

ORDINANCE NO. 456

VILLAGE OF BELLEVUE, ILLINOIS

AN ORDINANCE IMPOSING A
MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE
MAINTENANCE FEE

WHEREAS, the Village of Bellevue (the "Village") is a municipality in accordance with the Constitution of the State of Illinois of 1970; and

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety and welfare of its citizens; and

WHEREAS, this Ordinance is adopted pursuant to the provisions of the Illinois Telecommunications Municipal Infrastructure Maintenance Fee Act, Public Act 90-154 (the "Act"); and

WHEREAS, the fees imposed under this Ordinance will replace the Village's existing municipal franchise fees with respect to telecommunications retailers, which are currently paid by the telecommunications consumer, with a different fee under the Act; and

WHEREAS, this Ordinance is intended to create a uniform system for the collection of fees associated with the privilege of using Village rights-of-way and other public rights-of-way for telecommunications activity within the municipal boundaries of the Village including the recovery of reasonable costs for regulating the use of all public rights-of-way within its municipal boundaries for telecommunications activity.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bellevue as follows:

Section 1. Recitals. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. Adoption of Fee. The Village hereby adopts a municipal telecommunications maintenance fee, as follows:

2.1 Definitions.

As used in this Ordinance, the following terms shall have the following meanings:

(a) "Gross Charges" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the Village 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 of the cost of such telecommunications, the cost of the materials 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. "Gross charges" for private line service shall include charges imposed at each channel point within the Village, charges for the channel mileage between each channel point within the Village, and charges for that portion of the interstate inter-office channel provided within the Village. However, "gross charges" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv) the tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;

(2) charges for a sent collect telecommunication received outside the Village;

(3) 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;

(4) 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;

(5) 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 Village;

(6) 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, 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 other than a regulatory required profit for the corporation rendering such services;

(7) 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);

(8) charges paid by inserting coins in coin-operated telecommunications devices; or

(9) charges for telecommunications and all services and equipment provided to the Village.

(b) "Public Right-of-Way" means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the Village has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public Right-of-Way" shall not include any real or personal Village property that is not specifically described in the previous sentence and shall not include Village buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(c) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within the State of 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 this State 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 this State.

(d) "Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when 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 sale.

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

(f) "Telecommunications" 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, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are 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 provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the Village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

(g) "Telecommunications provider" means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

(h) "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Village may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Village, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the Village.

(i) "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

2.2 Registration of telecommunications providers.

(a) Every telecommunications provider as defined by this Ordinance shall register with the Village within 30 days after the effective date of this Ordinance or becoming a telecommunications provider, whichever is later, on a form to be provided by the Village provided, however, that any telecommunications retailer that has filed a return pursuant to 2.4(c) of this Ordinance shall be deemed to have registered in accordance with this Section.

(b) Every telecommunications provider who has registered with the Village pursuant to 2.2 (a) has an affirmative duty to submit an amended registration form or current return as required by 2.4(c), as the case may be, to the Village within 30 days from

the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the Village.

2.3 Municipal telecommunications infrastructure maintenance fee.

(a) A Village telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of 1.0% of all gross charges charged by the telecommunications retailer to service addresses within the Village for telecommunications originating or received in the Village.

(b) Upon the effective date of the infrastructure maintenance fee authorized in this Ordinance, the Village infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the Village by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Ordinance does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

(c) The Village telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 2.4 of this Ordinance.

2.4 Collection, enforcement, and administration of telecommunications infrastructure maintenance fees.

(a) A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the Village infrastructure maintenance fee attributable to that customer's service address.

(b) Unless otherwise approved by the Village Board, the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the Village not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the Village infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

(c) Remittance of the municipal infrastructure fee to the Village shall be accompanied by a return, in a form to be prescribed by the Village Board which shall contain such information as the Village Board may reasonably require.

(d) Any infrastructure maintenance fee required to be collected pursuant to this Ordinance and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the Village. The charge imposed under 2.4(a) by the telecommunications retailer pursuant to this Ordinance shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

(e) If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Ordinance, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Ordinance, from the telecommunications retailer who made the erroneous payment; provided, however, the Village Board may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three years after the date of the erroneous payment unless, (1) the credit is used only to offset a claim of underpayment made by the Village within the applicable statutory period of limitations, and (2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

(f) Amounts paid under this Ordinance by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

(1) "gross charges" for purposes of the Telecommunications Excise Tax Act;

(2) "gross receipts" for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;

(3) "gross charges" for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;

(4) "gross revenue" for purposes of the tax on annual gross revenue of public utilities prescribed in Section 2-202 of the Public Utilities Act.

(g) The Village shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Ordinance to determine whether the telecommunications retailer has properly accounted to the Village for the Village infrastructure maintenance fee. Any underpayment of the amount of the Village infrastructure maintenance fee due to the Village by the telecommunications retailer shall be paid to the Village plus five (5%) percent of the total amount of the underpayment determined in an audit, plus any costs incurred by the Village in conducting the audit, in an amount not to exceed five (5%) percent of the total amount of the underpayment determined in an audit. Said sum shall be paid to the Village within twenty-one (21) days after the date of issuance of an invoice for same.

(h) The Village Board, or its designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Ordinance, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to 2.2 of this Ordinance of such regulations.

2.5 Compliance With Other Laws. Nothing in this Ordinance shall excuse any person or entity from obligations imposed under any law, including but not limited to:

- (a) generally applicable taxes; and
- (b) standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public rights-of-way, as provided; and
- (c) any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and
- (d) compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right-of-way.

2.6 Existing Franchises and Licenses. Any franchise, license, or similar agreements between telecommunications retailers and the Village entered into before the effective date of this Ordinance regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

2.7 Penalties. Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Ordinance shall be subject to fine in accordance with the general penalty provisions adopted by the Village.

2.8 Enforcement. Nothing in this Ordinance shall be construed as limiting any additional or further remedies that the Village may have for enforcement of this Ordinance.

2.9 Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

2.10 Conflict. This Ordinance supersedes all Ordinances or parts of Ordinances adopted prior hereto which are in conflict herewith, to the extent of such conflict.

Section 3. Waiver and Fee Implementation.

(a) The Village hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the Village by a telecommunications retailer pursuant to any existing Village franchise, license, or similar agreement with a telecommunications retailer during the time the Village imposes the Telecommunications Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Ordinance is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

(b) The Village Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the Village has a franchise.

(c) The Village infrastructure maintenance fee provided for in this Ordinance shall become effective and imposed on the first day of the month not less than ninety (90) days after the Village provides written notice by certified mail to each telecommunications retailer with whom the Village has an existing franchise, license, or similar agreement that the Village waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the Village. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

Section 4. Effective Date. This Ordinance shall take effect immediately upon its passage, approval and publication in pamphlet form.

PASSED AND APPROVED THIS 27TH DAY OF OCTOBER, 1997.

6 AYES

0 NAYS

0 ABSENT

VILLAGE OF BELLEVUE, ILLINOIS

By: _____
Ralph E. Wilson, President

Attest: _____
Carol S. Howard, Clerk

397-1984