

1 AN ACT concerning telecommunications.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Mobile Telecommunications Sourcing Conformity Act.

6 Section 5. Legislative intent. The General Assembly
7 recognizes that the Mobile Telecommunications Sourcing Act,
8 Public Law 106-252, codified at 4 U.S.C Sections 116 through
9 126, was passed by the United States Congress to establish
10 sourcing requirements for state and local taxation of mobile
11 telecommunication services. In general, the rules provide
12 that taxes on mobile telecommunications services shall be
13 collected and remitted to the jurisdiction where the
14 customer's primary use of the services occurs, irrespective
15 of where the mobile telecommunications services originate,
16 terminate, or pass through. By passing this legislation in
17 the State of Illinois, the General Assembly desires to
18 implement that Act in this State by establishing the Mobile
19 Telecommunications Sourcing Conformity Act and to inform
20 State and local government officials of its provisions as it
21 applies to the taxes of this State.

22 Section 10. Definitions. As used in this Act:

23 "Charges for mobile telecommunications services" means
24 any charge for, or associated with, the provision of
25 commercial mobile radio service, as defined in Section 20.3
26 of Title 47 of the Code of Federal Regulations as in effect
27 on June 1, 1999, or any charge for, or associated with, a
28 service provided as an adjunct to a commercial mobile radio
29 service, that is billed to the customer by or for the
30 customer's home service provider regardless of whether

1 individual transmissions originate or terminate within the
2 licensed service area of the home service provider.

3 "Customer" means (i) the person or entity that contracts
4 with the home service provider for mobile telecommunications
5 services or (ii) if the end user of mobile telecommunications
6 services is not the contracting party, the end user of the
7 mobile telecommunications services, but this clause (ii)
8 applies only for the purpose of determining the place of
9 primary use. "Customer" does not include (i) a reseller of
10 mobile telecommunications service or (ii) a serving carrier
11 under an arrangement to serve the customer outside the home
12 service provider's licensed service area.

13 "Designated database provider" means a corporation,
14 association, or other entity representing all the political
15 subdivisions of a State that is:

16 (i) responsible for providing an electronic
17 database prescribed in Section 25 if the State has not
18 provided such electronic database; and

19 (ii) approved by municipal and county associations
20 or leagues of the State whose responsibility it would
21 otherwise be to provide such database prescribed by
22 Sections 116 through 126 of Title 4 of the United States
23 Code.

24 "Enhanced zip code" means a United States postal zip code
25 of 9 or more digits.

26 "Home service provider" means the facilities-based
27 carrier or reseller with which the customer contracts for the
28 provision of mobile telecommunications services.

29 "Licensed service area" means the geographic area in
30 which the home service provider is authorized by law or
31 contract to provide commercial mobile radio service to the
32 customer.

33 "Mobile telecommunications service" means commercial
34 mobile radio service, as defined in Section 20.3 of Title 47

1 of the Code of Federal Regulations as in effect on June 1,
2 1999.

3 "Place of primary use" means the street address
4 representative of where the customer's use of the mobile
5 telecommunications service primarily occurs, which must be:

6 (i) the residential street address or the primary
7 business street address of the customer; and

8 (ii) within the licensed service area of the home
9 service provider.

10 "Prepaid telephone calling services" means the right to
11 purchase exclusively telecommunications services that must be
12 paid for in advance that enables the origination of calls
13 using an access number, authorization code, or both, whether
14 manually or electronically dialed, if the remaining amount of
15 units of service that have been prepaid is known by the
16 provider of the prepaid service on a continuous basis.

17 "Reseller" means a provider who purchases
18 telecommunications services from another telecommunications
19 service provider and then resells, uses as a component part
20 of, or integrates the purchased services into a mobile
21 telecommunications service. "Reseller" does not include a
22 serving carrier with which a home service provider arranges
23 for the services to its customers outside the home service
24 provider's licensed service area.

25 "Serving carrier" means a facilities-based carrier
26 providing mobile telecommunications service to a customer
27 outside a home service provider's or reseller's licensed
28 service area.

29 "Taxing jurisdiction" means any of the several states,
30 the District of Columbia, or any territory or possession of
31 the United States, any municipality, city, county, township,
32 parish, transportation district, or assessment jurisdiction,
33 or any other political subdivision within the territorial
34 limits of the United States with the authority to impose a

1 tax, charge, or fee.

2 Section 15. Application of this Act. The provisions of
3 this Act shall apply as follows:

4 (a) General provisions. This Act shall apply to any
5 tax, charge, or fee levied by the State or a taxing
6 jurisdiction within this State as a fixed charge for each
7 customer or measured by gross amounts charged to customers
8 for mobile telecommunications services, regardless of whether
9 the tax, charge, or fee is imposed on the vendor or customer
10 of the service and regardless of the terminology used to
11 describe the tax, charge, or fee.

12 (b) General exceptions. This Act does not apply to:

13 (1) any tax, charge, or fee levied upon or measured
14 by the net income, capital stock, net worth, or property
15 value of the provider of mobile telecommunications
16 service;

17 (2) any tax, charge, or fee that is applied to an
18 equitably apportioned amount that is not determined on a
19 transactional basis;

20 (3) any tax, charge, or fee that represents
21 compensation for a mobile telecommunications service
22 provider's use of public rights of way or other public
23 property, provided that such tax, charge, or fee is not
24 levied by the taxing jurisdiction as a fixed charge for
25 each customer or measured by gross amounts charged to
26 customers for mobile telecommunications services;

27 (4) any generally applicable business and
28 occupation tax that is imposed by a State, is applied to
29 gross receipts or gross proceeds, is the legal liability
30 of the home service provider, and that statutorily allows
31 the home service provider to elect to use the sourcing
32 method required in this Act;

33 (5) any fee related to obligations under Section

1 254 of the federal Communications Act of 1934; or
 2 (6) any tax, charge, or fee imposed by the Federal
 3 Communications Commission.

4 (c) Specific exceptions. The provisions of this Act:

5 (1) do not apply to the determination of the taxing
 6 situs of prepaid telephone calling services;

7 (2) do not affect the taxability of either the
 8 initial sale of mobile telecommunications services or
 9 subsequent resale of such services, whether as sales of
 10 such services alone or as a part of a bundled product, if
 11 the federal Internet Tax Freedom Act would preclude a
 12 taxing jurisdiction from subjecting the charges of the
 13 sale of such services to a tax, charge, or fee, but this
 14 Section provides no evidence of the intent of the General
 15 Assembly with respect to the applicability of the federal
 16 Internet Tax Freedom Act to such charges; and

17 (3) do not apply to the determination of the taxing
 18 situs of air-ground radiotelephone service as defined in
 19 Section 22.99 of Title 47 of the Code of Federal
 20 Regulations as in effect on June 1, 1999.

21 (d) Date of applicability. The provisions of this Act
 22 apply to customer bills issued on or after August 1, 2002.

23 Section 20. Sourcing rules for mobile telecommunications
 24 services.

25 (a) Notwithstanding the law of this State or any
 26 political subdivision of this State, mobile
 27 telecommunications services provided in a taxing jurisdiction
 28 to a customer, the charges for which are billed by or for the
 29 customer's home service provider, shall be deemed to be
 30 provided by the customer's home service provider.

31 (b) All charges for mobile telecommunications services
 32 that are deemed to be provided by the customer's home service
 33 provider under this Act are authorized to be subjected to

1 tax, charge, or fee by the taxing jurisdictions whose
2 territorial limits encompass the customer's place of primary
3 use, regardless of where the mobile telecommunications
4 services originate, terminate, or pass through, and no other
5 taxing jurisdiction may impose taxes, charges, or fees on
6 charges for such mobile telecommunications services.

7 Section 25. Provision of electronic database.

8 (a) The State may provide an electronic database to a
9 home service provider or, if the State does not provide such
10 an electronic database to home service providers, then the
11 designated database provider may provide an electronic
12 database to a home service provider.

13 (b) The electronic database, whether provided by the
14 State or the designated database provider, shall:

15 (1) be provided in a format approved by the
16 American National Standards Institute's Accredited
17 Standards Committee X12, that, allowing for de minimis
18 deviations, designates for each street address in the
19 State, including to the extent practical, any multiple
20 postal street addresses applicable to one street
21 location, the appropriate taxing jurisdictions, and the
22 appropriate code for each taxing jurisdiction, for each
23 level of taxing jurisdiction, identified by one
24 nationwide standard numeric code described in subsection
25 (c); and

26 (2) also provide the appropriate code for each
27 street address with respect to political subdivisions
28 that are not taxing jurisdictions when reasonably needed
29 to determine the proper taxing jurisdiction.

30 (c) The nationwide standard numeric codes shall contain
31 the same number of numeric digits with each digit or
32 combination of digits referring to the same level of taxing
33 jurisdiction throughout the United States using a format

1 similar to FIPS 55-3 or other appropriate standard approved
2 by the Federation of Tax Administrators and the Multistate
3 Tax Commission, or their successors. Each address shall be
4 provided in standard postal format.

5 Section 30. Notice; updates. If the State or a
6 designated database provider provides or maintains an
7 electronic database described in Section 25, then the State
8 or the electronic database provider shall provide notice of
9 the availability of the then current electronic database, and
10 any subsequent revisions thereof, by publication in the
11 manner normally employed for the publication of informational
12 tax, charge, or fee notices to taxpayers in the State.

13 Section 35. User held harmless. A home service provider
14 using the data contained in an electronic database described
15 in Section 25 shall be held harmless from any tax, charge, or
16 fee liability that otherwise would be due solely as a result
17 of any error or omission in the database provided by the
18 State or designated database provider. The home service
19 provider shall reflect changes made to the database during a
20 calendar quarter not later than 30 days after the end of the
21 calendar quarter if the State or an electronic database
22 provider issues notice of the availability of an electronic
23 database reflecting the changes under Section 30.

24 Section 40. Safe harbor.

25 (a) If neither the State nor a designated database
26 provider provides an electronic database under Section 25, a
27 home service provider shall be held harmless from any tax,
28 charge, or fee liability that otherwise would be due solely
29 as a result of an assignment of a street address to an
30 incorrect taxing jurisdiction if, subject to Section 60, the
31 home service provider employs an enhanced zip code to assign

1 each street address to a specific taxing jurisdiction for
2 each level of taxing jurisdiction and exercises due diligence
3 at each level of taxing jurisdiction to ensure that each such
4 street address is assigned to the correct taxing
5 jurisdiction. If an enhanced zip code overlaps boundaries of
6 taxing jurisdictions of the same level, the home service
7 provider must designate one specific jurisdiction within the
8 enhanced zip code for use in taxing the activity for the
9 enhanced zip code for each level of taxing jurisdiction. Any
10 enhanced zip code assignment changed in accordance with
11 Section 60 is deemed to be in compliance with this Section.

12 (b) For purposes of this Section, there is a rebuttable
13 presumption that a home service provider has exercised due
14 diligence if the home service provider demonstrates that it
15 has:

16 (1) expended reasonable resources to implement and
17 maintain an appropriately detailed electronic database of
18 street address assignments to taxing jurisdictions;

19 (2) implemented and maintained reasonable internal
20 controls to promptly correct misassignments of street
21 addresses to taxing jurisdictions; and

22 (3) used all reasonably obtainable and usable data
23 pertaining to municipal annexations, incorporations,
24 reorganizations, and any other changes in jurisdictional
25 boundaries that materially affect the accuracy of the
26 database.

27 Section 45. Termination of safe harbor. Section 40
28 applies to a home service provider that is in compliance with
29 the requirements of Section 40 until the later of:

30 (1) Eighteen months after the nationwide standard
31 numeric code described in Section 25 has been approved by the
32 Federation of Tax Administrators and the Multistate Tax
33 Commission; or

1 (2) Six months after the State or a designated database
2 provider in the State provides such database as prescribed in
3 Section 25.

4 Section 50. Home service provider required to obtain and
5 maintain customer's place of primary use. A home service
6 provider shall be responsible for obtaining and maintaining
7 the customer's place of primary use, as defined in this Act.
8 Subject to Section 60, and if the home service provider's
9 reliance on information provided by its customer is in good
10 faith, a taxing jurisdiction shall:

11 (1) allow a home service provider to rely on the
12 applicable residential or business street address supplied by
13 the home service provider's customer; and

14 (2) not hold a home service provider liable for any
15 additional taxes, charges, or fees based on a different
16 determination of the place of primary use for taxes, charges,
17 or fees that are customarily passed on to the customer as a
18 separate itemized charge.

19 Section 55. Primary place of use for service contracts
20 in effect on or before July 28, 2002. Except as provided in
21 Section 60, a taxing jurisdiction shall allow a home service
22 provider to treat the address used by the home service
23 provider for tax purposes for any customer under a service
24 contract or agreement in effect on or before July 28, 2002 as
25 that customer's place of primary use for the remaining term
26 of the service contract or agreement, excluding any extension
27 or renewal of the service contract or agreement, for purposes
28 of determining the taxing jurisdictions to which taxes,
29 charges, or fees on charges for mobile telecommunications
30 services are remitted.

31 Section 60. Determination by taxing jurisdiction or State

1 concerning place of primary use; notice to home service
2 provider. A taxing jurisdiction or the State, on behalf of
3 any taxing jurisdiction or taxing jurisdictions within this
4 State, may:

5 (a) determine that the address used for purposes of
6 determining the taxing jurisdictions to which taxes, charges,
7 or fees for mobile telecommunications services are remitted
8 does not meet the definition of place of primary use in this
9 Act and give binding notice to the home service provider to
10 change the place of primary use on a prospective basis from
11 the date of notice of determination if:

12 (1) the taxing jurisdiction obtains the consent of
13 all affected taxing jurisdictions within the State before
14 giving the notice of determination (if the taxing
15 jurisdiction making the determination is not the State);
16 and

17 (2) before the taxing jurisdiction gives the notice
18 of determination, the customer is given an opportunity to
19 demonstrate in accordance with applicable State or local
20 tax, charge, or fee administrative procedures that the
21 address is the customer's place of primary use.

22 (b) determine that the assignment of a taxing
23 jurisdiction by a home service provider under Section 40 does
24 not reflect the correct taxing jurisdiction and give binding
25 notice to the home service provider to change the assignment
26 on a prospective basis from the date of notice of
27 determination if:

28 (1) the taxing jurisdiction obtains the consent of
29 all affected taxing jurisdictions within the State before
30 giving the notice of determination (if the taxing
31 jurisdiction making the determination is not the State);
32 and

33 (2) the home service provider is given an
34 opportunity to demonstrate in accordance with applicable

1 State or local tax, charge, or fee administrative
2 procedures that the assignment reflects the correct
3 taxing jurisdiction.

4 Section 65. No change to authority of taxing
5 jurisdiction to collect tax if customer fails to provide
6 place of primary use. Nothing in this Act modifies, impairs,
7 supersedes, or authorizes the modification, impairment, or
8 supersession of, any law allowing a taxing jurisdiction to
9 collect a tax, charge, or fee from a customer that has failed
10 to provide its place of primary use.

11 Section 70. Tax may be imposed on items not subject to
12 taxation if those items not separately stated. If a taxing
13 jurisdiction does not otherwise subject charges for mobile
14 telecommunications services to taxation and if these charges
15 are aggregated with and not separately stated from charges
16 that are subject to taxation, then the charges for nontaxable
17 mobile telecommunications services may be subject to taxation
18 unless the home service provider can reasonably identify
19 charges not subject to such tax, charge, or fee from its
20 books and records that are kept in the regular course of
21 business.

22 Section 75. Customers and otherwise non-taxable charges.
23 If a taxing jurisdiction does not subject charges for mobile
24 telecommunications services to taxation, a customer may not
25 rely upon the nontaxability of charges for mobile
26 telecommunications services unless the customer's home
27 service provider separately states the charges for nontaxable
28 mobile telecommunications services from taxable charges or
29 the home service provider elects, after receiving a written
30 request from the customer in the form required by the
31 provider, to provide verifiable data based upon the home

1 service provider's books and records that are kept in the
2 regular course of business that reasonably identifies the
3 nontaxable charges.

4 Section 80. Customers' procedures and remedies for
5 correcting taxes and fees.

6 (a) If a customer believes that an amount of tax or
7 assignment of place of primary use or taxing jurisdiction
8 included on a billing is erroneous, the customer shall notify
9 the home service provider in writing. The customer shall
10 include in this written notification the street address for
11 her or his place of primary use, the account name and number
12 for which the customer seeks a correction of the tax
13 assignment, a description of the error asserted by the
14 customer, and any other information that the home service
15 provider reasonably requires to process the request. Within
16 60 days after receiving a notice under this subsection (a),
17 the home service provider shall review its records and the
18 electronic database or enhanced zip code used pursuant to
19 Section 25 or 40 to determine the customer's taxing
20 jurisdiction. If this review shows that the amount of tax,
21 assignment of place of primary use, or taxing jurisdiction is
22 in error, the home service provider shall correct the error
23 and refund or credit the amount of tax erroneously collected
24 from the customer for a period of up to 2 years. If this
25 review shows that the amount of tax, assignment of place of
26 primary use, or taxing jurisdiction is correct, the home
27 service provider shall provide a written explanation to the
28 customer.

29 (b) If the customer is dissatisfied with the response of
30 the home service provider under this Section, the customer
31 may seek a correction or refund or both from the taxing
32 jurisdiction affected.

33 (c) The procedures in this Section shall be the first

1 course of remedy available to customers seeking correction of
 2 assignment of place of primary use or taxing jurisdiction or
 3 a refund of or other compensation for taxes, charges, and
 4 fees erroneously collected by the home service provider, and
 5 no cause of action based upon a dispute arising from these
 6 taxes, charges, or fees shall accrue until a customer has
 7 reasonably exercised the rights and procedures set forth in
 8 this Section.

9 Section 85. Inseverability clause. If a court of
 10 competent jurisdiction enters a final judgment on the merits
 11 that (i) is based on federal law, (ii) is no longer subject
 12 to appeal, and (iii) substantially limits or impairs the
 13 essential elements of Sections 116 through 126 of Title 4 of
 14 the United States Code, then the provisions of this Act are
 15 invalid and have no legal effect as of the date of entry of
 16 such judgment.

17 Section 905. The Telecommunications Excise Tax Act is
 18 amended by changing Section 2 as follows:

19 (35 ILCS 630/2) (from Ch. 120, par. 2002)

20 Sec. 2. As used in this Article, unless the context
 21 clearly requires otherwise:

22 (a) "Gross charge" means the amount paid for the act or
 23 privilege of originating or receiving telecommunications in
 24 this State and for all services and equipment provided in
 25 connection therewith by a retailer, valued in money whether
 26 paid in money or otherwise, including cash, credits, services
 27 and property of every kind or nature, and shall be determined
 28 without any deduction on account of the cost of such
 29 telecommunications, the cost of materials used, labor or
 30 service costs or any other expense whatsoever. In case
 31 credit is extended, the amount thereof shall be included only

1 as and when paid. "Gross charges" for private line service
2 shall include charges imposed at each channel point within
3 this State, charges for the channel mileage between each
4 channel point within this State, and charges for that portion
5 of the interstate inter-office channel provided within
6 Illinois. However, "gross charges" shall not include:

7 (1) any amounts added to a purchaser's bill because
8 of a charge made pursuant to (i) the tax imposed by this
9 Article; (ii) charges added to customers' bills pursuant
10 to the provisions of Sections 9-221 or 9-222 of the
11 Public Utilities Act, as amended, or any similar charges
12 added to customers' bills by retailers who are not
13 subject to rate regulation by the Illinois Commerce
14 Commission for the purpose of recovering any of the tax
15 liabilities or other amounts specified in such provisions
16 of such Act; or (iii) the tax imposed by Section 4251 of
17 the Internal Revenue Code;

18 (2) charges for a sent collect telecommunication
19 received outside of the State;

20 (3) charges for leased time on equipment or charges
21 for the storage of data or information for subsequent
22 retrieval or the processing of data or information
23 intended to change its form or content. Such equipment
24 includes, but is not limited to, the use of calculators,
25 computers, data processing equipment, tabulating
26 equipment or accounting equipment and also includes the
27 usage of computers under a time-sharing agreement;

28 (4) charges for customer equipment, including such
29 equipment that is leased or rented by the customer from
30 any source, wherein such charges are disaggregated and
31 separately identified from other charges;

32 (5) charges to business enterprises certified under
33 Section 9-222.1 of the Public Utilities Act, as amended,
34 to the extent of such exemption and during the period of

1 time specified by the Department of Commerce and
2 Community Affairs;

3 (6) charges for telecommunications and all services
4 and equipment provided in connection therewith between a
5 parent corporation and its wholly owned subsidiaries or
6 between wholly owned subsidiaries when the tax imposed
7 under this Article has already been paid to a retailer
8 and only to the extent that the charges between the
9 parent corporation and wholly owned subsidiaries or
10 between wholly owned subsidiaries represent expense
11 allocation between the corporations and not the
12 generation of profit for the corporation rendering such
13 service;

14 (7) bad debts. Bad debt means any portion of a debt
15 that is related to a sale at retail for which gross
16 charges are not otherwise deductible or excludable that
17 has become worthless or uncollectable, as determined
18 under applicable federal income tax standards. If the
19 portion of the debt deemed to be bad is subsequently
20 paid, the retailer shall report and pay the tax on that
21 portion during the reporting period in which the payment
22 is made;

23 (8) charges paid by inserting coins in
24 coin-operated telecommunication devices;

25 (9) amounts paid by telecommunications retailers
26 under the Telecommunications Municipal Infrastructure
27 Maintenance Fee Act.

28 (b) "Amount paid" means the amount charged to the
29 taxpayer's service address in this State regardless of where
30 such amount is billed or paid.

31 (c) "Telecommunications", in addition to the meaning
32 ordinarily and popularly ascribed to it, includes, without
33 limitation, messages or information transmitted through use
34 of local, toll and wide area telephone service; private line

1 services; channel services; telegraph services;
2 teletypewriter; computer exchange services; cellular mobile
3 telecommunications service; specialized mobile radio;
4 stationary two way radio; paging service; or any other form
5 of mobile and portable one-way or two-way communications; or
6 any other transmission of messages or information by
7 electronic or similar means, between or among points by wire,
8 cable, fiber-optics, laser, microwave, radio, satellite or
9 similar facilities. As used in this Act, "private line" means
10 a dedicated non-traffic sensitive service for a single
11 customer, that entitles the customer to exclusive or priority
12 use of a communications channel or group of channels, from
13 one or more specified locations to one or more other
14 specified locations. The definition of "telecommunications"
15 shall not include value added services in which computer
16 processing applications are used to act on the form, content,
17 code and protocol of the information for purposes other than
18 transmission. "Telecommunications" shall not include
19 purchases of telecommunications by a telecommunications
20 service provider for use as a component part of the service
21 provided by him to the ultimate retail consumer who
22 originates or terminates the taxable end-to-end
23 communications. Carrier access charges, right of access
24 charges, charges for use of inter-company facilities, and all
25 telecommunications resold in the subsequent provision of,
26 used as a component of, or integrated into end-to-end
27 telecommunications service shall be non-taxable as sales for
28 resale.

29 (d) "Interstate telecommunications" means all
30 telecommunications that either originate or terminate outside
31 this State.

32 (e) "Intrastate telecommunications" means all
33 telecommunications that originate and terminate within this
34 State.

1 (f) "Department" means the Department of Revenue of the
2 State of Illinois.

3 (g) "Director" means the Director of Revenue for the
4 Department of Revenue of the State of Illinois.

5 (h) "Taxpayer" means a person who individually or
6 through his agents, employees or permittees engages in the
7 act or privilege of originating or receiving
8 telecommunications in this State and who incurs a tax
9 liability under this Article.

10 (i) "Person" means any natural individual, firm, trust,
11 estate, partnership, association, joint stock company, joint
12 venture, corporation, limited liability company, or a
13 receiver, trustee, guardian or other representative appointed
14 by order of any court, the Federal and State governments,
15 including State universities created by statute or any city,
16 town, county or other political subdivision of this State.

17 (j) "Purchase at retail" means the acquisition,
18 consumption or use of telecommunication through a sale at
19 retail.

20 (k) "Sale at retail" means the transmitting, supplying
21 or furnishing of telecommunications and all services and
22 equipment provided in connection therewith for a
23 consideration to persons other than the Federal and State
24 governments, and State universities created by statute and
25 other than between a parent corporation and its wholly owned
26 subsidiaries or between wholly owned subsidiaries for their
27 use or consumption and not for resale.

28 (l) "Retailer" means and includes every person engaged
29 in the business of making sales at retail as defined in this
30 Article. The Department may, in its discretion, upon
31 application, authorize the collection of the tax hereby
32 imposed by any retailer not maintaining a place of business
33 within this State, who, to the satisfaction of the
34 Department, furnishes adequate security to insure collection

1 and payment of the tax. Such retailer shall be issued,
2 without charge, a permit to collect such tax. When so
3 authorized, it shall be the duty of such retailer to collect
4 the tax upon all of the gross charges for telecommunications
5 in this State in the same manner and subject to the same
6 requirements as a retailer maintaining a place of business
7 within this State. The permit may be revoked by the
8 Department at its discretion.

9 (m) "Retailer maintaining a place of business in this
10 State", or any like term, means and includes any retailer
11 having or maintaining within this State, directly or by a
12 subsidiary, an office, distribution facilities, transmission
13 facilities, sales office, warehouse or other place of
14 business, or any agent or other representative operating
15 within this State under the authority of the retailer or its
16 subsidiary, irrespective of whether such place of business or
17 agent or other representative is located here permanently or
18 temporarily, or whether such retailer or subsidiary is
19 licensed to do business in this State.

20 (n) "Service address" means the location of
21 telecommunications equipment from which the
22 telecommunications services are originated or at which
23 telecommunications services are received by a taxpayer. In
24 the event this may not be a defined location, as in the case
25 of mobile phones, paging systems, maritime systems, service
26 address means the customer's place of primary use as defined
27 in the Mobile Telecommunications Sourcing Conformity Act.
28 For air-to-ground systems and the like, service address shall
29 mean the location of a taxpayer's primary use of the
30 telecommunications equipment as defined by telephone number,
31 authorization code, or location in Illinois where bills are
32 sent.

33 (o) "Prepaid telephone calling arrangements" mean the
34 right to exclusively purchase telephone or telecommunications

1 services that must be paid for in advance and enable the
2 origination of one or more intrastate, interstate, or
3 international telephone calls or other telecommunications
4 using an access number, an authorization code, or both,
5 whether manually or electronically dialed, for which payment
6 to a retailer must be made in advance, provided that, unless
7 recharged, no further service is provided once that prepaid
8 amount of service has been consumed. Prepaid telephone
9 calling arrangements include the recharge of a prepaid
10 calling arrangement. For purposes of this subsection,
11 "recharge" means the purchase of additional prepaid telephone
12 or telecommunications services whether or not the purchaser
13 acquires a different access number or authorization code.
14 "Prepaid telephone calling arrangement" does not include an
15 arrangement whereby a customer purchases a payment card and
16 pursuant to which the service provider reflects the amount of
17 such purchase as a credit on an invoice issued to that
18 customer under an existing subscription plan.

19 (Source: P.A. 90-562, eff. 12-16-97; 91-870, eff. 6-22-00.)

20 Section 910. The Telecommunications Municipal
21 Infrastructure Maintenance Fee Act is amended by changing
22 Section 10 as follows:

23 (35 ILCS 635/10)

24 Sec. 10. Definitions.

25 (a) "Gross charges" means the amount paid to a
26 telecommunications retailer for the act or privilege of
27 originating or receiving telecommunications in this State or
28 the municipality imposing the fee under this Act, as the
29 context requires, and for all services rendered in connection
30 therewith, valued in money whether paid in money or
31 otherwise, including cash, credits, services, and property of
32 every kind or nature, and shall be determined without any

1 deduction on account of the cost of such telecommunications,
2 the cost of the materials used, labor or service costs, or
3 any other expense whatsoever. In case credit is extended,
4 the amount thereof shall be included only as and when paid.
5 "Gross charges" for private line service shall include
6 charges imposed at each channel point within this State or
7 the municipality imposing the fee under this Act, charges for
8 the channel mileage between each channel point within this
9 State or the municipality imposing the fee under this Act,
10 and charges for that portion of the interstate inter-office
11 channel provided within Illinois or the municipality imposing
12 the fee under this Act. However, "gross charges" shall not
13 include:

14 (1) any amounts added to a purchaser's bill because
15 of a charge made under: (i) the fee imposed by this
16 Section, (ii) additional charges added to a purchaser's
17 bill under Section 9-221 or 9-222 of the Public Utilities
18 Act, (iii) amounts collected under Section 8-11-17 of the
19 Illinois Municipal Code, (iv) the tax imposed by the
20 Telecommunications Excise Tax Act, (v) 911 surcharges, or
21 (vi) the tax imposed by Section 4251 of the Internal
22 Revenue Code;

23 (2) charges for a sent collect telecommunication
24 received outside of this State or the municipality
25 imposing the fee, as the context requires;

26 (3) charges for leased time on equipment or charges
27 for the storage of data or information or subsequent
28 retrieval or the processing of data or information
29 intended to change its form or content. Such equipment
30 includes, but is not limited to, the use of calculators,
31 computers, data processing equipment, tabulating
32 equipment, or accounting equipment and also includes the
33 usage of computers under a time-sharing agreement;

34 (4) charges for customer equipment, including such

1 equipment that is leased or rented by the customer from
2 any source, wherein such charges are disaggregated and
3 separately identified from other charges;

4 (5) charges to business enterprises certified under
5 Section 9-222.1 of the Public Utilities Act to the extent
6 of such exemption and during the period of time specified
7 by the Department of Commerce and Community Affairs or by
8 the municipality imposing the fee under the Act, as the
9 context requires;

10 (6) charges for telecommunications and all services
11 and equipment provided in connection therewith between a
12 parent corporation and its wholly owned subsidiaries or
13 between wholly owned subsidiaries, and only to the extent
14 that the charges between the parent corporation and
15 wholly owned subsidiaries or between wholly owned
16 subsidiaries represent expense allocation between the
17 corporations and not the generation of profit other than
18 a regulatory required profit for the corporation
19 rendering such services;

20 (7) bad debts ("bad debt" means any portion of a
21 debt that is related to a sale at retail for which gross
22 charges are not otherwise deductible or excludable that
23 has become worthless or uncollectible, as determined
24 under applicable federal income tax standards; if the
25 portion of the debt deemed to be bad is subsequently
26 paid, the retailer shall report and pay the tax on that
27 portion during the reporting period in which the payment
28 is made);

29 (8) charges paid by inserting coins in
30 coin-operated telecommunication devices; or

31 (9) charges for telecommunications and all services
32 and equipment provided to a municipality imposing the
33 infrastructure maintenance fee.

34 (a-5) "Department" means the Illinois Department of

1 Revenue.

2 (b) "Telecommunications" includes, but is not limited
3 to, messages or information transmitted through use of local,
4 toll, and wide area telephone service, channel services,
5 telegraph services, teletypewriter service, computer exchange
6 services, private line services, specialized mobile radio
7 services, or any other transmission of messages or
8 information by electronic or similar means, between or among
9 points by wire, cable, fiber optics, laser, microwave, radio,
10 satellite, or similar facilities. Unless the context clearly
11 requires otherwise, "telecommunications" shall also include
12 wireless telecommunications as hereinafter defined.
13 "Telecommunications" shall not include value added services
14 in which computer processing applications are used to act on
15 the form, content, code, and protocol of the information for
16 purposes other than transmission. "Telecommunications" shall
17 not include purchase of telecommunications by a
18 telecommunications service provider for use as a component
19 part of the service provided by him or her to the ultimate
20 retail consumer who originates or terminates the end-to-end
21 communications. Retailer access charges, right of access
22 charges, charges for use of intercompany facilities, and all
23 telecommunications resold in the subsequent provision and
24 used as a component of, or integrated into, end-to-end
25 telecommunications service shall not be included in gross
26 charges as sales for resale. "Telecommunications" shall not
27 include the provision of cable services through a cable
28 system as defined in the Cable Communications Act of 1984 (47
29 U.S.C. Sections 521 and following) as now or hereafter
30 amended or through an open video system as defined in the
31 Rules of the Federal Communications Commission (47 C.D.F.
32 76.1550 and following) as now or hereafter amended. Beginning
33 January 1, 2001, prepaid telephone calling arrangements shall
34 not be considered "telecommunications" subject to the tax

1 imposed under this Act. For purposes of this Section,
2 "prepaid telephone calling arrangements" means that term as
3 defined in Section 2-27 of the Retailers' Occupation Tax Act.

4 (c) "Wireless telecommunications" includes cellular
5 mobile telephone services, personal wireless services as
6 defined in Section 704(C) of the Telecommunications Act of
7 1996 (Public Law No. 104-104) as now or hereafter amended,
8 including all commercial mobile radio services, and paging
9 services.

10 (d) "Telecommunications retailer" or "retailer" or
11 "carrier" means and includes every person engaged in the
12 business of making sales of telecommunications at retail as
13 defined in this Section. The Illinois Department of Revenue
14 or the municipality imposing the fee, as the case may be,
15 may, in its discretion, upon applications, authorize the
16 collection of the fee hereby imposed by any retailer not
17 maintaining a place of business within this State, who, to
18 the satisfaction of the Department or municipality, furnishes
19 adequate security to insure collection and payment of the
20 fee. When so authorized, it shall be the duty of such
21 retailer to pay the fee upon all of the gross charges for
22 telecommunications in the same manner and subject to the same
23 requirements as a retailer maintaining a place of business
24 within the State or municipality imposing the fee.

25 (e) "Retailer maintaining a place of business in this
26 State", or any like term, means and includes any retailer
27 having or maintaining within this State, directly or by a
28 subsidiary, an office, distribution facilities, transmission
29 facilities, sales office, warehouse, or other place of
30 business, or any agent or other representative operating
31 within this State under the authority of the retailer or its
32 subsidiary, irrespective of whether such place of business or
33 agent or other representative is located here permanently or
34 temporarily, or whether such retailer or subsidiary is

1 licensed to do business in this State.

2 (f) "Sale of telecommunications at retail" means the
3 transmitting, supplying, or furnishing of telecommunications
4 and all services rendered in connection therewith for a
5 consideration, other than between a parent corporation and
6 its wholly owned subsidiaries or between wholly owned
7 subsidiaries, when the gross charge made by one such
8 corporation to another such corporation is not greater than
9 the gross charge paid to the retailer for their use or
10 consumption and not for sale.

11 (g) "Service address" means the location of
12 telecommunications equipment from which telecommunications
13 services are originated or at which telecommunications
14 services are received. If this is not a defined location, as
15 in the case of wireless telecommunications, paging systems,
16 maritime systems, service address means the customer's place
17 of primary use as defined in the Mobile Telecommunications
18 Sourcing Conformity Act. For air-to-ground systems, and the
19 like, "service address" shall mean the location of the
20 customer's primary use of the telecommunications equipment as
21 defined by the location in Illinois where bills are sent.

22 (Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97;
23 91-870, eff. 6-22-00.)

24 Section 915. The Emergency Telephone System Act is
25 amended by changing Section 15.3 as follows:

26 (50 ILCS 750/15.3) (from Ch. 134, par. 45.3)

27 Sec. 15.3. (a) The corporate authorities of any
28 municipality or any county may, subject to the limitations of
29 subsections (c), (d), and (h), and in addition to any tax
30 levied pursuant to Section 8-11-2 of the Illinois Municipal
31 Code, impose a monthly surcharge on billed subscribers of
32 network connection provided by telecommunication carriers

1 engaged in the business of transmitting messages by means of
2 electricity originating within the corporate limits of the
3 municipality or county imposing the surcharge at a rate per
4 network connection determined in accordance with subsection
5 (c). For mobile telecommunications services, if a surcharge
6 is imposed it shall be imposed based upon the municipality or
7 county that encompasses the customer's place of primary use
8 as defined in the Mobile Telecommunications Sourcing
9 Conformity Act. A municipality may enter into an
10 intergovernmental agreement with any county in which it is
11 partially located, when the county has adopted an ordinance
12 to impose a surcharge as provided in subsection (c), to
13 include that portion of the municipality lying outside the
14 county in that county's surcharge referendum. If the
15 county's surcharge referendum is approved, the portion of the
16 municipality identified in the intergovernmental agreement
17 shall automatically be disconnected from the county in which
18 it lies and connected to the county which approved the
19 referendum for purposes of a surcharge on telecommunications
20 carriers.

21 (b) For purposes of computing the surcharge imposed by
22 subsection (a), the network connections to which the
23 surcharge shall apply shall be those in-service network
24 connections, other than those network connections assigned to
25 the municipality or county, where the service address for
26 each such network connection or connections is located within
27 the corporate limits of the municipality or county levying
28 the surcharge. Except for mobile telecommunication services,
29 the "service address" shall mean the location of the primary
30 use of the network connection or connections. For mobile
31 telecommunication services, "service address" means the
32 customer's place of primary use as defined in the Mobile
33 Telecommunications Sourcing Conformity Act. With respect to
34 network connections provided for use with pay telephone

1 services for which there is no billed subscriber, the
2 telecommunications carrier providing the network connection
3 shall be deemed to be its own billed subscriber for purposes
4 of applying the surcharge.

5 (c) Upon the passage of an ordinance to impose a
6 surcharge under this Section the clerk of the municipality or
7 county shall certify the question of whether the surcharge
8 may be imposed to the proper election authority who shall
9 submit the public question to the electors of the
10 municipality or county in accordance with the general
11 election law; provided that such question shall not be
12 submitted at a consolidated primary election. The public
13 question shall be in substantially the following form:

14 -----
15 Shall the county (or city, village
16 or incorporated town) of.....impose YES
17 a surcharge of up to...¢ per month per
18 network connection, which surcharge will
19 be added to the monthly bill you receive -----
20 for telephone or telecommunications
21 charges, for the purpose of installing
22 (or improving) a 9-1-1 Emergency NO
23 Telephone System?
24 -----

25 If a majority of the votes cast upon the public question
26 are in favor thereof, the surcharge shall be imposed.

27 However, if a Joint Emergency Telephone System Board is
28 to be created pursuant to an intergovernmental agreement
29 under Section 15.4, the ordinance to impose the surcharge
30 shall be subject to the approval of a majority of the total
31 number of votes cast upon the public question by the electors
32 of all of the municipalities or counties, or combination
33 thereof, that are parties to the intergovernmental agreement.

34 The referendum requirement of this subsection (c) shall

1 not apply to any municipality with a population over 500,000
2 or to any county in which a proposition as to whether a
3 sophisticated 9-1-1 Emergency Telephone System should be
4 installed in the county, at a cost not to exceed a specified
5 monthly amount per network connection, has previously been
6 approved by a majority of the electors of the county voting
7 on the proposition at an election conducted before the
8 effective date of this amendatory Act of 1987.

9 (d) A county may not impose a surcharge, unless
10 requested by a municipality, in any incorporated area which
11 has previously approved a surcharge as provided in subsection
12 (c) or in any incorporated area where the corporate
13 authorities of the municipality have previously entered into
14 a binding contract or letter of intent with a
15 telecommunications carrier to provide sophisticated 9-1-1
16 service through municipal funds.

17 (e) A municipality or county may at any time by
18 ordinance change the rate of the surcharge imposed under this
19 Section if the new rate does not exceed the rate specified in
20 the referendum held pursuant to subsection (c).

21 (f) The surcharge authorized by this Section shall be
22 collected from the subscriber by the telecommunications
23 carrier providing the subscriber the network connection as a
24 separately stated item on the subscriber's bill.

25 (g) The amount of surcharge collected by the
26 telecommunications carrier shall be paid to the particular
27 municipality or county or Joint Emergency Telephone System
28 Board not later than 30 days after the surcharge is
29 collected, net of any network or other 9-1-1 or sophisticated
30 9-1-1 system charges then due the particular
31 telecommunications carrier, as shown on an itemized bill.
32 The telecommunications carrier collecting the surcharge shall
33 also be entitled to deduct 3% of the gross amount of
34 surcharge collected to reimburse the telecommunications

1 carrier for the expense of accounting and collecting the
2 surcharge.

3 (h) A municipality with a population over 500,000 may
4 not impose a monthly surcharge in excess of \$1.25 per network
5 connection.

6 (i) Any municipality or county or joint emergency
7 telephone system board that has imposed a surcharge pursuant
8 to this Section prior to the effective date of this
9 amendatory Act of 1990 shall hereafter impose the surcharge
10 in accordance with subsection (b) of this Section.

11 (j) The corporate authorities of any municipality or
12 county may issue, in accordance with Illinois law, bonds,
13 notes or other obligations secured in whole or in part by the
14 proceeds of the surcharge described in this Section.
15 Notwithstanding any change in law subsequent to the issuance
16 of any bonds, notes or other obligations secured by the
17 surcharge, every municipality or county issuing such bonds,
18 notes or other obligations shall be authorized to impose the
19 surcharge as though the laws relating to the imposition of
20 the surcharge in effect at the time of issuance of the bonds,
21 notes or other obligations were in full force and effect
22 until the bonds, notes or other obligations are paid in full.
23 The State of Illinois pledges and agrees that it will not
24 limit or alter the rights and powers vested in municipalities
25 and counties by this Section to impose the surcharge so as to
26 impair the terms of or affect the security for bonds, notes
27 or other obligations secured in whole or in part with the
28 proceeds of the surcharge described in this Section.

29 (k) Any surcharge collected by or imposed on a
30 telecommunications carrier pursuant to this Section shall be
31 held to be a special fund in trust for the municipality,
32 county or Joint Emergency Telephone Board imposing the
33 surcharge. Except for the 3% deduction provided in
34 subsection (g) above, the special fund shall not be subject

1 to the claims of creditors of the telecommunication carrier.
2 (Source: P.A. 86-101; 86-1344.)

3 Section 920. The Illinois Municipal Code is amended by
4 changing Section 8-11-2 as follows:

5 (65 ILCS 5/8-11-2) (from Ch. 24, par. 8-11-2)

6 Sec. 8-11-2. The corporate authorities of any
7 municipality may tax any or all of the following occupations
8 or privileges:

9 1. Persons engaged in the business of transmitting
10 messages by means of electricity or radio magnetic waves,
11 or fiber optics, at a rate not to exceed 5% of the gross
12 receipts from that business originating within the
13 corporate limits of the municipality. Beginning January
14 1, 2001, prepaid telephone calling arrangements shall not
15 be subject to the tax imposed under this Section. For
16 purposes of this Section, "prepaid telephone calling
17 arrangements" means that term as defined in Section 2-27
18 of the Retailers' Occupation Tax Act.

19 2. Persons engaged in the business of distributing,
20 supplying, furnishing, or selling gas for use or
21 consumption within the corporate limits of a municipality
22 of 500,000 or fewer population, and not for resale, at a
23 rate not to exceed 5% of the gross receipts therefrom.

24 2a. Persons engaged in the business of
25 distributing, supplying, furnishing, or selling gas for
26 use or consumption within the corporate limits of a
27 municipality of over 500,000 population, and not for
28 resale, at a rate not to exceed 8% of the gross receipts
29 therefrom. If imposed, this tax shall be paid in monthly
30 payments.

31 3. The privilege of using or consuming electricity
32 acquired in a purchase at retail and used or consumed

1 within the corporate limits of the municipality at rates
2 not to exceed the following maximum rates, calculated on
3 a monthly basis for each purchaser:

4 (i) For the first 2,000 kilowatt-hours used or
5 consumed in a month; 0.61 cents per kilowatt-hour;

6 (ii) For the next 48,000 kilowatt-hours used or
7 consumed in a month; 0.40 cents per kilowatt-hour;

8 (iii) For the next 50,000 kilowatt-hours used or
9 consumed in a month; 0.36 cents per kilowatt-hour;

10 (iv) For the next 400,000 kilowatt-hours used or
11 consumed in a month; 0.35 cents per kilowatt-hour;

12 (v) For the next 500,000 kilowatt-hours used or
13 consumed in a month; 0.34 cents per kilowatt-hour;

14 (vi) For the next 2,000,000 kilowatt-hours used or
15 consumed in a month; 0.32 cents per kilowatt-hour;

16 (vii) For the next 2,000,000 kilowatt-hours used or
17 consumed in a month; 0.315 cents per kilowatt-hour;

18 (viii) For the next 5,000,000 kilowatt-hours used
19 or consumed in a month; 0.31 cents per kilowatt-hour;

20 (ix) For the next 10,000,000 kilowatt-hours used or
21 consumed in a month; 0.305 cents per kilowatt-hour; and

22 (x) For all electricity used or consumed in excess
23 of 20,000,000 kilowatt-hours in a month, 0.30 cents per
24 kilowatt-hour.

25 If a municipality imposes a tax at rates lower than
26 either the maximum rates specified in this Section or the
27 alternative maximum rates promulgated by the Illinois
28 Commerce Commission, as provided below, the tax rates
29 shall be imposed upon the kilowatt hour categories set
30 forth above with the same proportional relationship as
31 that which exists among such maximum rates.
32 Notwithstanding the foregoing, until December 31, 2008,
33 no municipality shall establish rates that are in excess
34 of rates reasonably calculated to produce revenues that

1 equal the maximum total revenues such municipality could
2 have received under the tax authorized by this
3 subparagraph in the last full calendar year prior to the
4 effective date of Section 65 of this amendatory Act of
5 1997; provided that this shall not be a limitation on the
6 amount of tax revenues actually collected by such
7 municipality.

8 Upon the request of the corporate authorities of a
9 municipality, the Illinois Commerce Commission shall,
10 within 90 days after receipt of such request, promulgate
11 alternative rates for each of these kilowatt-hour
12 categories that will reflect, as closely as reasonably
13 practical for that municipality, the distribution of the
14 tax among classes of purchasers as if the tax were based
15 on a uniform percentage of the purchase price of
16 electricity. A municipality that has adopted an
17 ordinance imposing a tax pursuant to subparagraph 3 as it
18 existed prior to the effective date of Section 65 of this
19 amendatory Act of 1997 may, rather than imposing the tax
20 permitted by this amendatory Act of 1997, continue to
21 impose the tax pursuant to that ordinance with respect to
22 gross receipts received from residential customers
23 through July 31, 1999, and with respect to gross receipts
24 from any non-residential customer until the first bill
25 issued to such customer for delivery services in
26 accordance with Section 16-104 of the Public Utilities
27 Act but in no case later than the last bill issued to
28 such customer before December 31, 2000. No ordinance
29 imposing the tax permitted by this amendatory Act of 1997
30 shall be applicable to any non-residential customer until
31 the first bill issued to such customer for delivery
32 services in accordance with Section 16-104 of the Public
33 Utilities Act but in no case later than the last bill
34 issued to such non-residential customer before December

1 31, 2000.

2 4. Persons engaged in the business of distributing,
3 supplying, furnishing, or selling water for use or
4 consumption within the corporate limits of the
5 municipality, and not for resale, at a rate not to exceed
6 5% of the gross receipts therefrom.

7 None of the taxes authorized by this Section may be
8 imposed with respect to any transaction in interstate
9 commerce or otherwise to the extent to which the business or
10 privilege may not, under the constitution and statutes of the
11 United States, be made the subject of taxation by this State
12 or any political sub-division thereof; nor shall any persons
13 engaged in the business of distributing, supplying,
14 furnishing, selling or transmitting gas, water, or
15 electricity, or engaged in the business of transmitting
16 messages, or using or consuming electricity acquired in a
17 purchase at retail, be subject to taxation under the
18 provisions of this Section for those transactions that are or
19 may become subject to taxation under the provisions of the
20 "Municipal Retailers' Occupation Tax Act" authorized by
21 Section 8-11-1; nor shall any tax authorized by this Section
22 be imposed upon any person engaged in a business or on any
23 privilege unless the tax is imposed in like manner and at the
24 same rate upon all persons engaged in businesses of the same
25 class in the municipality, whether privately or municipally
26 owned or operated, or exercising the same privilege within
27 the municipality.

28 Any of the taxes enumerated in this Section may be in
29 addition to the payment of money, or value of products or
30 services furnished to the municipality by the taxpayer as
31 compensation for the use of its streets, alleys, or other
32 public places, or installation and maintenance therein,
33 thereon or thereunder of poles, wires, pipes or other
34 equipment used in the operation of the taxpayer's business.

1 (a) If the corporate authorities of any home rule
2 municipality have adopted an ordinance that imposed a tax on
3 public utility customers, between July 1, 1971, and October
4 1, 1981, on the good faith belief that they were exercising
5 authority pursuant to Section 6 of Article VII of the 1970
6 Illinois Constitution, that action of the corporate
7 authorities shall be declared legal and valid,
8 notwithstanding a later decision of a judicial tribunal
9 declaring the ordinance invalid. No municipality shall be
10 required to rebate, refund, or issue credits for any taxes
11 described in this paragraph, and those taxes shall be deemed
12 to have been levied and collected in accordance with the
13 Constitution and laws of this State.

14 (b) In any case in which (i) prior to October 19, 1979,
15 the corporate authorities of any municipality have adopted an
16 ordinance imposing a tax authorized by this Section (or by
17 the predecessor provision of the "Revised Cities and Villages
18 Act") and have explicitly or in practice interpreted gross
19 receipts to include either charges added to customers' bills
20 pursuant to the provision of paragraph (a) of Section 36 of
21 the Public Utilities Act or charges added to customers' bills
22 by taxpayers who are not subject to rate regulation by the
23 Illinois Commerce Commission for the purpose of recovering
24 any of the tax liabilities or other amounts specified in such
25 paragraph (a) of Section 36 of that Act, and (ii) on or after
26 October 19, 1979, a judicial tribunal has construed gross
27 receipts to exclude all or part of those charges, then
28 neither those municipality nor any taxpayer who paid the tax
29 shall be required to rebate, refund, or issue credits for any
30 tax imposed or charge collected from customers pursuant to
31 the municipality's interpretation prior to October 19, 1979.
32 This paragraph reflects a legislative finding that it would
33 be contrary to the public interest to require a municipality
34 or its taxpayers to refund taxes or charges attributable to

1 the municipality's more inclusive interpretation of gross
2 receipts prior to October 19, 1979, and is not intended to
3 prescribe or limit judicial construction of this Section. The
4 legislative finding set forth in this subsection does not
5 apply to taxes imposed after the effective date of this
6 amendatory Act of 1995.

7 (c) The tax authorized by subparagraph 3 shall be
8 collected from the purchaser by the person maintaining a
9 place of business in this State who delivers the electricity
10 to the purchaser. This tax shall constitute a debt of the
11 purchaser to the person who delivers the electricity to the
12 purchaser and if unpaid, is recoverable in the same manner as
13 the original charge for delivering the electricity. Any tax
14 required to be collected pursuant to an ordinance authorized
15 by subparagraph 3 and any such tax collected by a person
16 delivering electricity shall constitute a debt owed to the
17 municipality by such person delivering the electricity,
18 provided, that the person delivering electricity shall be
19 allowed credit for such tax related to deliveries of
20 electricity the charges for which are written off as
21 uncollectible, and provided further, that if such charges are
22 thereafter collected, the delivering supplier shall be
23 obligated to remit such tax. For purposes of this subsection
24 (c), any partial payment not specifically identified by the
25 purchaser shall be deemed to be for the delivery of
26 electricity. Persons delivering electricity shall collect the
27 tax from the purchaser by adding such tax to the gross charge
28 for delivering the electricity, in the manner prescribed by
29 the municipality. Persons delivering electricity shall also
30 be authorized to add to such gross charge an amount equal to
31 3% of the tax to reimburse the person delivering electricity
32 for the expenses incurred in keeping records, billing
33 customers, preparing and filing returns, remitting the tax
34 and supplying data to the municipality upon request. If the

1 person delivering electricity fails to collect the tax from
2 the purchaser, then the purchaser shall be required to pay
3 the tax directly to the municipality in the manner prescribed
4 by the municipality. Persons delivering electricity who file
5 returns pursuant to this paragraph (c) shall, at the time of
6 filing such return, pay the municipality the amount of the
7 tax collected pursuant to subparagraph 3.

8 (d) For the purpose of the taxes enumerated in this
9 Section:

10 "Gross receipts" means the consideration received for the
11 transmission of messages, the consideration received for
12 distributing, supplying, furnishing or selling gas for use or
13 consumption and not for resale, and the consideration
14 received for distributing, supplying, furnishing or selling
15 water for use or consumption and not for resale, and for all
16 services rendered in connection therewith valued in money,
17 whether received in money or otherwise, including cash,
18 credit, services and property of every kind and material and
19 for all services rendered therewith, and shall be determined
20 without any deduction on account of the cost of transmitting
21 such messages, without any deduction on account of the cost
22 of the service, product or commodity supplied, the cost of
23 materials used, labor or service cost, or any other expenses
24 whatsoever. "Gross receipts" shall not include that portion
25 of the consideration received for distributing, supplying,
26 furnishing, or selling gas or water to, or for the
27 transmission of messages for, business enterprises described
28 in paragraph (e) of this Section to the extent and during the
29 period in which the exemption authorized by paragraph (e) is
30 in effect or for school districts or units of local
31 government described in paragraph (f) during the period in
32 which the exemption authorized in paragraph (f) is in effect.
33 "Gross receipts" shall not include amounts paid by
34 telecommunications retailers under the Telecommunications

1 Municipal Infrastructure Maintenance Fee Act.

2 For utility bills issued on or after May 1, 1996, but
3 before May 1, 1997, and for receipts from those utility
4 bills, "gross receipts" does not include one-third of (i)
5 amounts added to customers' bills under Section 9-222 of the
6 Public Utilities Act, or (ii) amounts added to customers'
7 bills by taxpayers who are not subject to rate regulation by
8 the Illinois Commerce Commission for the purpose of
9 recovering any of the tax liabilities described in Section
10 9-222 of the Public Utilities Act. For utility bills issued
11 on or after May 1, 1997, but before May 1, 1998, and for
12 receipts from those utility bills, "gross receipts" does not
13 include two-thirds of (i) amounts added to customers' bills
14 under Section 9-222 of the Public Utilities Act, or (ii)
15 amount added to customers' bills by taxpayers who are not
16 subject to rate regulation by the Illinois Commerce
17 Commission for the purpose of recovering any of the tax
18 liabilities described in Section 9-222 of the Public
19 Utilities Act. For utility bills issued on or after May 1,
20 1998, and for receipts from those utility bills, "gross
21 receipts" does not include (i) amounts added to customers'
22 bills under Section 9-222 of the Public Utilities Act, or
23 (ii) amounts added to customers' bills by taxpayers who are
24 not subject to rate regulation by the Illinois Commerce
25 Commission for the purpose of recovering any of the tax
26 liabilities described in Section 9-222 of the Public
27 Utilities Act.

28 For purposes of this Section "gross receipts" shall not
29 include (i) amounts added to customers' bills under Section
30 9-221 of the Public Utilities Act, or (ii) charges added to
31 customers' bills to recover the surcharge imposed under the
32 Emergency Telephone System Act. This paragraph is not
33 intended to nor does it make any change in the meaning of
34 "gross receipts" for the purposes of this Section, but is

1 intended to remove possible ambiguities, thereby confirming
2 the existing meaning of "gross receipts" prior to the
3 effective date of this amendatory Act of 1995.

4 The words "transmitting messages", in addition to the
5 usual and popular meaning of person to person communication,
6 shall include the furnishing, for a consideration, of
7 services or facilities (whether owned or leased), or both, to
8 persons in connection with the transmission of messages where
9 those persons do not, in turn, receive any consideration in
10 connection therewith, but shall not include such furnishing
11 of services or facilities to persons for the transmission of
12 messages to the extent that any such services or facilities
13 for the transmission of messages are furnished for a
14 consideration, by those persons to other persons, for the
15 transmission of messages.

16 "Person" as used in this Section means any natural
17 individual, firm, trust, estate, partnership, association,
18 joint stock company, joint adventure, corporation, limited
19 liability company, municipal corporation, the State or any of
20 its political subdivisions, any State university created by
21 statute, or a receiver, trustee, guardian or other
22 representative appointed by order of any court.

23 "Person maintaining a place of business in this State"
24 shall mean any person having or maintaining within this
25 State, directly or by a subsidiary or other affiliate, an
26 office, generation facility, distribution facility,
27 transmission facility, sales office or other place of
28 business, or any employee, agent, or other representative
29 operating within this State under the authority of the person
30 or its subsidiary or other affiliate, irrespective of whether
31 such place of business or agent or other representative is
32 located in this State permanently or temporarily, or whether
33 such person, subsidiary or other affiliate is licensed or
34 qualified to do business in this State.

1 "Public utility" shall have the meaning ascribed to it in
 2 Section 3-105 of the Public Utilities Act and shall include
 3 telecommunications carriers as defined in Section 13-202 of
 4 that Act and alternative retail electric suppliers as defined
 5 in Section 16-102 of that Act.

6 "Purchase at retail" shall mean any acquisition of
 7 electricity by a purchaser for purposes of use or
 8 consumption, and not for resale, but shall not include the
 9 use of electricity by a public utility directly in the
 10 generation, production, transmission, delivery or sale of
 11 electricity.

12 "Purchaser" shall mean any person who uses or consumes,
 13 within the corporate limits of the municipality, electricity
 14 acquired in a purchase at retail.

15 In the case of persons engaged in the business of
 16 transmitting messages through the use of mobile equipment,
 17 such as cellular phones and paging systems, the gross
 18 receipts from the business shall be deemed to originate
 19 within the corporate limits of a municipality only if the
 20 customer's place of primary use as defined in the Mobile
 21 Telecommunications Sourcing Conformity Act address--to--which
 22 the--bills-for-the-service-are-sent is within those corporate
 23 limits. If, however, that address is not located within a
 24 municipality--that-imposes-a-tax-under-this-Section, then (i)
 25 if the party responsible for the bill is not an individual,
 26 the gross receipts from the business shall be deemed to
 27 originate within the corporate limits of the municipality
 28 where that party's principal place of business in Illinois is
 29 located, and (ii) if the party responsible for the bill is an
 30 individual, the gross receipts from the business shall be
 31 deemed to originate within the corporate limits of the
 32 municipality--where--that--party's--principal--residence--in
 33 Illinois is located.

34 (e) Any municipality that imposes taxes upon public

1 utilities or upon the privilege of using or consuming
2 electricity pursuant to this Section whose territory includes
3 any part of an enterprise zone or federally designated
4 Foreign Trade Zone or Sub-Zone may, by a majority vote of its
5 corporate authorities, exempt from those taxes for a period
6 not exceeding 20 years any specified percentage of gross
7 receipts of public utilities received from, or electricity
8 used or consumed by, business enterprises that:

9 (1) either (i) make investments that cause the
10 creation of a minimum of 200 full-time equivalent jobs in
11 Illinois, (ii) make investments of at least \$175,000,000
12 that cause the creation of a minimum of 150 full-time
13 equivalent jobs in Illinois, or (iii) make investments
14 that cause the retention of a minimum of 1,000 full-time
15 jobs in Illinois; and

16 (2) are either (i) located in an Enterprise Zone
17 established pursuant to the Illinois Enterprise Zone Act
18 or (ii) Department of Commerce and Community Affairs
19 designated High Impact Businesses located in a federally
20 designated Foreign Trade Zone or Sub-Zone; and

21 (3) are certified by the Department of Commerce and
22 Community Affairs as complying with the requirements
23 specified in clauses (1) and (2) of this paragraph (e).

24 Upon adoption of the ordinance authorizing the exemption,
25 the municipal clerk shall transmit a copy of that ordinance
26 to the Department of Commerce and Community Affairs. The
27 Department of Commerce and Community Affairs shall determine
28 whether the business enterprises located in the municipality
29 meet the criteria prescribed in this paragraph. If the
30 Department of Commerce and Community Affairs determines that
31 the business enterprises meet the criteria, it shall grant
32 certification. The Department of Commerce and Community
33 Affairs shall act upon certification requests within 30 days
34 after receipt of the ordinance.

1 Upon certification of the business enterprise by the
2 Department of Commerce and Community Affairs, the Department
3 of Commerce and Community Affairs shall notify the Department
4 of Revenue of the certification. The Department of Revenue
5 shall notify the public utilities of the exemption status of
6 the gross receipts received from, and the electricity used or
7 consumed by, the certified business enterprises. Such
8 exemption status shall be effective within 3 months after
9 certification.

10 (f) A municipality that imposes taxes upon public
11 utilities or upon the privilege of using or consuming
12 electricity under this Section and whose territory includes
13 part of another unit of local government or a school district
14 may by ordinance exempt the other unit of local government or
15 school district from those taxes.

16 (g) The amendment of this Section by Public Act 84-127
17 shall take precedence over any other amendment of this
18 Section by any other amendatory Act passed by the 84th
19 General Assembly before the effective date of Public Act
20 84-127.

21 (h) In any case in which, before July 1, 1992, a person
22 engaged in the business of transmitting messages through the
23 use of mobile equipment, such as cellular phones and paging
24 systems, has determined the municipality within which the
25 gross receipts from the business originated by reference to
26 the location of its transmitting or switching equipment, then
27 (i) neither the municipality to which tax was paid on that
28 basis nor the taxpayer that paid tax on that basis shall be
29 required to rebate, refund, or issue credits for any such tax
30 or charge collected from customers to reimburse the taxpayer
31 for the tax and (ii) no municipality to which tax would have
32 been paid with respect to those gross receipts if the
33 provisions of this amendatory Act of 1991 had been in effect
34 before July 1, 1992, shall have any claim against the

1 taxpayer for any amount of the tax.
2 (Source: P.A. 90-16, eff. 6-16-97; 90-561, eff. 8-1-98;
3 90-562, eff. 12-16-97; 90-655, eff. 7-30-98; 91-870, eff.
4 6-22-00.)

5 Section 999. Effective date. This Act takes effect on
6 August 1, 2002.