MINUTES OF THE
LEGISLATIVE COMMITTEE ON TAXATION,
PUBLIC REVENUE AND TAX POLICY
(NRS 218.53741) 2005-2006

A meeting of the Legislative Committee on Taxation, Public Revenue and Tax Policy (NRS 218.53741) was held at 9:30 a.m. on March 16, 2006, in Room 4100 of the State Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada.

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Mike McGinness, Chairman
Senator Randolph J. Townsend
Assemblyman Lynn Hettrick

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Bob Coffin
Assemblywoman Peggy Pierce
Assemblyman David Parks, Vice Chairman

COMMITTEE MEMBERS ABSENT:

Senator William J. Raggio (excused)
Assemblyman Morse Arberry Jr.

STAFF MEMBERS PRESENT:

Russell Guindon, Senior Deputy Fiscal Analyst, LCB Fiscal Analysis Division
Tina Calilung, Deputy Fiscal Analyst, LCB Fiscal Analysis Division
Michael Nakamoto, Deputy Fiscal Analyst, LCB Fiscal Analysis Division
Kimberly Guinasso, Senior Principal Deputy Legislative Counsel, LCB Legal Division
Joel C. Benton, Senior Deputy Legislative Counsel, LCB Legal Division
Donna Thomas, Secretary, LCB Fiscal Analysis Division

EXHIBITS:
Exhibit A - Agenda and Meeting Packet
Exhibit B - Interim Tax Committee – Financial Commitments
Exhibit C - Cox Communications Las Vegas
Exhibit D - Local Taxes on Traditional Wireline Telephone Services
Exhibit E - Taxes in the Telecommunications Industry – March 16, 2006
Exhibit F - Nevada League of Cities – Franchise Fees
Exhibit G - Working Group Participants for Study of the Nevada Master Tax Plan 2007-2008 Interim

Because of their size, the exhibits are not attached to these minutes; however, upon request, may be reviewed in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada, phone number (775) 684-6825.

I. CALL TO ORDER AND OPENING REMARKS.

Chairman McGinness called the meeting to order at 9:37 a.m. and acknowledged that Senator Coffin, Assemblyman Parks and Assemblywoman Pierce were attending the meeting in Las Vegas. Senator Townsend and Assemblyman Hettrick were present in Carson City. He added that Senator Raggio was excused and Assemblyman Arberry was not yet present.

II. APPROVAL OF MINUTES OF THE NOVEMBER 17, 2005, MEETING.

Chairman McGinness asked for a motion to approve the minutes of the November 17, 2005, meeting as presented.

> SENATOR TOWNSEND MOVED APPROVAL OF THE MINUTES OF THE NOVEMBER 17, 2005, MEETING OF THE LEGISLATIVE COMMITTEE ON TAXATION, PUBLIC REVENUE AND TAX POLICY.
>
> ASSEMBLYMAN HETTRICK SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

III. REPORT FROM PROVIDERS OF TELECOMMUNICATION, VIDEO, AND DATA SERVICES ON THE STATE AND FEDERAL REGULATORY STRUCTURE FOR THEIR BUSINESS AND THE TAXES AND FEES IMPOSED ON THEIR BUSINESS SECTOR.

Bob Gastonguay introduced himself for the record and indicated he was the Executive Director of the Nevada State Cable Telecommunications Association. He informed the committee the cable industry was represented by Mr. Gardner Gillespie, who would speak on behalf of the cable companies regarding national and state issues. In addition, Marsha Berkbigler, Vice President, Charter Communications and Mr. Steve Schorr, Vice President, Public and Government Affairs, Cox Communications, would also be presenting at the meeting.

Gardner Gillespie, Hogan and Hartson LLP, stated that he was presenting on behalf of Cox Communications. Mr. Gillespie testified that not long ago, communication technology was synonymous with free advertising support of television, use of public airwaves, cable television use, coaxial cable and phone service use. Rarely was there any overlap between the services and technology used, which was no longer the case. Broadcast television was switching to digital technology, using multiple channels of ad supported, video, subscription television and data services. Presently, cable television included a significant amount of fiber in its hybrid fiber or coax systems, and provided high-speed data services along with digital phone services. In addition, video customers were able to have programs transmitted according to a schedule of shows which could be obtained on demand.

Mr. Gillespie reported that Cox Communications began digital phone service in Las Vegas in 2005; Charter Communications would roll out its own version of digital phone service in 2006. When cable companies provided voice service, it typically used a Voice Over Internet Protocol (VoIP) technology using packet switching developed for use on the Internet; however, cable phone services did not use the public Internet.

Mr. Gillespie remarked that "Ma Bell" incorporated fiber into its system providing high-speed data and an increasing number of markets were moving to video. Verizon, the second largest phone company, would introduce video services in a number of its markets, and the new AT&T previously SBC, would introduce its own version of video in the near future. Wireless companies were providing digital data and video in addition to voice and most satellite companies were providing video, subscription radio and data services.

Mr. Gillespie went on to say the latest information on file at the Federal Communications Commission (FCC) in Washington indicated satellite companies had approximately a 28 percent share of the national video market. New functional competitors used different technology causing confusion, and the line between video, voice and data technology was unclear. Digital bits were a fundamental element of the services making it harder to distinguish one service from another. Mr. Gillespie explained that in the industry, this issue was called conversions and although AT&T's new video service "looks, walks and quacks like a cable service," AT&T was now claiming it was not a cable service and not subject to the same regulations of cable. Mr. Gillespie stated the question raised by AT&T's position was the "elephant in the room" and he expected AT&T to introduce legislation during the next legislative session regarding cable franchising as it had done in many states. Mr. Gillespie understood that was not the issue for the committee to review today, but if they wanted to consider the issue, it should be addressed at a separate meeting with all stakeholders present.

Continuing with his presentation, Mr. Gillespie commented there were other parody issues raised by conversions based on the historic regulations and tax treatments that were the focus of the committee. He stated this was an issue in the past in Nevada and was seen as a contest between cable and direct broadcast satellite (DBS) companies. It was increasingly apparent the issue was broader and affected many other providers of competitive services other than cable and DBS companies.

Mr. Gillespie stated his position on the issue was that state fees, local fees and taxes should not tilt the playing field for providers of functionally similar and competitive services. Within the past five years, a number of states tried to level the playing field between DBS and cable with taxes in an attempt to equal the payments. The states of Florida, North Carolina, Tennessee, Ohio and Kentucky passed similar legislation, and the DBS companies filed suit against the states claiming that type of taxation was discriminatory and a violation of the Interstate Commerce Clause. Currently, those cases were in the lower courts and since there was no consistent treatment by the courts, it was hard to determine exactly how those cases would resolve.

Mr. Gillespie said it was clear the DBS companies were not arguing they were not subject to any taxation at the state level: in fact, more than 25 states currently had taxes that applied to DBS. The issue for them was a differential taxation rather than taxation per se. Mr. Gillespie explained that a new interesting approach was being introduced that was reflected in recent legislation in Virginia. The Virginia legislation was passed by the Assembly and Senate and waiting for the Governor's signature. Mr. Gillespie clarified he was not recommending that Nevada adopt the Virginia legislation, but it was something the committee should consider. The legislation broadly defined communication services to include voice, data and video and taxed companies equally at a uniform rate. In addition, the legislation defined communication services as, "the electronic transmission, conveyance or routing of voice, data, audio, video or any other information signals, by or through any electronic radio, satellite, cable, microwave or other medium or method in existence or hereafter devised." The legislation also provided for separate rights of way fees on wire providers based on the amount of the public rights of way used for new installations in a particular year and was intended to substitute all existing state and local permitting fees. Mr. Gillespie stated the taxes were returned to the municipalities in at least the amount the municipalities would have received from franchise fees; the legislation eliminated franchise fees but left the municipalities whole.

Mr. Gillespie explained that a tax was imposed in Virginia on sales of service and exempts sales to resellers, sales of information services, Internet access services and sales of advertising. He noted it was an interesting concept and he expected to see more of the legislation in other states as a way to deal with the convergence of technologies and to keep the playing field level in terms of tax policy.

Concluding, Mr. Gillespie said he would provide copies of the Virginia legislation (A.B. 568) to the committee after the Governor signed it.

Chairman McGinness thanked Mr. Gillespie for his presentation and requested he provide the copy of A.B. 568 to Mr. Guindon so he could distribute it to the committee. He called for questions for Mr. Gillespie.

Marsha Berkbigler, Vice President of Government and Community Affairs, Western Region, Charter Communications, directed the committee to the handout, Interim Tax Committee – Financial Commitments (Exhibit B). Ms. Berkbigler informed the committee that the handout specifically applied to Charter Communications' (Charter) operations for Nevada. Charter had franchises in Northern Nevada from Lake Tahoe to Wells and the franchise fees paid in 2005, for all of Charter's jurisdictions (with the exception of Lovelock and Winnemucca), totaled approximately $4 million. Public Education Government (PEG) access fees, paid based on the franchises renewed in the last five years, was a $2 million commitment over the life of the franchise (a ten-year period starting from 2003). In addition, Charter provided a number of PEG access channels including four in the Reno/Sparks areas, one in Carson City, and two in Douglas County (one in the Lake Tahoe portion and one in the valley portion). Fallon and Churchill County also had access to a channel that was set aside for their use. Ms. Berkbigler commented that if Charter were using those channels for its own programming proposes, the channels were valued to Charter at $500,000 a year. Based on the franchises that Charter holds, it paid $23,000 a year in business license fees in addition to its franchise fees. The total costs relating to the franchises, for one year, was approximately $10 million in addition to the Nevada business taxes and corporation registration fees paid.

Ms. Berkbigler continued and said all franchises were now based on the Cable Act (47 usc SEC 521 ET SEC) law which allowed a capped amount of 5 percent franchise fees of the operator's gross revenue derived from the operation of the cable system to provide cable services. She explained that franchise fees were broadly defined by the Cable Act to include "any tax, fee or assessment of any kind imposed by a franchising authority" and specifically excluded PEG capital expenses.

Ms. Berkbigler noted that the law also allowed the franchising local governments to request a certain amount of money in PEG fees to be used for capital purposes. Therefore, in some of the markets there could be a 1 percent of gross revenues paid for PEG fees; essentially, 6 percent of gross revenues were deducted off the top and PEG capital costs, bad debt and taxes of general applicability were excluded.

Additionally, Charter had a responsibility to provide social commitments for their franchises that included:

- Use of channels for government, educational and public programming.
- Programming for high school sports, as well as other local projects on Channel 14.
- Free cable drops and basic service to all K-12 schools and public buildings, including police, fire stations, senior centers and libraries.
- Public service announcements to promote community values and issues.
- Emergency alert systems.
- $250,000 plus in donations or free ad or air time in the greater Reno market and partnered with their programmers to bring sport games, Disney Imaginer project and Golf Channel Drive-Chip-Putt Program.

Concluding with her presentation, Ms. Berkbigler said the potential legislative changes that could make a difference would be to clarify in state law that like services be treated alike or in a level playing field allowing the incumbent cable operator to play by the same rules comparable to other businesses providing a similar service. Ms. Berkbigler stated that one area that might be beneficial to all players was clarification in state law of the definition of "gross revenues" stating that all franchise fees were paid based on customer services rather than the patchwork plan currently in place. In addition, affirming customer service regulations in state law would be beneficial to streamline reporting and ensure that all providers complied with the regulations.

Chairman McGinness thanked Ms. Berkbigler for her presentation and called for questions.

Steve Schorr, Vice President, Cox Communications, Southern Nevada, stated that Cox Communications provided service in five franchise areas that covered Clark County, Henderson, North Las Vegas, Boulder City and the city of Las Vegas. Mr. Schorr testified that his intent was not to challenge other service providers in the community or speak about a negative relationship with the Local Franchising Authorities (LFA); he believed Cox Communications and the other service providers did a great job of servicing the people of the state. Mr. Schorr envisioned the relationship with the local franchising authorities as a partnership bound by a document of great length, but it remained a partnership. In 2005, a partnership with the city of Las Vegas called Goal Getters provided free programming to elementary, middle and high schools students who wanted to develop goals for themselves. He indicated the program started because of a partnership between

Cox Communications and the city of Las Vegas reaching over 167,000 schoolchildren. According to the school district, it was one of the true programs, and schools noticed a change in children who set up the goal-getting sessions.

Mr. Schorr said another partnership of Cox Communications was to ensure the affiliation with the LFA was a positive relationship. The items of concern he discussed at the meeting were questions not only Cox had with the LFA, but uniform concerns within the industry and the United States to those dealing with franchising authorities.

Mr. Schorr recognized that Cox Communications supported local government programming both monetarily and in kind, and in 2005, Cox Communications donated over $1.8 million to the local communities. Cox Communications formed the partnership to prevent becoming a document or franchise that became adversarial in many cases. Mr. Schorr said he was proud that Cox Communications supported more than 115 different local and community organizations; because of these partnerships, Cox Communications was one of the top philanthropic companies in Nevada in 2005.

Mr. Schorr continued with his presentation and noted that most importantly; Cox Communications provided services to the community. The provision of those services took money, and it was important for the community to understand how much money. Since 1979, Cox Communications invested $987 million in capital expenditures, building a system to an ever-growing community. Mr. Schorr stated the franchise mandated that Cox Communications had to provide service to all people equally, including the communities, with a rate of return and the communities without a rate of return. As a provider of services, the customer received the same provision of Internet services regardless of where they resided. In addition, Cox Communications introduced digital telephone service, which was not Internet telephone or VoIP service. The service remained on Cox Communication's private network from start to finish; the only way it went to another network was if there was a handoff to a different provider. For example, if a customer in Nevada called someone in Ohio, the call remained private and never left the Cox Communications system.

Mr. Schorr went on to say that, Cox Communications met all Title II requirements as a telephone company and paid the same services and fees to the local governments, even though there was some conjecture whether they should. Cox Communications did not start providing its services in the most affluent area of the community; they started in North Las Vegas and built through the rest of the community. Cox Communications was a local business and a strong contributor to the local community, and provided over $103,000 to the local economy along with added investments for improving local communities. Cox Communications was proud to help parents make smart media choices through the Take Charge program designed to inform parents and caregivers of the shows their children were viewing on television and the Internet.

Mr. Schorr directed the committee to the handout, Cox Communications, Las Vegas (Exhibit C). He stated the definition of gross revenues was a key issue the industry and Cox Communications dealt with on a regular basis and it was a definition that was equal in all of its franchise areas. The definition was troublesome, especially when local governments, as part of their franchise, had the right to audit a business at any time to ensure it was paying the correct fees to the local governments.

Referring to the handout (Exhibit C), Mr. Schorr stated that page 1 contained the definition of gross revenues as defined by the Franchise Agreement between the LFA and the cable system. It was composed of 351 words that were so inclusive many businesses had questions because of it. Since the definition was so broad and included absolutely everything and potentially anything else, Mr. Schorr did not know of any person or company that could work under such documentation where the definition was so ever expanding.

Continuing, Mr. Schorr reiterated he did not have a problem with the local governments and was proud of their partnership, but he believed it was important for the committee to understand the mandates of cable companies that other service providers within the community did not have to meet. In the system and the operations defined by the franchise, it mandated upgrades, minimum fiber-optic trunk, distribution to the community and the number of active components in a cascade. For example, Mr. Schorr stated that if he built a community, he would have to build past 100 percent of the homes, and as a company, he must expend total capital to build the homes. After the homes were complete, Mr. Schorr stated he would be lucky to get six or seven people to subscribe to the service but he still had to expend 100 percent of the capital.

Mr. Schorr suggested that if the Legislature deemed the laws should be changed, like services should be treated alike, or on a level playing field, allowing the incumbent cable operators to play by the same rules as other businesses providing a similar service. When a mandate was part of the franchise and service had to provided to all customers, if it was done differently with anyone else, the playing field was immediately unleveled. Mr. Schorr stated that Cox Communications was proud to provide service to customers, but that service needed to be for all customers and everyone should be allowed access to the service.

Referring to the handout, Cox Communications, Las Vegas (Exhibit C), Mr. Schorr said the franchise mandated that service had to be provided to all residences, businesses and other structures within the service area, including multiple dwelling units whose owners or occupants requested cable service. He indicated that section 3(b) stated, "Within the company's existing service areas as of the effective date, the company must extend its cable services upon request to provide service to any person or business upon request, except for sites to which the company cannot legally obtain access, without charging such person or business more that the standard installation charges." Although it was an expenditure for the company, if Cox Communications was stopped by someone claiming a dwelling was a private building and access was not allowed to the building, Cox Communications would have to take the legal challenge to ensure the company could not legally get inside the building.

Continuing, Mr. Schorr stated that other than programming costs, customer service was the largest expenditure for cable companies. He stated that Cox Communication's rates had been frozen for 21 months, confirming it was a myth cable companies were constantly raising its rates. He stated the increase in programming costs were the main reason cable rates increased; many people talked about freezing cable rates, but no one discussed freezing programming rates.

Mr. Schorr noted that customer service was mandated by the franchise to provide certain things, and every service provider had to provide employee and vehicle identification. Annual notifications were mandated yearly, and companies had to meet 19 separate requirements from policies, prices, options and information on universal remotes, etc. In addition, there were requirements on how cable companies installed and answered service calls which went beyond mandates by the FCC or any other authority.

Telephone standards were so stringent it was hard for companies to meet those policies, and he was proud Cox Communications exceeded the standards. Under normal conditions, the following standards must be met by companies at least 90 percent of the time measured quarterly:

- Telephone answering time, including wait time, shall not exceed 30 seconds.
- Call transfer time shall not exceed 30 seconds.
- No more than three percent of incoming customer service callers shall receive a busy signal.
- Customer service operators must identify themselves immediately upon contact.

Continuing, Mr. Schorr said the franchise mandated how cable companies responded to complaints and inquiries. The cable companies must make every effort to resolve complaints within five working days.

Mr. Schorr said that scheduling of standard installations were also a part of customer service mandated by the franchise:

- Standard installations must be completed within seven days.
- Non-standard (those currently out of the area where build out was needed) must be done within 60 days.
- Service requests must be handled within 36 hours.
- Interruptions of service must be repaired within 24 hours.
- Service appointments must be within four-hour windows. (Currently, Cox has two-hour windows up to 7:00 p.m.)
- Customers had to be notified in advance if the cable provider could not make an appointment or if they were going to be late to the appointment.
- If there was a service interruption of one or more channels for four or more hours, an automatic credit was given to all accounts that could be affected within the service area.

Mr. Schorr referred to page 4 of the handout, Cox Communications Las Vegas (Exhibit C), which showed a breakdown of the annual operating expenses paid by Cox Communications. From 1998 until 2004, Cox Communications paid approximately $67,786,500 to the local governments in franchise fees; $12.2 million in 2005, and $79.9 million between 1998 and 2005.

In addition, Cox Communications provided 11 PEG channels, 2 analog LFA and 1 operational digital LFA, plus 2 analog educational channels. An additional analog channel was reserved along with 6 more digital channels for LFA use. A total of 12 PEG channels at a value of $4.6 million per year, plus a reserve of 7 more channels; the total for the life of the franchise for the PEG channels was $92 million, in addition to $3 million in funds provided for the educational channel. Cox Communications also provided free basic and expanded service to LFA buildings plus free drop. The 20-year term value for the drop cost $113,250, and programming was approximately $9.6 million. Also, Cox Communications provided free drop to all schools, fire and police stations with the life of the franchise at $16.8 million.

Mr. Schorr reported that annual operating expenses for the franchise fees, PEG channels, free service to the schools and free service to the LFAs was $18 million. The total expenses for a 20-year period were over $286 million, and the capital continued to grow. Concluding, Mr. Schorr said the operating expenses were a massive investment for service providers in the community. He indicated he was not questioning the partnership with the communities and franchises, but he believed it was important for the community to know how much money was involved in providing mandated services to customers.

Chairman McGinness thanked Mr. Schorr for his presentation and called for questions.

Senator Townsend commented he had questions for various providers and wondered if he should wait until all the presenters were finished before asking his questions. Chairman McGinness preferred that Senator Townsend hold his questions until all of the presenters finished testifying.

***B. SATELLITE SERVICE PROVIDERS.**

Fred Hillerby, representing Direct TV, introduced himself for the record. He announced that Brian Smith, Director, Sales and Use Taxes, Direct TV, would provide an explanation of Direct Broadcast Satellite (DBS) services. Chairman McGinness interjected that the satellite and Direct TV providers' information was located under Tab III B of the meeting packet (Exhibit A).

Mr. Smith informed the committee that he has been with Direct TV since 1993. He represented Direct TV across the nation on all transactional tax issues and had firsthand knowledge of the current litigation in each state regarding these issues. In addition, he represented Direct TV with the national Governor's Association to streamline the sales tax process along with working with other national committees.

Mr. Smith noted that Direct TV was a national service with PEG requirements defined by the federal government. He explained that Direct TV was a satellite service and reached most customers in Nevada. Mr. Smith explained that customers in Reno and Las Vegas received the same service; even though Direct TV was a national company, it had a local presence through its installation network. In addition, there were 105 commercial electronic stores taking orders and selling equipment, which generated sales tax revenue. Mr. Smith stated that Direct TV created business for local entrepreneurs; currently, there were 75 independent installers servicing customers in Nevada resulting in ancillary tax dollars.

Mr. Smith remarked that earlier in the meeting, Mr. Gillespie stated that according to FCC documents, DBS had a 28 percent share in the market but specifically in Nevada, Direct TV had a 15.4 percent share of the market. Mr. Smith said satellite service providers were like the “new kids on the block” with hopes of becoming larger. Unlike local providers, Direct TV did not require the use of rights of way when providing service, and all of its programming service needs and capacity requirements were handled at out-of-state broadcast facilities and via satellites. Direct TV had business licenses throughout the state, because it had a growing leasing business and had to comply with all the regulations.

Mr. Smith noted that Direct TV was a national service and Section 602(b) of the Federal Telecommunications Act of 1966 stated, “PREEMPTION – A provider of direct-to-home satellite television service shall be exempt from the collection or remittance of ANY tax or fee imposed by a local taxing jurisdiction on direct-to-home satellite service.”

In addition, Mr. Smith said that Section 602(c) of the Federal Telecommunications Act of 1996 states: “PRESERVATION OF STATE AUTHORITY – This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a state or to prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a state.” Section 602(b) specifically stated that a tax could be imposed on DBS services at a state level, and the money could be redistributed to the local governments. Mr. Smith expressed he was not averse to paying taxes but was opposed to the federal structure it worked beneath.

Continuing with his presentation, Mr. Smith noted that a few years back, there was equitable treatment in the states where Direct TV paid taxes, and they paid the same taxes as cable did in a sales tax arena. In the past five years, five states had inequitable taxation of DBS and cable. Currently, there were 19 states that did not impose a tax on DBS service; 22 states had equitable taxation on DBS and cable; 5 states had inequitable taxation of DBS and cable including Kentucky, Florida and Tennessee. All those court cases were in the discovery phase of the litigation. North Carolina’s court case had a hearing at the first level, and the outcome ruled in favor of the state but failed to issue a legal reasoning as to why that case was on appeal. Initial law for North Carolina imposed a tax on DBS but not on satellite. Mr. Smith noted that while the trial was going on, North Carolina changed its tax law and imposed a tax on DBS and cable and issued a credit to the cable companies. That case was in federal court.

Mr. Smith stated Direct TV was not challenging the tax; it was challenging the credit as it treated in-state and out-of-state businesses differently. He added the federal case was in the discovery phase of litigation and in Ohio, the case was in the Court of Common Pleas. The judge for the case issued a partial summary judgment that specifically addressed the issue of whether franchise fees and sales taxes were compensatory taxes. In addition, the judge had specific language regarding the court’s thoughts on leveling the playing field.

Concluding, Mr. Smith believed the state had the right to impose taxes and he hoped on behalf of its customers, satellite services would not be subjected to a sales tax. As a business, Mr. Smith understood the state’s revenues were depleting and the state had a legitimate reason to expand the tax base, but he hoped any tax imposed was equitable, very broad based with a low rate that least affected service customers.

Mr. Smith added that the Virginia bill had a problem because of its credit mechanism back to the localities and there was a high likelihood the law would be challenged if the Governor signed the bill.

Chairman McGinness asked the committee if they had any questions for Mr. Smith. Hearing none, he moved to agenda items, III C-1 and III C-2 in the meeting packet (Exhibit A).

Dan Jacobsen, AT&T, referred the committee to the handout, Local Taxes on Traditional Wireline Telephone Services (Exhibit D). He explained that page 2 of the handout presented the cities and counties where AT&T operated and the respective franchise fees percentage that applied to voice telephone services in those cities and counties. Mr. Jacobsen was recently notified that the unincorporated areas of White Pine County might also be adopting a new franchise fee since the current franchise fee only applied to the city of Ely and not the rural areas.

Chairman McGinness added the Department of Taxation was running White Pine County, and he believed the department was looking at imposing a tax to provide revenue for the rural areas.

Mr. Jacobsen stated that business license fees were pass-through fees that showed up on a consumer's bill as a local tax. Page 3 of the handout (Exhibit D), listed technologies used by customers instead of traditional telephone services. According to FCC reports, there were more wireless phones in Nevada than wireline. In addition to wireless phones, 86 percent of customers in AT&T's service area had access to Broadband service and one in four customers subscribed to Broadband service. Mr. Jacobsen stated that wireless Broadband had become readily available, and there were at least five carriers offering wireless service. In addition, there were WIFI hotspots located in airports, coffee shops, hotels, campgrounds, casinos and a variety of other places where people could take their laptop computer and receive a wireless Broadband signal. Therefore, instead of using traditional telephone service, people were using wireless Broadband service which affected telephone service.

Moving to page 4 of the handout (Exhibit D), Mr. Jacobsen referenced the chart showing the declining telephone lines in Washoe County while the labor force and housing increased. The number of lines that AT&T provided decreased approximately 4 percent from 2002 to 2004. During that same period, housing went up 6.4 percent and the labor force increased 6 percent. Mr. Jacobsen reiterated that consumers were using other means of telecommunications rather than traditional wireline service, which affected the franchise fees. Franchise fees paid to the city of Reno from the first quarter of 2005 to the fourth quarter of 2005 declined 3 percent because of alternative services. The rate or base did not change, people used less telephone services. That same percentage went down 4 percent for Carson City; 2 percent for Sparks and franchise fees were declining throughout the state. Mr. Jacobsen mentioned that telephone companies were similar to cable companies in that even though the use of the network was declining, they still had an obligation to build to every new neighborhood. In many cases, approximately 30 percent of the people did not subscribe to a traditional telephone service even though the companies built out the facilities.

Mr. Jacobsen felt it was significant to point out that when a competitor came into the telephone market, that market was open and the company had no obligation to build out. In addition, the traditional wireline companies had an obligation similar to cable and had to notify its customers every year regarding new services and options. Also, companies had to submit reports to the Public Utilities Commission (PUC) showing response time to phone calls, repairs and customer wait time for new service.

Moving to page 5 of the handout (Exhibit D), Mr. Jacobsen concluded by saying that when the committee looked into franchise revenues, they should be aware that as people used alternative services, franchise revenues associated with traditional telephone services were diminishing and he did not see that changing soon.

Chairman McGinness thanked Mr. Jacobsen for his presentation.

Linda Stinar introduced herself for the record and indicated she was the Director of Regulatory Affairs, Sprint of Nevada (Sprint), and she represented the incumbent local exchange carrier in the Las Vegas area. Currently, Sprint served North Las Vegas, Henderson, Boulder City, Blue Diamond, Searchlight, Nelson, Laughlin, Mount Charleston and the Jean area. Ms. Stinar referred the committee to the handout, Taxes in the Telecommunications Industry (Exhibit E), in the meeting packet under Tab III C-2 and she would explain the types of telecommunications taxes/fees imposed on Sprint customers. These taxes were referred to as transactional taxes because they were billed to the end-user customer and passed on to the appropriate government agency. The first type of federal tax was the Federal Universal Service Fund (USF).

Senator Townsend questioned why AT&T was still listed as Sprint on all materials. Ms. Stinar explained that AT&T was still legally Sprint and the exchange had not been finalized. AT&T was scheduled to be legally separated from Sprint by the end of the second quarter of 2006, at which time they would be a new entity named Embark.

Continuing, Ms. Stinar stated that currently Sprint customers paid 10.2 percent of retail interstate services (changes quarterly) for the USF. Historically, long distance companies were the only carriers required to pay into the USF, and in 1996, the fund was changed and required that local, long distance, wireless and paging companies contributed to this fund. It was not mandatory for carriers to display the USF charge separately on its bill, but most companies chose to recover the fee that way. The Federal Telecommunications Excise Tax was established as a luxury tax to fund the Spanish American War in 1898. Currently, the Federal Telecommunications Excise Tax was 3 percent. Ms. Stinar noted the tax continued in order to fund World War I and was still in existence. The Federal Telecommunications Excise Tax was the third largest General Fund excise tax in the federal budget; the only items taxed more heavily were the alcohol and cigarette taxes, or sin taxes. In 2003, tobacco sales generated $8.2 billion in Federal Excise Tax revenue, alcohol generated $7.5 billion and telecommunications generated $7.1 billion in revenue.

The state surcharge tax supporting telecommunication devices was established in 1986 and relay service for the deaf (711) program was $0.03 per telephone line. The tax was initially set at $0.10 cents per telephone line; however, the surcharge was reduced to $0.03 because of the inclusion of wireless services to the fund. The last telecommunications state tax was the Nevada USF currently set at .0356 percent of retail intrastate services. The fund was established in 1997 by the PUC to provide funding for providers in the state that served high-cost areas in order to keep telephone rates at an affordable level. In addition, the USF was established to provide subsidies for low-income customers in addition to fund schools, libraries and rural health care facilities in the state.

Moving to page 31 of the meeting packet (Exhibit A), Ms. Stinar noted that in addition to the federal and state taxes, Sprint customers were assessed a 5 percent local franchise fee on its services. This tax applied to customers whether they were located in the unincorporated area of Clark County, city of Las Vegas, North Las Vegas, Henderson or Boulder City. Ms. Stinar stated that all of the aforementioned taxes were billed to the end user customer and were passed to the appropriate government agency.

Ms. Stinar stated the total pass-through telecom taxes collected by Sprint in 2005 were $32 million in transaction taxes, which did not include sales taxes. The $32 million included $14 million in franchise fees, $9 million in money to the Federal USF, $9 million in Federal Excise Taxes, $300,000 for the telecommunication devises for the deaf (711 service) and $125,000 for the Nevada USF. In addition, Sprint paid $5 million per year in property taxes, $400,000 in business tax and $850,000 in annual mill tax assessment that funded the PUC and Bureau of Consumer Protection.

Ms. Stinar reiterated that the 10.2 percent Federal USF fees applied to interstate services, which included federal subscriber line charge, high-speed Internet service (DSL), interstate long distance calls and interstate private data services. The Federal Excise Taxes applied to all voice only telecommunications services both intrastate and interstate. The fees applied to the federal subscriber line charge, all basic voice service and features such as call waiting and caller ID, and to both intrastate and interstate long distance calls. The tax did not pertain to any high-speed Internet services or private data services since they were not considered “voice” services.

Directing the committee to page 34 of the meeting packet (Exhibit A), Ms. Stinar stated the local franchise fees and Nevada USF fees applied to retail intrastate services only, including basic voice service, calling features, non-published phone numbers or additional listings, intrastate long distance calls and intrastate data services or circuits that had less than 10 percent interstate usage. The local franchise fees and Nevada USF fees did not apply to the federal subscriber line charge, high-speed Internet or interstate private data services.

Ms. Stinar stated the current taxes were implemented when telephone companies had a monopoly and it was relatively simple to determine a telecommunications service. Customers today had many choices for telecommunications service such as traditional wireline, wireless, Internet (VoIP) and cable telephony and there was much debate on what constituted telecommunications service.

Turning to page 36 of the meeting packet (Exhibit A), Ms. Stinar noted the telecommunications tax was complex for customers to understand and was typically more complex at the state and local level. Sprint’s customers paid approximately 9 percent on average in telecommunication pass-through taxes excluding sales tax.

Ms. Stinar stated she was hopeful her presentation clarified for the committee the types of taxes that applied to telecommunication services on the federal, state and local levels.

Page 37 of the meeting packet (Exhibit A), outlined the particular statute that limited cities and counties authority on assessing franchise taxes as it related to public utilities (NRS 354.59881 to 354.59889). The statute defined any public utility as electric or gas utilities, community antenna television companies and telecommunication companies that hold a certificate from the PUC or sell/resell personal wireless service.

NRS 354.59881 to 354.59889 mandated that a city or county could not impose a fee that exceeded 5 percent of the utilities' gross revenue. In addition, it required that the fee not exceed 5 percent from the first $15.00 charged by a public utility selling or reselling personal wireless service.

Concluding her presentation, Ms. Stinar stated the future impacts of the current tax structure were obvious and as customers shift from traditional telephone service to other providers, tax revenues may be negatively impacted. In addition, tax differences between providers influence customer decisions on which provider to use and how much to purchase. Ms. Stinar noted that several states were looking at changes to state/local taxes in 2006 that applied to telecommunications. Virginia Bill 568 applied a 5 percent statewide communications sales and use tax to retail communications and video services on a competitively neutral basis. The bill also replaced the local gross receipts tax, consumer utility tax, E-911 surcharge, relay fee and cable franchise fee. Sprint supported this type of tax structure and believed it provided a competitively neutral tax framework.

Before moving to the other presenters, Chairman McGinness asked if anyone had any questions for Ms. Stinar.

Senator Townsend asked Mr. Gillespie if Virginia Bill 568 dealt with the perceived inequities in the gross revenue definition. He asked if any counties or cities experienced a tax increase using the 5 percent tax. In addition, Senator Townsend commented there were many jurisdictions in Nevada with a 2 or 3 percent tax and he wondered how the bill would deal with people that would see a tax increase if the state followed the Virginia guideline.

Mr. Gillespie responded there was a definition in the Virginia bill that applied to how to count and include certain revenues for the state. He understood the definition of gross revenues currently in Nevada varied jurisdiction-to-jurisdiction creating problems for the cable companies when trying to determine what needed to be paid in each jurisdiction. The Virginia bill applied across the board, not only for every jurisdiction in which the cable company operated, but also in every jurisdiction where a phone company or provider of those services operated. Mr. Gillespie stated the Virginia bill imposed a 5 percent fee across the board and Nevada would see an increase in revenue if they followed the same guidelines. The 5 percent fee applied in situations where currently amounts were less than that. In addition, the fee would be applied to other types of services that were not currently taxed. Therefore, Nevada would have to calculate the money needed in order to keep the municipalities whole without a substantial tax increase.

In regard to the definition of gross revenues, Senator Townsend said it appeared there was no ability for a cable or local exchange company, required to build out a community, regardless of whether a customer subscribed to its service, to apply that in terms of the formula used, since it was a massive expense, with no revenue, and no way to be dealt with at the local level other that in the federal income tax.

Mr. Jacobsen, AT&T, responded that it was a difference between revenue and capital expense and capital costs to build out a telephone or cable plant were large and not factored into the amount of taxes paid.

Senator Townsend asked the record to reflect when companies were mandated under their franchise agreements to build out a community, regardless of whether customers subscribed to its service; it had expenses greater than its returns.

Mr. Schorr, Cox Communications, interjected it was clear the cable/telecommunications industry was impacted the same way as the telephone industry and overall penetrations continued to decrease while overall expenses increased. He believed everyone testifying at the meeting had seen an expediential increase in the costs of providing service to customers and to spend the capital to expand to an ever-growing population. In closing, Mr. Schorr commented that costs have continued to increase and even though there was a lower penetration, the companies were actually spending more to get it.

Continuing, Senator Townsend questioned the benefits customers received when there was an increase in PEG fees.

Replying to Senator Townsend's question, Ms. Berkbigler said theoretically PEG fees went toward capital expenditures such as cameras, video and editing equipment used for taping live programs. If PEG fees were not spent on capital expenditures, the fees had to be deducted from the franchise fees because the law mandated fees had to be passed on to the customers. For example, a company could not use its PEG fees to hire a person to film a program because it was considered part of the companies operations. Ms. Berkbigler concluded that even though companies had a right in law to request an audit, as a rule they did not. She noted that the law was clear PEG fees were intended for capital expenditures only.

Senator Townsend asked if his assumption was correct that cable and landline companies were required to build out for every new development.

Mr. Schorr responded that it was a "catch 22" situation and there were requirements for cable and landline companies to build out to new developments. In the past, cable and landline companies used to be "held out" by some developers unless the company paid the developer a "right" to provide service mandated by its franchise. He noted that was the legal caveat many companies challenged in court, and even though service companies were mandated by its franchise to build out a community, being "held out" by the developers was reason for the franchise renewals to be denied.

Senator Townsend asked if the requirements for the telephone companies were more stringent than the cable company requirements. Mr. Jacobsen responded that telephone companies were also required to build out to new areas and to serve everybody.

In addition, telephone companies were required to answer customer calls within twenty seconds and submit a yearly report to the PUC showing its performance. Mr. Jacobsen speculated the requirements were comparable to cable and companies were monitored by the PUC.

Senator Townsend asked if gas and electric companies had the same customer standards as the cable and telephone industry. Mr. Schorr indicated that he did not have the answer Senator Townsend's question.

Senator Townsend requested staff provide committee members with the utility, telephone and cable company requirements for customer service. In addition, he wondered if the local governments could provide some input on the issue. If the requirements were different for each company, why were they more stringent for the cable and telephone companies rather than the utility companies or visa versa?

Mr. Jacobsen responded the state PUC adopted a consumer bill of rights for the telephone companies and one of the requirements dealt with customer response time.

Senator Townsend questioned the presenters from Cox Communication regarding the free basic service to the LFA and the 151 buildings Cox Communications were required to service. He wondered if he was correct in assuming that cable companies were required to provide the services negotiated in the requirements.

Senator Townsend asked Ms. Berkbigler if she was aware of the number of buildings to be built out in Charter's service territory. Ms. Berkbigler responded that Charter serviced every public building, court building, fire stations, schools and libraries in its territory but she was unsure of the exact number. Senator Townsend commented that he thought schools were listed differently, and in Southern Nevada, there were 151 LFA buildings, and 280 educational or school buildings with basic and expanded cable for 5 different jurisdictions.

Senator Townsend asked if there were any "add-ons" for the basic and expanded cable for the buildings. Ms. Berkbigler stated Charter Communications offered "add-ons" but in most cases, each business paid for its own "add-ons".

Mr. Schorr said Cox Communications offered digital channels to customers in Southern Nevada that subscribed to that particular service and he was unaware of anyone in government with upgraded service. Ms. Berkbigler interjected that most often fire stations subscribed to upgraded or expanded service.

Responding to Senator Townsend's inquiry, Ms. Berkbigler explained that in rate-regulated markets, cable companies were required to submit a 1240 and 1205 form explaining the current rate of equipment and services three months prior to rate increases. Charter Communications submitted documents to its rate-regulated markets in November; 30-day notices were required in non rate-regulated markets.

Senator Townsend asked Ms. Berkbigler the number of jurisdictions Charter Communications serviced in Nevada. Ms. Berkbigler replied that Charter Communications served 26 jurisdictions; 4 of which were rate-regulated.

Customers in the remaining jurisdictions received 30-day notices of rate and channel changes.

Mr. Schorr related that Cox Communications provided service to 5 rate-regulated jurisdictions. Normally, Cox Communications submitted 1240 and 1205 forms in December explaining the current rate of all regulated services and notice of rate changes. In addition, if Cox Communications had any other rate changes, they were required to give a 45-day notice to the LFAs and 30-day notice to its customers prior to any of those changes.

Mr. Smith stated that Direct TV did not have any legally imposed compliance notification policies but had a self-imposed 30-day notification policy for all increases.

Directing his question to Mr. Smith, Senator Townsend asked if it was a "cosmic coincidence", that Direct TV's customers were notified of rate increases approximately 30-days after the cable increases were accepted by the local jurisdictions. Responding, Mr. Smith said the increases were closely tied to renegotiated programming agreements.
Senator Townsend commented that Direct TV's customers seemed to benefit from the fact there were no fees from the state or local government allowing them ability to move rates around at anytime, in any combination, in order to be competitive with multiple competitors.

Mr. Smith replied that Senator Townsend was not taking into consideration infrastructure costs companies invested in ground equipment in addition to the billions of dollars invested in satellite equipment, which the customer did not see in the form of recovery fees. Landline services reflected a franchise fee on its customer's bill but satellite bills did not reflect the fee, which many people believed was an injustice. Mr. Smith understood it was driven from a different fact pattern on how companies were developed and operated.

With respect to Senator Townsend's inquiry, Mr. Jacobsen stated the fees imposed on wireless customers in Nevada, from a franchise point of view, were more of a tax as opposed to compensation for use of service.

Senator Townsend concluded his questions and appreciated the time of the committee.

Senator Coffin noted the fiscal impact to Virginia from passage of A.B. 568 was approximately $1 million. He requested that staff and the Department of Taxation research the fiscal impact and legal ramifications if legislation similar to the Virginia bill was imposed in Nevada. Concluding, Senator Coffin commented that as a subscriber to XM Satellite Radio, he wondered if satellite radio was exempt from the Virginia bill.

Mr. Gillespie believed the definition of communication services in the Virginia bill was broad enough to cover broadcasts for pay including exempt programming. He explained there was an exemption in the bill for advertising revenues that would exempt free broadcast television revenues from being included in the tax. Mr. Gillespie added that exempt satellite and other radio satellite revenues were included which he believed was fair because they were competitive services offered by cable television.

Senator Coffin stated the bill looked like it specifically stated satellite television and not satellite radio.

Mr. Gillespie explained the legislation was complicated and the definition of communication services included taxable entities and services subject to the tax. More specifically, the definition of communication services included any electronic transmission, conveyance or routing of voice, data, audio, video, or any other information signals that included satellite radio by or through any electronic radio, satellite, cable, microwave or any other medium or method in existence or hereafter devised.

Senator Coffin commented that satellite radio could be included in the Nevada legislation but because of the political implications, he was opposed to it. Since the Virginia bill was used as a model, Senator Coffin requested staff analyze the bill to see how it related to the state, how it fit in the statutes, and the fiscal impact for Nevada. He added the fiscal reports for the Virginia bill were recently completed and the bill was waiting for the Governor's signature.

Chairman McGinness questioned whether the $1 million fiscal impact for the Virginia bill was a positive or negative effect to the state or local government. Senator Coffin responded that in the impact statement provided by the state, the summary of the final enrolled bill indicated it was a new tax. The bill required the Department of Taxation to implement and administer a new tax and would incur costs of $1,030.000 the first year and approximately $200,000 to $300,000 in subsequent years, meaning the state would most likely have to borrow from its treasury to implement the bill.

Chairman McGinness suggested that staff look at the impacts of the bill on Virginia and Nevada.

Senator Coffin asked if Legal Counsel could look into whether similar legislation in Nevada would be considered a new tax or could it be added to an existing tax.

Chairman McGinness commented that it seemed the Virginia bill replaced a number of taxes and he was unsure whether it meant it was a new or replacement tax and required a two-thirds vote.

Mr. Smith, Direct TV, noted that the Virginia bill replaced franchise fees and brought in some new players to the tax and Direct TV was one of the volunteers subject to the 5 percent tax. He concurred with Mr. Gillespie's analyses that satellite radio by definition was included in the new tax. He added the differentiation between a franchise fee and a tax was very important and the Ohio Court of Common Pleas ruled on the issue. He read a brief statement from the partial summary judgment:

> The Ohio court recently held, that in Direct TV and Ecostar's constitutional challenge, Ohio sales tax, rather than leveling the playing field, the higher tax on satellite works like a golf handicap, depriving the better player of the benefit of his superior competitive characteristics.

Mr. Smith reported that the court dismissed the concept that franchise fees and sales tax were compensatory and could be used to level the playing field.

Chairman McGinness thanked Mr. Smith for his insight and called for questions.

IV. REPORT ON THE REVENUES GENERATED BY FRANCHISE TAXES AND FEES IMPOSED ON PROVIDERS OF TELECOMMUNICATIONS, VIDEO, AND DATA SERVICES AND THEIR IMPORTANCE TO LOCAL GOVERNMENT BUDGETS.

Mr. David Fraser, Executive Director, Nevada League of Cities, introduced himself for the record and thanked the committee for allowing him to testify. In addition, he thanked the other presenters for their testimonies, partnerships with the communities, and investment of services to increase and enhance the quality of life for residents of the state. Their partnerships with the community provided pubic access, education and government channels to the public in addition to the added investments provided to the community.

Mr. Fraser commented that franchise agreements were developed in recognition of the fact that local governments held a great deal of property in the form of rights of way in trust for its taxpayers. Rather than negotiating with each individual property owner to gain access in the community, it was recognized the local government, that held the property in trust, could reach an agreement with the companies. The fees attached with the agreements were in fact rental payments for use of the valuable real estate, and it was appropriate and customary for the local government to charge those fees because of the fiduciary responsibility to the taxpayers who owned the properties. The companies were based on a business model requiring physical conveyance and local governments could provide the means and partnership to convey service to each structure.

Mr. Fraser stated the franchise agreements not only included specified fees but conditions under which the franchisee would operate including customer service and the use of rights of way. He noted the rights of way contained water lines, waste lines, phone lines, cable and coaxial cable lines and fiber optic cable within one area overlaid by roads and sidewalks. The rights of way were managed to ensure there was no confusion maintaining the lines allowing franchises access to its lines without cutting off service to another provider. Local governments protected the taxpayers and in addition, the companies knew it had well-managed rights of way in which to operate.

Mr. Andrew List, Executive Director, Nevada Association of Counties, introduced himself for the record and referred to page 42, Tab IV A in the meeting packet (Exhibit A). Mr. List said revenues generated from the franchise agreements for Nevada counties and cities were approximately $58 million in FY 2004: over $45 million of that revenue was generated from Clark County. Esmeralda, Eureka and Nye Counties did not have any franchise fees. In addition, as part of the fiscal recovery plan for White Pine County, the Nevada Department of Taxation recommended that White Pine County institute a 5 percent franchise fee on the Mount Wheeler Power Plant in Ely. The county looked at the numbers and decided to institute its original plan of 3 percent but decided to go down a notch and institute a 2 percent franchise fee generating approximately $400,000 in Fiscal Year 2005-06.

Continuing, Mr. List said at this point he did not believe Esmeralda, Eureka or Nye Counties intended to institute any franchise fees; Lander County had a 2 percent rate and Lyon County expected to generate $1.13 million from franchise fees for Fiscal Years 2005-06.

Mr. List concluded and said he would be happy to answer any questions.

Mr. Fraser referred the committee to a handout providing financial information from the counties and cities (Exhibit F). He reviewed the charts in the handout summarizing the franchise fees by entity, General Fund revenue, population, per capita franchise fees and total franchise fees as percentage of General Fund revenue. The franchise fees were broken down by each city showing its franchise rates, revenues generated, and the utility it was generated from. He noted that the city of Caliente did not have franchise fees and there was no data for Fallon and Fernley.

Moving to page 3 of the handout (Exhibit F), Mr. Fraser said the 2005 franchise fees for Nevada cities generated over $110 million which on average was approximately 10 percent of General Fund revenues.

Mr. List added that he did not break down the franchise fees like Mr. Fraser but he recalled that during the last session, he looked at the percentage of General Fund revenues for the counties; close to 5 percent of the General Fund revenue came from franchise fees. He added the highest county on the list was Humboldt County with franchise fees totaling approximately 10 percent of the county's revenue.

Chairman McGinness called for questions for Mr. List and Mr. Fraser. Hearing none, he told Mr. Fraser that he was surprised that six of the cities were in or near double-digits as part of its General Fund revenue. Chairman McGinness asked if the difference between the counties was due to the different rates or were there just more people to tax. Mr. Fraser responded that he did not have a definitive answer to the question.

Senator Townsend questioned Mr. Fraser's historical perspective and definition of rights of way. He believed the public already owned the rights of way and were being taxed for land they already owned. Although he respected what Mr. Fraser was trying to accomplish, Senator Townsend disagreed with it. Concerning the willing contracts, Senator Townsend thought people might be in disagreement over what some law school individuals called contracts of adhesion. In order for the public to understand the issue, Senator Townsend included gas, electric, sanitation, cell phone usage and landlines when he questioned the benefits customers received from the increased fees creating additional revenue for the companies.

Responding, Mr. Fraser said he understood they differed on the point and the distinction for him in terms of using the public rights of way was while many of the taxpayers were ratepayers for the various utilities; taxpayers and ratepayers were not exclusively the same group. Mr. Fraser said the benefit was simple and based on a business model requiring a physical conveyance and the use of a public asset to convey it. The ratepayer would then receive the benefit of service available at their home or business.

Senator Townsend stated he would be careful describing government as having a business model and he thought Mr. Fraser should rethink that term because he did not believe it worked. Senator Townsend was more specific with his question and again asked the benefits the public received every time the gas, electric, phone or cable company raised its rate creating additional revenue for the company.

Mr. Fraser replied that he recognized Senator Townsend's point when gross receipts went up; the basis of that calculation was used as a means of trying to obtain fair market value of the asset. As those revenues build for the people that franchised through the local governments, that public asset became more valuable, therefore; the public received a higher fair market return for the use of that public asset.

Senator Townsend noted the reason he disagreed was that every time the gas company increased its rates, a mil tax increase was paid on the increase, which went to the PUC. Based on a formula, the PUC would then distribute some of the tax to the Office of Consumer Advocacy, who were required under state law to analyze those revenues and present them to the Interim Finance Committee (IFC) and money committees for terms of expenditure. Senator Townsend concluded by saying the cable companies did not have the same accountability and when fees increased, the company received revenue that was absorbed into its operations.

Chairman McGinness called for further questions from the committee.

*V. **DISCUSSION OF THE APPLICATION OF THE BUSINESS LICENSE AND FRANCHISE FEES BY LOCAL GOVERNMENTS ON PROPANE SUPPLIERS – Neena Laxalt, (Lobbyist) and Blair Poulsen, Nevada Propane Dealers Association.**

Neena Laxalt, Government Relations Consultant representing the Nevada Propane Dealers Association, introduced herself for the record.

Ms. Laxalt referred the committee to Tab V of the meeting packet (Exhibit A) and noted the Nevada Propane Dealers Association had a discrepancy amongst the definition of public utility in statute. Referring to page 43 of the meeting packet, Ms. Laxalt said she provided some examples of the definition of public utilities as described in Title 58, NRS 704.020 and NRS 704.030. There were specific exemptions in the definition for LPG propane as a public utility and it was commonly known, and assumed that propane did not fall under the category of public utility. When the cap was put into place in Senate Bill 568, 1998, NRS 354.598817, the definition simply described public utility and referred to gas as gas encompassing many forms of gas, which was a very broad term. Based on the minutes and discussions with the people who were present at the hearing, it was assumed that gas referred to natural gas products.

Ms. Laxalt commented that the Nevada Propone Dealers Association would like NRS 354.598817 aligned in the same language as NRS 704, or be referred to as in other areas of the statute. Ms. Laxalt concluded and told committee members that supporting documentation to her testimony was included under Tab V of the meeting packet (Exhibit A).

Blair Poulsen, past president and legislative member of the Nevada Propane Dealers Association, commented he was in full support of Mr. Laxalt's testimony and would be happy to answer any logistical questions regarding propane or propane services.

Chairman McGinness called for questions for Ms. Laxalt or Mr. Poulsen. Hearing none, he moved on to the next agenda item.

VI. INSTRUCTIONS TO STAFF CONCERNING FUTURE MEETINGS.

Chairman McGinness requested staff provide information at the next meeting on the Virginia bill referenced by Senator Coffin. In addition, he requested staff give an update on the current federal legislation regarding the same issues. If committee members had any items they wanted the committee to review in more detail, Chairman McGinness requested they provide the information to Mr. Guindon or himself.

VII. PUBLIC COMMENT.

Chairman McGinness asked if there was any public comment from Las Vegas. Hearing none, he noted there was one speaker in Carson City that would like to approach the bench.

William Freed, representing himself, stated that he provided an addendum to the proposed study group for the 2007-08 Interim titled, *Working Group Participants for the Study of the Nevada Master Tax Plan, 2007-2008 Interim* (Exhibit G). Mr. Freed indicated the handout contained a list of suggested non-exclusionary parties intended for a working group. The result of the working group was to provide a master tax plan derived from the budgets allowing the Legislature to focus on state operations.

Chairman McGinness offered the following statement from Mr. Freed's handout:

> Whereas, the current tax system is chaotic patchwork pieced together over many years and a coherent, unified system would be less expensive to administer.

Mr. Freed hoped the working group would concentrate on the operations, regulations and things that would make businesses better and more profitable as opposed to endless discussions over who was going to pay for what.

Chairman McGinness thanked Mr. Freed for his testimony and said it was worth considering when requesting bill drafts during the upcoming session.

Chairman McGinness stated the committee was considering mid to late April for the next meeting. If anyone had input on future topics of discussion for the upcoming meeting, please advise Mr. Guindon or himself. Senator Coffin requested that staff schedule the next meeting after April 15, 2006. In addition, he recognized that Chuck Chinnock, Department of Taxation, had recently retired. He believed Mr. Chinnock did a wonderful job and he hoped he would be invited to the next meeting so the committee could either "roast or toast him."

VIII. ADJOURNMENT.

There being no further business to come before the committee, the meeting was adjourned at 11:52 p.m.

Respectfully submitted,

____
Donna Thomas, Committee Secretary

APPROVED:

____

Senator McGinness, Chairman

Date:______________________________