

ORDINANCE No. 185756

Adjust the Utility License Law to revise tax rate and tax base for telecommunications utilities operating within the City (Ordinance; amend Code Chapter 7.14)

The City of Portland Ordains:

**Section 1.** The Council finds:

1. General Fund services currently receive 18% of their resources from utility license and franchise fee revenues. The General Fund has relied on utility license fees for many years as one of several essential components of continuing funds for critical public services and programs.
2. Under the current City Code Chapter 7.14, Utility License Law, "telecommunications utilities" pay a license fee based on 7% of revenues from wireline dialtone service only. There are currently two such incumbent telephone companies operating in Portland. Other utilities (including electric, gas, competitive communications and cable television) are subject to utility license fees based on 5% of gross revenue.
3. The technically limited "phone company" of yesteryear has evolved over time. Today, that company offers many different services that did not exist previously including cell backhaul, Voice Mail, Call Forwarding, Caller I.D., and Call Waiting.
4. Local and national data shows that market penetration of these additionally offered services has grown substantially since their introduction.
5. Utility license fee revenue from telecommunication utilities has dropped significantly over time, from over \$6 million in 1999 to \$2.1 million in 2012. In contrast, utility license fee revenue from other utilities has increased.
6. The drop in utility license fee revenue is due in large part to changes in technology and diversification of the marketplace for telecommunications services and the failure of the City Code to keep pace with those changes.
7. The 2009 Audit entitled Utility and Franchise Revenue: Equitable tax and consistent approach recommended that, "the City Council ... review and update the utility codes to ensure equitable treatment of all businesses. The impact of this inequity is a loss of revenue to the City."

NOW, THEREFORE, the Council directs:

- a. Section 7.14.040 is amended as follows:

**7.14.040 Definitions.**

**A.** "Bureau" means the Revenue Bureau ~~Office for Community Technology~~ of the City of Portland, Oregon, along with its employees and agents, or such other bureau as the City Council may designate.

**B.** "Cable Communications Utility" means a business that provides cable service or telephone service to subscribers, including voice services delivered through the use of Internet protocol, through its own cable system or a cable system owned by another person.

**C.** "Director" means the Bureau Director.

**~~D.~~** "~~Exchange access services~~" means:

~~1. Telephone exchange access lines or channels which provide local access from the premises of a subscriber in the City to the local telecommunications network to effect the transfer of information; and~~

~~2. Unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in Subsection 1.~~

**ED.** "Gross revenue" means any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts, from the sale of electrical energy, gas, district heating or cooling, or water, or sewage disposal and treatment service, and for use, rental, or lease of operating facilities of the utility engaged in such business, from the furnishing or sale of communications or associated services by or from a telecommunications or cable communications business.

~~1. Gross revenue of a telecommunications utility means revenues derived from exchange access services.~~

~~2.~~ Gross revenues do not include proceeds from:

~~a.~~**1.** The sale of bonds, mortgages, or other evidence of indebtedness, securities, or stocks, or sales at wholesale by one utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer; or

~~b.~~**2.** Public purpose charges collected by a utility selling electrical energy or gas. For purposes of this Subsection, "public purpose charges" means a charge or surcharge to a utility customer that the utility is required or authorized to collect by federal or state statute, administrative rule, or by tariff approved by the Oregon Public Utility Commission, that raises

revenue for a public purpose and not as compensation for either the provision of utility services or for the use, rental, or lease of the utility's facilities within the City. "Public purpose" includes energy efficiency programs, market transformation programs, low-income energy efficiency programs, carbon offset programs and other types of programs designed to benefit utility customers within Oregon and the City.

3. Revenues associated with Universal Service funding requirements under 47 U.S.C. § 254 (2012) or revenues associated with taxes for emergency communications under ORS Chapter 403 (2011).

**E. "Internet Service"** means a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical subnetwork called the world wide web. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

**F. "Licensee"** means any person or entity coming within the provisions of the Utility License Law, whether or not application has been made or a utility license has been issued.

**G. "Telecommunications utility"** has the meaning provided in ORS 759.005(9) (2007).

**G. "Public Safety Radio System"** means a radio system whose licensing and use of radio transmitters by state and local government and non-governmental entities is regulated by the Federal Communications Commission as engaged in public safety activities.

**H. "Telecommunications"** means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming or any other information between or among points by wire, cable, fiber optics, laser, microwave, radio, or similar facilities, with or without benefit of any closed transmission medium, but does not include:

1. cable television services;
2. private telecommunications network services;
3. over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto;

4. direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996;

5. services provided solely for the purpose of providing internet service to the consumer;

6. public safety radio systems;

7. mobile service within the meaning of 47 U.S.C § 153(33) (2012) and

8. services to devices exclusively utilizing electromagnetic spectrum unlicensed by the Federal Communications Commission.

**HJ.** “Utility” means the business of supplying electrical energy, gas, district heating or cooling, water, sewage disposal and treatment, cable, telecommunications, or other services through or associated with telecommunications utility; telephone or coaxial cable, ~~sewage disposal and treatment,~~ and other operations for public service but does not include transportation service, railroad operations, or services otherwise licensed under this Title.

b. Section 7.14.060 is amended as follows:

**7.14.060 Fees and Payment.**

**A.** Except as provided in Sections 7.14.065 and 7.14.070, the fee for a utility license shall be measured by a percentage of the gross revenues earned by the utility for each quarter year period of licensed operation. The percentage for each type of utility shall be as follows:

The licensee shall compute the license fee by multiplying the percentage applicable to the type of operation in which such utility engages, by the gross revenues received during the quarter.


Electrical Utility 5.0 percent  
 Gas Utility 5.0 percent  
 Sewer Utility 7.5 percent  
 District Heating or Cooling Utility 5.0 percent  
 Water Utility 7.5 percent  
 Telecommunications Utility 5.0 percent ~~7.0 percent~~  
 Cable Communications Utility 5.0 percent

**B.** The licensee shall pay the utility license fee to the Bureau on the following basis: on or before May 15 the fee for the period extending from January 1 through March 31, inclusive, of the same calendar year; on or before August 15

the fee for the period extending from April 1 through June 30, inclusive, of the same calendar year; on or before November 15 the fee for the period extending from July 1 through September 30, inclusive, of the same calendar year; on or before February 15 the fee for the period extending from October 1 through December 31, inclusive, of the preceding calendar year. All such payments shall be subject to the deductions set forth in Section 7.14.070.

- C. A licensee commencing operations as provided in Subsection 7.14.050 C. shall make the initial payment to the Bureau on or before the payment date following the first quarter year period after commencing operations. In the event a licensee terminates operations which come within the provisions of the Utility License Law, the final payment shall be made on or before the 45th day following the date of such termination.
- c. The amendments to Chapter 7.14, Public Utilities, under this Ordinance shall be effective on and after January 1, 2013.
- d. Revenues paid by or collected from any telecommunications utility, as that term is defined under ORS 759.005(9) (2007), shall not be included in calculating either the forecast base or actual collections as provided under Ordinance No. 184693, adopted by the Council on June 22, 2011.

Passed by the Council: NOV 28 2012  
Mayor Sam Adams  
MBHenry/BWalters  
November 7, 2012

**LaVonne Griffin-Valade**  
Auditor of the City of Portland  
By   
Deputy

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Agenda No. **185756**  
**ORDINANCE NO.** 185756  
 Title

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<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Sam Adams</b>	CLERK USE: DATE FILED <u>NOV 08 2012</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance and Administration - Adams <i>[Signature]</i> Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland  By: <u><i>[Signature]</i></u> Deputy
<b>BUREAU APPROVAL</b> CAO: Jack D. Graham Bureau: Revenue <i>[Signature]</i> Bureau Head: Thomas W. Lannom	<b>ACTION TAKEN:</b>  NOV 15 2012 PASSED TO SECOND READING      NOV 28 2012 9:30 A.M.
Prepared by: Mary Beth Henry/JL Date Prepared: November 7, 2012	
Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date November 14 2012	
City Attorney Approval <i>[Signature: Benjamin Walters]</i>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input checked="" type="checkbox"/> Start time: <u>3pm 11/15</u>  Total amount of time needed: <u>30</u> (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input checked="" type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Leonard	✓	
Adams	✓	