

**MINUTES OF THE
TELECOMMUNICATIONS TAX POLICY SUBCOMMITTEE
REVENUE AND TAXATION INTERIM COMMITTEE**
Wednesday, October 3, 2001 – 3:00 p.m. – Room 131 State Capitol

Members Present:

Sen. Curtis S. Bramble, Senate Chair
Rep. Wayne A. Harper, House Chair
Rep. Judy Ann Buffmire
Rep. David Clark

Members Absent:

Sen. Ron Allen

Staff Present:

Mr. Bryant R. Howe, Research Analyst
Ms. Rebecca L. Rockwell, Associate General
Counsel

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Subcommittee Business

Chair Bramble called the meeting to order at 3:20 p.m.

2. Welcome and Opening Statements from Subcommittee Members

Chair Bramble introduced committee members and staff and made a brief opening statement. He noted that the purpose of the subcommittee is to review tax policy with regards to the telecommunications industry in Utah.

3. Invited Testimony from Telecommunications Industry

Mr. Robin Riggs, Qwest Telecommunications, told the subcommittee that Qwest operates under two business units: Qwest Corporation and Qwest Wireless. He stated that both companies are taxed in much the same way. Qwest pays about \$3 million annually in corporate income taxes and pays over \$91 million each year in total taxes.

Mr. Riggs noted that the State allows cities to impose a utility tax or franchise tax at a rate of up to 6 percent of a telecommunication's company gross revenue base. For telephone companies, this is a narrow base on just local telephone services. For taxation purposes Qwest would not like to be separated out as two business: one wire based and the other wireless.

Mr. Riggs also stated that the subcommittee should study ways to broaden the telecommunications tax base and lower the rate. Perhaps the base would have to be expanded beyond the current basic telephony services. The subcommittee should also find a way to eliminate the current \$1 per month per customer tax on wireless communications tax and replace it with a single tax imposed on a broad base.

He indicated that the Legislature should also consider imposing caps on what municipalities can charge for use of public right-of-ways. The federal Telecommunications Act allows local governments to impose fees to recover costs associated with the use of right-of-ways. The current fee structure does not comply

with this requirement. Municipalities are imposing these fees as source for general revenue, not just to recoup costs.

Other long term issues identified by Mr. Riggs include: (1) as the telecommunications industry moves from a monopolistic to a competitive industry, it is bad public policy to have taxes that are specifically imposed on this industry; (2) equipment purchases by telecommunication's companies should be exempt from sales tax as are manufacturing equipment; (3) the Legislature should find a way to simplify the minor taxes and fees that only telecommunications companies pay such as the "911" fee and poison control fee; (4) a single tax collection entity should be designated where all taxes paid by telecommuni-cations companies are filed and remitted; and (6) the Legislature should closely scrutinize the valuation methods used by the Utah State Tax Commission in determining a company's value for property tax purposes to ensure that the value of intangible assets is excluded.

Rep. Harper asked how the current franchise tax imposed by municipalities violates the Federal Telecommunications Act. Mr. Riggs replied that the act only allows fees to recoup costs associated with use of right-of-ways and the fees imposed by municipalities go beyond this and are used for general revenue purposes.

Mr. Miles "Cap" Ferry, Verizon Wireless, told the subcommittee that the single most important action that the Legislature can take with regards to telecommunications tax policy is to treat the telecommunications industry like other businesses. He stated while there may have been valid policy reasons to treat the telecommunications industry differently in the past, those reasons no longer exist. The Legislature should eliminate the multiple and discriminatory taxes that are now being imposed on the industry. Mr. Ferry noted other actions that the Legislature should take include: (1) enacting an exemption from the sales and use tax for purchases of equipment by telecommunications companies; and (2) simplifying and rationalizing the current tax system with its myriad of taxes, fees, and filing and remittance requirements.

Sen. Bramble asked how would revenues for local jurisdictions be held harmless if the current tax system were to change. Mr. Ferry replied that in some instances municipalities are imposing fees where none is justified. Therefore, the revenue from these fees should not be "held harmless." For example, the \$1 per month per customer tax on wireless services is not fair. Wireless equipment generally does not use public right-of-ways. This fee should never have been imposed in the first place. Mr. Ferry said that his company does not want to cause problems for city revenues, but these hidden taxes are not fair to citizens.

Mr. John McNamara, Regional Director for External Tax Policy, AT&T, told the subcommittee that the single most important issue facing the telecommunications industry is the inclusion of intangible assets in the determination of a company's value for property tax purposes. He said that despite the fact the inclusion of intangible value is prohibited in the Utah Constitution and that certain itemized intangibles are excluded when determining values, intangible assets are inherently included in the use of unit valuation techniques. The unitary value determined by Utah officials of his company are consistency higher than those found in other states that employ the unitary methodology. One solution to this problem would be for county assessors to determine the value of telecommunications companies.

He stated that another issue is the complex and confusing array of the various taxes and fees that a telecommunications company must file and pay. These taxes include multiple local option sales and use taxes. Additionally, the Legislature should consider enacting an exemption from the sales and use tax for equipment purchases by telecommunications companies.

Sen. Bramble asked Mr. McNamara why his company does not challenge the property tax values in court. Mr. McNamara replied that there are many factors involved in the decision to sue and that his company would prefer to use the Legislative process whenever possible.

Sen. Howard Stephenson told the subcommittee that the Property Tax Division of the Utah State Tax Commission is under pressure from counties to maintain business values, thereby enhancing property tax revenues. He said that it is frustrating for companies to win a value dispute under appeal only then to have the values again change in the following tax year, as if the court ruling had never occurred.

Mr. Reed Searle, AT&T Wireless, told the subcommittee that it should consider repealing Section 10-1-204 of the Utah Code. This is the law that the municipalities have relied on for the statutory authority to impose the \$1 per month per customer wireless tax. Cities do not impose this tax on kites or radio waves or anything else in the air. Also, no tax is imposed on other means of communication, such as electronic mail. He said that his company believes that this tax is unfair. Wireless services do not use public right-of-ways. ATT believes that cities are unlawfully imposing this tax as a surrogate for wireless fees. They do not use any public right-of-ways. This statute should be repealed so that all providers are treated the same. This should not result in diminished revenue, would support increases in other taxes to make up last revenue. Right-of-way fee should not be imposed on wireless companies. No wireline provider pays this tax. In the drafting of model ordinance, the amount of the tax was specifically calculated to equal the revenue lost from no right-of-way payments from wireless companies. AT&T Wireless believes that this explanation cannot stand. In other states, courts have ruled that wireless providers cannot be subject to right-of-way fees, because they do not use them. Most companies place facilities on private property and do not disrupt public right-of-way. When they do disturb the right-of-way, they pay a fee. AT&T Wireless also agrees that inclusion of intangibles in property tax assessment remains an issue require remedy. Those burdened with paying the tax should not be burdened with also the administration issues. This was done in Oregon, and seems to be working well.

Mr. Larry Bunkall, MCI/Worldcomm, told the subcommittee that the current tax system for telecommunications companies is quite confusing. The subcommittee indeed has a challenging task and hopes that a simplified tax system can be developed. He told the subcommittee that he would submit written comments at a later time.

Mr. Bunkall stated that when a municipality uses a public right-of-way, there are various fees that must be paid which include curb cut fees, road cut fees, and trenching fees. Unfortunately, these fees have all moved from a cost reimbursement mechanism to a revenue generating mechanism.

Rep. Harper asked if this is a statewide problem or in just certain jurisdictions. Mr. Bunkall said that he would provide this information to the committee.

Rep. Clark stated that some jurisdictions believe that there should be some compensation for the value of the use of the right, not just reimbursement for costs. Mr. Bunkall replied that public right-of-ways are there for use of the public. The services that telecommunication companies provide benefit the public. There are many ways that municipalities have to raise revenue. Municipalities should not use customer's phone bills to raise revenue for general government purposes.

Mr. Rex Knowles, X/O Communications, told the subcommittee that his company is a competitive local exchange carrier. His company entered Utah with the advent of local competition that legislature allowed in 1995. He said that many competitive local phone companies have found Utah to be a favorable place in which to offer services. When his company first entered Utah, there was plentiful capital available for expansion. His company alone has invested in \$72 million in capital, but at this point are not making any money.

However, since spring of last year, the telecommunications sector has faced challenged in the equity markets. Access to capital from the public market is gone. Expenses are being closely examined to remain profitable. The subcommittee should closely examine the imposition of the sales tax on equipment purchased by telecommunications companies. This amounts to double taxation. He said that 10 states grant an exemption for these purchases and that Utah should also consider this exemption.

Mr. Knowles emphasized that a new telecommunications company puts lots of assets in the ground to start doing business. A company is still taxed on these assets even though they produce no income. With regards to property taxes, he said that his company pays \$1 million in property taxes. It has a net book value of \$56 million yet it has been assessed a value of \$63 million for property tax purposes.

He noted another issue that deals with the right-of-way fees imposed on telecommunications companies by the Utah Department of Transportation. For example, his company had budgeted \$6 million for 37 mile redundant fiber optic line between Ogden and Salt Lake City. This line was to be placed in the I-15 corridor. Yet the right-of-way fees was to be \$2.8 million, a 50 percent tax on the investment. Given these costs, his company decided to invest elsewhere.

Mr. Knowles concluded that administration of the tax system needs to be simplified. For example, some municipalities impose both a franchise fee and a license fee. Together, these fees cannot be more than 6 percent. He suggested that these two taxes be combined into one for simplification purposes.

3. Other Business

Chair Bramble announced that the subcommittee would hold its next meeting on Thursday, October 4, 2001 at 8:30 a.m.

MOTION: Rep. Clark moved that the meeting be adjourned. The motion passed unanimously.

Chair Bramble adjourned the meeting at 5:10 p.m.