

ORDINANCE 1009
CITY OF LACEY

01 AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON, CLARIFYING
01 THE MANNER IN WHICH THE CITY'S UTILITY TAX APPLIES TO
Carter 3.10.020 OF THE LACEY MUNICIPAL CODE, ADDING SECTIONS
3.10.065 AND 3.01.075 TO SAID CODE AND DECLARING AN
EFFECTIVE DATE

WHEREAS, questions have arisen as to the manner in which the utility tax of the city of Lacey and similar taxes for other cities within the state of Washington apply to cellular telephone services, and a report to the Washington State Legislature has been returned recommending certain uniform provisions be added to the various utility tax ordinances in the state of Washington, now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Section 3.01.020A of the Lacey Municipal Code is hereby amended to read as follows:

- A. "Cellular telephone service" is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

"Competitive telephone service" means the providing by any person of telephone equipment, or apparatus, or service, other than toll service, which related to that equipment or apparatus such as repair or maintenance

service, if the equipment or apparatus is of a type which can may be provided by persons that are not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made. Transmission of communication through cellular telephones is classified as "telephone business" under subsection I. of this section rather than "competitive telephone service".

Section 2. Section 3.01.020^{020 correction} D. of the Lacey Municipal

Code is hereby amended to read as follows:

D. "Gross income" means the value proceeding or accruing from the performance of the particular public utility service involved within the city, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever, paid or accrued and without any deduction on account of losses; provided, that gross income of a light and power business means those amounts or value accruing to a taxpayer from the last distribution of electrical energy which is a taxable event within this state and, provided further, that gross income of a cellular telephone service shall mean gross subscriber revenues.

Section 3. Section 3.01.020 I. of the Lacey Municipal

Code is hereby amended to read as follows:

I. "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone service, ~~or~~ coin telephone services, ~~or providing~~ telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, ~~to a line or channel~~ toll line or channel, cable, microwave, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating ~~in an~~ an exchange. "Telephone business" does not include the providing of competitive telephone service, ~~nor~~ the providing of cable television service nor the providing of broadcast services by radio or television stations.

Section 4. There is hereby added to the Lacey Municipal

Code a new section 3.01.065 to read as follows:

3.01.065 Accrual basis cellular telephone service companies. A deduction from gross income shall be allowed to those cellular telephone service companies which keep their regular books of account on an accrual basis, for credit losses, actually sustained by such a taxpayer as a result of its cellular telephone service business. Twenty percent of such credit losses shall be allowed as a deduction during the calendar year 1995; forty percent of such credit losses shall be allowed as a deduction during calendar year 1996; sixty percent of such credit losses shall be allowed as a deduction during calendar year 1997; eighty percent of such credit losses shall be allowed as a deduction during calendar year 1998 and all such credit losses shall be allowed as a deduction for calendar years 1999 and thereafter.

Section 5. There is hereby added to the Lacey Municipal

Code a new section 3.01.075 to read as follows:

3.01.075 Allocation of income - cellular telephone service.

- A. The tax levied herein shall apply to subscriber revenues from customers whose principal service address is within the city of Lacey, Washington, for that telephone service from telephones without a fixed location.
- B. It shall be presumed that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.
- C. When the service is provided while a subscriber is outside the subscribers normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of call, or to the location of the main cellular switching office that switched the call.
- D. The city shall negotiate with other cities any disputes involving which city's utility tax applies to cellular telephone services and if such disputes cannot be resolved by negotiation, the city will submit the issue causing the dispute to the Association of Washington Cities for resolution. If a cellular telephone service company has paid the disputed tax revenue to another contesting city, such company will have no further liability with respect to additional taxes, penalties or interest on the disputed tax revenue so long as such company promptly changes its billing records for future revenues to be consistent with the settlement decision rendered or facilitated by the Association of Washington Cities.

Section 6. Effective date. This ordinance shall take effect on March 1, 1995. The City Manager shall provide, at least 60 days before the effective date of this ordinance, a copy of this ordinance and such additional information as shall facilitate compliance by each cellular telephone service company with the terms set forth herein.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON,
this 15th day of December, 1994.

CITY COUNCIL

By *Eustace A. Swift*
Deputy Mayor

Attest:

Approved as to form:

Charlotte M. Taylor
City Clerk

[Signature]
City Attorney

Published: December 19, 1994
Monday