

Exhibit E

TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS TELECOMMUNICATIONS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between AMERICAN FORK CITY (hereinafter "City"), a municipal corporation of the State of Utah, with principal offices at 51 East Main Street, American Fork, Utah 84003, and AMERICAN FIBER, INC. (hereinafter "Provider"), a Utah corporation with its principal offices at 1503 North Technology Way, Orem, Utah 84097.

WITNESSETH:

WHEREAS, the Provider is purchasing certain assets of the City's telecommunications network pursuant to and described in the accompanying Purchase and Sale of Assets Agreement; and

WHEREAS, the Provider desires to provide Internet and telecommunications services within the City and in connection therewith to purchase and establish a telecommunications system in, under, along, over and across present and future rights-of-way of the City; and

WHEREAS, the City has enacted Ordinance No. 2004-04-16 of the Municipal Code of the City (hereinafter the "Telecommunications Tax Ordinance") which levies a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to the City; and

WHEREAS, the City, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the Provider a nonexclusive franchise to operate a telecommunications system in the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the City and the Provider agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT, ORDINANCE, AND POLICY.

1.1 Agreement. Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between City and Provider.

1.2 Ordinance and Policy. The City has adopted the Telecommunications Tax Ordinance which is hereby incorporated by reference into this Agreement and attached hereto as "Exhibit A." Provider acknowledges that it has had an opportunity to read and become familiar with this ordinance. The parties agree that the provisions and requirements of the ordinance are material

terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with its terms. The definitions in the ordinance shall apply herein unless a different meaning is indicated.

The Public Works Department of the City also has a permitting policy for use of City's Rights-of-Way and Provider agrees to be bound by and follow said policy ("permitting policy").

1.3 Ordinance and Policy Amendments. The City reserves the right to amend the Telecommunications Tax Ordinance or the permitting policy at any time.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the Provider the nonexclusive right and franchise to maintain and expand a telecommunications system in, under, above and across the present and future public Rights-of-Way in the City ("Provider's System"). The franchise also grants to the Provider the right, privilege and authority to engage in the telecommunications business and to provide Internet service and any telecommunications service to any person in the City. Nothing contained herein shall preclude the Provider from permitting another provider of telecommunications services with a telecommunications franchise who is lawfully engaged in such business to utilize the Provider's System within the City for such purposes. The franchise does not grant to the Provider the right, privilege or authority to engage in cable television or other video system service business; although, nothing contained herein shall preclude the Provider from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the Provider's System within the City for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 Licenses. The Provider acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunications services consistent with the provisions of this Agreement.

1.6 Underground Facilities/Blue Stakes. As owner of Provider's System, the Provider is an operator, and when repairing or expanding Provider's System, the Provider is an excavator under Utah Code Ann. § 54-8a-2 *et seq.* and is liable for its acts or omissions under said statute.

1.7 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

1.8 Burying Temporary Lines. Provider acknowledges that there are numerous temporary cable lines lying on the ground in the telecommunications network Provider purchased that must be buried. As part of this franchise granted by City, Provider shall begin identifying and burying the temporary cable lines as soon as this Agreement is effective and shall make commercially reasonable efforts to complete burying said lines by October 31, 2011. If Provider

must place temporary lines due to seasonal conditions after this Agreement is executed, Provider shall bury said lines no later than June 30th of the following summer.

ARTICLE 2. TELECOMMUNICATIONS TAX; ADMINISTRATIVE FEES

2.1 Telecommunications Tax Ordinance. Pursuant to the Utah Municipal Telecommunications Tax Act, Utah Code Annotated §§ 10-1-401 to 410, as amended, the City has levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to the City codified in the Telecommunications Tax Ordinance. In accordance with state law, the municipal telecommunications tax is levied by the City in lieu of franchise fees (except for administrative fees discussed at Section 2.3 herein) and imposed upon telecommunications providers of telecommunications services as those terms are defined in the Telecommunications Tax Ordinance. Provider shall give notice to the City when it provides telecommunications services that are taxable under the Telecommunications Tax Ordinance.

2.2 Non-Telecommunications Services. The municipal telecommunications license tax imposed by Section 2.1 does not apply to non-telecommunications services offered by Provider unless the Provider fails to separately charge its customers for the non-telecommunications services or the charge for non-telecommunications services cannot be reasonably identified in the books and records Provider keeps in the normal course of business. All other provisions of this Agreement apply whether Provider's services are telecommunications or non-telecommunications services.

2.3 Administrative Fees. The Provider shall pay to the City any and all applicable administrative fees required by ordinance.

ARTICLE 3. TERM AND RENEWAL.

3.1 Term and Renewal. The franchise granted to the Provider shall be for a period of fifteen (15) years commencing on the first day of the month following execution of this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the fifteen (15) year term of this Agreement, the franchise granted herein will be renewed upon the same terms and conditions as contained in this Agreement for an additional fifteen (15) year term, unless the Provider gives written notice to the City's representative designated herein of the Provider's intent not to renew within ninety (90) calendar days of the expiration of the initial franchise term.

3.2 Rights of Provider upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture, the Provider shall have the right to remove from the Rights-of-Way any and all of Provider's System, subject to the limitations and conditions of the permitting policy. In such event, it shall be the duty of the Provider, immediately upon such removal, to restore the Rights-of-Way from which Provider's System is removed to as good a condition as the same was before the removal was effected.

ARTICLE 4. PUBLIC USE RIGHTS

4.1 City Use of Poles, Underground Trenches or Infrastructure, and Overhead Structures. The City shall have the right, without cost, to use all poles, underground trenches or infrastructure, and overhead structures owned or leased by the Provider within the City for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the City shall be for activities owned, operated or used by the City for any public purposes.

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require the Provider to increase pole or underground capacity, alter the manner in which the Provider attaches equipment to the poles, or alter the manner in which the Provider operates and maintains its equipment. Such City attachments and other lawful public uses of Provider's underground trenches, infrastructure and overhead structures shall not interfere with Provider's equipment or ability to provide telecommunications services and shall be installed and maintained in accordance with the reasonable requirements of the Provider and the current National Electrical Safety Code. City attachments and other lawful public uses permitted by this Agreement shall be attached or installed only after written notice to the Provider.

ARTICLE 5. POLICE POWERS

The City expressly reserves, and the Provider expressly recognizes, the City's right and duty to adopt, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY

6.1 Changing Conditions. The Provider and the City recognize that conditions in the telecommunications industry may change in ways that affect the way the Provider offers telecommunications services and the way the City regulates the telecommunications industry. In recognition of that possibility, the Provider and the City each agree, upon request of the other during the term of this Agreement, to meet with the other to discuss in good faith whether it would be appropriate, in view of new developments in the industry during the term of this Agreement, to amend this Agreement or to enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

6.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Tax Ordinance or the permitting policy is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such

portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is its ability to collect the municipal telecommunications tax during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, and the permitting policy. For the Provider, "material consideration" is its ability to use the Rights-of-Way for telecommunications purposes in a manner similar to that provided in this Agreement, the Rights-of-Way Ordinance, and the City's excavation ordinance.

ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES

7.1 Grounds for Termination. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The Provider fails to make timely payments of taxes or fees as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice from the City of such failure;

(b) The Provider, by act or omission, materially violates a material duty herein set forth in any particular within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Provider notice of such determination, the Provider, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Provider shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Provider;

(c) The Provider becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities are to be sold under an instrument to secure a debt and are not redeemed by the Provider within sixty (60) days.

7.2 **Remedies at Law.** In the event the Provider or the City fails to fulfill any of its respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.3 **Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 8. NOTICES

8.1 **Notices.** All notices or other communications required or permitted hereunder shall be in writing and may be given by depositing the same in United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, by overnight courier or by delivering the same in person to such party:

If to Seller:

American Fork City
ATTN: Broadband Manager
51 E. Main
American Fork, Utah 84003

If to Buyer:

American Fiber, Inc.
Larry A. Lires
1503 North Technology Way
Orem, Utah 84097

With a Copy To:

Callister Nebeker & McCullough
Attn: Steve Mecham
10 East South Temple, Suite 900
Salt Lake City, UT 84133

With a Copy To:

8.2 Notice shall be deemed given and effective when actually received. Either party may change the address for notice by notifying the other party of such change in accordance with this paragraph.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 **Insurance.** Prior to commencing operations in the City pursuant to this Agreement, the Provider shall furnish to the City evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the Provider is effectively self-insured if the Provider has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the state of Utah. Any and all insurance, whether purchased by the Provider from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the City.

9.2 **Indemnification.** The Provider agrees to indemnify, defend and hold the City harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the Provider's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the City in defense of such claims. The City shall promptly give written notice to the Provider of any claim, demand, lien, liability, or damage with respect to which the City seeks indemnification and, unless in the City's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the City shall permit the Provider to assume the defense of such with counsel of the Provider's choosing, unless the City reasonably objects to such counsel. Notwithstanding any provision of this section to the contrary, the Provider shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with gross negligent acts or omissions of the City.

ARTICLE 10. GENERAL PROVISIONS

10.1 **Binding Agreement.** The parties represent that (a) when executed by their respective representatives, this Agreement shall constitute legal and binding obligations of the parties; and (b) that each party has complied with all relevant statutes, ordinances, resolutions, bylaws and other legal requirements applicable to their operation in entering into this Agreement.

10.2 **Utah Law/Venue.** This Agreement shall be governed by and interpreted pursuant to Utah law. Any action to enforce this Agreement shall be filed in the Fourth Judicial District for the State of Utah, Utah County, or in the Federal District Court for the District of Utah.

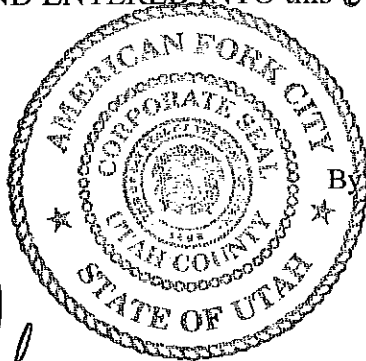
10.3 **Interpretation of Agreement.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

10.4 **No Presumption.** All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

10.5 **Amendments.** This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

10.6 **Assignment.** The Provider may not assign this Agreement to a successor or assign without the written consent of the City.

SIGNED AND ENTERED INTO this 6th day of June, 2008.



AMERICAN FORK CITY

By: Heber M. Thompson
Heber M. Thompson, Mayor

Attest:

K. M. Oeh
City Recorder

Approved as to form:

[Signature]
Legal Department

AMERICAN FIBER, INC.
1503 North Technology Way
Orem, Utah 84097

By: [Signature]
LARRY A LINDS President.
(Print Name and Title)

STATE OF UTAH)

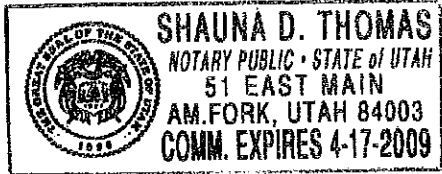
) ss.

COUNTY OF UTAH)

On this 6th day of June, 2008, personally appeared before me Larry A. Jiles, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed), did say that he/she is the President/CEO (title or office) of American Fiber, Inc., by Authority of its Bylaws/Resolution of the Board of Directors, and said Larry A. Jiles acknowledged to me that said Corporation executed the same.

Samuel Thomas

Notary Public



ORDINANCE NO. 2004-04-16

**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 of American Fork, Utah (hereinafter referred to as "this Municipality"), pursuant to the provisions of Sections 10-1-401, *Utah Code Annotated* (1953, as amended), *et seq.*, may levy a tax on the gross receipts of telecommunications service providers; and

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

WHEREAS, this Municipality has previously raised general fund revenue from taxes or fees from certain telecommunications service providers under the authority of Section 10-1-203 and/or 11-26-1, *et seq.*, *Utah Code Annotated* (1953, as amended), and now wishes to repeal those taxes or fees.

NOW THEREFORE BE IT ORDAINED by the City Council of this Municipality as follows:

SECTION I: ADDITION OF CHAPTER 3.11 OF THE CODE OF THE CITY OF AMERICAN FORK, UTAH:

Chapter 3.11 is hereby added to *The Code of the City of American Fork, Utah*, as follows:

Chapter 3.11

TELECOMMUNICATIONS SERVICE PROVIDERS GROSS RECEIPTS TAX

SECTION 3.11.010. Intent.

It is the intent of American Fork City to repeal those portions of Chapter 3.12 of *The Code of the City of American Fork, Utah*, known as the "public utilities use tax," insofar as they pertain to the taxation of telecommunications service providers, and to adopt the Telecommunications Service Providers Gross Receipts Tax pursuant to and in conformance with Sections 10-1-401, *et seq.*, *Utah Code Annotated* (1953, as amended) (known as the "Municipal Telecommunications License Tax Act").

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SECTION 3.11.020. Definitions.

As used in this Chapter:

- A. "Commission" means the Utah State Tax Commission.
- B. Customer.
 - 1. Subject to Subsections B.2 and B.3 hereof, "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.
 - 2. For purposes of this Chapter, "customer" means:
 - a. The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or
 - b. If the end user is not the person described in Subsection B.2.a, the end user of telecommunications service.
 - 3. "Customer" does not include a reseller:
 - a. Of telecommunications service; or
 - b. 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.
 - 1. "End user" means the person who uses a telecommunications service.
 - 2. 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.

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- D. "Gross receipts attributed to the municipality" means those gross receipts from a transaction for telecommunications services that is located within this Municipality for the purposes of sales and use taxes under Title 59, Chapter 12, *Utah Code Annotated* (1953, as amended), (the "Sales and Use Tax Act"), and determined in accordance with Section 59-12-207, *Utah Code Annotated* (1953, as amended).
- E. "Gross receipts from telecommunications service" means the revenue that a telecommunications service provider receives for telecommunications service rendered except for amounts collected or 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 service provider; or
 2. Sales and use taxes collected by the telecommunications service provider from a customer under Title 59, Chapter 12, *Utah Code Annotated* (1953, as amended), (the "Sales and Use Tax Act"); or
 3. Interest, a fee, or a charge that is charged by a telecommunications service 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, at 4 U.S.C. Section 124.
- G. "Municipality" means the City of American Fork, Utah.

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H. "Place of primary use":

1. 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:
 - 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, at 4 U.S.C. Section 124.

I. Notwithstanding where a call is billed or paid, "service address" means:

1. If the location described in this Subsection I.1 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 is not known but the location described in this Subsection I.2 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 service provider; or
 - b. If the system used to transport the signal is not a system of the telecommunications service provider, information received by the telecommunications service provider from its service provider; or
3. If the locations described in Subsection I.1 or I.2 are not known, the location of a customer's place of primary use.

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J. Telecommunications Service Provider:

1. Subject to Subsections J.2 or J.3, "telecommunications service provider" means a person that:
 - a. Owns, controls, operates, or manages a telecommunications service; or
 - b. Engages in an activity described in Subsection J.1.a for the shared use with or resale to any person of the telecommunications service.
2. A person described in Subsection J.1 is a telecommunications service 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 service provider" does not include an aggregator as defined in Section 54-8b-2, *Utah Code Annotated* (1953, as amended).

K. "Telecommunications service" means:

1. Telephone 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 this state; and
2. Mobile telecommunications service, as defined in Section 59-12-102, *Utah Code Annotated* (1953, as amended):
 - a. That originates and terminates within the boundaries of one state; and

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- b. Only to the extent permitted by the Mobile Telecommunications Sourcing Act, at 4 U.S.C. Sections 116, *et seq.*

SECTION 3.11.030. Levy of Tax.

There is hereby levied a Municipal Telecommunications License Tax on the gross receipts from telecommunications service attributed to this Municipality.

SECTION 3.11.040. Rate.

- A. The rate of the tax levy shall be **Four Percent (4%)** of the telecommunications service provider's gross receipts from telecommunications service that are attributed to the Municipality, subject to the provisions of Subsection B hereof.
- B. 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 determined pursuant to the provisions of Section 10-1-407, *Utah Code Annotated* (1953, as amended).

SECTION 3.11.050. Rate Limitation and Exemption Therefrom.

The rate of this levy *shall not exceed* **Four Percent (4%)** of the telecommunication providers's gross receipts from telecommunication service attributed to this Municipality unless a higher rate is approved by a majority vote of the voters in this Municipality that vote in:

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

ORDINANCE NO. 2004-04-16

SECTION 3.11.060. Effective Date of Tax Levy.

This Municipal Telecommunications License Tax shall be levied beginning July 1, 2004.

SECTION 3.11.070. Changes in Rate or Repeal of Tax.

This Chapter and the provisions thereof are subject to the requirements, conditions, and limitations set forth in Sections 10-1-403 through 10-1-401, *et seq.*, *Utah Code Annotated* (1953, as amended). If the tax rate is hereafter changed or the tax is repealed, the appropriate notice shall be given in accordance with the provisions of Section 10-1-403, *Utah Code Annotated* (1953, as amended).

SECTION 3.11.080. Interlocal Cooperation Agreement for Collection of the Tax.

On or before the effective date of the Ordinance adding this Chapter to *The Code of the City of American Fork, Utah*, the Municipality shall enter into a uniform interlocal cooperation 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.

SECTION 3.11.090. Interlocal Cooperation Agreement for Collection of the Tax.

Pursuant to the provisions of Section 10-1-408, *Utah Code Annotated* (1953, as amended), a customer may not bring a cause of action against a telecommunications service provider on the basis that the telecommunications service provider erroneously recovered from the customer the Municipal Telecommunications License Tax, except as provided in Section 10-1-408, *Utah Code Annotated* (1953, as amended).

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SECTION 3.11.100. Repeal of Inconsistent Taxes and Fees.

- A. Any tax or fee previously enacted or adopted by this Municipality under authority of Section 10-1-203, *Utah Code Annotated* (1953, as amended), and/or Title 11, Chapter 26, *Utah Code Annotated* (1953, as amended), ("Local Taxation of Utilities Limitation"), including any franchise fee set forth in a Franchise Ordinance pertaining to a telecommunications service provider (as defined herein), is hereby repealed, effective July 1, 2004.
- B. Provided, that 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:
 - 1. Is imposed in accordance with Section 72-7-102, *Utah Code Annotated* (1953, as amended); and
 - 2. 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. Provided further, that nothing in this Chapter shall be interpreted to 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 who locate telecommunications facilities, as defined in Section 72-7-108, *Utah Code Annotated* (1953, as amended), in this Municipality.

SECTION II: SEVERABILITY.

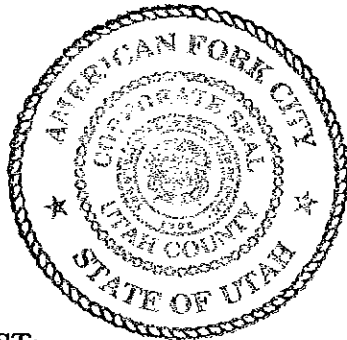
The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable. If any such section, paragraph, sentence, clause, or phrase shall be declared invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

ORDINANCE NO. 2004-04-16

SECTION III: EFFECTIVE DATE.

The American Fork City Council specifically finds that it is necessary for the immediate preservation of the health, safety and welfare of the present and future inhabitants of the City of American Fork that this Ordinance take effect immediately; therefore, except where otherwise specifically provided herein, this Ordinance shall take effect immediately upon its passage and first publication as provided by law.


PASSED AND ADOPTED by the City Council of American Fork City this 8th day of June, 2004.





TED BURTON BARRATT, Mayor

ATTEST:



RICHARD M. COLBORN
City Recorder