

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 10:30 a.m. on March 4, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes  
Scott Wells, Office of the Revisor of Statutes  
Corey Carnahan, Kansas Legislative Research Department  
Chris Courtwright, Kansas Legislative Research Department  
Mary Jane Brueck, Committee Assistant

Conferees appearing before the Committee:

Ken Eckles, Vice President of Government Affairs for the Kansas Chamber of Commerce  
Dan Jacobson, President, AT&T Kansas  
Mark Beshears, Vice President, State and Local Tax, Sprint/Nextel  
John Cmelak, Director of Tax Policy, Verizon Wireless  
Sen. Tom Sloan,  
Richard Cram, Department of Revenue

Others attending:

See attached list.

Chairman Donovan began the hearing on **HB 2079 - Sales tax refund on certain purchasers of telecommunications machinery and equipment.** He introduced Ken Eckles, Vice President of Government Affairs for the Kansas Chamber of Commerce told us the Chamber is fully behind this measure to better improve the State's business tax climate and help spur investment and job creation in Kansas. (Attachment 1) Dan Jacobson, President, AT&T Kansas explained this bill is good policy because it encourages more investment. The policy applies to Kansas manufacturing and farming, and many nearby states have adopted a similar policy to assure state-of-the-art telecommunications are available in Kansas. (Attachment 2)

Mark Beshears is Vice President, State and Local Tax, for Sprint/Nextel and is also speaking on behalf of Verizon Wireless, T-Mobile, Alltel, Cox Communications, Embarq, and Kansas Cable Telecommunication Association. He explained a bill similar to this passed both the Kansas House and the Senate last year but was vetoed by the Governor because it had been inserted in the Holcome Coal bill. Mr. Beshears said he has attached an article from Business Week indicating the stimulus package should include funds to invest in high-speed communications infrastructure. (Attachment 3)

John Cmelak, Director of Tax Policy, Verizon Wireless also spoke in support of this bill. He told the committee their support of this bill will send a strong signal to senior management of Verizon and its telecommunications competitors that Kansas not only sees the value of tax parity, but also is taking steps to modernize its tax code in order to continue development of high-speed telecommunications infrastructure. (Attachment 4)

Rep. Tom Sloan, was not present give his neutral testimony to the bill. The committee skipped over the Senator until he returns. (Attachment 5)

Richard Cram, Department of Revenue expressed concern regarding this bill's negative fiscal impact and permanent decrease to the tax base. (Attachment 6)

Chairman closed the hearing on **SB 2079.**

Chairman Donovan asked for approval of the minutes of the February 26, 2009 meeting. Sen. D. Schmidt moved the minutes be approved. Sen. Holland seconded the motion. The motion carried.

CONTINUATION SHEET

Minutes of the Senate Assessment And Taxation Committee at 10:30 a.m. on March 4, 2009, in Room 535-N of the Capitol.

The next meeting is scheduled for March 5, 2009.

The meeting was adjourned at 11:30 p.m.

SENATE  
Assessment & Taxation Committee  
GUEST LIST

DATE: 3/4/09

NAME	REPRESENTING
Rep. Van Sloan	Mural Hanson
Sean Tomp	Divsion of the Budget
Richard Crum	KDOOR
David Corbin	KDOOR
STEVE KEARNEY	ALLTEL
Mike Huttles	KRITC
Ronald Richey	
Tom Eckles	KS Chamber of Commerce
Dan Murray	KCTA
Kent Cornish	KAB
Derek Hein	Hein Law Firm
Nelson Kraeger	PAR
Bill Ashburn	Alltel / Verizon
DINA FISK	VERIZON
JOHN AMELAR	VERIZON
Nichelle Butler	Capital Strategies
Mike Murray	Embargo
Jim Gortner	AT&T
Don Josephson	AT&T

**SENATE**  
**Assessment & Taxation Committee**  
**GUEST LIST**

DATE: 3/4/09

NAME	REPRESENTING
<i>Tom Geahly</i>	<i>PRINT</i>

**Written Testimony before the Senate Assessment & Taxation Committee  
HB 2079 – Sales Tax Refunds for Telecommunications Machinery & Equipment  
Presented by J. Kent Eckles, Vice President of Government Affairs**

**Wednesday, March 4<sup>th</sup>, 2009**

The Kansas Chamber of Commerce appreciates the opportunity to submit written testimony in favor of House Bill 2079, which would phase-in over time the amount of sales tax refunds paid on the purchase of certain telecommunications machinery and equipment.

The sales tax would be refunded at a rate of 20% in 2012, 40% in 2013, 60% in 2014, 80% in 2015 and would be completely refunded in 2016.

The Kansas Chamber is supportive of equitable tax treatment for all Kansas companies. Business machinery and equipment is exempt from Kansas' sales taxes and telecom equipment should be afforded similar treatment. With the telecommunications industry sector such a large part of the State's economy, we believe equitable tax treatment provided under House Bill 2079 is necessary to allow Kansas to attract high paying jobs and investment in the new media, electronic commerce & high technology industries.

A National Governor's Association (NGA) report entitled "Telecommunications Tax Policies: Implications for the Digital Age," states that to achieve tax reform in telecom, states should extend sales tax exemptions to telecommunications equipment.

Source: <http://www.nga.org/Files/pdf/000202TELECOM.PDF>

Additionally, according to a Committee On State Taxation (COST) study of how states tax the telecommunications industry, surcharges imposed on telecommunications in Kansas amount to a rate of 15.910% compared to just 6.35% for products sold by most other businesses.

Source: <http://www.statetax.org/StateTaxLibrary.aspx?id=17768>

We urge the Committee to pass favorably House Bill 2079 to better improve the State's business tax climate and help spur investment and job creation in the State.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium, and large employers all across Kansas. Please contact me directly if you have any questions regarding this testimony.





Dan Jacobsen  
President-Kansas

AT&T Kansas  
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Suite 500  
Topeka, KS 66603

785.276.8201 Phone

Testimony of Dan Jacobsen, President – AT&T Kansas  
In support of HB 2079 – Sales taxation relating to telecommunications  
machinery and equipment  
Before the Senate Assessment and Taxation Committee  
March 4, 2009

Mr. Chairman and Members of the Committee,

My name is Dan Jacobsen. I am the President of AT&T Kansas. I appreciate this opportunity to speak with you regarding an important issue that will affect the way our state's telecom infrastructure is upgraded. House Bill 2079 would gradually eliminate the sales tax burden that telecommunications companies pay when we purchase equipment for Kansas. This is good policy because it encourages more investment. This policy currently applies to Kansas manufacturing and farming. Many nearby states have adopted similar statutes in order to help assure that state-of-the-art telecommunications are available to businesses and consumers.

AT&T understands that 2009 is a very challenging year from an economic point of view. The world is going through a significant economic downturn. Kansas legislators are grappling with a large state revenue shortfall. For this reason, the financial impact of HB 2079 is delayed until 2012 through 2016.

AT&T has invested \$625 million dollars over the past three years to upgrade telecommunications in Kansas. Because we have large wireless, wireline, broadband and Video networks in Kansas, we need to keep investing in order to keep them modernized. We also must invest in order to win and retain customers in very competitive markets. Despite all of these pressures to invest, capital is always constrained. In a company the size of AT&T, there are always more investment opportunities than available capital. Each state competes for available capital. The adoption of a gradual elimination of sales tax on equipment will send a signal to my company that Kansas is committed to advancing the state's telecommunications infrastructure. Again, I know this is a very challenging year, but that should not prevent the Legislature from adopting good policies that will provide benefits in future years and will not add to the financial challenges of 2009 through 2011.

Thank you for this opportunity.

Senate Assessment & Taxation

3/4/09  
Attachment 2

MEMORANDUM

TO: The Honorable Les Donovan, Chairperson  
Senate Committee on Assessment and Taxation

FROM: Mark Beshears  
Vice-President - State and Local Tax  
Sprint/Nextel

DATE: March 4, 2009

RE: House Bill 2079 – Sales Tax Refunds for Certain Telecommunications Machinery and Equipment

Thank you for the opportunity to appear in support of proposed legislation that would create the right to a refund of sales tax paid on the purchase of telecommunications machinery and equipment in Kansas. I am appearing on behalf of Sprint/Nextel, Verizon Wireless, T-Mobile, Alltel, Cox Communications, Embarq and Kansas Cable Telecommunications Association. The State of Kansas has made significant strides in the past few years in creating a more favorable tax environment for businesses which has had the effect of stabilizing the job market and increasing tax receipts. Kansas still imposes a sales tax on telecommunications companies that purchase equipment to expand and upgrade the state's telecommunications networks. Telecommunications providers are one of the few business taxpayers that pay sales tax on the acquisition of machinery and equipment. Manufacturers have benefitted from a sales tax exemption since 1986. Superior telecommunications networks improve business productivity and remain a high priority for the local economic development officials. A report in the January, 2008 issue of *Governing* magazine found that excessive taxes on wireless and other telecommunications services may actually be harming economic development efforts by discouraging necessary network investment. The elimination of this tax on investment in telecommunications network assets would have significant benefits for Kansas businesses and constitutes sound tax policy:

- A new study by economist John Dunham, graduate of Columbia University and president of John Dunham and Associates, an economic consulting firm based in New York City, shows that the elimination of sales and use taxes on equipment will create as much as \$75 million in new economic activity in the state consisting of \$16.3 million in new network equipment in the first year, additional earnings from employees and suppliers of new equipment of \$24.2 million, and \$31.6 million from productivity gains from firms that have greater access to high speed telecommunications.
- 560 new jobs in the state would result from the increased investment.
- Tax experts universally agree that sales tax should only be imposed on the final consumption of a product, not on the point used to produce the product, in order to

prevent the pyramiding of tax. This is the same rationale for not taxing the purchases of machinery and equipment acquired by manufacturers in the state.

- More states are moving toward the elimination of sales tax on telecommunications equipment. Since 2004, Iowa, Utah and Pennsylvania have eliminated such taxes. In addition, the Missouri Supreme Court has determined that such equipment is exempt as manufacturing machinery and equipment under the Missouri statute addressing such purchases.
- The improvements brought about through increased infrastructure investment will benefit consumers.

The telecommunication industry has invested more than \$36 billion in telecommunications networks nationwide since 2006. This investment includes the installation of fiber optic cable which results in a significant increase in network speeds. In addition, wireless providers are expected to invest an additional \$20 billion to provide better coverage and to upgrade existing coverage to provide seamless high speed internet access and other new services.

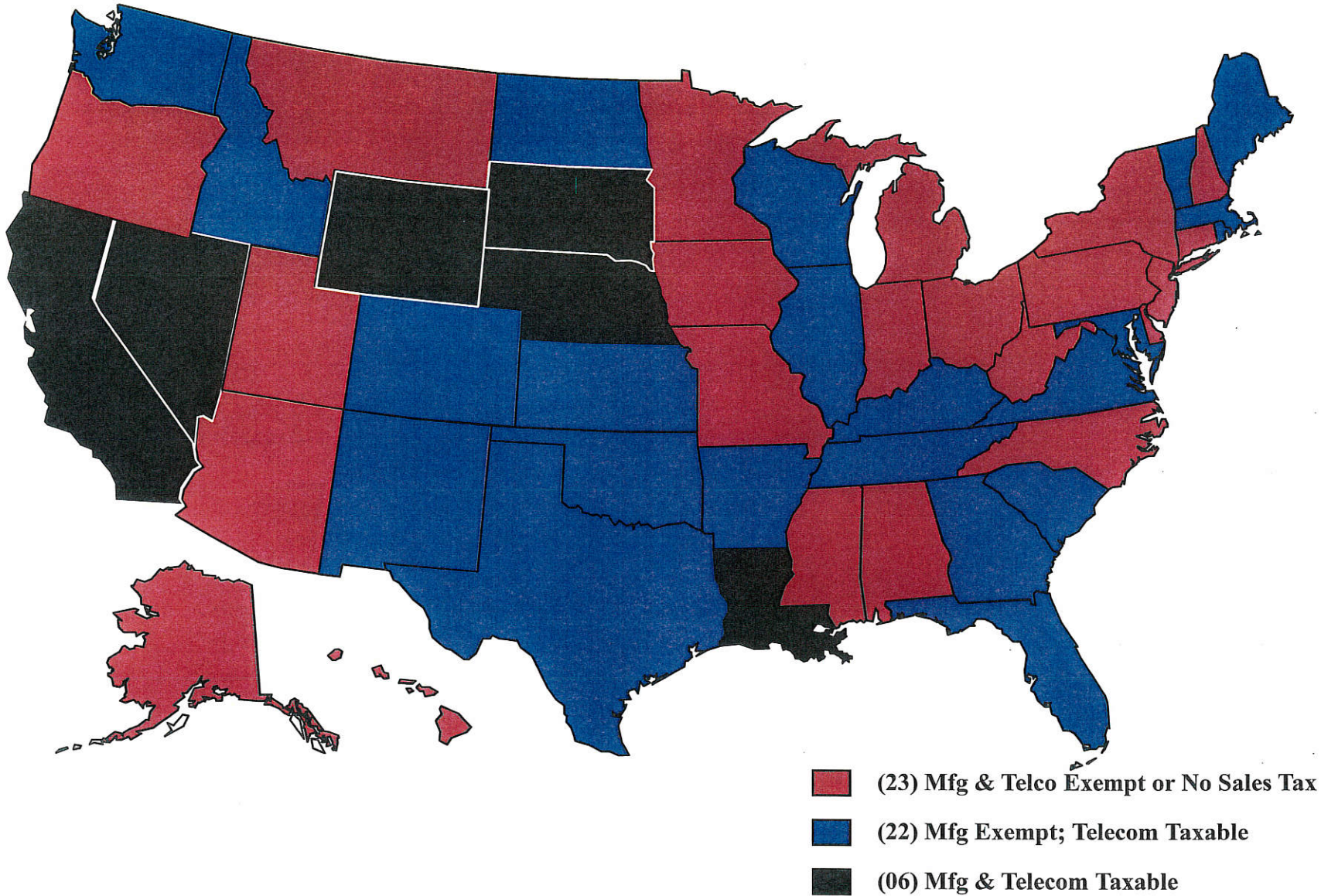
H.B. 2079 has the following features:

- A refund mechanism would be established for all purchases of telecommunications machinery and equipment.
- The refund mechanism would be phased in over 4 years.
- Only the state tax (currently 5.3%) would be subject to the refund provision – there would be no impact on local units of government.
- Any refund claim would need to be filed within one year from date of payment.

Thank you for the opportunity to appear in support of this proposal. On behalf of Sprint/Nextel and the telecommunications industry, I encourage the Legislature to take this necessary step to eliminate the disparate sales tax treatment for telecommunications companies and to further enhance vital telecommunications networks within the State of Kansas.



# Telecommunications/Manufacturing Equipment Sales Tax Exemptions



# BusinessWeek

INAUGURATION January 17, 2009, 12:01AM EST

## Bring U.S. Broadband Up to Speed

For long-term economic growth, Obama's stimulus package should include a \$10 billion to \$15 billion investment in high-speed communications infrastructure

By Sol Trujillo

The Obama Administration's stimulus package to jump-start the American economy should include a crucial and relatively inexpensive program to improve the country's communications infrastructure. This would ignite long-term growth throughout the economy and close a serious technology gap between the U.S. and many other countries.

The U.S. desperately needs to catch up with global leaders in two areas of high-speed broadband communications. The first is extending the current world-class wired broadband service now used by big business, smaller companies, and consumers across America. The second is increasing the transmission speed and reach of wireless service to nearly everywhere in the nation. Achieving these two goals would bridge the digital divide between city and country and provide a powerful productivity tool to all sectors of society: private enterprise, nonprofit organizations and institutions, and every level of government. A federal stimulus plan should do more than just add jobs in the telecommunications industry.

### U.S. MISSING OUT ON PRODUCTIVITY GAINS

In many countries, including Australia, broadband service is available to a much larger percentage of the population than in the U.S. Many have much faster and more versatile third-generation, or 3G, wireless broadband networks—what much of the rest of the world calls the "mobile Internet." On the wired side, many countries have a lead in the penetration of robust fixed-line networks that their businesses are using to innovate and create new opportunities. The greater power and penetration of their networks means their businesses can reach more customers. Result: Companies in other countries are leveraging broadband and the Internet to operate more efficiently and create game-changing competitive advantages. Their governments are also using high-speed broadband technologies to reach more citizens and lower the cost of services in health care, education, and public safety. America is missing these productivity gains at a time when it needs them most.

Based on what I have seen as CEO of media and telecommunications companies on three continents, I believe the U.S. should use a small portion of its stimulus spending as seed money for the nationwide deployment of high-speed broadband networks, wireless and wired, capable of transmitting data at speeds of 100 megabits per second (Mbps), compared with speeds of one or two Mbps that are common today. But it's important that the right policy mix be in place to encourage the private sector to invest the additional capital necessary for these networks.

Japan, South Korea, and Europe have been well ahead of the U.S. for a while. China just approved a measure to upgrade to 3G wireless service at an estimated cost of \$41 billion. And Australia, with territory nearly as large as the continental U.S. and a very similar population distribution, has wireless network speeds of 14.4 Mbps to cell phones, laptops, and other wireless devices on a mobile Internet that reaches 99% of the population. This

3-4

speed, many times faster than the best U.S. wireless networks, enables Australians to transmit real-time video, photos, MRI images, and other data that cannot yet be delivered by American wireless systems. Our network is ready to operate at 21 Mbps and, in the next year or so, we will double Australia's network speeds to 42 Mbps—providing bandwidth fast enough to download a two-hour movie to a laptop on a beach in four minutes. That's faster than all but a tiny fraction of U.S. wireline broadband connections.

Economists who say productivity gains based on digital technologies have peaked have not seen the future as it is playing out in other countries, particularly on the wireless front. In Australia, for example:

- Construction companies download drawings to remote sites and coordinate jobs in real time without sending managers on the road.
- Medical technicians transmit mammograms, MRIs, and glucose screenings from rural stations and mobile vans to central interpretation facilities in minutes, cutting days of transport time and increasing the efficiency of radiologists and the quality of patient care.
- Farmers use wireless telemetry to manage remote irrigation systems and avoid driving hundreds of miles daily, saving thousands of dollars of fuel, water, and time over the course of a growing season, while simultaneously reducing carbon emissions.

In the U.S., improving health care by cutting duplication and waste and enhancing quality of care will require better management of patient data and more robust networks. In addition, manufacturing and retailing need the data-mining capabilities that high-speed broadband enables. Furthermore, research and development is directly dependent on analyzing and moving immense quantities of data. The networks the U.S. now has are just too slow and not pervasive enough.

Aside from missing out on innovation, the U.S. also is missing opportunities to better manage its infrastructure: bridges, roads, tunnels, elevators and other facilities. With ubiquitous, reliable data networks, video surveillance can monitor facilities 24/7, microtelesensors the size of an aspirin can be used to gauge heat, stress conditions, or aberrations that signal infrastructure is at risk. Minnesota might have avoided any loss of life if monitors had been used on the interstate highway bridge that collapsed into the Mississippi River.

### **PROVIDE INCENTIVES FOR INDUSTRY INVESTMENT**

I believe that if the government primes the pump and provides the right regulatory environment, the telecommunications industry will invest the \$20 billion to \$30 billion needed to build complementary wireless and wired broadband networks that reach at least 90% of the American population. This would include expanding the number of wireless towers, upgrading their capacity, expanding fiber networks, and upgrading cable TV boxes from analog to digital to expand bandwidth on existing cable systems. I urge the government to put up \$10 billion to \$15 billion in a combination of low-interest loans, tax advantages including accelerated depreciation, and other incentives for companies to invest in the telecommunications "plumbing" that will deliver end-to-end high-speed service to many more Americans. One step should be consumer subsidies to help people upgrade their cable TV boxes. If the investment climate is right, industry will employ private capital to create the powerful and pervasive communications infrastructure our country needs. Government assistance can help finance extending the service to sparsely populated and low-income areas where it is not economically viable.

But building telecommunications networks is different than building highways because newer, less-understood technologies are involved. In such cases, history has shown that corporations are better suited to make the

crucial technological decisions and risk capital than more risk-averse government agencies. A high-speed Internet cannot be mandated or regulated into existence. The key is to give the private sector incentives to invest. But policies and regulations must be predictable and technology-neutral. No one, least of all the government, has perfect vision as to what technologies will yield the right combinations of capability and affordability.

Some of the right policies are decidedly old-fashioned—the private sector would need investment tax credits and the right to accelerate depreciation, for example.

Getting the right policy mix also would require shattering the myth of net neutrality. It may seem like a high-minded ideal to argue that everyone should have unfettered access to telecom networks at a discounted rate. But one low price for unlimited use destroys telecommunications companies' incentive to invest the tens of billions of dollars needed to create and maintain networks. For them to earn an appropriate rate of return on their investments, they must be allowed to charge rates based on usage. People who consume massive amounts of bandwidth, by distributing movies online, for example, would pay more than small users. Net neutrality works directly against the goal of unleashing private capital and know-how to build a nationwide, high-speed mobile Internet. Regulatory clarity must be in place before the private sector will risk capital.

It should not take much time to sort out all these issues. The place to begin is by recognizing a simple reality: America is seriously behind other countries in some of the future's most important infrastructure capabilities. But if America clears the obstacles to bold investments in telecommunications, it will provide a foundation for innovation and competitiveness and help its battered economy to rebound.

*Trujillo is chief executive of Telstra, the largest Australian media and telecommunications provider.*

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TESTIMONY OF JOHN CMELAK  
VICE PRESIDENT – STATE TAX POLICY

The Honorable Les Donovan, Chairperson  
Senate Committee on Assessment and Taxation

Sales Tax Refund on Telecommunications Equipment, HB 2079  
March 4, 2009

My name is John Cmelak. Thank you for the opportunity to appear in support of HB 2079. Verizon Communications, Verizon Business and Verizon Wireless (collectively, “Verizon”) respectfully offer the following comments in support of HB 2079.

The telecomm industry respectfully requests that the Kansas legislature extend its existing sales tax exemption to include the purchase of equipment used in the business of providing telecommunications services to Kansans. Local exchange carriers, inter-exchange carriers, and wireless providers universally view this 2009 legislative objective as very important.

- **It’s a responsible goal that this legislature can achieve this session; one that would place Kansas in a strong competitive position to attract new investment and create new jobs.**

Economists and policymakers have long recognized that consumption taxes should be imposed at final sale. Imposing taxes at final consumption allows companies to choose the most economically efficient mix of capital and labor to produce goods as inexpensively as possible. Taxes on inputs distort these investment decisions. They result in “pyramiding” or “cascading” of taxes – the imposition of a tax on a tax. Pyramiding occurs when taxes paid for machinery, equipment, and other inputs to production are then added to the price of a good, which is then taxed at final sale. Kansas policymakers have already endorsed this important tax policy principle by providing the manufacturing sector with a sales tax equipment exemption.

- **We are merely requesting that the legislature promote parity in taxation by treating the fiercely competitive telecommunications industry on a footing equal to the manufacturing industry.**

There are compelling economic reasons why a telecommunications equipment exemption is a key ingredient to Kansas’ future economic development and prosperity. I urge each respected member of this committee to ask yourself the question:

- **“Is Kansas doing all that it should to attract new and speedier telecommunications technologies?”**

As a Vice President for the nation’s largest wireless telecommunications service provider, I can offer this committee my own perspective. The hard economic reality is that telecommunications service providers no longer can tap a virtually unlimited supply of investment capital to upgrade our networks within each venue. Investors remain nervous. The rapid slowdown in our economy and the resulting deterioration in capital markets have forced companies like Verizon to carefully scrutinize each capital investment decision to generate maximum return. And although it would be disingenuous to suggest that all capital investment decisions are driven exclusively by state tax policy, it is absolutely accurate to state that the increased cost of Kansas’s state and local sales tax is factored into the “rate of return” computations that companies use to determine where to make new capital investment.

Once again, the telecomm industry speaks with a common voice, and our message remains consistent: we respectfully request that the Kansas legislature extend its current sales tax exemption to include the purchase of equipment used in the business of providing telecommunications services to Kansans.

- **Your support will send a strong signal to senior management of Verizon and its telecommunications competitors that Kansas not only recognizes the value of tax parity, but that it has also taken affirmative steps to modernize its tax code to foster the continued deployment of 21<sup>st</sup> century, high-speed telecommunications infrastructure.**

Thank you for your consideration.

Senate Assessment & Taxation  
3/4/09  
Attachment 4

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HOUSE OF  
REPRESENTATIVES

## Testimony on HB 2079 - Sales Tax Exemption for Telecommunications Companies

Senate Assessment and Taxation Committee

March 4, 2009

Mr. Chairman, Members of the Committee: I am neutral on the merits of the underlying bill. Tax policies are your domain, not mine. However, telecommunications public policy-making is an area in which I take great interest. You may recall that I organized and hosted two Rural Broadband Summits that brought the Chairman and a Commissioner of the Federal Communications Committee to Kansas to meet with our stakeholders.

Approximately 15-20 percent of the customer lines owned by the two largest telecommunications companies in Kansas do not have access to high speed Internet service, broadband. While the independent telecommunications providers (e.g., Pioneer, Rural Tel, Tri-County) have made the necessary investments and policy commitments to reach all or almost all of their subscribers, the same has not been true for the larger companies. Whether this discrepancy is due to out-of-state ownership/administrative control, different finance options or business models, or some other reason is unimportant.

What is important is that all Kansans should have access to broadband services for education, health care, employment, and other opportunities. For example, a student living in Lawrence with broadband available at home can access more resources as he/she writes term papers than can a fellow student who lives outside the city limit and who has only dial-up services available. A woman living in SW Kansas sells tumbleweeds to New York City interior decorators (I know, P.T. Barnum was correct - a sucker is born every minute). She can offer these fine products for sale because she lives in a town with broadband service. If she lived on the ranch where she collects the tumbleweeds she would only have access to dial-up service. Lawrence Memorial Hospital links all physicians' offices and homes via broadband so that if someone is brought to the emergency room the attending physician can communicate with the primary care physician about pre-existing conditions, medications, etc. This system works only for physicians living within the Lawrence city limits because broadband services are not generally available beyond that point.

Senate Assessment &amp; Taxation

3-4-09  
Attachment 5

To address the lack of investment and policy commitment by certain telecommunications companies, and because I do not serve on the House Tax Committee, I offered the attached amendment on the House floor. In a bi-partisan effort, Rep. Frownfelter supported my amendment. Obviously it was not accepted and I bring it to you for your consideration. In addition, the Kansas Farm Bureau is making ubiquitous access to broadband a high priority, the Kansas State Librarian and Farm Bureau are working with the Bill and Melinda Gates Foundation to expand access to broadband, and every topic-relevant economic study demonstrates the value of broadband access to individuals and businesses.

There also is an equity issue - how long should a digital divide exist within a telecommunication company's customer base? I recognize that economic opportunities determine where initial investments are made, but how long do we deny people the 21<sup>st</sup> Century's equivalent of the 1930's "basic telephone service?"

The premise of the proposed amendment is simple, if all of a telecommunications company's customers do not have access to broadband services, then the sales tax money refunded by the State of Kansas shall be used to provide those services. Once all of a company's customers have access (they do not have to accept service, simply have access), the refunds may be expended or saved in any manner desired by the company. This language does not impact cable providers - even those with telephony services, because any customer with cable passing their home could receive broadband service. Similarly, the rural or independent telephone companies should not be impacted because their customers have ubiquitous broadband availability.

There is no expectation in the proposed amendment that the telecommunications companies would deliver the broadband service via DSL or fiber to the home. Rather, the expectation is that fixed-base wireless technology will be used, though other options exist using copper wires. Finally, satellite service is frequently held up as an option. Most knowledgeable broadband policy-makers do not consider satellite service comparable to fixed base wireless (much less DSL or cable).

The economic stimulus package provides incentives for the deployment of broadband services - but only if a company applies for the money and accepts the conditions. If our Kansas companies avail themselves of the stimulus dollars, great. If they do not do so, then it is important that Kansans without broadband access not be forgotten.

The intent of the original HB 2079 is for the telecommunications companies to reinvest the sales tax refunds. My proposed amendment simply states that if all of your customers do not have access to high speed Internet services, spend those refund dollars that the Kansas Legislature is returning to you on providing access to broadband services.

Thank you for your consideration.

## STATE OF KANSAS

## HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend HB 2079, on page 2, after line 19, by inserting:

"Sec. 2. (a) As used in this section, "broadband" means any synchronous or asynchronous transmission technology capable of speeds of at least 700 kilobits per second in both directions between customer and provider.

(b) Any retail broadband service provider who receives a sales tax refund pursuant to section 1, and amendments thereto, shall use all moneys received from such refund to deploy broadband services to retail customers in areas of the provider's service territory where such services are not available to retail customers.";

And by renumbering the remaining section accordingly;

In the title, in line 9, by striking all after "concerning"; in line 10, by striking all before the period and inserting "telecommunications; relating to certain sales tax refunds"

\_\_\_\_\_  
District.



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Testimony to the Senate Committee on Assessment and Taxation

Richard Cram

March 4, 2009

**Department Concerns with House Bill 2079**

Senator Donovan, Chair, and Members of the Committee:

House Bill 2079 would provide a refund of state sales tax to telecommunications providers on their purchases of certain machinery & equipment, to be phased in over 5 fiscal years, starting with FY 2013 at a 20% refund level (-\$3.2 million fiscal impact) and reaching the 100% refund level in FY 2017 (-\$17.3 million fiscal impact) and thereafter. The Department's fiscal note is attached.

The Department is concerned with the magnitude of this bill's negative fiscal impact and permanent decrease to the tax base, even though that impact does not begin until FY 2013 and phases in over 5 years.

The Department is also alarmed at the ability of the State to meet the basic needs of its citizens if the tax base continues to shrink with proposals like this. Tax cuts in the range of \$143 million through FY 2009 have been enacted in the past four sessions, and if those tax cuts are cumulated through FY 2013, the number is over \$1 billion. The question that needs to be asked is not whether a particular tax cut proposal is a good idea, but whether the State can afford to do any tax cutting in the current environment.

## MEMORANDUM

**To:** Mr. Duane Goossen, Director  
Division of Budget

**From:** Kansas Department of Revenue

**Date:** 02/03/2009

**Subject:** House Bill 2079  
Introduced as a House Bill

### **Brief of Bill**

House Bill 2079, as Introduced, provides for a sales tax exclusion on the purchase of telecommunications machinery and equipment by persons providing services taxable pursuant to K.S.A 79-3603 (b). The proposal would require the purchaser to pay the sales tax and then seek a refund of tax from the department of revenue on the purchase of telecommunications machinery and equipment. The proposal allows for refunds on machinery and equipment based on the following schedule:

- 20% refund on purchases from July 1, 2012 through June 20, 2103
- 40% refund on purchases from July 1, 2013 through June 20, 2104
- 60% refund on purchases from July 1, 2014 through June 20, 2105
- 80% refund on purchases from July 1, 2015 through June 20, 2106
- 100% refund on purchases on and after July 1, 2016

The request for refund must be submitted within one year from the date of payment of the tax and only state tax is to be refunded. Telecommunication machinery and equipment is defined as machinery, equipment and software that is used directly and predominantly for the purpose of sending, receiving or storing voice or data communications and all equipment that is used to enable, facilitate, maintain or monitor such machinery, equipment and software. A list of the type of machinery and equipment is included in the proposal

The Act would be effective July 1, 2009.

### **Fiscal Impact**

The proposal does not take effect until fiscal year 2013. For FY 2013, the loss is estimated at \$3.2 million. The loss to the state general fund is estimated at \$2.81 million and \$0.39 million to the state highway fund. As the amount of purchases that qualifies for refund increases each year from 20% in FY 2013, to 40% in FY 2014, to 60% in FY 2015, to 80% in FY 2016, and 100% of purchases in FY 2017 and after, the fiscal note's growth is considerable for each of the next four (4) years before leveling off. The table below shows the fiscal impact for the next five (5)

years. A 2% annual increase in purchases, and therefore in sales tax refund is built into the estimate.

Fiscal Year	Total	SGF	Hwy
2013	\$3.20	\$2.81	\$0.39
2014	\$6.53	\$5.73	\$0.80
2015	\$9.99	\$8.76	\$1.23
2016	\$13.58	\$11.91	\$1.67
2017	\$17.32	\$15.19	\$2.13

**Administrative Impact**

Sales tax publications will require revision at a cost of \$18,800.

**Administrative Problems and Comments**

It is the department's interpretation of the proposal that telecommunication machinery and equipment must be purchased on or after July 1, 2012 to qualify for the sales tax refund.

The department anticipates there will be administrative issues and potentially litigation over what companies and what machinery and equipment qualify for the exemption. For example, cellular and land line telephone companies would be exempt but what about cable and satellite television companies providing VOIP (voice over internal protocol).

If telecommunication companies are exempt on their purchases of machinery and equipment, it would be anticipated that other industries (such as utility companies) would request the same exemption or refund on their machinery and equipment purchases.

**Taxpayer/Customer Impact**

Refunding of state sales tax on machinery and equipment purchases to telecommunication and related companies.

**Legal Impact**

Approved By:

