

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 3.24 of the Lincoln Municipal Code relating
 2 to Occupation Taxes by amending Section 3.24.080, Telecommunication Occupation Tax, to define
 3 in more detail that the telecommunication occupation tax applies to all telecommunication services,
 4 including the provision of equipment, and to make the occupation tax applicable to all businesses
 5 selling telecommunication equipment; amending Section 3.24.090 to provide when the
 6 telecommunication occupation tax from all businesses are due and to authorize the quarterly
 7 compounding of interest for late payments; amending Section 3.24.100 to require monthly
 8 statements be submitted by all businesses paying the occupation tax and to provide for audits and
 9 access to records; amending Section 3.24.160 to eliminate the requirement that the City Treasurer
 10 direct the City Attorney to bring suit for unpaid taxes; and repealing Sections 3.24.080, 3.24.090,
 11 3.24.100, and 3.24.160 of the Lincoln Municipal Code as hitherto existing.

12 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

13 Section 1. That Section 3.24.080 of the Lincoln Municipal Code be amended to read
 14 as follows:

15 **3.24.080 Telecommunication Occupation Tax.**

16 Commencing ~~January~~ October 1, 2010, there is hereby levied upon every person, firm,
 17 partnership, corporation, or association engaged in the business of offering, ~~or providing~~ or selling
 18 telecommunication equipment or telecommunication services to the public for hire in the City of
 19 Lincoln an occupation tax of six percent (6%) on (1) the gross receipts resulting from any
 20 telecommunication services and charges for each account related to a customer for which
 21 telecommunication services are provided; and (2) the gross receipts resulting from any sale of
 22 telecommunication equipment. ~~as follows:~~

1 ~~(a) Six percent (6%) on the gross receipts resulting from any toll services and charges on~~
2 ~~basic local exchange services; inter-exchange services; mobile services; and other~~
3 ~~telecommunication services as follows:~~

4 (a) Telecommunication services as used in this ordinance is defined as the provision of all
5 communication services and equipment provided in connection therewith, operable by the general
6 public as opposed to the employees of a telecommunications business only, using electromagnetic
7 wire or radio waves to control or direct the sending and receiving of messages at a distance, and
8 includes transmission, conveyance, or routing of voice, data, audio, video, or any other information
9 or signals to any geographic location, or between or among geographic locations, and any
10 transmission, conveyance, or routing in which computer processing applications are used to act on
11 the form, code, or protocol of the content for purposes of transmission, conveyance, or routing,
12 without regard to whether such service is referred to as voice over internet protocol services or is
13 classified by the federal communications commission as enhanced or value added;

14 (b) Telecommunication equipment as used in this ordinance is defined as any equipment
15 sold for the purpose of providing or as part of a telecommunication service as defined in subsection
16 (a) of this section, including but not limited to, phones, mobile phones, cellular phones, smart
17 phones, pagers, and all like devices and accessory items associated therewith. Accessory items shall
18 include, but not be limited to, chargers, cases, Bluetooth devices, headsets, headphones, phone
19 batteries, speakerphones and all like items; provided, however, that telecommunications equipment
20 shall not include computers, routers, hubs or other like devices not sold as part of a
21 telecommunication service.

22 (c) Telecommunication services which are subject to this occupation tax includes but shall
23 not be limited to:

1 (1) Basic local exchange services ~~shall~~ which include the access and transmission of
2 two-way switched communications within the city, including local telephone and telecommunication
3 services;

4 (2) Inter-exchange services ~~shall mean~~ which include the access and transmission of
5 communications between two or more local exchange areas, provided that such inter-exchange
6 service either (a) originates from an end user within the city or (b) terminates with an end user
7 within the city, and is charged to a service address within the city regardless of where the charges
8 are actually paid;

9 (3) Mobile services ~~shall~~ which include any radio or similar communication services
10 provided pursuant to license or authority granted by the Federal Communications Commission,
11 charged to a service address within the city regardless of where the charges are actually paid,
12 including cellular, radio paging, and mobile radio services; ~~and~~

13 (4) Any other similar telecommunication services and telecommunications equipment
14 involving any electronic or electromagnetic transmission of messages or any other communications
15 originating and terminating in the State of Nebraska and charged to a service address in the City of
16 Lincoln, regardless of where the charges are actually paid;

17 (5) Any other telecommunication services that are a necessary component of the
18 services provided, regardless of whether the services are required by federal, state or local
19 authorities or provided by the telecommunication business including, but not limited to, installation,
20 maintenance, any premise services, service connections, late payment fees, and equipment leasing;
21 and

22 (6) Ancillary services and charges that are associated with or incidental to the provision
23 of telecommunication services including, but not limited to conference bridging, detailed
24 telecommunications billing, directory assistance, vertical service, or voice mail services.

1 (b d) Gross receipts shall not include any toll-services and charges as follows:

2 (1) For interstate telecommunications between persons in this city and persons outside
3 of this state;

4 (2) For local carrier access charges, transmission facilities and switching services
5 provided to telecommunications companies;

6 (3) From accounts charged to the United States government or any of its departments,
7 or the State of Nebraska, or any of its agencies, subdivisions, or departments.

8 No part or portion of the tax provided for in this chapter shall be levied upon or assessed
9 against or taken from any such gross receipts so excepted from the provisions hereof.

10 Section 2. That Section 3.24.090 of the Lincoln Municipal Code be amended to read
11 as follows:

12 **3.24.090 Telecommunication Occupation Tax; Credit; Payment.**

13 On or before the last day of each and every month, ~~said~~ any company providing telecom-
14 munications company equipment or services shall pay to the City of Lincoln six percent (6%) of the
15 gross receipts as provided in Section 3.24.080 from the preceding month as an occupation tax;
16 provided that such business shall be entitled to a credit for any occupation tax, or other similar tax
17 based on gross receipts, satisfactorily documented or verified as paid to any other jurisdiction upon
18 any gross receipts taxed herein. All deferred payments shall draw interest at the rate of one percent
19 (1%) per month and shall be compounded quarterly. After default for six months, a penalty of five
20 percent (5%) shall be added in addition to the interest charges.

21 Section 3. That Section 3.24.100 of the Lincoln Municipal Code be amended to read
22 as follows:

23 **3.24.100 Telecommunication Occupation Tax; Reports; Contents.**

24 ~~All telecommunications companies on~~ On the last day of each month, any company
25 providing telecommunications equipment or services shall submit to the City Treasurer a full,

1 complete and detailed statement of the income and gross receipts, omitting any exemptions
2 provided for in Section 3.24.080 hereof, and said statement shall be duly verified and sworn to
3 by the officer or officers in charge of the business. All such businesses shall at any reasonable
4 times during business hours permit the city, through its officers, agents or representatives, to
5 inspect the books and records of any such business for the purpose of verifying such report or
6 reports. In the event the amount owed as a result of the findings of an audit or inspection is in
7 excess of three percent (3%) of the telecommunication occupation taxes paid by the business
8 during the audited period, the business shall pay City's out-of-pocket expenses associated with
9 such audit.

10 Access to records and other materials shall not be denied on the basis that said records
11 and materials contain trade secret, proprietary or confidential information; provided, however,
12 that the telecommunication business may require that the City enter into a reasonable
13 confidentiality agreement prior to inspecting any records or material that the business reasonably
14 believes contains trade secrets, proprietary or confidential information which the public release
15 thereof would harm or jeopardize the business's competitive position.

16 Section 4. That Section 3.24.160 of the Lincoln Municipal Code be amended to read
17 as follows:

18 **3.24.160 City Attorney; Enforce Collection.**

19 The City Attorney may bring suit in the name of the city against any person, corporation,
20 firm, or association in any court of competent jurisdiction for the amount of such tax levied by
21 this chapter upon the failure of such person, corporation, firm, or association to pay the same as
22 herein provided, ~~whenever the City Attorney is so directed by the City Treasurer.~~

23 Section 5. That Sections 3.24.080, 3.24.090, 3.24.100, and 3.24.160 of the Lincoln
24 Municipal Code as hitherto existing be and the same are hereby repealed.

1 Section 6. That this ordinance shall take effect and be in force from and after
2 passage and publication in one issue of a daily or weekly newspaper of general circulation in the
3 City, according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2010:

Mayor