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HOUSE BILL NO. 2634

Offered January 20, 1997

A BILL to amend and reenact §§ 58.1-3818.2, 58.1-3818.4 and 58.1-3818.5 of the Code of Virginia, relating to the video programming excise tax.

Patrons—Robinson, Bennett, Cranwell, Hargrove, Heilig, Jones, J.C., Shuler and Tata; Senators: Edwards, Holland and Lambert

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3818.2, 58.1-3818.4 and 58.1-3818.5 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3818.2. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Cable operator" means any person or group of persons (i) that provides cable service over a cable system and directly or through one or more affiliates owns an interest in such cable system or (ii) that otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system. Cable operator does not include a provider of wireless or direct-to-home satellite transmission service.

"Direct-to-home satellite transmission" means the transmission, distribution or broadcasting of video programming or services by satellite directly to an end-user subscriber without the use of ground receiving or distribution equipment, except at the site of the end-user subscriber or in the uplink process to the satellite.

"End-user subscriber" means the ultimate consumer of the video programming provided by video programmers over any means of transmission, other than wireless or direct-to-home satellite transmission. End-user subscriber does not include a video programmer that purchases a common carrier's obtains channel capacity on an open video system dialtone transport service to provide video programming over the common carrier's video dialtone open video system.

"Gross receipts" means the amount charged for or received by (i) video programmers from sales of video programming and (ii) persons from sales of access to video programming, by any means of transmission, other than wireless or direct-to-home satellite transmission, directly to end-user subscribers with service addresses in the local jurisdiction. Gross receipts shall not include (i) amounts charged for or received by persons from sales of telephone access or service that entitles the subscriber to the privilege of interactive telephonic quality telecommunications with substantially all persons having telephone or radio telephone stations constituting a part of a particular system or in a specified area; (ii) the excise tax imposed pursuant to this section if the tax is shown as a separate line charge to end-user subscribers; (iii) any other taxes, fees or surcharges on services furnished by common carriers or video programmers which are imposed on subscribers by the Commonwealth, counties, cities or towns pursuant to statute, ordinance, resolution or regulation and which are collected on behalf of said governmental unit by the provider of the services; (iv) amounts charged for or received by persons from sales of video programming which is delivered directly to end-user subscribers through a satellite master antenna television (SMATV) system; (v) amounts received from retail sales of tangible personal property that provides access to video programming; or (vi) any portion of a debt related to the sale of video programming or the sale of access to a video network, the gross charges for which are not otherwise deductible or excludable, that have become worthless or uncollectible, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the video programmer or person shall report and pay the excise tax on that portion during the reporting period in which the payment is made.

"Local jurisdiction" means a county, city or town located in Virginia.

"Open video system" means a system for the provision of cable service which complies with Section 653 of the Federal Communications Act of 1934, 47 USC § 573.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, governmental entity, limited liability company, or any other entity.

"Video dialtone service" means a common carrier service for the transport of video programming to end-user subscribers.

"Video programmer" means an individual, partnership, association, joint stock company, trust, corporation, governmental entity, limited liability company, or any other entity that sells video

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60 programming to end-user subscribers.

61 "Video programming" means video and/or information programming provided by, or generally
62 considered comparable to programming provided by, a cable operator. Video programming does not
63 include ~~online~~on-line, interactive information services to the extent access to such services is
64 accomplished via a dial-up or private telephone line or via wireless or direct-to-home satellite
65 transmission.

66 "Wireless transmission" means the distribution of video programming using radio communications
67 including, but not limited to, terrestrial-based radio systems.

68 § 58.1-3818.4. Excise tax paid in lieu of other taxes.

69 The payment of an excise tax by persons in accordance with this article shall be in lieu of the
70 payment of taxes or fees pursuant to (i) any local tax authorized under Chapter 37 (§ 58.1-3700 et seq.)
71 of this title or any other local tax if such tax is imposed solely on the gross receipts of persons
72 providing video programming or access to video programming to subscribers located within the local
73 jurisdiction; (ii) Article 4 (§ 58.1-3812 et seq.) of this chapter or any other state or local tax if such tax
74 is imposed solely on purchases of ~~video dialtone~~ *open video system* or telecommunications services,
75 with respect to any revenues received by a ~~common carrier or video programmer~~ from subscribers for
76 access to the ~~common carrier's video dialtone network~~ *open video system* or for video programming; and
77 (iii) any franchise fee or similar fee based on revenue which is authorized or permitted by federal, state
78 or local law or imposed by ordinance in any local jurisdiction or, agreed to pursuant to a written
79 franchise agreement ~~between the common carrier and~~ *with* the local jurisdiction, with respect to any
80 revenues received by a ~~common carrier or video programmer~~ from subscribers for access to the ~~common~~
81 ~~carrier's video dialtone network~~ *open video system* or for video programming.

82 § 58.1-3818.5. Applicability of other taxes.

83 Any revenues received by a common carrier from video programmers for the transport of video
84 programming to an end-user subscriber's premises ~~or for access to the video dialtone network, (other than~~
85 ~~revenues received by an open video system operator)~~ shall be excluded from (i) the excise tax imposed
86 pursuant to this article; (ii) the consumer utility tax imposed pursuant to Article 4 (§ 58.1-3812 et seq.)
87 of this chapter or any other local tax or fee imposed on purchases of utility services; (iii) the license tax
88 imposed pursuant to Chapter 37 (§ 58.1-3700 et seq.) of this title; (iv) any other state or local tax or fee
89 imposed on receipts from the sale or use of communications services pursuant to § 58.1-400.1 or
90 Chapter 6 (§ 58.1-600 et seq.) of this title; and (v) any franchise fee or similar fee imposed by ordinance
91 in any local jurisdiction or, if no local ordinance exists, in the written franchise agreement between the
92 common carrier and the local jurisdiction.