COMMUNICATIONS TAX STRUCTURE

Presented to

COMMUNICATIONS TAX REFORM COMMISSION

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Introduction

The Maryland Communications Tax Reform Commission was created by Chapters 261 and 262, Communications Taxes – Reform Commission, during the 2012 Regular Session of the General Assembly. The 22-member Commission includes legislators, State officials, and representatives of the business community, local governments, and the public. The Commission's charge is to assess the "feasibility and fiscal implications for the State and local governments of a modernized, competitively neutral communications tax and fee system that eliminates disparate treatment of similar communications service providers" and the "efficacy of tax and other incentives to encourage investment in broadband networks and emerging technologies." The Commission is explicitly directed to include an examination of the following taxes and fees as they relate to consumers and providers of communications services:

- State and local property taxes;
- the public service company franchise tax;
- sales and use taxes;
- corporate income tax;
- local communications taxes and fees; and
- any other communications tax or fee that the Commission determines is relevant.

This report, submitted for the Commission's consideration, identifies the current taxes and fees levied on communications services in Maryland. All revenue estimates are preliminary and subject to revision after the receipt of data from the communications companies and the local governments.

Communications

In this report, communications services are separated into telecommunications services and pay-television services. Telecommunications services include long distance (interexchange), local exchange, wireless (cellular), and Voice-over-Internet-Protocol (VoIP) services. Pay-television services include cable and satellite services. These grouping are used for organizational purposes, rather than to suggest the different services in each group are perfect substitutes. In fact, many of the services discussed in this report are not distinct from one another and a number of providers offer more than one of these services.

Definitions

Long Distance (Interexchange)

Two-way voice communication that does not originate and terminate in the same local calling area and that is transmitted via the public switched telephone network. Long distance does not include VoIP service.

Local Exchange

Two-way voice communication that originates and terminates in the same local calling area and that is transmitted via the public switched telephone network. Local exchange does not include VoIP service.

Wireless (Cellular)

Communications services through a mobile phone, which connects to a cellular network or satellite via a radio link.

Voice-over-Internet-Protocol (VoIP)

Any two-way voice communication that originates from or terminates to the subscriber end user's location requiring Internet protocol or any successor protocol to Internet protocol and requiring a broadband connection from the user's location.

Cable Television

Television services distributed to subscribers via radio frequency signals transmitted through coaxial cables or digital light pulses through hybrid fiber coaxial networks.

Satellite Television

Television services delivered to consumers by means of a communications satellite and received by an outdoor antenna, referred to as a satellite dish.

Telecommunications Taxation Structure

The long distance and local exchange industries (landline services) are taxed similarly in Maryland, and, as a result, are grouped together in this paper. The remaining two telecommunications services examined in this report, wireless and Voice-over-Internet-Protocol (VoIP), are taxed or regulated differently from both each other and the more traditional landline services.

Public Service Company Franchise Tax

A 2% public service company franchise tax is applied to the gross receipts of long and local distance telephone, telegraph, electric, common carrier, and gas companies in Maryland. The tax is levied on public service companies for the privilege of doing business in the State. Currently, the tax base of gross receipts is defined as including:

- Gross or total earnings and total receipts;
- The full amount, minus a certain discount, of approved and applicable federal and State tariff charges for telephone lifeline service; and
- For a telecommunications company providing interstate long distance telecommunications service, the gross charges from the sale of long distance telecommunications service that originates or terminates in the State and for which a charge is made to a service address located in the State, regardless of where the amount is billed or paid.

Gross receipts do not include:

- Any revenue derived from an activity not related to the telephone business;
- Net uncollectible revenue;
- Gross charges from the sale by the public service company to another public service company subject to the tax imposed by this subtitle of a service or product for resale
- Gross charges from the sale by the public service company of Internet access service by which a connection is provided between a computer and the Internet; or
- Gross charges from the sale of telecommunications service obtained by using a prepaid telephone calling arrangement.

In 1992, the General Assembly made a significant change to the application of the public service company franchise tax to interstate long distance carriers. The sourcing method for interstate service was changed from a method of using “circuit mileage” to determine the state to which a service was credited for taxation purposes to a “service site charged” method. It was believed that this method would be able to accommodate future technological developments while generating a significant revenue increase to the State of Maryland. For unlimited calling packages, the state of taxation is determined according to the location of the service address.

Gross charges by a public service company from the sale of Internet access service were exempted from the gross receipts base in 1998. This exemption matches federal legislation passed in 1998 that blocked the federal, state, and local governments from imposing taxes on Internet access. The moratorium on Internet access taxation has been extended three times, and currently extends until November 1, 2014. The federal exclusion of tax on Internet access does not apply to a tax that was imposed and collected before October 1, 1998.

A tariff is, essentially, a common name for a schedule of rates filed with or approved by the Public Service Commission (PSC) which the customer pays for public utility service. Federal and State tariff charges for telephone lifeline service are included in the gross receipts tax base. This lifeline service exists to provide low income households with local telephone service. Local telephone companies with over 10,000 customers are required to provide this service. In Maryland, 50% of the lowest rate as allowed by the federal and State government is charged to the customer for limited and basic telephone service. The telephone company is required to add 100% of the rate to the gross receipts base, but is entitled to a credit against the public service company franchise tax equal to the total amount not collected from the customer. The customer is charged all applicable federal, State, and local taxes and fees on 100% of the rate.

Prepaid calling arrangements became exempt from the public service company franchise tax in 2000 and, instead, became subject to the State sales tax. In fiscal year 2012, Maryland received approximately $127.0 million from the public service company franchise tax. Of this total, about $36.8 million, or 29%, was remitted by telephone companies.

Long Distance and Local Exchange Telephone Service

The public service company franchise tax is levied upon companies which are categorized as public service companies because they are, or originally were, in natural monopoly industries: industries which require very large start-up costs to enter the market but very small marginal costs to deliver each additional product after the pre-requisite infrastructure has been established. These market conditions were characteristic to the long distance and local exchange telephone industries: the poles and wires were very expensive to initially erect but, once this infrastructure had been formed, it was relatively inexpensive to add a new customer to the network. In these markets the most efficient level of production can be provided by one firm rather than many competing firms, leading governments to allow the formation of regulated monopolies.

American Telephone and Telegraph (AT&T) held a monopoly on virtually the entire long distance and local telecommunications markets into the latter half of the 20th century. To regulate the prices and quality of service delivered, interstate service became regulated at the federal level by the Interstate Commerce Commission (ICC) in 1910. The ICC controlled entry to the market, as well as minimum and maximum rates. In 1934, regulation of the interstate market was transferred to the newly created Federal Communications Commission (FCC). Intrastate service regulation was primarily left to the states, provided that such activity was performed by a state commission.

Maryland chose to regulate both the intrastate long distance and local exchange industries via the PSC. This commission was given the authority to set a "just and reasonable rate" that AT&T could charge. The State Department of Assessments and Taxation (SDAT) was given the authority to administer the primary State tax levied on long distance and local exchange telecommunications: the 2% public service company franchise tax on gross receipts.

The public service company franchise tax was deemed a superior form of taxation than the more traditional profit-based corporate income tax for two reasons. First, the 2% tax could be easily passed directly to the consumer through higher service rates, thereby simplifying the PSC's maintenance of an equitable rate of profit for the company. Second, for a public service company whose profit is guaranteed, a tax based on overall activity (such as a gross receipts tax) may be better suited to finance the actual cost of governmental resources used by the company compared to a profit based tax. This second point is made even more pertinent when considering that losses in other states decrease corporate tax liability to Maryland; even if the profitability of the company's Maryland operations remain constant.

AT&T's monopoly culminated in the 1982 antitrust case brought against them by the United States Justice Department. This case forced AT&T to sever its connections with twenty-two local operating companies, thereby isolating AT&T to the long distance market. AT&T retained Western Electric, its manufacturing division, Bell Labs, its research and development division, and its long distance operations. Local operations were split between seven independent companies, commonly referred to as the "Baby Bells."

Though federal legislation broke up the AT&T monopoly and created more competition in the telecommunications industry, long distance and local exchange are still categorized as public utilities and are regulated by the Public Service Commission. Traditional telephone companies such as AT&T and Verizon as well as new competitive long and local distance carriers, and resellers of long and local distance service are subject to the public service company franchise tax. The public service company franchise tax is charged directly to the consumer. By law, since 1997, companies must itemize the tax separately on the telephone bill, rather than include the tax in the rate charged to the customer.

Recent Maryland legislation, HB 1182 of the 2009 regular session, proposed replacing the 2% public service company franchise tax on long distance and local exchange telecommunications with the 6% sales tax. This legislation would seem to indicate the belief that the public service company franchise tax, when levied on long and local distance communications, serves as a substitute for the sales tax. This belief may be true, as both taxes are levied on gross receipts; however, the public service company gross receipts tax applies to a different base than the receipts tax levied on sales. For example, receipts from sales to non-profits and to the State or political subdivisions are exempt from the sales tax but are not exempt from the public service company franchise tax. Specified services have become taxable in Maryland since 1992. Prior to this, only tangible personal property was subject to the sales tax. Perhaps the increased taxation of services has fueled consideration of levying the sales tax on long and local distance telecommunications services.

Wireless

Cellular telephone companies are explicitly excluded from the definition of a telephone company and are therefore not considered a public service company. As only public service companies are under the jurisdiction of the PSC and subject to the public service company franchise tax, wireless is both exempt from State regulation and from the tax. Wireless companies are not required to provide telephone lifeline services; thus, they are not deprived of the credit claimed against the public service company franchise tax for providing the service.

Voice-over-Internet-Protocol (VoIP)

The definition of a telephone company includes companies which lease, license, or sell telephone or teletype communications; therefore, a company offering VoIP service can be classified as a telephone company and defined as a public service company. As a result, the State has the authority to levy the public service company franchise tax on VoIP companies. The PSC is prohibited from regulating VoIP service, including requiring the filing of tariffs to provide VoIP service; however, currently, a VoIP company is only subject to the public service company franchise tax if they file an approved tariff with the Public Service Commission. This contradiction can be explained by the fact that VoIP companies may still file a tariff with the PSC for various reasons. Essentially, the business structure of a VoIP company determines whether the company is required to file a tariff, and, if the company files a tariff, it is liable to collect and remit the public service company franchise tax.

Some companies which are not usually thought of as public service companies, such as Comcast, pay the public service company franchise tax on VoIP service. Comcast offers the “Triple Play” service which combines VoIP phone, internet, and cable services; with a different tax structure applicable to each service. Comcast pays the public service company franchise tax exclusively on the VoIP services they provide. VoIP companies are required to provide telephone lifeline services.

State Sales Tax

Sales of tangible personal property made to Maryland consumers are, generally, subject to the 6% State sales tax or, in those instances in which the seller cannot be obligated by the State to collect the sales tax, the customer is subject to the use tax. The sales tax is collected from the purchaser at the point of sale by the seller and remitted to the Comptroller if the seller has nexus in Maryland. The use tax is payable to the Comptroller directly by the purchaser via a use tax return. Most services are exempt from the sales tax because, on the whole, the sales tax only applies to tangible property; however, the number of taxable services has been increasing since 1992. It is estimated that approximately $200 million was remitted to the State in fiscal year 2012 by communications companies for taxable goods and services.

Long Distance and Local Exchange Telephone Service

To prevent tax pyramiding, most input products are not subject to the State sales tax. Following this, capital for use in "production activities" is exempt from the sales tax. Telecommunications firms are currently not entitled to this capital exemption, as the creation of telecommunications services is not considered a "production activity." Additionally the bulk of telecommunications services, including basic service, are not taxable. Since 1992, the sales tax is levied on long and local distance services which may be considered "luxury items". These "luxury items" are:

- "900", "976", "915", and other "900"-type telecommunications services;
- Custom calling service provided in connection with basic telephone service (e.g. call waiting); and
- Telephone answering services.

The sales tax also applies to equipment sold or rented to the consumer. Additionally since tax year 2000, a sales tax is imposed on prepaid telephone services if the sale or recharge takes place at the vendor's place of business located in the State, the buyer's shipping address is in the State, or there is no item shipped, but the buyer's billing address or the location associated with the buyer's mobile telephone number is in the State. Prior to this, prepaid calling arrangements were subject to the public service company franchise tax.

Wireless

All non-prepaid wireless telecommunications became included as a taxable service in 1992, in the same bill that expanded the sales tax on other telecommunications services. The wireless service is sourced to Maryland, and subject to the sales tax, if the primary user's residential or business street address is located in the State. The sales tax was applied to prepaid calling arrangements in tax year 2000. Furthermore, capital goods purchased to provide wireless service is subject to the sales tax. The sales tax is not levied on non-taxable services, such as data plans, which can be reasonably identified from the taxable wireless service cost (even if the provider aggregates the nontaxable service with the taxable service on the price provided to the customer).

Voice-over-Internet-Protocol (VoIP)

The sales tax is applied to 900-type telecommunications services, custom calling services, telephone answering services, prepaid calling arrangements, capital machinery and equipment, and hardware sold or rented to the customer.

Property Tax

A property tax is imposed at the State, county and municipal levels. Non-public utility property (also known as property of ordinary business companies) is assessed and taxed differently from public utility property. Non-public utility property is assessed strictly according to the estimated dollar value of any land and tangible assets which a company holds in Maryland. The property is assessed differently according to if it is real or personal property. Real property, generally, is the term used for any land or improvements to land. Personal property is all property that is not real property. Real property is valued and assessed at market value. Personal property is valued by applying standard depreciation rates to the original cost of the personal property reported by the taxpayers.

Public utility property is assessed according to the unit valuation method. The unit valuation method assesses the national value of a company by calculating the income approach of value, the cost approach to value, as well as all other factors relevant to the determination of the value of the operating unit held by the company. The portion of the national value attributable to Maryland is determined by the State Department of Assessments and Taxation (SDAT). Any property that is exempt by law is deducted from the Maryland assessment. The property of public utility companies is then divided into operating real and operating personal property, as determined by SDAT. This is different from non-public utility companies, whose property is broken into real and personal property (non-operating).

For non-public utility property, personal property is taxed at a rate which is usually 2.5 times higher than real property. The operating personal property of public utility companies is taxed at the same rate as the personal property of non-public utility companies. The operating real property of public utility companies is taxed at a rate 2.5 times higher than the real property of non-public utilities companies at the State, county, and municipal levels. In 1997, cables, lines, poles, and towers of telecommunications companies were reclassified as operating personal property. Before 1997, this property was classified as operating real property.

For the State, the rate of taxation is set annually by the Board of Public Works. This rate is currently 28 cents per hundred dollars of assessed value for operating real property and 11.2 cents per hundred dollars for all other real property. For counties, operating real property is also taxed at a rate 2.5 times higher than other real property, by law. County rates are set by the governing board of each county and Baltimore City. Municipalities also set their own rates on operating real property, which are, again, taxed at a rate 2.5 times higher than all other real property, unless otherwise provided by the governing body of the municipal corporation.

The property of public utility companies is assessed and taxed differently from non-public utility companies due to the monopolistic nature of public utility companies: the higher rates and different assessed values can be justified by the difference between competitive and monopolistic industries. For a company that operates as a monopoly, a higher tax rate is passed through to its customers and thus does not impact its business or act as a barrier to capital investment. The value of each additional pole, alone, is not worth as much as each additional pole when included in the large capital structure required of a natural monopoly industry, possibly explaining the use of the income valuation method.

Long Distance and Local Exchange Telephone Service

Long distance and local exchange telephone service providers are considered public utility companies. As a result, long distance and local exchange property is assessed according to the unit valuation method and taxed at a higher rate than non-public utility property.

Wireless

Maryland's Tax-Property Article explicitly excludes cellular telephone companies from the definition of a public utility company. As a result, wireless property is assessed and taxed as it is for a regular company.

Voice-over-Internet-Protocol (VoIP)

SDAT currently classifies a VoIP company as a public utility company if they file a tariff with the PSC. If a VoIP company is classified as a public utility company, property used to deliver VoIP is assessed according to the unit valuation method. The largest portion of this property is personal property which is taxed at the personal property rate.

Income Tax

Corporations with nexus in Maryland are required to pay an 8.25% tax on the net profit of business activity attributable to the State. Pass-through-entities report income on its members' individual income tax returns, with the tax applied to total income. The progressive individual income tax rates increase with net taxable income attributable to the tax year to a top rate of 5.75%. It is estimated that approximately $12.9 million was paid in corporate income taxes by communications companies in fiscal year 2009.

Long Distance and Local Exchange Telephone Service

Since tax year 2000, all public service companies pay the corporate income tax on gross receipts subject to the public service company franchise tax. Long distance telephone companies were obligated to pay the corporate income tax on these receipts earlier than local exchange companies, and both industries were required to pay the corporate income tax on these receipts earlier than all other public service companies. The rationale for this may have followed the perceived advent of competition in the long and local distance industries following the divestiture of AT&T.

Until 1992, both long and local distance companies could subtract from corporate income gross receipts subject to the public service company franchise tax. Starting in 1992, long distance companies became exempt from this subtraction. Later, through the 1997 regular session, local exchange companies also became subject to the corporate tax on these receipts. In

1999, the corporate income tax subtraction for gross receipts subject to the public service company franchise tax was completely removed from Maryland law.

Despite divestiture, some contend that the local exchange market became competitive later than the long distance market. By 1993, there were 57 companies providing long distance service in Maryland. On the other hand, while the divestiture of AT&T created seven companies in the local market where before there was only one, each of these seven companies existed in its own defined geographic area and was effectively still a monopoly. This could explain why the corporate income tax applied to long distance service sooner than local exchange.

The federal Telecommunications Act of 1996 (1996 Act) passed with the purpose of creating more competition in the telecommunications industry. This bill required that landline telecommunications companies allow other companies to interconnect with their lines, such that customers of separate carriers could contact each other. Telecommunications is a service exhibiting positive network effect, meaning the value of a product increases with the number of other individuals who own the product. Without this provision, the incumbent firms were capable of creating barriers to entry by denying such interconnection, thereby diminishing the value of competing local telecommunications service. Following the 1996 Act, the Maryland legislature levied the corporate income tax on local telecommunications firms, possibly signaling the belief that this industry would now become more competitive.

Pass-through-entities report income on its members' individual income tax returns, with the tax applied to total income. The individual income tax rates are progressive: they rise as net taxable income increases to a top rate of 5.75%.

Wireless

A wireless company's net profit is taxable via the Maryland corporate income tax. Pass-through-entities report income on its members' individual income tax returns, with the tax applied to total income. The individual income tax rates are progressive: they rise as net taxable income increases to a top rate of 5.75%.

Voice-over-Internet-Protocol (VoIP)

A VoIP company's net profit is taxable via the Maryland corporate income tax. Pass-through-entities report income on its members' individual income tax returns, with the tax applied to total income. The individual income tax rates are progressive: they rise as net taxable income increases to a top rate of 5.75%.

Miscellaneous Surcharges

The **9-1-1 Emergency Trust Fund Surcharge** (9-1-1 Surcharge) is used to establish and fund the three digit primary emergency number of the State. The 9-1-1 Surcharge is comprised of two separate fees designated to offset 9-1-1 related capital and operational costs. The state fee, a $0.25 monthly fee per account, is distributed to the Maryland counties at the discretion of the

Department of Public Safety and Correctional Services' Emergency Number Systems Board in response to county 9-1-1 system enhancement requests. The level of the second portion is the "Additional Charge" and determined by each county through local resolution. Maryland's Public Safety Article limits the "Additional Charge" to a maximum of $0.75, monthly. Currently, all Maryland counties charge the maximum amount. The Comptroller collects both fees, exclusive of up to 0.75% of the State portion for expenses incurred, from the telecommunications company, and remits the county portion to its respective source location. **Landlines, wireless and VoIP are subject to the surcharge.** The Emergency Number System Board stated in their annual report that Maryland counties received approximately $40.5 million from the $0.75 "Additional Charge" in fiscal year 2011. It is estimated that Maryland received approximately $13.5 million from the $0.25 State portion of the 9-1-1 fee in the same fiscal year.

The **Universal Relay Service Surcharge** was created in December 1991 to fund the Maryland Relay Service which provides telecommunication equipment for individuals with hearing or speech disabilities. The Secretary of Information Technology certifies the costs of the program to the Public Service Commission, which uses this information to set the monthly surcharge required to fund the program for the following fiscal year. Currently, the surcharge is $0.18 per month for each account. The surcharge is collected monthly from subscribers of switched local exchange access telephone service and remitted to the Comptroller for deposit into the Universal Service Trust Fund. **Landlines, wireless and VoIP are subject to the surcharge.** Revenue from this surcharge was approximately $4.8 million in fiscal year 2011.

Local Sales Taxes

A county, municipal corporation, special taxing district, or other political subdivision of the State may not impose any retail sales or use tax except for a specified few types of sales, including sales of utilities. Currently, Anne Arundel, Baltimore County, and Prince George's County each impose an 8% local sales tax on telecommunications services. The telecommunications services which they levy the tax on are:

- Anne Arundel County: Residential and non-residential local exchange which originates in the county;
- Baltimore County: Residential and non-residential local service; and
- Prince George's County: Residential, non-residential, and wireless.

Local Fees, Surcharges, Excise Taxes, etc.

Local fees, surcharges, or excise taxes are levied on landline, wireless and VoIP telecommunications services. Baltimore City and Montgomery County levy monthly per line fees on telecommunications services. Baltimore city charges $4.00 per residential, non-residential, wireless, and VoIP line. Montgomery County charges $2.00 per residential, nonresidential, and VoIP line and $3.50 per wireless line.

TELECOMMUNICATIONS TAXATION OVERVIEW

	Long Distance	Local	Wireless	Voice-over-Internet-Protocol
Public Service Company Franchise Tax	Yes	Yes	No	Differs[1]
Corporate or Individual Income Tax	Yes	Yes	Yes	Yes
State Sales Tax[2]	Some Services, Consumer Hardware, and Capital Machinery and Equipment	Some Services, Consumer Hardware, and Capital Machinery and Equipment	Yes	Some Services, Consumer Hardware, and Capital Machinery and Equipment
Property Tax[3]	Public Utility	Public Utility	Non-Public Utility	Differs[1]
911 Emergency Trust Fund Surcharge	Yes	Yes	Yes	Yes
Universal Relay Service Surcharge	Yes	Yes	Yes	Yes
Local Sales Tax[4]	Yes	Yes	Yes	No
Local Fees, Excise Taxes, etc.[4]	Yes	Yes	Yes	Yes

Notes:

[1] Whether a VoIP company incurs the public service company franchise tax and is considered a public utility for property tax purposes depends on the existence of a tariff agreement with the Public Service Commission.

[2] Sales tax charged for 900-type phone calls, custom calling services provided in connection with basic telephone service (e.g. call waiting), telephone answering services, prepaid calling arrangements, hardware sold or rented to customers, and capital equipment used to provide telecommunications services.

[3] Public utility property is assessed according to the unit value method and real property is, generally, taxed at a rate 2.5 times higher than the real property of non-public utility companies.

[4] See Appendix 1 for complete list of telecommunications taxes and fees levied by local governments.

Current Pay-Television Taxation Structure

In Maryland, the satellite industry is subject to much of the same taxation and fee structure as the cable industry, with two major exceptions: satellite companies are not subject to franchise or public, educational or governmental (PEG) channel fees.

Franchise Fees

A franchise fee is the payment, currently to local or municipal governments, for the privilege of using the public right-of-way. The public right-of-way is the term used for the land under, and the air above, the ground which is used for infrastructure to provide service to customers. Revenue from franchise fees totaled $56.6 million in fiscal year 2011.

Cable Television

Cable companies must use the public right-of-way in order to lay cables and lines such that they can offer their service to customers. The franchise fee may be viewed as the rent that cable companies pay to localities in exchange for access to public right-of-way. The fee is also intended to cover all costs incurred by the localities to support and regulate the franchises, including the regular maintenance required to support the cable companies' infrastructure and the resources necessary to ensure a quality product and customer service. Some contend that franchising by local governments is superior to state franchising, as localities are more knowledgeable on the customers and the public rights-of-way in their respective regions.

A cable franchise fee is assessed on a cable company by the franchising authority of the state, local or municipal government as agreed through the franchise agreement. The fee is paid based on a percentage of gross revenue, not to exceed 5% per federal law: The Cable and Communications Policy Act of 1984. The cost of the fee is passed on to the subscribers and permitted to be itemized separately on the bill.

Generally, a local government or county will award one or many franchises to serve its jurisdiction. In Maryland, large urban counties have several franchises. These counties have split into regions with each region awarding a franchise. Many incorporated towns and municipalities have utilized their authority to franchise cable companies independent of their respective county.

Satellite Television

Through the federal Telecommunications Act of 1996, satellite companies became exempt from collecting any local tax or fee for remittance to the local governments. In this legislation the terms "tax" and "fee" mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license or fee that is imposed for the privilege of doing business in, regulating, or raising revenue for a local taxing jurisdiction.

This legislation, however, does not prevent taxation of a provider of direct-to-home satellite service by a state or prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by the state.

Public, Educational, or Governmental (PEG) Channel Fees

Federal law provides that, within the franchise agreement, a franchise authority can mandate that a television company make available channel space for public, educational or governmental (PEG) use. Payment from the television company to fund this programming can also be assessed through the franchise agreement, separate from franchise fees.

Cable Television

Cable television companies make payments for PEG programming, granted that it is agreed upon in the franchise agreement.

Satellite Television

As satellite television companies do not enter into franchise agreements with franchising authorities, they do not pay for PEG programming, or have PEG channel carrying requirements. Federal law, however, requires satellite TV companies to set aside 4% of their available channels for public interest programming. This mandate effectively subjects satellite TV companies to similar PEG channel carrying requirements found in the franchise agreements that cable companies negotiate with local governments.

State Sales Tax

The State sales tax is not collected on television subscription packages; however, since 1992, pay-per-view television service is specifically labeled as a taxable service and subject to the 6% sales tax. Television firms are currently subject to the sales tax on purchases of capital and other equipment used to provide television services. Any equipment rented or sold to subscribers is also subject to the sales tax. There existed an exemption from the sales tax on machinery or equipment that enables a television to originate and broadcast or to receive and broadcast digital signals from January 1, 2000 through January 1, 2008.

Boxing and Wrestling Tax

Pay-per-view boxing and wrestling programs sold via cable and satellite were made explicitly subject to a 10% boxing and wrestling gross receipts tax. If the sales tax is also applicable to a boxing and wrestling match, the total tax collected from both the sales and boxing and wrestling taxes may not exceed 10%.

Property Tax

Both satellite and cable television are subject to State, county and municipal government property taxes. Neither pay television provider is categorized as a public utility company; thus, tangible property owned by pay-television companies is assessed according to the value of the property and taxed at normal property tax rates.

Income Tax

Both satellite and cable television companies are subject to an 8.25% tax on all net income attributable to activity in Maryland. Pass-through-entities report income on its members' individual income tax returns, with the tax applied to total income. The individual income tax rates are progressive: they rise as net taxable income increases to a top rate of 5.75%.

Local Sales Tax, Fees, Surcharges, Excise Taxes, etc.

Cable Television

Local governments can levy a sales tax on cable television service because cable television providers are classified as utilities. In addition, local governments and municipalities may charge fees, surcharges and excise taxes on the sale or use of cable television services.

Satellite Television

Through the federal Telecommunications Act of 1996, satellite companies became exempt from collecting any local tax or fee on their video programming for remittance to the local governments. This legislation, however, does not prevent taxation of a provider of direct-to-home satellite service by a state or prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by the state. Nor does it prevent local governments from taxing the set-top boxes or other equipment that satellite TV companies lease or sell to their customers, though State law may.

PAY TELEVISION TAXATION OVERVIEW

Tax/Fee	Cable Television	Satellite Television
Franchise Fee	Yes	Federal Law Restricts
Public, Educational, Governmental Channel Fees	Yes	Federal Law Restricts
State Sales Tax[1]	Some Services, Consumer Hardware, and Capital Machinery and Equipment	Some Services, Consumer Hardware, and Capital Machinery and Equipment
Boxing and Wrestling Tax	Yes	Yes
Property Tax[2]	Non-Public Utility	Non-Public Utility
Corporate or Individual Income Tax	Yes	Yes
Local Sales Tax	Some May[3]	Federal Law Restricts[4]
Local Fees, Surcharges, Excise Taxes, etc.	Some May[3]	Federal Law Restricts[4]

Notes:

1) Sales or use tax charged for pay-per-view programming, hardware sold or rented to customers for television services, and capital equipment used to provide television services.

2) Public utility property is assessed according to the unit value method and real property is, generally, taxed at a rate 2.5 times higher than the real property of non-public utility companies.

3) Some counties may be able to tax cable services, but their legal authority to do so is uncertain.

4) Through the federal Telecommunications Act of 1996, satellite companies became exempt from collecting any local tax or fee for remittance to the local governments.

Appendix 1

LOCAL TELECOMMUNICATIONS TAXES AND FEES—RATES AND REVENUES

County	Unit Taxed	Tax Rate[1]	FY 2011 Revenue	FY 2012 Revenue
Anne Arundel	Local Residential, Local Nonresidential	8% sales tax	$6,000,000	$5,800,000
Baltimore City	Residential, Nonresidential, Wireless, VoIP	$4.00 per line	$34,937,114	$33,720,000
Baltimore	Local Residential, Local Nonresidential	8% sales tax	$9,800,000	$9,800,000
Montgomery	Residential, Nonresidential, VoIP	$2.00 per line	$49,620,000	$51,528,000
	Wireless	$3.50 per line	(Revenue included in amounts above)	
Prince George's	Residential, Nonresidential, Wireless	8% sales tax	$41,982,171	$42,334,100

[1]Tax rates were the same for fiscal 2011 and 2012
*Some changes have been made to 'Unit Taxed' column but 'Revenue' columns remain unchanged
Source: *2012 Budget and Tax Rate Survey*, Maryland Association of Counties

Appendix 2

CABLE TELEVISION FRANCHISE FEES—RATES AND REVENUES

County	Franchise Fee	FY 2011 Yield	FY 2012 Yield	Number of Companies	County Franchise
Allegany	5%	$ 340,000	$ 350,000	2	Y
Anne Arundel	5%	$ 7,840,000	$ 8,500,000	4	Y
Baltimore City	5%	$ 6,130,459	$ 5,400,000	1	Y
Baltimore	5%	$12,240,000	$12,852,000	2	Y
Calvert	5%	$ 1,050,000	$ 1,100,000	1	Y
Caroline	5%	$ 134,376	$ 136,000	1	Y
Carroll	5%	$ 1,150,000	$ 1,200,000	1	Y
Cecil	5%	$ 319,000	$ 333,010	3	Y
Charles	5%	$ 1,694,600	$ 1,710,900	0	Y
Dorchester	0%	$ -	$ -	0	N
Frederick	0%	$ -	$ -	1	N
Garrett	0%	$ -	$ -	3	N
Harford	3%	$ 1,400,000	$ 1,400,000	3	Y
Howard	5%	$ 4,000,000	$ 4,467,940	3	Y
Kent	3%, 5%	$ 19,500	$ 20,000	2	Y
Montgomery	5%	$13,939,000	$14,997,000	1	Y
Prince George’s	5%	$ 9,427,730	$ 8,845,900	2	Y
Queen Anne’s	5%	$ 315,000	$ 320,000	1	Y
St. Mary’s	5%	$ 775,000	$ 800,000	2	Y
Somerset	3%	$ 100,956	$ 95,000	2	Y
Talbot	2%	$ 24,000	$ 24,000	2	Y
Washington	0%	$ -	$ -	0	N
Wicomico	5%	$ 820,000	$ 820,000	2	Y
Worcester	0%	$ -	$ -	0	N
Total		**$61,719,621**	**$63,371,750**		

Source: 2012 Budget and Tax Rate Survey, Maryland Association of Counties

Appendix 3

COUNTY REAL PROPERTY TAX RATES (NON-MUNICIPAL AREAS) FOR FISCAL YEARS 2002 THROUGH 2012

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Allegany	0.98	0.98	1	1	1.001	0.983	0.9829	0.983	0.9829	0.9829	0.982
Anne Arundel	0.96	0.95	0.96	0.94	0.931	0.918	0.891	0.888	0.876	0.88	0.91
Baltimore City	2.33	2.33	2.33	2.33	2.308	2.288	2.268	2.268	2.268	2.268	2.268
Baltimore	1.115	1.115	1.115	1.115	1.115	1.1	1.1	1.1	1.1	1.1	1.1
Calvert	0.89	0.89	0.89	0.89	0.892	0.892	0.892	0.892	0.892	0.892	0.892
Caroline	0.95	0.95	0.95	0.95	0.91	0.87	0.87	0.87	0.87	0.87	0.87
Carroll	1.05	1.048	1.048	1.048	1.048	1.048	1.048	1.048	1.048	1.048	1.028
Cecil	0.98	0.98	0.98	0.98	0.98	0.96	0.96	0.96	0.94	0.915	0.94
Charles	0.95	0.95	0.95	0.96	0.962	0.962	0.962	0.962	0.962	0.962	1.003
Dorchester	0.88	0.88	0.93	0.93	0.92	0.896	0.896	0.896	0.896	0.896	0.976
Frederick	1	1	1	1	1	0.936	0.936	0.936	0.936	0.936	0.936
Garrett	1.04	1.04	1.04	1.04	1	1	1	1	0.99	0.99	0.99
Harford	1.092	1.092	1.092	1.092	1.082	1.082	1.082	1.082	1.064	1.042	1.042
Howard	1.04	1.04	1.04	1.04	1.044	1.014	1.014	1.014	1.014	1.014	1.014
Kent	1.01	1.01	1.01	1.01	0.992	0.972	0.972	0.972	0.972	1.022	1.022
Montgomery	0.901	0.91	0.914	0.902	0.856	0.812	0.812	0.818	0.904	0.904	0.946
Prince George’s	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96
Queen Anne’s	0.98	0.98	0.98	0.93	0.87	0.8	0.77	0.77	0.77	0.767	0.847
St. Mary’s	0.908	0.908	0.908	0.878	0.872	0.857	0.857	0.857	0.857	0.857	0.857
Somerset	0.98	1.01	1.01	1.01	0.99	0.94	0.94	0.92	0.9	0.884	0.884
Talbot	0.56	0.55	0.55	0.54	0.52	0.5	0.475	0.449	0.432	0.432	0.448
Washington	0.95	0.95	0.95	0.95	0.948	0.948	0.948	0.948	0.948	0.948	0.948
Wicomico	1.07	1.05	1.04	1.03	0.993	0.942	0.881	0.814	0.759	0.759	0.769
Worcester	0.73	0.73	0.73	0.73	0.73	0.7	0.7	0.7	0.7	0.7	0.7

NOTE: Many counties levy special service property taxes by district. Those taxes are in addition to those represented on this table.
SOURCE: Maryland Association of Counties/Department of Legislative Services, *Budget and Tax Rate Survey*, August 2011 and prior year data

Appendix 4

PUBLIC, EDUCATION, AND GOVERNMENT (PEG) ACCESS CHANNEL FEES FISCAL YEARS 2012 - 2013

Subdivision	PEG Fee	FY 2012 Yield	FY 2013 Yield	Number of Companies	County Franchise
Allegany	N/A	N/A	N/A	N/A	N
Anne Arundel	1%	$1,700,000	$1,800,000	3	Y
Baltimore City	N/A	N/A	N/A	N/A	N
Baltimore	N/A	N/A	N/A	N/A	N
Calvert	N/A	N/A	N/A	N/A	N
Caroline	N/A	N/A	N/A	N/A	N
Carroll	N/A	N/A	N/A	N/A	N
Cecil	N/A	N/A	N/A	N/A	N
Charles	1%	$335,000	$364,800	2	Y
Dorchester	N/A	N/A	N/A	N/A	N
Frederick	N/A	N/A	N/A	N/A	N
Garrett	N/A	N/A	N/A	N/A	N
Harford	N/A	N/A	N/A	N/A	N
Howard	.20/subscriber/mo.	$100,000	$100,000	3	Y
Kent	N/A	N/A	N/A	N/A	N
Montgomery	See below	$7,195,120	$7,656,572	3	Y
Prince George's	N/A	N/A	N/A	N/A	N
Queen Anne's	N/A	N/A	N/A	N/A	N/A
St. Mary's	N/A	N/A	N/A	N/A	N/A
Somerset	N/A	N/A	N/A	N/A	N/A
Talbot	2%	$27,408	$27,000	2	Y
Washington	N/A	N/A	N/A	N/A	N
Wicomico	N/A	N/A	N/A	N/A	N
Worcester	N/A	N/A	N/A	N/A	N/A
Total Yield		**$9,357,528**	**$9,948,372**		

Note: RCN and Verizon - 3% of gross revenues; Comcast - Capital Equipment: $200,000 per year adjusted for CPI
Operating Costs: $1.5 million per year adjusted for CPI

Source: Maryland Association of Counties/Department of Legislative Services, Budget and Tax Rate Survey, August 2012

Appendix 5

COMMUNICATIONS TAX STRUCTURE OVERVIEW

	Telecommunications Services				Pay-Television Services	
	Local	**Long**	**Wireless**	**VoIP**	**Cable**	**Satellite**
Public Service Company Franchise Tax	Yes	Yes	No	Differs[1]	No	No
Property Tax[2]	Public Utility	Public Utility	Non-Public Utility	Differs[1]	Non-Public Utility	Non-Public Utility
State Sales and Use Tax	Some Services, Consumer Hardware, and Machinery and Equipment[3]	Some Services, Consumer Hardware, and Machinery and Equipment[3]	Yes	Some Services, Consumer Hardware, and Machinery and Equipment[3]	Some Services, Consumer Hardware, and Machinery and Equipment[4]	Some Services, Consumer Hardware, and Machinery and Equipment[4]
Income Tax	Yes	Yes	Yes	Yes	Yes	Yes
9-1-1 Surcharge	Yes	Yes	Yes	Yes	No	No
Relay Service Surcharge	Yes	Yes	Yes	Yes	No	No
Boxing and Wrestling Tax	No	No	No	No	Yes	Yes
Franchise Fees	No	No	No	No	Yes	Federally Prohibited[7]
PEG Fees	No	No	No	No	Yes	Federally Prohibited[7]
Local Sales Tax	Yes[5]	Yes[5]	Yes[5]	No[5]	Some May[6]	Federally Prohibited[7]
Other Local Taxes, Surcharges, Fees	Yes[5]	Yes[5]	Yes[5]	Yes[5]	Some May[6]	Federally Prohibited[7]

Notes:

[1)] Whether a VoIP company incurs the public service company franchise tax and is considered a public utility for property tax purposes depends on the existence of a tariff agreement with the Public Service Commission.

[2)] Public utility property is assessed according to the unit value method and real property is, generally, taxed at a rate 2.5 times higher than the real property of non-public utility companies.

[3)] Sales or use tax charged for 900-type phone calls, custom calling services provided in connection with basic telephone service (e.g. call waiting), telephone answering services, prepaid calling arrangements, hardware sold or rented to customers, and capital equipment used to provide telecommunications services.

[4)] Sales or use tax charged for pay-per-view programming, hardware sold or rented to customers for television services, and capital equipment used to provide television services.

[5)] See Appendix 1 for complete list of telecommunications taxes and fees levied by local governments.

[6)] Some counties may be able to tax cable services, but their legal authority to do so is uncertain.

[7)] Through the federal Telecommunications Act of 1996, satellite companies became exempt from collecting any local tax or fee for remittance to the local government.