

ORDINANCE NO. 2004 - 04 _____

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

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

WHEREAS, the City 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 governing body of the City of Wendover, Tooele County, Utah as follows:

1-101. Definitions.

As used in this ordinance:

- (1) "Commission" means the Utah State Tax Commission.
- (2) (a) Subject to Subsections (2) (b) and (c), "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 ordinance, "customer" means:
 - (i) the person who is obligated under a contract with a telecommunications provider to pay for telecommunications 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 telecommunications service.
 - (c) "Customer" does not include a reseller:
 - (i) of telecommunications service; or

(ii) for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

(3) (a) "End user" means 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.

(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" or "City" mean the City of Wendover, Tooele County, Utah.

(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 (8) (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 (9) (b) and (9) (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 (9) (a) (i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (9) (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 59-12-1 02, 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.

1-102. Levy of Tax.

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

1-103. Rate

The rate of the tax levy shall be four percent (4.00%) of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality subject to the following:

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 the lower of (1) the rate imposed by the taxing jurisdiction in which the transaction is located or (2) the rate for non-mobile telecommunication services shall be the rate imposed by the municipality in which the customer's service address is located; or for mobile telecommunications service, the rate imposed by the municipality of the customer's primary place of use.

1-104. 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:

- (1) a municipal general election;
- (2) a regular general election; or
- (3) a local special election.

1-105. Effective Date of Tax Levy.

This tax shall be levied beginning the earlier of July 1, 2004 or the first day of any calendar quarter after a 75 day period beginning on the date the Commission received notice pursuant to Utah Code Section 10-1-403 that this municipality has enacted this ordinance.

1-106. 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.

1-107. 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.

The Mayor of the City of Wendover, Utah is authorized to execute on behalf of the City that document entitled:

A Uniform Interlocal Agreement Between the Utah State Tax Commission and a Municipality that has Imposed the Municipal Telecommunications License Tax.

1-108. Repeal of Inconsistent Taxes and Fees.

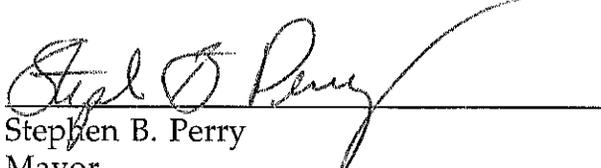
Any tax or fee previously enacted by this municipality under authority of Utah Code Section 10-1- 203 or Utah Code Title 11, Chapter 26, Local Taxation of Utilities Limitation is hereby repealed.

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 change 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.

1-109. Effective Date.

This ordinance shall take effect upon posting.

Passed and adopted by the City Council of Wendover, Tooele County, Utah this 5 day of May, 2004.


Stephen B. Perry
Mayor

Attest:


Margaret L. Wheeler
Recorder

Seal:

**A UNIFORM INTERLOCAL AGREEMENT BETWEEN THE UTAH
STATE TAX COMMISSION AND A MUNICIPALITY THAT HAS
IMPOSED THE MUNICIPAL TELECOMMUNICATIONS LICENSE TAX.**

This Uniform Interlocal Cooperation Agreement (hereinafter "Uniform Agreement") is made by and between the Utah State Tax Commission (hereinafter "Commission") and the City of Wendover, Utah (hereinafter "Municipality").

WHEREAS, Utah Code Section 10-1-404 requires a Municipality to enter into a Uniform Agreement with the Commission on or before the effective date of the Municipality's ordinance imposing the municipal telecommunications license tax; and

WHEREAS, Utah Code Title 11, Chapter 13, Interlocal Cooperation Act, authorizes the state and political subdivisions to enter into agreements with one another to permit local governmental units to make the most efficient use of their powers, and to provide the benefit of economy of scale; and

WHEREAS, the purpose of the Agreement is to ensure that the Municipal Telecommunications License Tax is appropriately imposed and collected.

NOW THEREFORE, Commission and Municipality do hereby agree as follows:

1. Municipality has adopted an ordinance to impose the municipal telecommunications license tax under Title 10, Chapter 1, Part 4, at a rate of four percent (4.00%).
2. Commission shall transmit monies collected under the Municipal Telecommunications License Tax monthly by electronic funds transfer to Municipality.
3. Commission shall conduct audits of the Municipal Telecommunications License tax with the same frequency and diligence as it does with the state sales and use tax.
4. Commission shall charge Municipality for the Commission's services in an amount sufficient to reimburse Commission for Commission's costs of administering, collecting, and enforcing the municipal telecommunications license tax. Commission's charge to Municipality may not exceed an amount equal to 1.5% of the municipal telecommunications license tax imposed by Municipality's ordinance.

5. Commission shall collect, enforce, and administer the Municipal Telecommunications License Tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Utah Code Section 10-1-405(1)(a).

6. The duration of this Agreement shall not exceed 50 years and shall be automatically terminated if the Municipal Telecommunications License Tax is no longer in existence.

This Agreement shall take effect July 1, 2004.

FOR THE UTAH STATE TAX COMMISSION:

Kodiy A Marshall
Date 6/30/04
(Name/Position) **Executive Director**

FOR THE CITY OF WENDOVER, UTAH

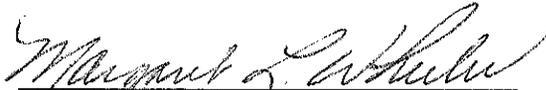
Stephen B Perry
Stephen B. Perry
Mayor
Date: May 5, 2004.

CERTIFICATE OF POSTING ORDINANCE

**I, THE DULY APPOINTED AND ACTING RECORDER FOR THE CITY OF WENDOVER, UTAH,
HEREBY CERTIFY THAT COPIES OF THE FOREGOING ORDINANCE NO 2004-04 WERE POSTED
AT THREE PUBLIC PLACES WITHIN THE MUNICIPALITY THIS 18TH DAY OF AUGUST, 2004.
WHICH PUBLIC PLACES ARE:**

- 1. WENDOVER, UTAH CITY OFFICES**
- 2. FRED'S MARKET**
- 3. WENDOVER, UTAH POST OFFICE**
- 4. FAXED TO THE WENDOVER TIMES**

DATED THIS 18TH DAY OF, 2004.


Margaret L. White
CITY CLERK/RECORDER