

New York State  
Department of Taxation and  
Finance



New York State  
Office of Real Property  
Services

# Local Telecommunications Taxes and Fees in New York State

Report to Governor George E. Pataki  
and the New York State Legislature

January 2001

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# Executive Summary

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Telecommunications is the backbone of the new economy. The ability to transmit voice, video, data and information in a clear and efficient manner is the 21st century analog to the ability to move goods along a nationwide network of high speed roads and bridges during the last century. New York State must be at the forefront of this new economy by having a first class telecommunications network. New York's continued position as a center for financial services, entertainment, advertising, broadcasting, new media, and other communications-intensive industries requires this form of superior infrastructure. The State's millions of private consumers and commercial businesses also demand high quality telecommunications.

The SFY 1999-00 budget agreement mandated a study of local telecommunications taxes to be conducted by the Department of Taxation and Finance and the Office of Real Property Services (ORPS). The purpose of the report is to examine the various sources of local taxes and fees levied on telecommunications companies, including cable television companies, and on consumers of telecommunications services. The statutory mandate can be found in Appendix A. To assist the Tax Department and ORPS in the preparation of the report, the legislation called for the appointment of an advisory panel (see Appendix B) comprised of representatives of local government, affected telecommunications providers, the cable television industry, and other individuals with expertise in the field. We thank the panel members for their assistance in preparing this report.

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## Description of Local Taxes and Fees

The report catalogs all of the various local taxes and fees paid by telecommunications providers, cable television companies, and consumers of telecommunications. This includes:

- ***Local Sales and Compensating Use Tax*** – Local sales taxes, along with the State sales tax, apply to sales of intrastate telecommunications services. Cable television programming services are exempt from tax. Telecommunications services are subject to

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local sales taxes imposed by 104 separate taxing units including counties, cities, and school districts. County and city tax rates vary from 3 percent to 4.25 percent. In addition, there is a 0.25 percent tax rate levied in the downstate Metropolitan Commuter Transportation District. Certain school districts can also impose an additional sales tax on consumer utility services, including taxable telephone services, at a rate of up to 3 percent.

- ***Real Property Tax*** – Real property taxes are levied by over 3,500 separate taxing units including counties, cities, towns, villages, school districts, and other special districts. In New York, special franchises granted to companies to place their property on, under, or over the public way are State assessed. All other utility property is locally assessed.
- ***Local Gross Receipts Taxes*** – Cities, other than New York City, and villages may impose gross receipts taxes on sales of utility services that occur within their jurisdiction. Currently, 57 cities and 349 of 553 eligible villages impose this tax. The tax is imposed at a rate of 1 percent, but special authority has been granted to three cities (Buffalo, Rochester, and Yonkers) to impose the tax at 3 percent.
- ***New York City Taxes*** – The City of New York imposes its own set of corporate and excise taxes on telecommunications. This includes a 2.35 percent utility tax, an 8.85 percent general corporation tax, and a 4 percent unincorporated business tax.
- ***Cable Television Franchise Fees*** – Municipalities may impose fees of up to 5 percent of gross revenues derived from the operation of cable television systems.
- ***Telecommunications Franchise Fees*** – The telecommunications industry and local governments take opposing views on whether local governments are authorized under New York law to impose local telecommunications franchise fees and, if authorized, whether franchise fees are limited to the cost of managing the use of the public way. This report describes the positions of the local government representatives and the telecommunications industry members on the advisory panel regarding these local franchise fees.

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- **County E911 Surcharges** – Counties outside New York City are authorized to impose a surcharge of up to 35 cents per local exchange service access line per month to pay for the costs associated with obtaining and maintaining the telecommunications equipment necessary to provide an enhanced 911 emergency telephone system.
  - **Cellular 911 Surcharge** – A statewide cellular surcharge of 70 cents per cellular telephone is applied to customers' bills.
  - **Metropolitan Transportation Authority (MTA) Surcharge** – A 17 percent surcharge applies to State corporation taxes allocable to the 12 county, Metropolitan Commuter Transportation District.

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## Data Collection

The statutory language for this report requires the presentation of information on the amount of taxes, fees, and other charges being collected by local governments from telecommunications and cable television companies and providers. One method for collecting data on the amount of tax and fee revenue is to examine various State government sources. However, because many of the taxes and fees are locally collected and administered, this may not provide a complete accounting of these revenues. At the initial meeting of the advisory panel, it was suggested that the companies complete a data request survey on the taxes and fees they pay to local governments.

Survey results showed (see Table 1), for the most part, general agreement with figures computed by the Tax Department and ORPS from various governmental sources. In total, the survey showed that telecommunications and cable television companies remitted nearly \$900 million to local governments in 1998. Computations from governmental sources indicated that the total amount of local telecommunications taxes and fees was slightly over \$1 billion for the same time period. Nearly two-thirds of these revenues came from two sources – the sales tax and the real property tax. These figures provide a reasonable range for an estimate of the fiscal impact of the various local telecommunications taxes and fees levied in New York State.

**Table 1: Comparison of 1998 Revenues – Survey vs. Government Sources**

| Revenue Type            | Survey (\$ millions) | Government Source (\$ millions) |
|-------------------------|----------------------|---------------------------------|
| Local Sales Tax         | \$304.9              | \$350.0                         |
| Local GRTs & NYC Taxes  | 81.7                 | 107.0                           |
| Real Property Tax       | 308.7                | 306.5                           |
| Cable TV Franchise Fees | 101.9                | 100.0                           |
| Local Telecom. Fees     | 0                    | 26.0                            |
| County E911 Surcharge   | 39.4                 | 40.0                            |
| Cellular 911 Surcharge  | 12.5                 | 25.0                            |
| MTA Surcharge           | 45.0                 | 84.8                            |
| <b>Total</b>            | <b>\$894.1</b>       | <b>\$1,039.3</b>                |

**Local Telecommunications Tax Issues**

During meetings of the advisory panel with Tax Department and ORPS staff, panel members raised several issues concerning local telecommunications taxes that they felt deserved the attention of the Governor and the Legislature. These issues may provide a starting point for areas of future research regarding local telecommunications tax policy. However, this list of issues does not comprise the entire set of issues in local telecommunications taxation. In addition, these discussions should not be construed as formal recommendations, nor do they represent a consensus of all panel members. The issues discussed include:

- ***Administrative Burden of Combined State and Local Telecommunications Taxes*** – New York State, and many of its local governments, levy sales and excise taxes on telecommunications services. Recent studies of local taxation of telecommunications have noted that there is a significant administrative cost to comply with these numerous taxes imposed in multiple jurisdictions. In addition, State-imposed gross receipts-based excise taxes, and their local counterparts, currently do not have the same tax base, definitions or exemptions. According to industry representatives, this adds to the burden of compliance with local utility taxes.
- ***Potential Non-compliance with Existing Telecommunications Taxes*** – Established telecommunications companies are known to the taxing authorities and seek to comply with the myriad of State and local taxes imposed on the services provided by these companies. Some members of the advisory panel noted that there may be new telecommunications companies entering the New York market that

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are not subject to PSC regulation or are subject to only nominal regulation, and that these companies may not be paying New York State and local taxes. If this is true, then fair and equitable treatment would require that these companies comply with the law.

- ***Real Property Tax on Telecommunications Network Assets*** – Currently, certain property of telecommunications companies, such as poles, wires, cables and conduits, are defined and taxed as real property under the Real Property Tax Law. As such, the equipment in question is taxable, except for that owned by a cable television company and located on land that was privately owned at the time of initial installation. Industry representatives argue that their network equipment should be granted the same tax-exempt status granted to certain movable machinery and equipment of other industries pursuant to Section 102(12)(f) of the Real Property Tax Law. Local government representatives argue that the telecommunications industry is very profitable, and that any further removal of its property from local tax bases would be detrimental to their ability to raise property tax revenues, particularly insofar as substantial amounts of the property of this industry has already been made exempt in prior years.
- ***Non-Uniformity in Real Property Assessment Practices*** – New York has over 1,200 separate real property tax assessing jurisdictions, all of which contain telecommunications property. Where telecommunications equipment is located on privately-owned land, it is assessed by local assessors; and where it is located on publicly-owned land, it is assessed by the State.

Industry representatives argue that equipment located in different assessing units may not be valued in the same manner by the respective assessors. They point out that, quite often, network equipment such as lines, poles, or cellular equipment is very similar, regardless of location. However, because the equipment located on private land is assessed separately by a large number of assessors, some of it may be over-valued and some may be under-valued, either in absolute terms or as compared to other types of property. Local officials argue that locational differences will likely affect the value of any property, and that it is unrealistic to expect the values of similar equipment to be the same everywhere, even if it were assessed by a single governmental entity.



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- ***Real Property Taxes Are Paid By Telecommunications Companies to a Large Number of Separate Billing Entities*** – In contrast to some other states, where taxes are billed centrally by the State and the proceeds distributed to local governments, New York generally uses separate local billing for municipalities and school districts. When combined with a variety of billing cycles, this highly decentralized, and duplicative billing system is said to be burdensome by telecommunications companies having property located in a large number of municipalities. Survey results indicate that some 512 separate tax bills, sent by 314 separate billing entities, must be dealt with annually by the average telecommunications company having taxable real property. Participants suggested that greater centralization or consolidation of billing through technological means is probably a useful avenue to explore.
  - ***Non-Uniform Treatment of Capital Improvements – Property Tax and Sales Tax*** – Under current law and statutory interpretations, capital improvements to real property may or may not be subject to property or sales taxes, while the tangible personal property used to create the improvement may or may not qualify as a capital improvement for sales tax purposes under different rules. Depending on the specific circumstances, a given improvement may result in additional tax liability under both taxes, under one or the other, or under neither. Participants believed that greater consistency between the two taxes would be a desirable goal.
  - ***Sourcing of Mobile Telecommunications Services*** – Currently, under the sales tax, telephone calls are generally sourced based on where the service is provided. This sourcing method works well for stationary landline calls, but it is problematic for mobile telecommunications. With mobile services, a call can start in one jurisdiction and end in another and the place of origin may not be known. The wireless industry introduced a sourcing proposal in Congress in 1999 as The Mobile Telecommunications Sourcing Act. The bill was signed into law this past summer and will become effective in August 2002.

Under the new federal law, mobile telecommunications will utilize a new sourcing method where only the jurisdiction of the primary use of the mobile phone can tax all calls made by the subscriber, regardless of where the call originates or terminates. Primary use

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would be evidenced by the residential street address or primary business street address of the customer. When carriers compute the local sales tax, they may use the subscriber's 9-digit zip code from their residential street or business address, unless the State provides a street address-based geographic information system (GIS) which associates the address to the correct jurisdiction. Such a system must conform with nationwide standards and it would have to be continually updated to account for new construction and other changes. The carrier is held harmless by the jurisdiction in the assignment of customers to jurisdictions when using the applicable database.

Several provisions of the new federal law will affect sourcing of wireless calls and its affect on local government revenue. The new sourcing provisions address three aspects of the sales tax: which jurisdiction's tax applies to the taxable charges for mobile telecommunications services; the tax compliance responsibilities of the home service provider; and the application of taxes when other services or items are bundled with mobile telecommunications services.



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# Introduction

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Telecommunications is the backbone of the new economy. The ability to transmit voice, video, data and information in a clear and efficient manner are the 21st century analogs to the ability to move goods along a nationwide network of high speed roads and bridges during the last century. New York State must be at the forefront of this new economy by having a first class telecommunications network. New York's continued position as a center for financial services, entertainment, advertising, broadcasting, new media, and other communications-intensive industries requires this form of superior infrastructure. The State's millions of private consumers and commercial businesses also demand high quality telecommunications.

With this background, in 1995, New York State commenced a comprehensive study of the State's telecommunications tax policy. The Department of Taxation and Finance's report entitled "Improving New York State's Telecommunications Taxes" was released in two volumes in 1996 and 1997. The report found that the State's telecommunications taxes had not kept pace with the changing technology in this industry. For instance, the gross receipts tax was originally enacted in the 19th century as a way for the State to receive payment for the granting of monopoly franchises for various utilities such as telecommunications, energy, and transportation. The study made several recommendations to modernize and improve State telecommunications taxes and the Governor and Legislature enacted many of those recommendations.

One issue, however, raised in the 1997 study was not addressed at that time. The report discussed the concern over the effect of locally imposed taxes and fees on telecommunications companies. New York State's local governments impose numerous taxes and fees including sales taxes, gross receipts taxes, real property taxes, and franchise fees. Additionally, the bases of some of these taxes do not always correspond with the bases of comparable State taxes. Because the 1997 study focused on State telecommunications taxes, local tax issues were beyond the scope of that

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report. Therefore, the study recommended the formation of a local tax study task force comprised of industry members, local government representatives, and appropriate State agencies to examine areas where local taxes could be modernized and administration and compliance simplified.

The SFY 1999-00 budget agreement mandated a study of local telecommunications taxes to be conducted by the Department of Taxation and Finance and the Office of Real Property Services (ORPS). The purpose of the report is to examine the various sources of local taxes and fees levied on telecommunications companies, including cable television companies, and on consumers of telecommunications services. The statutory language can be found in Appendix A. To assist the Tax Department and ORPS in the preparation of the report, the legislation called for the appointment of an advisory panel comprised of representatives of local government, affected telecommunications providers, the cable television industry, and other individuals with expertise in the field. Appendix B lists the names and affiliations of the members of the advisory panel.

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## Recent Studies of Local Telecommunications Taxation

### Information Highway State and Local Tax Study Group

New York State's examination of local telecommunications taxes is not the first such study on this topic. In 1995, the Information Highway State and Local Tax Study Group issued a paper entitled, "Supporting the Information Highway: A Framework for State and Local Taxation of Telecommunications and Information Services." This study group represented a cross-section of national telephone, cable, wireless, and information providing companies, and they received assistance in the preparation of the paper from experts in the fields of telecommunications and tax policy. The paper identified problems created by state and local tax laws that have not kept pace with the dramatic changes which had been reshaping the telecommunications industry. It also suggested solutions consistent with federal policy objectives, principles of tax policy, and the experience of the telecommunications industry in complying with state and local tax laws. The main recommendations of this study were:

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- Taxes aimed solely at the telecommunications industry are inequitable because they bias investment away from the telecommunications infrastructure and raise the cost of telecommunications and information technologies relative to other products and services, and they should be eliminated.
  - Tax policies that result in inequitable treatment among providers or functionally equivalent transactions or property of providers are anticompetitive and are obstacles to the achievement of a level playing field, and need to be modified.
  - Tax policies intended to encourage innovation and investment in the information infrastructure should include taxes, credits and exemptions for telecommunications taxpayers that are comparable to those available to general business taxpayers.

New York State  
Conference of Mayors and  
Municipal Officials

In 1996, the New York State Conference of Mayors and Municipal Officials (NYCOM) produced a report entitled “The Eroding Tax Base: New York’s Property Tax at a Crossroads.” The report does not focus solely on telecommunications taxation, but it demonstrates the erosion of the local real property tax base over recent periods. Factors causing this erosion include:

- Increased use of property tax exemptions.
- State legislated exemptions for condominiums, cooperatives, railroads, and telecommunications property.
- Decline in special franchise property taxes paid by utilities, including telecommunications companies.
- Increase in administrative and judicial assessment challenges.
- Lack of State mandate relief for local governments.

The NYCOM report recommendations for stopping local real property tax base erosion include:

- Stop adopting new, and expanding existing, property tax exemptions as a means of implementing State social and economic policy.

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- Repeal unjustified exemptions and assessment restrictions that merely serve as State mandated and locally financed subsidies to special interest groups.
  - Reject efforts by utilities to eliminate the local option gross receipts tax, especially as utility property taxes have already declined significantly.
  - Work with local assessing units to remove barriers and add incentives to reassess, thereby making assessments more equitable.
  - Fund revenue sharing at statutory levels and approve mandate relief proposals.

## Committee on State Taxation

Perhaps the most comprehensive study of local telecommunications taxes was conducted in 1999 by the Committee on State Taxation (COST). COST's "50-State Study and Report on Telecommunications Taxation" examined the state and local telecommunications tax structures in each of the 50 states and compared them to the tax systems imposed on general businesses. The report was presented at the September 1999 meeting of the Advisory Commission on Electronic Commerce (ACEC) held in New York City. The ACEC was formed by the federal Internet Tax Freedom Act to conduct a comprehensive study of the current systems of taxation as they relate to the Internet and electronic commerce. One of the issues examined by the ACEC was how to simplify federal, state and local taxes imposed on the provision of telecommunications services.

The COST study found that the existing tax system on telecommunications is more burdensome and unmanageable than the complicated transactional tax system applicable to general businesses. For example, a single nationwide telecommunications service provider would have to maintain information on 310 individual state and local taxes that are applied to 687 different tax bases. The report also concluded that telecommunications providers have substantially more administrative filing requirements (55,748 returns required to be filed annually nationwide) as compared to sellers of goods (7,237 returns). In New York State, a telecommunications company doing business across the State would have to file over 3,000 tax returns each year. COST also showed that New York imposed a higher combined effective tax rate on

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telecommunications (21.33 percent) than on other general businesses operating in the State (8.5 percent).

The COST study provided a series of options for telecommunications tax simplification:

- Eliminate or simplify industry-specific taxes imposed on telecommunications services.
- Reform the disparate real property taxation applicable to telecommunications businesses.
- Exempt communications equipment and other business inputs from transactional taxes.
- Simplify the bases to which transactional taxes apply.
- Provide uniform rules for sourcing telecommunications revenues.
- Simplify the rate structure of transactional taxes.
- Simplify tax administration through unified filing, unified audits, and unified exemption rules.

Proposal to the Advisory  
Commission on Electronic  
Commerce

In November 1999, a consortium of telecommunications providers presented their “Proposal for State and Local Taxation of the Telecommunications Industry” to the ACEC. The proposal is divided into two parts. The first part offers two options for simplification of state and local telecommunications taxes. Option A incorporates a single, statewide transaction tax on telecommunications, a portion of which could, at the state’s option, be distributed to local governments. Other components of Option A include:

- One return per state.
- One audit administered at the state level.
- Nationwide uniform sourcing rules.
- Nationwide uniform definitions.



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- 120 days lead time for implementing tax base and rate changes.

The second option, Option B, allows for the continued imposition of local taxes in those states where local taxes are currently imposed on telecommunications services. However, Option B requires certain additional provisions to ensure that there is substantial simplification in the administration of those taxes. These include:

- Uniform state and local tax base.
- Uniform state and local exemptions.
- Single tax return and state distribution of revenues.
- Unified state level audits.
- State administered uniform address database.
- State administered jurisdictional and rate database.
- Nationwide uniform sourcing rules and definitions.

The second part of this proposal to reform telecommunications suggests a phase-out of those aspects of the current tax structure that discriminate against the telecommunications industry. The ultimate goal of this proposal is to create an equalized tax burden between telecommunications companies and other competitive businesses. The main parts of this proposal are:

- Phase-out over time of industry-specific and higher transaction tax rates.
- Real property tax reform in terms of equalizing assessment ratios between telecommunications property and other types of business property.
- Equal treatment for business inputs between telecommunications equipment purchases and other business equipment expenditures.

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National Governors' Association and National Association of State Budget Officers

The most recent study of state and local telecommunications taxes was published in February 2000 by the National Governors' Association and the National Association of State Budget Officers. In "Telecommunications Tax Policies: Implications for the Digital Age," the authors discuss ways for state and local governments to simplify and reform their telecommunications taxes. These include:

- Extending sales tax exemptions for manufacturing equipment to telecommunications equipment.
- Equalizing assessment ratios in real property taxes between telecommunications property and other types of business property.
- Consolidating local telecommunication taxes and fees.
- Promoting simplicity through joint state-local tax administration and standardization of state and local tax bases.

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Recent Actions in Other States

Several states have undertaken reforms of their local telecommunications tax structures. This section highlights the most recent changes including those made in Florida, Illinois and Ohio.

Florida

Earlier this year, Florida enacted a complete overhaul of its various taxes applicable to telecommunications. Florida's previous telecommunications tax structure included a state sales tax, local sales tax, state gross receipts tax, municipal utility tax, and franchise fees. However, these taxes and fees were applied differently depending on the nature of the provider and the type of service sold. The new law attempts to equalize taxes across all types of telecommunications providers and simplifies the administration and compliance of the taxes on telecommunications services. The legislation allows the legislature to set local tax rates such that the existing levels of revenue are maintained for the cities and counties that rely on those funding sources. The law becomes effective in October 2001, to allow the legislature additional time to set the local tax rates.

Illinois

The Illinois legislature is considering a bill that would, beginning in 2002, require that the Illinois Department of Revenue collect and administer the municipal telecommunications infrastructure maintenance fee, the municipal tax on transmitting messages, and the municipal telecommunications tax. This would be done on one monthly return

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rather than filing separate returns with each municipality individually. The State would then distribute the money back to the municipalities. Currently, these taxes and fees are collected and administered by municipalities. Under the legislation, the City of Chicago would continue to be permitted to collect its own telecommunications taxes and fees.

## Ohio

In Ohio, over 400 municipalities levy a corporate income tax with a lack of uniformity among the localities. Legislation enacted this year creates uniformity among municipalities, without breaching Home Rule restrictions and makes Ohio municipal income taxes easier to comply with. Beginning in 2001, the legislation allows taxpayers to file generic municipal income tax forms (i.e., uniformity of tax forms among local governments). Additionally, municipal income tax returns do not have to be filed before the applicable federal filing deadlines, and taxpayers requesting filing extensions from the federal government must receive similar extensions from local governments. Beginning in 2002, the law creates a central repository by requiring municipalities to publish municipal income tax ordinances and rules in an electronic form on an Internet-accessible site, and to provide electronic versions of tax forms, returns and instructions on the Internet. It also requires the Tax Commissioner to provide an electronic link between the Ohio Department of Taxation's web site and all municipalities' sites.

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# Description of Local Taxes and Fees in New York State

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## Local Sales and Compensating Use Taxes

The New York State and local sales and compensating use taxes are administered jointly by the Department of Taxation and Finance. Generally, the sales tax is imposed on the consumer of taxable goods and services; but the tax is collected by the retail vendor from the consumer and remitted to the Tax Department on a monthly, quarterly, or annual basis depending on the amount of the vendor's taxable receipts. Vendors who file via electronic funds transfer remit tax twice monthly. Once the tax is collected, the State distributes the local portion of sales and use tax collections back to the counties, cities, and school districts which impose this tax. Counties may then distribute a portion of their revenues to cities, towns, villages, and school districts in the county.

## Sales and Compensating Use Tax Base

New York State adopted Article 29 of the Tax Law, known as the Local Enabling Act, in 1965 when it enacted the State sales and use taxes (Article 28). The sales and compensating use taxes (sales tax) apply primarily to retail sales or uses of tangible personal property in New York State. The sales tax also applies to the retail sale of a variety of services, notably, intrastate telephone calls, certain services to real or tangible personal property, and hotel occupancy. Generally, the sales tax base includes tangible personal property unless the law provides a specific exemption and does not include a service unless the law specifically enumerates the service as taxable.

Intrastate telephone and telegraph services fall within the purview of a taxable service. The tax applies to:

“... every sale, other than sales for resale, of... telephony and telegraphy and telephone and telegraph service of whatever nature except for interstate and international telephony and telegraphy and telephone and telegraph service...”

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The sales tax also applies to telephone answering services and to prepaid telephone calling services.<sup>1</sup>

The term “telephony and telegraphy” includes the use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals. The regulation explicitly includes dispatch services, paging, and facsimile transmissions. However, telephone service is not taxed if it is merely incidental to another service being sold.<sup>2</sup>

New York’s sales tax does not apply to sales of cable television service or other forms of television programming or music programming service.<sup>3</sup> Charges for incidental tangible personal property supplied to customers with cable service (e.g., remote control units and converter boxes) are also exempt. However, charges to a customer to install cable service or to service cable equipment are subject to tax.<sup>4</sup>

Under Article 29, a city or county can impose a broad-based sales tax generally on the same goods and services subject to the State tax. Article 29 also allows a city or county which does not impose the broad-based sales tax to tax selectively any one or more of four segments of the broad-based sales tax. These are:

- utility services, including intrastate telephone and telegraph services, and pre-paid telephone calling services;
- “restaurant” food and drink;
- hotel room occupancy; and,
- certain amusement charges.

Currently, all counties and most cities that impose a sales tax impose the broad-based sales tax, generally similar to the State’s sales tax. Four cities (Lockport, Newburgh, Niagara Falls, and Port Jervis) impose the segmented sales tax on telephone and other utility services.

## Local Sales Tax Rates

In general, cities and counties may impose a local sales tax rate of up to 3 percent. However, 24 counties and four cities in Westchester County have exercised legislative authorization to exceed the 3 percent rate. The 4 percent sales tax rate in New York City also exceeds the 3 percent rate.<sup>5</sup>

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The State also imposes sales tax at the rate of 0.25 percent in the Metropolitan Commuter Transportation District (MCTD), which consists of seven downstate counties and the five boroughs of New York City. Receipts from this tax are earmarked for the Mass Transportation Operating Assistance Fund which supports public transportation in the Metropolitan Commuter Transportation District.

Finally, school districts that are coterminous with, or wholly or partly located within, a city of less than 125,000 inhabitants may impose sales tax on utility services – including intrastate telephone and telegraph services – at a rate of up to 3 percent. Currently, 19 city school districts impose these taxes.

Table 2 shows each of the local sales tax rates in New York State by community. Table 3 shows the combined rates of the different State and local sales taxes, by community, on telephone service. For example, local telephone service in Albany County outside the area of the Albany City School District is 8 percent, but local telephone service delivered in the Albany City School District would be subject to an 11 percent tax rate.

#### Treatment of Telecommunications Equipment

Effective September 1, 2000, many purchases made by telecommunications service providers are exempt from State and local sales tax. Specifically, the Tax Law exempts purchases of network equipment, customer-premises equipment, optical fiber, wire, cable, wireless equipment, and other tangible property (including prewritten computer software), when used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, switching or monitoring of switching of telecommunications or Internet access services for sale.<sup>6</sup>

Also exempt from State and local sales tax are the parts, tools, and supplies used directly and predominantly in or on the equipment described above. The charges for installing, repairing, maintaining, or servicing exempt equipment, or exempt parts, tools, and supplies described above are also exempt.

**Table 2: New York Local Sales Tax Rates on Telephone Service, by Community, as of September 1, 2000**

| State  |       |                               |       |                             |       |
|--|-------|-------------------------------|-------|-----------------------------|-------|
| The State sales tax rate is 4% in each county                                    |       |                               |       |                             |       |
| Counties   |       |                               |       |                             |       |
| The following shows the County sales tax rates currently in effect:              |       |                               |       |                             |       |
| County   | Rate  | County                        | Rate  | County                      | Rate  |
| Albany   | 4.00% | Herkimer                      | 4.00% | Richmond 1/                 | n/a   |
| Allegany   | 4.00% | Jefferson                     | 3.00% | Rockland                    | 3.00% |
| Bronx 1/   | n/a   | Kings 1/                      | n/a   | St. Lawrence                | 3.00% |
| Broome   | 4.00% | Lewis                         | 3.00% | Saratoga                    | 3.00% |
| Cattaraugus  | 4.00% | Livingston                    | 3.00% | Schenectady                 | 3.50% |
| Cayuga   | 4.00% | Madison                       | 3.00% | Schoharie                   | 3.00% |
| Chautauqua   | 3.00% | Monroe                        | 4.00% | Schuyler                    | 4.00% |
| Chemung  | 3.00% | Montgomery                    | 3.00% | Seneca                      | 3.00% |
| Chenango   | 3.00% | Nassau                        | 4.25% | Steuben                     | 4.00% |
| Clinton  | 3.00% | New York 1/                   | n/a   | Suffolk                     | 4.00% |
| Columbia   | 4.00% | Niagara                       | 3.00% | Sullivan                    | 3.00% |
| Cortland   | 4.00% | Oneida                        | 4.00% | Tioga                       | 3.50% |
| Delaware   | 2.00% | Onondaga                      | 3.00% | Tompkins                    | 4.00% |
| Dutchess   | 3.00% | Ontario                       | 3.00% | Ulster                      | 3.75% |
| Erie   | 4.00% | Orange                        | 3.00% | Warren                      | 3.00% |
| Essex  | 3.00% | Orleans                       | 4.00% | Washington                  | 3.00% |
| Franklin   | 3.00% | Oswego                        | 3.00% | Wayne                       | 3.00% |
| Fulton   | 3.00% | Otsego                        | 3.00% | Westchester                 | 2.50% |
| Genesee  | 4.00% | Putnam                        | 3.00% | Wyoming                     | 4.00% |
| Greene   | 4.00% | Queens 1/                     | n/a   | Yates                       | 3.00% |
| Hamilton   | 3.00% | Rensselaer                    | 4.00% |                             |       |
| Cities   |       |                               |       |                             |       |
| The following shows the City sales tax rate currently in effect:                 |       |                               |       |                             |       |
| City/County  | Rate  | City/County                   | Rate  | City/County                 | Rate  |
| Auburn/Cayuga  | 2.00% | Lockport/Niagara              | 3.00% | Oswego/Oswego               | 3.00% |
| Canandaigua/Ontario  | 1.50% | Mount Vernon/Westchester      | 2.50% | Port Jervis/Orange          | 3.00% |
| Corning/Steuben  | 1.50% | New Rochelle/Westchester      | 3.00% | Rome/Oneida                 | 1.50% |
| Fulton/Oswego  | 3.00% | New York City                 | 4.00% | Salamanca/Cattaraugus       | 1.50% |
| Geneva/Ontario   | 1.50% | Newburg/Orange                | 3.00% | Sherrill/Oneida             | 1.00% |
| Glens Falls/Warren   | 1.50% | Niagara Falls/Niagara         | 3.00% | Utica/Oneida                | 1.50% |
| Gloversville/Fulton  | 1.50% | Norwich/Chenango              | 1.50% | White Plains/Westchester    | 2.00% |
| Hornell/Steuben  | 1.50% | Ogdensburg/St. Lawrence       | 1.50% | Yonkers/Westchester         | 4.00% |
| Ithaca/Tompkins  | 1.50% | Olean/Cattaraugus             | 1.50% |                             |       |
| Johnstown/Fulton   | 1.50% | Oneida/Madison                | 1.50% |                             |       |
| City School Districts 2/   |       |                               |       |                             |       |
| The following shows the City School District sales tax rate currently in effect: |       |                               |       |                             |       |
| City School District/County  | Rate  | City School District/County   | Rate  | City School District/County | Rate  |
| Albany/Albany  | 3.00% | Johnstown/Fulton & Montgomery | 3.00% | Schenectady/Schenectady     | 3.00% |
| Batavia/Genesee  | 3.00% | Lackawanna/Erie               | 3.00% | Utica/Oneida                | 3.00% |
| Cohoes/Albany  | 3.00% | Long Beach/Nassau             | 3.00% | Watertown/Jefferson         | 3.00% |
| Glen Cove/Nassau   | 3.00% | Middletown/Orange             | 3.00% | Watervliet/Albany           | 3.00% |
| Gloversville/Fulton  | 3.00% | New Rochelle/Westchester      | 3.00% | White Plains/Westchester    | 3.00% |
| Hornell/Steuben  | 3.00% | Niagara Falls/Niagara         | 3.00% |                             |       |
| Hudson/Columbia  | 3.00% | Ogdensburg/St. Lawrence       | 3.00% |                             |       |
| Metropolitan Commuter Transportation District (MCTD)                             |       |                               |       |                             |       |
| The following shows the MCTD sales tax rate currently in effect:                 |       |                               |       |                             |       |
| County   | Rate  | County                        | Rate  | County                      | Rate  |
| Bronx  | 0.25% | New York                      | 0.25% | Richmond                    | 0.25% |
| Dutchess   | 0.25% | Orange                        | 0.25% | Rockland                    | 0.25% |
| Kings  | 0.25% | Putnam                        | 0.25% | Suffolk                     | 0.25% |
| Nassau   | 0.25% | Queens                        | 0.25% | Westchester                 | 0.25% |

1/ Counties within the City of New York do not impose county sales taxes.

2/ School Districts in cities with a population of 125,000 or less may impose this additional tax up to 3 percent.

Source: NYS Department of Taxation and Finance, Office of Tax Policy Analysis.

**Table 3: Combined State and Local Sales Tax Rates on Telephone Service, by Community, as of September 1, 2000**

The following shows the combined State, County, City, School District, and MCTD sales tax rates for each taxing jurisdiction:

| County                             | Rate   | County                             | Rate   | County                            | Rate   |
|------------------------------------|--------|------------------------------------|--------|-----------------------------------|--------|
| Albany outside of...               | 8.00%  | Jefferson outside of...            | 7.00%  | Rensselaer                        | 8.00%  |
| Albany City School District        | 11.00% | Watertown City School District     | 10.00% | Richmond                          | 8.25%  |
| Cohoes City School District        | 11.00% | Kings                              | 8.25%  | Rockland                          | 7.25%  |
| Watervliet City School District    | 11.00% | Lewis                              | 7.00%  | St. Lawrence outside of...        | 7.00%  |
| Allegany                           | 8.00%  | Livingston                         | 7.00%  | City of Ogdensburg, except in...  | 7.00%  |
| Bronx                              | 8.25%  | Madison outside of...              | 7.00%  | Ogdensburg City School District   | 10.00% |
| Broome                             | 8.00%  | City of Oneida                     | 7.00%  | Saratoga                          | 7.00%  |
| Cattaraugus outside of...          | 8.00%  | Monroe                             | 8.00%  | Schenectady outside of...         | 7.50%  |
| City of Olean                      | 8.00%  | Montgomery outside of...           | 7.00%  | Schenectady City School District  | 10.50% |
| City of Salamanca                  | 8.00%  | City of Johnstown School District  | 10.00% | Schoharie                         | 7.00%  |
| Cayuga outside of...               | 8.00%  | Nassau outside of...               | 8.50%  | Schuyler                          | 8.00%  |
| City of Auburn                     | 8.00%  | Glen Cove City School District     | 11.50% | Seneca                            | 7.00%  |
| Chautauqua                         | 7.00%  | Long Beach City School District    | 11.50% | Steuben outside of...             | 8.00%  |
| Chemung                            | 7.00%  | New York                           | 8.25%  | City of Corning                   | 8.00%  |
| Chenango outside of...             | 7.00%  | Niagara outside of...              | 7.00%  | City of Hornell except in...      | 8.00%  |
| City of Norwich                    | 7.00%  | City of Lockport                   | 7.00%  | Hornell City School District      | 11.00% |
| Clinton                            | 7.00%  | Niagara Falls City School District | 10.00% | Suffolk                           | 8.25%  |
| Columbia outside of...             | 8.00%  | Oneida outside of...               | 8.00%  | Sullivan                          | 7.00%  |
| Hudson City School District        | 11.00% | City of Rome                       | 8.00%  | Tioga                             | 7.50%  |
| Cortland                           | 8.00%  | City of Sherril                    | 8.00%  | Tompkins outside of...            | 8.00%  |
| Delaware                           | 6.00%  | City of Utica except in...         | 8.00%  | City of Ithaca                    | 8.00%  |
| Dutchess                           | 7.25%  | Utica City School District         | 11.00% | Ulster                            | 7.75%  |
| Erie outside of...                 | 8.00%  | Onondaga                           | 7.00%  | Warren outside of...              | 7.00%  |
| Lackawanna City School District    | 11.00% | Ontario outside of...              | 7.00%  | City of Glens Falls               | 7.00%  |
| Essex                              | 7.00%  | City of Canandaigua                | 7.00%  | Washington                        | 7.00%  |
| Franklin                           | 7.00%  | City of Geneva                     | 7.00%  | Wayne                             | 7.00%  |
| Fulton outside of...               | 7.00%  | Orange outside of...               | 7.25%  | Westchester outside of...         | 6.75%  |
| City of Gloversville, except in... | 7.00%  | City of Newburg                    | 7.25%  | City of Mount Vernon              | 8.25%  |
| Gloversville City School District  | 10.00% | City of Port Jervis                | 7.25%  | City of New Rochelle except in... | 8.25%  |
| City of Johnstown, except in...    | 7.00%  | Middletown City School District    | 10.25% | New Rochelle City School District | 11.25% |
| Johnstown City School District     | 10.00% | Orleans                            | 8.00%  | City of White Plains except in... | 7.75%  |
| Genesee outside of...              | 8.00%  | Oswego outside of...               | 7.00%  | White Plains City School District | 10.75% |
| Batavia City School District       | 11.00% | City of Fulton                     | 7.00%  | City of Yonkers                   | 8.25%  |
| Greene                             | 8.00%  | City of Oswego                     | 7.00%  | Queens                            | 8.25%  |
| Hamilton                           | 7.00%  | Otsego                             | 7.00%  | Wyoming                           | 8.00%  |
| Herkimer                           | 8.00%  | Putnam                             | 7.25%  | Yates                             | 7.00%  |



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Taxable purchases made by telecommunications companies include, by way of example, furniture, office supplies, motor vehicles, tangible personal property used in sales, tangible personal property used in administration, building systems (e.g., heating, ventilation, and air conditioning equipment), other property not used directly and predominantly in qualifying exempt uses, and utility services.

Treatment of Cable  
Television Equipment

Effective September 1, 2000 and ending August 31, 2003, the sales tax exempts machinery and equipment or apparatus used directly and predominantly to upgrade cable television systems for digital cable service. An exemption is also provided for certain equipment or apparatus used by a cable television service provider to furnish Internet access services. Also beginning September 1, 2000, the sales tax exempts radio and television broadcasters' purchases of machinery, equipment, and other tangible personal property used directly and predominantly to produce live or recorded programs for broadcast or to transmit the programs. In addition, the installation, repair, maintenance and service of these exempt items are not taxable under the sales tax. A "broadcaster" includes a radio or television station licensed by the Federal Communications Commission, a radio or television broadcast network, and a cable television network.

Structures, Towers, and  
Improvements to Real  
Property

Tangible personal property used to construct structures, towers, and improvements to real property may be taxable or exempt depending on the specific facts of the transaction. The sales tax does not apply to the service of installing tangible personal property which, when installed, constitutes a capital improvement to real property, property or land. A capital improvement is an addition or alteration to real property which:

- substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property;
- becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or to the article itself; and,
- is intended to become a permanent installation.<sup>7</sup>

If an installation qualifies as a capital improvement to real property, then the charge for labor to perform the capital improvement construction is not subject to sales tax. Tax must be paid, however, on the materials

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used in the construction. The tax on the materials is paid by the person who purchases those materials – either the contractor or the property owner, as the case may be.<sup>8</sup>

## Local Sales Tax Revenues

In total, New York State collects over \$8 billion in local sales tax revenues which it then distributes back to localities. Based on data of taxable sales and purchases made by companies in the communications category during the period September 1997 through August 1998, approximately \$350 million in local sales tax revenues were generated during that time frame.<sup>9</sup>

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## The Real Property Tax

The property tax is a local tax that currently generates approximately \$26 billion annually to support local government services. It is the largest of all taxes levied in New York State, substantially exceeding the combined total of State and local income taxes. Real property taxes are levied by over 3,500 separate taxing units, including counties, cities, towns, villages, school districts, and independent special districts which provide a variety of services. School districts are the single largest users of the property tax, claiming almost 60 percent of annual revenues.

In comparison to the type of local government organization and property tax administration found in most other states, New York's is highly localized. This fact derives ultimately from the fact that local governments assessed and levied property taxes in colonial times, and the State's courts have interpreted the Constitution as not taking away from local governments any powers they enjoyed prior to their creation.<sup>10</sup>

Whereas county assessing is the norm nationally, there are 981 city and town assessing units in New York, plus approximately 250 villages (which assess parcels also appearing on the respective town assessment rolls for village taxing purposes). Only two New York counties (Nassau and Tompkins), are assessing units, plus New York City which consists of five boroughs (vestigial counties). Some 370 assessing units – more than one-third of all non-village units – have less than 1,500 parcels each, and about 25 of them have fewer than 500 parcels. At the other extreme are New York City – with approximately one million parcels – and some assessing units on Long Island having between 100,000 and 450,000.

The majority of the non-village units employ sole appointed assessors, but about one-quarter have three elected assessors each. The elected

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assessors are subject to a high rate of turnover, due to often part-time status and relatively low pay. In recent years, county-level assistance, cooperative agreements, and the hiring of professional reassessment firms and multi-jurisdictional assessors have helped to offset to some extent the problems caused by fragmentation of assessing responsibility.

Typically, states require that assessments be updated at specified intervals and most require either that property be assessed at 100 percent of market value or that the same, specified percentages of market value be applied in all assessing jurisdictions to separate classes of property. Usually, market value is either defined in statute or a State agency is given authority to define it by regulation. Some states apply differential tax rates, or differential assessment levels to specified types of property, e.g., residential, commercial, etc. In contrast, the standard of assessment is more loose and ambiguous in New York, where assessing units are required to assess at a “uniform percentage of value” (RPTL Section 305), with New York City and Nassau County permitted to assess differentially four specified classes of property (RPTL Article 18). No update cycle is specified in either statute or regulation.

The value subject to taxation is not defined in the statute nor is specific authority given for definition through regulation. In certain cases, it has been interpreted by the courts to mean “value in current use,” whereas in other cases it has been held to mean “market value.”<sup>11</sup> Approximately one-third of New York’s assessing units have not updated their assessments for many years, with a few not having done so for fifty years or more. Some also apply differential assessment ratios to property classes, even though the practice is in apparent violation of the statutes which grant such authority only to New York City and Nassau County. However, the ambiguity of the relevant statutory language, and a lack of court decisions mandating uniform assessments throughout the State, has allowed inequitable practices to continue in this minority of assessing units.

In contrast to 41 of the other states, New York does not tax personal property (taxation of personalty was discontinued in 1933).<sup>12</sup> However, the exact definition as to what is real property and what is personal property varies greatly from state to state. Thus, it is possible to identify certain property components which are considered taxable realty in New York that would be either taxable personalty or exempt personalty in one or more other states. Appendix C, which provides a summary of

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the tax treatment of telecommunications property by states in the Northeastern and Mid-Atlantic regions, demonstrates the variety of provisions and the difficulty of making interstate comparisons.

## Taxation of Utility Property

### **Assessment**

In 33 of the other states, all public utility system property is assessed by an agency of state government for property tax purposes.<sup>13</sup> An additional nine states divide the assessment responsibility between state and local government, virtually always according to property type (e.g., telecommunications vs. pipelines), with the remainder providing for assessment by local government only. New York, however, is unique in that “special franchises” granted to utility companies to place their property on, under, or over the public way are State-assessed while all other utility property is locally assessed.

In practice, utility property is one of the most complex property types from a valuation standpoint. The difficulty it may pose for most of New York’s local assessors is recognized in the statutes insofar as they provide for both county-supplied and state-supplied advisory appraisals for complex parcels. These appraisals are made available to localities conducting reassessment programs but are not binding on them. An exception is New York City, which has sufficient specialized staff to assess utility equipment without State assistance. New York State’s approach thus contrasts markedly with the state-level assessment approach used in other states under which the state assessment is binding on the local government.

The standard methodology that has been used by states, referred to as the “unitary approach,” involves the following steps:

- valuation of a given utility company’s entire property base;
- removal from this figure of any non-taxable property (e.g., personal property) and “non-system” property (e.g., office buildings);
- determination of the share of the total value appropriately allocable to the taxing state; and
- distribution of the total value in the state to individual local governments.

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Alternatively, a state could, in theory, perform the assessment function centrally but not adopt the unitary approach, choosing instead to determine an independent value for the property component in each municipality without determining the unitary value of a company's entire property complement. This latter approach, which is found in a few, primarily Northeastern states, is essentially the one used in New York for special franchise property. However, it is not applied to utility property located on private land in New York because, as already discussed, such property is locally assessed.

The available techniques for determining value are the "comparable sales," "income," and "cost" approaches. Under comparable sales, recent sales of similar properties are used to determine the value of the property being assessed. In the past, when generating plants were rarely sold, the standard comparable sales approach had limited relevance. The income approach is based on the idea that the value of the property reflects the income it can earn in the future. The adding-up of future property income, discounted (capitalized) to its present value, determines what the property is worth at the present time.

The cost approach focuses on the construction cost of improvements when they were first built (original cost), what they would cost to build today (reproduction cost), or the cost of replacement with the lowest cost structure of having the same or better performance characteristics (replacement cost). Under any application of the cost approach, the estimated amount of depreciation must be subtracted from the estimated construction cost in determining value, and a land value, usually determined through comparable sales, must be added to the improvement value to produce a total value for the parcel. The depreciation component can be large for some properties, and it is often difficult to quantify as it must include not only physical deterioration but also functional and economic obsolescence. These latter factors are reflective of not only the plant's particular characteristics but also external factors such as technological change and economic conditions in the industry.

The existence of alternative methods to determine value (which, not surprisingly, may produce significantly different results), together with the lack of detailed statutory valuation requirements, has led to litigation. New York's courts, stepping in to specify the right approach in a particular instance, have been guided by a central concept of "specialty property." The Court of Appeals has established what constitutes a

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specialty and how it is to be valued: it must be uniquely adapted to the business conducted upon it; it must be used for a special purpose which is economically feasible at the time of valuation; and there must be no market or sales for property being so used. Once property is determined to be a specialty, it must be valued using the reproduction cost approach to valuation.<sup>14</sup>

Most utility properties, by their very nature, are designed for a special purpose and, because utilities have traditionally been regulated entities for which there has not been a market, the property has consequently been classified as specialty property. For example, in Brooklyn Union Gas v. State Board of Equalization and Assessment, the tangible component of special franchises was held to be “specialty property” and thus had to be assessed using the reproduction cost method rather than the capitalized net earnings approach that the company sought.<sup>15</sup> In Tenneco v. Town of Cazenovia, a natural gas pipeline located on a private land easement was found to be specialty property and the net earnings approach was again rejected.<sup>16</sup> More recently (1994), in Long Island Lighting Company v. Assessor for Town of Brookhaven, a non-operating nuclear power plant was found to be specialty property and was therefore to be assessed using the reproduction cost method.<sup>17</sup>

### **Tax Collection**

As with assessment, tax collection in New York is similarly localized. The general rule is that school taxes are billed in September and county/town taxes in January. Cities and villages have a wide variety of fiscal dates and billing schedules.

Taxes are usually due in a lump sum, but various installment payment arrangements exist. Under RPTL Section 972, a county can opt to become the tax collection agency for member municipalities, and can establish a system of installment payments. Counties have the option under Section 928-a to allow the cities, towns, and/or villages within their boundaries to accept partial or installment payments of taxes. School districts are also allowed to establish installment payment systems under RPTL Sections 1326 and 1326-a. In the “Big 5” cities, which do not have independent school districts, city and school taxes are part of the same levy and are billed in installments.

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Taxable Status of Various  
Types of  
Telecommunications  
Property

Under Sections 906 and 930, any “...railroad, telegraph, telephone, electric, gas, water or pipeline corporation...” may request a list of parcels and tax payments due to a county and make a single payment in satisfaction of this county tax liability.

As a general rule, all real property is taxable unless specifically exempted (RPTL §300). Real property includes land and things affixed to the land. The courts have addressed the issue of fixity by reference to such considerations as the permanency of the installation, the extent to which it would normally remain attached to the realty for its useful life, and the extent that the fixture is applied to the purpose of the real property in question. Real property also includes “special franchises,” which are the rights of utility companies, including telecommunications firms, to place equipment in the public right-of-way. For telecommunications equipment, the taxable status will often depend also upon the ownership and/or the type of telecommunication involved. The views of the New York State Office of Real Property services, based on interpretation of the statutes, case law, and relevant legal opinions are set forth below.

According to RPTL Section 102 “Real property,” “property” or “land” mean and include:

- (a) Land itself, above and under water, including trees and undergrowth thereon and mines, minerals, quarries and fossils in and under the same, except mines belonging to the State;
- (b) Buildings and other articles and structures, substructures and superstructures erected upon, under or above the land, or affixed thereto.

Special provisions apply to telecommunications property, in which case the terms “real property,” “property” or “land” mean and include:

“(d) When owned by a telephone company all telephone and telegraph lines, wires, poles, supports and inclosures for electrical conductors upon, above and underground. For purposes of this paragraph the term “real property” shall not include station connections and the term “telephone company” shall mean a company subject to regulation by the public service commission which provides, to the general public within its local exchange area,

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non-cellular switched local exchange telephone service at the points of origination and termination of the signal.”

“(i) When owned by other than a telephone company as such term is defined in paragraph (d) hereof, all lines, wires, poles, supports and inclosures for electrical conductors upon, above and underground used in connection with the transmission or switching of electromagnetic voice, video and data signals between different entities separated by air, street or other public domain, except that such property shall not include: (A) station connections; (B) fire and surveillance alarm system property; (C) such property used in the transmission of news wire services; and (D) such property used in the transmission of news or entertainment radio, television or cable television signals for immediate, delayed or ultimate exhibition to the public, whether or not a fee is charged therefor.”

### **Significant Amendments**

*Chapter 416 of the Laws of 1987* added the definitions quoted above in paragraphs 102(12)(d) and (i). The legislation removed from taxation certain central office equipment of regulated telephone companies. The removal was accomplished through a phase-out schedule, which ended in 1991.

*Chapter 676 of the Laws of 1995* excluded central office equipment from the definition of special franchise property, requiring that the “... term special franchise shall not include central office equipment or station equipment (except public telephone terminal equipment) which first appears on assessment rolls prepared on the basis of taxable status dates occurring on or after October first, nineteen hundred ninety-five and which is owned by a telephone company as defined in paragraph (d) of subdivision twelve of this section, or owned by a telephone corporation as defined in subdivision seventeen of section two of the public service law and certified by the public service commission under section ninety-nine of such law, nor shall it include property of a municipal corporation, public benefit corporation or special district, nor shall it include a crossing less than two hundred fifty feet in length of a public street, highway, water or other public place outside a city or village, unless such crossing be the continuation of an occupancy of another public street, highway, water or other public place.”



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### **Cable Television Property**

In 1985, Section 102(12) of the RPTL was modified by the Legislature to exclude certain cable television equipment from the definition of taxable real property. That cable television equipment located on privately owned land was classified as personal property, and thus became exempt. However, the definition of special franchise property contained in Section 102(17) was not changed, and cable television equipment located in public rights-of-way therefore continues to be taxable real property.

### **Television and Radio Towers**

Questions have been raised concerning television and radio towers, particularly in recent years. The towers themselves are taxable as “supports” for equipment pursuant to §102(12)(i). The electronic equipment used in the transmission of television and radio signals are excluded from the definition of real property in that paragraph and thus are not taxable. Some radio station towers are not merely structures to which equipment is affixed but rather are directly involved in the transmission of signals. These towers are thus also specifically excluded from the definition of realty.

Generally, equipment used in the transmission or switching of electromagnetic voice, video and data signals, which is not owned by a phone company as defined in 102(12)(d) (see above), should be analyzed pursuant to the provisions of 102(12)(i). While this section appears to make taxable all such equipment, it does exclude four items: (A) station connections; (B) fire and surveillance alarm system property; (C) such property used in the transmission of news wire services; and (D) such property used in the transmission of news or entertainment radio, television or cable television signals for immediate, delayed or ultimate exhibition to the public, whether or not a fee is charged therefor.

A literal reading of the statute is the best way to classify broadcasting towers. If the tower is not “actually used in the transmission of radio signals” but rather, is merely a support for equipment, it should be classified as real property. However, if the tower is actually used in transmitting the signal it would be excluded by the language of RPTL Section 102(12)(i)(D). If a tower actually acts as an antenna, and the radio signal is transmitted through the tower itself, the tower then meets

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the other requirements of 102(12)(i)(D), then the tower would not be taxable.

In most situations, absent specific inclusion or exclusion from the statute sections discussed above, a determination of taxable status of tower-like structures under 102(12)(b) will entail the so called “fixtures test.” The Court of Appeals, in its landmark decision in Metromedia, Inc. v. Tax Commission, 60 N.Y.2d 85, 455 N.E.2d 1252, 468 N.Y.S.2d 457 (1983) recited the test for whether such improvements or “fixtures” are to be considered real property for real property taxation purposes. In reaching its decision, the Court noted the common law test used for determining whether a particular item is a “fixture;” i.e., the item must:

- be actually annexed to the real property or something appurtenant thereto;
- be applied to the use or purpose of the real property; and
- be intended as a permanent accession thereto.

### **Summary**

As a general principle, all real property is taxable unless specifically exempted (RPTL §300). Real property includes land and things affixed to the land. Where there is no specific inclusion or exclusion, the general provisions of §102(12)(b) apply. To determine whether an improvement is real pursuant to §102(12)(b), the question is whether it is “affixed” to realty. The test is not simply whether the structure can be removed without material damage to it or to the realty to which it is affixed. Rather, the test is whether the structure remains attached to the realty in the normal course of events for its useful life.

While equipment of cable television companies that is located on privately owned property is considered personal property and thus exempt from taxation, that located in the public right-of-way is considered part of the special franchise in question and is thus taxable real property.

The status of cellular towers is the same whether they are owned by a local service provider or another entity. In either case, the tower itself is a support. The equipment shed at the base is an enclosure. The

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electronic equipment is neither specifically included or excluded. Therefore, its taxable status is determined by the fixtures tests – is it affixed to the realty and left there in the normal course of business.

Some radio station towers are not merely structures to which equipment is affixed but rather are directly involved in the transmission of signals. These towers are thus specifically excluded from the definition of real property.

### **Other Views on Cellular Towers and Related Equipment**

Some representatives of the telecommunications industry have disputed the conclusions of the Office of Real Property Services, outlined above, regarding cellular antennae, support towers, and enclosures used to shelter the electronic equipment associated with cellular towers. They argue that cellular towers and/or associated equipment are not taxable under New York Law. The arguments they make are the following:

*(1) cellular towers and associated equipment are excluded from taxation by a statutory change enacted in 1987*

Chapter 416 of the Laws of 1987 exempted from taxation certain “central office equipment” owned by telephone companies regulated by the Public Service Commission (PSC), and switching and transmission equipment owned by other telecommunications companies not regulated by the PSC. The removal was accomplished through a phase-out schedule which ended in 1991. Thus, after the phase-out was completed, there was no statutory provision that explicitly directed that such equipment should continue to be treated by local assessors as real property. Some industry representatives believe that the Legislature intended to exempt cellular telephone towers and associated equipment when Chapter 416 was enacted.

*(2) only towers used as supports for transmission equipment should be considered real property*

Based on trial court decisions relating to radio and television broadcasting towers, they argue that cellular towers are only taxable when their purpose is to support transmission equipment. They maintain that when the towers are also used as antennae, through

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which signals are broadcast, they should be excluded from taxation under RPTL Section 102(12)(I)(D).

*(3) when the “fixtures test” is applied by the courts to cellular telephone equipment, they conclude that it is not taxable real property*

Several trial court decisions with different results are cited as examples of courts finding that the property in question is not taxable.<sup>18</sup> Also raised in relation to the “fixtures test” is the issue that, since assessors apply it on a case-by-case basis, different conclusions can be reached on what is said to be the same or similar types of property.<sup>19</sup>

## Telecommunications Revenues

The Office of Real Property Services has compiled data on the property tax levied on telecommunications property using 1998 assessment rolls (1999 for New York City) and tax rates provided by the Office of the State Comptroller. Table 4 summarizes the results and provides a breakdown of local telecommunications property taxes by type of jurisdiction and by whether the property is special franchise property or other property. Total local property tax collections on telecommunications property equals \$306.5 million.

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## Local Gross Receipts Taxes

Cities (other than New York City, which is described in the next section of the report) and villages may impose selective gross receipts taxes on the sales of utility services that originate and terminate within their jurisdictions. Chapter 321 of 1937 granted cities in New York the authority to impose a tax of 1 percent on the gross income of utilities operating in their jurisdiction. Chapter 591 of 1950 extended similar authority to villages. This amendment was one recommendation of the State Comptroller’s Committee on Local Non-Property Taxes. Like the tax for cities, this tax was based on the State Section 186-a tax and applied only to receipts derived from transactions within the territorial limits of the village.

**Table 4: New York State Office of Real Property Services – Estimated Taxes Paid by Telecommunications Properties  
(Based on 1998 Assessment Rolls (1999 for NYC) and Tax Rates Provided by NYS Comptroller)**

|                                    | Property Class | County Taxes      |            | City/Town Taxes   |            | Village Taxes     |           | School District Taxes |            | Grand Total |
|------------------------------------|----------------|-------------------|------------|-------------------|------------|-------------------|-----------|-----------------------|------------|-------------|
|                                    |                | Special Franchise | Other      | Special Franchise | Other      | Special Franchise | Other     | Special Franchise     | Other      |             |
| <b>Specific Property Codes</b>     |                |                   |            |                   |            |                   |           |                       |            |             |
| Communication – General            | 830            |                   | 45,650     |                   | 34,019     |                   | 847       |                       | 115,908    | 196,414     |
| Telephone                          | 831            |                   | 12,142,366 |                   | 8,938,016  |                   | 3,036,127 |                       | 35,309,777 | 59,426,286  |
| Telegraph                          | 832            |                   | 49,792     |                   | 71,044     |                   | 6,750     |                       | 189,515    | 317,101     |
| Radio                              | 833            |                   | 198,855    |                   | 166,081    |                   | 5,857     |                       | 820,341    | 1,191,134   |
| Television – Other Than CATV       | 834            |                   | 303,505    |                   | 296,433    |                   | 18,079    |                       | 894,900    | 1,512,917   |
| Community Antenna                  |                |                   |            |                   |            |                   |           |                       |            |             |
| Television (CATV)                  | 835            |                   | 197,432    |                   | 203,670    |                   | 61,420    |                       | 710,205    | 1,172,727   |
| Telecommunications                 | 836            |                   | 177,125    |                   | 141,306    |                   | 15,480    |                       | 612,894    | 946,805     |
| Cellular Telephone Towers          | 837            |                   | 1,842      |                   | 1,047      |                   | 0         |                       | 5,237      | 8,126       |
| Special Franchise – Telephone      | 866            | 21,243,509        |            | 16,250,992        |            | 6,578,593         |           | 64,322,149            |            | 108,395,243 |
| Special Franchise – Television     | 869            | 2,533,362         |            | 2,116,234         |            | 552,751           |           | 8,629,385             |            | 13,831,732  |
| <b>General Property Codes</b>      |                |                   |            |                   |            |                   |           |                       |            |             |
| Public Services – General          | 800            |                   | 431        |                   | 336        |                   | 51        |                       | 1,123      | 1,941       |
| Special Franchise – General        | 860            | 3,158,063         |            | 5,361,536         |            | 1,448,717         |           | 17,483,572            |            | 27,451,888  |
| Special Franchise – Misc.          | 867            | 34,762            |            | 20,013            |            | 3,398             |           | 116,536               |            | 174,709     |
| <b>Total Gen. Prop. Codes</b>      |                | 3,192,825         | 431        | 5,381,549         | 336        | 1,452,115         | 51        | 17,600,108            | 1,123      | 27,628,538  |
| <b>Taxing Units Other Than NYC</b> |                | 26,969,696        | 13,116,988 | 23,748,775        | 9,851,952  | 8,583,459         | 3,144,611 | 90,551,642            | 38,659,900 | 214,627,023 |
| <b>New York City</b>               |                |                   |            |                   |            |                   |           |                       |            |             |
| Cable TV                           |                |                   |            | 6,266,489         | 548,527    |                   |           |                       |            |             |
| Other Telecommunications           |                |                   |            | 56,604,998        | 28,430,191 |                   |           |                       |            |             |
| <b>Total NYC</b>                   |                |                   |            | 62,871,487        | 28,978,718 |                   |           |                       |            |             |
| <b>Total, Excluding NYC</b>        |                |                   |            |                   |            |                   |           |                       |            |             |
| <b>With Gen. Prop. Codes</b>       |                | 214,627,000       |            |                   |            |                   |           |                       |            |             |
| <b>Without Gen. Prop. Codes</b>    |                | 186,998,550       |            |                   |            |                   |           |                       |            |             |
| <b>Total, Including NYC</b>        |                |                   |            |                   |            |                   |           |                       |            |             |
| <b>With Gen. Prop. Codes</b>       |                | 306,477,200       |            |                   |            |                   |           |                       |            |             |
| <b>Without Gen. Prop. Codes</b>    |                | 278,848,700       |            |                   |            |                   |           |                       |            |             |

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Local utility taxes, authorized by these enactments of Section 20-b of the General City Law and Section 5-530 of the Village Law, conform to the State Section 186-a tax as it existed on January 1, 1959. Currently, 57 cities, other than New York City, and some 349 of 553 eligible villages impose this tax. The Legislature granted special authority to the cities of Rochester, Yonkers and Buffalo to impose the tax at a rate of 3 percent. Local utility taxes are administered by the chief fiscal officer of each municipality.

Appendix E summarizes the jurisdictions within New York State, outside of New York City, that have a local gross receipts tax. The dollar figures in the appendix table represent the local gross receipts taxes reported by the Office of State Comptroller for fiscal years ending in 1998. However, this municipal data combines both energy and telecommunications utility payments. Total telecommunications and gas and electric local utility tax payments equaled \$72.9 million. At the end of the table, the Office of Tax Policy Analysis has estimated the approximate share of the local gross receipts taxes that were due from telecommunications as opposed to energy services. Data provided by the Energy Association of New York State showed that in 1997, the latest year available, energy companies paid \$56.0 million in local energy utility taxes. This means that approximately \$17 million was paid in local telecommunications utility taxes.

Administration of these local taxes is far from uniform. A telephone survey of municipal fiscal offices was conducted that elicited the most common response: “We just get a check and make sure it’s credited to the right revenue source.” However, upon further inquiry, it was found that it is generally the case that a return or schedule is submitted with a check. Some of the municipalities contacted in the telephone survey provided the Department with a copy of their form. The telephone survey of municipal fiscal offices also found that few municipalities had procedures in place for identifying new companies providing service within their jurisdiction.

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## New York City Taxes and Fees

### Utility Tax

Companies subject to the supervision of the New York State Public Service Commission (PSC) are subject to a tax of 2.35 percent on their “gross income.” Gross income means receipts from sales made or services rendered in the City of New York, and certain other income. This tax is generally imposed only on transactions taking place within the territorial limits of the City (intracity telecommunications). PSC-supervised utility companies are not subject to other City business income taxes.

Companies not subject to PSC supervision, but that sell or furnish telecommunications services, are “vendors of utility services.” These companies are subject to the Utility Tax of 2.35 percent on their “gross operating income” from selling telecommunications services. Income earned by vendors of utility services not subject to the Utility Tax is subject to other City business income taxes.

### General Corporation Tax

Corporations subject to the General Corporation Tax (GCT) compute their tax liability by applying an 8.85 percent rate to New York City allocated net income or by means of an alternative base if it results in a higher liability.

Vendors of utility services may be subject to the GCT on income not subject to the Utility Tax. Cable television programmers and operators conducting business in New York City as corporations are subject to the GCT.

### Unincorporated Business Tax

Unincorporated businesses within New York City are subject to a 4 percent Unincorporated Business Tax (UBT) on New York City allocated net income. Vendors of utility services may be subject to the UBT on income not subject to the Utility Tax. Cable television programmers and operators conducting business in New York City as unincorporated businesses are subject to the UBT.

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## New York City Revenues

Data provided by the New York City Department of Finance show the following revenues collected from telecommunications companies:

| Period      | Revenue Source         | Revenue (\$ millions) |
|-------------|------------------------|-----------------------|
| TY98        | Utility Tax            | \$80.0                |
| TY98        | Business Taxes         | \$10.0                |
| CFY00       | Property Tax – Class 3 | \$93.0                |
| CFY99       | Franchise Fees         | \$11.3                |
| 9/97 - 8/98 | Sales Tax              | \$170.1               |

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## Cable Television Franchise Fees

Cable franchise fees are governed by Section 622 of the federal Cable Act. Under this section, municipalities are entitled to a maximum of 5 percent of gross revenues derived from the operation of the cable system for the provision of cable services.

Cable companies are also assessed a special franchise tax on the value of their physical plant (cables, poles, etc.) in the municipal right-of-way. Section 626 of the Real Property Tax Law gives cable companies the right to offset the amount payable under this special franchise tax against the amount of their franchise fee payable to the municipality.

The U.S. Cable Communications Policy Act of 1984 confirmed that cable television service came under federal jurisdiction. Federal law (47 USC Section 542) stipulates that municipalities may negotiate with cable companies for their franchise rights. The maximum fee equals 5 percent of the revenues attributable to the franchise locality. Wireless cable company competitors, such as Direct Broadcast Satellite (DBS) providers, do not operate in public rights-of-way, and are, therefore, not subject to these franchise fees.

The Public Service Commission (PSC) regulates cable providers at the State level. The State's purview includes customer relations, franchising procedures and standards, technical standards, and accounting practices. State law limits the duration of local franchise agreements to ten years.

Many franchises have provisions which reduce the fee payable to the municipality by the amount of the regulatory assessment (currently about two-tenths of one percent) payable annually to the PSC under Article 11 of the Public Service Law.



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Under federal law, cable companies have the right to pass through the amount of the franchise fee directly to subscribers, and to include both the amount of the franchise fee and the name of the franchising authority as a separate line item on each subscriber's bill.

Currently in New York State, 51 companies serving 1,436 municipalities provide cable television service. In total, 1,532 separate franchises exist because more than one company serves some communities. In 1999, there were 4.7 million cable subscribers in the State representing 1.9 million households. The distribution of the subscriptions is highly concentrated among three companies. Data provided by the PSC showed that in 1998, three companies provided service to 95 percent of the subscribers.

The PSC estimates that the average cable franchise rate is currently 4.2 percent and that gross revenues for 1998 were over \$2.3 billion. Based on these figures, the franchise fees paid by cable operators is nearly \$100 million.

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## Telecommunications Franchise Fees

The telecommunications industry and local government representatives take opposing positions on whether local governments are authorized under New York law to impose local telecommunications franchise fees and, if authorized, whether franchise fees are limited to the cost of managing the use of the public way. This report describes the positions of the local government representatives and the telecommunications industry members on the advisory panel regarding these local franchise fees.

Federal legislation also potentially affects the ability of local governments, including those in New York, to require telecommunications providers to pay franchise fees. The Telecommunications Act of 1996, for example, sought to prohibit any State or local legal requirements that might hinder the ability of new service providers to offer telecommunications services. However, the Act also preserved the right of State and local governments to manage their rights-of-way and to receive compensation for their use:

Nothing in this section affects the authority of a state or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral basis, for use of public rights-of-way on a

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nondiscriminatory basis, if the compensation required is publicly disclosed by such government (47 USC §253(c)).

Representatives of the telecommunications industry and some government entities on the advisory panel offer different interpretations of the federal statute as it relates to the laws of each individual state and also disagree on whether compensation, if authorized by state law, is restricted to the cost of managing the public way or can include payments, which may be based on provider revenues, for the use of public property for commercial purposes.

The telecommunications industry representatives argues that:

- (1) *The franchise right of traditional telephone companies operating in New York State comes directly from the State, independent of any municipal grant pursuant to Section 27 of the Transportation Corporations Law;*
- (2) *In New York State, municipal powers are limited to regulating and controlling the installation and maintenance of facilities in the public way to protect interests of public health, safety or convenience. Consequently, fees in excess of those necessary for this regulatory function used for general revenue purposes are invalid as they are unauthorized taxes;*
- (3) *Despite the federal language preserving state and local government rights to manage their rights-of-way and to receive compensation for the use thereof, state and federal courts have routinely struck down local attempts to impose compensation requirements, often calculated as a percentage of providers' revenue, that are unrelated to managing the rights-of-way;*
- (4) *In the case cited by the local government representatives, TCG Detroit v. City of Dearborn, the Circuit Court affirmed the district court's decision that the Michigan law under which Ameritech (formerly Michigan Bell) was incorporated, and its original franchise granted, prohibits the local imposition of franchise fees on providers who had already been granted a franchise by the State of Michigan. New York law similarly grants providers a state franchise under Section 27; and*

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- (5) *Whether New York City is authorized under New York and 1996 federal law to impose revenue-based franchise fees on high capacity telecommunications providers has not been determined by the New York or federal courts.*

The government entities argue that:

- (1) *Franchise rights for telecommunications providers operating in the City of New York differ from those of other New York State municipalities. The requirements for a municipal franchise in the City are expressly set forth in the City's Charter, including a requirement of express approval by the City of a written franchise agreement and a requirement that the City receive adequate compensation for any franchise grant. These requirements were adopted by the State Legislature and have the force of state law, with precedence over Section 27 of the State Transportation Corporation Law;*
- (2) *The claim that revenue-based franchise fees are illegitimate is untrue. In fact, the highest-level federal court decision on this issue clearly recognizes the validity of these fees under the Telecommunications Act of 1996 (TCG Detroit v. City of Dearborn 206 F. 3rd 618 (6th Cir., 2000));*
- (3) *That municipalities view franchises as equivalent to leases of municipal property for commercial purposes, for which fair rental charges can be made, akin to rentals by private sector landlords. These charges are separate from tax due municipalities in their governmental capacity. However, municipalities should be free to charge lower fees for economic development reasons to encourage a particular type of franchise development; and*
- (4) *That municipalities in New York State have an obligation – not merely the authority – to manage the public's rights-of-way and to seek compensation for their use. The legitimacy of franchise fees should not be open to debate.*

There is an emerging, but apparently as yet inconclusive, body of case law on this issue. Determining the economic impact of such fees and the their legal validity is beyond the scope of this report. This is not to say,

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however, that these issues do not warrant further consideration in another forum.

According to the New York City Department of Information Technology and Telecommunications, telecommunications providers with facilities in the public right-of-way in the City are generally required to have written agreements with the City and pay the City compensation. Verizon does not have a franchise agreement or pay compensation to New York City. The City enters into company-specific franchise agreements pursuant to Chapter 14 of the New York City Charter. The typical New York City agreement requires telecommunications providers to pay 5 percent of gross receipts, or a minimum of \$200,000 per year, for the privilege of building in and using the right-of-way. In order to enter into these agreements, telecommunications providers must also sign a waiver of their right to offset the franchise fees against their special franchise real property taxes pursuant to Section 626 of the Real Property Tax Law.

Currently, New York City has 11 such agreements in force. Six of the providers have had agreements with the City for over 5 years. Four agreements date from 1998. Another agreement was recently completed. Further negotiations are underway with several more providers at this time. According to the New York City Department of Finance, telecommunications franchise agreement revenues were estimated at approximately \$11 million in the City Fiscal Year 1999-2000 budget.

Facilities-based competitive telecommunications providers have become more common in all parts of New York State, but New York City is by far the largest center of such activity in the State. Several other localities have entered into less formal “letter” agreements with competitive telecommunications providers. Other municipalities merely require these providers to pay standard permit fees in order to perform construction work in the public rights-of-way.

Public pay telephone operators must enter into franchise agreements with New York City. There are two categories of public pay telephones (PPTs). First, are “location level-one” curb line PPTs. Second, are “location level-two” non-curb line PPTs. Curb line payphones pay the City 10 percent of their non-advertising revenue and 26 percent of their advertising revenue. Non-curb line payphones that sit back or near the building line away from the curb are not permitted to have advertising

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and pay a flat fee to the City that starts at 40 cents per day per phone, increasing 2.5 cents per year, with periodic readjustments to make sure that the flat fee is not an unrealistically high or low share of industry revenue.

To date, the City has entered into franchise agreements with approximately 90 companies. In Fiscal Year 1999-2000, the City received approximately \$15 million in revenues from these PPT commissions. The combined total of high-capacity telecommunications provider franchise fees and PPT fees equals \$26 million.

#### County Enhanced 911 (E911) Surcharges

Chapters 756 and 757 of the Laws of 1989 created the “enhanced emergency telephone system surcharge.” Pursuant to Article 6 of the County Law, counties outside New York City are authorized to impose a surcharge of up to 35 cents per local exchange service access line per month to pay for the costs associated with obtaining and maintaining the telecommunications equipment and services necessary to provide an enhanced 911 (E911) emergency telephone system. The E911 surcharge is imposed in the vast majority of counties, but there is no readily available list of jurisdictions imposing the tax or rates. The Division of the Budget estimates annual surcharge revenues are approximately \$40 million.

An E911 system is defined as a service that automatically connects a caller with an established public service answering point (PSAP) and includes selective routing and automatic number and location identification. A PSAP is defined as a communications facility that first receives a 911 call and, as appropriate, directly dispatches the services of a public safety agency or routes calls to a public safety agency.

The surcharge is collected from customers by telephone service suppliers and must be separately stated on customer bills. The surcharge may not be imposed on more than 75 access lines per customer per location. Service providers must remit collections to the county chief fiscal officers on a monthly basis within 30 days after the last business day of the period. Providers may retain 2 percent of the total surcharge collected as an administrative fee. Lifeline telephone service customers and counties imposing the fee are exempt from the surcharge.

#### Cellular 911 Surcharge

In addition to the county E911 surcharge, Chapter 166 of the Laws of 1991, effective June 12, 1991, created a similar surcharge on cellular

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telephones for emergency communications. The surcharge on cellular telephones is a statewide surcharge that does not require adoption by particular counties. The surcharge is 70 cents per cellular telephone. Cellular telephone service providers collect the surcharge from their customers through their bills. Service providers must remit funds to the New York State Division of State Police on a quarterly basis. Surcharge funds are deposited in the seized assets account of the miscellaneous special revenue fund for payment of State Police costs related to the statewide operation of a cellular 911 system. Service providers may retain 2 percent of the total surcharge collected as an administrative fee. According to the Division of the Budget, total revenues from the surcharge were approximately \$31.0 million for SFY 1999-2000, and \$25 million for the prior fiscal year.

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Metropolitan  
Transportation  
Authority (MTA)  
Surcharge

Since 1982, a temporary surcharge (currently at a rate of 17 percent) applies to corporation taxes otherwise due, after deduction of credits, allocable to the 12 county (Bronx, Brooklyn, Manhattan, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester) Metropolitan Commuter Transportation District. This includes the City of New York, Long Island and the mid-to-lower Hudson River Valley. The MTA surcharge remains in effect through tax years ending before December 31, 2001. The receipts from the surcharge are earmarked for the Mass Transportation Operating Assistance Fund which supports public transportation.

All companies providing telecommunications services pay to the State the telecommunications excise tax under Section 186-e of the Tax Law. PSC-supervised telecommunications providers also pay tax under Section 186-a on their non-telecommunications income. In addition, corporate providers of local telephone service pay a State corporate franchise tax under Section 184. All corporations principally engaged in transmission services pay a State franchise tax under Section 183. All of these sections are found in Article 9 of the Tax Law, and have imposed upon them the MTA surcharge. The allocation of receipts for the purposes of calculating the MTA surcharge for Section 186-e follows the *Goldberg* rules; for Section 184, a gross operating revenue ratio; and for Section 183, an asset ratio.

Beginning in 1998, the tax rate for Section 186-e (telecommunications excise tax) was reduced to 3.25 percent from 3.5 percent. The rate for Section 186-e was further reduced to 2.5 percent on January 1, 2000.

The Section 184 tax (additional franchise tax imposed on local carriers) was reduced effective July 1, 2000. Legislation required that the MTA surcharge be computed as if the rates had not changed. Therefore, although the tax rate for Section 186-e is currently 2.5 percent, companies must compute their surcharge as if the rate were still 3.5 percent.

In addition, there is the same temporary MTA surcharge imposed on those companies paying their franchise tax under Article 9-A of the Tax Law. The only difference in this surcharge from that above, is in the allocation percentage. The allocation of the MTA surcharge is determined by the average of the following percentages: the receipts inside the MTA district divided by the total State receipts; the property inside the MTA district divided by the total State property; and the payroll inside the MTA district divided by the total payroll inside the State. As with the Article 9 taxes, as the tax rate under Article 9-A has fallen from 9 percent to 8 percent (7.5 percent for taxable years beginning after June 30, 2001), the MTA surcharge is calculated as if the tax rates under Article 9-A had not decreased.

Table 5 below shows Tax Department data for tax year 1998 of the MTA surcharge by section of the Tax Law.

**Table 5: MTA Surcharge Paid by Telecommunications Companies – Tax Year 1998**

|               |                            |
|---------------|----------------------------|
| Article 9     |                            |
| Section 183   | \$1.9 million              |
| Section 184   | \$9.8 million              |
| Section 186-e | \$73.1 million             |
| Article 9-A   | \$ less than \$0.1 million |
| <b>Total</b>  | <b>\$84.8 million</b>      |

### Transportation Business Tax on Utility Services in Erie County

Chapter 26 of the Laws of 1990 authorized Erie County to impose a local tax of not less than one-half percent nor more than three-quarters of one percent on utility services. Such a tax would be on the gross income or gross operating income as defined in Section 186-a of the Tax Law. The authorization was provided to give a dedicated local revenue source to support the Niagra Frontier Transportation Authority. Although the authorization given in Section 186-d remains in effect, at last report, Erie County had not adopted such a local utility services tax.

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## Endnotes

1. Article 28, Section 1105(b).
2. 20 NYCRR Section 527.2
3. These services are not the sale of telephone or telegraph services. See *NYS Cable Television v. State Tax Commission* (3rd Dept., 1977, 59AD2d81); 20NYCRR Sec. 527.2.
4. See TSB-M-94(2)S for information regarding sales tax on equipment furnished in conjunction with cable television service.
5. New York City was authorized to impose a sales tax at the rate of 4 percent; but its authority to impose sales tax has been suspended while the 4 percent rate of sales tax imposed by Tax Law Section 1107 for the benefit of the Municipal Assistance Corporation is in effect in New York City.
6. Tax Law Section 1115(a)(12-a). Prior to September 1, 2000, the exemption was found in Section 1115(a)(12) and was limited to telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication or in receiving, amplifying, processing, transmitting and retransmitting telephone or telegraph signals.
7. Section 1101(b)(9) of the Tax Law and Section 527.7(a)(3) of the Sales and Use Tax Regulations.
8. Tangible personal property which is exempt from tax as being used directly and predominantly in providing telecommunications services for sale under Section 1115(a)(12-a) would not be subject to tax.
9. The reference material is the Tax Department's publication *Taxable Sales and Purchases Subject to Use Tax by County and Industry*.
10. People ex rel. Met. St. Railway v. State Board of Tax Commissioners (1903) 174 N.Y. 417.
11. See, for example, New Country Club of Garden City v. Bd. of Assessors, Supreme Court, Nassau County, Index No. 12696/88, June 4, 1991) and Foss v. City of Rochester, 1985, 65 N.Y. 2d 247, 491 N.Y.S. 2d 128, 480 N.E. 2d 717.
12. Assessment Administration Practices in the U.S. and Canada, International Association of Assessing Officers, August 1992 (Section 7).



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13. Survey of Railroad and Utility Taxation Practices Among the States, NYS Board of Equalization and Assessment, December 1993 (Table 1).
  14. Allied Chemical v. Town of Camillus, 80 N.Y. 2d 351, 604 N. E. 2d 1348, 590 N. Y. S. 2d 417 (1992).
  15. 65 N. Y. 2d 472, 482 N. E. 2d 277, 492 N. Y. S. 2d 598 (1985).
  16. 104 A.D. 2d 511,479 N. Y. S. 2d 587 (A.D. 3rd Dept. 1984).
  17. 202 2d 32, 616 N. Y. S. 2d (2nd Dept. 1994).
  18. See for example Matter of Travis v. Board of Assessors, 183 Misc.2d 699 (sup. Ct. Broome County 1999).
  19. See Appendix D for a summary description of the equipment normally found on a cellular tower site, as supplied by E. Parker Brown, II on behalf of SBC Communications Inc.

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# Telecommunications Provider Survey

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One of the major goals of this study is to catalog all the local taxes and fees levied on telecommunications and to provide data on the amounts collected from each source. Earlier in the report, there were discussions of the amount of tax and fee revenue found in various State government sources. However, because many of the taxes and fees are locally collected and administered, this may not provide a complete accounting of these revenues. At the initial meeting of the advisory panel, it was suggested that the companies complete a data request survey on the taxes and fees they pay to local governments. This survey would allow the holes from the State government sources to be filled in, and it would provide a double check on that information. Appendix F contains the data survey.

The survey was administered to the individual companies represented on the advisory panel and to all other providers through the New York State Telecommunications Association and The Cable Television and Telecommunications Association of New York. Fifty-four telecommunications and cable television companies responded to the survey. This includes all of the major telecommunications service providers and cable television companies in New York State. However, the survey population does not include the entire telecommunications industry. Data was requested for tax year 1998 because 1999 information may not have been available to all companies when the survey was administered. Table 6 shows the aggregated responses to the data survey.

**Table 6: Summary of Telecommunications Industry Survey (1998)**

| <b>Sales Tax</b>  |                        |
|---|------------------------|
| Number of Companies Paying Sales Tax  | 47                     |
| Average Number of Jurisdictions a Company Files in                              | 15                     |
| Average Number of Returns Filed   | 19                     |
| Taxable Intrastate Telecommunications Sales                                     | \$6,822.1 million      |
| Local Sales Tax   | \$272.9 million        |
| Taxable Sales and Rentals of TPP  | \$125.4 million        |
| Local Sales Tax   | \$5.0 million          |
| Taxable Installation Charges  | \$153.8 million        |
| Local Sales Tax   | \$6.2 million          |
| Taxable Intrastate Telecommunications Sales Made in Small City School Districts | \$296.7 million        |
| Local Sales Tax   | \$20.8 million         |
| Taxable Sales and Rentals of TPP Made in Small City School Districts            | \$0.6 million          |
| Local Sales Tax   | Negligible             |
| Taxable Installation Charges Made in Small City School Districts                | Negligible             |
| Local Sales Tax   | Negligible             |
| <b>Total Local Sales Tax Implied from Survey</b>                                | <b>\$304.9 million</b> |
| <b>Local Utility Taxes (including New York City)</b>                            |                        |
| Number of Companies   | 20                     |
| Average Number of Jurisdictions   | 28                     |
| Average Number of Returns   | 67                     |
| <b>Amount of Tax Paid</b>   | <b>\$81.7 million</b>  |
| <b>Local Real Property Taxes</b>  |                        |
| Number of Companies Paying Property Tax   | 34                     |
| Total Number of Bills Received  | 17,391                 |
| Average Number of Bills/Company   | 512                    |
| Average Number of Separate Billing Entities/Company                             | 314                    |
| <b>Total Taxes Paid</b>   | <b>\$308.7 million</b> |
| Special Franchise Property (State-assessed)                                     | \$165.8 million        |
| Other Property (locally-assessed)   | \$116.5 million        |
| Unallocated   | \$26.4 million         |
| <b>Local Cable Television Franchise Fees</b>                                    |                        |
| Number of Companies   | 6                      |
| Average Number of Jurisdictions   | 158                    |
| Average Number of Returns   | 323                    |
| <b>Amount Paid</b>  | <b>\$101.9 million</b> |
| <b>Local Telecommunications Franchise Fees</b>                                  |                        |
| Number of Companies   | 0                      |
| Average Number of Jurisdictions   | 0                      |
| Average Number of Returns   | 0                      |
| <b>Amount Paid</b>  | <b>\$0</b>             |

**Table 6: Summary of Telecommunications Industry Survey (1998) (Con't)**

| <b>County E911 Emergency Telephone Surcharge</b>               |                                |
|--|--------------------------------|
| Number of Companies  | 25                             |
| Average Number of Jurisdictions                                | 9                              |
| Average Number of Returns                                      | 88                             |
| <b>Amount Paid</b>   | <b>\$39.4 million</b>          |
| <b>Cellular 911 Telephone Surcharge</b>                        |                                |
| Number of Companies  | 4                              |
| Average Number of Jurisdictions                                | 1                              |
| Average Number of Returns                                      | 9                              |
| <b>Amount Paid</b>   | <b>\$12.5 million</b>          |
| <b>Metropolitan Commuter Transportation District Surcharge</b> |                                |
| Section 183  |                                |
| Number of Companies  | 8                              |
| Number of Returns  | 19                             |
| <b>Amount Paid</b>   | <b>\$2.1 million</b>           |
| Section 184  |                                |
| Number of Companies  | 9                              |
| Number of Returns  | 19                             |
| <b>Amount Paid</b>   | <b>\$6.6 million</b>           |
| Section 186-e  |                                |
| Number of Companies  | 14                             |
| Number of Returns  | 24                             |
| <b>Amount Paid</b>   | <b>\$36.3 million</b>          |
| Article 9-A  |                                |
| Number of Companies  | 4                              |
| Number of Returns  | 170                            |
| <b>Amount Paid</b>   | <b>less than \$0.1 million</b> |

The sales tax part of the survey asked for information based on taxable sales from two parts of the sales tax return. Part 2 of the return provides taxable sales in a county or city only, so those figures were multiplied by an average local rate of 4 percent. Schedule B information is generally for taxable sales in a county or city inside a school district. Here, the average local rate equals 7 percent.

Taxable sales are comprised of several parts including taxable telecommunications services, sales and rentals of tangible property, and service installation charges. Total local sales tax remitted by the companies submitting the survey equaled just over \$300 million. Forty-seven of the 54 companies completing the survey pay sales tax. On average, each company remits tax to the State for taxable sales made

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in 15 taxing jurisdictions, and file an average of 19 returns per year. This number, which is larger than 12 (one per month) could be because of the EFT filing requirements discussed earlier in this report.<sup>1</sup>

Local utility taxes and New York City business taxes paid by telecommunications and cable television providers have been aggregated into one category due to disclosure issues. Only 20 of the companies pay these taxes to an average of 28 jurisdictions. They file, on average, 67 returns to these localities. Just over \$80 million is paid in local utility and New York City business taxes by telecommunications and cable companies.

Local real property taxes paid by these companies generated over \$300 million according to the survey. Only 34 of the 54 companies pay this tax, and they report, on average receiving over 500 bills per company and having to deal with over 300 separate billing entities. Approximately \$165 million of the real property tax bill comes from State-assessed special franchise property, \$115 million from locally-assessed property, and about \$25 million could not be accounted for in this disaggregation.

Six cable television companies reported paying cable franchise fees worth just over \$100 million. They paid these fees, on average, to 158 jurisdictions, and filed 323 pieces of paper per year.

No companies reported paying local telecommunications franchise fees. This may be because none of the survey respondents paid these fees, these fees were aggregated in with other categories, or complete information was not provided by respondents.

The county E911 emergency telephone surcharge was paid by 25 companies for a total of just under \$40 million. The average number of jurisdictions that a company would remit this fee to equaled 9, and they would file 88 returns, on average. The cellular 911 surcharge was only paid by four companies completing the survey worth just over \$12 million.

The various surcharges levied on State business tax returns on behalf of the Metropolitan Commuter Transportation District (MTA surcharge) paid by telecommunications and cable television companies completing the survey equaled \$45 million. Approximately \$36 million came from

the surcharge attached to the Section 186-e telecommunications excise tax.

## Comparison of Survey Results and State Government Sources

Table 7 below compares the survey results with the findings from State government sources described earlier in the report.

**Table 7: Comparison of 1998 Revenues – Survey vs. Government Sources**

| Revenue Type  | Survey (\$ millions) | Government Source (\$ millions) |
|---|----------------------|---------------------------------|
| Local Sales Tax   | \$304.9              | \$350.0                         |
| Local GRTs & NYC Taxes  | \$81.7               | \$107.0                         |
| Real Property Tax   | \$308.7              | \$306.5                         |
| Cable TV Franchise Fees                                       | \$101.9              | \$100.0                         |
| Local Telecom. Fees (includes Franchise Fees & Payphone Fees) | \$0                  | \$26.0                          |
| County E911 Surcharge   | \$39.4               | \$40.0                          |
| Cellular 911 Surcharge  | \$12.5               | \$25.0                          |
| MTA Surcharge   | \$45.0               | \$84.8                          |
| <b>Total</b>  | <b>\$894.1</b>       | <b>\$1,039.3</b>                |

In total, the survey completed by the companies shows local telecommunications-based taxes and fees paid of just under \$900 million. This compares with tax data from various government sources of just over \$1 billion. These figures provide a reasonable range for an estimate of the fiscal impact of the various local telecommunications taxes and fees levied in New York State.

In terms of the individual tax categories, the sales tax figure from government sources of \$350 million was computed from the reported taxable transactions in the Tax Department’s publication “Taxable Sales and Purchases.” This figure may be too high because the industry category used to generate the estimate – Communications – includes companies beyond the telephone and cable television firms surveyed here. For example, it includes sales reported by paging companies, dispatch services and telephone answering services. The communications category excludes some telecommunications provided by certain resellers such as hospitals and universities. However, the survey would not pick up this information either.

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The survey reported about \$30 million less than the government source in the category local utility gross receipts taxes and New York City business taxes paid by telecommunications providers. The government sources break out the \$107 million figure into \$17 million for the local utility taxes and about \$90 million for the New York City taxes including their utility tax, unincorporated business tax and their general corporation tax. The survey combined all these taxes due to disclosure issues. However, informal conversations with members of the advisory panel indicate that the \$17 million figure estimated by the Tax Department (see the earlier discussion on estimation methodology) may be somewhat overstated. This would help to explain some of the discrepancy.

The real property taxes figures from the two approaches were remarkably consistent at just over \$300 million each. The same was true for the cable television franchise fees at around \$100 million. However, this could not be said of the local telecommunications franchise fees imposed on high-capacity telecommunications providers. As described above, no company responding in the survey reported that they paid these fees. Information from New York City, where most of these fees are imposed, provides a figure of \$11 million growing to \$16 million at the current time. Survey respondents also did not report paying any public pay telephone (PPT) commissions. According to New York City, these fees currently amount to approximately \$15 million.

There is a very little difference between the total county E911 Surcharge reported on the survey compared to the government source figure (i.e., \$39.4 million versus \$40 million). The latter figure is an annual estimate used by the Division of the Budget. The survey respondents included the vast majority of companies required to collect and remit the surcharge. A comprehensive list of counties imposing the tax – and their respective surcharge rates – is not currently available. It appears that some of this confusion may be because the number of counties imposing the surcharge may actually be different from the number of counties currently operating E911 systems. However, based on the survey responses, it is clear that the vast majority of counties – perhaps as many as 55 of 57 counties outside New York City – at present impose some level of E911 surcharge.

The cellular surcharge figure from the survey showed that only \$12 million was paid compared to information from the Division of the Budget that states that \$25 million in fees were paid in 1998. The

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difference may be due to the fact that not all the cellular carriers and resellers were in the survey population.

Finally, Tax Department data showed that the MTA surcharges paid by telecommunications and cable television companies equaled about \$85 million compared to only \$45 million reported in the survey. We believe that some of the companies completing the survey did not accurately report this item.



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## Endnotes

1. Effective December 1, 2001, Chapter 129 of the Laws of 2000 will reduce by eight the number of returns filed by companies participating in the EFT payment program.

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# Local Telecommunications Tax Issues

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During the meetings of the advisory panel, panel members raised several issues concerning local telecommunications taxes that they felt deserved the attention of the Governor and the Legislature. This section of the report outlines these issues and provides a starting point for areas of future research regarding local telecommunications tax policy. However, this list of issues does not comprise the entire set of issues in local telecommunications taxation. In addition, the discussions found in this section should not be construed as formal recommendations, nor do they represent a consensus of all panel members.

## **Issue: Administrative Burden of Combined State and Local Taxes on Telecommunications**

New York State, and many of its local governments, levy sales and excise taxes on telecommunications services (see the description of these taxes in another section of the report). Recent studies of local taxation of telecommunications have noted that there is a significant administrative cost to comply with these numerous taxes imposed in multiple jurisdictions. In addition, State-imposed gross receipts-based excise taxes, and their local counterparts, currently do not utilize the same tax base, definitions or exemptions. According to industry representatives, this adds to the burden of compliance with local utility taxes.

## **Discussion:**

Industry members of the advisory panel have pointed to the relative efficiency of the sales tax administrative structure whereby the State collects both the State and local sales tax, generally on the same tax base, and then redistributes the revenues to the appropriate local jurisdiction. Centralized collection and administration would relieve local governments of having to undertake these tasks. It would also reduce the administrative burden on taxpayers by having to file with only one jurisdiction. However, the sales tax generates \$8 billion in local tax revenues as compared to local utility taxes that produce less than

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\$20 million in the aggregate (excluding New York City). In addition, there are only about 80 local jurisdictions in the State that impose sales taxes, while there are nearly 400 municipalities that levy local utility taxes.

The current local utility tax base consists of intrajurisdictional calls, as defined under former Tax Law Section 186-a as it existed in 1959. The State's gross receipts telecommunications excise tax base is comprised of calls that originate or terminate in the State and are billed to a New York service address. The State base can include interstate or international calls if they meet the criteria. Section 186-e of the Tax Law was enacted in 1995 and among the changes made at that time to the statute was a new, more modern definition of telecommunications services to include: "...any transmission of voice, image, data, cable, fiber-optic, laser, microwave, radio wave, satellite or similar media..." These differences in law have led to different interpretations of what are taxable services, and resold services that can avail themselves of certain exemptions from tax.

**Issue: Potential Non-compliance With Existing Telecommunications Taxes**

Established telecommunications companies are known to the taxing authorities and comply with the myriad of State and local taxes imposed on the services provided by these companies. Some members of the advisory panel noted that there may be new telecommunications companies entering the New York market that are either not subject to PSC regulation, or subject to nominal regulation, that may not be paying New York State and local taxes. If this is true, then fair and equitable treatment requires that these companies comply with the law.

**Discussion:**

Earlier in this report, it was described how many of the smaller local utility taxes and fees are not well advertised so that new companies entering the New York State market may not even be aware of their tax obligations. To the extent that new telecommunications providers are approved by the PSC, notifications could be sent to all applicable cities and villages. Improvements in education could include such things as providing information on these local taxes and fees on a web site. In addition, to the extent that they do not yet exist, forms and instructions

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could be developed and made available electronically. The State and appropriate local governments could also be encouraged to develop tax hotlines with 800 numbers so that businesses and individuals can call in and receive accurate information about their filing responsibilities. The Tax Department has such an 800 number for business taxpayers seeking information about State taxes administered by the agency.

**Issue: Real Property Tax on Telecommunications Network Assets**

Currently, New York State treats certain property for telecommunications companies, such as poles, wires, cables and conduits, as real property. As such, the equipment in question is taxable, except for that owned by a cable television company and located on land that was privately owned at the time of initial installation. Most states treat this type of telecommunications equipment as personal property. Although the great majority subject it to taxation as personal property, industry representatives argue that, if it were treated as personal property in New York, it would be exempt from property taxes, since New York does not tax personal property. They point out that since certain equipment owned by non-telecommunications companies is already considered personal property in New York, giving similar treatment to the telecommunications equipment in question would “level the playing field” for businesses that must compete with each other in the marketplace. In particular, it would eliminate a tax that falls most heavily on land-line telephone companies, which own large networks of taxable equipment. Finally, industry representatives argue that, since certain bordering states already do not tax at least some of the types of telecommunications equipment in question (see Appendix C), similar treatment in New York would make it more attractive as a business location.

**Discussion:**

Technological and regulatory changes in the telecommunications industry, and especially the increasingly widespread proliferation of wireless communications, have created new competitors for the more traditional telephone companies. These companies are typically more “real-property-intensive” than many of their newer competitors, and are therefore more likely to pay relatively greater shares of the total property taxes paid by the industry. While the industry as a whole pays only about one percent of the approximately \$26 billion in property taxes now levied

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by New York's local governments, the traditional land-line companies pay the lion's share of this amount.

Exempting their network equipment would help to "level the playing field" between competing telecommunications businesses, especially insofar as some property such as cable TV equipment located on private land is already exempt. However, it also raises other issues. Network assets of electric and gas utilities are taxable, and bear a strong resemblance to network assets of telephone companies. Both industries are also subject to very competitive pressures from deregulation and technological change. It would appear to be good tax policy to treat the network property of all utilities in the same manner for property tax purposes. Furthermore, some businesses are now developing the capacity to offer telecommunications, cable TV, and even energy delivery on the same infrastructure, raising obvious complications as to how multiple-use property will be handled under a tax regime where some uses create taxable status and others exempt status for the same equipment item.

However, local government representatives argue that exempting a certain type of property will narrow the tax base, thus shifting property taxes to other taxpayers. They further argue that real property taxes paid by utilities on their special franchises are already too low: according to one analysis they fell from 6.1 percent of all property taxes in 1986 to 2.7 percent of all property taxes in 1994.<sup>1</sup> Local government representatives also warn against the substitution of other taxes such as a sales tax for the property tax, since not all types of local governments share in sales tax revenues and the incidence of the sales tax is on the consumer rather than on the telecommunications companies. Some further suggest that any property tax changes should be part of a comprehensive reform effort rather than piecemeal modifications.

### **Issue: Non-Uniformity in Real Property Assessment Practices**

New York has over 1,200 separate assessing jurisdictions, all of which have telecommunications property. As previously discussed, where telecommunications equipment is located on privately-owned land, it is assessed by local assessors, and where it is located on publicly-owned land, it is assessed by the State.

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Industry representatives argue that equipment located in different assessing units may not be valued in the same manner by the respective assessors. They point out that quite often, network equipment such as lines, poles, or cellular equipment is very similar, regardless of location. However, because the equipment located on private land is assessed separately by a large number of assessors, some of it may be over-valued and some may be under-valued, either in absolute terms or as compared to other types of property. Moreover, companies with property widely distributed throughout the State must deal with a large number of independent jurisdictions if they wish to dispute their assessments, making the process cumbersome and costly.

**Discussion:**

The network equipment used by telecommunications companies is complex property, requiring specialized expertise to value it properly. Statutes allow for county-supplied and State-supplied advisory appraisals, but these valuations are not binding on assessors. An assessing unit such as New York City has the required staff expertise available, but this is the exception rather than the rule. Educational courses, legal opinions, and a variety of manuals and publications are also provided by the State, but this assistance may not be sufficient to assure that all the parcels owned by a given company, or similar properties of two different companies, will be assessed in the same manner. Industry representatives on the advisory panel have urged that something more “formal” than the current level of State involvement be considered.

Although centralized, State-level valuation of property such as telecommunications equipment is practiced in most other states, the New York State Constitution gives assessing authority (for property other than special franchises) to local governments. Nevertheless, some additional centralization could be accomplished if municipal assessing units were willing to cede assessing authority voluntarily to county-level governments by referendum. Village assessing units may also relinquish assessing responsibility, choosing instead to use the village portion of the town roll to levy their taxes. However, centralization at the State level would probably require constitutional changes.

Local government representatives point out that similar equipment that is situated in different locations may well have different values and that it is

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unrealistic to expect values to be the same throughout the state. This would be true whether assessing is performed by many assessors or through a centralized assessment system. They further argue that the assessment situation for telecommunications companies is no different than that of other utilities such as electric and gas companies. The same company may have property in various assessing units, but it has full legal recourse to appeal the assessment of any parcel.

**Issue: Real Property Taxes Are Paid by Telecommunications Companies to a Large Number of Separate Billing Entities**

In contrast to some other states, where taxes are billed centrally by the State and the proceeds distributed to local governments, New York generally uses separate local billing for municipalities and school districts. When combined with a variety of billing cycles, this highly decentralized and duplicative billing system is said to be burdensome by telecommunications companies having property located in a large number of municipalities. Survey results indicate that some 512 separate tax bills, sent by 314 separate billing entities, must be dealt with annually by the average telecommunications company having taxable real property.

**Discussion:**

In concept, the tax on telecommunications property could be collected by one level of local government, with the proceeds distributed to local governments. However, centralization of the collection process at the State level would likely raise the same constitutional issues as State-level assessing, discussed above. For this reason, it is probably unattainable in New York, although it is practiced in other states such as Pennsylvania. However, there is precedent in New York for collection of taxes due to one type of taxing unit by another type of taxing unit: county taxes are now generally collected by cities and towns and forwarded to the county, and some municipalities collect school taxes for their school districts. Extending this arrangement to other jurisdictions would likely have to be at the discretion of the local governments involved. If this type of plan were to be implemented for the network assets of telecommunications companies, it should probably also be extended to other utilities such as electric and gas companies.

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Alternatively, automation of the collection and payment process through an Internet application could substantially reduce the administrative burden without necessarily requiring any change in local government structure or collection responsibilities. Under the Internet automation approach, computer applications developed by the State or the private sector could be used by local governments on a voluntary basis to collect their taxes. Such programs could provide the utility property owner with a list of that owner's properties and tax liabilities annually as taken from the tax roll. Payments could be made very efficiently through a transfer of funds by the property owner for the total amount of taxes due.

**Issue: Non-Uniform Treatment of Capital Improvements – Real Property Tax and Sales Tax**

Under current law and statutory interpretations, capital improvements to real property may or may not be subject to real property or sales taxes. Depending on the specific circumstances, a given improvement may result in additional tax liability under both taxes, under one or the other, or under neither.

**Discussion:**

Under the real property tax, the general rule is that capital improvements to real property are taxable, assuming they are of a fixed and permanent nature. Fixity and permanency must be determined on a case-by-case basis. As noted earlier, specific statutory exceptions are provided, including equipment of cable television companies located on privately owned land, "central office equipment" of regulated telephone companies, certain equipment used for transmission of radio, television, and news wire services, station connections, and alarm system equipment.

Under the sales tax, materials used to create a capital improvement to real property are exempt to the purchaser of the capital improvement. However, the contractor's purchase of the materials is taxable in most circumstances. A capital improvement:

- substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property;



- 
- becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or to the article itself; and,
  - is intended to become a permanent installation.<sup>2</sup>

As with the real property tax, decisions about fixity and permanency must be determined on a case-by-case basis. For instance, although most forms of equipment normally require some form of affixation to real property, the test is not merely whether such equipment is affixed to the property. The test also includes whether the equipment is affixed in such a way that it becomes part of the real property and removal would cause material damage to the property or to the article itself. Also, for sales tax purposes, an installation made for a tenant, licensee or franchisee, is generally presumed not to be permanent, and therefore does not qualify as a capital improvement. Moreover, where the lessee is obligated to remove the improvement at the end of the lease term, the evidence is even stronger that the improvement is intended not to be permanent.

An example of a specific type of equipment that may be taxed as real property under the property tax and personal property under the sales tax are certain cellular telephone towers. Specific types of equipment treated as real property under both property and sales taxes include installed telephone poles. However, the property tax and the sales tax are fundamentally different – the former subjects any value added by equipment installation to annual taxation, while the latter subjects certain transactions to one-time taxation.

The tax treatment and definitions of this type of equipment under both the property tax and the sales tax could be reviewed by the responsible agencies. Desirable goals would include the avoidance of double taxation and the fair treatment of all types of telecommunications companies, as they must increasingly compete with one another in the same marketplace. More uniform treatment of all capital improvements under both taxes could promote taxpayer understanding, ease compliance burdens, and result in fairer tax policies.

### **Issue: Sourcing of Mobile Telecommunications Services**

Currently, under the sales tax, telephone calls are generally sourced based on where the service is provided. This method works well for

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stationary landline calls, but it may be problematic for mobile telecommunications, because a call can start in one jurisdiction and end in another. In addition, the place of origin may not be known. Also, wireless carriers often do not sell this service on a call-by-call basis. The Tax Department has not issued any formal guidance to the carriers about how to source these calls. Carriers use several different methods to determine the location where a service is provided including the exchange number, location of the first cell tower, and the billing address of the subscriber. Depending on which method is used, some localities may be receiving more or less sales tax revenues.

In its 1997 telecommunications study, the Tax Department recommended that the sourcing rule for sales tax should be based on the location of the primary use of the mobile telecommunications device. A business or residence address would be one way to determine the location of primary use. After the release of the study, the mobile telecommunications industry, consulting with state and local governments, developed a national proposal for sourcing mobile telecommunications that applies to all state and local transaction taxes, including sales and excises taxes. The wireless sourcing proposal was introduced in Congress in 1999 as The Mobile Telecommunications Sourcing Act. The bill was signed into law this past summer and will become effective for customer bills issued after August 1, 2002. It is referenced as Public Law 106-252.

Under the Act, only the jurisdiction of the customer's place of primary use can tax calls made by the subscriber. The customer's place of primary use would be evidenced by the residential or business street address that most accurately reflects their primary use of the mobile telecommunications service. The home service provider is held harmless for using the address provided by the customer. In addition, the home service provider may use an enhanced zip code database, 9 or more digits, to determine the taxing jurisdiction based on the customer's street address unless the State provides an address database that meets national standards. The carrier is held harmless by the jurisdiction in the assignment of customers to jurisdictions when using the applicable database. The Act does not apply to prepaid mobile telecommunications, air-to-ground telecommunications, or international mobile telecommunications.

Several provisions of the new federal law will affect administration of local government revenue. The new sourcing provisions address three

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aspects of the sales tax: which jurisdiction's tax applies to the taxable charges for mobile telecommunications services and from which carrier; the tax compliance responsibilities of the home service provider; and the application of taxes when other services or items are bundled with mobile telecommunications services.

**Discussion:**

Under the Act, if the jurisdiction is authorized by law to do so, it can tax charges for mobile telecommunications of a customer whose place of primary use is in the jurisdiction, regardless of the location of the placement of the call. Today, and prior to the Act's effective date, a jurisdiction imposes taxable charges for mobile telecommunications regardless of the customer's place of primary use. Under the Act, they can no longer apply tax to a call if the customer's place of primary use is outside the jurisdiction. In addition, all services are deemed to be made by the customer's home service provider.

The second issue concerns which local tax jurisdiction imposes the tax. Under the new law, carriers may use zip-plus-four or more digit codes to identify the local taxing jurisdiction where a customer lives. In some cases, the zip codes will not align with taxing jurisdiction boundaries. In that event, a carrier must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity. Because the 9-digit level zip codes do not always correspond with political boundaries, some degree of inaccuracy can occur. The Tax Department has worked with the Office of Real Property Services to identify those places where the zip-plus-four codes do not match the boundaries. If zip-plus-four codes are not adequate, then the State may provide a database that assigns a local taxing jurisdiction code to each street address within New York State. Such a system must conform with nationwide standards to be approved by the Federation of Tax Administrators and the Multistate Tax Commission. To maintain accuracy, the State would have to continually update the database to account for new construction and other changes. A home service provider must reflect changes made to a database during a calendar quarter within 30 days after the end of the quarter.

The third issue is a provision to deal with situations where the home service provider sells bundled items. The Act provides that state and local sales tax applies to the charge unless the home service provider separately states charges for nontaxable items. The resolution of the

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taxation of bundled items leaves open several questions to be discussed between the Tax Department and industry prior to the Act's effective date in 2002.

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## Endnotes

1. The Eroding Tax Base: New York's Property Tax at a Crossroads, New York State Conference of Mayors, February 1986, pp. 12-13.
2. As noted earlier, the purchaser of the building materials (the contractor or the property owner) pays sales tax on the building materials.

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# Appendix A: Local Telecommunications Study Mandate – Chapter 407 of the Laws of 1999, Part U

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Section 1. On or before December 1, 2000, the commissioner of taxation and finance shall submit to the governor, the temporary president of the senate, the speaker of the assembly, the minority leaders of the senate and the assembly, the chairman and ranking minority member of the senate finance committee, and the chairman and ranking minority member of the assembly ways and means committee, a written report prepared by the office of tax policy analysis of the department of taxation and finance and the state board of real property services. A preliminary report shall be submitted to such designated persons on or before September 1, 2000. Such report shall concern a study of local taxes, fees and other governmental revenue sources on telecommunications companies and consumers of telecommunications services; what local taxes, fees, or charges of any kind currently exist and are being collected from telecommunications and cable television companies and providers. The data and supporting documentation underlying the report, to the extent allowed by law, shall be available to the persons designated to receive a copy of the final report.

§ 2. In order to provide professional and technical advice to the office of tax policy analysis in connection with this study, the commissioner of taxation and finance and the chairperson of the state board of real property services shall appoint an advisory panel consisting of representatives of the state's local governments, affected telecommunications providers such as interexchange carriers, local exchange carriers, cellular and wireless carriers, resellers of telecommunications services, the cable television industry, academic experts, persons with accounting or legal expertise, or other persons the commissioner and chairperson shall deem appropriate. Prior to the initiation of the study prescribed hereunder, such commissioner and chairperson shall submit to the persons designated to receive a copy of

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the report, a work plan that describes the study and indicates the members of the advisory panel.

§ 3. This act shall take effect immediately.

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# Appendix B: Local Telecommunications Advisory Panel Members

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Mr. Richard Alteri  
The Cable Television & Telecommunications  
Association of New York, Inc.

Mr. E. Parker Brown  
SBC Communications Inc.

Dr. Roger S. Cohen  
Senate Finance Committee Minority

Ms. Jeanne S. Conroy  
Verizon

Mr. Charles Dickson  
New York State Department of Public Service

Mr. William A. Dvorak  
AT&T

Mr. Edward Farrell  
New York State Conference of Mayors

Mr. Thomas Frey  
New York State Assessors Association

Mr. Robert Gregory  
New York State Association of Counties

Mr. G. Jeffrey Haber  
New York State Association of Towns

Mr. William A. Hickey  
Verizon Wireless

Mr. Cary B. Hinton  
Sprint

Ms. Carol D. Holley  
Real Property Tax Services

Mr. Timothy G. Kremer  
New York State School Boards Association

Mr. Michael Lawler  
Assembly Ways and Means Committee Minority

Mr. Patrick Nugent  
MCI WorldCom

Mr. Daniel Piekarczyk  
Frontier Corporation

Richard Platkin, Esq.  
Deputy Counsel to the Governor

Mr. Steven Pleydle  
Assembly Ways and Means Committee Majority

Mr. Robert Puckett  
New York State Telecommunications Association, Inc.

Mr. David Richter  
Division of the Budget

Mr. Lee Van Riper  
Senate Finance Committee Majority

Mr. Keith J. Roland  
Roland, Fogel, Koblenz & Petroccione

Mr. Israel Schupper  
New York City Department of Finance

Mr. Richard S. Schwarz  
The Business Council of New York State, Inc.





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# **Appendix C: Treatment of Telecommunications Equipment for Property Tax Purposes – Selected Northeast and Mid-Atlantic States**

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**Appendix C: Treatment of Telecommunications Equipment for Property Tax Purposes – Selected Northeast and Mid-Atlantic States**

|  | Connecticut   |                   |         |        |               | Delaware      |                   |         |        |               | Maine         |                   |         |        |                    |
|--|---------------|-------------------|---------|--------|---------------|---------------|-------------------|---------|--------|---------------|---------------|-------------------|---------|--------|--------------------|
|  | Real Property | Personal Property | Taxable | Exempt | Asmnt. Juris. | Real Property | Personal Property | Taxable | Exempt | Asmnt. Juris. | Real Property | Personal Property | Taxable | Exempt | Asmnt. Juris.      |
| <b>Telecomm. Equipment</b>             |               |                   |         |        |               |               |                   |         |        |               |               |                   |         |        |                    |
| Poles                                  |               | X                 | X       |        | State         | X             |                   | X       |        | Local         |               | X                 | X       |        | State              |
| Wires                                  |               | X                 | X       |        | State         | X             |                   | X       |        | Local         |               | X                 | X       |        | State              |
| Fiber Optic/Cable                      |               | X                 | X       |        | State         | X             |                   | X       |        | Local         |               | X                 | X       |        | State              |
| Conduits                               |               | X                 | X       |        | State         | X             |                   | X       |        | Local         |               | X                 | X       |        | State              |
| Towers/Antennae                        |               | X                 | X       |        | State         |               | X                 |         | X      | N/A           |               | X                 | X       |        | Local <sup>1</sup> |
| Switching Equipment                    |               | X                 | X       |        | State         |               | X                 |         | X      | N/A           |               | X                 | X       |        | State              |
|  |               |                   |         |        |               |               |                   |         |        |               |               |                   |         |        |                    |
| <b>Similar Non-Telecomm. Equipment</b> |               |                   |         |        |               |               |                   |         |        |               |               |                   |         |        |                    |
| Poles                                  |               | X                 | X       |        | State         | X             |                   | X       | X      | N/A           | X             |                   | X       |        | Local              |
| Wires                                  |               | X                 | X       |        | State         | X             |                   | X       |        | Local         | X             |                   | X       |        | Local              |
| Pipelines                              |               | X                 | X       |        | State         | X             |                   | X       |        | Local         | X             |                   | X       |        | Local              |
| Other Fixed Equipment                  |               | X                 | X       |        | Local         |               | X                 |         | X      | N/A           | X             |                   | X       |        | Local              |

1/ State assesses microwave dishes and other appurtenances to antennae and towers, which are locally assessed.

**Appendix C: Treatment of Telecommunications Equipment for Property Tax Purposes – Selected Northeast and Mid-Atlantic States (Con't)**

|  | Maryland      |                   |         |                |               | Massachusetts |                   |                |                |               | New Hampshire  |                   |         |                |               |
|--|---------------|-------------------|---------|----------------|---------------|---------------|-------------------|----------------|----------------|---------------|----------------|-------------------|---------|----------------|---------------|
|  | Real Property | Personal Property | Taxable | Exempt         | Asmnt. Juris. | Real Property | Personal Property | Taxable        | Exempt         | Asmnt. Juris. | Real Property  | Personal Property | Taxable | Exempt         | Asmnt. Juris. |
| <b>Telecomm. Equipment</b>             |               |                   |         |                |               |               |                   |                |                |               |                |                   |         |                |               |
| Poles                                  |               | X                 | X       |                | State         |               | X                 | X <sup>2</sup> |                | State         |                | X                 |         | X <sup>3</sup> | N/A           |
| Wires                                  |               | X                 | X       |                | State         |               | X                 | X <sup>2</sup> |                | State         |                | X                 |         | X              | N/A           |
| Fiber Optic/Cable                      |               | X                 | X       |                | State         |               | X                 | X <sup>2</sup> |                | State         |                | X                 |         | X              | N/A           |
| Conduits                               |               | X                 | X       |                | State         |               | X                 | X              |                | State         |                | X                 |         | X              | N/A           |
| Towers/Antennae                        |               | X                 | X       |                | State         | X             |                   | X              |                | Local         | X              |                   | X       |                | Local         |
| Switching Equipment                    |               | X                 | X       |                | State         | X             |                   |                | X <sup>4</sup> | State         |                | X                 |         | X              | N/A           |
|  |               |                   |         |                |               |               |                   |                |                |               |                |                   |         |                |               |
| <b>Similar Non-Telecomm. Equipment</b> |               |                   |         |                |               |               |                   |                |                |               |                |                   |         |                |               |
| Poles                                  |               | X                 | X       |                | State         |               | X                 | X              |                | Local         | X <sup>5</sup> |                   | X       |                | N/A           |
| Wires                                  |               | X                 | X       |                | State         |               | X                 | X              |                | Local         | X <sup>5</sup> |                   | X       |                | Local         |
| Pipelines                              | X             |                   | X       |                | State         |               | X                 | X              |                | State         | X <sup>5</sup> |                   | X       |                | Local         |
| Other Fixed Equipment                  |               | X                 |         | X <sup>6</sup> | State         |               | X                 | X              |                | Local         | X <sup>5</sup> |                   | X       |                | Local         |

2/ Poles and wires situated in the public way are exempt from property taxation (statute limits exemptions to corporations).

3/ N.H. Supreme Court ruled poles, wires, conduits and switching equipment are personal property which is not taxable to a telephone company.

4/ Applies only to switching equipment owned by telephone companies.

5/ For electric and gas companies, defined as real estate by statute.

6/ Fixed equipment used in manufacturing is eligible for exemption.

**Appendix C: Treatment of Telecommunications Equipment for Property Tax Purposes – Selected Northeast and Mid-Atlantic States (Con't)**

|  | New Jersey    |                   |                |        |               | New York        |                   |                 |                 |                    | Ohio          |                   |         |        |                     |
|--|---------------|-------------------|----------------|--------|---------------|-----------------|-------------------|-----------------|-----------------|--------------------|---------------|-------------------|---------|--------|---------------------|
|  | Real Property | Personal Property | Taxable        | Exempt | Asmnt. Juris. | Real Property   | Personal Property | Taxable         | Exempt          | Asmnt. Juris.      | Real Property | Personal Property | Taxable | Exempt | Asmnt. Juris.       |
| <b>Telecomm. Equipment</b>             |               |                   |                |        |               |                 |                   |                 |                 |                    |               |                   |         |        |                     |
| Poles                                  |               | X                 | X <sup>7</sup> |        | N/A           | X               |                   | X <sup>8</sup>  |                 | Local <sup>9</sup> |               | X                 | X       |        | State <sup>10</sup> |
| Wires                                  |               | X                 | X <sup>7</sup> |        | N/A           | X               |                   | X <sup>8</sup>  |                 | Local              |               | X                 | X       |        | State               |
| Fiber Optic/Cable                      |               | X                 | X <sup>7</sup> |        | N/A           | X               |                   | X               |                 | Local              |               | X                 | X       |        | State               |
| Conduits                               |               | X                 | X <sup>7</sup> |        | N/A           | X               |                   | X               |                 | Local              |               | X                 | X       |        | State               |
| Towers/Antennae                        |               | X                 | X <sup>7</sup> |        | N/A           | X <sup>11</sup> |                   | X <sup>11</sup> |                 | Local              |               | X                 | X       |        | State               |
| Switching Equipment                    |               | X                 | X <sup>7</sup> |        | Local         |                 | X <sup>12</sup>   |                 | X <sup>12</sup> | N/A                |               | X                 | X       |        | State               |
|  |               |                   |                |        |               |                 |                   |                 |                 |                    |               |                   |         |        |                     |
| <b>Similar Non-Telecomm. Equipment</b> |               |                   |                |        |               |                 |                   |                 |                 |                    |               |                   |         |        |                     |
| Poles                                  |               | X                 |                | X      | N/A           | X               |                   | X               |                 | Local              |               | X                 | X       |        | State               |
| Wires                                  |               | X                 |                | X      | N/A           | X               |                   | X               |                 | Local              |               | X                 | X       |        | State               |
| Pipelines                              |               | X                 |                | X      | N/A           | X               |                   | X               |                 | Local              |               | X                 | X       |        | State <sup>13</sup> |
| Other Fixed Equipment                  |               | X                 |                | X      | N/A           | X <sup>14</sup> |                   | X <sup>14</sup> |                 | Local              |               | X                 | X       |        | State               |

7/ Only local exchange carriers, as statutorily defined, are subject to the property tax.

8/ Cable TV equipment exempt if located on private property.

9/ Real property situated on, above, or under public way is assessed by the state.

10/ All telecommunications equipment is assessed at 25 percent of true value, except for equipment owned by local exchange companies that was installed before 1994 (assessed at 88 percent of true value). Realty (land and buildings) is assessed locally, at 35 percent of true value.

11/ Radio/TV antennae, and towers actually part of antennae, are exempt personal property.

12/ Transmission equipment for radio/TV, and central office equipment of telephone companies, is exempt personal property. Equipment at base of cellular phone towers may be taxable real property or exempt personal property depending on fixity of installation.

13/ Assessed at 88 percent of true value if transporting unrefined fluids; otherwise, assessed at 25 percent of true value.

14/ Certain "moveable" machinery and equipment is excluded from definition of taxable real property.

**Appendix C: Treatment of Telecommunications Equipment for Property Tax Purposes – Selected Northeast and Mid-Atlantic States (Con't)**

|  | Pennsylvania  |                   |         |        |                     | Rhode Island  |                   |         |        |                     | Vermont       |                   |                 |        |                     |
|--|---------------|-------------------|---------|--------|---------------------|---------------|-------------------|---------|--------|---------------------|---------------|-------------------|-----------------|--------|---------------------|
|  | Real Property | Personal Property | Taxable | Exempt | Asmnt. Juris.       | Real Property | Personal Property | Taxable | Exempt | Asmnt. Juris.       | Real Property | Personal Property | Taxable         | Exempt | Asmnt. Juris.       |
| <b>Telecomm. Equipment</b>             |               |                   |         |        |                     |               |                   |         |        |                     |               |                   |                 |        |                     |
| Poles                                  |               | X                 |         | X      | N/A                 |               | X                 | X       |        | State <sup>15</sup> |               | X                 | X               | X      | State               |
| Wires                                  |               | X                 |         | X      | N/A                 |               | X                 | X       |        | State               |               | X                 | X               | X      | State               |
| Fiber Optic/Cable                      |               | X                 |         | X      | N/A                 |               | X                 | X       |        | State <sup>16</sup> |               | X                 | X               |        | Local <sup>17</sup> |
| Conduits                               |               | X                 |         | X      | N/A                 |               | X                 | X       |        | State               |               | X                 | X               |        | Local               |
| Towers/Antennae                        |               | X                 |         | X      | N/A                 |               | X                 | X       |        | State               | X             |                   | X <sup>18</sup> |        | Local               |
| Switching Equipment                    |               | X                 |         | X      | N/A                 |               | X                 | X       |        | State               |               | X                 | X               |        | State               |
|  |               |                   |         |        |                     |               |                   |         |        |                     |               |                   |                 |        |                     |
| <b>Similar Non-Telecomm. Equipment</b> |               |                   |         |        |                     |               |                   |         |        |                     |               |                   |                 |        |                     |
| Poles                                  | X             |                   | X       |        | Local <sup>19</sup> | X             |                   | X       |        | Local               | X             |                   | X               |        | Local               |
| Wires                                  | X             |                   | X       |        | Local <sup>19</sup> | X             |                   | X       |        | Local               | X             |                   | X               |        | Local               |
| Pipelines                              | X             |                   | X       |        | Local <sup>19</sup> | X             |                   | X       |        | Local               | X             |                   | X               |        | Local               |
| Other Fixed Equipment                  | X             |                   | X       |        | Local <sup>19</sup> | X             |                   | X       |        | Local               | X             |                   | X               |        | Local               |

15/ Personal property assessed by the state and taxed at a statewide average tax rate. Statewide tax rate may vary from local real property tax rate.

16/ Cable television equipment owned by other than a telecommunications firm is assessed locally, as realty.

17/ Except for telecommunications fiber-optic cable (state assessed).

18/ Only if owned by cable television companies.

19/ All non-telecommunications fixed equipment, though locally assessed, is taxed through the State Public Utilities Realty Tax (PURTA), except for electricity generating stations, which are taxed locally. PURTA revenues are distributed to localities.

**Appendix C: Treatment of Telecommunications Equipment for Property Tax Purposes – Selected Northeast and Mid-Atlantic States (Con't)**

|  | Virginia      |                   |                 |        |                     | West Virginia     |                   |         |        |                     |
|--|---------------|-------------------|-----------------|--------|---------------------|-------------------|-------------------|---------|--------|---------------------|
|  | Real Property | Personal Property | Taxable         | Exempt | Asmnt. Juris.       | Real Property     | Personal Property | Taxable | Exempt | Asmnt. Juris.       |
| <b>Telecomm. Equipment</b>             |               |                   |                 |        |                     |                   |                   |         |        |                     |
| Poles                                  | X             |                   | X               |        | State               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
| Wires                                  | X             |                   | X               |        | State               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
| Fiber Optic/Cable                      | X             |                   | X               |        | State <sup>21</sup> | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
| Conduits                               | X             |                   | X               |        | State               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
| Towers/Antennae                        | X             |                   | X               |        | State               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
| Switching Equipment                    | X             |                   | X               |        | State               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
|  |               |                   |                 |        |                     |                   |                   |         |        |                     |
| <b>Similar Non-Telecomm. Equipment</b> |               |                   |                 |        |                     |                   |                   |         |        |                     |
| Poles                                  | X             |                   | X               |        | State               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
| Wires                                  | X             |                   | X               |        | State               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
| Pipelines                              | X             |                   | X               |        | State               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | State               |
| Other Fixed Equipment                  | X             |                   | X <sup>22</sup> |        | Local               | N/A <sup>20</sup> | N/A <sup>20</sup> | X       |        | Local <sup>23</sup> |

20/ No statutory distinction is made between realty and personalty.

21/ If not owned by telecommunications firm, equipment is locally assessed and taxed.

22/ At local option, equipment used in manufacturing process is eligible for exemption.

23/ Pollution control equipment (assessed by the state as part of an operating utility system), plus fixed equipment used in manufacturing operations (assessed locally) is preferentially assessed, according to a state-prescribed salvage schedule.





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# Appendix D: Cellular Telecommunications Cell Site Property

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Cell site property typically falls into three categories: the tower, the shelter for electronic equipment, and the electronic equipment itself. However, a tall building or other structure may replace the tower in certain instances, and a room or large closet in a building may serve the purpose normally performed by a shelter. The land on which a site is located is typically leased by the telecommunications service provider operating the site, and such a lease normally contains provisions requiring the lessee to remove telecommunications property at the end of its term or in the event of default. One provider may permit other providers to co-locate antennas on its tower for a fee.

The **tower** (of widely varying heights, depending on topography) is typically freestanding and bolted to concrete footings, or guyed. In either case the footings are not readily removable, but the tower can be unbolted, taken down in segments like a Tinkertoy, and moved elsewhere. Attached to the tower are antennas to send and receive radio signals and microwave dishes for sending and receiving microwave transmissions, as well as cabling necessary to connect these to electronic equipment in the shelter.

The **shelter** is a modular shed fabricated elsewhere and trucked to the site. It is typically placed on skids on a gravel bed, bolted to concrete footings or welded to metal rails inserted in concrete footings. The shelter is used to keep electronic equipment out of the elements and appropriately cool or warm depending on the season. The shelter, like the tower, is readily removable without damage to the item itself or to the realty. Shelters are, in fact, removed when a lease is terminated. (However, because this technology is still relatively new, removal has not yet become a common occurrence.) Tower and shelter usually require site improvements, including road work, utility service, and fencing.

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The **electronic equipment** is manufactured mainly by L. M. Ericsson Company, Lucent, Motorola, and Northern Telecom. From one manufacturer to the next it is all quite similar, the equipment in the shelter is called collectively the Radio Base Station, and this is normally broken down conceptually into two main parts called the Radio Cabinet Equipment (or RCE Cabinet) and the Exchange Radio Interface (or ERI Cabinet). In actual practice Radio Base Station equipment of all vendors has gone through many evolutions in recent years, resulting in combination of previously separate functions and miniaturization. Today this equipment consists of a number of modules about the size of an overnight suitcase, which are connected by wires and stacked together. These modules are frequently removed and replaced either because of early obsolescence or because the module is needed at another cell site. In addition to the Radio Base Station equipment, as such, a shelter usually contains batteries and HVAC equipment.

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Supplied by E. Parker Brown II, on behalf of SBC Communications

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# Appendix E: 1998 Local Utility Tax Receipts by Municipality

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**Table E1: 1998 Local Utility Tax Receipts by Municipality - Telecommunications, Gas & Electricity**

| County             | Municipality   | Amount (\$) | County          | Municipality     | Amount (\$) |
|--------------------|----------------|-------------|-----------------|------------------|-------------|
| <b>Albany</b>      |                |             | <b>Chenango</b> |                  |             |
|                    | Albany         | 1,899,615   |                 | Norwich          | 121,554     |
|                    | Cohoes         | 188,205     | <b>Clinton</b>  |                  |             |
|                    | Watervliet     | 135,977     |                 | Plattsburgh      | 58,943      |
|                    | Ravena         | 40,123      |                 | Keeseville       | 12,672      |
|                    | Colonie        | 121,973     |                 | Dannemora        | 17,054      |
|                    | Altamont       | 13,801      | <b>Columbia</b> |                  |             |
|                    | Voorheesville  | 32,092      |                 | Hudson           | 101,118     |
| <b>Allegany</b>    |                |             |                 | Philmont         | 9,712       |
|                    | Alfred         | 28,301      | <b>Cortland</b> |                  |             |
|                    | Almond         | 5,709       |                 | Cortland         | 277,219     |
|                    | Canaseraga     | 4,193       |                 | McGraw           | 19,576      |
|                    | Wellsville     | 32,568      |                 | Homer            | 54,132      |
| <b>Broome</b>      |                |             | <b>Delaware</b> |                  |             |
|                    | Binghamton     | 708,115     |                 | Delhi            | 36,875      |
|                    | Port Dickinson | 16,676      |                 | Franklin         | 3,388       |
|                    | Johnson City   | 214,289     |                 | Sidney           | 99,986      |
| <b>Cattaraugus</b> |                |             |                 | Hobart           | 6,535       |
|                    | Olean          | 274,611     |                 | Stamford         | 16,616      |
|                    | Salamanca      | 32,933      |                 | Walton           | 65,559      |
|                    | Allegany       | 22,446      | <b>Dutchess</b> |                  |             |
|                    | South Dayton   | 9,854       |                 | Beacon           | 113,070     |
|                    | Little Valley  | 7,084       |                 | Poughkeepsie     | 286,546     |
|                    | Cattaraugus    | 14,825      |                 | Rhinebeck        | 23,798      |
|                    | Gowanda        | 45,723      |                 | Wappingers Falls | 34,208      |
|                    | Portville      | 19,122      |                 | Millbrook        | 16,500      |
|                    | Randolph       | 4,121       | <b>Erie</b>     |                  |             |
|                    | Delevan        | 11,764      |                 | Buffalo          | 14,202,105  |
| <b>Cayuga</b>      |                |             |                 | Lackawanna       | 272,308     |
|                    | Auburn         | 599,786     |                 | Tonawanda        | 227,016     |
|                    | Cayuga         | 7,307       |                 | Alden            | 37,534      |
|                    | Weedsport      | 35,132      |                 | Williamsville    | 80,232      |
|                    | Meridian       | 2,057       |                 | East Aurora      | 110,870     |
|                    | Aurora         | 6,341       |                 | Farnham          | 4,829       |
|                    | Port Byron     | 20,393      |                 | Depew            | 235,954     |
|                    | Moravia        | 20,249      |                 | Sloan            | 30,206      |
|                    | Union Springs  | 19,751      |                 | Springville      | 27,184      |
| <b>Chautauqua</b>  |                |             |                 | Angola           | 22,101      |
|                    | Dunkirk        | 203,790     |                 | Blasdell         | 113,578     |
|                    | Jamesstown     | 188,562     |                 | Hamburg          | 124,201     |
|                    | Sinclairville  | 7,765       |                 | Lancaster        | 133,469     |
|                    | Cherry Creek   | 3,979       |                 | Akron            | 27,875      |
|                    | Forestville    | 9,816       |                 | North Collins    | 16,353      |
|                    | Silver Creek   | 67,594      |                 | Orchard Park     | 46,065      |
|                    | Fredonia       | 128,023     |                 | Kenmore          | 257,874     |
| <b>Chemung</b>     |                |             | <b>Essex</b>    |                  |             |
|                    | Elmira         | 483,884     |                 | Lake Placid      | 26,117      |
|                    | Wellsburg      | 2,961       |                 |                  |             |
|                    | Elmira Heights | 69,358      |                 |                  |             |
|                    | Van Etten      | 5,670       |                 |                  |             |

**Table E1: 1998 Local Utility Tax Receipts by Municipality - Telecommunications, Gas & Electricity (Con't)**

| County            | Municipality   | Amount (\$) | County            | Municipality       | Amount (\$) |
|-------------------|----------------|-------------|-------------------|--------------------|-------------|
| <b>Franklin</b>   |                |             | <b>Madison</b>    |                    |             |
|                   | Tupper Lake    | 3,129       |                   | Oneida             | 160,214     |
|                   | Burke          | 962         |                   | Cazenovia          | 39,697      |
|                   | Saranac Lake   | 44,096      |                   | DeRuyter           | 7,522       |
|                   | Malone         | 68,872      |                   | Morrisville        | 27,758      |
| <b>Fulton</b>     |                |             |                   | Hamilton           | 2,646       |
|                   | Gloversville   | 188,264     |                   | Canastota          | 70,303      |
|                   | Johnstown      | 130,857     |                   | Chittenango        | 48,971      |
|                   | Mayfield       | 9,766       | <b>Monroe</b>     |                    |             |
| <b>Genesee</b>    |                |             |                   | Rochester          | 10,423,258  |
|                   | Batavia        | 336,719     |                   | East Rochester     | 93,131      |
|                   | LeRoy          | 79,377      |                   | Honeoye Falls      | 42,288      |
|                   | Oakfield       | 24,252      |                   | Hilton             | 49,298      |
| <b>Greene</b>     |                |             |                   | Fairport           | 17,707      |
|                   | Catskill       | 42,128      |                   | Pittsford          | 37,793      |
|                   | Coxsackie      | 17,233      |                   | Brockport          | 96,651      |
|                   | Tannersville   | 9,101       |                   | Scottsville        | 23,148      |
| <b>Hamilton</b>   |                |             | <b>Montgomery</b> |                    |             |
|                   | Speculator     | 9,346       |                   | Amsterdam          | 244,228     |
| <b>Herkimer</b>   |                |             |                   | Canajoharie        | 47,596      |
|                   | Little Falls   | 105,879     |                   | Fort Plain         | 44,555      |
|                   | Frankfort      | 14,818      | <b>Nassau</b>     |                    |             |
|                   | Ilion          | 57,313      |                   | Glen Cove          | 453,490     |
|                   | Herkimer       | 94,896      |                   | Long Beach         | 337,911     |
|                   | Dolgeville     | 32,554      |                   | Atlantic Beach     | 38,606      |
| <b>Jefferson</b>  |                |             |                   | Bellerose          | 17,283      |
|                   | Watertown      | 372,409     |                   | Cedarhurst         | 103,673     |
|                   | Adams          | 24,120      |                   | East Rockaway      | 157,932     |
|                   | Alexandria Bay | 18,767      |                   | Floral Park        | 170,101     |
|                   | Brownville     | 16,064      |                   | Freeport           | 138,569     |
|                   | Glen Park      | 3,914       |                   | Garden City        | 419,921     |
|                   | West Carthage  | 34,535      |                   | Hempstead          | 461,023     |
|                   | Clayton        | 19,612      |                   | Hewlett Bay Park   | 17,037      |
|                   | Sackets Harbor | 15,734      |                   | Hewlett Harbor     | 31,332      |
|                   | Chaumont       | 5,043       |                   | Hewlett Neck       | 10,070      |
|                   | Philadelphia   | 8,128       |                   | Island Park        | 50,275      |
|                   | Black River    | 12,526      |                   | Lawrence           | 124,305     |
|                   | Theresa        | 2,822       |                   | Lynbrook           | 343,244     |
|                   | Carthage       | 112,056     |                   | Malverne           | 130,116     |
|                   | Deferiet       | 135,822     |                   | Rockville Centre   | 123,693     |
| <b>Livingston</b> |                |             |                   | South Floral Park  | 8,687       |
|                   | Avon           | 56,351      |                   | Stewart Manor      | 17,505      |
|                   | Caledonia      | 45,329      |                   | Valley Stream      | 420,079     |
|                   | Geneseo        | 62,521      |                   | Woodsburgh         | 17,192      |
|                   | Leicester      | 5,775       |                   | East Hills         | 111,095     |
|                   | Livonia        | 15,128      |                   | East Williston     | 25,193      |
|                   | Mount Morris   | 38,031      |                   | Flower Hill        | 75,290      |
|                   | Dansville      | 79,636      |                   | Great Neck         | 121,978     |
|                   | Nunda          | 19,599      |                   | Great Neck Estates | 43,281      |

**Table E1: 1998 Local Utility Tax Receipts by Municipality - Telecommunications, Gas & Electricity (Con't)**

| County                | Municipality       | Amount (\$) | County          | Municipality       | Amount (\$) |
|-----------------------|--------------------|-------------|-----------------|--------------------|-------------|
| <b>Nassau (Con't)</b> |                    |             | <b>Onondaga</b> |                    |             |
|                       | Great Neck Plaza   | 138,591     |                 | Syracuse           | 2,176,201   |
|                       | Kensington         | 15,589      |                 | Camillus           | 14,791      |
|                       | Kings Point        | 96,314      |                 | North Syracuse     | 81,594      |
|                       | Lake Success       | 133,685     |                 | East Syracuse      | 189,625     |
|                       | Manorhaven         | 78,325      |                 | Elbridge           | 14,609      |
|                       | Mineola            | 324,464     |                 | Jordan             | 26,063      |
|                       | Munsey Park        | 44,447      |                 | Solvay             | 34,626      |
|                       | New Hyde Park      | 132,864     |                 | Baldwinsville      | 92,712      |
|                       | North Hills        | 105,058     |                 | Fayetteville       | 62,949      |
|                       | Old Westbury       | 86,177      |                 | Manlius            | 62,520      |
|                       | Plandome           | 30,289      |                 | Minoa              | 32,882      |
|                       | Plandome Heights   | 9,025       |                 | Marcellus          | 31,497      |
|                       | Plandome Manor     | 3,986       |                 | Liverpool          | 55,367      |
|                       | Port Washington No | 65,668      |                 | Skaneateles        | 25,348      |
|                       | Roslyn             | 55,019      |                 | Tully              | 14,313      |
|                       | Roslyn Harbor      | 30,445      | <b>Ontario</b>  |                    |             |
|                       | Saddle Rock        | 17,971      |                 | Canandaigua        | 170,949     |
|                       | Sands Point        | 46,520      |                 | Geneva             | 207,980     |
|                       | Thomaston          | 56,324      |                 | Manchester         | 26,054      |
|                       | Westbury           | 161,530     |                 | Shortsville        | 16,700      |
|                       | Williston Park     | 73,947      | <b>Orange</b>   |                    |             |
|                       | Bayville           | 68,062      |                 | Middletown         | 284,009     |
|                       | Brookville         | 68,322      |                 | Newburgh           | 221,556     |
|                       | Cove Neck          | 6,352       |                 | Port Jervis        | 88,025      |
|                       | Farmingdale        | 97,599      |                 | Washingtonville    | 40,316      |
|                       | Lattingtown        | 25,283      |                 | Cornwall-on-Hudson | 58,197      |
|                       | Laurel Hollow      | 32,803      |                 | Goshen             | 79,151      |
|                       | Massapequa Park    | 145,910     |                 | Highland Falls     | 36,229      |
|                       | Matinecock         | 17,888      |                 | Unionville         | 6,152       |
|                       | Muttontown         | 59,445      |                 | Kiryas Joel        | 41,667      |
|                       | Old Brookville     | 36,204      |                 | Monroe             | 74,615      |
|                       | Oyster Bay Cove    | 32,969      |                 | Maybrook           | 42,598      |
|                       | Sea Cliff          | 56,976      |                 | Montgomery         | 16,036      |
|                       | Upper Brookville   | 25,327      |                 | Walden             | 65,149      |
| <b>Niagara</b>        |                    |             |                 | Otisville          | 10,158      |
|                       | Lockport           | 478,876     |                 | Greenwood Lake     | 29,376      |
|                       | Niagara Falls      | 1,422,727   |                 | Warwick            | 109,618     |
|                       | North Tonawanda    | 980,131     |                 | Harriman           | 41,724      |
|                       | Lewiston           | 41,360      | <b>Orleans</b>  |                    |             |
|                       | Youngstown         | 20,115      |                 | Albion             | 121,413     |
|                       | Middleport         | 34,020      |                 | Medina             | 89,574      |
| <b>Oneida</b>         |                    |             |                 | Lyndonville        | 14,541      |
|                       | Rome               | 469,012     | <b>Oswego</b>   |                    |             |
|                       | Utica              | 846,360     |                 | Fulton             | 243,390     |
|                       | Camden             | 60,999      |                 | Oswego             | 284,751     |
|                       | Clayville          | 10,800      |                 | Altmar             | 2,978       |
|                       | Vernon             | 4,402       |                 | Cleveland          | 6,314       |
|                       | Sylvan Beach       | 15,575      |                 | Central Square     | 22,662      |



**Table E1: 1998 Local Utility Tax Receipts by Municipality - Telecommunications, Gas & Electricity (Con't)**

| County                | Municipality         | Amount (\$) | County             | Municipality      | Amount (\$) |
|-----------------------|----------------------|-------------|--------------------|-------------------|-------------|
| <b>Oswego (Con't)</b> |                      |             | <b>Saratoga</b>    |                   |             |
|                       | Mexico               | 25,169      |                    | Mechanicville     | 55,074      |
|                       | Pulaski              | 37,680      |                    | Saratoga Springs  | 453,096     |
|                       | Lacona               | 5,859       |                    | Corinth           | 73,504      |
|                       | Sandy Creek          | 8,725       |                    | Galway            | 3,618       |
|                       | Phoenix              | 29,578      |                    | Ballston Spa      | 84,064      |
| <b>Otsego</b>         |                      |             |                    | South Glens Falls | 54,011      |
|                       | Oneonta              | 157,670     | <b>Schenectady</b> |                   |             |
|                       | Cooperstown          | 62,942      |                    | Schenectady       | 721,436     |
|                       | Richfield Springs    | 4,631       |                    | Scotia            | 70,422      |
|                       | Unadilla             | 9,486       | <b>Schoharie</b>   |                   |             |
| <b>Rensselaer</b>     |                      |             |                    | Cobleskill        | 86,318      |
|                       | Rensselaer           | 86,466      |                    | Middleburgh       | 12,368      |
|                       | Troy                 | 616,385     |                    | Schoharie         | 14,920      |
|                       | Hoosick Falls        | 58,039      |                    | Sharon Springs    | 4,860       |
|                       | Valley Falls         | 3,780       | <b>Schuylar</b>    |                   |             |
|                       | Schaghticoke         | 11,620      |                    | Watkins Glen      | 17,560      |
|                       | Castleton-on-Hudson  | 29,851      |                    | Burdett           | 1,554       |
| <b>Rockland</b>       |                      |             |                    | Montour Falls     | 40,508      |
|                       | Upper Nyack          | 25,622      | <b>Seneca</b>      |                   |             |
|                       | West Haverstraw      | 116,694     |                    | Interlaken        | 5,361       |
|                       | Grand View-on-Hudson | 5,229       |                    | Seneca Falls      | 116,424     |
|                       | Nyack                | 92,072      |                    | Waterloo          | 70,483      |
|                       | Piermont             | 28,514      | <b>Steuben</b>     |                   |             |
|                       | South Nyack          | 27,996      |                    | Corning           | 299,463     |
|                       | Airmont              | 104,739     |                    | Hornell           | 133,882     |
|                       | Hillburn             | 16,183      |                    | Addison           | 21,852      |
|                       | Kaser                | 10,577      |                    | Canisteo          | 23,781      |
|                       | New Hempstead        | 48,237      |                    | Riverside         | 10,343      |
|                       | New Square           | 19,137      |                    | Painted Post      | 37,582      |
|                       | Pomona               | 38,209      |                    | Arkport           | 16,455      |
|                       | Sloatsburg           | 28,228      |                    | North Hornell     | 15,935      |
|                       | Spring Valley        | 194,985     |                    | Hammondsport      | 16,205      |
|                       | Suffern              | 129,539     | <b>Suffolk</b>     |                   |             |
|                       | Wesley Hills         | 44,056      |                    | Amityville        | 138,193     |
| <b>St. Lawrence</b>   |                      |             |                    | Babylon           | 132,719     |
|                       | Ogdensburg           | 218,027     |                    | Lindenhurst       | 325,151     |
|                       | Canton               | 88,411      |                    | Belle Terre       | 8,202       |
|                       | Richville            | 1,657       |                    | Bellport          | 25,998      |
|                       | Edwards              | 2,413       |                    | Lake Grove        | 135,683     |
|                       | Gouverneur           | 35,922      |                    | Old Field         | 9,822       |
|                       | Massena              | 87,797      |                    | Patchogue         | 116,438     |
|                       | Norwood              | 18,798      |                    | Port Jefferson    | 88,516      |
|                       | Potsdam              | 109,081     |                    | East Hampton      | 86,564      |
|                       | Waddington           | 9,124       |                    | Asharoken         | 6,421       |

**Table E1: 1998 Local Utility Tax Receipts by Municipality - Telecommunications, Gas & Electricity (Con't)**

| County                 | Municipality         | Amount (\$) | County                               | Municipality       | Amount (\$) |
|------------------------|----------------------|-------------|--------------------------------------|--------------------|-------------|
| <b>Suffolk (Con't)</b> |                      |             | <b>Westchester</b>                   |                    |             |
|                        | Huntington Bay       | 18,682      |                                      | Mount Vernon       | 590,074     |
|                        | Lloyd Harbor         | 37,645      |                                      | New Rochelle       | 847,732     |
|                        | Northport            | 85,540      |                                      | Peekskill          | 204,323     |
|                        | Brightwaters         | 31,525      |                                      | Rye                | 244,265     |
|                        | Ocean Beach          | 8,026       |                                      | White Plains       | 1,008,723   |
|                        | Saltaire             | 3,610       |                                      | Yonkers            | 5,284,909   |
|                        | Village of the Branc | 46,477      |                                      | Croton-on-Hudson   | 73,811      |
|                        | North Haven          | 8,223       |                                      | Bronxville         | 157,711     |
|                        | Quogue               | 34,317      |                                      | Tuckahoe           | 162,889     |
|                        | Sag Harbor           | 42,795      |                                      | Ardsley            | 57,350      |
|                        | Southampton          | 132,424     |                                      | Dobbs Ferry        | 123,807     |
|                        | Westhampton Beach    | 57,528      |                                      | Elmsford           | 58,579      |
|                        | West Hampton Dunes   | 8,101       |                                      | Hastings-on-Hudson | 92,889      |
| <b>Sullivan</b>        |                      |             |                                      | Irvington          | 68,799      |
|                        | Woodridge            | 11,578      |                                      | Tarrytown          | 254,491     |
|                        | Liberty              | 43,392      |                                      | Larchmont          | 76,558      |
|                        | Bloomington          | 7,090       |                                      | Mamaroneck         | 238,940     |
|                        | Wurtsboro            | 7,078       |                                      | Mount Kisco        | 159,883     |
|                        | Monticello           | 65,678      |                                      | Pleasantville      | 80,638      |
| <b>Tioga</b>           |                      |             |                                      | Sleepy Hollow      | 71,128      |
|                        | Newark Valley        | 10,982      |                                      | Ossining           | 175,907     |
|                        | Owego                | 66,321      |                                      | Pelham             | 63,370      |
| <b>Tompkins</b>        |                      |             |                                      | Pelham Manor       | 85,817      |
|                        | Ithaca               | 341,637     |                                      | Port Chester       | 320,076     |
|                        | Dryden               | 27,750      |                                      | Rye Brook          | 161,163     |
|                        | Groton               | 7,254       |                                      | Scarsdale          | 232,921     |
|                        | Cayuga Heights       | 46,326      | <b>Wyoming</b>                       |                    |             |
|                        | Lansing              | 149,544     |                                      | Arcade             | 15,392      |
|                        | Trumansburg          | 24,760      |                                      | Attica             | 31,265      |
| <b>Ulster</b>          |                      |             |                                      | Silver Springs     | 4,565       |
|                        | Kingston             | 238,281     |                                      | Perry              | 53,640      |
|                        | New Paltz            | 34,843      |                                      | Warsaw             | 53,747      |
| <b>Warren</b>          |                      |             | <b>Yates</b>                         |                    |             |
|                        | Glens Falls          | 269,608     |                                      | Penn Yan           | 26,854      |
|                        | Lake George          | 28,521      |                                      | Dundee             | 28,161      |
| <b>Washington</b>      |                      |             | <b>TOTAL</b>                         |                    |             |
|                        | Fort Ann             | 4,032       |                                      |                    |             |
|                        | Fort Edward          | 64,042      |                                      |                    |             |
|                        | Greenwich            | 5,494       | Estimated Telecommunications Portion |                    |             |
|                        | Hudson Falls         | 76,147      | of Local Gross Receipt Taxes         |                    |             |
| <b>Wayne</b>           |                      |             |                                      |                    |             |
|                        | Newark               | 167,517     |                                      |                    |             |
|                        | Clyde                | 33,752      |                                      |                    |             |
|                        | Lyons                | 68,667      |                                      |                    |             |
|                        | Macedon              | 56,215      |                                      |                    |             |
|                        | Palmyra              | 64,164      |                                      |                    |             |
|                        | Sodus Point          | 13,652      |                                      |                    |             |
|                        | Wolcott              | 23,526      |                                      |                    |             |

Source: New York State Office of the State Comptroller



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# Appendix F: Local Telecommunications and Cable Television Taxes and Fees Data Request

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## Local Telecommunications & Cable Television Taxes and Fees Data Request

Please provide the following information for your company for calendar year 1998, or for a period as close to 1998 as possible. By providing your company's employer identification number (EIN), the Tax Department will be able to independently ascertain your total local sales and use taxes.

Name of Company \_\_\_\_\_ Company EIN(s) \_\_\_\_\_

Time Period \_\_\_\_\_

### Local Sales and Use Taxes

New York State imposes local sales taxes for approximately 100 counties, cities and school districts. For the request below, please provide data on the **number** of sales tax jurisdictions that your company had **taxable sales** in, and the frequency of the filing of the returns filed by your company (e.g., quarterly would be 4 returns per year).

|   |                                      |
|---|--------------------------------------|
| # Jurisdictions (lines on the<br>sales tax return)<br>_____ | # Returns Filed (frequency)<br>_____ |
|---|--------------------------------------|

For the next request, please provide data on the **taxable sales** your company made.

From your sales tax returns (Part 2), **for taxable sales in a County or City only:**

|                               |                                       |                                 |
|-------------------------------|---------------------------------------|---------------------------------|
| Taxable Telecomm.<br>Services | Sales/Rentals of<br>Tangible Property | Service Installation<br>Charges |
| \$ _____                      | \$ _____                              | \$ _____                        |

From your sales tax returns (Schedule B), **for taxable sales in a County or City inside of a School District:**

|                               |                                       |                                 |
|-------------------------------|---------------------------------------|---------------------------------|
| Taxable Telecomm.<br>Services | Sales/Rentals of<br>Tangible Property | Service Installation<br>Charges |
| \$ _____                      | \$ _____                              | \$ _____                        |

Name of Company \_\_\_\_\_

**Local Utility Gross Receipts Taxes** (not including New York City)

| # Jurisdictions | # Returns Filed | Amount of Tax Paid |
|-----------------|-----------------|--------------------|
| _____           | _____           | \$ _____           |

**New York City**

Utility Gross Receipts Tax

| # Returns Filed | Amount of Tax Paid |
|-----------------|--------------------|
| _____           | \$ _____           |

General Corporation Tax

| # Returns Filed | Amount of Tax Paid |
|-----------------|--------------------|
| _____           | \$ _____           |

Unincorporated Business Tax

| # Returns Filed | Amount of Tax Paid |
|-----------------|--------------------|
| _____           | \$ _____           |

**Local Real Property Taxes**

For the request below, property taxes levied by more than one local government unit (e.g., county, town) may appear on the same bill; in such instances, please count as a *single* jurisdiction.

| # Billing Entities | # Returns Filed<br>Or Bills Paid | Amount of Tax Paid |
|--------------------|----------------------------------|--------------------|
| _____              | _____                            | \$ _____           |

In addition to the information provided above, the Office of Real Property Services would like, *if possible*, a disaggregation of your real property tax paid by type of property (i.e., special franchise or other real property) and by jurisdiction.

Name of Company \_\_\_\_\_

**Local Real Property Taxes (Con't)**

Total real property tax paid on  
Special Franchises: \$ \_\_\_\_\_

City or Town tax paid on  
Special Franchises: \$ \_\_\_\_\_

County tax paid on  
Special Franchises: \$ \_\_\_\_\_

Village tax paid on  
Special Franchises: \$ \_\_\_\_\_

School tax paid on  
Special Franchises: \$ \_\_\_\_\_

Special District tax paid on  
Special Franchises: \$ \_\_\_\_\_

Total real property tax paid on  
Other Real Property: \$ \_\_\_\_\_

City or Town tax paid on  
Other Real Property: \$ \_\_\_\_\_

County tax paid on  
Other Real Property: \$ \_\_\_\_\_

Village tax paid on  
Other Real Property: \$ \_\_\_\_\_

School tax paid on  
Other Real Property: \$ \_\_\_\_\_

Special District tax paid on  
Other Real Property: \$ \_\_\_\_\_



Name of Company \_\_\_\_\_

**Local Cable Television Franchise Fees**

|                 |                 |                    |
|-----------------|-----------------|--------------------|
| # Jurisdictions | # Returns Filed | Amount of Fee Paid |
| _____           | _____           | \$ _____           |

**Local Telecommunications Franchise Fees**

|                 |                 |                    |
|-----------------|-----------------|--------------------|
| # Jurisdictions | # Returns Filed | Amount of Fee Paid |
| _____           | _____           | \$ _____           |

**Enhanced 911 Emergency Telephone Surcharge**

|                 |                 |                          |
|-----------------|-----------------|--------------------------|
| # Jurisdictions | # Returns Filed | Amount of Surcharge Paid |
| _____           | _____           | \$ _____                 |

**Cellular 911 Telephone Surcharge**

|                 |                 |                          |
|-----------------|-----------------|--------------------------|
| # Jurisdictions | # Returns Filed | Amount of Surcharge Paid |
| _____           | _____           | \$ _____                 |

**Metropolitan Commuter Transportation District Surcharges**

|             |                 |                                  |
|-------------|-----------------|----------------------------------|
| Section 183 | # Returns Filed | Amount of MCTD<br>Surcharge Paid |
|             | _____           | \$ _____                         |

Name of Company \_\_\_\_\_

**Metropolitan Commuter Transportation District Surcharges (Con't)**

|             |                 |                                  |
|-------------|-----------------|----------------------------------|
| Section 184 | # Returns Filed | Amount of MCTD<br>Surcharge Paid |
|             | _____           | \$ _____                         |

|               |                 |                                  |
|---------------|-----------------|----------------------------------|
| Section 186-e | # Returns Filed | Amount of MCTD<br>Surcharge Paid |
|               | _____           | \$ _____                         |

|             |                 |                                  |
|-------------|-----------------|----------------------------------|
| Article 9-A | # Returns Filed | Amount of MCTD<br>Surcharge Paid |
|             | _____           | \$ _____                         |

