

# OUTLINE OF TESTIMONY REGARDING NCSL MARKETPLACE FACILITATOR SALES TAX COLLECTION MODEL LEGISLATION

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On Behalf of AT&T

1. Enacted in 2019, 32 V.S.A. § 9713 requires “marketplace facilitators” to collect and remit Vermont’s sales tax on taxable retail sales to Vermonters by “marketplace sellers” through a “marketplace.”
2. NCSL’s Task Force on State and Local Taxation recently engaged in a consensus process to develop model legislation to simplify and standardize state laws concerning tax collection obligations by marketplace facilitators. Legislators, business representatives, the Multistate Tax Commission, the Federation of Tax Administrators, the Streamlined Sales Tax Governing Board and state tax officials participated in the Task Force’s proceedings. The members of the task force unanimously approved the model legislation in November 2019 and NCSL’s Executive Committee approved it on January 18.
3. AT&T is a “marketplace seller” because it sells prepaid calling plans and phones through Amazon, Best Buy, Target and other marketplace facilitators.
4. For AT&T the immediate issue is the fact that while its marketplace facilitators must collect and remit the sales tax due on the sales of AT&T’s prepaid calling plans, the state’s 2.4% Universal Service Fund Fee must also be collected and remitted by retailers who sell prepaid calling plans. See 30 V.S.A. § 7521(e). The marketplace facilitators statute, 32 V.S.A. § 9713, does not require marketplace facilitators to collect and remit the USF fee. Instead, their obligation is to collect and remit sales tax proceeds. This results in a bifurcated system that is cumbersome and could potentially result in USF fee revenues not being collected and remitted. Accordingly, 32

V.S.A. § 9713 should be amended to require marketplace facilitators to also collect the USF fee if the underlying transaction is subject to that fee. See NCSL Model Legislation, footnote 1.

5. More generally, the NCSL model language also makes at least two significant changes:
  - a. It modifies the definition of marketplace facilitator to make it clear that a business is a marketplace facilitator only if, among other things, it collects payments from purchasers. See NCSL Model Legislation, section 2(A)(2), and
  - b. It allows marketplace facilitators and marketplace sellers to contractually agree that the marketplace seller will remit the sales tax proceeds due from taxable sales made via a marketplace facilitator's "market" if specified requirements are met. See NCSL Model Legislation, section 1(D).
6. AT&T supports the model legislation's provisions in these regards, but its immediate "ask" is that marketplace facilitators be required to collect and remit the USF fee.