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## HOUSE BILL NO. 1051

Offered January 10, 2018

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A BILL to amend and reenact §§ 58.1-647 and 58.1-648 of the Code of Virginia, relating to communications sales and use tax; services subject to taxation.

Patron—Watts

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 58.1-647 and 58.1-648 of the Code of Virginia are amended and reenacted as follows:

**§ 58.1-647. Definitions.**

Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title (§ 58.1-600 *et seq.*), unless defined otherwise, as follows:

"Cable service" means the one-way transmission to subscribers of (i) video programming as defined in 47 U.S.C. § 522 (20) 522(20) or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332 (d) 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303 (v) 303(v).

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Coin-operated communications service" means a communications service paid for by means of inserting coins in a coin-operated telephone.

"Communications services" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, and any other service utilizing any communications infrastructure such as international calling services, extended call area services, audio and visual streaming services, and Internet application-based services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term "Communications services" includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; and (vi) directory assistance. "Communications services" applies to any service described or listed in this definition, regardless of whether the customer is billed for such service based on a subscription charge, a periodic charge, or a charge for actual usage, including such a fee for the use of an Internet-based application, excluding the original cost of purchasing the application.

"Communications services provider" means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

"Cost price" means the actual cost of the purchased communications service computed in the same manner as the sales price.

"Customer" means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the private communications service.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

"Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. "Internet access service" does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

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59 "Place of primary use" means the street address representative of where the customer's use of the  
60 communications services primarily occurs, which must be the residential street address or the primary  
61 business street address of the customer. In the case of mobile communications services, the place of  
62 primary use shall be within the licensed service area of the home service provider.

63 "Postpaid calling service" means the communications service obtained by making a payment on a  
64 call-by-call basis either through the use of a credit card or payment mechanism such as a bank card,  
65 travel card, debit card, or by a charge made to a telephone number that is not associated with the  
66 origination or termination of the communications service.

67 "Prepaid calling service" means the right to access exclusively communications services, which must  
68 be paid for in advance and which enables the origination of calls using an access number or  
69 authorization code, whether manually or electronically dialed, and that is sold in predetermined units or  
70 dollars that decrease in number with use.

71 "Private communications service" means a communications service that entitles the customer or user  
72 to exclusive or priority use of a communications channel or group of channels between or among  
73 channel termination points, regardless of the manner in which such channel or channels are connected,  
74 and includes switching capacity, extension lines, stations, and any other associated services that are  
75 provided in connection with the use of such channel or channels.

76 "Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than  
77 for resale or for use as a component part of or for the integration into communications services to be  
78 resold in the ordinary course of business.

79 "Sales price" means the total amount charged in money or other consideration by a communications  
80 services provider for the sale of the right or privilege of using communications services in the  
81 Commonwealth, including any property or other services that are part of the sale. The sales price of  
82 communications services shall not be reduced by any separately identified components of the charge that  
83 constitute expenses of the communications services provider, including but not limited to, sales taxes on  
84 goods or services purchased by the communications services provider, property taxes, taxes measured by  
85 net income, and universal-service fund fees.

86 "Service address" means, (i) the location of the telecommunications equipment to which a customer's  
87 call is charged and from which the call originates or terminates, regardless of where the call is billed or  
88 paid. If the location is not known in clause (i), "service address" means (ii) the origination point of the  
89 signal of the telecommunications system or in information received by the seller from its service  
90 provider, where the system used to transport such signals is not that of the seller. If the location is not  
91 known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of  
92 primary use.

93 "*Streaming service*" means a method of transmitting or receiving video and audio data over a  
94 computer network as a steady, continuous flow, allowing playback to proceed while subsequent data is  
95 being received.

96 **§ 58.1-648. Imposition of sales tax; exemptions.**

97 A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of  
98 every kind imposed by law, a sales or use tax on the customers of communications services in the  
99 amount of 5% of the sales price of each communications service that is sourced to the Commonwealth  
100 in accordance with § 58.1-649.

101 B. The sales price on which the tax is levied shall not include charges for any of the following: (i)  
102 an excise, sales, or similar tax levied by the United States or any state or local government on the  
103 purchase, sale, use, or consumption of any communications service that is permitted or required to be  
104 added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by  
105 the United States or any state or local government, including but not limited to, regulatory fees and  
106 emergency telephone surcharges, that is required to be added to the price of service if the fee or  
107 assessment is separately stated; (iii) coin-operated communications services; (iv) ~~sale or recharge of a~~  
108 ~~prepaid calling service;~~ (v) provision of air-to-ground radiotelephone services, as that term is defined in  
109 47 C.F.R. § 22.99; ~~(vi)~~ (v) a communications services provider's internal use of communications services  
110 in connection with its business of providing communications services; ~~(vii)~~ (vi) charges for property or  
111 other services that are not part of the sale of communications services, if the charges are stated  
112 separately from the charges for communications services; ~~(viii)~~ (vii) sales for resale; ~~(ix)~~ (viii) charges  
113 for communications services to the Commonwealth, any political subdivision of the Commonwealth, and  
114 the federal government and any agency or instrumentality of the federal government; and ~~(x)~~ (ix)  
115 charges for communications services to any customers on any federal military bases or installations  
116 when a franchise fee or similar fee for access is payable to the federal government, or any agency or  
117 instrumentality thereof, with respect to the same communications services.

118 C. Communications services on which the tax is hereby levied shall not include the following: (i)  
119 information services; (ii) installation or maintenance of wiring or equipment on a customer's premises;  
120 (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited

121 to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access  
122 service, electronic mail service, electronic bulletin board service, or similar services that are incidental to  
123 Internet access, such as voice-capable ~~e-mail~~ *email* or instant messaging; (viii) digital products delivered  
124 electronically, such as software, ~~downloaded~~ music, *video*, ring tones, and reading materials; and (ix)  
125 over-the-air radio and television service broadcast without charge by an entity licensed for such purposes  
126 by the Federal Communications Commission. Also, those entities exempt from the tax imposed in  
127 accordance with the provisions of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of Title 58.1, in effect  
128 on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions  
129 of this chapter.