FLORIDA DEPARTMENT OF REVENUE

PUBLIC MEETING

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Lisa Vickers, Chair

Brian Smith

Gary Resnick

Sharon R. Fox

Alan Rosenzweig

Gary S. Lindsey

Kathleen Kittrick

Charlie Dudley

Davin Suggs

Also Present:

Andrea Moreland

PROCEEDINGS

MADAM CHAIR: All right. Good morning, everyone. I'd like to convene the first meeting of the Communication Services Tax working group. My name is Lisa Vickers. I'm the executive director for the Florida Department of Revenue. I'll be chairing the meeting today. I apologize for my voice. I've had a little bit of a cold, so I'm going to try to remember to turn off my microphone if I have to start coughing so I don't bother anyone.

I'm not going to start with our formal roll call because we are going to have each of the participants in the working group introduce themselves in just a little bit. But I have a number of administrative items that I need to go over as we start the meeting. This is a public meeting. It's a non-rule public meeting. It is held under Section 120.525 of Florida Statutes. A notice of the meeting was purchased in the Florida Administrative Weekly of June 1st, 2012, Volume 38, number 22, pages 2,299 through 2,230. The meeting agenda and materials are posted on the Department's website.

We have a court reporter who's creating a transcript of the meeting today. The official transcript will be posted on the working group's web page. If you wish to speak today and you are present, please provide a completed speaker card to Jamie who -- Jamie, if you raise your hand -- is back there in the corner of the room. Speaker cards are located on the side counter to my right. Before speaking, please state your name and the organization you represent. The court reporter may stop us at some point to spell a name so that we have an accurate transcript, so just for her, when she needs more information.

We have created a web page on the Department of Revenue's website for the working group. Agendas, meeting materials, transcripts, and other information relevant to the working group will be posted on the website. We do have hard copies of today's meeting materials, and they're available in the back on the side counter. If you would like to receive updates about the working group by e-mail, please provide us with your e-mail address. A sign-up sheet is located on the side counter. Please be aware that your e-mail will be considered public record and subject to disclosure if requested.

If you're participating in today's session using WebEx, we are using WebEx today, so we have a number of people that are following the meeting via their computer. Please do not mute or un-mute your phone using the instructions given by WebEx automated system. To ensure today's session goes as smoothly as possible, our staff is controlling the muting and un-muting feature. For those using WebEx, you should see a telephone icon next to your name on your computer screen. If you wish to make a public comment, please click on the hand icon located below the participant panel list. Our staff will let the facilitator know that you have your hand raised, and you will be called on for comment.

I don't think the video feature of the live meeting is working right now, but you will be able to follow the screen shots via WebEx. And they hope to have the video up later today. Always dealing with some technical difficulties on WebEx, but you will be able to follow the actual meeting materials that are up on our screen.

If you're not using WebEx, you can make public comment by sending an e-mail for those of you that are just following by teleconference, to

CSTworkinggroup@DOR.state.FL.US. I'll go over that one more time. It's all one word, CSTworkinggroup@DOR.state.FL.US. In the subject line, use CST working group, and please keep your comments brief. Your e-mail will be printed and read into the record. Please turn off your cell phones or place them on vibrate. This meeting is scheduled for all day today. We will be taking breaks throughout the day, and we will have a lunch break around noon. Feel free, though, if you need to make a phone call or take a phone call, just step outside. You can leave the room.

The restrooms are located in the hallway that runs directly behind this room. The men's restroom is located on the west end of the hallway, and the lady's room is on the east end of the hallway. There are some vending machines on the west end, if you need to get a drink or something during the course of the meeting. All areas of this building that are closed off to the public should be designated -- this is a secure facility, so please try to stay in the main areas today.

I'd like to introduce Andrea Moreland; she's our legislative director. Andrea has been with us now about six weeks. She comes to us from

Department of Financial Services, Division -- Office of Financial Regulation. And she will be our person who is helping to support this meeting along with her staff. Andrea's going to be coordinating the activities of the working group, and Andrea's contact information is on the working group's web page or you may obtain it at the break. She's a really good contact person if you have any questions.

Does anybody have any questions about the working group before we get started?

Okay. I'm just going to go over the mission of the working group, and then I'd like to have our working group members introduce themselves.

This working group is created as a result of legislation passed during the 2012 legislative session. It's Section 12, Chapter 2012-70, Laws of Florida. It tasks the Department of Revenue with holding this working group. And it has the following tasks as part of the working group: Reviewing national and tax policies relating to communication industry, reviewing the historical amount of tax revenue that has been generated by the communication services tax imposed or administered under Chapter 202, Florida Statutes for the purposes of determining the effect of laws that have been passed during the last five years have had on declining revenues. Reviewing the extent to which this revenue has been relied on in -- used as security for bond indebtedness, reviewing the fairness of the State's communications tax laws and the administrative burdens it contains, including whether the applicability of tax laws are reasonably clear to communication services providers, retailers, customers, local government entities, and state administrators. Identifying options for streamlining the administrative system and identifying options that remove competitive advantages within the industry as it relates to the state's tax structure without unduly reducing revenue to local governments.

The working group is required to create a report that addresses each of these issues, and that report must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2013. We're planning on having a series of meetings. We've already sort of outlined general topics that we think should be covered in order to make that

February 1 date, but, of course, we'll make adjustments as we go along and we see what areas the working group is interested in exploring.

The law requires that the working group be comprised of the following members: The executive director of the Department of Revenue or my designee -- as some of you may know, I'll be leaving the Department at the end of June and will be taking a position in the Senate. And so after this first meeting, I've designated Marshall Stranburg, who is the deputy executive director, to chair the meetings during the transition period of the working group. Four representatives of the communication services industry are voting members -- two representatives of the counties and two representing the interests of the cities.

I am going to start to my -- all the way to my left with Charlie Dudley. If you want to introduce yourself, tell the audience what member category you represent, and --

MR. DUDLEY: Great. My name's Charlie Dudley. I'm an attorney here in Tallahassee. One of my clients is Florida -- Telecommunications Association, which most of you know by Cox and Comcast and Bright House owners. For better or for worse, I've been doing this for, I guess, over 20 years. I was a member of the '90s of the Governor Chiles, I guess, task force that moved a lot of these issues. And I would welcome any e-mails or comments from any of your ideas, because -- happens, it -- in this whole world we're in sometimes we get stale, and I think that this is probably a tax -- prior before five years needs to have a review like this, given technology giving out significant taxes in terms of its reign of tax on customers but also its impact on local and state governments in terms of the revenue it generates. I look forward to your comments. Thank you.

MADAM CHAIR: Okay. Kathleen.

MS. KITTRICK: Hi. I'm Kathleen Kittrick. I'm the director of tax policy in the State Government Affairs Department for Verizon. And that includes Verizon Wireless issues as well. I'm new to Florida but not new to tax policy and state contract stuff. Back in 2005 -- 2004, 2005, I worked for the -- efforts and -- reform efforts in multiple other states. So while Florida is, you know, always unique, there is, you know, a lot of national tax policy concerns that I've been dealing with. So I look forward to working with you all.

MADAM CHAIR: Gary.

MR. LINDSEY: Good morning. I'm Gary Lindsey. I'm the director of external tax policy with AT&T. And I've been doing this for about 20 years, working in tax policy and prior to that, with a background in a more practical application of taxes to systems and billing systems and such as that. So pretty extensive background in wireless and in landline. And I represent, of course, the communications industry. And I look -- I've worked on tax reform in other states -- West Virginia, Virginia -- and currently working on some other tax reform efforts in some other states in the nation. And I look forward to working on this committee to look to the interests of the Florida taxpayers and customers as well as to the revenue rates and needs of the state and local governments. So I look forward to working on this. Thank you.

MADAM CHAIR: Thank you. Davin?

MR. SUGGS: Good morning, everybody. Davin Suggs, senior legislative advocator with the Florida Association of Counties. I do -- tax issues. So just like everybody else, I just look forward to working -- very efficient for all parties involved so it will work out. Like Charlie said, maybe it might last for three years.

MADAM CHAIR: Alan.

MR. ROSENZWEIG: I'm Alan Rosenzweig. I'm the deputy county administrator here in Leon County. I've worked for about 24 years in local government. Prior to local government, I was a senior consultant with -- Alan. And I've done a lot of budget work and ultimately, landed here in Leon County. And as Davin said, I'm -- local government's needs and just looking out at -- the taxpayer, making sure the revenues from this tax remain fair for everybody.

MADAM CHAIR: Sharon.

MS. FOX: Good morning. I'm Sharon Fox. I'm with the City of Tampa. I'm the tax revenue coordinator. I've been with the City of Tampa for 29 years. My primary focus has been tax issues for the last 25 of those years as well as -- so, I'm looking forward to the discussion, again, and seeing how we can tweak this to make it a little bit more stable for local governments and seeing how we can make it a little bit better.

MADAM CHAIR: Gary.

MR. RESNICK: Thanks. Good morning. I'm Gary Resnick. I'm the Mayor of the City of Wilton

Manors. As of Friday, I think I'm reelected. No one filed to run against me. So as of November, I will be entering my fourth term as mayor. I've been on the City Commission since 1998. I'm also on the Board of Directors of the Florida League of Cities. I'm a past president of the Broward County League of Cities. In my professional life, I'm a lawyer with Gray Robinson and I've been specializing in communications law for 20-some odd years. And I'm really on the panel to find out who I can tell my residents to call when their services go out.

(Laughter.)

MR. SMITH: I'm Brian Smith. I'm with Direct TV. Much like the folks from AT&T and Verizon, we're a nationwide provider; so we see this conversation happening across states. And so I hope to bring to the table a little bit of insight, what's happening in Utah, what happened in Virginia, what people are thinking about in California. And probably more so than most, I'm kind of the in-the-trenches guy. I mean, I look at tax returns every -- you know, four times a month and I deal with audit controversy. So on the administration side, we want to make sure that, you know, whatever we decide, it could be as great, you know, and look good on paper. But you turn around to put it out there, we can't administer it, you know, that's going to create a lot of headaches for audit staff and for companies combined. So maybe a little bit more of the in-the-trenches point of view.

MADAM CHAIR: I think from hearing from everybody on the panel, you have a really esteemed group of people with a lot of background and knowledge in this area. I think as Charlie mentioned, Florida was sort of a pioneering area of simplifying its communication services tax and hasn't really taken a -- view of that tax structure since that time. When you're an early pioneer, sometimes you see other states move forward after you do and make some changes and adopt things a little differently based on your experience. So it's probably a good time for us to look at what other states did after Florida adopted its simplified tax and see if it's time to make any provisions to our tax.

We're going to start this morning's presentations with a presentation on the Sunshine Law. It's important that we make sure that we run these meetings according to statute and that we adhere to the Sunshine Law. So we have Nancy Terrel, our general counsel, to give us some information on that.

MS. TERREL: Good morning. I'm Nancy Terrel. I'm a general counsel here at the Florida Department of Revenue. And I'm going to be giving you a brief overview of Sunshine Law. I've also prepared a handout which was in your packet and also posted on the web, which to give you just some pointers on what you might run across as a member of this working group.

The presentation I'm giving actually was created by Pat Gleason. Pat Gleason, for those of you I'm sure probably knows who Pat Gleason is, she's an institution here in Florida. But she is with the attorney general's office. And she -- if you have any questions about open government, you can call her. She is a wonderful resource. And she will pick up the phone and talk to you right that second. So this is her presentation. And she posts it out there for groups to use.

Next slide, please.

Florida's government in the Sunshine Law commonly referred to as the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. This group is covered by the Sunshine Law.

Next slide.

There are three basic requirements of the Sunshine Law: Meetings of public boards or commissions must be open to the public. And you see, we do have members of the public here today. Reasonable notice of such meetings must be given. And minutes of the meetings must be taken, promptly recorded, and open to public inspection.

The scope of the Sunshine Law: Advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law, even though their recommendations are not binding upon the agencies that create them, like this group.

Scope of the Sunshine Law: Neither legislature nor the court are subject to the Sunshine Law. This is a constitutional provision that provides access to legislative meetings, but it is not as strict as the Sunshine Law. However, if legislators are appointed to serve on a board subject to the Sunshine Law, the legislator members are subject to the same Sunshine Law requirements as the other board members.

Meeting of staff are not ordinary to the subject Sunshine Law. However, when a staff member ceases to function in a staff capacity and is appointed to a committee which has delegated authority normally within the public board or commission, the staff member loses his or her identity as staff while working on the committee and the Sunshine Law as applicable to the committee. It is the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision which determines whether a committee comprised of staff is subject to the Sunshine Law.

Only the legislature can create an exemption to the Sunshine Law by two-thirds vote and allow a board to close a meeting. Exemptions are narrowly construed. I'll repeat that one more time, Exemptions are narrowly construed. The Sunshine Law is very strongly protected in Florida.

This is an important point for -- just, I want to make sure everyone understands this. Board members may not use e-mail or the telephone to conduct a provide discussion about board business. Board members may send a one-way communication to each other as long as the communication is kept as a public record and there's no response to the communication except in an open public meeting. Accordingly, any one-way communications, for example, one board members wants to forward an article to the board members for information, should be distributed to the board office so that they can be preserved as public records and ensure that any response to the communication is made only at a public meeting. For purposes of this group, you could send information to Andrea and she'll make sure that everyone gets a copy and that she's able to retain it for records retention purposes, which is very important.

While a board member is not prohibited from discussing board business with staff or a non-board member, these individuals cannot be used as liaison to communicate information between board members. For example, a board members cannot ask staff to poll the other board members to determine their views on a board issue.

Board members are not prohibited from using written ballots to cast a vote as long as the votes are made openly in a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act.

While boards may adopt reasonable rules and policies to ensure orderly conduct at meetings, the Sunshine Law does not allow boards to ban non-disruptive videotaping, tape recording, or photography at public meetings. And we are making a transcript of this entire meeting, just if folks haven't noticed.

Board meetings should be held in buildings that are open to the public. This means that meetings should not be held in private homes.

The phrase "open to the public" means open to all who choose to attend. Boards are not authorized to exclude some members of public, i.e., employees or vendors from public meetings.

Now, there are penalties for not complying with the Sunshine Law. Another important penalty that folks often overlook is the Sunshine Law provides that no resolution, rule, regulation, or formal action shall be considered binding exempt as taken or made in an open meeting. Recognizing that the Sunshine Law should be confused so as to frustrate all evasive devices, the courts have held action taken in violation of the law was void *ab initio*, as if it never occurred which is a very severe penalty.

There is a way to cure it sometimes. Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept in a later open meeting those decisions which were made at an earlier secret meeting but rather takes independent final action in the Sunshine, the board's decision may stand.

And then the last slide are additional resources. If you have any questions, we have a little bit of time. I can answer any. Yes, sir.

MR. LINDSEY: To the extent a board member will seek communication from individuals who want to provide input to the task force --

MS. TERREL: That would be a public record and I would suggest that you forward that communication to Andrea so she can be the central point of receiving the communication, preserving it, and disseminating it back out to the group.

Something else to think about, and this is where it sometimes in practice gets a little difficult. We'll take breaks. You guys are going to go to lunch. When you're at lunch or when you're at breaks, don't talk about communication services tax, don't talk the tax. Talk about anything else, but not that because that could be construed as a violation. Also the other thing that's sometimes challenging is we all instant message and we get texts and things like that from our family and colleagues. Try not to take them during the meeting because folks might assume that you're talking to each other. And all of these guidelines that are in this slide, they're taken from court cases. So Sunshine Law litigation is very active.

Does anyone have any other questions?

MADAM CHAIR: Questions for Nancy? One of the things that I think is always the hardest is we may get in a discussion that's lively and everybody's here engaged in it, then it may be time to take a break or go to lunch. And it's easy at that time for us to turn to each other and kind of have -- finish up some kind of the comment or -- and that would be a violation if it's not part of the public meeting. But even just those quick conversations that you have as the meeting is breaking up may give the impression to the audience or to others that we're continuing to talk about business. So, it's a good idea, you know, if you feel like you didn't get to finish up on a conversation that we were having, just let Andrea know so we can schedule time as soon as we get started again to finish up those comments and to continue those conversations. Thank you.

MS. TERREL: Thank you.

MADAM CHAIR: All right. As I mentioned earlier, today is going to be really about educating ourselves about communication services tax. And that's some of the preliminary things that the law required that we do. So next up we have French Brown, who's the deputy director for technical assistance and dispute resolution. And French is going to give us a review of national and state tax, communication policies.

MR. BROWN: Morning everyone. As Lisa said, first off, I just want to give a quick overview. Some of the Florida communication services tax, I know that many of us are very familiar with it but never hurts to have a quick overview.

Next slide, please.

First off, just a brief history, as many of us know, in 2000, Florida decided to revamp and resimplify its communications law. Chapter 202 was created effective October 1, 2001. This new law simplified and restructured a number of taxes that were previously in place before then that dealt with communication services. That new law also essentially administered everything with the Department of Revenue administration tax.

Some just -- some general examples of various services that are subject to the Florida communications service tax are local, long distance, and toll telephone services. Cable television, direct-to-home satellite, mobile communications, private line services, telephone charges made to guests at hotels or motels, facsimiles, teletext -- sorry, telex, telegram, and teletype are also some examples of CST.

Florida's communications service tax, there's a Florida portion, a state portion of the tax is imposed at the rate of 6.65 percent. The state portion of the tax is also collected with the gross receipt tax from Chapter 203 which is imposed generally at the rate of 2.37 percent. And then there's also a .015 percent additional state portion which creates a combined Florida communication service tax rate of 9.17 percent.

This tax also has a local portion, which each local taxing jurisdiction, municipality, charter, county, unincorporated county can each have their own specific local tax rate. As of January 1st, 2012, there were approximately 481 separate jurisdictions. The local tax rates currently range from 0 to 7.12 percent. And based on local tax reported in 2011, the weighted average across all counties is approximately 5.04 percent for that tax rate. Just to note, the statute provides that municipalities and counties may levy up to a rate of 5.22 percent. And non-charter counties may levy up to a rate of 1.84 percent, however, there are provisions that allow various local jurisdictions to exceed those rates.

Florida also has a specific rate for direct-to-home satellite service that's taxed at the state rate of 10.8 percent. And a 2.37 gross receipts tax for a total of 13.17 percent. The local component of the tax does not apply to direct-to-home satellite.

Just some terms to know, maybe for this group, just so we can all be on the same page. If we can -- when we refer to the state portion of the communications service tax, if when we do that, we can be thinking of the 6.65 percent tax rate. That's the tax rate that flows through and it's distributed under Section 212.20(6) in the sales and use tax. When we talk about the gross receipts tax, if we can talk about the 2.52 percent generally but then note that for certain services, such as residential land lines and direct-to-home satellite, that rate is 2.37. And then if we talk about the Florida communications service tax as a whole, that we're generally talking about the 9.17 percent tax rate which is combined the state portion and the gross receipts tax portion.

Some general exemptions that are applicable to the tax. There's, of course, the sale for resale exemption, if you're purchasing communication services that you're then reselling to other customers, end customers' initial purchases are exempt. Sales to federal agencies: The state, counties, municipalities or other political subdivisions that are exempt from tax. Sales to religious and educational organizations to certain religious and educational organizations with 501C3 status. And also sales to certain homes for the age that have 501C3 status.

Next is one thing that we have in Florida. We have a residential exemption for communication services. This applies to certain services that are sold to residential at households. And what they are is they're essentially exempt from the state portion of the CST. And they're also exempt from the .015. So they are only subject to the gross receipt tax, the 2.37 percent rate, and also any applicable local portion. This partial exemption does not apply to the sales of mobile communication services, cable services or video services, direct-to-home satellite services, or any residence that's part of a public lobbying establishment.

A couple services in Florida that are not subject to tax, internet access service, such as electronic mail services, electronic bulletin services, or similar on-line computer services. Just this past session, Florida officially adopted the federal definitions of internet access service. Florida does not tax information services, such as electronics publishing, web posting, and user 900 service. Just to note: That video services are specifically excluded from the definition of information service. The sale or recharge of prepaid calling arrangements isn't subject to Florida's communication services tax; instead it's subject to Florida's sale and use tax. And then also the sale or lease of tangible personal property is not subject to communication services tax but to Florida's general sales and use tax under Chapter 212.

Talking a little bit more about prepaid. Florida has a specific definition for prepaid calling arrangements. I think many of us are aware of them. But I'll just go through and read it so that we're all -- prepaid calling arrangement is a separately stated retail sale by advantaged payment of communication services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electrically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with a use in a known amount. So if you have something that falls under this treatment, it will be subject to Florida sales and use tax and not communication services tax.

Just a couple more notes on prepaid calling arrangements. Sales of prepaid calling arrangements are treated -- are subject to the 6 percent state sales tax and any applicable discretionary sales surtaxes that are collected at the time of sale and are remitted by the selling dealer. If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it's deemed to take place at the customer's shipping address. Or if no item is shipped, such as if it's like a code that's e-mailed or something to that effect, then the sales occurred -- deemed to occur at the customer's address or location associated with the customer's mobile telephone number.

One thing in Florida that we do have with the Florida communications service tax that I'm sure many of us are aware of is sourcing or situsing, some of the terms that may be used during the course of this working group. Florida law specifically requires that sellers of communication services must source those sales to the correct local jurisdiction in order for their local jurisdictions to receive the right amount of tax. Generally, it's sourced to the customer service address, that's defined by statute. It can also include, like for mobile customers, it could be their primary place of use. The communications dealer must bill and remit the local tax properly to ensure that the local governments will receive the appropriate distribution related to the services provided within their boundaries.

As part of the sourcing, the Department of Revenue actually maintains a master database that assigns each Florida address to a specific local taxing jurisdiction. This database is based on the information that's provided from the local governments, and it's updated every six months.

Now, because sourcing and everything can be difficult, the statute allows for providers to become certified to have their databases certified. Dealers or vendor databases can be certified for their accuracy of assignment of street address to the proper jurisdiction. Dealers or database vendors can request certification, and if approved by the Department, then those dealers who exercise due diligence in applying the database will be held harmless from situsing errors and can be eligible for enhanced collection allowance.

Speaking of collection allowance, Florida does allow a collection allowance for dealers, and it's essentially, the statute says, for the purpose of compensating dealers providing communication services for the keeping of prescribed records, for the filing of timely tax return, and the proper accounting and remittance of taxes and gross receipts tax. The dealers are allowed to deduct a general credit equal up to 0.25 percent of the total tax due on each return. However, if dealers do become certified under the method described in the last slide, then those dealers can receive enhanced collection allowance of up to .075 percent of tax due on each return.

MADAM CHAIR: Okay. Before we get into the recent law changes and surveys, does anybody have any questions about just a general overview that French just provided on the communication services tax?

MR. DUDLEY: French, can you go to slide six on the exemptions? I'm trying to understand, I think there's -- you need to help me out, jog my memory on what can be exempt and what can't be. For example, Florida can't tax any federal government that uses communication services, if I remember right, gross receipts -- sales tax.

MR. BROWN: Generally under any tax, the federal government --

MR. DUDLEY: But it can tax itself, state government and/or local government if it wants to?

Is it different for sales versus gross receipts?

MR. BROWN: I'd have to look at that, Charlie.

MR. DUDLEY: Okay.

MR. BROWN: I'd have to look at that and get back --

MR. DUDLEY: I'm just trying to remember, because I think it just has a role if you're trying to figure out how to have a broad-based tax. And if you're looking for ways to continue to have a broad-based tax and you use tax rates, that's one issue -- consider how the tax is done in terms of when it's turned on or turned off.

MADAM CHAIR: All right. We'll take a look at that issue. I was kind of looking over at Marshall. I mean, my recollection is that you -- if you're going to exempt state and local, you have to exempt federal. In some circumstances, I know, for example, under sales tax on real property improvement contracts, all contractors are subject to impasse even if it's a federal project. And the rationale is you can't carve out the state and local without also carving out the federal; but we'll look at that issue, and we will get back to you.

Other questions?

MR. SUGGS: French, on slide four, I just want to bring this up now, I know you -- applied rate of the local portion and the number of taxing jurisdictions and what -- rate and a weighted average rate, either do you know or can you provide -- or it may be later in other portions of the presentation -- also statistics on capacity? Unused capacity of local governments in terms of we know that each of these jurisdictions has a current rate. Maybe show the weighted average but also have an idea of -- capacity or total capacity.

MADAM CHAIR: So you would like us to maybe prepare a chart that shows each local jurisdiction's current rate and what the maximum rate could be and whether they are at the maximum or there's some capacity there to increase the rate?

MR. SUGGS: Correct.

MADAM CHAIR: All right. Any other questions?

MR. SUGGS: Just with -- it came across and maybe you already said it. We have a chance to receive public input. I just -- I know with prepaid, I know there's other interested parties that might not be represented on the working group that --

MADAM CHAIR: Absolutely. If someone's participating by WebEx or teleconference, they have a means of letting us know that they have a comment. And if anybody in the audience wants to make a comment, they can provide a speaker card to Jamie and we'll take public comment. And as we -- this meeting -- you know, I don't know how much public comment we will have, but I think in future meetings, as we dig down into the issues and start discussing different topics, I think we probably will see, you know, various interested parties want to make sure they get on record.

Mayor, do you have --

MR. RESNICK: Yeah, just back on page two, you indicated that the communication services tax restructured numerous state and local taxes and fees. My recollection from the '90s is that there were seven or so such taxes and fees --

MR. BROWN: Here's what I --

MR. RESNICK: -- that were consolidated, but if you can --

MR. BROWN: Here's what I have. And anyone on the panel, feel free to correct me. There was a sales tax on telecommunications at 7 percent rate, a sales tax on cable at 6 percent rate, local options sales tax which was up to a 2.5 --

MR. RESNICK: You going to get us a chart of this, too?

MR. BROWN: I can.

MR. RESNICK: Go ahead. Because you're doing it quicker than I can --

MR. BROWN: Oh, it's okay. So I'll just start back over for you real quick. Telecom, 7 percent, sales tax on telecom. Sales tax on cable which was 6 percent. The local option that went along with those sales taxes which was up to a 2.5 percent. There was a telecom gross receipts tax rate of 2.5 percent. Then there were the two public service taxes, option one and option two. Option one was a 10 percent rate and option two was a 7 percent rate. There were franchise fees for cable at 5 percent or for local exchanges at 1 percent. And then there were various permitting fees for cable, long distance or local.

Did I miss anything that anybody knows of? Okay.

MADAM CHAIR: Okay. So from that portion, I heard two requests for additional information. One, a list of all those taxes that applied previously that French just went through and then a chart that shows the local government capacity under the various rates.

MR. BROWN: The federal and state.

MADAM CHAIR: And a research topic on imposing tax on federal and local and state government.

Okay.

MR. BROWN: Great.

Next, this is just a couple brief slides just to maybe wet your appetite because Bob's going to talk about more of the legislative changes. These are just some of the more recent changes to Florida's communication services tax in the last couple of years. In 2007, the emergency rate repeal. In 2010, there was a presentation that allowed "netting" of bad debts. 2010, there was also a sales tax and gross receipts tax rate swap that sort of hit that .015 percent that moved from sales tax to gross receipts tax. 2010, there was a change to the definition of transient public lodging establishments. In 2011, the legislature adopted the rounding rule, which many people are aware of. 2012, there was also a change to the definition of transient public lodging establishments which impacts the residential exemption. And then the big package in 2012, House Bill 809, chapter and law, 2012-70 which created this working group also redefined terms, dealt with local situsing and other provisions on the Florida communication services tax.

As for more in the national stage, I know many of us are aware that the federal government currently prohibits states from taxing the sale of internet access under the Internet Tax Freedom Act and its various amendments. One important note for Florida is that prior to the amendments in 2007, Florida was grandfathered in and Florida could essentially tax the purchases of communication services by internet service providers even though they were turning around and selling exempt internet access. But due to those 2007 amendments, as of July 1, 2008, Florida can no longer tax those purchases and communication services by internet service providers. So, essentially that flow of communication services to ultimately provide internet access is exempt in Florida.

Any other questions on those?

MADAM CHAIR: Any questions on the law changes? Okay.

MR. BROWN: All right. Now, this next portion of the presentation is really kind of dealing with that first goal, that first bullet of the working group to kind of look at and compare Florida's communication service tax policy with other state and national policies.

All right. So what we did was a couple months ago, we sent out a survey to all the states. And first couple cites, I'm going to go over the various questions that we provided. I believe the actual matrix of the questions and answers is all provided in your handouts. Okay. So the first question we just asked was, Does the state impose a tax of the sale of communication services. Is this tax separate from the state's general sales and use tax? We asked who administers the tax, is it state or locally. We asked who is the tax imposed on and where the service is sourced.

We wanted to specifically focus on kind of the different types of services that we deal with in Florida. So we asked them specifically about residential wire line telephone service, commercial wire line telephone service, mobile communications, VoIP, Voice over the Internet Protocol, cable service, direct-to-home satellite, prepaid communication services, digital goods, and digital services.

Our initial survey also asked, if applicable, how local sourcing was administered, to what level down and how is it distributed. We asked specific questions about prepaid communication services feeling that it may come up during this working group. We asked specifically about prepaid phone cards, new or prepaid wireless plans, recharge of prepaid wireless plans, and then how do they treat plans bundled with tangible personal property. And the last question we asked in our initial survey was if the state allowed bundling or unbundling of transactions using dealers' books and records, mainly because of law changes in this last legislative session.

So, out of the initial survey, we received 25 states and the District of Columbia responded. Of those 26, two states, Nevada and Oregon did not impose any tax on communication services. The 24 remaining jurisdictions can be seen below: Alabama, Arkansas, Connecticut, D.C., Georgia, Hawaii, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, South Carolina, Texas, Virginia, Washington, West Virginia, and Wyoming. So those were the responses for our initial survey.

Some of our initial findings: Most states do -- that administer the tax do administer at a state level. Only Nebraska and New York administer at both the state and local level. Interestingly enough, Florida was -- only Florida and D.C. had different rates for residential versus commercial customers. D.C. has a straight 10 percent rate for all residential services and then 11 percent for non-residential services. But other than that, all the other states appeared or answered that they had the same rate for residential versus commercial, unlike Florida.

Focusing on just the state rates because we -- in the initial survey, we broke out state versus local rates. So first focusing on the state rates. Of the 24 jurisdictions other than Florida, only Washington, D.C. had a higher state tax on communication services than Florida. Six states had a communications service tax rate that was different from their general sales and use tax rate. Four had higher CST rates. Two had higher sales tax rates. So that means that 18 of the 24 generally had the same sales and use tax and communication services tax rates.

Of the initial survey, Florida did have the largest variance in the state rate -- or -- yeah, in the state rates across all of its taxable services since Florida essentially ranges from 2.37 to a 13.17 going from residential to direct-to-home satellite. The next closest states were approximately 5 percent variance across their rates. And 13 of the states had no variance, so they had the same rates across their taxable services.

Next on the local rates, of the 21 states other than Florida, and this is because Connecticut, D.C., and Indiana did not complete that local rates portion of the survey. So of the other 21 states, two jurisdictions generally had higher local CST rates on services, higher than Florida. So Maryland and New York were higher local rates than Florida. Three states had local CST rates different from their local general sales tax rate. So 18 of the 21 generally had the same local rate for sales tax and communication services tax. Florida had the second largest variance in local rates. And Maryland was the highest with a variance from 0 to 8 percent. Fourteen of the states had no variance in local rates across their taxable services.

Moving on to sourcing. Of the 21 states, other than Florida, six of the states sourced to the state level, five states sourced to the county level, seven states sourced down to the city level, and three states sourced below the city level. And those were either school or special-purpose districts. Only Missouri, South Carolina, and Utah were -- those were the only states that used some sort of distribution formula based on our initial survey. All the other states used actual collections to distribute those to the various levels.

On prepaid, of the 24 states that reported other than Florida, 14 states -- and just recall that this -- what we asked them specifically about was prepaid phone cards, new prepaid wireless plans, recharges of the prepaid wireless plans and the prepaid wireless plans bundled with tangible property. But 14 of the states said they taxed solely a sales and use tax. Six states said they had a combination of the sales and use tax and other taxes, either a communication services-type tax or a gross receipts-type tax. And then four states taxed prepaid services as sales and use tax or not at all. So, you know, they may have said a prepaid phone card were subject to the sales and use tax, but prepaid wireless plans were not subject to tax at all. So that's that last --

On to bundling. Of the 23 states other than Florida, 19 of the states did allow services being bundled via dealers' books and records. But just to note, and the one thing that comes up with bundling is you want to look at the variance of the rate across services. And of those 23 states, 15 of them have the same tax rate across services.

All right. So an attempt to get an even better picture for the whole working group and legislature and everyone else involved, the Department went and did some follow-up research. We did a combination of calling states and independent research on, you know, state's websites and other research avenues and tried to look at the information for the remaining states.

All right. So these are the questions that we kind of focused on on the follow-up research, which weren't necessarily as expansive as the ones we had on the initial, but we had to -- had to get done quicker. So first question really was, Does the state impose a tax on communication services and then maybe, you know, if they could provide examples or if we could get examples? What is the communications tax rate? What's the general sales tax rate? Who administers the communication services tax? What level is the rate distributed? How is the rate distributed? And then, how does your state treat prepaid calling arrangements?

As for rates -- and just to note, on the follow-up research, this is going to be total rate. It's not broken out by state and local as it was on the initial. But the total rates, of the remaining 22 states, only California generally had a higher sales tax rate on communication services than Florida. Eight states had a state communication services tax rate different from their general sales tax rate. Seven of them were higher for CST, and one had a higher sales tax rate. So just to note, 14 of the remaining 22 had the same communication services and sales tax rate.

On to sourcing. Of the remaining 22 states other than Florida, 11 states administered the tax at a state level, two states administered the local level, and six states administered at both state and local levels. Six of the states sourced to the state level, one state sourced to the county level, three states sourced to the city level, and one state sources below the city level. And that was Wisconsin that actually has a different rate for the stadium where the Packers play. North Dakota and Ohio use some sort of distribution formula where the other ones that answered this -- or the other ones that we could find information for on this follow-up research used actual distributions.

Now on the follow up on prepaid. Of those 22 states, 12 had tax on prepaid services, solely a sales and use tax. One taxed them solely communication services tax. One state taxed them as a mix of sales and use tax and communication services tax. And one state taxed them as gross receipts tax.

Now putting all the data together and trying to -- you know, what does it all mean? As for rates, the 46 jurisdictions other than Florida that we had information on, four of the jurisdictions generally had a higher rate than Florida on communication services. Those four jurisdictions were D.C. had a higher state rate, Maryland had a higher local rate, New York had a higher local rate, and California had a higher combined rate, higher local and total tax rate. Fifteen states had communications service tax rates different from their general sales tax; 11 of those 15 were higher communication rates and three had higher sales tax rates. Florida had one of the highest variances across rates of taxable services. And at least 13 states had no variance in rates across taxable services.

Now, this is just kind of showing the various rates. 67 percent had the same communication services tax and sales and use tax rate. 24 percent had a higher CST rate, 7 percent had a higher sales tax rate. Because this is total, Alabama was kind of the outlier because Alabama had a higher state CST rate but no local communication services tax where they did have a local sales tax.

On to sourcing or situsing. Of the 32 states other than Florida, 12 were to the state level, six were to the county level, ten were to the city level, and four were below the city level. And that's referenced on the next graph. Representative -- state, 37 percent; city, 31 percent; county level, 19 percent; below the city, 13 percent.

Also, local distribution. Of the states, we had 16 that use actual distribution to those various levels, 76 percent. And five used formula-based distribution for 24 percent. For prepaid, of the 39 jurisdictions that we received information from on prepaid, 24 of the states used the definition found in the Streamlined Sales and Use Tax Agreement. It wasn't one of our specific questions, but we went back and looked at that and thought it might be interesting. 26 of the states taxed prepaid services solely by sales and use tax. One state taxes prepaid services solely by communication services tax. One state taxes prepaid services solely by gross receipts tax. Seven used a mix of sales tax and other taxes. And four jurisdictions tax prepaid services as a mix of sales tax or no tax at all. And that's represented in the next graph. So 67 percent were sales and use tax only, and then you can see the other percentages in the slide.

MADAM CHAIR: Okay. That's a lot of information. I'm sure that we'll have questions. And I'm trying to figure out what the best way to go about moving through that information is.

Why don't we start down at this end? I see a hand from Sharon Fox.

MS. FOX: Because of the unique design of the CST, which combines multiple taxes as well as rights-of-way and permit fees, for purposes of apples to apples comparison of tax rates between Florida and other states, I think we need also to get an idea of what rates other states and local governments continue to charge for those replaced fees, if any.

MR. BROWN: If you look at the matrix that you have, and I know it's a lot of information and there are a lot of notes because, you know, you're right, you can't build the perfect questionnaire for every state. But the way that we tried to ask questions and the way we tried to qualify them, you know, based on the information that we received from the states, we tried to capture that information in notes if it was available. I mean, we -- but I definitely understand your point. I mean, if we can go and get that further detail from all the states, it probably would be helpful, especially if it is different. But just comparing -- you know, the states did report to us, at least we hoped, what the full rates were that could apply to those services.

MS. FOX: But because of the way that it's framed, and I believe -- I'm sorry --

MADAM CHAIR: Go ahead.

MS. FOX: Because of the way that it's framed as taxes, a lot of jurisdictions don't necessarily assume that franchise fees are taxes or permit fees are taxes. So I think that we need to directly ask that question.

MR. BROWN: Okay.

MADAM CHAIR: So we could do a little deeper dive in the research -- franchise fees and right-of-way fees and permitting fees -- and try to compare the states from that perspective as well.

I think I saw a hand. Kathleen?

MS. KITTRICK: I was just curious, what state has CST for prepaid? You said one state. Know if you don't know off the top, I can --

MR. BROWN: Arkansas has a mix of sales and is communication services set for wireless plans. You mean for just CST?

MADAM CHAIR: One state -- previous -- communication services tax.

MR. BROWN: What we had found, Kathleen, was for New Hampshire.

MS. KITTRICK: Right. Because they don't have a sales tax.

MR. BROWN: That's what we had found, that was New Hampshire was that one.

MS. KITTRICK: That makes sense; they don't have sales tax.

MR. LINDSEY: French, on the prepaid and maybe on the other, I'm not sure if I'm asking the question the right way because there is a lot of data, but the -- for example, on the prepaid, maybe you can extend this to the others -- on the prepaid where we have states that have a mix where they have other taxes, the detail may be back there, but could that be summarized or looked at in terms of whether those other taxes are also applied to other goods and services?

MR. BROWN: I'm sure it could be.

MR. LINDSEY: That might be helpful to summarize or identify any that are -- that also apply to other goods and services as opposed to just telecom or prepaid. I'm not sure if that will be applicable in looking at the other parts of the questionnaire about communication services, I'm trying to see if there's some way we can make that distinction as easy to look at.

MR. BROWN: There is a lot of detail in the matrix. And like I said, there's a number of notes.

MR. LINDSEY: Hard to put notes on the slide, I know.

MR. BROWN: It is, yeah. The -- just for example, say Kentucky, what they reported to us for prepaid phone cards, they said it was just sales tax. For wireless plans, they said it's a mix of sales and communication services. Same with recharging. And the same with bundled with the phone. So -- but I think we could probably try to dive deeper into the prepaid and how the various states use prepaid if that's something that the group would be interested in.

MR. LINDSEY: And that might be -- on a similar thought, looking at the taxes that are applied to communication services and other states as well, for example, I think one is Hawaii. They have kind of an odd-ball gross receipts tax there, so it's not a sales tax but it kind of is in some ways. Kind of what we think of it as a -- but on paper, it looks different. Thank you.

MADAM CHAIR: French, in your research, how much variance was there in the way the states defined prepaid services?

MR. BROWN: Surprisingly, and why we put it on one of those last slides was most of the states seem to define it the same way the streamlined sales and use tax does. Other than that, we have --

MADAM CHAIR: Can you tell us --

MR. BROWN: Not off the top of -- I have it over there. Do you want me to get it? I can follow up maybe after the break or after lunch.

MADAM CHAIR: I'm assuming the streamline definition is different than Florida's? Because Florida has a very narrow definition of prepaid.

MR. BROWN: Yeah, streamline's definition is different. But as for variance, for all of the initial -- for the initial survey, we actually asked all the states to essentially copy and paste their definition, so we have that for all of the initial states. So, I mean, we can go into further detail on that and compare how the actual definitions vary.

MADAM CHAIR: Thought I had a couple more questions. Questions for -- David?

MR. SUGGS: Slide 20. This is just, I think slide -- sort of working on the types of services.

MR. BROWN: Yeah, ask --

MR. SUGGS: Just for our particular -- for like this breakdown, the different percentage, how would we know what percentage of the revenue total would be coming to the state can be applied -- the idea of like mobile phones -- wireless, residential?

MADAM CHAIR: Okay. We can do some research on that. I don't think that the way it is remitted gives us that level of detail. But I think there's probably some national research or research through the PSC that may help us come up with some assumptions there.

MR. BROWN: Davin, just to be clear, you're looking for Florida?

MR. SUGGS: Yeah, for Florida specifically. And slide 24, this is similar to what Sharon said; but I wanted to go a little bit further. These other states, we're comparing CST rates and that type of thing, but maybe some other things that would be good to know are like we don't have -- rates, just sort of general -- just some general high level revenue-base characteristics of these states that may determine -- because I think when we're comparing us, Florida, to other states and CST, I mean, it makes a difference. Just --

MADAM CHAIR: So I think the question is: Can we have some kind of idea of the other states' tax structures or the high level?

MR. SUGGS: Yeah. And maybe one other thing to that, just how they use like -- we use the way we split up our CST and there's different things on how we use it, sort of if you can give us a general sense of how they use it -- is it restricted, unrestricted, or how they apply it.

And then slide 28, finally on the bundled services because I think this has become -- I think we'll talk about this later, too, make sure I'm just correct. You said 19 states allow services to be unbundled via books and records, meaning -- in the market and sale a bundled package to somebody, be it phone, Internet, whatever for 99 bucks and as long as they break it out in the books and records, if you want to look at it, that's fine. It would be interesting to see in those 19 other states -- I don't know if you want to go back two years, three years -- has there been any audit findings, any legal challenges to those books and records?

MR. BROWN: Okay.

MR. SUGGS: Transactions, activities in these other states, anything major.

MR. BROWN: We can definitely look into that. But one reason why I noted the 15 states, I know that when we talked to a couple of states, they said that it wasn't really an issue if you unbundled something that was then sales tax if it was the same rate because they didn't really have a concern. But we can go back and see what we can find on that.

MR. SUGGS: Okay.

MR. BROWN: Marshall brought me the prepaid definition for sales and use tax, so I'll go ahead --

MADAM CHAIR: For streamline?

MR. BROWN: Yeah, for streamline. There's a couple. But you have prepaid calling service which means the right to access exclusively telecommunication services which must be paid for in advance and which enables their origination calls using an access number and authorization code for the manually, electronically dialed, and that it's sold in predetermined units or dollars in which the number of clients use in a known amount. And then they also have definition for prepaid wireless calling service, which means a telecommunication service that provides the right to utilize mobile wireless service as well as other non-telecommunication services including the downloaded digital products delivered electronically, content in the ancillary services which must be paid for in advance that is sold in predetermined units or dollars which the number of clients is a known amount. And we can get those definitions to everyone so that they can have everything available to them.

MADAM CHAIR: Any other questions from any of other members?

MR. RESNICK: Just a question. As part of the information you got from the states, I know you indicated which states sourced down to a city or a county or below, but did you ask if they didn't source to that level, how they distributed the funds, if they distributed funds, to that level from the tax?

MR. BROWN: We did.

MR. RESNICK: So you have that information?

MR. BROWN: We did. And we went through it. And a majority of them were actual distributions is what we found. Only a number -- I think only five out of all the states that we looked at used a distribution formula.

MR. RESNICK: Okay. Did you ask -- I'm sorry.

MADAM CHAIR: Can I follow up on that? Because I think that's a good question. I had a question about that also on slide 26, because we say six states sourced to the state level and then down below, only Missouri, South Carolina, and Utah use some type of distribution formula. So of the six states that source to the state level, do they distribute money to a local level? And if so, how?

MR. BROWN: No. No, no, no. The six states reported that they only went down to the state level.

MADAM CHAIR: It's just a state tax? It goes into state hoppers? It's not divided up among local governments either through revenue sharing or --

MR. BROWN: I'd have to dig in deeper to see if there was revenue sharing there, but we can go -- we can look at the detail for those six states.

MADAM CHAIR: Because I think that is one way to -- that state-level source taxes get distributed is through revenue sharing. And so I had a very similar question to your question. I'm sorry. Go ahead, please.

MR. RESNICK: It's a follow-up question, it's related. Is, if you could ask as well which states allow cities and counties to pledge these revenues as collateral for loans? Because my city just recently pledged our communication services tax as collateral for a couple million dollars. And I think that's part of what this work group is supposed to look at, so --

MR. BROWN: Yeah. And I think this afternoon or even shortly, you're going to be looking at Florida's pledges. But that probably is a good idea to have, to see what other states that they can pledge.

MADAM CHAIR: All right. Do we have any other questions on --

MR. DUDLEY: Lisa?

MADAM CHAIR: Yes, Mr. Dudley.

MR. DUDLEY: French, go back to Lisa's question so I understand this on slide 26. You got 15 states that source through the county, city, or below city level. And of those 15, you're saying only three use some sort of distribution formula. So the 12 distribute actual collections back to that region. And I guess the issue there is going to be of the 12, are the rates variable or are they actual -- I mean, are they variable or are they standard?

MR. BROWN: Yeah, and that information will be in the matrix. But I'll have to go through and maybe distill it down a little bit better to show it to everyone.

MADAM CHAIR: It's funny. I would assume that the three using distribution formula are the six that source to the state level. So let's -- need to dig a little deeper in that actually to understand what's going on there.

MR. BROWN: Let's see, actually -- well, no, I'm sorry. We can do that; no problem.

MADAM CHAIR: Any other questions from the working group? Did we have any questions from the audience?

Okay. It's --

MR. ROSENZWEIG: I was thinking about Davin's question earlier to get the higher level of information from these states instead of the general revenue pictures. Is it possible to find out which states tax internet sales?

MADAM CHAIR: And I know that was a lot of information to try to digest. So as we look at it and think about it further, we can have an opportunity in a future meeting to bring French back up and ask some more questions. And, you know, especially when he brings the additional information back to us.

All right. Our next presentation is by Bob McKee, but I think we'll take a short break if that's okay. It's 10:20 right now, so if we can reconvene at 10:30.

(Brief recess.)

MADAM CHAIR: Okay. We are going to reconvene. If I could ask, I think people are having a little bit of trouble hearing us speak, so if everybody could just try and speak up a little bit. There are a couple mics on the phone and our presenters are at the microphone, but I think they're still having a little bit of trouble hearing us; so if we could just speak up.

All right. Next we have Bob McKee, our chief economist. And he's going to give us a review of the communication services tax revenue and the effect of recent law changes. And depending on timing, we might split Bob's presentation up between the morning and then begin again in the afternoon. Just kind of depends on how many questions we get. Or we may get through all of his presentation this morning. So please, you know, feel free to ask questions.

Bob, do you want them to ask questions as you go through the presentation?

MR. McKEE: The presentation covers a lot of different topics, number of law changes first and then there's a lot of other information that's provided in the latter part of the presentation. So I think it would be best to answer them as they have the questions.

MADAM CHAIR: Okay. So why don't you just stop periodically when you get to the end of each logical break and see if we have any questions. That way you don't have to try and keep them in your head as we get through the entire presentation. All right.

MR. McKEE: Well, good morning. I am Bob McKee with the Department of Revenue. I head up the office of tax research. I'm going to be talking about a number of things this morning. First, some of the recent law changes and what the impacts to the revenues were from those. Then I'll be talking about some of the revenues, some of the implications of the rate structure and some variety of facts and figures we put together to help provide some additional information to working group.

I do want to just take a personal note this morning and say that I'm excited to be your tallest presenter this morning. I almost never get to say that, so I just had to say that at this moment.

I have sort of worn a lot of hats. I have a lot of history with the communication services tax. I've worn a lot hats since it's just been put in place in 2001. I've both represented local governments with respect to CST, worked for the Department as both chief economist and heading up the office of the legislative services, and was the staff director of -- compliance and tax committee when a number of the laws that I'm going to talk about were put into place. So I've got a lot of history with the tax and hopefully can provide you some of the benefit of that today.

In starting out in the presentation, a part of House Bill 809 requires that the working group review the historic amount of tax revenue that has been generated by the communication services tax for purposes of determining the effect of laws passed since 2007 -- the law actually says the last five years, but we've focused since 2007 -- have had on declining revenues of the communication services tax. What I'm going to do this morning is talk first about the changes of law, talk about what the official adopted estimate was with respect to those changes in laws, and then look at the revenues that have come in since the beginning of the communication services tax. And look at the various revenue components of the tax.

There have been a number of changes in law since 2007. French went over the list. The first one we'll talk about is the emergency rate repeal. Then the netting of bad debts, a rate swap that took place between the gross receipts tax and the state portion of the communication services tax in 2010. A change to transient public lodging definition, rounding rule that was changed in 2011, and then the bill that passed last year, House Bill 809, and the various changes that took place for which there were estimated revenue impacted.

Next slide, please.

As 2007 was the starting point, in 2007, Chapter Law 2007-106 repealed much of the emergency rate authority that had been in place since the beginning of the communication services tax for the local portion of the state communication services tax.

Back in 2000, there was a lot of concern by local governments because there were a number of different sources that were being replaced. French talked about some of them -- the two options in the public service tax, the 1 percent franchise fee, the local option sales taxes that have been put in place. And there was concern by local governments because the way the tax was structured was that there was a calculated amount for the replacement revenues and there was a calculated new base on what the new base would be because there were things that were going to be taxable that weren't taxable under the old taxing scheme.

The local governments knew how much the numerator of that, calculating the rates. They knew the revenues -- the historic revenues they had, but they didn't know what the new base was going to be. And so there was concern that if that new base was estimated incorrectly, that once the tax was put in place -- because the legislature did adopt conversion rates for each of the local jurisdictions in the state -- but if those rates had not been properly calculated, most likely that would be because the denominator was miscalculated, and as such, they might not generate enough revenues back, with particular concern to the extent that there were pledges or loans that were backed by these local revenue sources that were being replaced by the CST.

The emergency rate authority was put in place to act as a protection for those local governments, that if they were -- once the tax was in place and the collections started coming in, they observed that they were collecting less than what they had been taxing -- collecting under the old scheme with some provisions for growth, that they had some local mechanism to address that. And what the law put in place was an emergency rate authority. And there were two components to that emergency rate. One was designed to capture over a period of time what revenues had been missed because the rate had been miscalculated. And the second piece was to make a permanent adjustment to the rate to correct for the conversion rate that the legislature had put in place so that those local governments wouldn't, over a long period of time, lose the revenues that they should have been able to maintain. It was designed to really give some local mechanism to ensure a hold harmless for local governments.

The way that the emergency rate authority was written, it never sun-setted in the original 2001 legislation. And so this 2007 legislation essentially came in and said that if local governments hadn't exercised it by that point in time, by 2007, that the authority would go away. And there was a limited window that remained within the law that if, on discovery of audits that went back to that original period of time, that there was additional revenues attributable to that early period of tax, local governments could still make use of the emergency rate.

When the emergency rate provisions were repealed, there was an estimate made of the impact of repealing that. And the estimate by the REC, the Revenue Estimating Conference, was that by changing the law -- first, it was indeterminate because they had no idea at that point in time, it was unknown. It required additional action if any local government would have put in an emergency rate at that point in time from that point in time forward. So that made the impact indeterminate.

But the REC went further and said that by taking away this authority, it reduced the potential revenues the local governments could receive by just under 87 million on a recurring basis and 572 million in the first year in 2007, 2008. The reason there was such a big nonrecurring number is again, when you look at the emergency rate authority, there were two provisions -- one that allowed them to adjust the rate going forward to correct forth. The second being providing they capture all revenues up to that point in time that had been missed because the rate had not been calculated or adjusted correctly. And so it was that second piece, this missed revenues over the horizon of the tax until the emergency rate provision was put in place that generated that 572.

As you can expect, the further you got away from the -- date of the beginning of the tax, the further you got away from that, the greater the amount of potential revenues that that nonrecurring, that catch-up provision, could put in place. And so that was the 2007 launching. It did only impact local governments.

Next slide, please.

In 2010, there was a piece of legislation, Chapter Law 2010-83, that changed the way that communication services providers could take bad debt on their return. What this change in law did, prior to the change in law, the providers would be required to essentially apply that bad debt back to the individual jurisdictions where the bad debt had arisen. And what the change in law did is it allowed the dealers to use a proportion allocation method. So they could allocate based upon the current taxes due or in another reasonable method that was presented to the Department, in order to net the credits of bad debt instead of having to take them back specifically against the jurisdiction where the bad debt had arisen. On this proposal, the Revenue Estimating Conference estimated that there was a zero impact to the bill.

The next change in law -- and I do want to make it clear. When I talk about the changes in law to the communication services tax, I'm only talking about the ones that went before the Revenue Estimating Conference where there was some estimate adopted, albeit that it might have been zero like the last one, but only looking at those changes of law given the charge to determine the impact to the revenues.

Also in the 2010 session, the legislature passed Chapter Law 2010-149. And this is what's been referred to as the rate swap legislation. And what was done in this 2010 piece of legislation was that the legislature reduced the state rate, the state component of the communication services tax from 6.8 percent to 6.65 percent. They then also increased the rate of the gross receipts tax on communication services from 2.37 to 2.52. But in doing so, they did treat that additional .5 -- excuse me, .15 percent of gross receipts tax differently because they specified that the exemption that's referred to as the residential exemption that French talked about earlier also applies to that .15 percent. It did apply to it when it was part of the 6.8 percent, the state sales tax portion. So when they moved that over the gross receipts tax, they treated that differently and allowed it to be subject to the residential exemption or the residential exemption to be available for that portion of gross receipts tax.

On this portion, the Revenue Estimating Conference estimated that the recurring impact to state sales tax component was 22.3 million. And at this point, I want to make sure the state portion of communication services tax gets essentially treated like a sales tax, state sales tax, and as such, flows through to 1220 of Florida Statutes which provides for the distribution of the state sales tax. A portion of that state sales tax does get distributed to local governments. And so it gets distributed through the local government house revenue-sharing program, it gets distributed through the county revenue-sharing program, and municipal revenue-sharing program. So when there was an impact to the state sales tax portion, there was a state impact of 19.8 and a local impact of 2.5 because of those impacts to the shared revenues. And then there was a positive impact to the gross receipts tax of 22.3, the entire benefit to the gross receipts tax.

There was an additional provision that was put in the legislation that's not talked about here on the slide that allowed the communication services providers to collect that amount in total, the gross receipts tax and the communication services tax portion together as long as they properly allocated it on the return. Essentially, the exemptions applied equally to everyone as they did previously. In order to prevent additional administrative burden on the communication services providers by making this rate swap, there was a specific provision put in place to allow them to collect it together and allocate it between the two taxes.

The next change was also in 2010, and that was to the definition of transient public lodging facilities. Previous to that, and this again dealing with the exemption in 202.125 subsection one which is known as the residential exemption, that exemption applied prior to this law change to public lodging establishments, however the cross reference -- in law, there's actually a definition of transient and non-transient public lodging establishments. And the CST portion was silent to that. This change in law added the word "transient" in it, however the impact was determined to be zero because that was the way the law was being administered prior to the change. The residential exemption was only going to the non-transient -- this was only going to -- the residential exemption was not going to the transient public lodging establishments.

And then there was another change that took place in 2011 in Chapter Law 2011-120, and it was to the rounding rule for the tax. And there's a lot of language there. I'll just try to say that -- instead of reading what was strictly in the statute, what the law did was it specified that the rounding would take place as mathematical rounding does which is to round up if it's five or more -- if the last digit is five or more. Round down if it's four or less. And so it went to mathematical rounding. The law also specified that if the rounding were to take place at the item level, which means if they were rounded at an individual call or an individual tax or something underneath the invoice level of the bill, that it could not result in less tax due than if the rounding were done at the invoice level. And as the REC looked at this change to rounding, the rounding rule, they also adopted a zero impact on that bill.

Now, Lisa, I suspect that there'll probably be quite a few questions on the 2012 change in legislation, so I wanted to see if there's any questions on the law that I covered up to this point.

MADAM CHAIR: Do we have any questions on the law changes that Bob just covered? No.

MR. McKEE: Just a kick note. I didn't say this when we talked about the emergency rate repeal, but in that, the authority that was -- the impact was the removal of authority. That law change didn't force any local government that had already adopted an emergency rate ordinance to go back and readdress that emergency rate ordinance or to any way revise the revenues that they were actually receiving. It took away capacity, so to speak, in repealing the emergency rate authority. So when we look at the charge of it, House Bill 809, to what impact the change of law had to actual revenue streams, that one did not affect the dollars that were actually being collected but addressed capacity. So I just wanted to try and make that clear.

House Bill 809, which is what -- which has become Chapter 2012-70, passed this last session. And it had a number of changes that picked up revenue impacts. The first change that had a revenue impact was the change to the sales price definition. Prior to this law change, which will become effective July 1, the -- prior to the law change, Florida had a sales price definition that essentially if anything was sold along with communication services, anything that was a part of the sale of communication services, was taxable for communication services.

There's a specific provision, and it comes from the Internet Tax Freedom Act and was picked up in current Florida law prior to the change that will take effect in July 1, that allowed for unbundling of internet access and allowed for internet access to be unbundled and -- by books and records. But other than the internet unbundling, there was not any provisions for unbundling for things that were sold as a part of the sales communication services. There was an expressed provision that said if there was something that was not a part of the sale of communication services, that it could be separately stated on the bill and then not be subject to the communication services tax. But if it was a part of the sales communication services, it would then be a part of the sales price of communication services and subject to the communication services tax.

What the change in law does is it allows items that are not taxable as communication services, that are not separately stated on the customer's bill but that can be reasonably identified from the selling dealer's books and records, to be unbundled and not taxed for communication services. Now, the Estimating Conference on this bill adopted an indeterminate but not less than estimate. And what their statement was, was that though the full scope of the impacts is indeterminate, the recurring annual impacts would be at least 11.3 million for the gross receipts tax, 2.9 million for states sales and use tax, and 21.3 million for the local government communication services tax. And then they adopted a further statement that said the speed with which the minimum recurring impacts will be reached is unknown, so the cash impacts for fiscal year 2012-13 are unknown.

The next part of the Chapter Law 2012-70 that had a fiscal impact as determined by the Revenue Estimating Conference was the part dealing with local situsing. And what this part did was specify when the Department could essentially hold a communication services tax dealer liable for failure to properly assign service addresses. Because Florida CST has local boundaries and local flexible rates that are maximum rate and rates -- and we'll talk a little bit later about sort of the array of rates and the number of boundaries in

Florida -- but because Florida has the local boundary, local situsing issues, and an array of rates, there are potential that the local government might not receive the amount of revenue that would otherwise be due them if individual customers were situsing properly and/or charged a different rate.

And so there's a specific provision in statute that requires the Department, when we conduct audits, to also look at the local component of the state communication services tax upon audit. So what the bill did was that it said that in order for the Department to hold a communication services tax deal reliable for failure to properly assign service addresses to the proper jurisdiction, that the Department must first determine that there was a net aggregate under payment so that if in total there was not enough tax collected, then the Department could assess against a communication services tax provider. But if it was simply a misallocation, the right amount of tax was charged but there was a misallocation between jurisdictions, that the Department would not be able to hold the CST dealer liable.

Now, this provision also limits the liability of the dealer to the net underpayment but also is subject to the requirement that the dealer maintain and provide records as required in Section 202.34. For this provision, the Revenue Estimating Conference adopted a recurring impact of negative 4.7 million for the local component of the communication services tax.

The third piece of the Chapter Law 2012-70, laws of Florida that had a fiscal impact was what's referred to as the retroactive or -- clarifying portion of the bill. The law provided that the two changes I just talked about, the changes to the sales price definition and the changes to local situsing are remedial and clarifying and apply retroactively with respect to the requirements of law but do not provide a basis for an assessment or create a right of refund or credit of any tax paid. So essentially it goes -- those changes in law go backwards. And to the extent that there might have been a liability going backwards under the old language, that liability would no longer exist under the new law.

For this provision, the REC adopted a negative indeterminate impact along with the following statement regarding this retroactive application:

That the 2012-13 impact was expected to be at least negative 6 million, negative two and a half million to gross receipts, negative .3 to local sales tax, one million to gross receipts tax, and negative 2.2 to the local component of the state communication services tax. And those were the impacts from the 2012 law.

If anyone has questions specific to the -- do we have any questions on any of those changes?

MADAM CHAIR: Sharon Fox.

MS. FOX: Do we know how the sales price definition differs or compares to that in the streamline sales tax initiative?

MR. McKEE: I'll have to look to others for that, and we may have to get that to you later in the meeting.

MS. FOX: Thank you.

MADAM CHAIR: Any other questions?

I had a question on the situsing. Bob, you -- was there any concern or discussion -- I'm trying to understand the revenue impact on the situsing piece, that CST dealers would look to the IS local rate within each county and maybe not be as diligent in situsing because the net effect, as long as they were collecting it at the highest available rate in each county, would be -- liability, correct?

MR. McKEE: I can say that in the analysis that my office took to the revenue estimating conference, we did not look at that type of behavior. The assumption that we had going into the analysis that we took to the REC was that the communication services tax providers would -- we had no assumption that they would do other than to try to administer the local rate as it applied within those local areas.

MADAM CHAIR: I'm trying to understand from a -- within negative impact thing.

MR. McKEE: The negative impact that -- from that was driven primarily with information that we had on audits that had taken place to date where the basis for the audit was due to jurisdictional situsing errors. And so that data was based on historic data for audits. And also I believe information that we had from audits that may have been under -- not yet completed, where they were far enough that there was expected that there might have been some impact had there not been the law change and had there not been the retroactive application to the law change.

MADAM CHAIR: I'm just trying to understand how the effect of that law change would be a negative impact. Because, I mean, as I understand it as you described it, if the CST dealer had under collected, if there was a net under collection, they would still be held liable for that. If there was no negative collection, then they would not be held liable. So I'm just trying to figure out how to get to a negative.

MR. McKEE: As always, the part of the challenge in looking at changes, the impact of changes in law is looking at the strict words that are in the statutory change and trying to simulate or model how that would be put in place compared to what current practice, administrative practice has been. I think in coming to that negative was a part of the requirement that -- and, again, ultimately when the REC adopts an estimate, the REC impact, we bring in work papers. We essentially present what we think are impacts as to the Revenue Estimating Conference. But once they adopt an estimate, it's their estimate. It may not be strictly based or the correlation between the work that we bring in and what ultimately -- you know, the reasoning behind their estimate. There may be direct connections; there may not be direct connections.

So I don't mean in this to speak directly as to what the basis for the REC's adopted estimate was but for the numbers that we brought in. It was really that requirement that the Department make this determination that there was a net overpayment that was made. And the information that we had received is that there has been challenge for the Department in getting sufficient information to make that determination. And as such, that if we cannot clearly make that determination that there was a net overpayment -- excuse me, underpayment, that then we could not make that assessment.

So I think there was concern looking at the current historic administrative practice compared to what the practice could be underneath the change in law. Whether some of the -- you know, where we didn't receive enough information or could not make that determination, whether then assessments that would otherwise have been made could not be made underneath that provision of law.

MADAM CHAIR: Davin.

MR. SUGGS: On the same issue, in the past, what was -- from DOR's perspective, what was the penalty for underpayment before the law changed in terms -- was it reduction in collection allowance or a percentage of what was not collected?

MR. McKEE: I think on that, I'd have to go back and talk to audit staff because the audit issues range from audit to audit. And so without going back and specifically reviewing where there's been assessments against providers with respect to situsing issues, there's some challenge, I think, in characterizing that for you today. We'd have to go back and look at those things. The penalties would, I expect, vary. But penalties are -- under law, there are specific things that are -- tax that was not remitted, there's penalty where tax may not have been remitted correctly. There's some ability for penalties to be waived. There's interest that can be due. There's a number of different ways to collect it. And I'm not sure when you're saying "penalties," if you're specifically talking about the penalties.

Now, collection allowance is a provision that allows the dealer to retain a certain portion of the taxes they collect for doing certain things. And so ultimately if it's determined that those things that were necessary for a provider to earn the collection allowance were not actually in evidence at the point of audit, then a collection allowance may not be denied. But I'm not -- excuse me, might not be allowed -- but I'm not sure the Department would characterize that as a penalty.

MADAM CHAIR: I think we probably need to get a more detailed answer on that. I think it's probably a combination of things. I think there was some denial of collection allowance, you know, in some areas, and that may be part of what went into the negative impact. But there was also cases in which the Department could see that there was a net over collection. But because it didn't have enough information to necessarily move money from one jurisdiction to another, it would make an assessment with respect to the jurisdiction where there was an under collection. And this provision would change that so there couldn't be an assessment if you could tell that overall there was a net over collection.

MR. McKEE: And it's that last circumstance that you described, Lisa, that really drove us taking a negative impact with respect to this language. Where there was an overpayment, but we couldn't -- didn't have enough information to say for certain it was this amount to this jurisdiction, then there would be an initial assessment against the provider. And that that would not be able to be done potentially under the new language.

MADAM CHAIR: This issue is certainly one that was the most difficult when it was administered locally. And we didn't really do much to improve that when we moved it to be administered centrally, you know, in terms of those difficulties of just, you know, going back and trying to make sure that the correct amounts were collected from the correct jurisdictions and how you move that money back and forth. So this is probably an issue that this group should take a deeper look at.

MR. SUGGS: This is issues where a ton of locals were filling out the paperwork -- moved across a certain jurisdiction or something and there was a finance officer or somebody gets paperwork verifying that this is --

MADAM CHAIR: It's where the customer is located, uh-huh.

MR. RESNICK: With respect to correcting the errors of situsing, it's my understanding from recollection a couple years ago there were some audits that were released that showed the situsing errors, and they were significant. I mean, we're talking millions of dollars in counties. And it took -- my understanding, it took three years to rectify the payments. Is that the process or --

MR. McKEE: There's a provision laid out in the statute for how -- there's several different methods by which those adjustments can be made from one jurisdiction to another. I believe the rule is that if it's over a certain amount of a jurisdiction's, I believe it's monthly distribution, I think it's 90 percent of their monthly distribution, that then it gets spread over a period of time. And so it gets spread over, I believe, it's a two- or three-year period.

MR. RESNICK: That's provided in the statute?

MR. McKEE: It's provided in the statute. They're also sort of cued up so that there's a period where the Department notifies local governments. I believe it's in the April or May time frame each year of sort of the prior basket of audits that are going to be finalized and there's going to be adjustments made between local governments.

And then there's a protest period. The local governments want more information or otherwise are concerned about those amounts and then there's -- it starts up, I believe it's cued up with the start of the local fiscal year. It's either September or October -- end of September, beginning of October in the distribution -- so that there's some time period for local governments to adjust as well. And that was a provision that was put in later after the start of communication services tax to give the Department some more authority to spread out those distributions so as to, you know, correct the distributions to some local governments but not throw others in fiscal chaos by taking too much in a given period of time.

There's also a provision, I believe, where if the two affected jurisdictions could work something out between them, that they could take care of it directly. They could do it with other revenue sources as long as they both agree to some other manner of correcting the issue.

MR. RESNICK: That's what I wanted to ask: Is that -- an ILA possibility still part of the law that they can still do an inner local agreement to try to work that out?

MR. McKEE: Yes. Yeah, I'll get you a statutory site for that. But, yeah, it's still a part of Chapter 202.

MR. RESNICK: And then can you go back to the point you made about the unbundling services and negative impacts on that on page eight? I'm not sure how you -- that could have a negative impact to either of that.

MR. McKEE: What unbundling -- under the Florida law, prior to the change that took place in Chapter 2012-70, Florida had sort of a very all-encompassing sales price definition. So if anything is sold along with communication services, it was all treated as communication services.

MR. RESNICK: Right.

MR. McKEE: The -- and taxable at the communication services tax rate. So to the extent that either something might otherwise not be taxable at all, or in Florida, if it were taxable say, for example, for sales tax as opposed to communication services tax, under the prior law, all of that, when it's sold as part of the sales of communication services, becomes taxable as communication services and at the communication services tax rates.

If instead it was -- under this law what this allows the providers to do is to unbundle and say prior law says that I sold you this and I sold you this also. One is clearly communications service, the other is not; it's something else. Let's say just for purposes of conversation, it's a digital good. Digital goods in Florida are not taxable for sales tax. So, it would be a rate difference of, say, 15 compared to zero on bundling. Or let's say, for example, it was I'm getting communication services tax and you're also giving me a phone. Now, when I sign up for the two-year contract, I get a discount, but I'm not really getting that phone for free. I'm signing up for a two-year contract. There's some cost recovery that the entity must be engaging in to be able to give me an iPhone for $200 instead of $600 that it would cost me if I bought it elsewhere.

So under current law when they charge me communication services for that, it's all communication services. It's not a bundle on the phone; it's all taxable. But under the law change, if, instead, they would say, well, some part of the monthly charge each month we're recovering for the handset price, it's taxable for sales tax instead at a state rate of 6 percent with the local option as opposed to the 13-plus rate, 14-plus rate communication services tax.

So now the reason for the indeterminacy is that we, as the State of Florida, have no knowledge about how the unbundling will be put in place, how quickly billing methods can be changed to accommodate that, how ready the books -- sufficient the books and records information will be to allow for the unbundling. And so that is what I think really points to the uncertainty, the indeterminacy of the estimate is that there's not any certainty about how soon we'll see that show up in collections.

But assuming that the industry -- you know, assumption going in that part of their intent is to minimize the tax burden on behalf of their customers and to competitively do so, that that will push providers to develop accounting mechanism and others to minimize that rate. This impact really only goes one way. And so that's why it's a negative indeterminate amount.

MR. RESNICK: Does DOR audit that? Do they audit those books and records?

MR. McKEE: Yes. I mean, we would audit books and records, where an audit it became clear that there was an allocation made by books and records, my expectation would be that auditor would require some documentation to show how that -- to support that allocation with books and records as the law requires.

MR. RESNICK: By the way, the concrete example that you gave, I mean, that's more of what I need anyhow is -- I mean, this is real world stuff, so the concrete examples are very helpful.

MR. McKEE: And this is one we really don't know. I mean, we don't know how rapidly the industry will move to this. We don't know what will be unbundled. And this is just one where there's -- and that really, again, speaks to the indeterminacy. We'll see it when we see the audits.

MR. RESNICK: Will we get information from DOR as to just generally the scope of the audits? I know we can't get specific information about it. How much they've done, you know, what percentage of --

MADAM CHAIR: If you would like a presentation on, you know, audits, not specifically, but how many audits, how much has been recovered, what audit issues are that, you know, seem to cause problems or are typical, we can certainly provide that kind of presentation.

MR. RESNICK: Thanks.

MADAM CHAIR: Mr. Dudley.

MR. DUDLEY: Bob, at that point because I know Davin was asking this earlier, too, about the other states that allow for dealer records. I know you started the timeline of legal changes in '07, but I think it was '05 that Florida adopted the books and records reasonable standard for internet access -- as a nontaxable item. So I assume that you went back to the audit staff to see what empirical audit information was available as to whether or not that legal change had caused any revenue changes?

MADAM CHAIR: The language from the statute asked us to look back for the last five years which is why we just went back to 2007.

MR. DUDLEY: That's fine. I think it was '05 when we adopted --

MR. McKEE: '05 was when the amendment went in to the Internet Tax Freedom Act. That's actually the next slide that I have is talking about the Internet Tax Freedom Act changes. But on that, Charlie, I think -- for the impact of this bill, we sort of looked to where there were opportunities because of the rate differences for minimizing tax burdens and didn't go back so much -- or like I said, we didn't go back and look at from audit how much we could see that there was actually utilization of the books and records provision for internet. Audits can be great sources of information. They can also -- you know, they give information based upon where the focus of the audit was. So to the extent that the audits, you know, may have looked at internet access on the unbundling, we can certainly try to get more information for you on that.

For this impact, it was more looked at at what were the opportunities to unbundle beyond what was already available for unbundling the Internet access. And again, with that implicit assumption that the providers would act on behalf of their customers to try and minimize rates and what opportunities they might have to minimize rates. When you get to other states, some of these states don't have some of the same issues with unbundling because they have same communication services tax rate as they do sales tax rate.

So, for example, that second example that I gave you of the handsets -- in other states, we talked to that had similar unbundling language, they just didn't look at it and they didn't have any impacts because, to them, it really didn't matter whether it was state sales tax or communication services tax because the rates were the same.

MADAM CHAIR: You have a question --

MR. LINDSEY: Sure. Pardon me, follow-up question that Charlie's question prompted. And this may have been discussed during the revenue estimating process. But in determining this amount, did you also consider the wireless -- you know, on the wireless side that was already permissible under the preempted federal law, and I didn't know if you had carved out that so that we can't really count that because that should already have been in place or allowable any way similar to the Internet Tax Freedom Act.

MR. McKEE: There is some language in the Wireless Sourcing Act that speaks to the unbundling. I don't have that language in front of me. I think that that's an area where we might not have the same read of how far that language goes as the industry may feel it goes. So that's one where we may need to have some additional conversation before this group. I'm probably not the best person to answer those questions, but I know there's some differences. There's some specific language that's used in the Wireless Sourcing Act that there's some question about how far that wireless sourcing language goes to allow for unbundling.

MADAM CHAIR: Would you like us to add that as a topic --

MR. LINDSEY: Yeah, please. Thank you.

MR. SMITH: Just from an industry side, some real time perspective on the bundling is we started doing it, it took -- what we did is we keep all our records at the lowest level. And then what sales and marketing groups have done is put like software in place to kind of do consolidations with -- so what they're looking for is a simplified bill to the customer. But in the background we're maintaining, you know, all the detailed lines of the -- under audit, we can produce 60 million lines of transactions, but sales and marketing gets a nice clean presentation to the customer that isn't cluttered with 60 million lines on the bill so that they can understand it.

So internally as a corporation, we say, we always have to maintain the lowest level of detail. If you want to put software in between when the bill is printed and when the bill is calculated that does some type of, you know, following up or summarizing unification, you know, knock yourselves out.

MR. McKEE: Lisa, Marshall just handed me the actual statutory reference for the adjustments and distribution, so I can give that to you. It's in Chapter 202, Section .18, 3C3. And then it's in A, B, and C paragraphs -- I guess that's --

MADAM CHAIR: If we can make a copy of that and provide it.

MR. McKEE: Subparagraphs A, B, and C. It does -- and I wasn't -- I was incorrect, the adjustment -- it is equal or exceeds 90 percent, but it is of the average distribution, not jurisdiction for six months. So if it equals or exceeds that amount, they can receive it over a period of time and will verify that -- and there is also if it exceeds 90 percent and that's -- of that average six-month period, it does provide in C for that's effective jurisdiction's manner or written agreement to establish a method of adjustment. So that provision is in 202.

MADAM CHAIR: Well, before we get to your next slide, you know, I was trying to go back and look at what the legislature tasked us with and trying to figure out why. You know, specifically, they asked us what the law changes for the past five years and what effect those law changes have had on declining revenues. I know we're going to get into collections a little bit. But just sort of as a recap, if we are just looking back at the last five years, the 2007 change on the emergency rate repeal is really indeterminate. It's talking about potential revenue. But in terms of -- on the 2010 netting bad debt, RECS estimated the change to have made zero impact. On the rates swap, that was really an impact more on local government than on state to the tune of about 2.5 billion.

MR. McKEE: Yeah. In net for all taxing authorities, it was a zero impact. There was a negative impact to locals and a slight positive then as a consequence to the state when that amount moved to gross receipts tax.

MADAM CHAIR: Then 2010 transient public lodging was a zero impact. The 2011 rounding rule, which I assume that was the current practice, the rounding was also a zero impact. So it's really these 2012 changes in terms of state law changes between the change in sales price definition, local situsing, and --

MR. McKEE: The retroactive application.

MADAM CHAIR: Right, the retroactive application. Do you think -- and you might not know the answer to this -- is it maybe more of an issue of seeing where these revenue estimates are playing out as correct on some of these other issues? Because I don't see much in terms of anticipating revenue impact -- 2012 changes.

MR. McKEE: Let me know if this doesn't answer your question, Lisa, but I think when we look at the revenues -- and most likely now it will be after lunch -- to the extent that there have been either diminished growth or declining revenues over the period of time, they're better described as being either driven, one, by the general economy as so many of the revenue sources saw downturns during the great recession. And also really changes in technology and consumption patterns. When we got the reduction of land lines, for example, when you look at what's happened with pricing plans, the competition that's been out there among the various segments of the communication services provider's industry, to the extent that that competition results in better prices for the consumer, that those are the things that have really driven either dampened growth rates or negative growth rates within those two factors -- changes in consumption patterns and changes due to the general state of the economy and not specifically to the change in law.

Now, the -- what happens with the 2012 change is -- remains to be seen. And, you know, in long term with communication services, what happens in this industry, how much moves to content, which, you know, in some areas can be argued to be a partly communication services tax base and some areas that may not be. To the extent that things migrate to internet access as opposed to communication service, it's unclear what the long-term viability or potential for the revenue source is as we continue to see changes of technology, changes in the products that are provided, more and more of it becoming -- provided essentially as part of internet rather than as separate communication services.

MADAM CHAIR: I just -- I guess my impression -- is it would be really difficult for us as a working group between now and then reporting this report February of 2013 to be able to see whether there are any significant impacts from the 2012 legislation to be able to put into the report.

MR. McKEE: Yeah, the -- given particularly the adopted -- of the REC, the speed, the timing of which these changes, the -- you know, part of the history I have with the communication services tax is that -- and we talked about it a little bit and what had to be done with the gross receipts rates swap, that we're talking about a lot of, I don't want to say moveable, but there's a lot of infrastructure in place that drives these billing systems and that drives the process by which the charge that goes to the consumer gets aggregated up and reported on a return. And so these things don't change on a dime. And that there's a lot of infrastructure there. That particularly what happened in the last ten years of rapid acquisition and conversions, that the billing systems have sort of been -- what anecdotically has been conveyed to me is that a lot of the billing systems have been inherited and perhaps not yet cojoined or one system as companies got acquired and as smaller entities became larger entities.

And so that the billing systems, you know, very good at delivering me my bill and making sure that I pay it on time, are nimble to the point that these changes happen overnight. So I think there's a lot of question about, to the extent that those -- if those assumptions we may do hold, of trying to ensure that the consumer gets the lowest price possible as the provider, they won't happen overnight.

MADAM CHAIR: I think you have one more slide that we're going to try to do before the lunch break and then go to collections after.

MR. McKEE: Okay. This last slide talks about sort of -- in the background of all of this on the communication services tax is the Federal Internet Tax Freedom Act. Because the Internet Tax Freedom Act specifically says that access to the internet cannot be taxed by local jurisdictions. There were some jurisdictions that were grandfathered in if they taxed it previously. But in essence, it says that there cannot to be a tax on that internet access.

In 2004, they changed that law to specifically allow for the unbundling of internet access. The law changed that Charlie talked about earlier that Florida picked up. And so there was -- before that, if it was sold as part of the communication service, it could -- the communication services tax could still apply. After this law changed, it allowed the providers to unbundle internet access by books and records. But prior to the 2012 change in law, there were -- it was the only unbundling provision essentially. Anything else that was sold as part of the sale of communication services, whether separately stated on the bill or not, was taxable as part of the sale of communication services.

There was a second part, and this one gets a little bit more complex to talk about, in that 2004 law change, prior to the 2004 law change, the Internet Tax Freedom Act did not apply to the underlying telecommunications that say -- the example we used all back at the time was nettally, I don't know if they still exist or not, but they were a local information services provider. And while they are in -- my purchase of their service was not taxable, when they purchased the underlying telecommunications to provide that internet service access from a communication service provider, that purchase was taxable. The 2004 law changed that. However, and this is where it gets complex. Even though that law took place in 2004, Florida was a grandfathered state at the time, but that grandfather went away effective July 1, 2008 due to a change in 2007 to how that grandfather was defined. So, there were two changes that took place that presumably could have revenue impact to Florida -- the first being that they allowed us to be unbundling for internet access in the Internet Tax Freedom Act. The second is the loss of the taxing of those underlying communication services provided -- purchased by someone who is providing internet access.

Now those, because they were federal law changes, there was not any Revenue Estimating Conference document adopted estimating the impact of those changes at the time those specific changes were made.

And that's the first part.

MADAM CHAIR: Okay. So that as of the 2007 amendment, is there an ability at this point to look back and see whether that change had any kind of significant impact on Florida revenues or does that put it about the same time as the changes resulting from the changes in the economy to make it difficult to see that?

MR. McKEE: I guess on that, the -- to go back and to try and get the impact on that law change, we'd have to go back and essentially look at who was paying at the time, who may not have paid subsequent to that. But it is wrapped up with what takes place in the economy. I don't believe there's anything in the form that would identify this type of purchase separate from what you described as an end-consumer purchase of communication services. So it would be a matter of, you know, trying to identify companies as -- well, no, actually -- excuse me, let me step back. No, we wouldn't have that information on the return. Because we know -- this is always one of the challenges in doing estimates. We know the information provided by the entity that collects and remits the tax, we don't necessarily know the direct information about who's purchasing that from them or exactly what they're purchasing.

So, you know, we might be able to go back and look at -- usually there's some survey data or some national numbers that might exist for this type -- for the sales of activity in Florida to try and --

like we do so on for the REC that I know Charlie loves all of our efforts there that we make, that we can try and find some alternate method to try and estimate that if that's the will of the working group. But we would not have any direct information on this.

MADAM CHAIR: We have other questions on this slide or any of the previous slides before we break? Public comments? E-mails?

Okay. I think this part is going to be a challenge for us because it is one of the things we're tasked with and it doesn't sound like we're going to have a whole lot of information to base anything in our report. So just keep that in mind as you think about this portion, if you can come up with any ideas and other things you think we may need to look at. It just sounds like this may be a part where we're going to struggle a little bit about meeting the charge of the group in terms of providing back something meaningful in that report.

We're going to take our lunch break because I think if we try to get into the next section, it will take us well past noon. And I think you probably have some questions on that portion.

Our plan is to reconvene at 1:30 p.m. to finish Bob's presentation. And then we have Amy Baker who's going to join us at 2 o'clock to review the communication services tax revenue and public education capital outlay program.

So we'll see everybody back here at 1:30. Thanks.

(Brief recess.)

(End of Volume I.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF LEON:

I, TRACY L. BROWN, court reporter and Notary Public do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated, and that the foregoing pages numbered 1 through are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the foregoing action.

DATED THIS day of , 2012.

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