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7-0-94

AN ORDINANCE

TELECOMMUNICATIONS TAX

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Section 3-2-9 of the City Code of the
City of Evanston is hereby amended by adding the following:

3-2-9-8-1: A tax is imposed on any or all of the
following acts or privileges:

(1) The act or privilege of originating in Evanston or
receiving in Evanston intrastate telecommunications by
a person at a rate not to exceed 5% of the gross
charge for such telecommunications purchased at retail
from a retailer by such person. However, such tax is
not imposed on such act or privilege to the extent such
act or privilege may not, under the Constitution and
statutes of the United States, be made the subject of
taxation by municipalities in Illinois.

(2) The act or privilege of originating in Evanston or
receiving in Evanston interstate telecommunications by
a person at a rate not to exceed 5% of the gross
charge for such telecommunications purchased at retail
from a retailer by such person. To prevent actual
multi-state taxation of the act or privilege that is
subject to taxation under this paragraph, any taxpayer,
upon proof that the taxpayer has paid a tax in another
state on such event, shall be allowed a credit against
any tax enacted pursuant to an ordinance authorized by
this paragraph to the extent of the amount of such tax
properly due and paid in such other state which was not
previously allowed as a credit against any other state
or local tax in this State. However, such tax is not
imposed on the act or privilege to the extent such act
or privilege may not, under the Constitution and
statutes of the United States, be made the subject of
taxation by municipalities in Illinois.

3-2-9-8-2: The tax authorized by this ordinance shall
be collected from the taxpayer by a retailer
maintaining a place of business in this State and
making or effectuating the sale at retail and shall be
remitted by such retailers to the City. Any tax

required to be collected pursuant to this ordinance and any such tax collected by such retailer shall constitute a debt owed by the retailer to the City. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use in the manner prescribed by the City. The tax authorized by this ordinance shall constitute a debt of the purchaser to the retailer who provides such taxable services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such taxable services. If the retailer fails to collect the tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to the City in the manner provided by the City.

3-2-9-8-3: The tax imposed by this ordinance shall be in addition to the payment of money, or value of products or services furnished to the City of Evanston by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon, or thereunder of poles, wires, pipes, or other equipment used in the operation of the taxpayer's business.

3-2-9-8-4: For the purpose of the taxes authorized by the ordinance:

(1) "Amount Paid" means the amount charged to the taxpayer's service address in Evanston regardless of where such amount is billed or paid.

(2) "Gross Charge" means the amount paid for the act or privilege of originating or receiving telecommunications in Evanston and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. However, "gross charge" shall not include:

(A) Any added to a purchaser's bill because of a charge made pursuant to: (i) the tax imposed by this Section, (ii) additional charges added to a purchaser's bill pursuant to Section 9-222 of the Public Utilities Act, (iii) the tax imposed by the Telecommunications Excise Tax Act, or (iv)

the tax imposed by Section 4251 of the Internal Revenue Code;

(B) charges for a sent collect telecommunication received outside of such municipality;

(C) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;

(D) charges for customer equipment including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(E) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;

(F) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Section has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;

(G) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made); or

(H) charges paid by inserting coins in coin-operated telecommunication devices.

(3) "Interstate telecommunications" means all telecommunications that either originate or terminate outside Illinois.

(4) "Intrastate telecommunications" means all telecommunications that originate and terminate within Illinois.

(5) "Person" means any natural individual, firm trust, estate, partnership, association, joint stock company, joint venture, corporation, or a receiver, trustee, guardian or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, county, or other political subdivision of this State.

(6) "Purchase at retail" means the acquisition, consumption or use of telecommunications through a sale at retail.

(7) "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Section. The city may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who to the satisfaction of the city, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in such municipality in the same manner and subject to the same requirements as a retailer maintaining a place of business within such municipality.

(8) "Retailer maintaining a place of business in this State," or any like term, means and includes any retailer having or maintaining within Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within Illinois under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or

temporarily, or whether such retailer or subsidiary is licensed to do business in Illinois.

(9) "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries, when the tax has already been paid to a retailer and the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for resale.

(10) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. If this is not a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

(11) "Taxpayer" means a person who individually or through his agents, employees, or permittee engages in the act or privilege of originating in Evanston or receiving in Evanston telecommunications and who incurs a tax liability hereunder.

(12) "Telecommunications," in addition to the usual and popular meaning, includes but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services; cellular mobile telecommunications service, specialized mobile radio services, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiberoptics, laser, microwave, radio, satellite or similar facilities. The definition of "telecommunications" shall not include value added services in which computer processing applications are you may used to act on the form, content, code and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications

service provided for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inner-company facilities, and all telecommunications resold in the subsequent provision used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable as sales for resale.

(13) If a person, who originates or receives telecommunications in Evanston, claims to be a reseller of such telecommunications, such person shall apply to the City for a resale number. Such applicant shall state facts which will show the City why such applicant is not liable for tax under this ordinance on any of such purchases and shall furnish such additional information as the City may reasonably require.

Upon approval of the application, the City shall assign a resale number to the applicant and shall certify such number to the applicant. The City may cancel any number which is obtained through misrepresentation, or which is used to send or receive such telecommunication tax-free when such actions in fact are not for resale, or which no longer applies because of the person's having discontinued the making of resales.

Except as provided hereinabove in this Section, the act or privilege of sending or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the municipality and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is non-taxable because of being a sale for resale.

3-2-9-8-5: Any tax payer who fails to make a return, or who makes a fraudulent return, or who wilfully violates any other provision of this ordinance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and in addition shall be liable in a civil action for the amount of tax due, plus interest and costs.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: This ordinance shall be in full force

and effect from and after April 1, 1994, following its passage, approval and publication in the manner provided by law.

Introduced: February 14, 1994

Adopted: February 28, 1994

Approved: February 28, 1994

Lorraine A. Norton
Mayor

ATTEST:

Luster Davis
City Clerk

Approved as to form:

[Signature]
Corporation Counsel

