MARYLAND Association of COUNTIES

THE MARYLAND MUNICIPAL LEAGUE

Maryland Communications Tax Reform Commission
December 5, 2012

The Maryland Association of Counties (MACo) and the Maryland Municipal League (MML) would like to thank the Maryland Communications Tax Reform Commission (Commission) for providing the opportunity for our members to participate in the discussion regarding communication taxes and fees. Local governments have a vested interest in the recommendations of this Commission. Any changes to the Maryland tax code need to be properly structured and implemented to ensure that the local revenues which fund important community services will not be negatively affected.

Currently, the communications industry annually earns billions in revenues providing voice, broadband, and video services within Maryland. Commission staff is currently working to calculate this revenue information. Commission staff is also working to calculate communication tax and fee revenue, and property tax revenue for county and municipal governments. However, using MACo's Fiscal 2013 Budget and Tax Rate survey, we can offer a snapshot of the communication tax and fee revenue being collected by county governments.

At the local level, four counties and Baltimore City have the authority to impose local telecommunications taxes and do so, generating approximately $135.9 million in revenue. Local governments - county and municipal - also collect real property taxes on property owned by communications providers within local jurisdictions. Additionally, the State and all counties impose fees on landline, wireless, and VOIP telephone service to support 9-1-1 services. These fees total approximately $42.5 million in FY 2013.

Telephone, broadband and cable providers (other than satellite communications providers) also use thousands of miles of State and local rights-of-way to earn billions in annual revenue. Local rights-of-way are used to deliver services and to generate additional revenue by leasing capacity on utility poles, leasing channels on video systems, and/or providing telecommunications backhaul services using facilities located within the public rights-of-way.

Nineteen of Maryland's twenty-four Counties, and a majority of municipalities located within those counties, require cable franchise fees as compensation for use of local rights-of-way. Five counties also require Public, Education, and Government (PEG) capital grants which may be used solely to construct local communications networks and to equip television production facilities. Together, these fees support general government services, but are also used in many jurisdictions to construct and operate local government communications networks, provide high speed broadband for schools and libraries, deliver reliable public safety communications for first responders, televise and Internet-stream local legislative and town hall meetings, support community-produced media, and to provide local interest, educational, public health, and emergency preparedness programming. Collectively, for county governments, these local right-of-way fees total $76.7 million in FY 2013.

A restructuring that could potentially result in a loss of revenue could not be coming at a worse time. Local governments have foregone approximately $1.8 billion in State support since FY 2010, affecting nearly every essential local service: roads and bridges; law enforcement; health departments; and jails. In addition, declining property assessments have negatively affected local government's largest revenue source, and although it appears assessments have "bottomed out," property tax revenue growth will be stagnant for the next several years.

It is within this context that we offer the following comments for the Commission's consideration.

Clarification of Commission's Process and Next Steps

Including today's meeting, the Commission has met three times. It is anticipated that this meeting will be the first opportunity for members to discuss their views on communications tax reform. In addition, the Commission is collecting data related to State and local government tax and fee collections and payments for State fiscal year 2012 from communications companies and State and local government agencies. While some of this data is still being collected, MACo and MML would like to have a better understanding of how the Commission's staff plans to use this information, whether members will be given the opportunity to review and comment on the data collected, and the next steps given the upcoming legislative session.

According to the legislation that created this Commission, an interim and final report is to be submitted. The interim report is due on or before December 31, 2012. In developing these reports, the Commission would be most effective if it provided a clear process for their preparation, incorporated the differing views of the members, and allowed members to review, comment, and vote on the reports prior to their public release.

General Principles for Communications Tax Reform

According to today's meeting agenda, members are to be asked to offer policy proposals for consideration and discussion by the Commission. MACo and MML would need further vetting with its membership before offering any formal policy proposals or comments in these areas. However, both organizations' members look forward to participating in discussions during today's meeting and offering the following general principles for communications tax reform.

1. **Local Government Revenue Not Be Negatively Affected –** Reform of the communications tax structure should protect current local government revenues and recognize that the necessity of providing services to the community will continue to grow. Tax statutes should be robust enough to capture economic changes and shifts in use of technology over time without requiring additional statutory amendments.

2. **Flexible Local Government Taxation Authority –** Under the current communications tax structure, some local governments have pursued the authority to impose and collect taxes on certain services while others have not. Reform of the communications tax structure should maintain this local flexibility.
    a. Local option to not impose local communications taxes.
    b. Local option to establish local communications taxes and rates subject to common state definitions.
    c. Local collection of communications taxes.
    d. Local audit authority.

3. **Preserve Local Franchising and Rights-of-Way Management –** Preservation of local franchising and rights-of-way management is both consistent with existing constitutional mandates and implementing legislation in the state, and recognizes the critical distinction between taxes which support general government activities, and user fees which pay for special government privileges. Local governments should maintain their right to franchise, manage use of, and require fees for use of, public right-of-ways.

4. **Preserve Tax and Fee Distinction –** Excise (sales and use) taxes allow governments to raise general funds for governmental purposes. Franchise fees and other forms of public property user fees serve a different purpose. Maryland local governments collect these fees to compensate the community for a third party's use and occupation of local property. Confusing the two concepts incentivizes providers to make inefficient use of local property and

other resources, to the detriment of the local community. This distinction should be recognized.

5. **Comparable Services to be Treated Equitably –** General taxes and special purpose fees (such as 911 and those for the hearing impaired) should fall equitably on all substitutable communications services (such as landline, wireless, prepaid, and broadband-based telephone services). Taxes should also equitably apply to related services (such as call waiting, call forwarding, answering services, and toll calls).

6. **Tax Policy Can Be An Incentivizing Tool –** Targeted tax policy can be used as a tool to encourage private and public development of broadband networks in areas of the state where additional investment is needed. General tax reduction is not likely to promote additional private investment in areas where current market factors have failed to spur investment.

MACo and MML would again like to thank the Commission for providing our members the opportunity to comment on the communications tax and fee structure in Maryland. We look forward to working within the Commission as it continues its deliberations.