

CERTIFICATION OF ENROLLMENT

SENATE BILL 6539

Chapter 67, Laws of 2002

57th Legislature
2002 Regular Session

MOBILE TELECOMMUNICATIONS SOURCING ACT

EFFECTIVE DATE: 8/1/02

Passed by the Senate February 16, 2002
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 7, 2002
YEAS 93 NAYS 0

FRANK CHOPP

**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6539** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK

Secretary

Approved March 21, 2002

FILED

March 21, 2002 - 2:15 p.m.

GARY LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6539

Passed Legislature - 2002 Regular Session

State of Washington

57th Legislature

2002 Regular Session

By Senators T. Sheldon, Poulsen and Rossi; by request of Department of Revenue

Read first time 01/21/2002. Referred to Committee on Economic Development & Telecommunications.

1 AN ACT Relating to implementing the federal mobile
2 telecommunications sourcing act; amending RCW 82.04.065, 82.08.0289,
3 82.14.020, 82.14B.030, 35.21.714, and 35A.82.060; adding new sections
4 to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding
5 new sections to chapter 82.32 RCW; adding a new section to chapter
6 35.21 RCW; creating new sections; and providing an effective date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that the United States
9 congress has enacted the mobile telecommunications sourcing act for the
10 purpose of establishing uniform nationwide sourcing rules for state and
11 local taxation of mobile telecommunications services. The legislature
12 desires to adopt implementing legislation governing taxation by the
13 state and by affected local taxing jurisdictions within the state. The
14 legislature recognizes that the federal act is intended to provide a
15 clarification of sourcing rules that is revenue-neutral among the
16 states, and that the clarifications required by the federal act are
17 likely in fact to be revenue-neutral at the state level. The
18 legislature also desires to take advantage of a provision of the
19 federal act that allows a state with a generally applicable business

1 and occupation tax, such as this state, to make certain of the uniform
2 sourcing rules elective for such tax.

3 **Sec. 2.** RCW 82.04.065 and 1997 c 304 s 5 are each amended to read
4 as follows:

5 (1) "Competitive telephone service" means the providing by any
6 person of telecommunications equipment or apparatus, or service related
7 to that equipment or apparatus such as repair or maintenance service,
8 if the equipment or apparatus is of a type which can be provided by
9 persons that are not subject to regulation as telephone companies under
10 Title 80 RCW and for which a separate charge is made.

11 (2) "Network telephone service" means the providing by any person
12 of access to a ~~((local))~~ telephone network, ~~((local))~~ telephone network
13 switching service, toll service, or coin telephone services, or the
14 providing of telephonic, video, data, or similar communication or
15 transmission for hire, via a ~~((local))~~ telephone network, toll line or
16 channel, cable, microwave, or similar communication or transmission
17 system. ~~("Network telephone service" includes interstate service,
18 including toll service, originating from or received on
19 telecommunications equipment or apparatus in this state if the charge
20 for the service is billed to a person in this state.)~~ "Network
21 telephone service" includes the provision of transmission to and from
22 the site of an internet provider via a ~~((local))~~ telephone network,
23 toll line or channel, cable, microwave, or similar communication or
24 transmission system. "Network telephone service" does not include the
25 providing of competitive telephone service, the providing of cable
26 television service, the providing of broadcast services by radio or
27 television stations, nor the provision of internet service as defined
28 in RCW 82.04.297, including the reception of dial-in connection,
29 provided at the site of the internet service provider.

30 (3) "Telephone service" means competitive telephone service or
31 network telephone service, or both, as defined in subsections (1) and
32 (2) of this section.

33 (4) "Telephone business" means the business of providing network
34 telephone service, as defined in subsection (2) of this section. It
35 includes cooperative or farmer line telephone companies or associations
36 operating an exchange.

37 (5) "Charges for mobile telecommunications services" means any
38 charge for, or associated with, the provision of commercial mobile

1 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
2 on June 1, 1999, or any charge for, or associated with, a service
3 provided as an adjunct to a commercial mobile radio service, regardless
4 of whether individual transmissions originate or terminate within the
5 licensed service area of the mobile telecommunications service
6 provider.

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

16 (7) "Designated data base provider" means a person representing all
17 the political subdivisions of the state that is:

18 (a) Responsible for providing an electronic data base prescribed in
19 4 U.S.C. Sec. 119(a) if the state has not provided an electronic data
20 base; and

21 (b) Approved by municipal and county associations or leagues of the
22 state whose responsibility it would otherwise be to provide a data base
23 prescribed by 4 U.S.C. Secs. 116 through 126.

24 (8) "Enhanced zip code" means a United States postal zip code of
25 nine or more digits.

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

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

32 (11) "Mobile telecommunications service" means commercial mobile
33 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
34 on June 1, 1999.

35 (12) "Mobile telecommunications service provider" means a home
36 service provider or a serving carrier.

37 (13) "Place of primary use" means the street address representative
38 of where the customer's use of the mobile telecommunications service
39 primarily occurs, which must be:

1 (a) The residential street address or the primary business street
2 address of the customer; and

3 (b) Within the licensed service area of the home service provider.

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

11 (15) "Reseller" means a provider who purchases telecommunications
12 services from another telecommunications service provider and then
13 resells, uses as a component part of, or integrates the purchased
14 services into a mobile telecommunications service. "Reseller" does not
15 include a serving carrier with whom a home service provider arranges
16 for the services to its customers outside the home service provider's
17 licensed service area.

18 (16) "Serving carrier" means a facilities-based carrier providing
19 mobile telecommunications service to a customer outside a home service
20 provider's or reseller's licensed service area.

21 (17) "Taxing jurisdiction" means any of the several states, the
22 District of Columbia, or any territory or possession of the United
23 States, any municipality, city, county, township, parish,
24 transportation district, or assessment jurisdiction, or other political
25 subdivision within the territorial limits of the United States with the
26 authority to impose a tax, charge, or fee.

27 NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW
28 to read as follows:

29 A telephone business other than a mobile telecommunications service
30 provider must calculate gross proceeds of sales by including all
31 charges for network telephone services originating from or received on
32 telecommunications equipment or apparatus in this state if the charge
33 for the service is billed to a person in this state.

34 NEW SECTION. Sec. 4. A new section is added to chapter 82.04 RCW
35 to read as follows:

36 (1) Unless a mobile telecommunications service provider elects to
37 be taxed under subsection (2) of this section, the mobile

1 telecommunications service provider must calculate gross proceeds of
2 sales by reporting all sales to, or sales between carriers for,
3 customers with a place of primary use within this state, regardless of
4 where the mobile telecommunications services originate, are received,
5 or are billed, consistent with the mobile telecommunications sourcing
6 act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126.

7 (2) A mobile telecommunications service provider may elect to
8 calculate gross proceeds of sales by including all charges for mobile
9 telecommunications services provided to all consumers, whether the
10 consumers are the mobile telecommunications service provider's
11 customers or not, if the services originate from or are received on
12 telecommunications equipment or apparatus in this state and are billed
13 to a person in this state.

14 (3) If a mobile telecommunications service provider elects to be
15 taxed under subsection (2) of this section, the mobile
16 telecommunications service provider must provide written notice of the
17 election before the effective date of this section, or before the
18 beginning date of any tax year thereafter in which it wishes to change
19 its reporting and make this election.

20 (4) The department may provide, by rule, for formulary reporting as
21 necessary to implement this section.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.08 RCW
23 to read as follows:

24 For the purposes of this chapter, mobile telecommunications
25 services are deemed to have occurred at the customer's place of primary
26 use, regardless of where the mobile telecommunications services
27 originate, terminate, or pass through, consistent with the mobile
28 telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116
29 through 126. The definitions in RCW 82.04.065 apply to this section.

30 **Sec. 6.** RCW 82.08.0289 and 1983 2nd ex.s. c 3 s 30 are each
31 amended to read as follows:

32 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

33 (a) Network telephone service, other than toll service, to
34 residential customers((~~-~~))*i*

35 (b) Network telephone service which is paid for by inserting coins
36 in coin-operated telephones((~~-~~))*i*

1 (c) Mobile telecommunications services, including any toll service,
2 provided to a customer whose place of primary use is outside this
3 state.

4 ~~((As used in this section:))~~ The definitions in RCW 82.04.065,
5 as well as the definitions in this subsection, apply to this section.

6 ~~(a) ("Network telephone service" has the meaning given in RCW~~
7 ~~82.04.065.~~

8 ~~(b))~~ "Residential customer" means an individual subscribing to a
9 residential class of telephone service.

10 ~~((e))~~ (b) "Toll service" does not include customer access line
11 charges for access to a toll calling network.

12 **Sec. 7.** RCW 82.14.020 and 2001 c 186 s 3 are each amended to read
13 as follows:

14 For purposes of this chapter:

15 (1) A retail sale consisting solely of the sale of tangible
16 personal property shall be deemed to have occurred at the retail outlet
17 at or from which delivery is made to the consumer;

18 (2) A retail sale consisting essentially of the performance of
19 personal business or professional services shall be deemed to have
20 occurred at the place at which such services were primarily performed,
21 except that for the performance of a tow truck service, as defined in
22 RCW 46.55.010, the retail sale shall be deemed to have occurred at the
23 place of business of the operator of the tow truck service;

24 (3) A retail sale consisting of the rental of tangible personal
25 property shall be deemed to have occurred (a) in the case of a rental
26 involving periodic rental payments, at the ~~((primary))~~ place of primary
27 use by the lessee during the period covered by each payment, or (b) in
28 all other cases, at the place of first use by the lessee;

29 (4) A retail sale within the scope of RCW 82.04.050(2), and a
30 retail sale of taxable personal property to be installed by the seller
31 shall be deemed to have occurred at the place where the labor and
32 services involved were primarily performed;

33 (5)(a) A retail sale consisting of the providing to a consumer of
34 telephone service, as defined in RCW 82.04.065, other than a sale of
35 tangible personal property under subsection (1) of this section or a
36 rental of tangible personal property under subsection (3) of this
37 section or a sale of mobile telecommunications services, shall be

1 deemed to have occurred at the situs of the telephone or other
2 instrument through which the telephone service is rendered;

3 (b) A retail sale consisting of the providing to a consumer of
4 mobile telecommunications services is deemed to have occurred at the
5 customer's place of primary use, regardless of where the mobile
6 telecommunications services originate, terminate, or pass through,
7 consistent with the mobile telecommunications sourcing act, P.L. 106-
8 252, 4 U.S.C. Secs. 116 through 126;

9 (6) A retail sale of linen and uniform supply services is deemed to
10 occur as provided in RCW 82.08.0202;

11 (7) "City" means a city or town;

12 (8) The meaning ascribed to words and phrases in chapters 82.04,
13 82.08 and 82.12 RCW, as now or hereafter amended, insofar as
14 applicable, shall have full force and effect with respect to taxes
15 imposed under authority of this chapter;

16 (9) "Taxable event" shall mean any retail sale, or any use of an
17 article of tangible personal property, upon which a state tax is
18 imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or
19 may hereafter be amended: PROVIDED, HOWEVER, That the term shall not
20 include a retail sale taxable pursuant to RCW 82.08.150, as now or
21 hereafter amended;

22 (10) "Treasurer or other legal depository" shall mean the treasurer
23 or legal depository of a county or city.

24 **Sec. 8.** RCW 82.14B.030 and 1998 c 304 s 3 are each amended to read
25 as follows:

26 (1) The legislative authority of a county may impose a county
27 enhanced 911 excise tax on the use of switched access lines in an
28 amount not exceeding fifty cents per month for each switched access
29 line. The amount of tax shall be uniform for each switched access
30 line. Each county shall provide notice of such tax to all local
31 exchange companies serving in the county at least sixty days in advance
32 of the date on which the first payment is due.

33 (2) The legislative authority of a county may also impose a county
34 911 excise tax on the use of radio access lines located within the
35 county in an amount not exceeding twenty-five cents per month for each
36 radio access line. The amount of tax shall be uniform for each radio
37 access line. The location of a radio access line is the customer's
38 place of primary use as defined in RCW 82.04.065. The county shall

1 provide notice of such tax to all radio communications service
2 companies serving in the county at least sixty days in advance of the
3 date on which the first payment is due. Any county imposing this tax
4 shall include in its ordinance a refund mechanism whereby the amount of
5 any tax ordered to be refunded by the judgment of a court of record, or
6 as a result of the resolution of any appeal therefrom, shall be
7 refunded to the radio communications service company or local exchange
8 company that collected the tax, and those companies shall reimburse the
9 subscribers who paid the tax. The ordinance shall further provide that
10 to the extent the subscribers who paid the tax cannot be identified or
11 located, the tax paid by those subscribers shall be returned to the
12 county.

13 (3) A state enhanced 911 excise tax is imposed on all switched
14 access lines in the state. The amount of tax shall not exceed twenty
15 cents per month for each switched access line. The tax shall be
16 uniform for each switched access line. The tax imposed under this
17 subsection shall be remitted to the department of revenue by local
18 exchange companies on a tax return provided by the department. Tax
19 proceeds shall be deposited by the treasurer in the enhanced 911
20 account created in RCW 38.52.540.

21 (4) By August 31st of each year the state enhanced 911 coordinator
22 shall recommend the level for the next year of the state enhanced 911
23 excise tax, based on a systematic cost and revenue analysis, to the
24 utilities and transportation commission. The commission shall by the
25 following October 31st determine the level of the state enhanced 911
26 excise tax for the following year.

27 **Sec. 9.** RCW 35.21.714 and 1989 c 103 s 1 are each amended to read
28 as follows:

29 (1) Any city which imposes a license fee or tax upon the business
30 activity of engaging in the telephone business(~~(, as defined in RCW~~
31 ~~82.04.065,))~~) which is measured by gross receipts or gross income may
32 impose the fee or tax, if it desires, on one hundred percent of the
33 total gross revenue derived from intrastate toll telephone services
34 subject to the fee or tax: PROVIDED, That the city shall not impose
35 the fee or tax on that portion of network telephone service(~~(, as~~
36 ~~defined in RCW 82.04.065,))~~) which represents charges to another
37 telecommunications company, as defined in RCW 80.04.010, for connecting
38 fees, switching charges, or carrier access charges relating to

1 intrastate toll telephone services, or for access to, or charges for,
2 interstate services, or charges for network telephone service that is
3 purchased for the purpose of resale, or charges for mobile
4 telecommunications services provided to customers whose place of
5 primary use is not within the city.

6 (2) Any city that imposes a license tax or fee under subsection (1)
7 of this section has the authority, rights, and obligations of a taxing
8 jurisdiction as provided in sections 11 through 15 of this act.

9 (3) The definitions in RCW 82.04.065 apply to this section.

10 **Sec. 10.** RCW 35A.82.060 and 1989 c 103 s 3 are each amended to
11 read as follows:

12 (1) Any code city which imposes a license fee or tax upon the
13 business activity of engaging in the telephone business(~~(, as defined~~
14 in ~~RCW 82.04.065,~~) which is measured by gross receipts or gross income
15 may impose the fee or tax, if it desires, on one hundred percent of the
16 total gross revenue derived from intrastate toll telephone services
17 subject to the fee or tax: PROVIDED, That the city shall not impose
18 the fee or tax on that portion of network telephone service(~~(, as~~
19 defined in ~~RCW 82.04.065,~~) which represents charges to another
20 telecommunications company, as defined in RCW 80.04.010, for connecting
21 fees, switching charges, or carrier access charges relating to
22 intrastate toll telephone services, or for access to, or charges for,
23 interstate services, or charges for network telephone service that is
24 purchased for the purpose of resale, or charges for mobile
25 telecommunications services provided to customers whose place of
26 primary use is not within the city.

27 (2) Any city that imposes a license tax or fee under subsection (1)
28 of this section has the authority, rights, and obligations of a taxing
29 jurisdiction as provided in sections 11 through 15 of this act.

30 (3) The definitions in RCW 82.04.065 apply to this section.

31 **NEW SECTION. Sec. 11.** A new section is added to chapter 82.32 RCW
32 to read as follows:

33 (1)(a) The department may provide an electronic data base as
34 described in this section to a mobile telecommunications service
35 provider, or if the department does not provide an electronic data base
36 to mobile telecommunications service providers, then the designated

1 data base provider may provide an electronic data base to a mobile
2 telecommunications service provider.

3 (b)(i) An electronic data base, whether provided by the department
4 or the designated data base provider, shall be provided in a format
5 approved by the American national standards institute's accredited
6 standards committee X12, that after allowing for de minimis deviations,
7 designates for each street address in the state, including to the
8 extent practicable, any multiple postal street addresses applicable to
9 one street location, the appropriate taxing jurisdictions, and the
10 appropriate code for each taxing jurisdiction, for each level of taxing
11 jurisdiction, identified by one nationwide standard numeric code.

12 (ii) An electronic data base shall also provide the appropriate
13 code for each street address with respect to political subdivisions
14 that are not taxing jurisdictions when reasonably needed to determine
15 the proper taxing jurisdiction.

16 (iii) The nationwide standard numeric codes shall contain the same
17 number of numeric digits with each digit or combination of digits
18 referring to the same level of taxing jurisdiction throughout the
19 United States using a format similar to FIPS 55-3 or other appropriate
20 standard approved by the federation of tax administrators and the
21 multistate tax commission, or their successors. Each address shall be
22 provided in standard postal format.

23 (2) The department or designated data base provider, as applicable,
24 that provides or maintains an electronic data base described in
25 subsection (1) of this section shall provide notice of the availability
26 of the then-current electronic data base, and any subsequent revisions,
27 by publication in the manner normally employed for the publication of
28 informational tax, charge, or fee notices to taxpayers in the state.

29 (3) A mobile telecommunications service provider using the data
30 contained in an electronic data base described in subsection (1) of
31 this section shall be held harmless from any tax, charge, or fee
32 liability that otherwise would be due solely as a result of any error
33 or omission in the data base provided by the department or designated
34 data base provider. The mobile telecommunications service provider
35 shall reflect changes made to the data base during a calendar quarter
36 not later than thirty days after the end of the calendar quarter if the
37 department or designated data base provider, as applicable, has issued
38 notice of the availability of an electronic data base reflecting the
39 changes under subsection (2) of this section.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.32 RCW
2 to read as follows:

3 (1) If neither the department nor the designated data base provider
4 provides an electronic data base under section 11 of this act, a mobile
5 telecommunications service provider shall be held harmless from any
6 tax, charge, or fee liability in any taxing jurisdiction in this state
7 that otherwise would be due solely as a result of an assignment of a
8 street address to an incorrect taxing jurisdiction if, subject to
9 section 13 of this act, the home service provider employs an enhanced
10 zip code to assign each street address to a specific taxing
11 jurisdiction for each level of taxing jurisdiction and exercises due
12 diligence at each level of taxing jurisdiction to ensure that each
13 street address is assigned to the correct taxing jurisdiction. If an
14 enhanced zip code overlaps boundaries of taxing jurisdictions of the
15 same level, the home service provider must designate one specific
16 jurisdiction within the enhanced zip code for use in taxing the
17 activity for such enhanced zip code for each level of taxing
18 jurisdiction. Any enhanced zip code assignment changed in accordance
19 with section 13 of this act is deemed to be in compliance with this
20 section. For purposes of this section, there is a rebuttable
21 presumption that a home service provider has exercised due diligence if
22 the home service provider demonstrates that it has:

23 (a) Expended reasonable resources to implement and maintain an
24 appropriately detailed electronic data base of street address
25 assignments to taxing jurisdictions;

26 (b) Implemented and maintained reasonable internal controls to
27 correct misassignments of street addresses to taxing jurisdictions
28 promptly; and

29 (c) Used all reasonably obtainable and usable data pertaining to
30 municipal annexations, incorporations, reorganizations, and any other
31 changes in jurisdictional boundaries that materially affect the
32 accuracy of the data base.

33 (2) Subsection (1) of this section applies to a mobile
34 telecommunications service provider that is in compliance with the
35 requirements of subsection (1) of this section, if in this state an
36 electronic data base has not been provided under section 11 of this
37 act, until the later of:

1 (a) Eighteen months after the nationwide standard numeric code
2 described in section 11(1) of this act has been approved by the
3 federation of tax administrators and the multistate tax commission; or

4 (b) Six months after the department or a designated data base
5 provider in this state provides the data base as prescribed in section
6 11(1) of this act.

7 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.32 RCW
8 to read as follows:

9 A taxing jurisdiction, or the department on behalf of any taxing
10 jurisdiction or taxing jurisdictions within this state, may:

11 (1) Determine that the address used for purposes of determining the
12 taxing jurisdictions to which taxes, charges, or fees for mobile
13 telecommunications services are remitted does not meet the definition
14 of place of primary use in RCW 82.04.065 and give binding notice to the
15 home service provider to change the place of primary use on a
16 prospective basis from the date of notice of determination. If the
17 authority making the determination is not the department, the taxing
18 jurisdiction must obtain the consent of all affected taxing
19 jurisdictions within the state before giving the notice of
20 determination. Before the taxing jurisdiction gives the notice of
21 determination, the customer must be given an opportunity to
22 demonstrate, in accordance with applicable state or local tax, charge,
23 or fee administrative procedures, that the address is the customer's
24 place of primary use; and

25 (2) Determine that the assignment of a taxing jurisdiction by a
26 home service provider under section 12 of this act does not reflect the
27 correct taxing jurisdiction and give binding notice to the home service
28 provider to change the assignment on a prospective basis from the date
29 of notice of determination. If the authority making the determination
30 is not the department, the taxing jurisdiction must obtain the consent
31 of all affected taxing jurisdictions within the state before giving the
32 notice of determination. The home service provider must be given an
33 opportunity to demonstrate, in accordance with applicable state or
34 local tax, charge, or fee administrative procedures, that the
35 assignment reflects the correct taxing jurisdiction.

36 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.32 RCW
37 to read as follows:

1 (1) A home service provider is responsible for obtaining and
2 maintaining information regarding the customer's place of primary use
3 as defined in RCW 82.04.065. Subject to section 13 of this act, and if
4 the home service provider's reliance on information provided by its
5 customer is in good faith, a taxing jurisdiction shall:

6 (a) Allow a home service provider to rely on the applicable
7 residential or business street address supplied by the home service
8 provider's customer; and

9 (b) Not hold a mobile telecommunications service provider liable
10 for any additional taxes, charges, or fees based on a different
11 determination of the place of primary use.

12 (2) Except as provided in section 13 of this act, a taxing
13 jurisdiction shall allow a home service provider to treat the address
14 used by the home service provider for tax purposes for any customer
15 under a service contract or agreement in effect on August 1, 2002, as
16 that customer's place of primary use for the remaining term of the
17 service contract or agreement, excluding any extension or renewal of
18 the service contract or agreement, for purposes of determining the
19 taxing jurisdictions to which taxes, charges, or fees on charges for
20 mobile telecommunications services are remitted.

21 NEW SECTION. **Sec. 15.** A new section is added to chapter 82.32 RCW
22 to read as follows:

23 (1) This act does not modify, impair, supersede, or authorize the
24 modification, impairment, or supersession of any law allowing a taxing
25 jurisdiction to collect a tax, charge, or fee from a customer that has
26 failed to provide its place of primary use.

27 (2) If a taxing jurisdiction does not otherwise subject charges for
28 mobile telecommunications services to taxation and if these charges are
29 aggregated with and not separately stated from charges that are subject
30 to taxation, then the charges for nontaxable mobile telecommunications
31 services may be subject to taxation unless the mobile
32 telecommunications service provider can reasonably identify charges not
33 subject to the tax, charge, or fee from its books and records that are
34 kept in the regular course of business.

35 (3) If a taxing jurisdiction does not subject charges for mobile
36 telecommunications services to taxation, a customer may not rely upon
37 the nontaxability of charges for mobile telecommunications services
38 unless the customer's home service provider separately states the

1 charges for nontaxable mobile telecommunications services from taxable
2 charges or the home service provider elects, after receiving a written
3 request from the customer in the form required by the provider, to
4 provide verifiable data based upon the home service provider's books
5 and records that are kept in the regular course of business that
6 reasonably identifies the nontaxable charges.

7 NEW SECTION. **Sec. 16.** A new section is added to chapter 35.21 RCW
8 to read as follows:

9 If a customer believes that an amount of city tax or an assignment
10 of place of primary use or taxing jurisdiction included on a billing
11 for mobile telecommunications services is erroneous, the customer shall
12 notify the home service provider in writing. The customer shall
13 include in this written notification the street address for the
14 customer's place of primary use, the account name and number for which
15 the customer seeks a correction, and a description of the error
16 asserted by the customer. Within sixty days of receiving a notice
17 under this section, the home service provider shall review its records
18 and the electronic data base or enhanced zip code used pursuant to
19 sections 11 and 12 of this act to determine the customer's taxing
20 jurisdiction. The home service provider shall notify the customer in
21 writing of the results of its review.

22 The procedures in this section shall be the first remedy available
23 to customers seeking correction of assignment of place of primary use
24 or taxing jurisdiction, or a refund of or other compensation for taxes,
25 charges, and fees erroneously collected by the home service provider,
26 and no cause of action based upon a dispute arising from such taxes,
27 charges, or fees shall accrue to the extent otherwise permitted by law
28 until a customer has reasonably exercised the rights and procedures set
29 forth in this section.

30 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.32 RCW
31 to read as follows:

32 The definitions in RCW 82.04.065 apply to sections 11 through 16 of
33 this act.

34 NEW SECTION. **Sec. 18.** If a court of competent jurisdiction enters
35 a final judgment on the merits that is based on federal or state law,
36 is no longer subject to appeal, and substantially limits or impairs the

1 essential elements of P.L. 106-252 Secs. 116 through 126, or this act,
2 then this act is null and void in its entirety.

3 NEW SECTION. **Sec. 19.** This act takes effect August 1, 2002.

Passed the Senate February 16, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.