Approved: February 6, 2002
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:40 a.m. on February 4, 2002, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Senator David Adkins
Mark Beshears, Sprint
John Cmelak, Verizon Wireless
Amy Yarkoni, Cingular Wireless
Dan Leary, Voice Stream Wireless
Richard Cram, Kansas Department of Revenue
Mike Reecht, AT&T

Others attending: See attached list.

On behalf of the six Johnson County senators, Senator Adkins requested the introduction of a bill regarding the apportionment of business income for certain investment funds service companies. He said the bill would provide Kansas communities with an excellent economic development tool to lure or retain this type of business in the state. He explained that the bill conforms with the recommendations of the interim Committee on Assessment and Taxation and that it is compatible with a law on the books in Missouri and in several other states.

Senator Praeger moved to introduce the bill as requested by Senator Adkins, seconded by Senator Taddiken. The motion carried.

The minutes of the January 28 and 29, 2002, meetings were approved.

SB 372–Sales taxation; sourcing of mobile telecommunications services

Mark Beshears, Sprint, submitted written testimony in support of **SB 372**, which would conform Kansas' sales tax statues to the provisions of the federal Mobile Telecommunications Sourcing Act (MTSA) passed in July 2000. (Attachment 1) He introduced John Cmelak, Director of Tax Policy for Verizon Wireless in San Francisco. Mr. Beshears explained that Mr. Cmelak could give expert testimony on the bill because he had worked with wireless telecommunications companies in several states in drafting the federal legislation. He noted that Sprint supports the industry amendments to **SB 372** suggested by Mr. Cmelak.

As background information, Mr. Cmelak explained that the federal bill addresses the problem of states and localities taking inconsistent sourcing positions with respect to taxation of wireless phone calls made in different taxing jurisdictions. Without clear, national rules for determining what jurisdiction is permitted to tax the call, the possibility exists that the same call could be subject to taxation in multiple jurisdictions or that the call might escape taxation. The industry supported the MTSA to prevent multiple taxation, to achieve administrative simplicity, to avoid expensive audit and litigation, and to avoid class action lawsuits from customers who claim that companies are improperly collecting taxes. Mr. Cmelak noted that the federal law was designed to be revenue neutral to the states.

Mr. Cmelak went on to explain that Verizon Wireless and other members of the wireless industry submitted a bill draft to the 2001 interim taxation committee. The interim committee later recommended conformity legislation to adopt the federal MTSA provisions (**SB 372**). However, the bill differs significantly from the

language proposed by the industry. He explained that **SB 372** conforms Kansas tax law to the federal statute through the use of "incorporation by reference." The industry prefers a statutory amendment because it would provide Kansas taxpayers with superior notice of all the essential federal law provisions, and it also would allow Kansas to avail itself of all the benefits of the new federal law through the modernization of the terms "intrastate" and "interstate." Mr. Cmelak called attention to a copy of two proposed amendments to the bill attached to his written testimony. The first amendment would repeal the bundling agreement requirement, which is inconsistent with federal bundling language. In this regard, he explained that the bundling requirement is above and beyond what is required by federal law which relies on underlying books and records, and, furthermore, the industry is unable to supply the required information to the Director of Revenue. The second amendment would insert a "customer remedy provision," which creates a procedure for customers to contact the company to try to resolve a dispute regarding tax charges before filing a lawsuit seeking a refund from the company. In conclusion, Mr. Cmelak suggested that the effective date be changed to August 1, 2002, which is the date by which all states must conform to the federal sourcing methodology. (Attachment 2)

Amy Yarkoni, Cingular Wireless, testified in support of **SB 372**. She also expressed her support for the "customer remedy provision" as suggested by Mr. Cmelak, noting that the provision does not remove the right of customers to file suit but merely requires an initial notification to the company and a period for redress by the company prior to filing suit. (Attachment 3) She addressed committee questions at which time she noted that most of the customer complaints regarding tax charges can be solved much faster and much less expensively by the company than through class action suits. She pointed out that the lawsuits ultimately have an affect on customer rates because the legal expenses for telecommunications companies range from $5,000 to $10,000 per case.

Committee discussion followed regarding the bundling provision and Verizon's request that it be removed from the bill. Mr. Beshears reiterated that, due to the current state of flux in taxation procedures, Kansas telecommunications service providers cannot comply with the written agreement requirement for bundled transactions.

Dan Leary, Voice Stream Wireless, stood in support of the testimony given by Mr. Cmelak and Ms. Yarkoni.

With regard to the bundling issue, Richard Cram, Kansas Department of Revenue, commented that the Department strongly supports the provision. He noted that the concept was not intended to cause difficulty for the telecommunications industry but rather was intended to make the audit process go more smoothly in determining what is taxable and nontaxable. He agreed to submit written testimony on the topic at a future meeting. Senator Corbin continued the hearing on **SB 372** to a date to be announced.

SB 472–Sales taxation; prepaid telephone cards

Mike Reecht, AT&T, testified in support of **SB 472**. He explained that prepaid cards work on the basis that customers pay in advance for a certain amount of phone time and can use it at their convenience. In 1998, legislation was passed in Kansas that changed the method of taxation on the cards from a usage based system to a point of sale based system. At that time, all the cards were issued with a number of minutes available for use. However, marketing of the cards has changed, and cards are no longer marketed or sold exclusively with the designation of time, but with a designation of value. Currently, cards sold based on a monetary value may not be technically covered by the existing statute. The bill would change the current statutory language to insure that all prepaid calling cards are taxed consistently at the point of sale. (Attachment 4)

Senator Corbin called the Committee's attention to written testimony in support of **SB 472** submitted by Mr. Beshears on behalf of Sprint. (Attachment 5) With this, the hearing on **SB 472** was closed.

Senator Donovan moved to recommend **SB 472** as favorable for passage, seconded by Senator Clark. The motion carried.

The meeting was adjourned at 11:45 a.m. The next meeting is scheduled for February 5, 2002

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: February 4, 2002

NAME	REPRESENTING
MARK CIARDULLO	KANSAS DEPT OF REVENUE
Richard Cram	KDOR
Mike Reecht	AT&T
Sandy Braden	Cingular
Amy Yarkoni	Cingular
John Cmelak	Verizon WIRELESS
Jim Yonally	Verizon Wireless
Ann Durkes	DOB
TOM DAY	KCC
Helen Pedigo	Governor's Office
Cindy Shaw	Kearney Law Office
Marlee Carpenter	KCCI
Dan Leary	VoiceStream Wireless
Rebecca Reed	KDA
Anne Spiess	KCRAR - K.C. Realtors
BILL YANEK	KS Assoc. of REALTORS
Mike Murray	Sprint
Mark Moshiers	Sprint
Mark Burghart	"

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: February 4, 2002

NAME	REPRESENTING
Bob Totten	Ks Contractors association
Hillary Hayes	Federico Consulting

Mark Beshears
Assistant Vice President, State & Local Tax

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MEMORANDUM

TO: The Honorable David Corbin, Chairperson
Senate Committee on Assessment and Taxation

FROM: Mark Beshears, Assistant Vice-President
State and Local Tax, Sprint

DATE: February 4, 2002

RE: Senate Bill No. 372-Federal Mobile Telecommunication Sourcing Act

I am Mark Beshears, Vice-President of State and Local Tax for Sprint Corporation located in Overland Park, Kansas. I am appearing on behalf of Sprint PCS, our wireless telecommunications company. I am pleased to be here today to ask for your support for Senate Bill No. 372 which implements the Federal Mobile Telecommunications Sourcing Act ("MTSA") passed by Congress in July, 2000.

The MTSA was the by-product of nearly four years of efforts between industry and government representatives. Representatives of the National Governor's Association, National League of Cities, Federation of Tax Administrators and Multi-State Tax Commission all testified in favor of this legislation. The provisions of the MTSA become effective on August 1, 2002. Therefore, the Kansas statutory tax provisions must be amended to insure the state statutory language is in conformity with the provisions in the controlling federal law.

The MTSA is a model of simplification. It insures the taxation of wireless telecommunications in a fair and efficient manner by providing a uniform method of sourcing tax revenues from the sales of mobile transactions thereby avoiding multiple taxation of a customer's purchase of wireless telecommunications services.

The federal legislation provides that tax revenues from sales of wireless telecommunications services will be sourced to the customer's place of primary use - the residential or business street address of the customer, regardless of the state where the individual's calls originate, terminate, or pass through. The MTSA only clarifies how tax revenues will be sourced - it does not alter in anyway the tax base for existing state and local tax provisions.

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We believe the federal legislation is a win-win situation for both industry and government. Industry supports the federal legislation because it prevents multiple taxation, achieves administrative simplicity and cost savings in the billing process, avoids expensive audit and litigation exposure when multiple states assert jurisdiction. State and local governments support the legislation because it prevents "nowhere taxation" and brings administrative simplicity and cost savings to tax administration.

I urge the Committee's support for Senate Bill No. 372. The telecommunications industry commits to work with Committee staff and the Kansas Department of Revenue to implement any legislation which will effectuate the purposes of the federal law by the August, 2002 deadline.
Thank you for the opportunity to speak in support of this proposal. I would be happy to respond to any questions that you might have.

Statement in Support of an Amendment to SB 372 - Kansas Conformity to the Federal Mobile Telecommunications Sourcing Act
February 4, 2002

John Cmelak
Director – Tax Policy
Verizon Wireless
925/904-3703
john.cmelak@verizonwireless.com

Mr. Chairman and Members of the Assessment and Taxation Committee:

My name is John Cmelak, and I am a Director of Tax Policy for Verizon Wireless. I am here today to propose industry amendments to SB 372, legislation that conforms Kansas' tax statute applicable to commercial mobile radio services to the provisions of PL 106-252, the federal mobile telecommunications sourcing act.

Background and Intent behind MTSA Conformity Legislation

Verizon Wireless, along with several members of the wireless telecommunications industry, approached state and local officials in 1998 regarding a joint effort to clarify how mobile telecommunications calls involving multiple jurisdictions should be assigned or "sourced" for tax purposes. The industry – along with the major organizations of state and local elected officials and appointed tax officials – met over two years to craft the federal Mobile Telecommunications Sourcing Act. Congress passed the legislation and it was signed into law on July 28, 2000.

Sourcing involves determining which jurisdiction will have the right to tax a telephone call that originates and terminates in different taxing jurisdictions. In the case of mobile telecommunications, the customer might live in one jurisdiction, have her bill sent to a second jurisdiction, make a call in a third jurisdiction and complete the call in a fourth jurisdiction. Without clear, national rules for determining what jurisdiction is permitted to tax the call, the possibility exists that the same call could be subject to taxation in multiple jurisdictions – or that a call might escape taxation all together.

The federal legislation was a "win-win" for both industry and government. Industry supported the MTSA to prevent multiple taxation; to achieve administrative simplicity and cost savings in the billing process; to avoid expensive audit and litigation exposure when multiple states claim jurisdiction to tax the same call; and to avoid class action lawsuits from customers who claim that companies are improperly collecting taxes even when they are merely complying with state laws. Government supported the

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legislation to prevent "nowhere taxation" and to bring administrative simplicity and cost savings to tax administration.

Key Provisions and Concepts

The MTSA does not impact the rate of taxes or fees that Kansas chooses to impose on wireless calls, or the types of calls that are subject to such taxes. It only determines which jurisdiction has the authority to tax a wireless call. Each jurisdiction with legal taxing authority will continue to determine whether to tax such calls and at what rate.

Today if you live in Topeka and travel to California and while there make wireless phone calls that originate and terminate within California, that service is taxed by California. And if a person from California were to travel here to Topeka and make calls that originate and/or terminate within the state of Kansas, that service is taxed by the state of Kansas.

After August 1, 2002 that will change. The MTSA introduces the concept of "place of primary use," or PPU, which is the jurisdiction with the right to tax wireless calls, even if the call neither originates nor terminates in that jurisdiction. The PPU is defined as "either the residential or business street address of the customer and where the wireless telecommunications service primarily occurs". Additionally, it must be within the licensed service area of the home service provider. The fundamental change is the federal law now allows Kansas to tax calls that originate and terminate in another state, as long as the customer has a place of primary use in Kansas. But the federal law also pre-empts the state of Kansas from imposing taxes or charges on customers with a PPU outside the state of Kansas, even if they make calls that originate and terminate in Kansas.

The federal law was designed to be revenue neutral to the states, and we expect this to be the case in Kansas. The revenues that the state will lose from no longer being able to tax "roaming calls" made by non-residents making calls while in Kansas will be offset by the revenues gained from being able to tax calls that Kansas residents make while "roaming" in other states.

SB 372

Verizon Wireless and other members of the wireless industry offered up draft legislative language to the Special Committee on Assessment and Taxation on September 19, 2001. At (or soon after) that hearing, the Special Committee recommended conformity legislation that would adopt the provisions of the federal Mobile Telecommunications Sourcing Act. Unfortunately, the SB 372 manner of conforming to the federal legislation differs significantly from the manner proposed by industry. SB 372 attempts to conform Kansas tax law to the federal statute through use of the "incorporation by reference" technique, whereas industry favors statutory amendment. The wireless industry believes that statutory amendment provides Kansas taxpayers with superior notice of all the essential federal law provisions. It also allows the state of Kansas to unambiguously avail

itself of all the benefits of the new federal law through the modernization of the terms "intrastate" and "interstate." It is the opinion of the wireless industry that those two conformity sentences currently contained in SB 372 fall short in accomplishing either of these two very important legislative objectives.

Industry Amendment provides Superior Clarity: Without specifically providing researchers of Kansas statutory tax law with a few simple, yet critical, federal law guideposts (such as introducing the cornerstone concept of "place of primary use", and adopting it as the new wireless sourcing methodology), the Kansas Legislature would essentially be asking such researchers to reference and read eight pages of federal law, understand the content of those eight pages, and then correctly apply the federal concepts within those eight pages to Kansas tax statutes. We believe that approach asks too much of a researcher of state tax law. Industry believes the more prudent drafting approach is to distill the federal law into its most salient, basic and compelling concepts, and then amend state law in a way that assists the researcher in applying those federal law concepts against the backdrop of Kansas' tax statutes.

Industry Amendment avoids Potential Revenue Loss: Perhaps a more compelling reason to include industry's proposed amendment within SB 372 is potential revenue loss. Without modernizing the terms "intrastate" and "interstate" as they relate to wireless calls, it is very debatable whether the Kansas legislature has actually exercised the additional authority granted to it by the federal Congress. Creative trial lawyers may contend that Kansas did not affirmatively expand its statutory taxing power to reach wireless calls made by Kansans who roam outside Kansas and make calls to locations outside Kansas. Opponents may assert that the plain meaning of the term "intrastate", should be "calls that originate and terminate in Kansas", and the plain meaning of the term "interstate" should be "calls that originate or terminate in Kansas." Certainly that's the meaning those terms have historically been given by the Department of Revenue. This Committee should therefore revise Kansas' definition of "intrastate" to mean "wireless calls that originate and terminate within the same state." Likewise, this Committee should revise the definition of "interstate" to mean "wireless calls that originate in one state and terminate in a different state." Otherwise, since courts frequently construe state tax statutes strictly against the drafter, the Kansas Treasurer may be left holding an empty bag. Inserting industry's proposed statutory amendment language removes ambiguity from these terms, and with it, eliminates potential revenue loss to the State.

Proposed Industry Amendment

There are two additional provisions that the wireless industry would like to respectfully request that this Committee seriously consider introducing as a Committee amendment to this bill. The first is the written agreement requirement for bundled transactions. It's currently a requirement that Kansas's telecommunications service providers enter into a bundling agreement with the Secretary of the Department of Revenue, or else the nontaxable components within the bundle become fully taxable. To date, not one agreement has been executed with the Secretary. Furthermore, the federal MTSA allows wireless carriers to rely on their underlying books to allocate bundled

purchase prices between taxable and nontaxable components. The wireless industry requests that this Committee repeal the bundling agreement requirement on grounds that such as requirement is inconsistent with, and not authorized by, federal law.

The second additional provision pertains to a topic about which Mr. Beshears of Sprint Corporation and I testified in September before the Special Committee: the necessity to enact a "customer remedy provision". In addition to the mandatory federal MTSA provisions, the industry is seeking this Committee's endorsement of a "customer remedy provision", which appears in section (t)(5) of the proposed industry amendment to SB 372. This provision deals with situations when a customer believes that the wireless company is charging the wrong amount of tax or believes the assignment of the place of primary use is incorrect. This provision creates a procedure for customers to contact the company and try to resolve the dispute. Only after the company has had an opportunity to correct the problem, and the customer has exhausted remedies as outlined in this provision, would the customer have the ability to file lawsuits seeking refunds from the company. These suits expose both companies and local governments to the difficulties and expense of having to refund back taxes, as well pay as attorneys' fees and court costs. In most cases the customer would receive their tax refund much faster under this proposed administrative procedure than if the customer were to first commence litigation against their service provider.

It's important to emphasize that nothing within the federal MTSA law requires any state to adopt this "customer remedy" provision. It's equally important to emphasize that 11 of the 16 states (69%) that have already enacted state conforming legislation have voluntarily chosen to include this standard provision within their state conformity bills. The Office of the Reviser of Statutes believes that there currently are sufficient administrative protocols in place to preclude the filing of customer class action lawsuits that allege over-taxation from carriers. Industry's position is that until a customer must first approach the carrier, inform the carrier of the problem, and allow the carrier to remedy the grievance, that carriers end up unnecessarily spending too much money defending themselves in expensive, protracted, class action litigation. These unnecessary legal expenses drive up the cost of wireless phone service to Kansans. Therefore, industry believes this provision has considerable value, and would operate to keep the cost of telecommunications service to consumers as affordable as possible. We therefore respectfully request that this Committee seriously consider the inclusion of this provision within SB 372.

Closing

Mr. Chairman, members of the Committee, let me reiterate the industry's strong support for MTSA conforming legislation. We feel it is a "win-win-win" for business, government, and the consumer, and look forward to assisting this Committee in any way we can. Thank you once again for the opportunity to testify in support of this important legislative amendment, and I'd be happy to answer any technical questions that you might have.

Proposed Industry Amendment to SB 372
1/31/02

1) On page 6, strike lines 18 – 24 that amend subsection (t) and insert the following new subsection (t):

(t) the gross receipts received for telephone answering services, ~~including~~ mobile ~~phone~~ *telecommunications* services, beeper services and other similar services. *For the purposes of taxes levied by this subsection on mobile telecommunications services, mobile telecommunications services provided to a customer by or for a home service provider are deemed to be provided by the home service provider if the customer's place of primary use is in this state. Such mobile telecommunications services are taxable only in the taxing jurisdiction or jurisdictions whose territorial limits encompass the customer's place of primary use, and mobile telecommunications services provided to a customer with a place of primary use outside of this state are not subject to taxation under this subsection.*

For the purposes of this subsection:

(1) the terms "mobile telecommunications services," "customer," "place of primary use," and " home service provider" have the meaning given in 4 U.S.C. Sec. 124 as in effect on January 1, 2002;

(2) the term "intrastate", in the context of mobile telecommunications services, means gross receipts received from the retail sale of mobile telecommunications services that originate and terminate within the same state. The term "interstate", in the context of mobile telecommunications services, means gross receipts received from the retail sale of mobile telecommunications services that originate in one state and terminate in a different state.

(3) all provisions of the federal mobile telecommunications sourcing act as in effect on January 1, 2002 shall be applicable to taxes imposed on mobile telecommunications services under this subsection;

(4) the provisions of subsection (b)(3) of this section shall not apply;

(5) for the purposes of taxes imposed on mobile telecommunications services under this subsection, if a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a bill under the provisions of this section is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within sixty days of receiving a notice under this section, the home service provider shall review its records to determine the customer's taxing jurisdiction. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes, charges, and/or fees erroneously collected by the home service provider, and no cause of action based upon a dispute arising from such taxes, charges, or fees shall accrue until a customer has exhausted the remedies set forth in this section.

2) On page 7, strike lines 3-4 and insert the following:

Sec. 3. This act shall apply to customer bills issued after August 1, 2002.

Customer Remedy Provision
Mobile Telecommunications Sourcing Act Conformity
Summary of Key Points

What is the "customer remedy provision?"

- It provides a mechanism for mobile telecommunications service customers to resolve questions concerning taxes that are collected on customer bills for state and local governments. It requires that customers first notify the provider of the problem in writing. The provider then has 60 days to research the problem and correct the error or notify the customer of the company's determination that the tax on the customer's bill is correct. If there was an error and the company over collected the tax, the company must refund the overpayment. The customer must first exhaust this remedy before seeking to recover overpayments through the courts.

Why is this provision necessary?

- Mobile telecommunications service providers serve as tax collection agents for state and local governments. Using the best available address information, they strive to ensure that they collect the right amount of tax and remit that tax to the proper taxing authority. However, in some states, the boundaries of local taxing jurisdictions do not always follow street address or zip code boundaries and, given this complexity, mistakes are possible. Companies can be hit from both sides: by customers who file class action lawsuits for overpayment of taxes, and by taxing jurisdictions that audit the companies and levy back taxes and penalties for underpayment. This provision would give the companies an opportunity to fix errors before they face legal action.

- As providers switch to the new uniform sourcing rules, some customers are bound to have questions about whether the proper taxes are being collected. Given the switch to the new rules, this provision becomes very important to ensure that customers have a mechanism to investigate and fix potential errors, and correct them quickly.

Would this provision help state and local governments?

- Yes. State and local taxing jurisdictions are frequently named as co-defendants in class action lawsuits alleging over collection of tax. By allowing providers the opportunity to correct problems before resorting to legal action, the provision should reduce the number of suits and the associated state and local legal expenses for defending them.

Would this legislation prevent customers from filing class action lawsuits?

- No. No customer would be denied access to the court system. However, the provision would require the customer to contact the provider try to fix the problem first. If the customer is not satisfied with the result, or if the company does not respond within the sixty-day period, the customer still has the option of legal action.

Is this provision required under the federal Mobile Telecommunications Sourcing Act?

- No. This provision is not required for states to conform to the Mobile Telecommunications Sourcing Act.

How many states have included this provision in their MTSA conforming statute?

- Eleven of the 16 states that passed conforming legislation by the end of 2001 included the customer remedy provision: AL, AZ, AR, CT, FL, IL, LA, NV, ND, OK, TX.

Statement in Support of SB 372 – Kansas Conformity to the Federal Mobile Telecommunications Sourcing Act

By Amy Yarkoni of Cingular Wireless
Senate Bill 372
Monday, February 4, 2002

Mr. Chairman and members of the Committee – thank you for the opportunity to testify in favor of SB372, legislation that would conform the Kansas statutes governing taxes and fees on wireless services to the provisions of PL 106-252, the mobile telecommunications sourcing act.

Cingular Wireless strongly supports this legislation and commends you for your efforts to develop it and bring it before the committee.

Sourcing involves determining which jurisdiction will have the right to tax a telephone call that originates and terminates in different taxing jurisdictions. In the case of mobile telecommunications, the customer might live in one jurisdiction, have her bill sent to a second jurisdiction, make a call in a third jurisdiction, complete the call in a fourth jurisdiction and have the call terminate in a fifth jurisdiction. Without clear, national rules for determining what jurisdiction is permitted to tax the call, the possibility exists that the same call could be subject to taxation in multiple jurisdictions – or that a call might escape taxation all together.

States now have until August 1, 2002 to conform their laws applicable to the taxation of wireless telecommunications to the provisions in the federal law. States that fail to act by that time are preempted from imposing taxes on most calls made outside of the state where the customer's primary use occurs (so-called "roaming").

For example, place of primary use taxation - a resident of Lawrence that contracts for wireless telecommunications service for personal use would designate Lawrence as his/her place of primary use. If that person traveled to Omaha and placed a call from Omaha to Lawrence during the trip, the state of Kansas and the city of Lawrence would have the authority to tax that call even though it did not originate or terminate in Kansas.

Conversely, if a Nebraska resident traveled to Kansas and placed a call within Kansas, that call will no longer be taxable in Kansas. Only the state of Nebraska and any authorized local governments at the location of the customer's place of primary use will be able to tax that call.

An amendment that Cingular would like added to SB372 will amend the sales tax administrative provisions to provide a procedure for investigating and remedying

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Attachment 3

situations where customers believe that the place of primary use has been improperly assigned. This amendment would provide that before a customer may file suit against a mobile telecommunications service provider for refunds, the customer must notify the service provider and allow the service provider an opportunity to remedy any errors. This provision enables the service providers to work with our customers to correct potential problems caused by very complex geographic and tax systems. This provision does not remove the rights of customers to file suit it merely requires an initial notification to the company and period for redress by the company prior to filing suit.

Mr. Chairman, let me reiterate our appreciation for your efforts on this legislation. We strongly support its passage and look forward to assisting you in any way we can. Thank you again for the opportunity to testify.

MIKE REECHT

GOVERNMENT AFFAIRS CONSULTANT

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Testimony on Behalf of AT&T
Before the Senate Assessment and Taxation Committee
Regarding SB 472

February 4, 2002

Mr. Chairman and Members of the Committee:

My name is Mike Reecht and I appear before you today on behalf of AT&T in support of SB 472 regarding the application of sales tax to the sale of Prepaid Calling Cards.

Most of you are familiar with the prepaid calling card. You can purchase them at most convenience stores, discount stores, gas stations, and even the Post Office. The cards sell for a variety of prices and at times have restrictions regarding the use of the card. Some cards have expiration dates. The card works on the basis that a customer pays in advance for a certain amount of phone time and can use it at their convenience.

In 1998 the Kansas Legislature passed legislation that changed the method of taxation on these cards from a usage based system to a point of sale based system. At that time cards were sold in minutes or other units of time measurements. The legislation passed at that time reflected the current marketing practices of the prepaid card.

Marketing of these cards is changing. Cards are no longer marketed or sold exclusively with the designation of time, but with a designation of value. As an example, Sams Club sells cards in increment of 200, 500, or 1000 minutes as stated on the card. But cards are now also being marketed on the basis of monetary value. For instance, you can purchase a card for $50.00. The minutes associated with the value of the card may vary depending on the calling and called locations.

The intent of the legislation as it was proposed by AT&T in 1998 was to tax the prepaid calling card at the point of sale. The phrase of "with the prepaid value measured in minutes or other time units" was included because that was the only type of card being issued at that time. AT&T is recommending the change to the language to insure that all prepaid calling cards are taxed consistently at the point of sale. Currently cards sold based on a monetary value may not be technically covered by the existing statute.

These changes have been covered with the Department of Revenue and it is my understanding they have no problems with the proposal.

I urge your favorable consideration of changes proposed in KSA 79-3603 (b) and (u) as reflected in SB 472, and would be glad to answer any questions that you might have.

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Attachment 4

Mark Beshears
Assistant Vice President, State & Local Tax

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MEMORANDUM

TO: The Honorable David Corbin, Chairperson
Senate Committee on Assessment and Taxation

FROM: Mark Beshears, Assistant Vice-President
State and Local Tax, Sprint

DATE: February 4, 2002

RE: Senate Bill No. 472-Technical Corrections Regarding Tax Treatment of Prepaid Calling Cards.

I am Mark Beshears, Vice-President of State and Local Tax for Sprint Corporation located in Overland Park, Kansas. I am pleased to be here today to ask for your support for legislation providing certain technical corrections regarding the tax treatment of prepaid calling cards.

K.S.A. 79-3603(u) currently imposes the state's sales tax on the gross receipts received from the sale of prepaid telephone calling cards or prepaid authorization numbers and the recharge of such cards or numbers. By definition, prepaid calling cards are limited to cards and authorization numbers which provide the right to exclusively make telephone calls, paid for in advance, with the prepaid value measured in minutes or other time units. The proposed legislation would treat prepaid cards with the prepaid value measured in terms of dollars in the same manner as prepaid cards that have their value measured in minutes or other time units. The legislation merely reflects developments in the market place in terms of how prepaid calling cards and authorization numbers are sold.

I would again urge the Committee's support for this technical amendment. I would be happy to respond to any questions that you may have.

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Attachment 5