

House Bill 678

By: Representative Ehrhart of the 36th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48, Chapter 76 of Title 36, and Article 1 of Chapter 5 of Title 46, of the
2 Official Code of Georgia Annotated, relating to revenue and taxation, expedited franchising
3 of cable and video services, and general provisions relative to telephone and telegraph
4 service, respectively, so as to comprehensively revise the taxation of all entities participating
5 in the modern communications industry; to provide for the intent of the General Assembly;
6 to provide for definitions; to provide for procedures, conditions, and limitations; to provide
7 an exemption from state sales tax for certain communications equipment; to replace certain
8 local taxes and fees on communications services providers with a state tax on such providers;
9 to provide local political subdivisions with comparable resources to replace lost revenue; to
10 provide for cross-references; to provide for related matters; to provide for an effective date
11 and applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **PART I**
14 **SECTION 1-1.**

15 The General Assembly recognizes that the communications industry has become increasingly
16 competitive and that the distinctions among the providers of the various types of
17 communications services have become blurred. The General Assembly desires to treat
18 similar services consistently under the tax laws of this state. Accordingly, the General
19 Assembly finds that it is no longer appropriate for the providers of certain types of
20 communications services to be required to pay a myriad of local taxes, licenses, and fees
21 while other communications services providers are not required to pay some or all of such
22 taxes, licenses, and fees. The General Assembly finds, however, that it is in the best interests
23 of the state and its political subdivisions that the tax revenues available to such political
24 subdivisions not be diminished by the elimination of certain local taxes, licenses, and fees
25 imposed on communications services providers; and that a state level communications

26 services tax imposed equitably on communications services is expected at a minimum to
27 provide to each such political subdivision comparable tax revenues to the local taxes,
28 licenses, and fees that should be eliminated. The General Assembly further finds that, in
29 order to promote investment in Georgia's communications infrastructure and since the
30 communications services sold will be taxed, the equipment purchased to provide such
31 communications services should be exempt from state sales tax. The General Assembly
32 further finds that a modernized communications services tax structure in lieu of other taxes
33 on communications would promote simplicity, uniformity, and efficiency in the
34 administration of and compliance with the taxes on communications services which is in the
35 best interests of the state.

SECTION 1-2.

37 This part of this Act shall be known and may be cited as the "Georgia Digital Jobs Act."

SECTION 1-3.

39 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
40 amended in Code Section 48-8-2, relating to definitions regarding sales and use tax, by
41 revising paragraphs (31), (34), and (39) and by adding new paragraphs to read as follows:

"(4.1) 'Call center' means one or more locations that utilize telecommunications services in customer services, soliciting sales, reactivating dormant accounts, conducting surveys or research, fundraising, collection of receivables, receiving reservations, receiving orders, or taking orders."

"(5.1) 'Communications services' means telecommunications services, ancillary services, and video programming services."

"(18.1) 'Mobile telecommunications service' has the same meaning given to such term in Section 124(7) of the Mobile Telecommunications Sourcing Act, P.L.106-252, 4 U.S.C. Section 124(7)."

51 "(31) 'Retail sale' or a 'sale at retail' means any sale, lease, or rental for any purpose other
52 than for resale, sublease, or subrent. Sales for resale must be made in strict compliance
53 with the commissioner's rules and regulations. Any dealer making a sale for resale which
54 is not in strict compliance with the commissioner's rules and regulations shall ~~himself~~ be
55 liable for and shall pay the tax. The terms 'retail sale' or 'sale at retail' include, but are not
56 limited to, the following:

(A) Except as otherwise provided in this chapter, the sale of natural or artificial gas, oil, electricity, solid fuel, transportation, local telephone services prepaid calling service and prepaid wireless calling service, alcoholic beverages, and tobacco products, when made to any purchaser for purposes other than resale. Sales of communications

61 services other than prepaid calling service and prepaid wireless calling service shall not
62 be retail sales or sales at retail for purposes of this chapter and shall not be subject to
63 the tax imposed by this chapter;

64 (B) The sale or charges for any room, lodging, or accommodation furnished to
65 transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which
66 rooms, lodgings, or accommodations are regularly furnished to transients for a
67 consideration. This tax shall not apply to rooms, lodgings, or accommodations supplied
68 for a period of 90 continuous days or more;

69 (C) Sales of tickets, fees, or charges made for admission to, or voluntary contributions
70 made to places of, amusement, sports, or entertainment, including, but not limited to:

71 (i) Billiard and pool rooms;

72 (ii) Bowling alleys;

73 (iii) Amusement devices;

74 (iv) Musical devices;

75 (v) Theaters;

76 (vi) Opera houses;

77 (vii) Moving picture shows;

78 (viii) Vaudeville;

79 (ix) Amusement parks;

80 (x) Athletic contests, including, but not limited to, wrestling matches, prize fights,
81 boxing and wrestling exhibitions, football games, and baseball games;

82 (xi) Skating rinks;

83 (xii) Race tracks;

84 (xiii) Public bathing places;

85 (xiv) Public dance halls; and

86 (xv) Any other place at which any exhibition, display, amusement, or entertainment
87 is offered to the public or any other place where an admission fee is charged;

88 (D) Charges made for participation in games and amusement activities;

89 (E) Sales of tangible personal property to persons for resale when there is a likelihood
90 that the state will lose tax funds due to the difficulty of policing the business operations
91 because:

92 (i) Of the operation of the business;

93 (ii) Of the very nature of the business;

94 (iii) Of the turnover of so-called independent contractors;

95 (iv) Of the lack of a place of business in which to display a certificate of registration;

96 (v) Of the lack of a place of business in which to keep records;

97 (vi) Of the lack of adequate records;

- 98 (vii) The persons are minors or transients;
99 (viii) The persons are engaged in essentially service businesses; or
100 (ix) Of any other reasonable reason.

101 The commissioner may promulgate rules and regulations requiring vendors of persons
102 described in this subparagraph to collect the tax imposed by this article on the retail
103 price of the tangible personal property. The commissioner shall refuse to issue
104 certificates of registration and may revoke certificates of registration issued in violation
105 of his rules and regulations; or

106 (F) ~~Charges, which applied to sales of telephone service, made for local exchange~~
107 ~~telephone service, except coin operated telephone service, except as otherwise provided~~
108 in subparagraph (G) of this paragraph; In the case of a bundled transaction, including

109 a transaction that includes telecommunication service, ancillary service, Internet access,
110 or audio or video programming service:

111 (G)(i) If the price is attributable to products or services that are taxable and products
112 or services that are nontaxable, the portion of the price attributable to the nontaxable
113 products or services may be subject to tax unless the provider can identify by
114 reasonable and verifiable standards such portion from its books and records that are
115 kept in the regular course of business for other purposes, including, but not limited to,
116 nontax purposes.

117 (ii) If the price is attributable to products or services that are subject to tax at different
118 tax rates or subject to different taxes, the total price may be treated as attributable to
119 the products or services subject to tax at the ~~highest tax~~ higher rate or the higher-rate
120 tax unless the provider can identify by reasonable and verifiable standards the portion
121 of the price attributable to the products subject to tax at the lower rate or the
122 lower-rate tax from the provider's books and records that are kept in the regular course
123 of business for other purposes, including, but not limited to, nontax purposes; or

124 (H)(G)(i) Charges made for services by a person which are the subject of a referral
125 from a SOURCE Case Management Provider.

126 (ii) This subparagraph shall stand automatically repealed on the date the state
127 treasurer certifies in writing to the commissioner that federal matching funds have
128 ceased to be available or on June 30, 2014, whichever date is earlier."

129 "(34)(A) 'Sales price' applies to the measure subject to ~~sales~~ tax and means the total
130 amount of consideration, including cash, credit, property, and services, for which
131 personal property or services are sold, leased, or rented, valued in money, whether
132 received in money or otherwise, without any deduction for the following:

133 (i) The seller's cost of the property sold;

- 134 (ii) The cost of materials used, labor, or service cost, interest, losses, all costs of
135 transportation to the seller, all taxes imposed on the seller, and any other expense of
136 the seller;
137 (iii) Charges by the seller for any services necessary to complete the sale; and
138 (iv) Delivery charges.

139 (B) 'Sales price' shall not include:

- 140 (i) Discounts, including cash, term, or coupons that are not reimbursed by a third
141 party that are allowed by a seller and taken by a purchaser on a sale;
142 (ii) Interest, financing, and carrying charges from credit extended on the sale of
143 personal property or services, if the amount is separately stated on the invoice, bill of
144 sale, or similar document given to the purchaser;
145 (iii) Any taxes legally imposed directly on the consumer that are separately stated on
146 the invoice, bill of sale, or similar document given to the purchaser;
147 (iv) Installation charges if they are separately stated on the invoice, billing, or similar
148 document given to the purchaser;
149 (v) Telecommunications nonrecurring charges if they are separately stated on the
150 invoice, billing, or similar document; and
151 (vi) Credit for any trade-in.

152 (C) 'Sales price' shall include consideration received by the seller from third parties if:

- 153 (i) The seller actually receives consideration from a party other than the purchaser
154 and the consideration is directly related to a price reduction or discount on the sale;
155 (ii) The seller has an obligation to pass the price reduction or discount through to the
156 purchaser;
157 (iii) The amount of the consideration attributable to the sale is fixed and determinable
158 by the seller at the time of the sale of the item to the purchaser; and
159 (iv) One of the following criteria is met:

- 160 (I) The purchaser presents a coupon, certificate, or other documentation to the seller
161 to claim a price reduction or discount where the coupon, certificate, or
162 documentation is authorized, distributed, or granted by a third party with the
163 understanding that the third party will reimburse any seller to whom the coupon,
164 certificate, or documentation is presented;
165 (II) The purchaser identifies himself or herself to the seller as a member of a group
166 or organization entitled to a price reduction or discount; provided, however, that a
167 'preferred customer' preferred customer card that is available to any patron shall not
168 constitute membership in such a group; or

169 (III) The price reduction or discount is identified as a third-party price reduction or
170 discount on the invoice received by the purchaser or on a coupon, certificate, or
171 other documentation presented by the purchaser."

172 "(39) 'Telecommunications service' means the electronic transmission, conveyance, or
173 routing of voice, data, audio, video, or any other information or signals to a point, or
174 between or among points. The term 'telecommunications service' includes such
175 transmission, conveyance, or routing in which computer processing applications are used
176 to act on the form, code, or protocol of the content for purposes of transmission,
177 conveyance, or routing without regard to whether such service is referred to as voice over
178 Internet protocol services or is classified by the Federal Communications Commission
179 as enhanced or value added. 'Telecommunications service' Telecommunications service
180 shall not include:

- 181 (A) Data processing and information services that allow data to be generated, acquired,
182 stored, processed, or retrieved and delivered by an electronic transmission to a
183 purchaser where such purchaser's primary purpose for the underlying transaction is the
184 processed data or information;
- 185 (B) Installation or maintenance of wiring or equipment on a customer's premises;
- 186 (C) Tangible personal property;
- 187 (D) Advertising, including, but not limited to, directory advertising;
- 188 (E) Billing and collection services provided to third parties;
- 189 (F) Internet access service;
- 190 (G) ~~Radio and television audio and video programming services, regardless of the
191 medium, including the furnishing of transmission, conveyance and routing of such
192 services by the programming service provider. Radio and television audio and video
193 programming services shall include but not be limited to cable service as defined in 47
194 USC 522(6) and audio and video programming services delivered by commercial
195 mobile radio service providers, as defined in 47 CFR 20.3 Video programming service;~~
- 196 (H) Ancillary services; or
- 197 (I) Digital products delivered electronically, including, but not limited to, software,
198 music, video, reading materials, or ring tones."

199 "(42.1) 'Video programming service' means the sale, offering, transmission, conveyance,
200 or routing of audio or video programming services for purchase by subscribers or
201 customers, regardless of the medium, technology, or method of display, including the
202 furnishing of transmission, conveyance, and routing of such programming by the
203 programming service provider. Such term shall include, but not be limited to:

- 204 (A) Cable service, as defined in Section 602(6) of the Communications Act of 1934(47
205 U.S.C. Section 522(6)):

- (B) Interactive on-demand service, as defined in Section 602(12) of such Act (47 U.S.C. Section 522(12));
- (C) The provision of video programming by a multichannel video programming distributor, as defined in paragraphs (20) and (13) of Section 602 of such Act (47 U.S.C. Section 522); and
- (D) The distribution of audio or video programming by providers of mobile service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, when such services are offered for purchase by subscribers or customers of such service."

SECTION 1-4.

215 Said title is further amended in Code Section 48-8-3, relating to exemptions from sales and
216 use taxes, by replacing ";" or" with a semicolon at the end of paragraph (94), replacing the
217 period at the end of paragraph (95) with a semicolon, and by adding new paragraphs to read
218 as follows:

"(70.2)(A) The sale or use of electricity for use at an Internet data center and eligible business property located at and used at such center.

(B) As used in this paragraph, the term:

(i) 'Eligible business property' means business property located at and used at an Internet data center and which is used for:

(I) The provision of a service included in the business of the primary user of the Internet data center, including equipment cooling systems for managing the performance of the property; or

(II) The generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(ii) 'Internet data center' means a data center facility that:

(I) Is used primarily or is to be used primarily by a business engaged in software publishing included in 2007 North American Industrial Classification Systems code 518210 or an Internet activity included in 2007 North American Industrial Classification Systems code 519130:

(II) Is composed of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned by or owned by affiliation with the operator of that facility; and

(III) Has a written determination from the commissioner that at least \$50 million in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within three years after the commencement of construction of the facility;"

242 "(96) The sale of any products or services purchased by a communications services
243 provider for further commercial broadcast, rebroadcast, transmission, or retransmission,
244 in whole or in part, to another person as such product or as a communications service; or
245
246 (97) The sale of equipment used in the business of providing communications services.
247 For purposes of this paragraph, the term 'equipment used in the business of providing
248 communications services' means all equipment, machinery, software, or other
249 infrastructure that is used in whole or in part in producing, broadcasting, or distributing
250 programs; sending, receiving, storing, transmitting, retransmitting, amplifying, switching,
251 or routing voice, data, or video communications; or which is used in monitoring, testing,
252 maintaining, enabling, or facilitating such equipment, machinery, software, or other
253 infrastructure. Such term includes, but is not limited to, wires, cables, antennas, poles,
254 switches, routers, amplifiers, rectifiers, repeaters, receivers, multiplexers, duplexers,
255 transmitters, power equipment, backup power equipment, diagnostic equipment, storage
256 devices, modems, and other general central office equipment, such as channel cards,
frames, and cabinets."

SECTION 1-5.

258 Said title is further amended by revising Code Section 48-8-32, relating to collectability and
259 rates of sales and use tax, as follows:

260 "48-8-32.

261 The tax at the rate of 4 percent of the retail sales price at the time of sale or 4 percent of the
262 purchase price at the time of purchase, as the case may be, shall be collectable from all
263 persons engaged as dealers in the sale at retail, or in the use, consumption, distribution, or
264 storage for use or consumption in this state of tangible personal property, prepaid calling
265 service, and prepaid wireless calling service."

SECTION 1-6.

267 Said title is further amended in Code Section 48-8-39, relating to the effect of certain use of
268 sales tax certificates, by revising subsection (a) as follows:

269 "(a) If a purchaser who gives a certificate stating that property is purchased for resale
270 makes any use of the property other than retention, demonstration, or display while holding
271 it for sale in the regular course of business, the use shall be deemed a retail sale by the
272 purchaser as of the time the property is first used by him the purchaser, and the purchase
273 price of the property to him the purchaser shall be deemed the gross receipts from the retail
274 sale. If the sole use of the property, other than retention, demonstration, or display in the
275 regular course of business, is the rental of the property while holding it for sale or the
276 transportation of persons for hire while holding the property for sale, the purchaser may

277 elect to include in ~~his~~ the purchaser's gross receipts either the amount of the rental charged
278 or the total amount of the charges made by ~~him~~ the purchaser for the transportation rather
279 than the cost of the property to ~~him~~ the purchaser. If the sole use of the property by a
280 purchaser, other than retention, demonstration, or display in the regular course of business,
281 is the transfer of such property, either free of charge or at a sale price not exceeding the
282 purchase price of the property, to another person in conjunction with such other person
283 entering into a contract to purchase communications services subject to the tax imposed
284 under Chapter 18 of this title, then such use shall be treated as a retail sale to such other
285 person for no consideration, in the case of a transfer that is free of charge, or for the sale
286 price collected with respect to such transfer."

287 SECTION 1-7.

288 Said title is further amended in Code Section 48-8-42, relating to credit for taxes paid in
289 other states, by adding a new subsection to read as follows:

290 "(c) Any communications services provider that erroneously but in good faith pays the tax
291 imposed by Chapter 18 of this title on an item of tangible personal property or a service
292 subject to the tax imposed by this chapter shall be allowed a credit against the tax imposed
293 by this chapter to the extent of the amount of such tax paid."

294 SECTION 1-8.

295 Said title is further amended by repealing subsection (e) of Code Section 48-8-77, relating
296 to sourcing of local telecommunications services.

297 SECTION 1-9.

298 Said title is further amended by adding a new Code Section to read as follows:

299 "48-8-78.

300 (a) As used in this chapter and Chapter 18 of this title, the term:

301 (1) 'Air to ground radiotelephone service' means a radio service, as that term is defined
302 in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio
303 telecommunications services for hire to subscribers in an aircraft.

304 (2) 'Call-by-call basis' means any method of charging for telecommunications services
305 where the price is measured by individual calls.

306 (3) 'Communications channel' means a physical or virtual path of communications over
307 which signals are transmitted between or among customer channel termination points.

308 (4) 'Communications services' means telecommunications services, ancillary services,
309 and video programming services.

310 (5) 'Customer' means the person or entity that contracts with the seller of
311 telecommunications services. If the end user of the telecommunications service is not the
312 contracting party, the end user of the telecommunications service is the customer of the
313 telecommunications service but only for the purpose of sourcing sales of
314 telecommunications services. Customer does not include a reseller of
315 telecommunications service or for mobile telecommunications service of a serving carrier
316 under an agreement to serve the customer outside the home service provider's licensed
317 service area.

318 (6) 'Customer channel termination point' means, in the context of a private
319 communications service, the location where the customer either inputs or receives
320 communications.

321 (7) 'Direct broadcast satellite service' means the distribution or broadcasting of video
322 programming or services by satellite directly to a subscriber's or customer's receiving
323 equipment.

324 (8) 'End user' means the person who utilizes the telecommunications service. In the case
325 of an entity, end user means the individual who utilizes the telecommunications service
326 on behalf of the entity.

327 (9) 'Home service provider' has the same meaning given to such term in Section 124(5)
328 of the Mobile Telecommunications Sourcing Act, P.L. 106-252, 4 U.S.C. Section 124(5).

329 (10) 'Postpaid calling service' means a telecommunications service obtained by making
330 a payment on a call-by-call basis either through the use of a credit card or payment
331 mechanism, such as a bank card, travel card, credit card, or debit card, or by charge made
332 to a telephone number which is not associated with the origination or termination of the
333 telecommunications service. A postpaid calling service includes a telecommunications
334 service, except a prepaid wireless calling service, that would be a prepaid calling service,
335 except that the right provided is not exclusively to access telecommunications services.

336 (11) 'Private communications service' means a telecommunications service that entitles
337 the customer to exclusive or priority use of a communications channel or group of
338 channels between or among termination points, regardless of the manner in which such
339 channel or channels are connected, and includes switching capacity, extension lines,
340 stations, and any other associated services that are provided in connection with the use
341 of such channel or channels.

342 (12) 'Service address' means:

343 (A) The location of the telecommunications equipment to which a customer's call is
344 charged and from which the call originates or terminates, regardless of where the call
345 is billed or paid;

346 (B) If the location under subparagraph (A) of this paragraph is not known, service
347 address means the origination point of the signal of the telecommunications service first
348 identified by either the seller's telecommunications system or, in information received
349 by the seller from its service provider, where the system used to transport such signal
350 is not that of the seller's; or

351 (C) If the locations under both subparagraphs (A) and (B) of this paragraph are not
352 known, service address means the location of the customer's place of primary use.

353 (b) The provisions of this Code section are solely for the purposes of sourcing
354 communications services, the taxability of which is governed by this chapter with respect
355 to prepaid calling services and prepaid wireless calling service and Chapter 18 of this title
356 with respect to all other communications services.

357 (c) The following sourcing rules shall apply to telecommunications services:

358 (1) Except as otherwise provided in paragraph (4) of this subsection, telecommunications
359 services sold on a call-by-call basis shall be sourced to this state if:

360 (A) The call both originates and terminates in this state; or

361 (B) The call either originates in this state or terminates in this state, and the service
362 address associated with the call is located in this state;

363 (2) Except as otherwise provided in paragraph (4) of this subsection, telecommunications
364 services sold on a basis other than a call-by-call basis shall be sourced to this state if the
365 telecommunications service is charged to a customer whose place of primary use is in this
366 state;

367 (3) Except as otherwise provided in paragraph (4) of this subsection, mobile
368 telecommunications services provided by a customer's home service provider shall be
369 sourced to this state if the customer's place of primary use is in this state; and

370 (4) Notwithstanding the provisions of paragraphs (1), (2), and (3) of this subsection:

371 (A) Air to ground radiotelephone services shall be sourced to this state if the customer's
372 place of primary use is located in this state;

373 (B) Postpaid calling services shall be sourced to this state if the origination point of the
374 telecommunications signal is located in this state, as first identified by:

375 (i) The seller's telecommunications system; or

376 (ii) Information received by the seller from its service provider, where the system
377 used to transport such signals is not that of the seller;

378 (C) Private communications services shall be sourced to this state under the following
379 rules:

380 (i) Service for a separate charge related to a customer channel termination point shall
381 be sourced to this state if the customer channel termination point is located in this
382 state;

- (ii) Service for a separate charge for the use of a channel that is exclusively between two channel termination points located in this state shall be sourced to this state; and
- (iii) Where channel termination points of a channel are located both within and outside this state:

(I) Fifty percent of any separate charge for a segment of a channel between two such channel termination points; and

(II) To the extent that the charge for any segment or segments of a channel is not separately billed, an amount equal to the total charge for such channel segment or segments multiplied by a fraction, the numerator of which is the number of channel termination points located in this state and the denominator of which is the total number of channel termination points; and

(D) A sale of prepaid calling service or a sale of a prepaid wireless calling service shall be sourced in accordance with subsection (b) of Code Section 48-8-77; provided, however, that in the case of a sale of prepaid wireless calling service, the rule provided in subparagraph (b)(1)(E) of Code Section 48-8-77 shall include as an option the location associated with the mobile telephone number.

(d) All communications services other than telecommunications services shall be sourced to the customer's place of primary use if located in this state."

SECTION 1-10.

402 Said title is further amended by adding a new chapter to read as follows:

"CHAPTER 18

48-18-1.

405 (a) Except as otherwise provided in this Code section, there is imposed on the sales price,
406 as defined in paragraph (34) of Code Section 48-8-2, paid for the retail purchase of
407 communications services that are sourced to this state under Code Section 48-8-78:

(1) A state tax on direct broadcast satellite service at the rate of 5 percent;

(2) A state tax on communications services other than direct broadcast satellite service at a rate of 2 percent;

(3) A local tax on communications services other than direct broadcast satellite service and other than telecommunications service at the rate of 3 percent;

(4) A local tax on telecommunications service at the rate of 2 percent; and

(5) A local tax on telecommunications service at the rate of 1 percent as authorized by Article VIII, Section VI, Paragraph IV of the Constitution and Part 2 of Article 3 of Chapter 8 of this title that shall be imposed on consumers that have a place of primary use in a jurisdiction that has adopted such local tax.

418 (b) Except within a jurisdiction that has not adopted a local tax on telecommunications
419 service as described in paragraph (5) of subsection (a) of this Code section, it is the intent
420 of the legislature that a total combined state and local tax rate of 5 percent shall be imposed
421 on all communications services throughout this state.

422 (c) The tax imposed by this chapter shall be paid by the person paying for such
423 communications services and shall be collected from such person by the retailer and
424 remitted to the department pursuant to Code Section 48-18-5.

425 (d) No sale of communications services shall be taxable to the person furnishing the
426 communications services which is not taxable to the purchaser of the communications
427 services.

428 (e) The sales price paid for the retail purchase of communications services shall not
429 include amounts paid for or attributable to:

430 (1) Communications services which are resold, used as a component part of, or
431 integrated into a communications service provided to the ultimate retail purchaser who
432 originates or terminates the taxable end to end communication, including, but not limited
433 to, carrier access charges, right of access charges, interconnection charges paid by the
434 providers of mobile telecommunications services or other communications services,
435 charges paid by cable or video service providers for the transmission of video or other
436 programming by another communications service provider over facilities owned or
437 operated by such other communications service provider, charges for the sale of
438 unbundled network elements, and charges for use of intercompany facilities;

439 (2) Coin operated telephone service;

440 (3) Communications services provided to any person or entity exempt from the tax
441 imposed by Chapter 8 of this title;

442 (4) Discounts, bad debts, taxes, or any other deduction to the extent allowed as a
443 deduction under Chapter 8 of this title;

444 (5) Prepaid calling service, prepaid wireless calling service, tangible personal property,
445 or services subject to tax pursuant to Chapter 8 of this title; or

446 (6) Communications services or transactions among entities under 50 percent or greater
447 common control, direct or indirect.

448 (f) A retailer of communications services may combine the taxes due under this chapter
449 and Chapter 8 of this title as a single line item on the retailer's invoice to a purchaser of
450 communications services.

451 48-18-2.

452 (a) Notwithstanding any provision of law to the contrary, with respect to sales of
453 telecommunications services to any person for use in the operation of one or more call

454 centers, the state tax imposed by this chapter shall not exceed \$12,500.00 per calendar year,
455 and the local tax imposed by this chapter shall not exceed \$12,500.00 per calendar year.
456 (b) The limitation set forth in subsection (a) of this Code section shall apply only to
457 holders of a direct payment number issued by the department. In order to obtain such
458 direct payment number, the applicant shall establish that the applicant satisfies the criteria
459 for a call center as defined in paragraph (4.1) of Code Section 48-8-2.
460 (c) The department shall not issue any refunds of taxes paid prior to receiving a direct
461 payment number.
462 (d) All entities wholly owned by the same person or entity shall be considered a single
463 person.

464 48-18-3.

465 (a) To prevent multistate taxation of a communications service subject to taxation under
466 this chapter, any taxpayer, upon proof that such taxpayer has paid a tax in another state on
467 such service, shall be allowed a credit against the tax imposed by this chapter to the extent
468 of the amount of such tax paid in such other state.
469 (b) Any communications services provider that erroneously but in good faith pays the tax
470 imposed by Chapter 8 of this title on the provision of communications services shall be
471 allowed credit against the tax imposed by this chapter to the extent of the amount of such
472 tax paid.

473 48-18-4.

474 All procedural and administrative provisions of Chapters 2 and 8 of this title, including
475 those which set forth the limitation periods and procedures for assessment, collection,
476 refunds, and credits, and those which fix penalties and interest for nonpayment of tax and
477 for noncompliance with the provisions of this title, and all other requirements and duties
478 imposed upon the taxpayer, shall apply to all taxpayers liable for the communications
479 services tax imposed under the provisions of this chapter and to all providers of
480 communications services required to collect and remit such taxes. In addition, all
481 definitions, sourcing rules, customer remedy rules, and bundled transaction rules which
482 have been enacted in compliance with the Streamlined Sales Tax Agreement and codified
483 in Chapter 8 of this title shall apply to the communications services tax imposed under the
484 provisions of this chapter. The commissioner shall exercise all power and authority and
485 perform all duties with respect to persons obligated under this chapter as are provided in
486 Chapters 2 and 8, except where there is a conflict, in which case, the provisions of this
487 chapter shall control. The commissioner may from time to time make such rules and

488 regulations not inconsistent with this chapter as may be deemed necessary to carry out its
489 provisions.

490 48-18-5.

491 (a) A communications services provider shall be permitted to deduct and retain 2 percent
492 of total communications services taxes that are collected and remitted by the provider on
493 a timely basis to the department.

494 (b) The tax imposed by Code Section 48-18-1, including any penalties or interest
495 attributable to the nonpayment of such taxes or for noncompliance with the provisions of
496 this chapter, shall be collected by the department and shall be accounted for separately
497 from all other taxes. One percent of the amounts collected shall be paid into the general
498 fund of the state treasury in order to defray the costs of administration.

499 (c)(1) The remaining amounts collected pursuant to paragraphs (1) and (2) of subsection
500 (a) of Code Section 48-18-1 shall be credited in the same manner as the state sales and
501 use taxes collected pursuant to Article 1 of Chapter 8 of this title.

502 (2) The remaining amounts collected pursuant to paragraphs (3) and 4 of subsection (a)
503 of Code Section 48-18-1 shall be distributed as follows:

504 (A) Each municipality or county that has complied with the requirements of subsection
505 (e) of this Code section shall receive an amount equal to the average monthly revenues
506 that were received from communications services providers during 2013 by such
507 municipality or county pursuant to taxes, charges, and fees, other than local option sales
508 taxes prohibited by Code Section 48-18-6, which were validly imposed and in effect
509 during that time. All or part of the proceeds received by a county pursuant to this
510 subparagraph may be expended for services provided within the unincorporated area
511 of the county, including within any special district created by a county for the provision
512 of services in all or parts of the unincorporated area of the county; and

513 (B) The amount remaining after the distributions required by subparagraph (A) of this
514 paragraph shall be distributed as follows:

515 (i) Each municipality that has complied with the requirements of subsection (e) of
516 this Code section shall receive an amount equal to such remaining amount multiplied
517 by a fraction, the numerator of which is the population in such municipality and the
518 denominator of which is the total population of this state, using the most recent annual
519 estimates of the population of cities and counties in Georgia as prepared by the United
520 States Bureau of the Census; and

521 (ii) Each county that has complied with the requirements of subsection (e) of this
522 Code section shall receive an amount equal to such remaining amount multiplied by
523 a fraction, the numerator of which is the sum of the population within the

524 unincorporated areas of such county and the denominator of which is the total
525 population of this state, using the most recent annual estimates of the population of
526 cities and counties in Georgia as prepared by the United States Bureau of the Census.

527 (3) The remaining amounts collected pursuant to paragraph (5) of subsection (a) of Code
528 Section 48-18-1 shall be distributed in the same manner as all other amounts collected
529 pursuant to Chapter 8, Article 3, Part 2 of the Georgia Tax Code and the associated
530 regulations.

531 (d)(1) Each county and municipality that received in 2013 taxes, charges, or fees, other
532 than local option sales taxes prohibited by Code Section 48-18-6, which were validly
533 imposed and in effect during that time shall report the amounts of such taxes, charges, or
534 fees received in 2013 to the department by January 31, 2014.

535 (2) Each communications services provider that paid in 2013 such taxes, charges, or fees,
536 other than local option sales taxes prohibited by Code Section 48-18-16, shall report the
537 amounts of such taxes, charges, or fees paid in 2013 to the department by January 31,
538 2014.

539 (3) The department shall be charged with reviewing such data from all political
540 subdivisions and communications services providers to ensure accuracy and to reconcile
541 the data based on the best information available.

542 (e) Each county and municipality shall impose by ordinance or resolution two local taxes:
543 a local tax on communications services other than direct broadcast satellite service and
544 other than telecommunications service pursuant to paragraph (3) of subsection (a) of Code
545 Section 48-18-1 and a local tax on telecommunications service pursuant to paragraph (4)
546 of subsection (a) of Code Section 48-18-1 under the following conditions:

547 (1) On or before December 31 of the year prior to enactment, the county or municipality
548 shall file with the department a certified copy of the pertinent parts of all ordinances,
549 resolutions, and amendments thereto which levy the 3.5 percent tax on communications
550 services other than direct broadcast satellite services and other than telecommunications
551 service;

552 (2) On or before December 31 of the year prior to enactment, the county or municipality
553 shall file with the department a certified copy of the pertinent parts of all ordinances,
554 resolutions, and amendments thereto which levy the 2.5 percent tax on
555 telecommunications service;

556 (3) Such ordinances shall have an effective date of January 1 of the following year;

557 (4) The filings required by this subsection shall be a condition to the imposition of the
558 local taxes pursuant to paragraphs (3) and (4) of subsection (a) of Code Section 48-18-1
559 by a county or a municipality;

560 (5) If a county or municipality does not file with the department a certified copy of the
561 pertinent parts of all ordinances, resolutions, or amendments thereto which levy the 3.5
562 percent tax on communications services other than direct broadcast satellite services and
563 other than telecommunications service as required in paragraph (1) of this subsection, or
564 if a county or municipality does not provide the department with the amount of taxes,
565 charges, or fees received in 2013, as required in paragraph (1) of subsection (d) of this
566 Code section, the department shall upon receipt of such information distribute such funds
567 on the first day of the next succeeding calendar quarter; and

568 (6) If a county or municipality does not file with the department a certified copy of the
569 pertinent parts of all ordinances, resolutions, or amendments thereto which levy the 2.5
570 percent tax on telecommunications service as required in paragraph (1) of this subsection
571 or if a county or municipality does not provide the department with the amount of taxes,
572 charges, or fees received in 2013, as required in paragraph (1) of subsection (d) of this
573 Code section, the department shall upon receipt of such information distribute such funds
574 on the first day of the next succeeding calendar quarter.

575 (f) Other than for purposes of collecting and remitting the local tax on telecommunications
576 service at the rate of 1 percent as authorized by Article VIII, Section VI, Paragraph IV of
577 the Constitution and Part 2 of Article 3 of Chapter 8 of this title, and certain enhanced
578 9-1-1 charges, providers of communications services shall not be required to identify,
579 report, or source communications services or communications services taxes on the county
580 or municipal level.

581 48-18-6.

582 (a)(1) For purposes of this subsection, the term 'providers of communications services'
583 shall include parties providing infrastructure directly involved in the transmission,
584 receipt, or processing of radio waves or electrical signals used in the provision or
585 provisioning of communications services. Infrastructure shall include, but not be limited
586 to, towers, poles, and other structures of whatever kind to which are attached antennas
587 or other equipment for the transmission or receipt of radio waves or electrical signals, as
588 well as fixtures necessary to affix antennas or other equipment to such towers, poles, or
589 structures. Infrastructure shall not include residences or commercial or industrial
590 buildings. Parties providing infrastructure are considered providers of communications
591 services only to the extent of their provision or provisioning of such infrastructure.

592 (2) Except as provided in paragraph (4) of this subsection, no county, municipality, or
593 other political subdivision of this state shall:

594 (A) Levy any tax, charge, fee, or other imposition on or with respect to
595 communications services, or collect any such tax, charge, fee, or other imposition, from
596 providers of communications services;

597 (B) Require any provider of communications services, including, but not limited to,
598 cable service providers or video service providers, to enter into or extend the term of
599 a franchise or other agreement which requires the payment of a tax, charge, fee, or other
600 imposition; or

601 (C) Adopt or enforce any provision of any ordinance or agreement to the extent that
602 such provision obligates a provider of communications services to pay to the county
603 and municipality a tax, charge, fee, or other imposition.

604 (3) For purposes of this subsection, a tax, charge, fee or other imposition includes any
605 amount or in kind payment of property or services which is required by ordinance or
606 agreement to be paid or furnished to a political subdivision by or through a provider of
607 communications services in its capacity as a provider of communications services,
608 regardless of whether such tax, charge, fee, or in kind payment of property or services is:

609 (A) Designated as a franchise fee, excise tax, sales tax, services tax, user fee,
610 occupancy fee, occupational or business license tax or fee, subscriber charge, tower fee,
611 base station fee, or otherwise;

612 (B) Measured by the amounts charged or received for services, the type of equipment
613 or facilities deployed, or otherwise;

614 (C) Intended as compensation for the use of public rights of way, the right to conduct
615 business, or otherwise; or

616 (D) Permitted or required to be separately stated on the customer's bill.

617 (4) This subsection shall not apply to:

618 (A) Ad valorem taxes levied pursuant to Chapter 5 of this title;

619 (B) Emergency telephone surcharges pursuant to Chapter 5 of Title 46;

620 (C) Amounts charged for the rental or other use of property owned by a public body
621 which is not in the public rights of way to a provider of communications services for
622 any purpose, including, but not limited to, the placement or attachment of equipment
623 used in the provision of communications services;

624 (D) Amounts charged for the rental of space on a utility pole or tower owned by a
625 political subdivision of this state, whether in the public right of way or not, for the
626 attachment of equipment used in the provision of communications services;

627 (E) Permit fees generally imposed and applicable to a majority of all other businesses,
628 which are not related to placing or maintaining facilities in or on public roads or rights
629 of way;

(F) Taxes, charges, and fees which are ordinary and generally applicable which are validly levied and required to be paid by a person in a capacity other than its capacity as a provider of communications services. Such taxes, charges, and fees include, by way of example, and are not limited to, taxes, charges, and fees for water, sewer, electricity, sanitation, police, fire, or other such services, or any special district, community improvement district, or similar such district services, or any taxes, fees, or assessments imposed to pay bonded indebtedness;

(G) Zoning, construction, and similar application fees, provided such fees do not exceed the lower of either the actual direct cost incurred by the county or municipality in the review of such applications or the amount generally imposed by the county or municipality for zoning, construction, and similar applications; and

(H) Any civil penalties or fines, any criminal penalties or fines, or both.

(5) This subsection shall not preempt the provisions of Code Section 25-9-6 or 25-9-13 and shall not be construed to prohibit a municipality or county from seeking to recover the actual direct cost of repairing damage to public streets caused by a communications services provider's installation or repair of its facilities.

(b) In establishing guidelines and conditions for placing, constructing, repairing, or maintaining communications lines or facilities over, on, under, through, or along any public highways, public roads, public streets, or other public places or rights of way, neither the state nor any agency or political subdivision thereof shall discriminate between or among communications services providers in violation of Section 253(c) of the Communications Act of 1934, 47 U.S.C. Section 253(c)."

SECTION 1-11.

Chapter 76 of Title 36 of the Official Code of Georgia Annotated, relating to expedited franchising of cable and video services, is amended in Code Section 36-76-2, relating to definitions, by revising paragraphs (1) and (8) as follows:

"(1) 'Advertising and home shopping services revenues' means the amount of a cable service provider or video service provider's nonsubscriber revenues from advertising disseminated through cable service or video service and home shopping services. The amount of such revenues that are allocable to a municipality or county shall be equal to the total amount of the cable service provider or video service provider's revenue received from such advertising and home shopping services multiplied by the ratio of the number of such provider's subscribers located in such municipality or in the unincorporated area of such county to the total number of such provider's subscribers. Such ratio shall be based on the number of such provider's subscribers as of January 1 of the current year;

665 except that in the first year in which services are provided, such ratio shall be computed
666 as of the earliest practical date Reserved."

667 "(8) 'Gross revenues' means all revenues received from subscribers for the provision of
668 cable service or video service, including franchise fees for cable service providers and
669 video service providers, and advertising and home shopping services revenues and shall
670 be determined in accordance with generally accepted accounting principles. Gross
671 revenues shall not include:

- 672 (A) Amounts billed and collected as a line item on the subscriber's bill to recover any
673 taxes, surcharges, or governmental fees that are imposed on or with respect to the
674 services provided or measured by the charges, receipts, or payments therefor; provided,
675 however, that for purposes of this Code section, such tax, surcharge, or governmental
676 fee shall not include any ad valorem taxes, net income taxes, or generally applicable
677 business or occupation taxes not measured exclusively as a percentage of the charges,
678 receipts, or payments for services;
- 679 (B) Any revenue, such as bad debt, not actually received, even if billed;
- 680 (C) Any revenue received by any affiliate or any other person in exchange for
681 supplying goods or services used by the provider to provide cable service or video
682 programming;
- 683 (D) Any amounts attributable to refunds, rebates, or discounts;
- 684 (E) Any revenue from services provided over the network that are associated with or
685 classified as noncable or nonvideo services under federal law, including, without
686 limitation, revenues received from telecommunications services, information services
687 other than cable service or video service, Internet access services, or directory or
688 Internet advertising revenue, including, without limitation, yellow pages, white pages,
689 banner advertisements, and electronic publishing advertising. Where the sale of any
690 such noncable or nonvideo service is bundled with the sale of one or more cable
691 services or video services and sold for a single nonitemized price, the term 'gross
692 revenues' shall include only those revenues that are attributable to cable service or video
693 service based on the provider's books and records; such revenues shall be allocated in
694 a manner consistent with generally accepted accounting principles;
- 695 (F) Any revenue from late fees not initially booked as revenues, returned check fees,
696 or interest;
- 697 (G) Any revenue from sales or rental of property, except such property as the
698 subscriber shall be required to buy or rent exclusively from the cable service provider
699 or video service provider to receive cable service or video service;
- 700 (H) Any revenue received from providing or maintaining inside wiring;

- (I) Any revenue from sales for resale with respect to which the purchaser shall be required to pay a franchise fee, provided the purchaser certifies in writing that it shall resell the service and pay a franchise fee with respect thereto; or
- (J) Any amounts attributable to a reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming Reserved."

SECTION 1-12.

Said chapter is further amended by revising subsection (c) and paragraphs (4) and (8) of subsection (g) of Code Section 36-76-4, relating to PEG support, as follows:

"(c) The application for a state franchise shall consist of an affidavit signed by an officer or general partner of the applicant that contains each of the following:

(1) An affirmative declaration that the applicant shall comply with all applicable federal and state laws and regulations, including municipal and county ordinances and regulations regarding the placement and maintenance of facilities in the public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the 'Georgia Utility Facility Protection Act';

(2) A description of the applicant's service area, which description shall be sufficiently detailed so as to allow a local government to respond to subscriber inquiries, including the name of each municipal or county governing authority within the service area. For the purposes of this paragraph, an applicant may, in lieu of or as supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area by making reference to the municipal or county governing authority to be served. If the geographical area is less than an entire municipality or county, the map shall describe the boundaries of the geographic area to be served in clear and concise terms;

(3) The location of the applicant's principal place of business, the name or names of the principal executive officer or officers of the applicant, information concerning payment locations or addresses, and general information concerning equipment returns; and

(4) Certification that the applicant is authorized to conduct business in the State of Georgia and that the applicant possesses satisfactory financial and technical capability to provide cable service or video service and a description of such capabilities. Such certification shall not be required from an incumbent service provider or any cable service provider or video service provider that has wireline facilities located in the public right of way as of January 1, 2008.; and

(5) Notice to the affected local governing authority of its right to designate a franchise fee pursuant to Code Section 36-76-6."

"(4) An incumbent service provider that elects to terminate a franchise under this subsection shall continue to provide PEG access support, as such existed on January 1, 2007, under the same terms as the terminated local franchise had it not been terminated until the local franchise would have expired under its own terms Reserved."

"(8) Each holder of a state franchise shall have the obligation to provide access to the same number of PEG channels pursuant to Code Section 36-76-8 and the additional PEG support cash payments specified in this paragraph for PEG access facilities in a service area as the incumbent service provider with the most subscribers in such service area as of January 1, 2007, which obligation shall continue until the local franchise would have expired under its own terms as specified in paragraph (4) of this subsection; provided, however, that if a local franchise would have expired before July 1, 2013, the holder of a state franchise shall continue to provide access to the same number of PEG channels until July 1, 2012, as provided in paragraph (5) of this subsection. To the extent such incumbent service provider provides PEG access support during said period in the form of periodic payments to the municipal or county governing authority equal to a percentage of gross revenue or a prescribed per subscriber amount, the state franchise holder shall be obligated to make the same periodic payments to the governing authority at the same time and equal to the same percentage of gross revenue or prescribed per subscriber amount. To the extent such incumbent service provider provides PEG access support to the applicable governing authority during said period in the form of a lump sum payment that remains unsatisfied as of January 1, 2008, the holder of a state franchise shall be obligated to provide a lump sum payment to said authority based on its proportion of the total number of cable service and video service subscribers of all service providers in such service area. No payments shall be due under this paragraph until the municipality or county notifies the respective providers, in writing, of the percentage of gross revenues, the per subscriber amount, or the lump sum payment amount and the expiration date of the local franchise obtaining such obligations. The holder of a state franchise may designate that portion of the subscriber's bill attributable to any fee imposed pursuant to this paragraph as a separate item on the bill and recover such amount from the subscriber."

SECTION 1-13.

Said chapter is further amended by revising Code Section 36-76-6, relating to franchise fees, as follows:

"36-76-6.

(a)(1) The holder of a state franchise, whether a cable service provider or a video service provider, shall pay to each affected local governing authority which complies with this

773 Code section a franchise fee which shall not exceed the maximum percentage rate
774 permitted in 47 U.S.C. Section 542(b) of such holder's gross revenues received from the
775 provision of cable service or video service to subscribers located within such holder's
776 service area.

777 (2) Each affected local governing authority or its authorized designee shall provide
778 written notice to the Secretary of State and each applicant for or holder of a state
779 franchise with a service area located within that affected local governing authority's
780 jurisdiction of the franchise fee rate that applies to the applicant for or holder of such state
781 franchise. The applicant for or holder of a state franchise shall start assessing the
782 franchise fee within 15 days of receipt of written notice from the affected local governing
783 authority or its authorized designee and shall not be required to pay such franchise fee
784 until the expiration of 15 days after receipt of such written notice. Any incumbent service
785 provider who obtains a state franchise under paragraph (1) of subsection (g) of Code
786 Section 36-76-4 shall pay its existing franchise fee during the 15 day period after receipt
787 of written notice of the new fee. The franchise fee rate shall be uniformly applicable to
788 all cable service providers and video service providers that obtain a state franchise within
789 the affected local governing authority. For purposes of this Code section, an authorized
790 designee is an agent authorized by charter or other act of the affected local governing
791 authority.

792 (3) Any affected local governing authority may change the franchise fee applicable to
793 holders of a state franchise once every two years. The affected local governing authority
794 or its authorized designee shall provide written notice to the Secretary of State and the
795 applicants for or holders of a state franchise with a service area within that affected local
796 governing authority's jurisdiction of the new franchise fee rate. The holder of a state
797 franchise shall start assessing the new franchise fee within 45 days of receipt of written
798 notice of the change from the affected local governing authority or its authorized
799 designee. The franchise fee rate shall be uniformly applicable to all cable service
800 providers and video service providers that obtain a state franchise within the affected
801 local governing authority's jurisdiction.

802 (b) Such franchise fee shall be paid directly to each affected local governing authority
803 within 30 days after the last day of each calendar quarter. Such payment shall be
804 considered complete if accompanied by a statement showing, for the quarter covered by
805 the payment:

806 (1) The aggregate amount of the state franchise holder's gross revenues, specifically
807 identifying subscriber and advertising and home shopping services revenues under this
808 chapter insofar as the franchise holder's existing billing systems include such capability,
809 attributable to such municipality or unincorporated areas of the county; and

810 (2) The amount of the franchise fee payment due to such municipality or county.

811 In the event that franchise fees are not paid on or before the dates specified above, then the
812 affected local governing authority shall provide written notice to the franchise holder
813 giving the cable service provider or video service provider 15 days from the date of the
814 franchise holder's receipt of such notice to cure any such nonpayment. In the event
815 franchise fees are not remitted to the affected local government authority postmarked on
816 or before the expiration of the 15 day cure period, then the holder of the state franchise
817 shall pay interest thereon at a rate of 1 percent per month to the affected local governing
818 authority. If the 15 day cure period expires on Saturday, Sunday, or a legal holiday, the
819 due date shall be the next business day. Moreover, the franchise holder shall not be
820 assessed interest on late payments if franchise payments were submitted in error to a
821 neighboring local governing authority.

822 (c) Each affected local governing authority may, no more than once annually, audit the
823 business records of the state franchise holder to the extent necessary to ensure payment in
824 accordance with this Code section. For purposes of this subsection, an audit shall be
825 defined as a comprehensive review of the records of the holder of a state franchise. Once
826 any audited period of a state franchise holder has been the subject of a requested audit, such
827 audited period of such state franchise holder shall not again be the subject of any audit. In
828 the event of a dispute concerning the amount of the franchise fee due to an affected local
829 governing authority under this Code section, an action may be brought in a court of
830 competent jurisdiction by an affected local governing authority seeking to recover an
831 additional amount alleged to be due or by a state franchise holder seeking a refund of an
832 alleged overpayment; provided, however, that any such action shall be brought within three
833 years following the end of the quarter to which the disputed amount relates. Such time
834 period may be extended by written agreement between the state issued franchise holder and
835 such affected local governing authority. Each party shall bear the party's own costs
836 incurred in connection with any such examination or dispute. In the event that an affected
837 local governing authority files an action to recover alleged underpayments of franchise fees
838 and a court of competent jurisdiction determines the cable service provider or video service
839 provider has underpaid franchise fees due for any 12 month period by 10 percent or more,
840 the cable service provider or video service provider may be required to pay the affected
841 local governing authority its reasonable costs associated with the audit along with any
842 franchise fee underpayments; provided, however, late payments shall not apply.

843 (d) The statements made pursuant to subsection (b) of this Code section and any records
844 or information furnished or disclosed by a cable service provider or video service provider
845 to an affected local governing authority pursuant to subsection (c) of this Code section shall
846 be exempt from public inspection under Article 4 of Chapter 18 of Title 50.

847 (e) No acceptance of any payment shall be construed as a release or as an accord and
848 satisfaction of any claim an affected local governing authority may have for further or
849 additional sums payable as a franchise fee.

850 (f) Any amounts overpaid by the holder of a state franchise shall be deducted from future
851 franchise payments.

852 (g) The holder of a state franchise may designate that portion of a subscriber's bill
853 attributable to any franchise fee imposed pursuant to this Code section as a separate item
854 on the bill and recover such amount from the subscriber, provided, however, that such
855 separate listing shall be referred to as a 'franchise' or a 'franchise fee.'

856 (h) No affected local governing authority shall levy any additional tax, license, fee,
857 surcharge, or other assessment on a cable service provider or video service provider for or
858 with respect to the use of any public right of way other than the franchise fee authorized
859 by this Code section. Nor shall an affected local governing authority levy any other tax,
860 license, fee, or assessment on a cable service provider or video service provider or its
861 subscribers that is not generally imposed and applicable to a majority of all other
862 businesses. The franchise fee authorized by this Code section shall be in lieu of any permit
863 fee, encroachment fee, degradation fee, or other fee that could otherwise be assessed on a
864 state issued franchise holder for the holder's occupation or work within the public right of
865 way; provided, however, that nothing in this Code section shall restrict the right of any
866 municipal or county governing authority to impose ad valorem taxes, sales taxes, or other
867 taxes lawfully imposed on a majority of all other businesses within such municipality or
868 county Reserved."

869 SECTION 1-14.

870 Said chapter is further amended in Code Section 36-76-10, relating to limitations on
871 requirements for state franchise holders, by revising paragraph (4) as follows:

872 "(4) The enactment and enforcement of lawful and reasonable laws and rules and
873 municipal or county ordinances and regulations concerning excavation, permitting,
874 bonding requirements, indemnification requirements, and placement and maintenance of
875 facilities in any public right of way that are generally applicable to all users of any public
876 right of way, except to the extent specifically precluded by subsection (h) of Code
877 Section 36-76-6; and"

878 SECTION 1-15.

879 Article 1 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to
880 general provisions relative to telephone and telegraph service, is amended by revising Code
881 Section 46-5-1, relating to due compensation provisions, as follows:

882 "46-5-1.

883 (a)(1) Any telephone company chartered by the laws of this or any other state shall have
884 the right to construct, maintain, and operate its lines and facilities upon, under, along, and
885 over the public roads and highways and rights of way of this state with the approval of
886 the county or municipal authorities in charge of such roads, highways, and rights of way.
887 The approval of such municipal authorities shall be limited to the process set forth in
888 paragraph (3) of subsection (b) of this Code section, and the approval of the county shall
889 be limited to the permitting process set forth in subsection (c) of this Code section. Upon
890 making due compensation, as defined for municipal authorities in paragraph (9) of
891 subsection (b) of this Code section and as provided for counties in subsection (c) of this
892 Code section, a A telephone company shall have the right to construct, maintain, and
893 operate its lines through or over any lands of this state; on, along, and upon the right of
894 way and structures of any railroads; and, where necessary, under or over any private
895 lands; and, to that end, a telephone company may have and exercise the right of eminent
896 domain.

897 (2) Notwithstanding any other law, a municipal authority or county shall not:

898 (A) Require any telephone company to apply for or enter into an individual license,
899 franchise, or other agreement with such municipal authority or county; or
900 (B) Impose any occupational license tax or fee as a condition of placing or maintaining
901 lines and facilities in its public roads and highways or rights of way, except as
902 specifically set forth in this Code section.

903 (3) A county or municipal authority shall not impose any occupational license, tax, fee,
904 regulation, obligation, or requirement upon the provision of the services described in
905 paragraphs (1) and (2) of Code Section 46-5-221, including any occupational license, tax,
906 fee, regulation, obligation, or requirement specifically set forth in any part of this chapter
907 other than Part 4.

908 (4) Whenever a telephone company exercises its powers under paragraph (1) of this
909 subsection, the posts, arms, insulators, and other fixtures of its lines shall be erected,
910 placed, and maintained so as not to obstruct or interfere with the ordinary use of such
911 railroads or public roads and highways, or with the convenience of any landowners, more
912 than may be unavoidable. Any lines constructed by a telephone company on the right of
913 way of any railroad company shall be subject to relocation so as to conform to any uses
914 and needs of such railroad company for railroad purposes. Such fixtures, posts, and wires
915 shall be erected at such distances from the tracks of said railroads as will prevent any and
916 all damage to said railroad companies by the falling of said fixtures, posts, or wires upon
917 said railroad tracks; and such telephone companies shall be liable to said railroad
918 companies for all damages resulting from a failure to comply with this Code section.

919 (5) No county or municipal authority shall impose upon a telephone company any
920 build-out requirements on network construction or service deployment, and, to the extent
921 that a telephone company has elected alternative regulation pursuant to Code Section
922 46-5-165, such company may satisfy its obligations pursuant to paragraph (2) of Code
923 Section 46-5-169 by providing communications service, at the company's option, through
924 any affiliated companies and through the use of any technology or service arrangement;
925 provided, however, that such company shall remain subject to its obligations as set forth
926 in paragraphs (4) and (5) of Code Section 46-5-169. The obligations required pursuant
927 to paragraph (2) of Code Section 46-5-169 shall not apply to a telephone company that
928 has elected alternative regulation pursuant to Code Section 46-5-165 and does not
929 receive distributions from the Universal Access Fund as provided for in Code Section
930 46-5-167.

931 (b)(1) Except as set forth in paragraph (6) of this subsection, any telephone company that
932 places or seeks to place lines and facilities in the public roads and highways or rights of
933 way of a municipal authority shall provide to such municipal authority the following
934 information:

- 935 (A) The name, address, and telephone number of a principal office and local agent of
936 such telephone company;
- 937 (B) Proof of certification from the Georgia Public Service Commission of such
938 telephone company to provide telecommunications services in this state;
- 939 (C) Proof of insurance or self-insurance of such telephone company adequate to defend
940 and cover claims of third parties and of municipal authorities;
- 941 (D) A description of the telephone company's service area, which description shall be
942 sufficiently detailed so as to allow a municipal authority to respond to subscriber
943 inquiries. For the purposes of this paragraph, a telephone company may, in lieu of or
944 as supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is
945 clear and legible and that fairly depicts the service area within the boundaries of the
946 municipal authority. If such service area is less than the boundaries of an entire
947 municipal authority, the map shall describe the boundaries of the geographic area to be
948 served in clear and concise terms;
- 949 (E) A description of the services to be provided;
- 950 (F) An affirmative declaration that the telephone company shall comply with all
951 applicable federal, state, and local laws and regulations, including municipal ordinances
952 and regulations, regarding the placement and maintenance of facilities in the public
953 rights of way that are reasonable, nondiscriminatory, and applicable to all users of the
954 public rights of way, including the requirements of Chapter 9 of Title 25, the 'Georgia
955 Utility Facility Protection Act'; and

956 (G) A statement in bold type at the top of the application as follows: 'Pursuant to
957 paragraph (2) of subsection (b) of Code Section 46-5-1 of the Official Code of Georgia
958 Annotated, the municipal authority shall notify the applicant of any deficiencies in this
959 application within 15 business days of receipt of this application.'

960 (2) If an application is incomplete, the municipal authority shall notify the telephone
961 company within 15 business days of the receipt of such application; such notice shall
962 specifically identify all application deficiencies. If no such notification is given within
963 15 business days of the receipt of an application, such application shall be deemed
964 complete.

965 (3) Within 60 calendar days of the receipt of a completed application, the municipal
966 authority may adopt such application by adoption of a resolution or ordinance or by
967 notification to the telephone company. The failure of a municipal authority to adopt an
968 application within 60 calendar days of the receipt of a completed application shall
969 constitute final adoption of such application.

970 (4) If it modifies its service area or provisioned services identified in the original
971 application, the telephone company shall notify the municipal authority of changes to the
972 service area or the services provided. Such notice shall be given at least 20 days prior to
973 the effective date of such change. Such notification shall contain a geographic
974 description of the new service area or areas and new services to be provided within the
975 jurisdiction of the affected municipal authority, if any. The municipal authority shall
976 provide to all telephone companies located in its rights of way written notice of
977 annexations and changes in municipal corporate boundaries which, for the purposes of
978 this Code section, shall become effective 30 days following receipt.

979 (5) An application adopted pursuant to this Code section may be terminated by a
980 telephone company by submitting a notice of termination to the affected municipal
981 authority. For purposes of this Code section, such notice shall identify the telephone
982 company, the affected service area, and the effective date of such termination, which shall
983 not be less than 60 calendar days from the date of filing the notice of termination.

984 (6) Any telephone company that has previously obtained permits for the placement of
985 its facilities, has specified the name of such telephone company in such permit
986 application, has previously placed its facilities in any public right of way, and has paid
987 and continues to pay any applicable municipal authority's ~~occupational license taxes~~,
988 permit fees, ~~franchise fees~~, except as set forth in paragraph (8) of this subsection, or, if
989 applicable, county permit fees shall be deemed to have complied with this Code section
990 without any further action on the part of such telephone company except as set forth in
991 paragraphs (8), (9), (11), and (17) and (10) of this subsection.

992 (7) Any telephone company that has placed lines and facilities in the public roads and
993 highways or rights of way of a municipal authority without first obtaining permits or
994 otherwise notifying the appropriate municipal authority of its presence in the public roads
995 and highways or rights of way shall provide the information required by paragraph (1)
996 of this subsection, if applicable, to such municipal authority on or before October 1, 2008.
997 As of October 1, 2008, if any telephone company, other than those who meet the
998 requirements of paragraph (6) of this subsection, has failed or fails to provide the
999 information required by paragraph (1) of this subsection to the municipal authority in
1000 which its lines or facilities are located, such municipal authority shall provide written
1001 notice to such telephone company giving that company 15 calendar days from the date
1002 of receipt of such notice to comply with this subsection (b) of this Code section. In the
1003 event the 15 calendar day cure period expires without compliance, such municipal
1004 authority may petition the Georgia Public Service Commission which shall, after an
1005 opportunity for a hearing, order the appropriate relief.

1006 (8)(A) In the event any telephone company has an existing, valid municipal franchise
1007 agreement as of January 1, 2008, the terms and conditions of such existing franchise
1008 agreement, with the exception of an imposition of taxes, charges, or fees prohibited
1009 pursuant to Code Section 48-18-6, shall only remain effective and enforceable until the
1010 expiration of the existing agreement or December 31, 2012, whichever shall first occur.

1011 (B) ~~In the event any telephone company is paying an existing occupational license tax~~
1012 ~~or fee, based on actual recurring local services revenues, as of January 1, 2008, such~~
1013 ~~payment shall be considered the payment of due compensation without further action~~
1014 ~~on the part of the municipal authority. In the event that the rate of such existing tax or~~
1015 ~~fee exceeds 3 percent of actual recurring local service revenues, that rate shall remain~~
1016 ~~effective until December 31, 2012; thereafter, the payment by such telephone company~~
1017 ~~at the rate of 3 percent shall be considered the payment of due compensation without~~
1018 ~~further action on the part of the municipal authority.~~

1019 (9) ~~As used in this Code section, 'due compensation' for a municipal authority means an~~
1020 ~~amount equal to no more than 3 percent of actual recurring local service revenues~~
1021 ~~received by such company from its retail, end user customers located within the~~
1022 ~~boundaries of such municipal authority. 'Actual recurring local service revenues' means~~
1023 ~~those revenues customarily included in the Uniform System of Accounts as prescribed~~
1024 ~~by the Federal Communications Commission for Class 'A' and 'B' companies; provided,~~
1025 ~~however, that only the local service portion of the following accounts shall be included:~~

- 1026 (A) ~~Basic local service revenue, as defined in 47 C.F.R. 32.5000;~~
1027 (B) ~~Basic area revenue, as defined in 47 C.F.R. 32.5001;~~
1028 (C) ~~Optional extended area revenue, as defined in 47 C.F.R. 32.5002;~~

- (D) Public telephone revenue, as defined in 47 C.F.R. 32.5010;
- (E) Local private line revenue, as defined in 47 C.F.R. 35.5040; provided, however, that the portion of such accounts attributable to audio and video program transmission service where both terminals of the private line are within the corporate limits of the municipal authority shall not be included;
- (F) Other local exchange revenue, as defined in 47 C.F.R. 32.5060;
- (G) Local exchange service, as defined in 47 C.F.R. 32.5069;
- (H) Network access revenue, as defined in 47 C.F.R. 32.5080;
- (I) Directory revenue, as defined in 47 C.F.R. 32.5320; provided, however, that the portion of such accounts attributable to revenue derived from listings in portion of directories not considered white pages shall not be included;
- (J) Nonregulated operating revenue, as defined in 47 C.F.R. 32.5280; provided, however, that the portion of such accounts attributable to revenues derived from private lines shall not be included; and
- (K) Uncollectible revenue, as defined in 47 C.F.R. 32.5300.

Any charge imposed by a municipal authority shall be assessed in a nondiscriminatory and competitively neutral manner.

(10) Any due compensation paid to municipal authorities pursuant to paragraph (9) of this subsection shall be in lieu of any other permit fee, encroachment fee, degradation fee, disruption fee, business license tax, occupational license tax, occupational license fee, or other fee otherwise permitted pursuant to the provisions of subparagraph (A) of paragraph (7) of Code Section 36-34-2 or Code Section 32-4-92 et seq. or any other provision of law regardless of nomenclature.

(11) A telephone company with facilities in the public rights of way of a municipal authority shall begin assessing due compensation, as defined in subsection (a) of this Code section, on subscribers on the date that service commences unless such company is currently paying a municipal authority's occupational license tax. Such due compensation shall be paid directly to each affected municipal authority within 30 calendar days after the last day of each calendar quarter. In the event that due compensation is not paid on or before 30 calendar days after the last day of each calendar quarter, the affected municipal authority shall provide written notice to such telephone company, giving such company 15 calendar days from the date such company receives such notice to cure any such nonpayment. In the event the due compensation remitted to the affected municipal authority is not postmarked on or before the expiration of the 15 day cure period, such company shall pay interest thereon at a rate of 1 percent per month to the affected municipal authority. If the 15 day cure period expires on a Saturday, a Sunday, or a state legal holiday, the due date shall be the next business day.

1066 A telephone company shall not be assessed any interest on late payments if due
1067 compensation was submitted in error to a neighboring municipal authority.

1068 (12) Each municipal authority may, no more than once annually, audit the business
1069 records of a telephone company to the extent necessary to ensure payment in accordance
1070 with this Code section. As used in this Code section, 'audit' means a comprehensive
1071 review of the records of a company which is reasonably related to the calculation and
1072 payment of due compensation. Once any audited period of a company has been the
1073 subject of a requested audit, such audited period of such company shall not again be the
1074 subject of any audit. In the event of a dispute concerning the amount of due
1075 compensation due to an affected municipal authority under this Code section, an action
1076 may be brought in a court of competent jurisdiction by an affected municipal authority
1077 seeking to recover an additional amount alleged to be due or by a company seeking a
1078 refund of an alleged overpayment; provided, however, that any such action shall be
1079 brought within three years following the end of the quarter to which the disputed amount
1080 relates, although such time period may be extended by written agreement between the
1081 company and such affected municipal authority. Each party shall bear the party's own
1082 costs incurred in connection with any dispute. The auditing municipal authority shall
1083 bear the cost of the audit; provided, however, that if an affected municipal authority files
1084 an action to recover alleged underpayments of due compensation and a court of
1085 competent jurisdiction determines the company has underpaid due compensation due for
1086 any 12 month period by 10 percent or more, such company shall be required to pay such
1087 municipal authority's reasonable costs associated with such audit along with any due
1088 compensation underpayments; provided, further, that late payments shall not apply. All
1089 undisputed amounts due to a municipal authority resulting from an audit shall be paid to
1090 the municipal authority within 45 days, or interest shall accrue.

1091 (13)(9) The information provided pursuant to paragraph (1) of this subsection and any
1092 records or information furnished or disclosed by a telephone company to an affected
1093 municipal authority pursuant to paragraph (12) of this subsection shall be exempt from
1094 public inspection under Article 4 of Chapter 18 of Title 50. It shall be the duty of such
1095 telephone company to mark all such documents as exempt from Article 4 of Chapter 18
1096 of Title 50, and the telephone company shall defend, indemnify, and hold harmless any
1097 municipal authority and any municipal officer or employee in any request for, or in any
1098 action seeking, access to such records.

1099 (14) No acceptance of any payment shall be construed as a release or as an accord and
1100 satisfaction of any claim an affected municipal authority may have for further or
1101 additional sums payable as due compensation.

1102 (15) Any amounts overpaid by a company as due compensation shall be deducted from
1103 future due compensation owed.

1104 (16) A telephone company paying due compensation pursuant to this Code section may
1105 designate that portion of a subscriber's bill attributable to such charge as a separate line
1106 item of the bill and recover such amount from the subscriber.

1107 (17)(10) Nothing in this Code section shall affect the authority of a municipal authority
1108 to require telephone companies accessing the public roads and highways and rights of
1109 way of a municipal authority to obtain permits and otherwise comply with the reasonable
1110 regulations established pursuant to paragraph (10) of subsection (a) of Code Section
1111 32-4-92.

1112 (18) If a telephone company does not have retail, end user customers located within the
1113 boundaries of a municipal authority, then the payment by such company at the same rates
1114 that such payments were being made as of January 1, 2008, to a municipal authority for
1115 the use of its rights of way shall be considered the payment of due compensation;
1116 provided, however, that at the expiration date of any existing agreement for use of such
1117 municipal rights of way or December 31, 2012, whichever is earlier, the payment at rates
1118 in accordance with the rates set by regulations promulgated by the Department of
1119 Transportation shall be considered the payment of due compensation. Provided, further,
1120 that if a telephone company begins providing service after January 1, 2008, and such
1121 telephone company does not have retail, end user customers located within the
1122 boundaries of a municipal authority, the payment by such company at rates in accordance
1123 with the rates set by regulations promulgated by the Department of Transportation to a
1124 municipal authority for the use of its rights of way shall be considered the payment of due
1125 compensation.

1126 (19) Nothing in this Code section shall be construed to affect any franchise fee payments
1127 which were in dispute on or before January 1, 2008.

1128 (c) If a telephone company accesses the public roads and highways and rights of way of
1129 a county and such county requires such telephone company to pay due compensation, such
1130 due compensation shall be limited to an administrative cost recoupment fee which shall not
1131 exceed such county's direct, actual costs incurred in its permitting process, including
1132 issuing and processing permits, plan reviews, physical inspection, and direct administrative
1133 costs; and such costs shall be demonstrable and shall be equitable among applicable users
1134 of such county's roads and highways or rights of way. Permit fees shall not include the
1135 costs of highway or rights of way acquisition or any general administrative, management,
1136 or maintenance costs of the roads and highways or rights of way and shall not be imposed
1137 for any activity that does not require the physical disturbance of such public roads and
1138 highways or rights of way or does not impair access to or full use of such public roads and

1139 highways or rights of way. Nothing in this Code section shall affect the authority of a
1140 county to require a telephone company to comply with reasonable regulations for
1141 construction of telephone lines and facilities in public highways or rights of way pursuant
1142 to the provisions of paragraph (6) of Code Section 32-4-42."

1143 **PART II**

1144 **SECTION 2-1.**

1145 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
1146 amended in Code Section 48-7-1, relating to definitions regarding income taxes, by revising
1147 subparagraph (D) of paragraph (11) as follows:

1148 "(D) Every individual who is not a resident of this state for income tax purposes and
1149 who makes a withdrawal as provided for in paragraph ~~(10)(9)~~ of subsection ~~(b)(c)~~ of
1150 Code Section 48-7-27; and"

1151 **SECTION 2-2.**

1152 Said title is further amended in Code Section 48-7-30, relating to taxation of nonresident
1153 income, by revising subsection (a) as follows:

1154 "(a) The tax imposed by this chapter shall apply to the entire net income of a taxable
1155 nonresident derived from employment, trade, business, professional, or other activity for
1156 financial gain or profit performed or carried on within this state, including, but not limited
1157 to, the rental of real or personal property located within this state or for use within this
1158 state, the sale, exchange, or other disposition of tangible or intangible property having a
1159 situs in this state, the receipt of proceeds of any lottery prize awarded by the Georgia
1160 Lottery Corporation, and withdrawals of contributions to a savings trust account under
1161 Article 11 of Chapter 3 of Title 20 which are required to be included in taxable net income
1162 as provided in subparagraph ~~(b)(10)(C) (c)(9)(C)~~ of Code Section 48-7-27."

1163 **SECTION 2-3.**

1164 Said title is further amended in Code Section 48-7-30, relating to taxation of nonresident
1165 income, by revising paragraph (2) of subsection (d) as follows:

1166 "(2) Expenses allowable to a taxable nonresident as provided in paragraph (1) of this
1167 subsection shall be allowable only to the extent that the expenses are attributable to the
1168 production of income allocable to and taxable by this state. As to allowable deductions
1169 essentially personal in nature, such as contributions to charitable organizations, alimony,
1170 medical expenses, ~~the optional standard deduction, personal exemptions,~~ and credits for
1171 dependents, the taxable nonresident shall be allowed deductions for such deductions

1172 essentially personal in nature in the ratio that the gross income allocated to this state bears
1173 to the total gross income of the taxable nonresident computed as if the taxable
1174 nonresident were a resident of this state. The commissioner may accept total federal
1175 gross income as the equivalent of total Georgia gross income for purposes of this
1176 allocation."

PART III

SECTION 3-1.

This Act shall become effective on January 1, 2014. With respect to communications services which are regularly billed on a monthly basis, the excise taxation provisions of Part I of this Act shall become effective on the first regular billing period coinciding with or following January 1, 2014.

SECTION 3-2.

1184 All laws and parts of laws in conflict with this Act are repealed.