

## HOUSE JOINT RESOLUTION NO. 36

*Expressing the sense of the General Assembly of Virginia that services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth or its political subdivisions.*

Agreed to by the House of Delegates, February 17, 1998

Agreed to by the Senate, March 10, 1998

WHEREAS, services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, have provided immeasurable social, educational, and economic benefits to the citizens of Virginia, the United States, and the world; and

WHEREAS, technological advancements made by and to the Internet and other related electronic communication services, as well as data and software transmitted via such services, develop at an ever-increasing rate, both qualitatively and quantitatively; and

WHEREAS, these advancements have been encouraged, in part, by public policies which facilitate technological innovation, research, and development; and

WHEREAS, companies which provide Internet access services and other related electronic communication services are making substantial capital investments in new plants and equipment; and

WHEREAS, it has been estimated that consumers, businesses, and others engaging in interstate and foreign commerce through the Internet or other related electronic communication services could be subject to more than 30,000 separate taxing jurisdictions in the United States alone; and

WHEREAS, multiple and excessive taxation places such investment at risk and discourages increased investment to provide such services, which, in turn, could put such jurisdictions at a long-term social, educational, and economic disadvantage; and

WHEREAS, the growth and development of electronic communication services should be nurtured and encouraged by appropriate state and federal policies; and

WHEREAS, the Commonwealth's exercise of its taxation and regulatory powers in relation to electronic communication services would likely impede the future viability and enhancement of Internet access services and other electronic communication services in the Commonwealth, which, in turn, could restrict access to such services, as well as data and software transmitted via such services, for all Virginians; and

WHEREAS, previous rulings of departments of taxation or revenue in several states have resulted in state taxes being levied on Internet service providers or Internet-related services, and have, in some cases, prompted action by those states' legislatures to overturn such rulings; and

WHEREAS, a majority of the states that have addressed the issue of taxing Internet-related services have chosen to exercise restraint in taxing Internet service providers and Internet-related services; and

WHEREAS, Virginia's existing tax code (§ 58.1-609.5) exempts from retail sales and use tax purchases of services where no tangible personal property is exchanged; and

WHEREAS, pursuant to § 58.1-609.5, the Commissioner of the Department of Taxation has promulgated regulations (Title 23 Virginia Administrative Code 10-210-4040) which provide that charges for services generally are exempt from retail sales and use tax, but that services provided in connection with sales of tangible personal property are taxable; and

WHEREAS, in interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97-405, October 2, 1997); and

WHEREAS, in further interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that providers of Internet access services and other electronic communication services are not subject to Virginia's retail sales and use tax (P.D. 97-425, October 21, 1997); and

WHEREAS, services which provide access to the Internet and other related electronic communication services, as well as data and software transmitted via such services, are not tangible personal property and, therefore, should not be subject to Virginia's retail sales and use tax; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

RESOLVED FURTHER, That P.D. 97-405 (October 2, 1997), by which the Commissioner ruled that

sales of software via the Internet are not subject to Virginia's retail sales and use tax, correctly reflects the sense of the General Assembly and the law of the Commonwealth regarding this issue; and, be it

RESOLVED FURTHER, That P.D. 97-425 (October 21, 1997), by which the Commissioner ruled that providers of Internet access services and other related electronic communication services are not subject to Virginia's retail sales and use tax, correctly reflects the sense of the General Assembly and the law of the Commonwealth regarding this issue; and, be it

RESOLVED FURTHER, That, to the greatest extent possible, future rulings of the Commissioner reflect the sense of the General Assembly that Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

RESOLVED FINALLY, That the Clerk of the House of Delegates transmit a copy of this resolution to the Commissioner of the Department of Taxation that he may be apprised of the sense of the General Assembly in this matter.