

# **Senate Select Committee on Budget and Tax Reform**

**Roundtable Meeting on August 12, 2009**

**Capitol Building Room 124**

**12:30 pm**

**“Modernizing New York State’s Telecommunications Tax System”**

**Prepared Remarks by:**

**Louis Manuta**

**Senior Attorney**

**Public Utility Law Project of New York, Inc.**

**194 Washington Avenue, Suite 420**

**Albany, New York 12210**

**518-449-3375**

**518-449-1769 (FAX)**

**lmanuta@pulp.tc**

Good afternoon. My name is Louis Manuta and I am the Senior Attorney for Public Utility Law Project of New York, Inc. I am pleased to be here to represent PULP. PULP is an independent, not-for-profit, organization formed in 1981 to represent the interests of residential utility (telephone, electric, and natural gas) consumers throughout New York State, and particularly, low income consumers. PULP focuses its efforts on education, research, and other activities and services designed to advance universal service, affordability, and consumer protections.

The topic for this roundtable discussion is modernizing New York State’s telecommunications tax system. PULP has been looking at the state’s telecom tax regime for the past several years, examining the number and types of telecom taxes, the tax rates, and their applicability. We are looking forward to reviewing the Telecom Tax Report, which is being prepared by the Department of Public Service and the Department of Taxation and Finance through a directive from this year’s State Budget, to shed further light on the subject.

In the Notice announcing this meeting, a series of questions were posed, which I will respond to in order:

*How should New York modernize its telecom taxes to make them better reflect industry practices and technology in the 21<sup>st</sup> century?*

There should be no unevenness in taxation that tilts the playing field for providers using different technological platforms to provide the same type of service. Allowing tax disparities is contrary to sound competition policy.

PULP believes that any telecom taxes should apply uniformly to all providers of similar services, including landline, VoIP (primarily the voice services offered by the cable companies), and wireless. Our position is that if taxes are applied in this manner, then the tax rate may be able to be reduced for all payors and the same or more revenue can be received by the state. That said, there should be explicit exemptions from all telecom taxes, other than state and local sales taxes, for Lifeline discount telephone customers. Also, clearly identifying the tax or surcharge without misleading labels is essential to protect consumers.

*What taxes are applied to some telecom companies but not to others, even when they offer similar services?*

Based on our research, it is our understanding that the following taxes are required to be collected by landline telephone companies and not VoIP providers, even though they both offer voice services in New York State:

- §184-A Metropolitan Commuter Transportation District Tax
- §186-A Utility Gross Revenues Tax
- §186-E Utility Gross Receipts Tax
- §208 Franchise Tax
- §§1101, 1109, 1201 Sales Taxes

*From a historical standpoint, why were these service providers taxed differently?*

To the best of our knowledge, these taxes are applied only to landline telephone companies (and to some extent, wireless) because the new competitors did not exist when the taxes were created. When the newer technologies came into existence, we believe they were exempted to promote the “nascent” industries and competition. That said, even wireless and VoIP are taxed differently from each other, with wireless providers needing to collect the gross receipts surcharge and E-911 fees, while VoIP does not.

Jurisdictional issues between the federal and state governments may come into play as well, as there are some limitations placed on the states with regards to regulating VoIP and wireless services. However, New York State already taxes wireless providers to some extent, specifically with regards to sales tax and the E-911 surcharge. In addition, other states have begun assessing VoIP and wireless providers for universal service (Kansas, Maine, Missouri, Nebraska, New Mexico, and South Carolina) and for general taxation purposes (such as Maine).

*What states have modern telecom tax systems that can serve as models for New York?*

Maine, for example, in 2007 replaced its antiquated telecom tax system with a “service provider tax” of 5%. This tax replaces the state telecom sales tax and is collected by landline, wireless, and VoIP providers. The service provider tax is in addition to surcharges for the state universal service funds, which support Lifeline, service to libraries, and broadband. It can be found in the Maine Statutes, Title 36, Chapter 358.

*What federal laws or local government concerns should the state take into consideration when looking to modernize its telecom taxes?*

The FCC has begun to regulate VoIP and wireless in a similar fashion to landline, including requiring them to contribute to the federal Universal Service Fund and to be subject to similar requirements, such as E-911 access, CALEA (wiretapping), and TRS (relay service) connectivity. Without declaring VoIP to be a telecom service, the FCC has already begun to bring VoIP under the telecom umbrella. We believe the time is right for New York to begin taxing and assessing all similar service providers similarly, since there should be no impediments on the federal or local levels.

*How have differing tax treatments for telecom companies offering similar services influenced behavior in the market?*

With VoIP and wireless exempt from some or all state taxation, they have been given an unfair and unreasonable advantage in the marketplace. For example, assume hypothetically that there are two equally efficient providers of a service. If one is taxed and the other is not, markets will drive customers to the provider whose bills are taxed less. Further, assume costs of a less efficient provider are 2% higher, but its customers receive tax benefits of 4%. Under this scenario, the less efficient provider will prevail in the marketplace.

We note that Verizon reportedly lost 53% of its access lines across the state in the past dozen years. Other incumbent local exchange carriers, including Frontier and Citizens, have seen similar losses. The absence of equal taxation may be a driver in migration of customers to less taxed services. Whatever the reason for this migration, the state receives about half of the money from telecom services it could anticipate if taxes were equalized. PULP believes similar services should be taxed and assessed the same

way and any and all charges should be made explicit to avoid customer confusion.

Finally, we can not ignore surcharges which apply to landline and not VoIP or wireless and which are generally retained by the provider as well as deceptive surcharges which appear under generic terms on wireless and VoIP bills, such as “regulatory surcharge” or “government surcharge.” Explaining what these surcharges actually apply to, that they are not collected for some governmental entity, and the source of their authorization should be investigated further. Keep in mind that the burden on telecom customers is not just the service charges and taxes collected, but the surcharges as well. A level playing field requires examining all.