The New Jersey Tax and Fiscal Policy Study Commission

November 16, 2009

The New Jersey Tax and Fiscal Policy Study Commission (the "Commission") has been asked by the Administration to evaluate the taxation of certain communication services[1] and property in New Jersey. The study was requested in response to declines in certain telecommunication tax revenues, perceived inconsistencies in tax applicability or rate depending upon the provider, and rapidly changing telecommunication technologies. We were asked to consider and recommend changes to current telecommunication tax policy.

Telecommunication technology continues to evolve rapidly. There are now three major categories of communication **providers**: telecommunications companies, cable companies, and satellite companies. Each type of provider is capable of delivering the three basic communication **services**: voice, video, and data. There are also numerous non-traditional providers of communication services, both telecommunications and video programming services. These include data networking providers, and companies providing application voice over internet protocol service and streaming video services.

The state currently levies a variety of taxes on communications services. The issues that arise herein relate primarily to taxation of video services at the state level,

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[1] We intend "communication services" to be broadly construed; cf the formally narrower and convoluted definition of "telecommunication services" in NJSA 54:32B-2(cc) and (cc)(13). The definition of "telecommunication services" may vary in federal and state law; see, eg, Letter from Maureen Adams, Director, Division of Taxation, NJ Department of the Treasury, to Mr. Scott Peterson, Executive Director, Streamlined Sales Tax Governing Board, dated May 15, 2008 at http://www.streamlinedsalestax.org/CRIC/5_8_08/New%20Jersey%20response%20to%20CRIC%20hearing.pdf. This letter and definitions referenced were before New Jersey enacted Chapter 123 of the Laws 2008 on December 19, 2008. The revised law modernized New Jersey's definition of telecommunications services under the sales to reflect all new technologies and methods for delivering telecommunications services. It is in conformance with the Streamlined Sales Tax Agreement which New Jersey must follow to stay a member state.

which unlike telephone services, are not subject to any sales tax. While cable providers pay franchise fees to municipalities, those fees amount to substantially less than a comparable sales tax. The taxation of purely internet access is proscribed by federal law.

The following table summarizes taxes paid for various forms of communication services, property and providers.

Table 1. **Major New Jersey Taxes and Fees Applicable to Communication Service Providers**

Service Type	Sales & Use Tax	911 fee[2]	Local Business Personal Property Tax	CATV Franchise Fees[3]		Corporation Business Tax[4]
				< 60%	> 60%	
Telecommunications Services						
Incumbent Local Exchange Carriers	7%	$0.90	3.03%[5]	N/A	N/A	9.36%
Competitive Local Exchange Carriers	7%	$0.90	N/A	N/A	N/A	9.36%
Cellular Carriers	7%	$0.90	N/A	N/A	N/A	9.36%
Cable Telephony Carriers	7%	$0.90	N/A	N/A	N/A	9.36%
Interconnected Voice Over Internet Protocol	7%	$0.90	N/A	N/A	N/A	9.36%
Video Programming Services						
Local Franchisees	N/A	N/A	N/A	2%[6]	4%[7]	9.36%
System-wide Franchisees	N/A	N/A	N/A	4%[7, 8]	4%[7,8]	9.36%

2 Monthly charge assessed for each voice grade access service number. The fee is passed through to end customer. The fee must be itemized and separately identified on each periodic billing statement NJSA Section 52:17C-18

3 Upon certification that a system-wide franchisee is capable of serving 60 percent or more of the households within a municipality, both system-wide and municipal franchisees shall annually pay 4%. N.J.S.A. 48:5A-30.

4 Entities with nexus to New Jersey and net income of $100,000 or more, 9% of allocable entire net income plus 4% surtax on corporation business tax liability is imposed for privilege periods ending on or after July 1, 2006 but before July 1, 2010. NJSA Sections 54:10A-5 and 54:10A-5.40.

5 2008 rate based on statewide estimated average applied per $100 of value. NJSA Section 54:4-1

6 On gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to its cable television reception service in a municipality NJSA Section 48:5A-30 a

7 On all revenues actually received by franchisee from all the charges or fees paid by subscribers. NJSA Section 48:5A-30 d and 48:5A-3.

8 3.5% to municipality served and 0.5% to for the "Pharmaceutical Assistance to the Aged and Disabled" program established pursuant to P.L.1975, c. 194. NJSA Section 48:5A-30 d (1) and (2)

Direct Broadcast Satellite	N/A	N/A	N/A	N/A	N/A	9.36%

I. Summary of Current Problems

First, distortions in taxation of communication services and property have arisen as technologies and competition have evolved. Second, revenue from the business personal property tax imposed on telecommunications equipment and paid directly to municipalities has declined sharply in recent years. These issues are clearly separable, but have arisen at the same time. It is understandable that some might view any increase in fees paid by cable or satellite users and a concomitant reduction in the BPPT as an unfair transfer in tax burden; however, others would view it as an imposition of the same tax regimen on various types of communication services.

Verizon has put a spotlight on these issues by its objection to the business personal property tax (BPPT), which only it and several other local carriers pay. New Jersey has retained for incumbent local exchange carriers a business personal property tax on certain local exchange property.[9] The BPPT is paid directly by Verizon and the other local carriers to the municipalities in which the personal property is located. It has become a less stable tax base as technology has changed the nature of the equipment used by the industry and competitive tax accounting methods have allowed for more rapid depreciation of the new technology assets. For example, between 1995 and 2008, the amount of business personal property tax paid by Verizon has decreased from approximately $103 million a year to approximately $53 million as follows:

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[9] The New Jersey personal property tax originated in 1670 and applied to all businesses and individuals. In 1945 intangible personal property was eliminated from the tax base. In a reform that took effect in 1968 (P.L. 1966, C.136) non-business personal property was exempted from local personal property tax and inventories of all businesses were exempted from the tax. The personal property used in business (except property used by telephone, telegraph, and messenger system companies and other public utilities) became subject to the State Business Personal Property Tax (SBPPT). Machinery and Equipment acquired after January 1, 1977 became exempt from the SBPPT (P.L. 1977, C.4). In 1989 interexchange telecommunications companies became subject to the SBPPT and were exempted from the local personal property tax beginning in 1990 (P.L. 1989, C.2). In 1993 the SBPPT was repealed (P.L. 1993, C.174).

The New Jersey personal property tax originated in 1670 and applied to all businesses and individuals. In 1945 intangible personal property was eliminated from the tax base. In a reform taking effect in 1968 (C. 136, Laws of 1966) non-business personal property was exempted from local personal property tax and inventories of all businesses were exempted from the tax. The personal property used in business (except property used by telephone, telegraph, and messenger system companies and other public utilities) became subject to the State Business Personal Property Tax (SBPPT). Machinery and Equipment acquired after January 1, 1977 became exempt from the SBPPT (C.4, Laws 1977). In 1989 interexchange telecommunications companies became subject to the SBPPT and were exempted from the local personal property tax beginning in 1990 (C.2, Laws of 1989). In 1993 the SBPPT was repealed (C.174, Laws 1993).

Table 2.

Year	Taxes Statewide
1995	$103,452,829
1996	101,919,416
1997	98,319,641
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2005	59,848,618
2006	54,336,202
2007	51,012,695
2008	53,300,000

Source: Office of Legislative Services

It appears that the steepest decline in BPPT revenue is behind us. The BPPT revenue stream could conceivably stabilize or even increase slightly as the expansion of Fios, which contributes to the BPPT base, offsets the continued decline in traditional phone service. However, the revenue stream could continue to decline depending upon how the statutory trigger[10] for its continued collection is adjudicated. A more predictable revenue stream would be helpful to state and local government.

In 2008, $53.3 million in taxes were paid to 555 municipalities based on a taxable value of $1.76 billion in business personal property. It is important to note that there is no relationship between the value of personal property assets located within a municipality and the volume of service provided to the municipality. Rather, tax receipts tend to correspond most closely to the location of equipment such as switching stations in several municipalities. Having substantial taxable value, however, does not necessarily translate into large tax revenues as Hackensack and Rochelle Park Twp indicate. Less than 1% of the value is represented by "poles and wires."

Table 3.

Top Five Municipal Recipients of BPPT Taxes

Municipality	Owner	2008 Taxable Value	2008 Taxes
Newark	Bell Atlantic	$72,848,700	$1,893,338
Camden	Verizon	24,753,986	1,147,347
New Brunswick	Verizon	22,196,451	1,084,075
Jersey City	Verizon	17,294,746	960,204
Hamilton (Mercer)	Bell Atlantic	15,208,497	601,800

[10] N.J.S.A. 54:4-2.45

Top Five Municipalities in Terms of BPPT Value

Municipality	Owner	2008 Taxable Value	2008 Taxes
Newark	Bell Atlantic	$72,848,700	$1,893,338
Hackensack	Verizon	26,667,333	559,214
Camden	Verizon	24,753,986	1,147,347
New Brunswick	Verizon	22,196,451	1,084,075
Rochelle Park Twp	Verizon	17,560,579	455,346

Source: Department of the Treasury, Division of Taxation, Class 6A , 2008, Verizon BPPT.

Finally, the system of taxation is a patchwork that evolved in response to new forms of communication service. Taxes such as the BPPT and the sales tax on phone service are tied to a time when telecommunication services generally meant landline telephones. With the advent of cable television, the imposition of locally-assessed franchise fees arose.

Video programming services have not been subject to taxation by the state or local governments, although municipalities have required cable and phone providers to pay franchise fees on video programming service. Some view these fees as an exchange for the right to do business in a given locale; others see the right of access to public rights of way as the basis of such fees. Satellite TV providers offer the latter view, since they do not require access to public rights of way to deliver their video programming to subscribers, and advance this as the reason that they have not been required to pay franchise fees to municipalities.

The world continues to evolve with new communication services particularly in the realm of data (as distinct from video or voice). As noted, the taxation of a service which is purely data is governed by federal law.

Yet as noted, overlapping services are now provided by phone companies, cable companies, and satellite companies. Many providers are capable of delivering voice, video, and data. Moreover, the lines between these services continue to blur. Voice had been delivered by an analog technology, but is now often delivered as "packets" of data. Video can also be either analog or data based. Information accessed on a computer screen has generally been considered "data", but with the advent of YouTube and similar technologies, a computer screen now has video features that had been associated with a TV screen. In fact, it is becoming more common to download entire TV shows or movies and watch them on a computer rather than on a TV. Also, services such as Skype allow voice transmission over the internet with no use of any sort of telephone. Clearly, telecommunication technologies are merging. While telecommunications services are taxed similarly regardless of the provider, video programming services are taxed differently depending on the type of provider one uses.

A further complication is that certain properties of the providers are taxed differently under the local personal property tax and the state sales tax. The treatment of equipment used to provide telecommunications and video programming services is different. These distortions regarding equipment should be the subject of additional study.

Such discrepancies raise obvious questions.

1. Is the state inadvertently discriminating among customers based solely on the service provider they choose?
2. Is the state tacitly favoring one technology or provider over another by having something other than a level playing field on taxes?
3. Is the state's tax policy inadvertently promoting or retarding the development of a particular type of technology?

II. Perspective of Providers

The telecommunications companies tend to say yes to all of those questions. They note that they are the only ones required to pay a BPPT in New Jersey. Such a tax has been phased out for most companies over time. Verizon has argued that telecommunication taxes are a legacy of the monopoly era and were implemented before alternative telecommunication technologies were even contemplated. Thus no other businesses including other communications providers are required to pay tax on their business personal property assets located in the state. Other providers such as the cable companies note, however, that they pay fees to Verizon for use of poles and wires, and thus effectively reimburse Verizon for some portion of that tax. Verizon has also asserted that state law allows it to stop BPPT payments to any municipality when its market share falls below 51% in that jurisdiction. That statutory interpretation may be litigated, and in any circumstance is beyond the mandate of the Commission. It is mentioned because the decline in BPPT revenues may accelerate in the event of certain administrative or judicial findings. Verizon also states that cable franchise fees in New Jersey have been the lowest in the country.

The cable companies are more likely to say no to at least some of those questions. They note that phone and cable companies are similarly taxed under New Jersey's current tax structure. In addition to general business taxes, each pays franchise fees to municipalities in which they provide video programming services. Both also pay Board of Public Utility (BPU) assessments and local real property taxes. They suggest that the franchise fee that they pay to a municipality is an appropriate parallel to the sales tax imposed at the state level on telecommunications services. They also note that they reimburse the phone company for at least a portion of the personal property tax on "poles and wires" paid by the latter. They note that they make certain voluntary payments to municipalities to subsidize certain local services. They suggest that the franchise tax system has worked well in New Jersey for a long time, and that changing it at the behest of Verizon should not be their problem. Finally, they say that any changes that would result in an increased tax burden on their customers should not be implemented during such difficult economic times.

The Commission also heard from representatives of the satellite industry. They are in accord with the notion of *taxing* a particular service rather than *taxing* the technology or delivery mechanism used. An industry representative, however, was careful to stress the difference between a "tax" imposed by a state or local government, and the "franchise fees" that cable and phone companies pay to municipalities which they view as rent for the right to access public streets and parks to lay the thousands of miles of cable necessary to deliver their video programming to subscribers. They point out that not just anyone can dig up a public street or hang wires from a public utility pole; municipalities own that property and they charge for it. Satellite representatives point out that they impose no such burden on municipalities. Accordingly, the satellite industry is opposed to any tax reform that replaces local franchise fees—which again are an inherent cost of doing business for cable and Verizon—with a tax on video service.

Satellite providers have litigated against the imposition of certain telecommunication taxes imposed in other states. However, it appears that such litigation is generally premised upon an equal protection claim when satellite providers are assessed in a manner (or at a rate) that other providers are not. (See, eg, Ohio and North Carolina). Some litigation has been based on lack of a nexus, or physical presence in a given jurisdiction. A cursory review, however, suggests that things such as sales representatives or converter boxes are adequate to establish a nexus in a given state that is sufficient to allow taxation of satellite service.

III. <u>Other Jurisdictions</u>.

After hearing the viewpoints of the various providers in the state, the Commission considered communication reform efforts in certain other states. In the absence of any staff support for the Commission, the scope of this review was necessarily limited. The State of Virginia recently undertook a comprehensive overhaul of its communication taxes. The end result: The State abolished local franchise fees and paid local governments the exact funds they lost with the proceeds of (1) a 5% sales tax imposed on all video service providers, and (2) a 72 cent per subscriber per month—called a "public rights of way use fee"—that is imposed only on subscribers of video services that use the public rights of way to deliver their services. Unlike New Jersey, the telecommunications and cable companies both[11] pushed for this reform in Virginia. However, their economic interests were far more aligned in Virginia than in New Jersey because the tax burdens on phone and cable were nearly identical under Virginia's earlier regimen. In contrast, in New Jersey consumers of video programming services pay no sales tax and absorb either a 2% franchise fee or 4% franchise fee while customers of telecommunication services pay a 7% sales tax on all services regardless of the provider (see table 1). Thus the interests of phone and cable companies are not economically aligned here.

The Virginia reforms were largely an effort to clean up a patchwork of locally imposed taxes, and to streamline into a statewide, flat-rate structure**.** Virginia now has a 5% tax on all communication services. The tax is explicitly not considered a sales tax and was imposed as a trust tax for municipal funding. Presumably, this was done to segregate the funds from the state general fund which otherwise received receipts from the sales tax. It may also have been done to avoid the uniform sales tax rate provisions in the streamlined sales tax agreement, although Virginia is not presently a party to that agreement. Whether the separate label of "communications tax" is seen as an artifice by parties to the uniformity conventions remains to be seen. In any circumstance, simplicity would be achieved by incorporating any video programming tax into an existing sales tax regimen. The new regimen was apparently designed to be revenue-neutral for municipal governments.

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[11] The concept all along has been: Treat us the same way," said Richard Schollmann, president of the Virginia Cable Telecommunications Association, the industry group that represents cable companies such as Comcast and Cox Communications.
http://www.washingtonpost.com/wp-dyn/articles/A55349-2005Feb1.html

IV. **Policy Options and Recommended Parameters**.

The discussion pretty quickly boils down to whether New Jersey should extend the "tax the service" model to video as has been done in other states. This approach has been endorsed by all three types of service providers in other jurisdictions. Are the current tax disparities in New Jersey too great to allow for a smooth transition? If not, then New Jersey should indeed move toward that model. If the disparities present too great an obstacle to a smooth transition, the discussion should focus on how to effect a sufficiently smooth transition. This could be accomplished by (i) waiting for a more favorable economic climate, (ii) phasing in a new regimen, (iii) adopting a gross receipts tax rather than a sales tax in order to set a rate that is not constrained by the streamlined sales tax uniform rate requirement, or (iv) limiting the sales tax to certain types of video programming services such as premium services. Members of the Commission consider the last alternative to be the best choice because it is simple and addresses the issue of regressivity.

If the discussion were *ab initio*, the "tax the service" model would certainly be the most appropriate one to apply to video. We can uncover no rational basis for discriminating among technologies. Rather, the current approach to taxation appears to be a patchwork of taxes that corresponded to technological developments at different points in time. Those technologies should compete based upon their inherent strengths and weaknesses; ie, their benefits to the consumer.

There are other reasons to favor this "tax the service" model. It is consistent with the current treatment of telecommunications service. The state should not be in a position of favoring one technology over another. Tax policy should not inhibit the development of new and better technologies. Tax policy should be neutral and should not be a factor in driving consumer choice from one delivery mechanism to another. Moreover, a "tax the service" model is transparent and easy to administer. It does not naturally lend itself to distortions.

The next question pertains to the nature of such a tax. The most administratively easy approach is to simply include all communication services in the state sales tax. The main reason not to do so is that the sales tax is already at 7%. This would be an abrupt increase for video customers, and it is uncertain whether companies would make a commensurate reduction in bills if the taxes they currently pay now were replaced by a customer-paid sales tax. Although telecommunication services are taxed more heavily than most other goods or services, a 50 state study[12] indicates that New Jersey's taxes on

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[12] Done by Council on State Taxation: 2004 State Study and Report on Telecommunications Study (published March 2005, CCH; http://tax.cchgroup.com, contact fnicely@cost.org).

communication services are substantially less than in most other states. Subscribers to basic service currently absorb a 2% franchise fee, and would face a net increase of 5% if the franchise fee were eliminated in favor of the current sales tax. Subscribers to premium service currently absorb a 4% franchise fee, and would face a net increase of 3% if the franchise fee were eliminated in favor of a sales tax. This is the case whether the video is from Verizon's Fios service or from traditional cable service. Subscribers to satellite-based video would face an increase of the full 7% since they are currently not subject to franchise fees.

There are few ways to limit an increase in the overall video programming services tax burden with a move to a sales tax. Clearly, the state could partially offset such a tax by reducing or eliminating franchise fees and the business personal property tax and taking those steps into account in future rate-setting hearings. Beyond that, other steps can be taken to minimize the regressivity of a sales tax. In particular, we would prefer extending a sales tax to only premium video service like Pennsylvania. Taxing only premium service could provide enough revenue to make up for a substantial reduction in franchise fees. However, while the Commission recommends the elimination of the baseline franchise fees in conjunction with the sales tax on premium service, we do not recommend an immediate elimination of the franchise fees paid in connection with premium services as part of a recent agreement to build out the state's communications infrastructure. Rather, we recommend a phase-out of those fees over a time.

The business personal property tax is a separate issue. However, it is paid only by certain phone companies and not by traditional cable companies. Thus as part of treating all providers equally, this tax should be rescinded.

One way to limit the additional tax burden of levying the sales tax on these services would be to follow Virginia's approach and label the tax as something other than a sales tax. However, it is not clear that the Virginia approach will withstand the scrutiny of the streamlined sales tax regimen. Moreover, there is some danger in setting different rates for the consumption of various goods and services in the state. In other words, there is the risk of opening a Pandora's box. It is important to note that the phone and satellite representatives have not insisted on revenue **neutrality** in any reform of video programming service taxes. Rather, their interest is primarily in **uniformity**. Verizon representatives suggest that there is substantial demand inelasticity with respect to telecommunication services, and that a net increase in taxation is unlikely to materially alter demand. Other providers expressed a different view, particularly with respect to video. Thus the cable and satellite TV industries are far more likely to seek either a lower rate than the sales tax, a gradual implementation, or an implementation that is predicated upon greater stability in the broader economy —largely because these would be new taxes to their customers.

All providers have indicated that a combination of a new 7% sales tax that is *in addition to* the current franchise taxes would be unduly burdensome. In the current economic climate, we agree. Moreover, we believe that franchise fees no longer reflect the same economic realities as when they were implemented. A franchise tax has traditionally been a payment in return for a privilege. One such privilege is a monopoly right. Since all types of providers are now free to compete in any jurisdiction, any payment for a monopoly right is clearly moot. The other such privilege is the right to interfere with local traffic and commerce in order to install or maintain wire or cable. Since the inconvenience associated with the maintenance of wire or cable is far less than that associated with initial installations, it is appropriate for franchise fees to reflect these changed circumstances. Finally, it is worth noting that municipalities are creatures of the state, and the sovereign entity is well within its rights to establish a more equitable and efficient way to tax a particular service and / or to limit imposition of certain taxes or fees by municipalities. The changes in both technology and economic realities argue for shifting the overall tax regimen more toward a sales tax.

The Commission considered a gross receipts tax is an alternative to a sales tax. The primary reason to use a gross receipts tax is to have more flexibility in assigning a tax rate because a gross receipts tax may not be subject to the interstate streamlined sales tax agreement. The taxes are quite similar, but there are important differences. The former is generally imposed on the provider while the latter is generally imposed on the consumer. A gross receipts tax imposed on the vendor is broader because it applies to services that would be exempt from a sales tax because of the tax status of the purchaser—eg public entities or not for profit entities who would be exempt from paying a sales tax. When imposed on the provider, it is presumed that the tax will be passed through to end consumer and many states with a gross receipts tax specifically provide for pass through of the tax. Since a sales tax is already imposed on all consumers of telecommunication services, it would be far more disruptive to repeal that direct sales tax in favor of an indirect one. Moreover, gross receipts taxes can give rise to much more litigation pertaining to in-state versus out-of-state services and other issues with respect to appropriate measurement of receipts. This approach would appear to invite more complexity than is ideal.

V. Holding Municipalities Harmless

The League of Municipalities voices a concern that a shift from local collection of franchise taxes to state collection of a sales tax poses a threat to the stability of a source of municipal revenues. Municipalities understandably wish to be held harmless and fully reimbursed for foregone tax revenues.

Although the League would welcome a constitutional amendment that would require payments to local jurisdictions that fully replace revenues lost in a transition to a new tax regimen, the members of the Commission do not support a constitutional remedy for an issue more appropriately addressed by statute.

The Commission notes that unlike need-based formulas for general municipal aid, the basis for distributing BPPT revenues is based on the location of subject property. Thus there is no relationship between cash flow from the BPPT and monies from other municipal aid formulas. Over a period of years, the state might justifiably assign new revenues to a general municipal aid formula rather than to the current distribution of revenues. However, transitional aid to offset disproportionate reductions in revenue would be desirable.

While the Commission recognizes the strain from the loss by a municipality of any tax revenue, other issues on both the revenue and spending sides of the equation have a far more significant impact on property taxes. We intend to address those issues in the context of property tax relief in subsequent work.

VI. Findings and Recommendations

The Commission makes the following findings:

i. The convergence of communications technologies has diversified the mediums and infrastructure used by telecommunication companies, multi system operators and direct broadcast satellite operators to provide similar voice, video and data communications services.

ii. The taxation of the local exchange personal property owned by incumbent telecommunications companies is a legacy levy from the era of highly rate regulated telecommunications services which unfairly burdens the current and continuing investment by incumbent telecommunications companies.

iii. Providers are largely free to compete in any jurisdiction. No longer is the privilege of providing video services in a franchise area a monopoly or quasi-monopoly right for which a franchisor should be compensated.

iv. The right to install and maintain communications infrastructure in public rights of way is a valuable right for which the public is entitled to a measure of compensation.

v. A taxation of video programming services in the state should be uniform and indifferent to the means used to provide such services.

vi. The imposition of a transitional franchise fee assessment on statewide franchisees to encourage the prompt built-out of each statewide franchisee's service infrastructure is appropriate and should be maintained.

vii. The revenues generated by the current system of local personal property taxation and franchise fees are material to the finances of the state and its local governments and any reform should not reduce the amount of revenue received by the state and its local governments, in the aggregate.

The Commission recommends the following:

A. Eliminate the Business Personal Property Tax (BPPT). The elimination of the local business personal property tax (BPPT) on local exchange personal property owned by incumbent telecommunications companies. The Commission estimates that the elimination of this local property tax will reduce tax revenues to municipalities by approximately $53 million, based on 2008 values and applicable tax rates.

B. BPPT Cut Should Benefit Ratepayers. The reduction of regulated telephone rates to the extent appropriate to reflect the elimination of the local property tax attributable to local exchange personal property used to provide rate regulated services to residential and single-line commercial customers.

C. Simplify Franchise Fees. The imposition of an $8 annual per-subscriber franchise fee payable by all CATV companies utilizing the public rights of way. The per-subscribe franchise fee would be payable to the subscribers' municipalities. The $8 per-subscriber fee would yield approximately $21 million based on 2008 subscriber levels, as reported by the Board of Public Utilities Cable TV Division.

D. Preserve Build-out Incentive. The retention of a two percent franchise fee on the gross revenues of CATV companies operating under a system-wide franchise within the municipality. The transitional franchise fee would be payable to a municipality until the system-wide franchisee is capable of serving sixty percent or more of the households within the municipality. The system-wide franchise fee would phase-out as system-wide franchisees become certified in each municipality serviced by them. This would not have a net revenue impact.

E. Eliminate Outmoded Franchise Fees. Except as described in D above, the elimination of the current receipts based video franchise fee regime. The Commission estimates that the loss of revenue associated with the elimination of the current receipts based video franchise fee would cost approximately $37 million, based on 2008 receipts. The approximate net revenue loss, after imposition of the per-subscriber franchise fee, based on 2008 franchise the receipts would be $16 million. The net revenue loss would be borne principally by municipalities. The CATV universal access fund would also lose revenue, which should be replaced as noted in recommendation H. The CATV universal access fund received franchise fees of approximately $1.9 million in 2008.

F. Extend Sales Tax to Premium Video Services. The extension of the state sales and use tax to receipts of all video service providers from the sale of video services other than non-premium subscription television. Non-premium subscription television shall mean a service, or schedule or group of programs (which may be offered for sale together with other services, or schedule or group of programs), for which subscribers are charged a subscription fee for the reception or viewing of the programming contained therein, other than pay television, subscription-on-demand and unencrypted broadcast television. By way of example, “basic cable service” and “extended basic cable service” (other than unencrypted broadcast television) are “non-premium subscription television.” Compare 47 C.F.R. § 76.1902(m). The exemption of non-premium subscription television is intended to address regressivity concerns. The Commission estimates the extension of the state sales tax to receipts of current franchisees for non-exempt video programming services would be approximately $54 million based on receipts reported by the CATV companies to the Board of Public Utilities Cable TV Division. The Commission estimates that the extension of the state sales tax to non-exempt revenues attributable to direct broadcast satellite operators would be $17 million based on an estimated 24 percent share of the pay television market in 2008. Total projected sales and use tax collection on the sale of non-exempt video programming services would be $71 million.

G. Supplemental and Transitional Aid to Affected Municipalities. The reassessment of municipal aid to reflect the loss of local tax revenues and the change in the collection of video programming service related revenues. The Commission’s recommendations will shift to the state revenue currently collected by local taxing jurisdictions from local property tax collections and cable television franchise fees. The Commission does not recommend a dollar-for-dollar replacement of lost local revenues with state aid for each affected taxing jurisdiction. We do recommend that in the aggregate, state aid to municipalities should be increased to reflect the increase of state level video programming service revenues and the commensurate loss of such revenue at the local level and should include transitional aid for disproportionately affected municipalities.

H. Preserve Aid to Senior Citizens. The statutory dedication of state sales tax revenues sufficient to replace the 0.5% system-wide franchise fee to be paid to the CATV universal access fund on behalf of persons residing in the municipality who are eligible for "Pharmaceutical Assistance to the Aged and Disabled."

Summary of Estimated Financial Implications of Recommendations:

	Revenue Loss	Revenue Gain
A. Eliminate the Business Personal Property Tax (BPPT)	53,000,000	
C. Simplified Franchise Fees.		21,000,000
E. Eliminate Outmoded Franchise Fees	37,000,000	
F. Sales Tax on Premium Services		71,000,000
	90,000,000	92,000,000

Respectfully submitted,

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