ORDINANCE NO. 04-37A

AN ORDINANCE ESTABLISHING A TAX ON THE GROSS RECEIPTS OF TELECOMMUNICATIONS SERVICE PROVIDERS; SETTING THE RATE FOR SUCH TAX; AND ESTABLISHING THE EFFECTIVE DATE OF THE TAX

WHEREAS, this municipality, pursuant to Utah Code Sections 10-1-401 et seq. may levy a tax on the gross receipts of telecommunication service providers; and

WHEREAS, this municipality has determined that the need for such a tax as a source of general fund revenue; and

WHEREAS, this municipality has previously raised general fund revenue from taxes or fees from certain telecommunication providers under the authority of Utah Code Sections 10-1-203 or 11-26-1 et seq. and now wishes to repeal those taxes.

NOW THEREFORE BE IT ORDAINED by the legislative body of this municipality as follows:

Chapter 3.35 - TELECOMMUNICATIONS TAX

3.35.010 Definitions.

As used in this ordinance:
(1) "Commission" means the State Tax Commission.
(2) (a) Subject to Subsections (2) (b) and (c), "customer" means the person who is obligated under a contract with a telecommunication service provider to pay for telecommunication service received under the contract.
(b) For purposes of this ordinance, "customer" means:
   (i) the person who is obligated under a contract with a telecommunication service provider to pay for telecommunication service received under the contract; or
   (ii) if the end user is not the person described in Subsection (2) (b) (i), the end user of telecommunication service.
(c) "Customer" does not include a reseller:
   (i) of telecommunications service; or
   (ii) for mobile telecommunication service, of a serving carrier under an agreement to serve the customer outside the telecommunication provider's licensed service area.
(3) (a) "End user" means the person who uses a telecommunication service.
(b) For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunication service on behalf of the person who is provided the telecommunication service.
(4) "Gross Receipts attributed to the municipality" means those gross receipts from a
transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Tax Act and determined in accordance with Utah Code section 59-12-207.

(5) “Gross receipts from telecommunications service” means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

(a) a tax, fee, or charge:
   (i) imposed by a governmental entity;
   (ii) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and
   (iii) imposed only on a telecommunications provider;

(b) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or

(c) interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

(6) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(7) "Municipality" means "City of Logan."

(8) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:
   (i) the residential street address of the customer; or
   (ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(9) Notwithstanding where a call is billed or paid, "service address" means:

(a) if the location described in this Subsection (9) (a) is known, the location of the telecommunications equipment:
   (i) to which a call is charged; and
   (ii) from which the call originates or terminates;

(b) if the location described in Subsection (9) (a) is not known but the location described in this Subsection (9) (b) is known, the location of the origination point of the signal of the telecommunications service first identified by:
   (i) the telecommunications system of the telecommunications provider; or
   (ii) if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

(c) if the locations described in Subsection (9) (a) or (b) are not known, the location of a customer's place of primary use.

(10) (a) Subject to Subsections (10) (b) and (10) (c), "telecommunications provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; or
(ii) engages in an activity described in Subsection (10) (a) (i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (10) (a) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:
   (i) that person; or
   (ii) the telecommunications service that the person owns, controls, operates, or manages.

(c) "Telecommunications provider" does not include an aggregator as defined in Utah Code Section 54-8b-2.

(11) "Telecommunications service" means:
   (a) telephone service, as defined in Utah Code Section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and
   (b) mobile telecommunications service, as defined in Utah Code Section 59-12-102:
      (i) that originates and terminates within the boundaries of one state; and
      (ii) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

3.35.020. Levy of tax.

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to this municipality.

3.35.030. Rate

The rate of the tax levy shall be four (4%) percent of the telecommunication provider’s gross receipts from telecommunications service that are attributed to the municipality. If the location of a transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Section 10-1-407.

3.35.040. Rate limitation and exemption therefrom.

This rate of this levy shall not exceed 4% of the telecommunication provider’s gross receipts from telecommunication service attributed to the municipality unless a higher rate is approved by a majority vote of the voters in this municipality that vote in:
   (a) a municipal general election;
   (b) a regular general election; or
   (c) a local special election.

3.35.050. Effective date of tax levy.

This tax shall be levied beginning July 1, 2004.
3.35.060. Changes in Rate or Repeal of the Tax

This ordinance is subject to the requirements of Utah Code Section 10-1-403. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Section 10-1-403.

3.35.070. Interlocal Agreement for collection of the tax

On or before the effective date of the ordinance, the municipality shall enter into the uniform interlocal agreement with the Commission as described in Utah Code Section 10-1-405 for the collection, enforcement, and administration of this municipal telecommunications license tax;

3.35.080. Procedures for taxes erroneously recovered from customers

Pursuant to the provisions of Utah Code Section 10-1-408, a customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer the municipal telecommunication license tax except as provided in Utah Code Section 10-1-408.

3.35.0901 Repeal of inconsistent taxes and fees.

Any tax or fee previously enacted by this municipality under authority of Utah Code Section 10-1-203 or Utah Code Title 11, Chapter 26, Local Taxation of Utilities Limitation is hereby repealed.

Nothing in this ordinance shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code Section 72-7-102 and is not related to the municipality’s loss of use of a highway as a result of the activities of the telecommunications provider in a right of way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way nor does this ordinance limit the municipalities right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this ordinance and locate telecommunications facilities, as defined in Utah Code Section 72-7-108, in this municipality.
This ordinance shall take effect upon posting.

AYES: Needham, Pyfer, Taylor, Swenson
NAYS: S. Thompson
ABSENT: None

Stephen C. Thompson, Chairman

Lois Price, City Recorder

PRESENTATION TO MAYOR
The foregoing ordinance was presented by the Logan Municipal Council to the Mayor for approval or disapproval on the 15th day of June, 2004.

Stephen C. Thompson, Chairman

MAYOR'S APPROVAL OR DISAPPROVAL
The foregoing ordinance is hereby APPROVED this 21st day of June, 2004.

Douglas E. Thompson, Mayor

Posted: Logan City Hall 6/16/04
       R. H. Price, Recorder
PROOF OF PUBLICATION

STATE OF UTAH
COUNTY OF CACHE, ET AL.

On this 28th day of December, A.D. 2004, personally appeared before me, Rachelle S. Thomas, who being first duly sworn, deposes and says that she is the chief clerk of the Cache Valley Publishing Co., publishers of The Herald Journal, a daily newspaper published in Logan, City, Cache County Utah, and that the advertisement

LEGAL NOTICE

LOGAN MUNICIPAL COUNCIL

was published in said newspaper for One (1) issue, commencing December 28, 2004, and ending December 28, 2004.

Signed Rachelle S Thomas

Subscribed and sworn to before me, the day and year above written.

Signed Cynthia K Fulton Notary Public

My Commission expires September 7, 2007

Lois Price, Recorder
Publication Date: December 28, 2004

SUMMARY OF AN ORDINANCE amending the Logan Municipal Code, 1989, is as follows:

ORD. 04-37A. An ordinance was adopted June 15, 2004 and approved June 21, 2004 enacting Chapter 3.35, Telecommunications Tax. The ordinance establishes a levy of 4% on the gross receipts of telecommunications service providers; sets rates for the tax; and establishes the effective date of the tax as July 1, 2004.

Telecommunications service means telephone service as defined in UCA 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of the state; and mobile telecommunications services, as defined in UCA 59-12-102 that originates and terminates within the boundaries of one state as permitted by federal law.

The ordinance took effect June 16, 2004, upon posting. Full text may be reviewed at the Office of the Logan City Recorder, City Hall, 255 North Main, during regular business hours.

Lois Price, Recorder
Publication Date: December 28, 2004