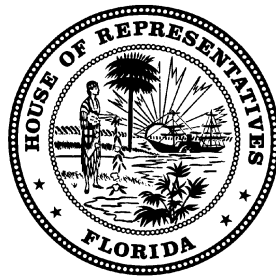


**SIMPLIFYING
COMMUNICATIONS
TAXATION IN
FLORIDA:

OVERVIEW AND ISSUES**



Prepared by staff of the
Florida House Of Representatives
Committee on Utilities and Communications
October, 1999

COMMITTEE ON UTILITIES AND COMMUNICATIONS

MEMBERS

Rep. Luis E. Rojas, Chairman
Rep. Josephus Eggelletion, Vice Chairman

Rep. George Albright
Rep. Joe Arnall
Rep. Gustavo Barreiro
Rep. Gus Bilirakis
Rep. Tom Feeney
Rep. J. Dudley Goodlette
Rep. Bob Henriquez
Rep. Randy Johnson
Rep. Willie Logan
Rep. Ken Pruitt
Rep. Chris Smith
Rep. Tracy Stafford
Rep. Dwight Stansel

STAFF

Patrick L. "Booter" Imhof, Staff Director
Lynn Koon, Committee Administrative Assistant
Charles Murphy, Staff Attorney
Wendy Holt, Legislative Analyst

Table of Contents

	<u>PAGE</u>
Executive Summary	1
I. Introduction	3
II. Impetus for Simplified Tax	5
III. Local Government Concerns	7
IV. Negotiations Regarding a Simplified Tax	9
V. State and Local Taxes and Fees	10
A. <i>Public Service Tax (also called the Municipal Utility Tax or MUT)</i>	10
B. <i>Gross Receipts Tax</i>	12
C. <i>State Sales Tax</i>	14
D. <i>Local Option Sales Surtax</i> -	15
E. <i>Franchise Fee</i>	16
F. <i>Telecommunications Access System Act (TASA) Fee</i>	17
G. <i>911/E911 Fee</i>	17
VI. The Florida Constitution	19
A. <i>Impairment of Contract</i>	19
B. <i>Taxpayer Bill of Rights</i>	19
C. <i>State Revenue Limitation</i>	20
D. <i>Mandates</i>	20
E. <i>Public Education Capital Outlay (PECO)</i>	21
Appendix A. Taxes and Fees Associated with Telecommunications Services	22

***Appendix B. Industry and Local Government
Positions on Issues Related to the
Simplified Tax***

23

1. Problems with the way that telecommunications services are currently taxed in Florida.
2. Annual costs for the industry to comply with the requirements of the current tax system.
3. Annual cost for local governments to implement the current system.
4. Annual cost for the state to implement a unified tax system.
5. How a unified tax might improve on the current method of taxing telecommunications.
6. Obstacles to implementing a unified telecommunications tax.
7. A unified telecommunications tax system and the requirements of the Florida Constitution.
8. Florida Statutes that would need to be amended in order to implement a unified telecommunications tax
9. Federal law and the inclusion of cable television service in the unified telecommunications tax.
10. Federal law and the inclusion of cable franchise fees in the unified telecommunications tax.
11. Industry segments and the desirability of a unified tax.
12. Ratepayer frustration with the proliferation of line item charges added to telephone bills.
13. Unified tax and focus groups.
14. Whether a unified tax will represent a tax increase or a tax decrease for residential consumers of cable television, basic local telecommunications service, vertical features, the Internet, and long distance services.

***Appendix C. Seven Types of Local Option
Sales Surtaxes***

24

Appendix D. Internet Tax Freedom Act

26

***Appendix E. F.C.C. 1998 Glossary of
Telecommunications Terms***

27

***Appendix F. State and Local Taxes
and Fees Stated as Percentage
of Bill. --BellSouth***

28

***Appendix G. Levy of Local Discretionary
Sales Surtaxes***

29

EXECUTIVE SUMMARY

Because of changes in the telecommunications marketplace that may make the current tax structure increasingly unworkable, the staff of the House Committee on Utilities and Communications was directed to monitor the possible development of a simplified telecommunications tax proposal and to gather background information that might assist members in evaluating the merits of such a proposal.

With the removal of regulatory restrictions, and the development of new technologies--- computer, television, and telephone services (whether landline or wireless) will increasingly begin to look more alike. This trend is known as *convergence*. Similarly, communications providers have begun to offer packages of several types of services for a single price; this is called *bundling*. Convergence and bundling will increasingly blur distinctions between categories of communications services.

Current law provides for seven state and local taxes and fees that apply to various communications services. These include the following:

- ◆ Public Service Tax;
- ◆ Gross Receipts Tax;
- ◆ State Sales Tax;
- ◆ Local Option Sales Surtax;
- ◆ Franchise Fee;
- ◆ Telecommunications Access System Act Fee;
- ◆ 911/E911 Fee.

These taxes and fees have varying rates and bases and apply differently to different services. Some of the revenues from communications taxes have been bonded by local governments; others are bonded at the state level to fund Public Education Capital Outlay (PECO).

According to industry representatives, variations in local tax and fee levies and the requirement that taxes be filed with hundreds of local tax jurisdictions, create an expensive administrative burden for the industry. Thus, the industry favors state administration of a simplified communications tax.

Local governments want to ensure that any change in the tax structure is equitably collected and distributed, and negatively impacts neither local revenues (including projected growth), nor the ability to bond funds. Development of a collection and distribution model is complicated because not all local governments are currently collecting communications taxes and fees at the statutorily authorized maximum level, and because noncharter counties are not statutorily authorized to collect all of the taxes authorized for municipalities and charter counties.

The Legislature has the power under the Florida Constitution to implement a simplified communications tax. However, in crafting the legislation, care must be taken to comply with constitutional requirements involving the following:

- ◆ impairment of contract,
- ◆ the taxpayer bill of rights,
- ◆ the state revenue limitation,
- ◆ local mandates, and
- ◆ Public Education Capital Outlay (PECO).

A simplified tax must be compatible with federal law governing franchise fees applicable to cable television service. There is also a three year federal moratorium on taxation of the Internet which preempts Florida's authority to tax Internet access service.

Representatives of industry and local governments have been meeting to develop a workable simplified tax. Among more specific issues, these meetings have generally focused on the following:

- ◆ establishing a revenue benchmark based on current law;
- ◆ crafting an equitable collection and distribution system;
- ◆ preserving bondable revenue streams;
- ◆ protecting current bond holders;
- ◆ preserving local autonomy with respect to rights of way;
- ◆ avoiding the creation of precedents that might erode local authority to collect franchise fees from electric and gas industries; and
- ◆ creating a competitively and technologically neutral tax.

Once a simplified tax proposal is developed, it is understood that representative consumer bills will need to be "run" to determine taxpayer impact; at that time adjustments may need to be made to correct any disproportionate tax burdens.

I. INTRODUCTION

The staff of the House Committee on Utilities and Communications was directed by the Chairman, and the Speaker of the House, to monitor the possible development of a simplified telecommunications tax proposal and to gather background information that might assist members in evaluating the merits of such a proposal. The proposal is being negotiated by the Florida League of Cities, the Florida Association of Counties, the Florida Telecommunications Industry Association (“FTIA”),¹ the Florida Cable Telecommunications Association (“FCTA”)² and others (collectively the “Work Group”). While the members of the Work Group are working to develop a simplified tax, the cities and counties currently neither support nor oppose the development of a simplified tax. This is because the specifics of any eventual proposal will matter a great deal to the local governments and, to this point, the simplified tax negotiations have been only conceptual.

In developing this report, staff did the following:

attended many of the meetings in which a proposed simplified telecommunications tax was discussed;

conducted research of relevant statutory and constitutional requirements;

reviewed the report by the 1996 Telecommunications Taxation Task Force and the 1996 Interim Report of the Senate Committee on Commerce and Economic Opportunities and Ways and Means; and

¹The FTIA is comprised of the following telecommunications providers plus a number of additional non-provider members: Alltel Communications, Inc.; AT&T; AT&T Wireless Services; BellSouth Telecommunications, Inc.; BellSouth Mobility, Inc.; Frontier Communications of the South, Inc.; GTE Florida Inc.; GTE Wireless; Intermedia Communications, Inc.; Nextel Communications; Northeast Florida Telephone Company, Inc.; Primeco Personal Communications, L.P.; Progress Telecommunications Corp.; Sprint - Florida, Inc.; Sprint PCS; TDS Telecom/Quincy; Vista-United Telecommunications.

²The FCTA is comprised of the following cable providers plus a number of additional members who are not cable providers: Adelphia; Advanced Cable Communications; AT&T Broadband & Internet Services; Charter Communications; Comcast; Cox; FSN Cable; Jones Intercable; MediaCom; MediaOne; Palm Coast Cablevision; Southeast Cable TV; Time Warner; Watson Cable Company.

developed a questionnaire in consultation with the Chairman which was sent to industry and government entities participating in the development of the simplified tax proposal.

The results of this research and review are set forth in this report.

II. IMPETUS FOR SIMPLIFIED TAX

There are seven distinct state-authorized taxes and fees applicable to telecommunications service.³ Cable television service is subject to higher local franchise fees based on federal law.⁴ Internet Service is not taxed.⁵

Perceived difficulties with the current taxation scheme are the result of a gradual opening of telecommunications markets and a constant evolution of technologies.⁶ Regulatory and technological changes have tended to result in a blurring, or *convergence*,⁷ of telecommunications, television and computer services. Each of these services is beginning to be offered by cable, local telephone, long distance telephone, Internet, satellite and wireless companies.

As service offerings *converge* and also become increasingly *bundled*,⁸ the existing distinctions between services for purposes of tax rates, bases, and exemptions will become an increasingly difficult and artificial accounting problem for the companies. According to the FTIA,

³Eight if you count the disparate franchise fee treatment of local and long distance telecommunications service. *See* section V. of this report for a summary of the state and local taxes and fees. *See also* Appendix A. for a chart prepared by DOR comparing the applicable taxes *and* Appendix F which illustrates the tax burden on local exchange service as reported by BellSouth.

⁴*See* 47 U.S.C. 542(b). (Authorized fees are “not to exceed 5 percent of . . . gross revenues”).

⁵The 1998 Internet Tax Freedom Act (Sec 1100-01, PL 105-277) established a three year moratorium on taxation of Internet access and multiple or discriminatory taxes on electronic commerce. *See* Appendix D. Although the Internet Tax Freedom Act “grandfathers” existing taxation of Internet Access, the service is not taxable under Florida Law. *See* s. 203.012(5), Florida Statutes (exempting Internet access service from gross receipts tax); s. 166.231(9), Florida Statutes (cross referencing gross receipts language for purposes of the municipal utilities tax); s. 212.05(1)(e)1, Florida Statutes (cross referencing Section 203.012, Florida Statutes, for purposes of sales tax.

⁶*E.g.*, wireless, satellite, and Internet offerings of video, voice and data.

⁷In its “1998 Glossary of Telecommunications Terms” the Federal Communications Commission (F.C.C.) states that “convergence means that providers of communications systems can deliver products and services that compete with products and services now delivered by other networks. One example would be a cable company providing local phone service or a local phone company providing video services.” The F.C.C. Glossary is included as Appendix E.

⁸*I.e.*, combined and sold in packages.

statewide providers have the additional burden of being subject to hundreds of individual local tax jurisdictions with differing tax rates and potentially differing interpretations of how these complicated accounting matters should be treated. The FTIA reports that a new computer platform capable of billing, collecting and remitting appropriate tax to Florida jurisdictions costs more than \$8 million to create.⁹ This cost would appear to be a tremendous barrier to market entry by new providers.

The FTIA also indicates that, even with such an expensive system, the industry must still pair each customer with the appropriate taxing jurisdiction. This pairing process is known as “situs-ing.” With city annexations and multiple jurisdictions sometimes claiming the same address, situs-ing can be very difficult and labor intensive. Correcting mistakes when a company fails to place a person in the correct taxing jurisdiction is similarly labor intensive. Moreover, according to the industry, because of disparities in taxation levels among taxation jurisdictions, inaccurate pairings of taxpayers and taxation jurisdictions have resulted in several class action law suits by customers.¹⁰

FTIA estimates that the combined *annual* costs for its 18 members to comply with the current tax laws totals between \$10 and \$15 million.¹¹ Asked to describe problems with the current taxation of telecommunications, the Department of Revenue described many of the problems discussed above and concluded that “these burdens are likely to increase with the blending of services, some subject to tax and some not, with the rate of taxation varying with the type of service, the type of user, and the location of the user.”¹²

⁹See FTIA response to committee questionnaire, question 2, Appendix B.

¹⁰See FTIA response to committee questionnaire, question 1, Appendix B.

¹¹See FTIA response to committee questionnaire, question 2, Appendix B.

¹²DOR response to committee questionnaire, question 1, Appendix B.

III. LOCAL GOVERNMENT CONCERNS

Generally, local governments are concerned about giving up local autonomy with respect to rights-of-way, and tax revenues. The League of Cities estimates that *municipalities*¹³ receive approximately \$246,747,000 annually from the cable and telecommunications companies for the combined payment of franchise fees, municipal utilities tax, local option sales tax, and local government half-cent sales tax program. The cities want to preserve these revenues and have them continue to grow. Local governments also are concerned about how bonding issues will be handled; naturally they are protective of their ability to continue to attract bond investors.

Because not all local tax jurisdictions have decided to tax at the maximum allowable level, and non-charter counties are not authorized to collect all of the taxes authorized for municipalities, there is concern at the local level over how a statewide simplified tax will treat local governments that are not similarly situated. This concern has taken the form of numerous questions about how taxes will be assessed and how revenues will be distributed. More specifically, local governments primary concern is preserving revenue capacity when moving from a local option tax structure to a simplified tax implemented statewide. This transition poses the second major concern which is how to establish a distribution mechanism that will fairly allocate revenues among the various local governments. Moving from a local option system to a revenue sharing system can be a complex political and logistical transition. During the August meeting of the Work Group there was a sentiment that nothing more remained to be discussed until there is a proposal on the table that can be evaluated by the participants. Even if every substantive issue regarding a simplified tax can be resolved, there is still some concern on the part of local governments because one Legislature cannot bind subsequent Legislatures. Thus, even if a perfectly equitable simplified tax can be devised, the same cannot be *guaranteed* going forward.

In response to the committee questionnaire, the City of Orlando, and the League of Cities identified several obstacles to implementing the simplified tax.¹⁴ Among these is concern about local governments losing *direct control over audit verification*. Local governments find telecommunications taxes to be a reliable, and bondable revenue source that has a proven and predictable growth rate. They believe that care must be taken with any system designed to distribute a simplified tax so that municipalities that have implemented telecommunications taxes, and come to rely on this revenue source, are ensured such revenues including projected growth.¹⁵

¹³These estimates do not include revenues collected by *counties* from cable and telecommunications providers.

¹⁴See Orlando/League of Cities response to committee questionnaire, number 6, Appendix B.

¹⁵*Id.*

Including franchise fees in the simplified tax calls into question issues associated with local government's authority to manage rights-of-way. This authority is viewed by local governments as essential to the protection of the health, safety and welfare of citizens and thus, any erosion of home rule authority with respect to rights-of-way may cause concern to local governments.¹⁶

Local governments also are concerned that *calling franchise fees a tax* creates a precedent that could jeopardize necessary revenue sources if such a precedent were applied to other utility companies (electric and gas) that use local rights-of-way. Thus, local governments believe that care must be taken to preserve the identity of funds in the simplified tax that are designated as franchise fees.¹⁷

Another concern raised by local governments is that reassignment of initial ownership of tax funds from local governments to the state raises potential legal and fiscal problems for local jurisdictions which have bonded revenues from telecommunications taxes. Local governments believe that care must be taken to ensure that current and future *bond ratings* are not impaired.¹⁸

The City of Orlando, and the League of Cities observe that a flat-rated, simplified tax on a broad base of all telecommunications/communications services could result in a *tax increase* on a number of non-charter county taxpayers that currently are not taxed on these services.¹⁹ How revenues from these areas are to be treated is of considerable interest to local governments.

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.*

IV. DISCUSSIONS REGARDING A SIMPLIFIED TAX

A Work Group comprised of industry and governmental stake holders has been discussing issues associated with a simplified tax and attempting to craft a simplified tax proposal. Participation has been wide ranging; however, a core group included representatives from BellSouth, the Florida Telecommunications Industry Association, the Florida Cable Telecommunications Association, the Florida League of Cities, the Association of Counties, and the Department of Revenue. The cities of Tampa, Tallahassee, Orlando, and Jacksonville were also active participants. The Work Group has toiled to determine what taxes and fees should be included in a simplified tax, how such a tax and distribution system should be structured, the current and projected revenue levels attributable to the taxes and fees that will be incorporated into the simplified tax, the basis upon which taxes will be assessed, and the services that should be subject to the tax. While there *appears* to be some consensus on some of these issues, the status of the Work Group might best be summarized by paraphrasing a comment made at the August meeting---there is nothing more that can be accomplished until the concept is reduced to writing in the form of proposed legislation. Only then can stake holders realistically begin to weigh the benefits and impacts of the proposal and craft suggested compromises.

As a simplified tax proposal becomes more concrete, it is understood by the Work Group members that consumers / tax payers will need to be brought into the dialogue. Tax impact will depend on each customer's usage pattern and local taxation jurisdiction. Thus, once issues are resolved between local governments and the industry, it is anticipated that various representative consumer bills will be "run" under the simplified tax proposal to determine tax payer impacts. At that point, adjustments can be made in the proposal to correct any perceived inequities.

V. STATE AND LOCAL TAX SUMMARY

In addition to the numerous federal taxes and fees, the following seven state and local taxes and fees appear on customer bills in Florida.

- ◆ Public Service Tax (also called the Municipal Utility Tax or MUT);
- ◆ Gross Receipts Tax;
- ◆ Sales Tax on Communications;
- ◆ Local Option Sales Surtax;
- ◆ Franchise Fees;
- ◆ Telecommunications Access System Act (TASA) Fee; and
- ◆ 911/E911 Fee.

The Work Group concluded that the fees supporting deaf relay service and 911/E911 service were not appropriate for inclusion in the simplified structure. Thus, the Work Group has been attempting to develop a simplified tax based on the remaining four taxes plus local franchise fees for cable and telecommunications.²⁰

A. Public Service Tax (also called the Municipal Utility Tax or MUT)

Municipalities and charter counties are authorized to levy a tax on the purchase of telecommunications services.²¹

For this purpose, telecommunications service *includes* local telephone service, telegram or telegraph service, teletypewriter service, private communication service, cellular service, specialized mobile radio service, pagers and paging service (beepers) and any form of mobile or portable one or two way communications.²²

²⁰Because describing the taxes in a narrative is invariably cumbersome, staff has included at Appendix A, a spread sheet prepared by the Department of Revenue which concisely illustrates the applicability, rates and revenues of the *taxes* currently being considered for the simplified tax. To staff's knowledge, such a document does not exist for *franchise fees*.

²¹s. 166.231(9), Florida Statutes. *See also e.g., Volusia County v. Dickinson*, 269 So.2d 9 (Fla. 1972) (reasoning that charter counties have authority comparable to municipalities). The MUT also applies to the purchase of other utility services such as electricity, gas, and water service. s. 166.231(1)(a), Florida Statutes.

²²ss. 166.231 and 203.012(5), Florida Statutes.

Telecommunications service *does not include* incidental services or related equipment such as the provisioning and maintenance of customer premises equipment. The term also *excludes* Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.²³

Municipalities levying the tax have two options for collection:

Up to 10 percent of the monthly recurring customer service charges.

Excluding: public telephone charges collected on site; access charges; customer access line charges paid to a local telephone company.²⁴

Or

Up to 7 percent of the total amount charged for any telecommunications service that originates and terminates within Florida that is provided within the municipality or attributable to a communications device, service address or billing address that is located within a municipality.²⁵

Excluding: public telephone charges collected on site; charges for foreign exchange or private line services (except when these are used as a substitute for specified local services); access charges; and any customer access line charges paid to a local company.²⁶

The MUT is collected by the seller of the taxable telecommunications service and remitted to the appropriate municipality.²⁷ The seller is permitted to keep 1 percent of the amount of the tax collected as compensation for this responsibility.²⁸

²³*Id.*

²⁴s.166.231(9)(a)1, Florida Statutes.

²⁵Cellular and other mobile services are taxed only on the *monthly recurring charges* excluding variable usage charges. ss.166.231(9)(a)2 and 203.012(5)(b), Florida Statutes.

²⁶s.166.231(9)(a)2, Florida Statutes.

²⁷s. 166.231(9)(f), Florida Statutes.

²⁸s. 166.231(9)(b), Florida Statutes.

The League of Cites reports that in fiscal year 96-97, the 260 *municipalities* which have implemented the tax collected \$169,574,675 for the municipal utilities tax on telecommunications services. Counties imposing this tax collected \$51.3M. for that same year.²⁹

B. *Gross Receipts Tax*

Providers of utility service³⁰ must pay a 2.5 percent tax on the total amount of gross receipts derived from business done in Florida, between points within Florida.³¹ Although the tax is owed by the provider, it may be separately stated on customer bills and based on the total amount of any bill.³² When separately stated, the tax must be paid by the provider's customers (including all government units).³³

The 2.5 percent tax applies to the gross receipts for the sale of the following:

- ◆ local telephone service;
- ◆ telegram or telegraph service;
- ◆ teletypewriter service;
- ◆ private communication service;
- ◆ cellular service;
- ◆ specialized mobile radio service;
- ◆ pagers and paging service (beepers); and,
- ◆ any form of mobile or portable one or two way communications.³⁴

For *interstate* calls the tax applies to the following:

charges imposed at each channel termination point within Florida;

²⁹See September 1998, Local Government Financial Information Handbook prepared by the Florida Legislative Committee on Intergovernmental Relations and the Department of Revenue.

³⁰Utility service means "electricity for light, heat, or power; natural or manufactured gas for light, heat, or power; or telecommunications services." s. 203.012(9), Florida Statutes.

³¹s. 203.01(1)(a-b), Florida Statutes. For telecommunications service, the tax is also owed on interstate services billed or charged to a Florida telecommunications number, device, or customer. s. 203.60(1), Florida Statutes.

³²s. 203.01(5), Florida Statutes.

³³*Id.*

³⁴s. 203.012(5), Florida Statutes.

charges for total channel mileage between each channel termination point within Florida;
half of the charges imposed for total channel mileage between the first channel termination point inside Florida and the nearest channel termination point outside Florida.³⁵

The tax does not apply to the following:

- ◆ Internet access service; electronic mail service; electronic bulletin board service, or similar on-line computer services;³⁶
- ◆ separately stated charges made for incidental services or related equipment such as the provisioning and maintenance of customer premises equipment;³⁷
- ◆ charges made to the public for commercial or cable television (an allocation procedure is created to determine the taxable amount when cable is used for two way telecommunications);³⁸
- ◆ charges made by hotels and motels for local telephone service when such charge occurs incidental to the right of occupancy in such hotel or motel;³⁹
- ◆ charges for connection, disconnection, move, change, suspension of service, service order, number change, restoration;⁴⁰
- ◆ charges for yellow pages listings.⁴¹

For fiscal year 99-2000 the gross receipts tax on communications will generate \$334.4M.⁴² Such revenues are deposited in the Public Education Capital Outlay and Debt Service Trust Fund (“PECO”).⁴³

³⁵s. 203.013(2), Florida Statutes.

³⁶s. 203.012(5), Florida Statutes.

³⁷*Id.*; ss. 203.012(2)(b)1, and 5, Florida Statutes.

³⁸ss. 203.012(2)(b)2 and s. 203.01(9), Florida Statutes.

³⁹s. 203.012(2)(b)3, Florida Statutes.

⁴⁰s. 203.012(2)(b)4, Florida Statutes.

⁴¹s. 203.012(2)(a), Florida Statutes.

⁴² See DOR tax chart, Appendix A.

⁴³Article XII, Section 9(a)(2), Florida Constitution; s. 235.42(2)(a)1, Florida Statutes.

C. *State Sales Tax*

The state sales tax on telecommunications service is 7 percent.⁴⁴ In this context, the taxable services include “all telecommunications services of whatever nature.”⁴⁵

The following are exempted from the state sales tax:

local service provided via pay telephone;⁴⁶
residential telephone service;⁴⁷
yellow pages classified listing charges;⁴⁸

⁴⁴s. 212.05(1)(e)1, Florida Statutes. (The statute provides that a tax is due and payable as follows: “At a rate of 6 percent on charges for: All telegraph messages and long-distance telephone calls beginning and terminating in this state, telecommunications service as defined in s. 203.012, and those services described in s. 203.012(2)(a), *except that the tax rate for charges for telecommunications service is 7 percent.*”). (*Emphasis supplied.*)

⁴⁵s. 212.05(1)(e)1., Florida Statutes (cross referencing definition of telecommunication service found at s. 203.012, Florida Statutes, and those services described in s. 203.012(2)(a), Florida Statutes.). (By way of additional clarification, the statute specifies that the following telecommunications services are taxable: local telephone services; toll telephone services; telegraph services; teletypewriter services; private communications services; cellular/wireless telephone services; paging services; all telegraph and toll calls originating and terminating in this state; telegraph and telephone equipment installation; access charges; rotary charges; centrex charges; directory assistance; touch-tone charges; emergency number services; PBX message charges; PBX trunk flat-rate charges; public announcement message charges; dial-it charges; local area data transport charges; key line charges, directory listings (other than yellow page classified listing charges). *Id.*

⁴⁶s. 212.05(1)(e)2, Florida Statutes.

⁴⁷s. 212.08(7)(j), Florida Statutes. (The residential sales tax exemption for telecommunications service is created under the *household fuels* exemption applicable to “sales of utilities to residential households . . . in this state by utility companies who pay the gross receipts tax imposed under s. 203.01...” That section of law provides that “every person that receives payment for any utility service” must pay a gross receipts tax. *Id.* Utility service “means electricity for light, heat, or power; natural or manufactured gas for light, heat, or power; or *telecommunications service.*” s. 203.012(9), Florida Statutes. (*Emphasis supplied.*)).

⁴⁸s. 203.012(2)(a), Florida Statutes.

services incidental to the provision of telecommunications service;⁴⁹
equipment sales or rental for which charges are separately stated.⁵⁰

The state sales tax rate on cable and television system program services and the installation of telephone equipment is 6 percent.⁵¹

The state sales tax is deposited into the General Revenue Fund.⁵² The Department of Revenue estimates that the tax on communications will generate \$644.3M. for FY 99-2000.⁵³ A portion of state sales tax is shared with local government through the local government half cent sales tax program which distributes net sales tax proceeds to counties and municipalities that meet strict eligibility requirements.⁵⁴ Based on data provided by the Department of Revenue, the Florida League of Cities estimates that *for fiscal year 98-99, municipalities* received \$19,227,420 from the half cent program based on taxes imposed on communications services.

D. Local Option Sales Surtax

As the name implies, the local option sales surtax is a discretionary sales tax that is levied at the option of local government. The surtaxes are authorized by general law with the rate and uses of each tax specified in the enabling law. The rate in a county may vary from 0 percent to 2.5 percent depending on which surtaxes are authorized for each county and which surtaxes each county has enacted.⁵⁵ Generally, the local option sales tax is levied on the same base as the state sales tax. However, there are a few exceptions:

⁴⁹Such as maintenance of customer premises equipment. s. 203.012(5)(b), Florida Statutes.

⁵⁰*Id.*

⁵¹*See* ss. 212.05(1)(e)1b and c, Florida Statutes.

⁵²s. 212.20, Florida Statutes.

⁵³*See* DOR chart, Appendix A.

⁵⁴*See* s. 212.20(6)(f) and Part IV of Chapter 218, Florida Statutes.

⁵⁵*See* ss. 212.054 and 212.055, Florida Statutes. *See also*, Levy of Local Discretionary Sales Surtaxes, Appendix G.

long distance telephone services are exempt;⁵⁶
local option sales tax applies to sales of tangible personal property up to \$5,000; (Items priced above \$5,000 are taxed upon the first \$5,000.);⁵⁷
telephone and cable services are treated equally.⁵⁸

Local option sales taxes are remitted to the Department of Revenue by telecommunications providers (selling dealers) who have collected the tax from their customers.⁵⁹ Telecommunications companies receive a small fee for this collection service. The tax is distributed by the Department of Revenue (minus administrative costs) according to the county in which it was collected.⁶⁰

E. Franchise Fee

A municipality is authorized by statute to charge telecommunications providers up to 1 percent of local recurring revenues for the use of the rights-of-way.⁶¹ Long distance companies are assessed franchise fees based on lineal distance in the rights-of-way.⁶²

Counties and municipalities are authorized by statute to enter into franchise agreements for the provision of cable television services.⁶³ Federal law provides that franchise fees may not exceed

⁵⁶s.212.054(2)(b)1, Florida Statutes.

⁵⁷*Id.*

⁵⁸s. 212.054(2)(b)2, Florida Statutes.

⁵⁹s. 212.054(4), Florida Statutes. (The local option tax is not required to be stated separately from the state sales tax.). *Id.*

⁶⁰*Id.* The League of Cities estimates that, in fiscal year 1998-99, municipalities received \$6,785,649 in local option sales tax on telecommunications.

⁶¹s. 337.401(3), Florida Statutes (1998 Supplement). (*Charter Counties* have the same authority granted to municipalities.). *See e.g., Volusia County v. Dickinson*, 269 So.2d 9 (Fla. 1972). The League of Cities estimates that, for fiscal year 1996-97, the 295 *municipalities* collecting franchise fees received \$15,349,606 from telecommunications providers.

⁶²s. 337.401(4), Florida Statutes (cross referencing the definition of “toll telephone service” at s. 203.012(7), Florida Statutes.).

⁶³s. 166.046, Florida Statutes. The League of Cities estimates that, for fiscal year 1996-97, the 339 *municipalities* collecting franchise fees received \$35,748,160 from cable television providers.

5 percent of the cable operator's gross revenues for a 12 month period,⁶⁴ and defines "franchising authority" to include "any governmental entity empowered by Federal, State, or local law to grant a franchise."⁶⁵

There appear to be no restrictions on the use of franchise fees.

F. *Telecommunications Access System Act (TASA) Fee*

The Public Service Commission is authorized to assess a surcharge that is not to exceed \$.25 per line per month. The surcharge is collected by local exchange telecommunications companies which are authorized to retain 1 percent of the total surcharge amount each month to recover the cost of collecting the fee.⁶⁶ Funds collected are remitted by the local exchange companies to the not-for-profit administrator of the telecommunications access system.⁶⁷

The proceeds are used to fund the telecommunications access system for speech and hearing impaired persons.⁶⁸ The Public Service Commission informs the staff that for the year ended June 30, 1998, the total surcharge revenues were \$13,893.643. The current monthly charge per telephone line is \$.09.

G. *911/E911 Fee*

Landline

Counties may impose a charge *not to exceed* \$.50 per month per line (up to a maximum of 25 lines per bill) for lines used to provide local exchange telephone service.⁶⁹ Pay telephones are

⁶⁴ 47 U.S.C. 542(b).

⁶⁵ 47 U.S.C. 522(10).

⁶⁶ See ss. 427.704(4)(a)3 and (4)(b), Florida Statutes.

⁶⁷ *Id.* at ss.(2) and (4)(c).

⁶⁸ *Id.*

⁶⁹ s. 365.171(13)(a)1, Florida Statutes.

exempt from the fee.⁷⁰ The fee is collected by “telephone companies;” such providers are authorized to retain 1 percent of the total fee to recover the cost of collecting the fee.⁷¹

The fee is remitted to the counties and used for the provision of 911 service.⁷²

Wireless (cellular, PCS)

The state requires wireless providers to collect a monthly fee of \$.50 from each service subscriber who has a service number with a billing address in this state.⁷³ Providers are authorized to retain 1 percent of the total fees to recover the cost of collecting the fee.⁷⁴ Fees are remitted to the wireless 911 board and are used to fund development and operation of E911 for wireless communications.⁷⁵

⁷⁰*Id.*

⁷¹s. 365.171(13)(c), Florida Statutes.

⁷²s. 365.171(13)(a)2, Florida Statutes.

⁷³s. 365.172(8), Florida Statutes, ch. 99-367 Laws of Florida.

⁷⁴s. 365.172(9)c, Florida Statutes, ch. 99-367, Laws of Florida.

⁷⁵s. 365.172(2)(d), Florida Statutes, ch. 99-367, Laws of Florida.

VI. THE FLORIDA CONSTITUTION

Generally, the State has authority to create a simplified tax and authority over local governments with respect to the taxation of telecommunications service;⁷⁶ however, there are several constitutional requirements that will govern how a statute creating a simplified tax must be drafted.

A. *Impairment of Contract*

Article I, Section 10 of the Florida Constitution prohibits laws impairing the obligation of contracts. A pledge of revenue is a contract.⁷⁷ Local governments are authorized to pledge local and state shared revenues unless otherwise prohibited by law.⁷⁸ Moreover, the gross receipts tax is pledged for the Public Education Capital Outlay bonds.⁷⁹ Based on a Work Group presentation by the Association of Counties, the simplified tax can avoid contract impairment by replacing revenue sources for bonded money with an equally creditworthy source.⁸⁰

B. *Taxpayer Bill of Rights*

Article I, Section 25 of the Florida Constitution requires the Legislature to adopt a Taxpayers' Bill of Rights that sets forth in "clear and concise language . . . taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of the state." The Legislature has created the required Taxpayers' Bill of Rights⁸¹ and any simplified tax must be consistent with these provisions.

⁷⁶See Article VII, Section 1(a), Florida Constitution and Article VIII, Sections 1(f-g) and 2(b), Florida Constitution.

⁷⁷*State v. City of Pensacola*, 40 So.2d 569, 574 (Fla. 1949).

⁷⁸*State v. Orange County*, 281 So.2d 310, 313 (Fla. 1973).

⁷⁹Article XII, Section 9, Florida Constitution.

⁸⁰See also Florida Association of Counties response to committee questionnaire, question 7, Appendix B. ("Care should be taken to avoid impairing the bondholders' contractual right to revenue derived from electronic communications taxes by state and local governments, by providing replacement revenues that are as good as or better than the existing source.").

⁸¹See s. 213.015, Florida Statutes.

C. State Revenue Limitation

Article VII, Section 1(e) of the Florida Constitution limits state revenues to the level of state revenues collected the previous year plus an adjustment for growth. “Growth” is tied to growth in Florida personal income. Moving local fees and taxes to a state-administered simplified tax would appear to bring those revenues within the scope of the state revenue cap. However, indications are that Florida has substantial room under the cap to accommodate the simplified tax.⁸²

While the constitution requires that “[t]he legislature shall, by general law, prescribe procedures necessary to administer” the revenue cap,⁸³ no such law has ever been enacted. Compliance with the constitutional cap has been accomplished through informal procedures.

D. Mandates

There is a sense from the Work Group that a simplified tax can be created that will not result in a mandate.⁸⁴ Naturally, this conclusion depends on the specific provisions of an eventual proposal. Depending on how the proposed distribution system is crafted, the two types of mandates that may be implicated follow:

1. Article VII, Section 18(b) of the Florida Constitution provides that:

Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that

⁸²Although the Department of Revenue cannot currently estimate the precise impact of a simplified tax, they believe that the impact will not cause the state to exceed its constitutional revenue cap. Based on a March 1999, five year projection by Economic and Demographic Research, the current revenue limit is \$25,415.6M. with the state operating at \$1,529.7M. below this limit.

⁸³Article VII, Section 1(e), Florida Constitution.

⁸⁴*See e.g.*, FCTA response to the committee questionnaire, question number 7, Appendix B. (Referencing the conclusions of the 1996 Tax Task Force, the FCTA states that the simplified tax would not constitute a mandate because “the aggregate dollars available to local governments under the proposal would actually be greater than their current revenue collections under the various taxes and fees.”). *Id.*

municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

2. Article VII, Section 18© of the Florida Constitution requires a two-thirds vote of the membership of both houses to reduce the percentage of a state tax shared with counties and municipalities as an aggregate based on 1989 revenue levels.

E. Public Education Capital Outlay (PECO)

Article XII, Section 9 of the Florida Constitution provides that

all of the proceeds of the revenues derived from the gross receipts taxes collected from every person, including municipalities, as provided and levied pursuant to the provisions of chapter 203, Florida Statutes, *as such chapter is amended from time to time*, shall, as collected, be placed in a trust fund to be known as the “public education capital outlay and debt service trust fund” in the state treasury.⁸⁵ (*Emphasis supplied.*)

PECO funds are used to pay principal and interest of bonds, for reserve funds provided for in proceedings authorizing the issuance of bonds and for direct payment of the cost of specified capital projects.⁸⁶

⁸⁵Article XII, Section 9(a)(2), Florida Constitution.

⁸⁶*Id.* at paragraphs (a)(2)a-c.

Appendix A. *Taxes and Fees Associated with Local Telecommunications Service*

Appendix B. *Industry and Local Government Positions on Issues
Related to the Simplified Tax*

Appendix C **Seven types of Local Option Sales Taxes**

The **Charter County Transit System Surtax** is authorized by s. 212.055(1), Florida Statutes. Counties that adopted a charter prior to June 1, 1976, and counties whose government is consolidated with one or more municipalities may levy a sales tax up to 1 percent upon approval by a majority of the electorate. Proceeds must be used for development, construction, maintenance, and operation of a fixed guide way rapid transit system or a county wide bus system.

The **Local Government Infrastructure Surtax** is authorized by s. 212.055(2), Florida Statutes. Counties may levy a sales surtax of .5 percent or 1 percent upon ordinance approval by a majority of the county governing authority and approval by a majority vote of the electorate. This local option sales tax when combined with other local option sales taxes authorized under s. 212.055(3),(4),(5), & (6), Florida Statutes, cannot exceed a combined rate of 1 percent.

For counties with populations that exceed 50,000, proceeds must be used 1) to finance, plan, and construct infrastructure, 2) to acquire land for public recreation, conservation, or protection of natural resources, or (3) to finance the closure of local government-owned landfills that are already closed or are required to close by order of the Department of Environmental Protection.

Counties with populations of 50,000 or fewer as of April 1, 1992, in addition to the generally authorized uses, may use the proceeds for any public purpose if 1) the debt service obligations for any year are met, 2) the county's comprehensive plan is in compliance, and 3) the county has amended its surtax ordinance.

The **Small County Surtax** is authorized by s. 212.055(3), Florida Statutes. Counties with a population of fewer than 50,000 may levy sales surtax of .5 percent or 1 percent upon ordinance approval by a majority of the county governing authority if the proceeds are expended for operating purposes. A majority vote of the electorate is required if the proceeds are to be expended for servicing bond debt. This local option sales tax when combined with other local option sales taxes authorized under ss. 212.055(2),(4),(5), & (6), Florida Statutes, cannot exceed a combined rate of 1 percent.

The **Indigent Care Surtax** is authorized by s. 212.055(4), Florida Statutes. Counties that are not consolidated with any municipalities, having a population of at least 800,000, and not levying a surtax authorized under s. 212.055(5) or (6), Florida Statutes, may levy sales surtax up to .5 percent conditioned on ordinance approval by a majority of the county governing

authority or by approval by a majority vote of the electorate. Funds from this surtax must be expended to provide health care services to qualified indigent residents. This local option sales tax when combined with other local option sales taxes authorized under s. 212.055(2) & (3), Florida Statutes, cannot exceed a combined rate of 1 percent. The authority to levy this tax expires on October 1, 2005.

The **County Public Hospital Surtax** is authorized by s. 212.055(5), Florida Statutes. Any counties as defined by s. 125.011(1), Florida Statutes, may levy a sales surtax at the rate of .5 percent conditioned on ordinance approval by a majority of the county governing authority or by approval by a majority vote of the electorate. At least 80 percent of funds from this surtax must be expended on a county public general hospital. This local option sales tax when combined with other local option sales taxes authorized under s. 212.055(2) & (3), Florida Statutes, cannot exceed a combined rate of 1 percent.

The **Small County Indigent Care Surtax** is authorized by s. 212.055(6), Florida Statutes. Counties with a population of fewer than 50,000 may levy sales surtax of .5 percent upon ordinance approval by a majority of the county governing authority. Funds from this surtax must be expended to provide health care services to the medically poor. This local option sales tax when combined with other local option sales taxes authorized under s. 212.055(2) & (3), Florida Statutes, cannot exceed a combined rate of 1 percent. The authority to levy this tax expired on October 1, 1998.

The **School Capital Outlay Surtax** is authorized by s. 212.055(7), Florida Statutes. The school board in each county may levy a discretionary sales surtax at the rate of up to .5 percent subject to a majority vote of the electorate. Funds must be used for fixed capital expenditures or fixed capital costs on school facilities and campuses that have a life expectancy of five or more years.

Appendix D. Internet Tax Freedom Act

*Appendix E. F.C.C. 1998 Glossary of Telecommunications
Terms*

Appendix F. State and Local Taxes and Fees Stated as Percentage of Bill. --BellSouth

Appendix G. Levy of Local Discretionary Sales Surtaxes