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To: Uniformity Sales and Use Tax Subcommittee
From: Roxanne Bland, Counsel
Date: July 19, 2007
Subject: Project: Model Statute for Administering Telecommunications
Transaction Taxes

The purpose of this memorandum is to set forth issues for the Subcommittee to consider in deciding the feasibility of developing model statutes for the administration of telecommunications transaction taxes.

Background

At the Subcommittee's March meeting, industry representatives gave a presentation on the need for tax reforms at the state and local level on telecommunications. The industry has identified three areas in which model statutes would be useful:

1. Centralized Collection. According to a presentation to the subcommittee made by industry representatives last March, telecommunications firms must file tens of thousands of tax returns in a given year. Some of these returns are required by the state. Most, however, appear to be required by local jurisdictions. In some instances the local tax bases differ from jurisdiction to jurisdiction within a single state. The industry proposes a centralized collection system to ease their perceived compliance burden. The issues the Subcommittee should consider include:

a. What is Uniformity in Centralized Collection? There are at least 3 different models of centralized collection, and probably more. In one model the state sets the type of tax, tax base, tax rate and administers all taxes and disburses funds to the local government. Another model features centralized administration, but allows local governments to retain some measure of autonomy, such as the option to levy fees. A third model would call for centralized "multi-political subdivision" administration and collection jointly performed by the local governments within a single state, rather than by the state. The question is how the matter should be approached, i.e., developing one proposal for uniformity's sake, or develop others to offer states as alternatives. Regarding the latter, the lack of uniformity may not be so much of an issue, as the proposals would be administrative rules, not statutes.

b. Local Government Involvement. In addition to industry groups, local government groups would have significant input into the development of any model or models. The question here is how local government should be involved in the process if the Subcommittee chooses to take up this matter. Given the stake local governments have in telecommunications tax reform and on-going consideration of the issues in other venues, it also raises the question of whether the MTC is an appropriate venue for tackling reform.

2. Uniform Telecommunications Definitions and Sourcing Rules. The obvious question here is if the Subcommittee opts to craft its own definitions and rules, whether it should do so from scratch or should it base any effort on those contained in the Streamlined Agreement. If the latter, the Committee should consider how such a project might benefit our different member states, which have taken varying positions with respect to adoption of the Streamlined Agreement. There is also a question of whether it is likely those definitions and sourcing rules may change in the future.

3. Protections to Minimize Class Action Lawsuits. Telecommunications providers informed the Committee they sometimes have difficulty obtaining timely information from taxing jurisdictions regarding jurisdictional boundaries and rates. Providers feel this puts them at a risk of class action lawsuits stemming from the erroneous collection of tax from customers who may not receive service in a particular taxing jurisdiction. Creating a database is one thing, but it leaves the question as to what entity will maintain it. It could be the state, it could be a local government (or a coalition of same), or perhaps even a private entity. The answer to this may tie in to the answer to question 1, above, and depend on the level of centralization chosen.