less of the value of the bundled products.

Bundled transactions are subject to sales and use tax.

Small Business Relief: Small retailers are defined as having less than \$500,000 in gross income, at least 5 percent of their income derived from deliveries away from their place of business, and at least 1 percent of their income from deliveries to destinations other than to the ones they report the most local sales tax to. Small retailers are relieved of penalty and interest from errors due to the sourcing changes. In addition, relief is provided for small retailers to allow them to either:

- use a certified service provider for up to two years, at no cost, for sales tax administration; or
- claim a credit against state sales tax liability in the amount of the costs of complying with the sourcing changes. The total credit that any small retailer can claim cannot exceed \$1,000 and may be carried forward until used.

Administration: Sellers are authorized to designate an agent to register the seller with the state. Sellers who agree to collect and remit sales and use taxes under the SSUTA must register through an on-line system authorized under the SSUTA.

Sellers registered under SSUTA are required to use DOR's address-based GIS system to determine the correct rate and jurisdiction for local sales and use tax. Sellers who use the system are held harmless from errors resulting from proper use of the system.

References are removed to the multiple points of use provisions from the sales tax sourcing section. Technical corrections were made to the telecommunication provisions. The small business relief provisions were modified to have the certified service provider fee established by rule rather than a schedule in state. A business and occupation tax credit was also added in addition to the sales tax credit for small businesses.

**Votes on Final Passage:**

Senate	45	3
House	76	15

**Effective:** July 22, 2007 (Sections 301, 1301, 1602, and 1701-1703)

July 1, 2008  
Contingent (Sections 302, 1003, 1006, 1014, and 1018)

# X.25 Protocol Conversion Diagram

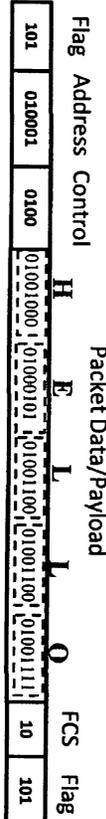
## Department Analogy



Data transmitted asynchronously in binary form to PAD

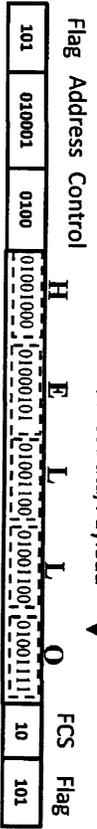
H E L L L L O  
 1010010001 010000101 101001100 01001100 01001111

PAD places asynchronous data in X.25 packet

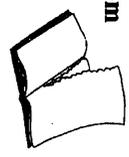


Packet switch reads address information at start of packet and routes packet toward destination

Packet Data/Payload



X.25 packet delivered to customer premises as synchronous X.25 packet



Page removed from book

Page placed in envelope with address label



Carrier reads address information on envelope and routes envelope to destination



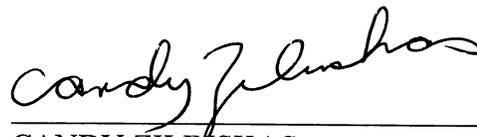
Page delivered to customer's mail box in envelope





I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 12th day of February, 2009, in Tumwater, Washington.

A handwritten signature in cursive script, reading "Candy Zilinskas".

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CANDY ZILINSKAS

Legal Assistant