

ORDINANCE NO. 08-08-2017-02

AN ORDINANCE ENACTING REGULATIONS FOR THE TELECOMMUNICATIONS SERVICE PROVIDER GROSS RECEIPT TAX.

WHEREAS, the City of Eureka desires to regulate telecommunication service provider license tax; and

WHEREAS, the Utah State legislature amended § 10-1-403 in 2007, and the City Council desires to incorporate the changes in Utah State law and to reformat the ordinance to enhance clarity; and

WHEREAS, Title 10 Chapter 3 and § 10-8-84 of the Utah Code authorizes the City Council to pass ordinances which are reasonably and appropriately related to the providing for the public health, safety, morals, convenience, order, prosperity, and general welfare of the City and its residents; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF EUREKA CITY, THAT THE FOLLOWING ORDINANCE BE ADOPTED:

I. DEFINITIONS

As used in this chapter:

A. **"Commission"** means the Utah State Tax Commission.

B. **"Customer"**:

1. means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract or, if the end user is not the person described above, the end user of telecommunications service; and
2. does not include:
 - a. a reseller of telecommunications service; or
 - b. a reseller—for mobile telecommunications service—of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

C. **"End user"** means the person who uses a telecommunications service. 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.

D. **"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 § 10-1-401 et. seq.

- E. **"Gross receipts from telecommunications service"** means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected and paid as:
1. A tax, fee or charge:
 - a. Imposed by a governmental entity,
 - b. Separately identified as a tax, fee or charge in the transaction with the customer for the telecommunications service, and
 - c. Imposed only on a telecommunications provider;
 2. Sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or
 3. 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.
- F. **"Mobile telecommunications service"** is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- G. **"Municipality"** means Eureka City.
- H. **"Place of primary use"** means:
1. For telecommunications service other than mobile telecommunications service, the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:
 - a. The residential street address of the customer, or
 - b. The primary business street address of the customer; or
 2. For mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- I. **"Service Address"**—notwithstanding where a call is billed or paid—means:
1. If the location described in this subsection is known, the location of the telecommunications equipment:
 - a. To which a call is charged, and
 - b. From which the call originates or terminates;
 2. If the location described in subsection (I)(1) of this section is not known but the location described in subsection (H)(2) of this section is known, the location of the origination point of the signal of the telecommunications service first identified by:
 - a. The telecommunications system of the telecommunications provider, or

- b. 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 (I)(1) or (2) of this section are not known, the location of a customer's place of primary use.

J. **"Telecommunications provider"** means:

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

K. **"Telecommunications service"** means:

- 2. Telecommunications service, as defined in Utah Code Section 59-12-102(129), other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and
- 3. Mobile telecommunications service, as defined in Utah Code Section 59-12-102:
 - a. That originates and terminates within the boundaries of one state, and
 - b. Only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

II. Rate

The rate of the tax levy shall 3.5 percent of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality subject to the following:

- A. 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

either the rate imposed by the taxing jurisdiction in which the transaction is located or 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.

III. 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 ~~seventy-five~~ ninety 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.

IV. 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.

V. Interlocal Agreement For Collection Of The Tax

The municipality shall enter into the uniform interlocal agreement with the commission as described in Utah Code § 10-1-405 for the collection, enforcement and administration of this municipal telecommunications license tax.

VI. Other Fees

Nothing in this chapter 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 highways as a result of the activities of the telecommunications provider in a right-of-way, nor does this chapter limit the municipality's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this chapter and locate telecommunications facilities, as defined in Utah Code Section 72-7-108, in this municipality.

VII. SEVERABILITY

If any provisions or clause of this chapter or its application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications

which can be implemented without the invalid provision, clause, or application. To this end, the provisions of this chapter are declared to be severable.

VIII. PRIOR OR CONFLICTION PROVISIONS REPEALED

This Ordinance repeals and replaces any prior or conflicting provisions that were previously adopted by the City.

IX. EFFECTIVE DATE

This amendment to the ordinance shall become effective on the date passed by the City Council of Eureka.

PASSED AND ADOPTED THIS 8th DAY OF August, 2017.

MAYOR OF EUREKA:


NICK CASTLETON

ATTEST:


CITY RECORDER