No. 13-1269

In the Supreme Court of the United States

WORLDCOM, INC., PETITIONER

v.

INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether certain now-obsolete telephone services purchased by petitioner in connection with the provision of Internet access to dial-up users constituted "local telephone service" taxable under 26 U.S.C. 4251.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-37a) is reported at 723 F.3d 346. The opinion of the district court (Pet. App. 38a-53a) is unreported but is available at 2011 WL 6434007. The opinion of the bankruptcy court (Pet. App. 54a-70a) is reported at 449 B.R. 655.

JURISDICTION

The judgment of the court of appeals was entered on July 22, 2013. A petition for rehearing was denied on November 19, 2013 (Pet. App. 71a). On January 13, 2014, Justice Ginsburg extended the time within which to file a petition for a writ of certiorari to and including April 18, 2014, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. An excise tax at the rate of three percent is imposed upon "amounts paid for communications services" and is payable by the person who has purchased the services. 26 U.S.C. 4251(a)(1), (2), and (b)(2). The term "[c]ommunications services" is defined as "(A) local telephone service; (B) toll telephone service; and (C) teletypewriter exchange service." 26 U.S.C. 4251(b)(1). Section 4252(a) defines "local telephone service" as "access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system." 26 U.S.C. 4252(a)(1). That definition also encompasses "any facility or service provided in connection with" such a service, 26 U.S.C. 4252(a)(2), but it does not include "toll telephone service" under Section 4252(b), "teletypewriter exchange service" under Section 4252(c), or "private communication service" under Section 4252(d), see 26 U.S.C. 4252(a).

2. Petitioner was originally a long-distance telephone service provider. In the late 1990s, petitioner began to build a massive Internet network to provide data services. Petitioner purchased a now-obsolete telecommunications service known as Central Office Based Remote Access (COBRA) from local telephone companies, known as local exchange carriers (LECs). COBRA service allowed local telephone subscribers to connect to the Internet using a dial-up modem. Pet. App. 3a.

To connect to the Internet through COBRA, a subscriber's modem would call the COBRA access number using the subscriber's telephone line on the Public

Switched Telephone Network (PSTN). The modem signal traveled over the PSTN, just as other telephone calls do. The signal then passed through a switch at the LEC's central office that routed the signal over the LEC's COBRA-specific high-capacity telephone lines, known as Primary Rate Interface (PRI) lines. The PRI lines, which were part of the COBRA service, carried the signal to a network access server. The network access server aggregated the data into Transmission Control Protocol/Internet Protocol (TCP/IP) packets, suitable for transmission over the Internet. Pet. App. 3a-4a.

The network access server sent the TCP/IP data signal to a router through another PRI line contained within the network access server, and the router then transmitted the signal, along with the aggregated dial-up data signals, to petitioner's network on a high-speed data line through the egress of the network access server. Once the network access server converted a signal from a modem into TCP/IP packets, it was no longer possible to transmit a traditional voice communication. The system also worked in reverse, converting an Internet data signal into a telephone signal to be carried over local telephone lines to the subscriber's modem. COBRA thus provided dial-up telephone customers with a two-way connection to the Internet. Pet. App. 4a-5a.

Petitioner plugged the output Internet data stream from the LEC's network access server into its own network and sold access to the stream to Internet Service Providers (ISPs). The ISPs in turn sold access to the Internet to customers with dial-up modems. The PRI lines and all aspects of the network access server through the egress port where petition-

er plugged in its network were considered COBRA equipment and were used by the LECs as part of providing the service to petitioner. Pet. App. 4a.

The COBRA system was theoretically capable of transmitting an ordinary telephone call. The PRI lines that carried modem signals to the network access server could also carry regular voice communication signals. Instead of connecting to the network access server, those PRI lines could have been plugged into a Private Branch Exchange (PBX), a switch that allows for voice communication over PRI lines. The COBRA-specific PRI lines, however, did not include a PBX switch. As purchased by petitioner, COBRA was not configured for voice communication. Petitioner could not reconfigure the PRI lines, which, along with the other COBRA equipment, were controlled by the LECs. Pet. App. 5a.

3. In July 2002, petitioner filed a Chapter 11 petition in bankruptcy court. Pet. App. 6a. After a plan of reorganization was confirmed, the Internal Revenue Service filed a request for payment of $16,276,440.81 in communications excise taxes stemming from petitioner's purchase of COBRA service. *Ibid.* Petitioner objected to this expense and requested a refund of $38,297,513 in excise taxes paid on COBRA service. *Ibid.* The potential refund was later agreed to be $25,158,939. C.A. J.A. 1369.

The parties disputed whether COBRA service was taxable as "local telephone service" within the meaning of 26 U.S.C. 4252(a). As relevant here, petitioner contended that the COBRA service did not provide "the privilege of telephonic quality communication" within the meaning of the statute, 26 U.S.C. 4252(a)(1), because the output signal of the COBRA

service was not of telephonic quality.[1] The government argued in response that COBRA service was nevertheless taxable because, before the output point, COBRA transmitted telephonic quality communication over the PRI lines, providing a channel for the transmission of modem signals between the customer and the network access server.

The bankruptcy court ruled in petitioner's favor, holding that the COBRA service purchased by petitioner was not taxable "local telephone service." Pet. App. 54a-70a. The court interpreted the term "telephonic quality communication" as used in Section 4252(a)(1) to mean "the quality of communication necessary to and present in a voice telephone call." *Id.* at 64a. The court concluded that petitioner did not obtain "the privilege of telephonic quality communication" described in the statute because it was "able to access only the high speed data stream" that came out of the network access server, which was "incapable of providing [petitioner] with telephonic quality communication." *Id.* at 66a.

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[1] Petitioner no longer contests that COBRA allowed the "privilege of * * * communication" with other local subscribers within the meaning of Section 4252(a)(1), even though the telephone lines were configured to allow inward dialing only. The district court reversed a ruling by the bankruptcy court on that issue, holding that, as long as two-way communication occurred, it was irrelevant which party initiated the call. *In re WorldCom, Inc.*, No. 07-cv-7417, 2009 WL 2432370, at *3-4 (S.D.N.Y. Aug. 7, 2009), rev'g *In re WorldCom, Inc.*, 371 B.R. 19 (Bankr. S.D.N.Y. 2007). Petitioner also does not contest the conclusions of the court of appeals that petitioner obtained "access to a local telephone system" (Pet. App. 10a-12a) and the ability to communicate with "substantially all persons" in the local telephone system (*id.* at 33a-35a) within the meaning of Section 4252(a)(1).

Regarding the PRI-line portion of COBRA service that transmitted voice quality modem signals, the bankruptcy court acknowledged that "it might have been possible to enable voice communications" on those PRI lines "by plugging [in] telephone equipment." Pet. App. 66a. The court found it decisive, however, that petitioner "did not purchase the ability to [enable voice communications], and could not do so because [it] lacked physical access to the PRI lines." *Ibid.* The court distinguished *USA Choice Internet Services, LLC* v. *United States*, 522 F.3d 1332 (Fed. Cir. 2008) (*USA Choice*), "wherein taxpayers received data streams or services that, when they reached the taxpayers, were capable of telephonic quality communication." Pet. App. 68a. The court stated that, "[b]y contract, COBRA service was not capable of telephonic quality communication at its egress point," whereas the limitations in *USA Choice* were "self-imposed." *Ibid.* The court stated that petitioner was "physically, contractually, and technologically incapable of altering COBRA service to obtain access to telephonic quality communication." *Id.* at 69a.

4. The district court affirmed. Pet. App. 38a-53a. The court held that petitioner had not obtained the "privilege of telephonic quality communication" within the meaning of Section 4252. *Id.* at 47a-48a. In the court's view, the "key for purposes of this appeal" was that petitioner had purchased a high-speed data stream from the LECs, which "is not a telephonic quality communication." *Id.* at 47a. The court explained that, "[v]iewed through dissection of the constituent parts of what dial-up users ultimately received, [petitioner] ha[d] at most a momentary and intermediary participation in the process." *Id.* at 47a-

48a. "The fact that [petitioner] ha[d] only an intermediary role in providing Internet service," in the court's view, was "a critical distinguishing factor between the COBRA service" in petitioner's case and the services at issue in *USA Choice*. *Id.* at 48a.

The district court acknowledged that, after the data passed through the switch at the LEC's central office, it traveled on a PRI line before entering the network access server. Pet. App. 50a. The court also recognized that "what is travelling along the PRI lines is potentially of telephonic quality" because "if that line were tapped into with a PBX line, a voice communication could occur." *Ibid.* The court framed the relevant question, however, as "whether the period of time when the LEC takes the data into its central office, passes it along its PRI lines and into the [network access server], is enough to transform this intermediate COBRA service into a standalone 'local telephone service.'" *Id.* at 51a. The court concluded that "[t]he answer to that question must be 'no.'" *Ibid.* The court stated that Congress did not intend to tax the "nanosecond on the PRI lines" as "local telephone service." *Ibid.*

5. The court of appeals reversed. Pet. App. 1a-37a. The court concluded that the COBRA service furnished petitioner with "the privilege of telephonic quality communication" described in Section 4252(a)(1). The court explained that, in specifying that the communication privilege obtained must be of telephonic "quality," the statute "refers to the technological capacity of the channel to transmit voice signals, regardless of whether or not the channel is used for voice communication." *Id.* at 15a. The court reasoned that, rather than making the word "quality"

redundant by reading it to mean "'property' or 'characteristic,'" applying a definition meaning "'a particular class, kind or grade' * * * gives meaning to 'quality' by broadening the scope of telephonic communications to those communications in the same 'class, kind or grade' as a communication by telephone." *Ibid.*

The court of appeals further explained that this definition was consistent "with industry usage of the term 'telephonic quality'" as meaning "'a communication channel over which it [i]s possible to have a two-way conversation with the use of telephones.'" Pet. App. 16a n.7 (citation omitted). The court also relied on the express exclusion of "local telephone service" from the definition of "teletypewriter exchange service" in Section 4252(c), a provision that would have been "surplusage" unless "Congress envisioned the possibility that a text-based teletypewriter service could also qualify as a local telephone service, even absent the provision of any voice communication." *Id.* at 17a. Because the parties' experts agreed that modems transmit computer data over telephone lines using the same frequency range as the human voice, the court of appeals concluded "that a data communication transmitted by a modem is a telephonic quality communication." *Ibid.*

The court of appeals rejected petitioner's argument that the privilege of telephonic quality communication must extend through the entirety of the connection, which did not occur here, where the data stream flowing from the egress point of the network access server was not of voice quality. Pet. App. 23a. In the court's view, the statutory text "does not answer" the question, *ibid.*, making resort to the legislative history

appropriate, *id.* at 25a. The court concluded that "[t]his history suggests that Congress intended to tax any communication service as a 'local telephone service' so long as it connected a customer to a local telephone system and allowed that customer to use the telephone lines to communicate with the subscribers to that system, regardless of whether the service also used non-telephonic equipment to accomplish that communication." *Id.* at 26a-27a.

The court of appeals observed that "[t]he COBRA service was not just a 'data stream'" flowing from the LEC's network access server, but "was a communication *pathway* between local telephone customers and [petitioner's] network," and "the part of that pathway that used modems required telephonic quality communication." Pet. App. 27a. "Without PRI lines," the court explained, "there would be no COBRA service and nothing for [petitioner] to resell to the ISPs." *Id.* at 28a. The court further stated that "to hold that COBRA did not provide the privilege of telephonic quality communication would create a strange result where telecommunication companies that used their own network access servers to convert a phone signal to a data stream * * * would have to pay the tax, but companies that relied on the local telephone company to convert the signals for them * * * would not." *Id.* at 30a.

The court of appeals stated that a 1979 IRS Revenue Ruling "may be contrary to [the court's] interpretation." Pet. App. 18a. The court explained that, in Revenue Ruling 79-245, 1979-2 C.B. 380, the IRS had concluded that "a data processing and transmission service that used modems and local telephone lines was taxable" as a local telephone service under Sec-

tion 4252(a)(1), but that the modems and computer equipment were not taxable as "facilities provided in connection with that service" under Section 4252(a)(2). Pet. App. 18a. The court inferred that, "[a]lthough not altogether certain, the strong implication of the IRS's reasoning * * * is that computer-to-computer communications over telephone wires are not 'telephonic quality communication.'" *Id.* at 19a. The court concluded, however, that the Revenue Ruling could not "overcome[] the text of the statute." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 16-32) that the COBRA service it purchased from local telephone companies was not subject to taxation as a "local telephone service" under 26 U.S.C. 4251 and 4252(a). Petitioner argues that, because it could not use the COBRA service to receive local telephone calls, the service did not provide "the privilege of telephonic quality communication" within the meaning of Section 4252(a)(1). The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or another court of appeals. The question presented lacks continuing importance, moreover, because the dial-up internet service at issue in this case is now obsolete. Further review is not warranted.

1. To be subject to the communications excise tax as a "local telephone service," 26 U.S.C. 4251(b)(1), a service paid for by the taxpayer must provide "access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system," 26 U.S.C. 4252(a)(1). The court of appeals correctly held

that the COBRA service purchased by petitioner conferred the privilege of "telephonic quality communication," even though the communication was not of voice quality once the signal was converted into TCP/IP data packets. The service that petitioner purchased included the privilege of telephonic quality communication between modems on the PRI lines from the threshold of the central office, *i.e.*, the LEC's switch, to the network access server. Although petitioner maintains (Pet. 18-19) that the telephonic quality of the transmission must exist throughout the entire connection, petitioner "cite[s] no portion of the statute, nor any relevant case law, that supports such an interpretation." Pet. App. 23a.

The court of appeals correctly concluded (Pet. App. 26a-27a) that Congress intended to tax, as "local telephone service," any communications service that connects the subscriber to a local telephone system and allows the subscriber to use telephone lines to communicate with other subscribers to that system, even if non-telephonic equipment is used. Under the predecessor statute, enacted as part of the Excise Tax Technical Changes Act of 1958, Pub. L. No. 85-859, § 133, 72 Stat. 1290, the communications excise tax on "general telephone service" was imposed on telephone service furnished in connection with a telephone station. The current statute, enacted as part of the Excise Tax Reduction Act of 1965, Pub. L. No. 89-44, § 302, 79 Stat. 145, broadened the tax base by eliminating any requirement that the service be furnished in connection with equipment. Congress enacted that amendment "in order 'to make it clear that it is the service as such which is being taxed and not merely the equipment being supplied.'" *Trans-Lux Corp.* v.

United States, 696 F.2d 963, 967-968 (Fed. Cir. 1982) (quoting H.R. Rep. No. 433, 89th Cong., 1st Sess. 30 (1965); S. Rep. No. 324, 89th Cong., 1st Sess. 35 (1965)).

To be sure, petitioner connected its equipment to the COBRA egress point only after the network access server had converted the modem signals into a high-speed data stream. But petitioner also relied on modem signals being carried back and forth over the PRI lines that were an integral part of the COBRA service. As the court of appeals explained, "[w]ithout PRI lines there would be no COBRA service and nothing for [petitioner] to resell to the ISPs." Pet. App. 28a.

2. Contrary to petitioner's contention (Pet. 16-20), the ruling below does not conflict with the Federal Circuit's decision in *USA Choice Internet Services, LLC* v. *United States*, 522 F.3d 1332 (2008).

a. The dial-up service at issue in *USA Choice* worked in the same way as the COBRA service purchased by petitioner. Dial-up users would connect to USA Choice's servers using modems over PRI lines, which USA Choice purchased from local telephone companies. 522 F.3d at 1334-1335. The only pertinent difference between the two cases is that the COBRA service at issue here also provided data processing through a network access server, whereas the taxpayer in *USA Choice* provided its own network access servers. *Id.* at 1334.

In *USA Choice*, the Federal Circuit held that the service purchased by the taxpayer had provided "the privilege of telephonic quality communication" within the meaning of Section 4252(a)(1). The court stated that "USA Choice's decision to connect [the PRI] lines

to modems in its network servers rather than to telephones * * * resulted in self-imposed limits that did not fundamentally alter the nature of the services that [USA Choice] had the 'privilege' to use." 522 F.3d at 1341 (second alteration in original); see *Comcation, Inc.* v. *United States*, 78 Fed. Cl. 61, 65 (2007). The court further explained that "USA Choice's configuration decision no more limited the underlying service's capabilities than would a subscriber's choice to connect a facsimile machine rather than a telephone set to his or her telephone line." *USA Choice*, 522 F.3d at 1341.

Petitioner contends (Pet. 18-19) that the Federal Circuit's analysis in *USA Choice* conflicts with the court of appeals' reasoning in this case because petitioner's inability to use the PRI lines within the COBRA system for telephone calls was not the result of petitioner's choice to plug the PRI lines into a network access server instead of a PBX switch. Instead, petitioner contends (Pet. 18 & n.17), the limitation was inherent in the way the COBRA system was configured and offered for sale, as access to a high-speed data stream that was not capable of transmitting voice calls. According to petitioner (Pet. 18), COBRA service should not be taxed because "[e]ven though certain *components* that the local telephone companies used as inputs to the COBRA service were capable of transmitting voice calls, the finished *service* that the telephone companies sold and that [petitioner] purchased had no such capability."

Like the Second Circuit in this case, the Federal Circuit in *USA Choice* concluded that the relevant dial-up service was taxable under Section 4251. It is therefore clear that the *holdings* of the two courts do

not conflict. In any event, there is no indication that the Federal Circuit would have viewed the factual distinction on which petitioner relies—*i.e.*, that petitioner's decision to plug the PRI lines into something other than a PBX switch was carried out by contract, rather than by petitioner's plugging the PRI lines into a network access server itself—as dictating a different answer to the question whether petitioner received the "privilege of telephonic quality communication." Because the Federal Circuit in *USA Choice* "did not address the issue of whether the 'service' changes when the customer does not have access to the PRI lines," Pet. App. 24a, petitioner is wrong to assume (Pet. 18) that it would have prevailed before the Federal Circuit.

Rather, the critical fact common to both cases is that telephonic quality is necessary for communication by modem over the PRI lines, which is an essential part of the COBRA service. COBRA, as configured, enabled petitioner to communicate signals by modems over voice-capable PRI lines, and the service therefore provided petitioner with "the privilege of telephonic quality communication." Petitioner's concerns (Pet. 19-20) about forum shopping therefore are misplaced. And because the transmission of modem signals over PRI lines was a necessary part of the COBRA service, the tax was imposed on a transaction that "actually occurred," and petitioner's reliance (Pet. 21-22) on the principle that taxes may not be imposed on hypothetical transactions is unfounded.

b. Far from rejecting the Federal Circuit's analysis, the court below relied on *USA Choice* in reaching its decision in this case. The court accepted the Federal Circuit's conclusion that "[t]o be of telephonic

quality a communication must use 'a communication channel over which it is possible to have a two-way conversation with the use of telephones.'" Pet. App. 22a-23a (quoting *USA Choice*, 522 F.3d at 1341 n.2 (alteration omitted)). The court also relied on *USA Choice* for the proposition that "the tax applies to customers who use their phone lines, regardless of whether to make phone calls or to plug in a fax machine." *Id.* at 28a.

The court of appeals further harmonized its decision with *USA Choice* when it explained that petitioner's construction of the statute "would create a strange result," in that taxpayers (like USA Choice) that provided their own network access servers would have to pay the tax for transmission of modem signals sent to the server over PRI lines, while taxpayers (like petitioner) that relied on the LECs to convert the modem signals into a data stream would not have to pay the tax for transmission of the same modem signals over the same PRI lines. Pet. App. 30a. For two reasons, the court considered such a result to be "at odds with the statute's intent." *Ibid.* First, contrary to congressional intent, the taxability of a service "would hinge on what equipment the local telephone company provided, not the nature of the service." *Ibid.* Second, Congress added an exemption for "private communication service" in Section 4252(d) in order "to avoid such a discrepancy," *i.e.*, a situation in which similar services are taxed differently based on whether the subscriber or the telephone company provided the equipment. *Ibid.* The court below saw no reason to "create a similar inequity here, despite

the identical purpose and function of the systems." *Id.* at 31a.[2]

Because the service in *USA Choice* and the COBRA service in this case both relied on voice-capable PRI lines to transfer modem signals to a network access server, each service provided the privilege of voice quality telephonic communication and was subject to the excise tax. By imposing the tax on both services, the IRS was not refusing to recognize an effort by petitioner to structure its transactions in a way that would not be taxable yet still had economic substance, as petitioner suggests (Pet. 22-23). Instead, both services were taxable because each afforded the taxpayer the privilege of voice quality telephonic communication by transmitting modem signals over voice-capable PRI lines.

3. Contrary to petitioner's further contention (Pet. 14-15, 19), the court of appeals' decision does not conflict with IRS Revenue Ruling 79-245, 1979-2 C.B. 380.

In Revenue Ruling 79-245, the IRS concluded that nonvoice data from a teleprocessing system that was transmitted over local telephone lines was taxable as "local telephone service." The IRS explained that the taxpayer "ha[d] access to the local telephone exchange

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[2] The United States Telecom Association contends (Amicus Br. 9-12) that, by going "beyond the statutory text" and considering the "strange result" that would occur if the dial-up service in *USA Choice* was subject to the tax but the COBRA service was not, the decision below creates uncertainty and makes it difficult for service providers to know when to collect taxes that "are not unequivocally covered by the statutory text." The court of appeals concluded, however, that the COBRA service qualified as local phone service based on the text of the statute. Pet. App. 12a-18a. The court noted the anomaly of treating the two services differently only as further support for its textual conclusion.

system through the lines used with the computer system," and that the taxpayer could exercise the privilege of telephonic quality communication "by plugging in a regular telephone set, if it so chooses." 1979-2 C.B. at 381. The IRS stated that, "[w]here a telephone service provides the subscriber the privilege of telephonic quality communication with substantially all other subscribers to the local telephone system, it is immaterial whether the subscriber exercises the privilege." *Ibid.*

The court of appeals stated (Pet. App. 18a) that the Revenue Ruling "may be contrary" to its holding, but only insofar as the Revenue Ruling further concluded that the fee for leasing modems in connection with the service was not also considered taxable. The IRS had concluded that "the type of telephone signal produced by * * * modems is usable only for nonvoice data transmission to other computer stations," and that a modem therefore "is not a facility provided in connection with the privilege of telephonic quality communication." 1979-2 C.B. at 381; see 26 U.S.C. 4252(a)(2).

Petitioner overstates the extent of the court of appeals' doubt in this regard when it asserts (Pet. 19) that the court "acknowledged" that the government's position in this case "conflicted with Revenue Ruling 79-245." In fact, the court's observations were more equivocal. The court stated that the implications of the Revenue Ruling were "not altogether certain," and that the Revenue Ruling "may be contrary" to the court's interpretation of the statute. Pet. App. 18a-19a. What is clear, however, is that the aspect of the Revenue Ruling that concerned the court of appeals addressed only the taxability of the amounts paid for equipment, not the taxability of the communications

service itself. Nothing in the Revenue Ruling, or in the General Counsel Memorandum in which the draft Revenue Ruling was analyzed, see IRS Gen. Couns. Mem. 37,368 (Dec. 30, 1977) (available at 1977 WL 46470), compels the extension of that reasoning to a service, like COBRA, in which telephonic quality communication takes place, regardless of the equipment used.

Petitioner describes Revenue Ruling 79-245 as holding that a service "*must* allow the purchaser to 'plug[] in a regular telephone'" in order to be taxable. Pet. 8 (emphasis added; brackets in original); accord Pet. 19. In fact, the ruling used the customer's ability to substitute a telephone in place of a modem to illustrate the telephonic quality of the line, see 1979-2 C.B. at 381—a matter that is not in dispute in this case. The ruling did not suggest that the customer's ability to substitute a telephone is necessary for the service to be taxed.[3]

4. Finally, this Court's review is not warranted because the dial-up Internet service at issue in this case is obsolete. As the district court explained, "[t]he technology underlying this proceeding has been superceded by other ways of accessing the Internet," and "[t]he issue in this appeal does not, therefore, have prospective application to how a 'local telephone

[3] Petitioner also relies (Pet. 9) on several private letter rulings that "adhered to" Revenue Ruling 79-245 in this regard. Only one of the rulings on which petitioner relies (IRS Priv. Ltr. Rul. 91-15-055 (Jan. 16, 1991) (available at 1991 WL 778396)) even cites Revenue Ruling 79-245, which, as explained above, is not inconsistent with the government's position. In any event, a private letter ruling may be relied on only by the person to whom it is issued. The citation of such a ruling as precedent is prohibited by 26 U.S.C. 6110(k)(3).

service' would be defined with respect to today's most utilized technologies for Internet connection." Pet. App. 40a.

Petitioner does not contend that COBRA continues to be a widely used service for connecting to the Internet. Instead, petitioner asserts (Pet. 26-29) that the court of appeals' decision creates uncertainty about whether the tax applies to "broadband and other data services, which vast numbers of consumers use today." Petitioner's amici likewise argue that the court of appeals' decision "could increase the cost of purchasing and providing broadband and other data services," but they do not describe broadband technology or explain how the court of appeals' analysis of dial-up Internet technology would apply to broadband. Broadband Tax Inst. Amicus Br. 4-11; see Chamber of Commerce of Am. Amicus Br. 9-15; Tax Found. Amicus Br. 10.

If questions arise with respect to the taxability of broadband or other technologies currently used to connect to the Internet, the Court can resolve any conflict in a case involving that technology. A decision from this Court on whether obsolete dial-up Internet technology constitutes "local telephone service" would be of little prospective importance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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