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Written Testimony of
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Senator Krueger and Members of the Select Committee, thank you for the opportunity to join the Committee for a roundtable discussion on "Enhancing New York State's fiscal stability through a more rational and streamlined sales tax system."

My name is Scott Mackey and I am an economist and partner at Kimbell Sherman Ellis LLP in Montpelier, Vermont. I have been working for the past ten years with a national coalition of wireless carriers to promote state and local tax policies that encourage investment in communications networks and eliminate discriminatory taxes on wireless consumers. This coalition includes AT&T, Sprint, T-Mobile USA, US Cellular, and Verizon Wireless. I've published two studies comparing the tax and fee burden on wireless consumers in the states, both published in *State Tax Notes.*

Prior to joining KSE, I was Chief Economist at the National Conference of State Legislatures (NCSL) in Denver, Colorado. I staffed NCSL's Task Force on Taxation of Telecommunications and Electronic Commerce and served as the NCSL representative to the federal Advisory Commission on Electronic Commerce. While at NCSL, I helped develop the NCSL policy supporting state and local communications tax reform that was first adopted in July 2000 and is still the official policy of NCSL today. It is attached as an Appendix.

Let me say at the outset that the wireless industry supports efforts to modernize New York's tax system. As you know, I testified on the need for modernization and rationalization of New York's tax system at the roundtable sponsored by this committee last August. New York's state and local tax system is really a hodgepodge of taxes that have been added or expanded at different times in New York's history to address a specific situation or need. The communications industry has changed dramatically over the past three decades, yet many of New York's state and local taxes have not.

The stakes for New York's economy are high. Tax policy plays an important and growing role in decisions about how and where to invest in communications networks.

As broadband networks become even more vital to economic growth, it becomes more critical that state and local tax policies encourage private sector investment in broadband networks.

New York wireless consumers are burdened with taxes that are much higher than neighboring states and that rank among the highest in the country. In 2009, the most recent year that figures were available, New York wireless taxes and fees averaged 16% as compared to the national average of 10.75%. Wireless taxes and fees are almost twice the 8.25% that many New Yorkers pay in state and local sales taxes. These wireless taxes and fees burden New Yorkers – especially low-income citizens – with excessive taxes and fees when compared to taxes and fees imposed on other competitive goods and services.

Additionally, the tax structure also distorts purchasing decisions because the taxation of certain types of communications services may depend upon the type of company providing the service instead of the service itself.

The Benefits of a Rational and Streamlined Sales Tax System

The wireless industry generally supports sales and use taxes that are levied on the broadest possible base and levied on final consumption. It is our belief that broad-based taxes allow revenue to be raised at the lowest possible rates. Low rates create fewer tax-induced distortions in consumer purchasing decisions. It is particularly important that sales taxes be levied only on final consumption and not on business inputs in order to avoid pyramiding of taxes (the imposition of a tax upon a tax).

The industry believes that if New York were to impose broad-based taxes on final consumption, it would be possible to eliminate industry-specific taxes on wireless and other communications consumers without reducing overall revenues to state and local governments. This type of reform would level the playing field in two important ways. First, purchasers of communications services would face the same tax burden without regard to the type of communications services they purchase and without regard to the type of provider selling the service. Second, purchasers of wireless and other communications services would no longer face a much higher tax burden for these purchases as compared to other goods and services sold in the competitive marketplace.

In addition to these benefits, simplification and rationalization of the tax system would eliminate the use of different tax bases for different types of taxes. Currently, interstate and international wireline telecommunications are exempt from state and local sales taxes and school utility taxes. Wireless intrastate service is subject to the sales and use tax, while wireless interstate and international service is subject to the sales and use tax if sold as part of a bundled package but exempt if separately stated. Local landline service is subject to the local gross receipts tax. Finally, prepaid wireless service is subject to the sales and use tax at the point of purchase but exempt from school utility taxes.

Simplification and rationalization of the New York state and local tax structure, by broadening the base of the sales and use tax, could result in the elimination of industry-specific communications taxes in favor of a single tax with a single base. This would significantly reduce administrative costs for local governments, the Department of Taxation and Finance, and communications service providers.

The wireless industry supports the efforts of the Streamlined Sales and Use Tax Project (SSTP) to develop uniform definitions of telecommunications terms across state lines. Wireless companies operate across the fifty states and thousands of local jurisdictions. The adoption of uniform definitions of telecommunications terms across these state and local jurisdictions would dramatically simplify the task of complying with laws in multiple states and local jurisdictions without taking away the authority of state legislatures to determine which specific services should be taxed or exempt.

Finally, there are provisions in the SSTP that help resolve disputes between customers, taxing agencies, and providers about the proper application of consumer taxes. These provisions are very helpful to wireless and other communications providers in complying with state and local laws and preventing class action lawsuits over the proper application of state and local taxes.

Conclusion

The wireless industry supports a modernization of the state and local telecommunications tax structure in New York. Broadening the base of the sales and use tax could provide additional revenues to state and local governments that would allow the state to eliminate industry-specific communications taxes. Elimination of these taxes would benefit communications consumers, level the playing field between communications and other goods and services, and encourage additional investment in New York's communications infrastructure.