

1 “(A) for purposes of subsection (a), the
2 term ‘Internet access’ shall have the meaning
3 given such term by section 1104(5) of this Act,
4 as enacted on October 21, 1998; and

5 “(B) for purposes of subsection (b), the
6 term ‘Internet access’ shall have the meaning
7 given such term by section 1104(5) of this Act
8 as enacted on October 21, 1998, and amended
9 by section 2(c) of the Internet Tax Non-
10 discrimination Act (Public Law 108-435).

11 “(2) EXCEPTIONS.—Paragraph (1) shall not
12 apply until November 1, 2007, to a tax on Internet
13 access that is—

14 “(A) generally imposed and actually en-
15 forced on telecommunications service purchased,
16 used, or sold by a provider of Internet access,
17 but only if the appropriate administrative agen-
18 cy of a State or political subdivision thereof
19 issued a public ruling prior to July 1, 2007,
20 that applied such tax to such service in a man-
21 ner that is inconsistent with paragraph (1); or

22 “(B) the subject of litigation instituted in
23 a judicial court of competent jurisdiction prior
24 to July 1, 2007, in which a State or political
25 subdivision is seeking to enforce, in a manner

1 that is inconsistent with paragraph (1), such
2 tax on telecommunications service purchased,
3 used, or sold by a provider of Internet access.

4 “(3) NO INFERENCE.—No inference of legisla-
5 tive construction shall be drawn from this subsection
6 or the amendments to section 1105(5) made by the
7 Internet Tax Freedom Act Amendments Act of 2007
8 for any period prior to November 1, 2007, with re-
9 spect to any tax subject to the exceptions described
10 in subparagraphs (A) and (B) of paragraph (2).”.

11 **SEC. 4. DEFINITION.**

12 Section 1105 of the Internet Tax Freedom Act (47
13 U.S.C. 151 note) is amended—

14 (1) in paragraph (1) by striking “services”,
15 (2) by amending paragraph (5) to read as fol-
16 lows:

17 “(5) INTERNET ACCESS.—The term ‘Internet
18 access’—

19 “(A) means a service that enables users to
20 connect to the Internet to access content, infor-
21 mation, or other services offered over the Inter-
22 net;

23 “(B) includes the purchase, use or sale of
24 telecommunications by a provider of a service
25 described in subparagraph (A) to the extent

1 such telecommunications are purchased, used or
2 sold—

3 “(i) to provide such service; or

4 “(ii) to otherwise enable users to ac-
5 cess content, information or other services
6 offered over the Internet;

7 “(C) includes services that are incidental
8 to the provision of the service described in sub-
9 paragraph (A) when furnished to users as part
10 of such service, such as a home page, electronic
11 mail and instant messaging (including voice-
12 and video-capable electronic mail and instant
13 messaging), video clips, and personal electronic
14 storage capacity; and

15 “(D) does not include voice, audio or video
16 programming, or other products and services
17 (except services described in subparagraph (A),
18 (B), or (C)) that utilize Internet protocol or any
19 successor protocol and for which there is a
20 charge, regardless of whether such charge is
21 separately stated or aggregated with the charge
22 for services described in subparagraph (A), (B),
23 or (C).”,

24 (3) by amending paragraph (9) to read as fol-
25 lows:

1 “(9) TELECOMMUNICATIONS.—The term ‘tele-
2 communications’ means ‘telecommunications’ as
3 such term is defined in section 3(43) of the Commu-
4 nications Act of 1934 (47 U.S.C. 153(43)) and ‘tele-
5 communications service’ as such term is defined in
6 section 3(46) of such Act (47 U.S.C. 153(46)), and
7 includes communications services (as defined in sec-
8 tion 4251 of the Internal Revenue Code of 1986 (26
9 U.S.C. 4251)).”, and

10 (4) in paragraph (10) by adding at the end the
11 following:

12 “(C) SPECIFIC EXCEPTION.—

13 “(i) SPECIFIED TAXES.—Effective
14 November 1, 2007, the term ‘tax on Inter-
15 net access’ also does not include a State
16 tax expressly levied on commercial activity,
17 modified gross receipts, taxable margin, or
18 gross income of the business, by a State
19 law specifically using one of the foregoing
20 terms, that—

21 “(I) was enacted after June 20,
22 2005, and before November 1, 2007
23 (or, in the case of a State business
24 and occupation tax, was enacted after

1 January 1, 1932, and before January
2 1, 1936);

3 “(II) replaced, in whole or in
4 part, a modified value-added tax or a
5 tax levied upon or measured by net in-
6 come, capital stock, or net worth (or,
7 is a State business and occupation tax
8 that was enacted after January 1,
9 1932 and before January 1, 1936);

10 “(III) is imposed on a broad
11 range of business activity; and

12 “(IV) is not discriminatory in its
13 application to providers of commu-
14 nication services, Internet access, or
15 telecommunications.

16 “(ii) MODIFICATIONS.—Nothing in
17 this subparagraph shall be construed as a
18 limitation on a State’s ability to make
19 modifications to a tax covered by clause (i)
20 this subparagraph after November 1,
21 2007, as long as the modifications do not
22 substantially narrow the range of business
23 activities on which the tax is imposed or
24 otherwise disqualify the tax under clause
25 (i).

1 “(iii) NO INFERENCE.—No inference
2 of legislative construction shall be drawn
3 from this subparagraph regarding the ap-
4 plication of subparagraph (A) or (B) to
5 any tax ^{described in clause (i)} for periods prior to November 1,
6 2007.”.

7 **SEC. 5. CONFORMING AMENDMENTS.**

8 (a) ACCOUNTING RULE.—Section 1106 of the Inter-
9 net Tax Freedom Act (47 U.S.C. 151 note) is amended—

10 (1) by striking “telecommunications services”
11 each place it appears and inserting “telecommuni-
12 cations”, and

13 (2) in subsection (b)(2)—

14 (A) by striking “, such services” and in-
15 serting “such telecommunications”, and

16 (B) by inserting before the period at the
17 end the following: “or to otherwise enable users
18 to access content, information or other services
19 offered over the Internet”.

20 (b) VOICE SERVICES.—The Internet Tax Freedom
21 Act (47 U.S.C. 151 note) is amended by striking section
22 1108.

23 **SEC. 6. EFFECTIVE DATE.**

24 This Act, and the amendments made by this Act,
25 shall take effect on November 1, 2007, and shall apply

- 1 with respect to taxes in effect as of such date or thereafter
- 2 enacted, except as provided in section 1104 of the Internet
- 3 Tax Freedom Act (47 U.S.C. 151 note).