The Honorable William C. Mims
Member, Senate of Virginia
March 15, 2000

You inquire regarding the applicability of the sales and use tax exemption in § 58.1-609.6(2) of the Code of Virginia to either equipment used in providing Internet access service directly to end users or to equipment and software used to enable other companies to provide such service to end users.

You present a hypothetical situation in which a company provides Internet service in two ways. The company sells Internet service directly to end users and, therefore, is an Internet service provider. In addition, the company sells "Internet access" to other Internet service providers that sell such service directly to end users. The company calls the first activity "retail sales" and the second activity "wholesale sales." For its "wholesale sales," the company also purchases equipment and software that is not "used for storing, processing and retrieving end-user subscribers’ requests."

You relate that § 58.1-609.6 was enacted by the 1993 Session of the General Assembly. You advise further that the following two classes of electronic media equipment are exempt from sales tax: (1) broadcasting and related equipment used by common carriers; and (2) equipment (including software) used for amplification, transmission and distribution of video.

Section 58.1-609.6 contains the media-related exemptions to the sales and use tax. Section 58.1-609.6(2) exempts the following:

[A]mplification, transmission and distribution equipment used or to be used by … open video systems or other video systems provided by telephone common carriers.

Section 58.1-602 defines the terms used in the Virginia Retail Sales and Use Tax Act. The following terms and definitions, which are pertinent to your inquiry, were added by the 1999 Session of the General Assembly:

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications
equipment and software used for storing, processing and retrieving end-user subscribers’ requests.

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"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected worldwide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

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"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of [the Virginia Retail Sales and Use Tax Act] only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

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"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

The language used by the General Assembly in defining "amplification, transmission and distribution equipment" is not entirely free from ambiguity. When the language of a statute is ambiguous, it must be interpreted in a manner that will give effect to the intent of the General Assembly. Although tax exemptions generally are to be narrowly construed, it is my view that the language defining the terms in § 58.1-602 generally reflects that the General Assembly intended a broad, rather than restrictive, application of the term "amplification, transmission and distribution equipment." The language of the definition provides that, while the exemption includes "production, distribution, and other equipment used to provide Internet-access services" and "software used for storing, processing and retrieving end-user subscribers’ requests," it is "not limited to" such equipment. Equally clear is the fact that the definition expressly considers "software" as "equipment." It is my view that the words following the term "software" are intended to be descriptive words and not words of limitation.

It is clear that the essence of the exemption is property used to provide Internet-access services. There is no language in the statutes expressly confining the exemption to purchases made by direct Internet providers. Clearly, as long as an Internet provider uses
the subject equipment to deliver Internet service to end-user subscribers, the statutory language is satisfied.

The inclusion of the language "end-user subscribers" in this definition is, in my opinion, used to make clear that no other software a company uses to conduct any portion of its Internet business, other than the provision of Internet services to its customers, is exempt from taxation. As an example, software that is used by an Internet provider to maintain its internal accounting system clearly is not exempt under § 58.1-609.6. When the equipment and software are used directly in providing Internet service, however, it is my opinion that such items are clearly within the tax exemption.

The intent of the General Assembly with regard to the taxation of Internet providers reflects a generally broad application of the sales and use tax exemption. Simply stated, the question is whether the entity seeking an exemption must use the equipment to provide direct Internet service to end users or whether it is sufficient for the entity to use the equipment to enable others to provide the same service. It is my opinion that the definitions and exemption are sufficiently broad to include both the entity using equipment to provide Internet access service directly to end users and the entity using equipment to enable other entities to provide such service to end users. Consequently, in the hypothetical situation you present, I must conclude that the sales and use tax exemption in § 58.1-609.6(2) is applicable to both equipment used in providing Internet access service directly to end users and to equipment used to enable other companies to provide Internet access service to end users.

Section 58.1-609.6(2) provides that the retail sales and use tax shall not apply to "[b]roadcasting equipment and parts and accessories thereto and towers used or to be used by commercial radio and television companies, wired or land based wireless cable television systems, common carriers or video programmers using an open video system or other video platform provided by telephone common carriers, or concerns which are under the regulation and supervision of the Federal Communications Commission and amplification, transmission and distribution equipment used or to be used by wired or land based wireless cable television systems, or open video systems or other video systems provided by telephone common carriers."

This language appears to have no significance for purposes of responding to your inquiry.

Section 58.1-602 (defining "amplification, transmission and distribution equipment").


Section 58.1-602 (emphasis added) (defining "amplification, transmission and distribution equipment").

Id.

Such constitutes, in essence, an indirect provision of Internet service to end users.