

SUMMARY - This imposes a 2% franchise fee on video service providers within Lincoln County.

ORDINANCE NO. _____
VIDEO SERVICE PROVIDER FRANCHISE FEE

TITLE — AN ORDINANCE THAT IMPOSES A FRANCHISE FEE OF 2% OF GROSS REVENUES EQUALLY AND UNIFORMLY ON ALL VIDEO SERVICE PROVIDERS OPERATING WITHIN THE JURISDICTION OF LINCOLN COUNTY FOR THE PRIVILEGE OF PROVIDING VIDEO SERVICE THROUGH A VIDEO SERVICE NETWORK THAT OCCUPIES OR USES, IN WHOLE OR IN PART, ANY PUBLIC RIGHT-OF-WAY OR HIGHWAY WITHIN THE JURISDICTION OF LINCOLN COUNTY.

WHEREAS, the Lincoln County Board of County Commissioners recognizes the benefits of video service to the residents of Lincoln County;

WHEREAS, NRS 711.670 permits Lincoln County to require video service providers to pay a franchise fee based on the gross revenue that the provider receives from its subscribers within Lincoln County for the privilege of providing video service through a video service network that occupies or uses, in whole or in part, any public right-of-way or highway within Lincoln County; and

WHEREAS, NRS 711.670 requires Lincoln County to adopt a nondiscriminatory ordinance that imposes the franchise fee equally and uniformly on all video service providers operating within the jurisdiction of Lincoln County.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, STATE OF NEVADA, DOES ORDAIN:

SECTION 1. As used in this Ordinance, unless the context otherwise requires, the words and terms defined in this section, inclusive, have the meanings ascribed to them in this section.

(a) "County" means Lincoln County, a subdivision of the State of Nevada.

(b) "Board" means the current Lincoln County Board of Commissioners and any future board constituting the legislative body of the County;

(c) "Gross revenue" means any revenue a video service provider receives from its subscribers for providing video service to those subscribers, as determined in accordance with generally accepted accounting principles; and any other consideration a video service provider receives from its subscribers for providing video service when it is received in a transaction that would evade imposition of a franchise fee if such consideration is not included in revenue.

a. The term includes, without limitation:

- i. Recurring monthly charges;
- ii. Event-based charges, including, without limitation, charges for pay per view and video on demand;
- iii. Charges for the rental of set-top boxes and other equipment;
- iv. Service charges, including, without limitation, charges for activation, installation, repair and maintenance;
- v. Administrative charges, including, without limitation, charges for service orders and service termination; and
- vi. The amount of any revenue received by a video service provider for providing video service when such service is a component of a bundle of services or products sold for a single price, but only to the extent the revenue received by the video service provider for the bundle of services or products is proportionately allocated among each of the components.

b. The term does NOT include:

- i. Revenue not actually received, regardless of when it is billed.

- ii. Refunds, rebates, or discounts made to subscribers.
- iii. Revenue from providing service other than video service, including, without limitation, revenue from providing telecommunication service; or information service that is not video service.
- iv. Any fee imposed on the video service provider that is passed through to and paid by subscribers, including, without limitation, a franchise fee.
- v. Revenue from the sale of video service to any person who purchases the video service for resale and who, upon resale, is required to pay a franchise fee pursuant to this chapter or the terms of a local franchise.
- vi. Any tax of general applicability.
- vii. The fair market value of free or reduced-cost video service provided without set-off or exchange to any person who is entitled or permitted to receive such service pursuant to this chapter or federal law.
- viii. Late payment fees collected from subscribers.

(d) “Subscriber” means any person in Lincoln County who purchases video service, except for any person who purchases video service for resale and who, upon resale, is required to pay a franchise fee pursuant to this chapter.

(e) “Video service” means the provision of multichannel video programming generally considered comparable to video programming delivered by a television broadcast station, cable service or other digital television service, whether provided as part of a tier, on-demand or on a per-channel basis, without regard to the technology used to deliver the video service, including, without limitation, Internet protocol technology or any successor technology.

- a. Including, without limitation:
 - i. Cable service; and

- ii. Video service delivered by a community antenna television system.

- b. But not including:

- i. Any video content provided solely as part of, and through, a service that enables users to access content, information, electronic mail or other services that are offered via the public Internet.

- ii. Direct broadcast satellite service.

- iii. Any wireless multichannel video programming provided by a commercial mobile service provider.

(f) “Video service provider” or “provider” means any person that provides or offers to provide video service over a video service network to subscribers in this State. The term includes, without limitation:

- a. An incumbent cable operator or other cable operator;

- b. A community antenna television company; and

- c. A multichannel video programming distributor.

SECTION 2. Franchise Fee Required. Lincoln County requires a video service provider to pay a franchise fee to Lincoln based on the gross revenue that the provider receives from its subscribers within Lincoln County for the privilege of providing video service through a video service network that occupies or uses, in whole or in part, any public right-of-way or highway within the jurisdiction of a local government.

SECTION 3. Yearly Reports. All video service providers operating within the jurisdiction of Lincoln County shall submit to the County, within sixty (60) days after the close of each accounting year, a report of the video service provided that year, certified as true and correct by an officer of the company, detailing the company's subscriber receipts for that year.

SECTION 4. Audits. A Lincoln County representative may, upon reasonable written notice, review and audit the business records of a video service provider to the extent necessary to ensure payment of a franchise fee pursuant to this Ordinance. Lincoln County shall not request such an audit more than once every 3 years. If the results of such a review and audit identify an underpayment of the franchise fee in an amount that requires corrective action, Lincoln County may perform a subsequent compliance review and audit to determine whether the video service provider has corrected the underpayment of the franchise fee. Lincoln County representatives shall perform the compliance review and audit not later than 12 months after the date on which the video service provider submitted the results of the initial review and audit to Lincoln County.

Lincoln County and the video service provider shall each pay their own costs and fees relating to each review and audit performed pursuant to this Ordinance, except that if the video service provider elects to have the local government review and audit the requested business records of the video service provider at a location outside the territorial boundaries of Lincoln County, the video service provider shall pay the per diem allowances and travel expenses incurred by the Lincoln County representatives to perform the review and audit at that location.

A person who performs a review and audit pursuant to this Ordinance may not receive compensation that is based, in whole or in part, on:

- (a) Finding a particular result; or
- (b) The amount of any underpayment of the franchise fee that is identified because of the review and audit.

Lincoln County shall submit all actions to recover a disputed underpayment of a franchise fee from a video service provider to the Attorney General for prosecution.

A video service provider may bring an action against Lincoln County to recover a disputed overpayment of a franchise fee to the local government.

Any action to recover a disputed underpayment or overpayment of a franchise fee must be commenced in the Seventh Judicial District Court not later than 4 years after the last day of the tax year to which the disputed underpayment or overpayment relates.

SECTION 5. Attorneys' Fees and Costs. Each party shall pay its own costs and attorneys' fees in commencing and prosecuting any action involving a disputed underpayment or overpayment of a franchise fee.

SECTION 6. Payment of the franchise fee. All video service providers operating within the jurisdiction of Lincoln County must pay yearly a franchise fee of two percent (2%) of the gross revenue that the provider received during that year from its subscribers within Lincoln County. The video service provider must pay the entire amount of the franchise fee directly to the Lincoln County Treasurer in legal tender of the United States or in a check, draft, or note that is payable in legal tender of the United States within fifteen (15) days after filing the report required in Section 3. The Board may adjust the rate in this section by resolution at its discretion; however, the Board shall never adjust the rate to greater than five percent (5%) of gross revenue.

SECTION 7. Subscriber Pass-Through. A video service provider may pass the franchise fee through to and collect the franchise fee from its subscribers within

Lincoln County based on the gross revenue received from each such subscriber; and designate the amount of the franchise fee collected from each subscriber as a separate line item on the subscriber's bill.

SECTION 8. Except as otherwise provided in section 7, the franchise fee authorized by this Ordinance:

(a) Is the only fee, tax, assessment or other charge that it will impose on a video service provider for the privilege of providing video service or constructing or operating a video service network within Lincoln County; and

(b) Is in lieu of any other fee, tax, assessment, or charge that Lincoln County may impose on a video service provider for its occupation or use of any public right-of-way or highway.

SECTION 9. This Ordinance shall not restrict the right of Lincoln County to impose on a video service provider:

(a) The fees authorized by subsection 5 of NRS 711.640; and

(b) Any generally applicable and nondiscriminatory fees, ad valorem taxes, sales taxes or other taxes that are lawfully imposed on other businesses within Lincoln County.

SECTION 10. Use of Rights-of-Way and Easements. Video Service Providers may construct their video service over public rights-of-way, and through easements within the County which have been dedicated for compatible uses, except that in using such easements the company shall ensure that:

(a) Its installation or construction of facilities for the video service shall not adversely affect the safety, functioning, and appearance of County's property or the convenience and safety of any person.

(b) It shall bear the cost of the installation, construction, operation, or removal of such facilities, or pass all or part of such cost to the subscriber; and

(c) It shall justly compensate the owner of any property subjected to damages caused by the installation, operation, or removal of such facilities.

SECTION 11. Indemnification and Insurance. The company shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the County, including the Board and the County's officers and employees, against any and all claims, suits, actions, liabilities, and judgments for damages to persons or property, in any way arising out of or through the acts or omissions of the company, its servants, agents, or employees, in connection with the construction, maintenance, repair, and operation of the cable system. The company shall maintain throughout the term of the franchise comprehensive general liability insurance insuring the company with regard to all damages mentioned in this Ordinance, in the minimum amount of One Million Dollars (\$1,000,000) combined single limit, personal injury, and property damage.

UPON ADOPTION, the County Clerk of Lincoln County shall have this Ordinance published, by title only, together with an adequate summary including any amendments, once in a newspaper published in the County, if any, otherwise in a newspaper published in the County, and having a general circulation in the County. The County Clerk shall post this Ordinance in full at the Lincoln County Courthouse. This Ordinance shall take effect twenty (20) days after its publication.

PASSED AND ADOPTED this _____ day of _____,
2009 by the following vote of the County Board of Commissioners:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this _____ day of _____, 2009.

By: _____
Paul Mathews, *Chairperson*

ATTEST: _____
Lisa Lloyd, *County Clerk*

AFFIDAVIT OF POSTING

STATE OF NEVADA)
) ss.
COUNTY OF LINCOLN)

Lisa Lloyd, being first duly sworn, deposes and says:

1. That she is and was at the time of posting hereafter mentioned,
2. That she is a citizen of the United States, over the age of twenty-one years;
3. That she is the duly appointed, qualified County Clerk of Lincoln County, State of Nevada;
4. That on the _____ day of _____, 2009, Affiant posted on a public bulletin board in the Lincoln County Courthouse, a full, true and correct copy of Ordinance No. _____ entitled:

VIDEO SERVICE PROVIDER FRANCHISE FEE

TITLE — AN ORDINANCE THAT IMPOSES A FRANCHISE FEE OF 2% OF GROSS REVENUES EQUALLY AND UNIFORMLY ON ALL VIDEO SERVICE PROVIDERS OPERATING WITHIN THE JURISDICTION OF LINCOLN COUNTY FOR THE PRIVILEGE OF PROVIDING VIDEO SERVICE THROUGH A VIDEO SERVICE NETWORK THAT OCCUPIES OR USES, IN WHOLE OR IN PART, ANY PUBLIC RIGHT-OF-WAY OR HIGHWAY WITHIN THE JURISDICTION OF LINCOLN COUNTY.

Lisa Lloyd, *County Clerk*

SIGNED AND SWORN TO (or affirmed) before me on _____, 2009 by

(Seal)

NOTARY PUBLIC

**PUBLIC NOTICE OF THE FILING OF A LINCOLN COUNTY ORDINANCE
PURSUANT TO N.R.S. 244.100**

LINCOLN COUNTY HEREBY GIVES NOTICE that it filed Ordinance

No. _____, as follows, with the Lincoln County Clerk on _____, 2009:

SUMMARY - This imposes a 2% franchise fee on video service providers within Lincoln County.

VIDEO SERVICE PROVIDER FRANCHISE FEE

TITLE — AN ORDINANCE THAT IMPOSES A FRANCHISE FEE OF 2% OF GROSS REVENUES EQUALLY AND UNIFORMLY ON ALL VIDEO SERVICE PROVIDERS OPERATING WITHIN THE JURISDICTION OF LINCOLN COUNTY FOR THE PRIVILEGE OF PROVIDING VIDEO SERVICE THROUGH A VIDEO SERVICE NETWORK THAT OCCUPIES OR USES, IN WHOLE OR IN PART, ANY PUBLIC RIGHT-OF-WAY OR HIGHWAY WITHIN THE JURISDICTION OF LINCOLN COUNTY.

LINCOLN COUNTY GIVES FURTHER NOTICE that copies of the Ordinance are available for public examination and distribution upon request at the office of the Clerk of Lincoln County, Nevada, at #1 Main Street, Pioche; that said Ordinance was proposed and read by title on _____, 2009, and that the Lincoln County Board of Commissioners intends to take final action on the adoption of said Ordinance on its regular meeting on the _____ day of _____, 2009 as a regular measure.

IN WITNESS WHEREOF, the Board of Commissioners for Lincoln County, Nevada gives this Notice by reference to its Title and Summary.

DATED this _____ day of _____, 2009.

LINCOLN COUNTY

Paul Mathews, *Chairperson*

PUBLISHED: on the _____ day of _____, 2009.

NOTICE OF ORDINANCE APPROVAL

NOTICE IS HEREBY GIVEN that on the _____ day of _____, 2009, 2009, the Lincoln County Board of Commissioners, in Lincoln County, Nevada, approved the adoption of an Ordinance for Lincoln County, Nevada, with the Summary and Title as follows:

SUMMARY - This imposes a 2% franchise fee on video service providers within Lincoln County.

**ORDINANCE NO. _____
VIDEO SERVICE PROVIDER FRANCHISE FEE**

TITLE — AN ORDINANCE THAT IMPOSES A FRANCHISE FEE OF 2% OF GROSS REVENUES EQUALLY AND UNIFORMLY ON ALL VIDEO SERVICE PROVIDERS OPERATING WITHIN THE JURISDICTION OF LINCOLN COUNTY FOR THE PRIVILEGE OF PROVIDING VIDEO SERVICE THROUGH A VIDEO SERVICE NETWORK THAT OCCUPIES OR USES, IN WHOLE OR IN PART, ANY PUBLIC RIGHT-OF-WAY OR HIGHWAY WITHIN THE JURISDICTION OF LINCOLN COUNTY.

NOTICE IS FURTHER GIVEN that, pursuant to N.R.S. 244.100, notice of the adoption of the above-entitled Ordinance is being published by title, together with an adequate summary, including any amendments, once a week for a period of 2 weeks before it goes into effect in the Lincoln County Record. Typewritten copies of the ordinance in its entirety are available for inspection at the office of the county clerk and posted in full in the Lincoln County Courthouse. The Ordinance shall become effective twenty (20) days after its publication.

DATED this _____ day of _____, 2009.

LINCOLN COUNTY

Paul Mathews, *Chairperson*

PUBLISHED: on the _____ day of _____, 2009.