

EXHIBIT A

MEASURE D – TEXT OF PROPOSED ORDINANCE

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PASADENA,
CALIFORNIA AMENDING CHAPTER 4.56 OF THE
PASADENA MUNICIPAL CODE TO MODERNIZE THE
APPLICATION OF THE UTILITY USERS TAX

THE PEOPLE OF THE CITY OF PASADENA DO ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 4.56.020 of the Pasadena Municipal Code is hereby amended to read as follows:

4.56.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

A. “Ancillary Telecommunications Services” means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services including, but not limited to, the following:

(1) Services that link two or more participants of an audio or video conference call, including the provision of a telephone number.

(2) Services that separately state information pertaining to individual calls on a customer’s billing statement.

(3) Services that provide telephone number information, and/or address information.

(4) Services offered in connection with one or more telecommunications services, which offer advanced calling features that allow customers to identify callers and to manage multiple calls and call connections.

(5) Services that enable customers to store, send or receive recorded messages.

B. “Billing address” means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

ⓑ C. "City" means the city of Pasadena.

Ⓒ D. "City administrator" means the city manager, or his or her authorized representative.

Ⓓ E. "Exempt wholesale generator" has the same meaning as set forth in the Federal Power Act (15 U.S.C. Section 79z-5a) and regulations thereunder.

Ⓔ F. "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel, ~~which~~ that may be substituted therefor.

Ⓕ G. "Gross annual income" means all income regardless of source and includes, but is not limited to, income subject to federal and state income taxation, social security payments, pensions, welfare payments, interest on tax-exempt investments, gifts and inheritances.

Ⓖ H. "Month" means a calendar month.

Ⓗ I. "Nonutility service supplier" means:

1. A service supplier, other than a supplier of electric distribution services to all or a significant portion of the city, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

2. An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the city, which sells or supplies electricity or supplemental services to electricity users within the city; and

3. A gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the city, which sells or supplies gas or supplemental services to gas users

within the city.

‡ J. "Person" means, without limitation, any domestic, nonprofit or foreign corporation; firm; trust; estate; association; syndicate; joint stock company; limited liability company; partnership of any kind; joint venture; club; Massachusetts business or common-law trust; society; any natural individual; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; municipal district; or municipal corporation (other than the city).

‡ K. "Service address" means the residential street address or the business street address of the service user's primary place of usage.

‡ L. "Service supplier" means any entity or person that provides telephone communication, electric, gas, water or video service to a user of such services within the city. The term includes any entity or person required to collect, or self-collect under Section 4.56.055, and to remit a tax imposed by this chapter, including its the billing agent of such an entity or person in the case of electric, gas, water or video service suppliers.

‡ M. "Service user" means a person required to pay a tax imposed by this chapter.

‡ N. "Tax administrator" means the revenue administrator of the city of Pasadena.

~~N. "Telephone communication services" includes any telephonic quality communication for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter~~
O. "Telephone communication services" includes the transmission, conveyance, or routing of voice, data, facsimile audio, video, or text) by electronic, radio or similar means through "any other information or signals to a point, or between or among points, whether or not such information is transmitted through interconnected service" with the "public switched network" (as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission – see 47 USCA Section 332(d)), whatever the technology used, whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service – see 47 USCA Section 332(c) (7) (C) (i) – regardless of radio spectrum used), switching facilities, satellite or any other similar facilities technology now existing or developed after the adoption of this ordinance., and includes, without

limitation, fiber optic, coaxial cable, and wireless. The term "telephone communication services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services. "Telephone communication services" include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling), local number portability, text messaging, ancillary telecommunication services, prepaid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and value-added non-voice data service. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitle a user to exclusive or priority use of communications channels.

O-P. "Telephone corporation," "electrical corporation," "gas corporation," and "water corporation" have the same meanings as defined in Sections 234, 218, 222, and 241, respectively, of the Public Utilities Code of the state of California, as said sections existed on January 1, 1969. "Electrical corporation" and "water corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power or water to a service user.

P-Q. "Video service supplier" means any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, to or from an address in the city, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors (as defined in 47 USCA Section 522(13)), open video systems (OVS) suppliers, suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services (MMDS), direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or communications (including two-way communications), whatever their technology.

Q.R. "Video services" means any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use or enjoyment of the video programming, regardless of the content of such video programming or communications. "Video services" does not include services for which a tax is paid under Section 4.56.030.

Section 2. Code Amendment. Section 4.56.030 of the Pasadena Municipal Code is hereby amended to read as follows:

4.56.030 Telephone tax.

A. There is imposed a tax upon every person, other than a telephone corporation, who uses telephone communication services in the city, including intrastate, interstate, and international telephone communication services, to the extent permitted by federal and state law. The telephone users tax is intended to, and does, apply to all charges within the city's tax jurisdiction, such as charges billed to a telephone account having a situs in the city as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. § 116 et seq. The tax imposed by this section shall be at the rate established under Section 4.56.180(A). The tax shall apply to all charges made for such telephone communication services and shall be collected from the service user by the telephone communication services supplier or its billing agent. ~~To the extent allowed by law, the tax on telephone communication services shall apply to a service user if the~~ There is a rebuttable presumption that telephone communication services billed to a billing or service address of the service user is in the city are used, in whole or in part, within the city's boundaries. If the billing address of the service user is different from the service address, the service address of the service user shall be used, and that such services are subject to taxation under this chapter. There is also a rebuttable presumption that telephone communication services sold within the city that are not billed to a billing address or provided to a primary physical location are used, in whole or in part, within the city's boundaries and that such services are subject to taxation under this chapter

B. As used in this section, the term 'charges' shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone communication services.

C. The tax administrator may, from time to time, ~~may~~ issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this chapter, ~~an administrative ruling-rulings~~ identifying those telecommunication services that are subject to the tax of subsection A of this section. ~~This~~ Such administrative ~~ruling-rulings~~ shall be consistent with legal nexus and laws pertaining to telephone communications services and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax, except as

allowed by California Government Code Section 53750(h) (2) and (A)3) or other law. The tax administrator may consider state-wide interpretive rules and guidelines promulgated by any government agency or association of government agencies as a factor in determining the intent of voters adopting this section. To the extent that the tax administrator determines that the tax imposed under this section shall not be collected in full for any period of time, such an administrative ruling falls within the tax administrator's discretion to settle disputes. The tax administrator's exercise of prosecutorial forbearance under this Chapter does not constitute a change in taxing methodology for purposes of Government Code section 53750(h), and the city does not waive or abrogate its ability to impose the telephone users' tax in full as a result of issuing such administrative rulings and may suspend such rulings and recommence collection of the tax without additional voter approval.

D. The following shall be exempt from the tax imposed by this section:

(1) Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

(2) Except with respect to local telephone service, on any charges for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

(3) Charges for services furnished to an international organization designated under the International Organizations Immunities Act and defined in 22 USCA 288 or to the American National Red Cross.

(4) Charges for any long distance telephone service which originates within a combat zone, as defined in section 112 of the Internal Revenue Code, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary of the U.S. Treasury may by regulations prescribe, is furnished to the person receiving such payment.

(5) Charges for any long distance telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

(6) Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital referred to in Internal Revenue Code section 170(b)(1)(A)(iii) which is exempt from income tax under Internal Revenue Code section 501(a).

(7) Charges for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

(8) Charges paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization described in Internal Revenue Code section 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue Code section 501(a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code section 501(c)(3) which is exempt from income tax under Internal Revenue Code section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(9) Charges for telephone channel facilities used by a cable television corporation in supplying cable television service to its customers

(10) Charges for "private mobile radio service" (as defined in Part 20 of Title 47 of the Code of Federal Regulations) or "private mobile service" (as defined in 47 USCA Section 332(d)) which is not interconnected to the public switched network.

E. To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another ~~state or city~~ American jurisdiction on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other ~~state or city~~ jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the city under this section. ~~For purposes of establishing sufficient legal nexus for the imposition and collection of utility users tax on charges for telephone communication services pursuant to this chapter, minimum contacts~~ This ordinance shall be construed broadly in favor of the imposition and collection of the utility users tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

F. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month.

G. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this subchapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as that law may change from time to time by judicial interpretation or by statutory enactment. Any telephone communication service (including VoIP) used by a person with a service address in the city, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the city to be obligated to collect and remit the tax imposed by this chapter if it does any of the following: maintains or has within the city, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the city by employees, independent contractors, resellers, agents or other representatives; solicits business in the city by means of advertising that is broadcast or relayed from a transmitter within the city or distributed from a location within the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail.

Section 3. Code Addition. A new Section 4.56.230 of the Pasadena Municipal Code is hereby adopted to read as follows:

4.56.230 Effect of state and federal authorization

To the extent that the city's authorization to impose or collect any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the city's authorization up to the full amount of the tax imposed under this chapter.

Section 4. Code Addition. A new Section 4.56.240 of the Pasadena Municipal Code is hereby adopted to read as follows:

4.56.240 Independent Audit

The city shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of as to

a service supplier where the cost of the verification is expected to exceed the tax revenues to be reviewed.

Section 5. Utility Rates. This Ordinance does not change the existing rate of any tax imposed under Chapter 4.56 of the Pasadena Municipal Code. A table of the existing rates of the taxes imposed under that Chapter 4.56 is attached hereto as Attachment 1.

Section 6. Low-Income Senior and Disabled Persons Exemptions. This Ordinance does not change the existing exemptions for low-income seniors and disabled persons from the any tax imposed under Chapter 4.56 of the Pasadena Municipal Code as specified in Section 4.56.210 of that Chapter. Any change to those exemptions which constitutes a tax increase within the meaning of Government Code Section 53750(h) shall require a vote of the People of the City of Pasadena.

Section 7. Amendment of Ordinance. Chapter 4.56 of the Pasadena Municipal Code as amended by this Ordinance may be repealed or amended by the City Council without a vote of the people except as follows: as required by Propositions 62 and 218, any amendment to that chapter that increases the amount or rate of tax beyond the levels authorized by this Ordinance may not take effect unless approved by a vote of the people. The City Council may impose the taxes authorized by that chapter in any amount or rate which does not exceed the rate approved by the voters of the City.

Section 8. Severability. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The people of the City of Pasadena hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 9. Majority Approval; Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

PASSED, APPROVED and ADOPTED this ____ day of _____,
2008.

William Bogaard
MAYOR

ATTEST:

Jane Rodriguez
CITY CLERK

APPROVED AS TO FORM:



Michael G. Colantuono
SPECIAL COUNSEL

10/17/07

Attachment 1

Existing UUT Rates by Utility Service

Cable Television	9.4%
Telephone (Intrastate, Interstate, International and Wireless)	8.28%
Natural Gas	7.9%
Electricity	7.67%
Water	7.67%