

TOQUERVILLE CITY

June 18, 2009

Ordinance No. ORD.2009.05

AN ORDINANCE ESTABLISHING THE MUNICIPAL TELECOMMUNICAITONS LICENSE TAX WITHIN THE CITY OF TOQUERVILLE.

WHEREAS, the City Council has considered and evaluated the current and future budgetary needs of the City of Toquerville to provide services to its citizenry; and

WHEREAS, the cost of providing services to the citizens of the City of Toquerville have increased over time; and

WHEREAS, the balancing of revenue sources provides for more consistent, predictable, and sustainable revenue reliability; and

WHEREAS, the establishment of revenue sources based on usage levels and the consumption of services more equitably distributes the financial burden predominantly born by property owners through the City of Toquerville property tax levy; and

WHEREAS, under the State of Utah's Municipal Telecommunications License Tax Act, Utah Code Annotated Section 10-1-401 et. seq., the City of Toquerville is authorized to levy a telecommunications license tax on telecommunications providers' gross receipts from telecommunications services that are attributed to the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOQUERVILLE, STATE OF UTAH, as follows:

1: DEFINITIONS:

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

COMMISSION: The Utah State Tax Commission.

CUSTOMER:

- A. Subject to subsections B and C of this definition, "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.
- B. For purposes of this chapter, "customer" means:
 1. The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or

2. If the end user is not the person described in subsection B.1. of this definition, the end user of telecommunications service.

C. "Customer" does not include a reseller:

1. Of telecommunications service; or
2. For mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

END USER:

- A. The person who uses a telecommunications service.
- B. For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

GROSS RECEIPTS ATTRIBUTED TO THE MUNICIPALITY: Those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under title 59, chapter 12, Utah Code Annotated ("sales and use tax act"), and determined in accordance with section 59-12-215 Utah Code Annotated (1953, as amended).

GROSS RECEIPTS FROM TELECOMMUNICATIONS SERVICE: The revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

- A. A tax, fee, or charge:
 1. Imposed by a governmental entity;
 2. Separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and
 3. Imposed only on a telecommunications provider;
- B. Sales and use taxes collected by the telecommunications provider from a customer under title 59, chapter 12 of the Utah Code Annotated ("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.

MOBILE TELECOMMUNICATIONS SERVICE: Is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124.

MUNICIPALITY: City of Toquerville

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:
 - 1. The residential street address of the customer; or
 - 2. 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. section 124.

SERVICE ADDRESS: Notwithstanding where a call is billed or paid, "service address" means:

- A. If the location described in this subsection is known, the location of the telecommunications equipment:
 - 1. To which the call is charged; and
 - 2. From which the call originates or terminates;
- B. If the location described in subsection A of this definition is not known but the location described in this subsection is known, the location of the origination point of the signal of the telecommunications service first identified by:
 - 1. The telecommunications system of the telecommunications provider; or
 - 2. 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 A or B of this definition are not known, the location of a customer's place of primary use.

TELECOMMUNICATIONS PROVIDER:

- A. Subject to subsections B and C of this definition, "telecommunications provider" means a person that:
 - 1. Owns, controls, operates, or manages a telecommunications service; or

2. Engages in an activity described in subsection A.1. of this definition for the shared use with or resale to any person of the telecommunications service.
- B. A person described in subsection A of this definition is a telecommunications provider whether or not the Public Service Commission of Utah regulates:
1. That person; or
 2. The telecommunications service that the person owns, controls, operates, or manages.
- C. "Telecommunications provider" does not include an aggregator as defined in Section 54-8b-2, Utah Code Annotated (1953, as amended).

TELECOMMUNICATIONS SERVICE:

- A. Telecommunications service, as defined in section 59-12-102, Utah Code Annotated (1953, as amended), other than mobile telecommunications service, that originates and terminates within the boundaries of the State of Utah; and
- B. Mobile telecommunications service, as defined in section 59-12-102, Utah Code Annotated (1953, as amended):
1. That originates and terminates within the boundaries of one state; and
 2. Only to the extent permitted by the mobile telecommunications sourcing act, 4 USC section 116 et seq; or
- C. An ancillary service as defined in Section 59-12-102, Utah Code Annotated (1953, as amended).

2: LEVY OF TAX:

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to the City of Toquerville (otherwise known as the gross receipts attributed to the Municipality).

3: TAX RATE:

- A. The rate of the tax levy shall be three and one-half percent (3.5%) of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality, subject to the provisions of subsection B of this section.
- B. If the location of a transaction for telecommunications service is determined to be a municipality other than the City of Toquerville, then the rate imposed on the gross receipts for telecommunications services shall be the lower of: 1) the rate imposed by the

taxing jurisdiction in which the transaction is located or 2) the rate for the nonmobile telecommunication services shall be the rate imposed by the municipality in which the customers service address is located; or for mobile telecommunications service, the rate imposed by the municipality of the customer's primary place of use.

4: RATE LIMITATION AND EXEMPTION:

The rate of this levy shall not exceed three and one-half percent (3.5%) 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 the City of Toquerville that vote in:

- A. a municipal general election;
- B. a regular general election; or
- C. a local special election.

5: EFFECTIVE DATE OF TAX LEVY:

This tax shall be levied beginning the earlier of October 1, 2009, or the first day of any calendar quarter after a ninety (90) day period beginning on the date the Commission received or receives notice pursuant to 10-1-403, Utah Code Annotated (1953, as amended), of the enactment of this chapter.

6: CHANGES IN RATE OR REPEAL OF THE TAX:

Any changes to the tax rate or a repeal of the tax levied under this chapter are subject to the requirement of Utah Code Annotated Section 10-1-403. If the tax rate is changed or the tax repealed, then the appropriate notice shall be given as provided in Utah Code Annotated Section 10-1-403.

7: INTERLOCAL AGREEMENT FOR COLLECTION OF TAX:

On or before the effective date hereof, the City of Toquerville shall enter into a uniform interlocal agreement with the Commission as described in section 10-1-405, Utah Code Annotated (1953, as amended), for the collection, enforcement, and administration of this municipal telecommunications license tax.

8: PROCEDURES FOR TAXES ERRONEOUSLY RECOVERED FROM CUSTOMERS:

Pursuant to the provisions of Utah Code Annotated 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 telecommunications license tax except as provided in Utah Code Annotated Section 10-1-408.

9: REPEAL OF INCONSISTENT TAXES AND FEES:

- A. Any tax or fee previously enacted by this municipality for the purpose of taxation of telecommunication services under authority of Utah Code Annotated Section 10-1-203 or Title 11, Chapter 26 of the Utah Code Annotated ("local taxation of utilities limitation") is hereby repealed.
- B. Nothing in this chapter shall be interpreted to repeal any municipal ordinance or fee which provides that the City of Toquerville may recover, from a telecommunications provider, the management costs of the city caused by the activities of the telecommunications provider in the rights of way of the municipality, if the fee is imposed in accordance with Section 72-7-102, Utah Code Annotated (1953, as amended), 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.
- C. Nothing in this chapter shall be interpreted to repeal or limit the City's right to charge fees or taxes on persons not subject to the municipal telecommunications license tax under this chapter who locate telecommunications facilities, as defined in section 72-7-108, Utah Code Annotated (1953, as amended), within the jurisdiction of the City of Toquerville.

10: SEVERABILITY:

If any section, clause or portion of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

(Remainder of Page Reserved)

11: EFFECTIVE DATE/CERTIFICATION:

It is hereby found and declared by the City of Toquerville that the creation and preservation of reliable revenue sources is of utmost imminent importance and is therefore certifies that, notwithstanding effective date of the tax levy pursuant to Section 5, above, all other provisions of this Ordinance shall become effective and of full force from and after its passage and approval.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TOQUERVILLE, STATE OF UTAH, ON THIS 18 DAY OF June, 2009.

CITY OF TOQUEVILLE

ATTEST:



Darren LeFevre, Interim Mayor



Carol Pogue, City Clerk/Recorder

