

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 to eliminate the application of the telecom-
3 munication occupation tax to telecommunication equipment and certain telecommunication services,
4 and to clarify that the telecommunication occupation tax continues to apply to private communica-
5 tion services; amending Section 3.24.100 to require companies to report telecommunication services
6 revenues by categories; amending Section 3.24.150 to remove the references to the Finance
7 Department providing written interpretations of the applicability of the telecommunication
8 occupation tax; and repealing Sections 3.24.080, 3.24.100, and 3.24.150 of the Lincoln Municipal
9 Code as hitherto existing.

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

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

13 **3.24.080 Telecommunication Occupation Tax.**

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

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

11 ~~(b) Telecommunication equipment as used in this ordinance is defined as any communi-~~
12 ~~cation device sold for the purpose of providing or as part of a telecommunication service as defined~~
13 ~~in subsection (a) of this section, including but not limited to, phones, mobile phones, cellular phones,~~
14 ~~smart phones, pagers, and all like devices. Telecommunications equipment shall not include~~
15 ~~computers, routers, hubs, lamp and key systems or private branch exchanges.~~

16 (e**b**) Telecommunication services which are subject to this occupation tax includes but shall
17 not be limited to:

18 (1) Basic local exchange services as defined in Neb. Rev. Stat. §86-105;

19 (2) Inter-exchange services as defined in Neb. Rev. Stat §86-111, provided that such
20 inter-exchange service either (a **i**) originates from an end user within the city or (b **ii**) terminates with
21 an end user within the city, and is charged to a service address within the city regardless of where
22 the charges are actually paid;

1 (3) Commercial mobile services as defined in 47 U.S.C. §332(d)(1) which include any
2 radio or similar communication services provided pursuant to license or authority granted by the
3 Federal Communications Commission, charged to a service address within the city regardless of
4 where the charges are actually paid, including cellular, radio paging, and mobile radio services;

5 (4) Any other ~~similar~~ telecommunication services, including but not limited to, private
6 communications services, involving any electronic or electromagnetic transmission of messages or
7 any other communications originating and terminating in the State of Nebraska and charged to a
8 service address in the City of Lincoln, regardless of where the charges are actually paid;

9 (5) Any other telecommunication services that are a necessary component of the
10 services provided, regardless of whether the services or fees are required by federal, state or local
11 authorities or provided by the telecommunication business including, but not limited to, universal
12 service fund fees imposed under Neb Rev. Stat. §§86-317 et seq., ~~installation, maintenance, any~~
13 ~~premise services, service connections, late payment fees, and equipment leasing; and~~

14 ~~(6) Ancillary services and charges that are associated with or incidental to the provision~~
15 ~~of telecommunication services including, but not limited to conference bridging, detailed tele-~~
16 ~~communications billing, directory assistance, vertical service, or voice mail services; and~~

17 ~~(7)~~ Telephone cards, phone cards, calling cards, rechargeable cards, telephone tokens
18 and any other method or device used in purchasing prepaid minutes, prepaid telecommunication
19 service, or pay-as-you-go services.

20 ~~(d)~~ Gross receipts shall not include any services and charges as follows:

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

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

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

5 (4) Any cable television services regulated under Chapter 5.15 of the Lincoln Municipal
6 Code.

7 (5) Any charges or services prohibited from being taxed by the Internet Tax Freedom
8 Act.

9 (6) Any sales taxes imposed by the State of Nebraska pursuant to Neb. Rev. Stat.
10 § 77-2703.

11 (7) Any surcharges required by Neb. Rev. Stat. §§86-313 or 86-457.

12 (~~e-d~~) The seller of telecommunication services ~~or equipment~~ may itemize, as an add-on
13 charge, the tax levied on a bill, receipt, or other invoice to the purchaser, but each seller engaged in
14 selling telecommunication services ~~or equipment~~ shall remain liable for the tax imposed by this
15 section.

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

18 Section 2. That Section 3.24.100 of the Lincoln Municipal Code be amended to read
19 as follows:

20 **3.24.100 Telecommunication Occupation Tax; Reports; Contents.**

21 On or before the last day of each month, any company providing telecommunications
22 equipment or services shall submit to the City Treasurer a full, complete and detailed statement of
23 the income and gross receipts for the preceding month, omitting any exemptions provided for in

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

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

16 Section 3. That Section 3.24.150 of the Lincoln Municipal Code be amended to read
17 as follows:

18 **3.24.150 Tax, When Due; Treasurer to Collect.**

19 It is hereby made the duty of any person desiring to exercise, carry on or engage in any
20 occupation within the provisions of this chapter, to pay to the City Treasurer the amount specified
21 for the occupation tax, as provided for in this chapter. The amount of the occupation tax shall be
22 due and payable to the City Treasurer immediately after such person shall begin business in any
23 occupation within the provisions of this chapter. ~~Any person, firm, partnership, corporation, or~~

1 ~~association affected by the telecommunications occupation tax may make written request of the City~~
2 ~~Finance Department to issue a written interpretation as to applicability or non-applicability of the~~
3 ~~occupation tax to particular sales of telecommunication equipment or telecommunication services.~~
4 ~~Any responses shall be made available to the public for review in order to inform all interested~~
5 ~~parties of the interpretation provided.~~

6 Section 4. That Sections 3.24.080, 3.24.100, and 3.24.150 of the Lincoln Municipal
7 Code as hitherto existing be and the same are hereby repealed.

8 Section 5. That this ordinance shall take effect and be in force from and after passage
9 and publication in one issue of a daily or weekly newspaper of general circulation in the City,
10 according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2012: _____ Mayor
