

**MINUTES OF THE
TELECOMMUNICATIONS TAX POLICY SUBCOMMITTEE
REVENUE AND TAXATION INTERIM COMMITTEE**
Thursday, October 25, 2001 – 8:30 a.m. – Room 131 State Capitol

Members Present:

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

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 can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

1. Call to Order

Chair Bramble called the meeting to order at 8:45 a.m.

MOTION: Rep. Buffmire moved to approved minutes of the October 3 and October 4, 2001 meetings. The motion passed unanimously.

2. Review of Issues Raised During Public Testimony

Mr. Paul Morris, City Attorney, West Valley City, reported on the progress of discussions between municipalities and the telecommunications industry. He reported that both groups have agreed to not seek comprehensive tax simplification legislation until the 2003 General Session. Both groups will focus their efforts on the creation of an address database that will greatly simplify the ability of companies to know what taxes should be collected from a customer who lives at a certain address. Mr. Morris said that the Utah State Tax Commission, in order to comply with the federal Mobile Telecommunications Sourcing Act, must also have this information for state and local sales tax purposes. It would be advantageous for all three groups to prioritize the development and implementation of the database during the coming year.

Mr. Morris also noted that Brooks Fiber has filed a suit against North Ogden City with regards to whether the municipal franchise fee, which is imposed for revenue purposes, violates the Federal Telecommunications Act. This case will be working its way through the federal courts and so a ruling will be made on this issue.

Chair Bramble asked whether the recommendation from the Utah League of Cities and Towns is to maintain the status quo and continue study efforts for another year and will additional municipalities hurry to impose the \$1 per month per customer fee on mobile telecommunications? Mr. Morris replied that all cities who wanted to impose the fee have already imposed it. Also, the model ordinance already complies with the Federal Mobile Telecommunications Sourcing Act.

Rep. Harper asked if there were any tax issues that need to be addressed during the 2002 General Session. Mr. Morris replied that there were not and tax issues and the address database already mentioned can be established without authorizing legislation.

Mr. Robin Riggs, Director of Government Relations, Qwest Communications, told the subcommittee that his company's first priority is to seek sales tax exemption from the legislature for telecommunications equipment. With currently tight capital markets, this tax exemption would provide a significant incentive for companies to invest in Utah rather than in other states that do impose a sales and use tax on this equipment. He stated that because Qwest is a regulated company, any reduction in expenses that it incurs due to lower taxes might result in lower rates for consumers. He agreed with Mr. Morris in that no legislation is needed during the 2002 General Session.

Sen. Allen asked what the revenue effect would be if the sales and use tax were eliminated on sales of equipment by telecommunications companies. Mr. Riggs replied that he did not know.

Chair Bramble asked how state and local governments would replace the lost revenue, which could be significant. Mr. Riggs said that one potential source of revenue would be impose state and local sales and use taxes on sales of inter-state long distance services. He stated that states are allowed to impose this tax but it is not currently imposed in Utah.

Rep. Harper stated that at the last meeting, concern was expressed over right-of-way fees and asked whether it is an issue that will be considered next year. Mr. Riggs replied that the issue is being resolved on two fronts: the North Ogden City court case and in continuing discussions with the Utah League of Cities and Towns.

Mr. Bruce Johnson, Commissioner, Tax Commission (Utah State Tax Commission), told the subcommittee that Utah needs to bring its tax based into conformity with the Federal Mobile Telecommunications Sourcing Act. He stated the address database will help with this effort and all taxes would be sourced according to this address database. Mr. Johnson explained that the effort to streamline and simplify the overall sales and use tax system could benefit from an address database. Local governments have an incentive to have an accurate and current database since imposition and allocation of tax dollars would be based on the information in this database. He stated that with regards to imposition of the sales and use tax on sales of inter-state long distance services, the Tax Commission has no position; however, it would simplify the current reporting and collection of the sales tax.

Mr. Roger Tew, Utah League of Cities and Towns, commented that Tax Review Commission studied the issue of inter-state long distance services several years ago. Originally, there was a constitutional issue that clouded taxation of inter-state calls; however, now that there is clear authority for states to tax these calls, it is a policy issue for the Legislature. He stated if such a tax were enacted, there could be an exemption for call centers and the business with a high volume of long distance calls.

Rep. Clark asked if some taxpayers could be taxed by two different states for the same call. Mr. Johnson replied that some type of credit mechanism would be needed to avoid double taxation.

Mr. Jeff Fox, Crossroads Urban Center, told the subcommittee that his organization has concerns with raising taxes on consumers while granting tax relief to telecommunications companies. He stated that another tax increase is not acceptable.

Mr. Wes Quinton, Vice-President, Utah Taxpayers Association, said that it would be unacceptable to have another tax even if the tax exemption were granted. He explained that the state should not tax business inputs, and the tax burden should not be shifted to consumers.

Chair Bramble asked that since the philosophy is to tax the final product and not the business inputs, wouldn't it make good sense to adopt this proposal. Mr. Quinton replied that ultimately this is a decision for the Legislature but that his organization would not support another tax.

Mr. Richard Martin, Director of External Tax Policy, Sprint, Inc., told the subcommittee that the telecommunication's industry is now under considerable pressure. For example, his company recently announced the layoff of 6,000 employees. Companies face difficulty in raising capital to make investments in equipment and infrastructure. While the tax policy will never be the single most important factor in an investment decision, it does make a difference where investment dollars are allocated, especially in stagnant economic conditions. He said that while he does not support a tax increase, imposing the sales and use tax on inter-state long distance could be one possible revenue source to pay for this sales tax exemption.

Ms. Nancy Gibbs, Utah Rural Telecommunication Association, said that her organization would support the sales tax exemption.

Sen. Allen commented that he was unsure about the proposal. There are substantial risks involved in granting the exemption if companies do not commit to new investments. It would be difficult to enact an exemption when revenues are already falling. He stated proponents would need to strongly argue the need for the exemption and the benefits that it could bring to the State.

Rep. Buffmire agreed that this is a complicated issue and there are other industries, not just telecommunications, that are also seeking a sales tax exemption for equipment purchases.

Chair Bramble said that the fiscal note on a bill only shows the lost revenue, not the possible economic and investment expansion that will occur if the exemption is granted. He stated the Legislature needs a way to look at the long-term economic consequences of a proposal, not just the effects in the next budget cycle and the State should do everything possible to encourage additional investment in tough economic times.

Rep. Harper noted that this will not be the only sales tax exemption or tax relief that will be sought this session. He commented that the subcommittee should focus on whether the proposal is sound public policy and not just the fiscal impact.

With regards to other issues, Rep. Clark noted that the right-of-way issue is being litigated in federal court, comprehensive tax simplification efforts are on hold until the 2003 General Session. Perhaps the subcommittee should focus on state compliance with the Federal Mobile Telecommunications Sourcing Act and seek additional information on the sales tax exemption for telecommunication equipment.

Rep. Harper noted that the counties were not represented at today's meeting. He asked whether there is a need for involvement by county governments. Mr. Johnson replied that counties will be involved in the development of the address database and with regards to property tax valuation issues that were raised at the

last meeting by the industry, the best response would be for the Tax Commission to work through these appeals on a case by case basis. Mr. Johnson explained there is no need for a Legislative response.

3. Subcommittee Discussion and Direction for Future Action

The subcommittee decided that at its next meeting it would continue the discussion of the proposed sales and use tax exemption for sales of telecommunications equipment. It would also consider draft legislation to bring Utah into conformity with the federal Mobile Telecommunications Sourcing Act.

4. Other Business

Chair Bramble announced that the next subcommittee meeting will be on Tuesday, November 13, 2001 at 1:00 p.m.

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