

ORDINANCE NO. 2022-24

AN ORDINANCE AMENDING ORDINANCE NOS. 08-09; 07-11; AND 05-07 ESTABLISHING A SCHEDULE OF NON-RECURRING RATES AND CHARGES COLLECTED FOR THE USE OF AND SERVICES PROVIDED BY THE TELECOMMUNICATIONS UTILITY OF THE CITY OF LEBANON

WHEREAS, the City of Lebanon, Indiana (“City”) owns and operates through its Utility Service Board (“Board”) a telecommunications utility known as Lebanon Utilities iLines (the “Utility”) for the purpose of providing safe, reliable and efficient communication services in and around the City pursuant to Ind. Code §8-1-2.6 et. seq., as amended, and other applicable provisions of Indiana Law (collectively, the “Act”);

WHEREAS, Common Council for the City of Lebanon (“City Council”), based upon recommendations from the Board periodically evaluates, changes and readjusts its various fees and charges to collect sufficient revenue in order to pay all the expenses incident to the operation and maintenance of the Utility, including, but not limited to improving the system for existing rate payers; and planning, budgeting, and expanding the facilities in order to serve new customers;

WHEREAS, the City Council has caused notice of a public hearing set forth hearing on the charges set forth herein to be duly advertised, posted and mailed and has held a public hearing thereon; and

WHEREAS, the City Council finds that the proposed modifications to the City’s existing non-recurring fees and charges should be enacted.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Lebanon, Indiana, that the non-recurring fees and charges be modified and therefore Ordinance Nos. 08-09, 07-11, and 05-07 are otherwise amended as follows:

Section 1. The following rates and charges are hereby adopted as and for the rates and charges to be used by the Utility when charging customers for Broadband Over Power-line (“BPL”) service:

(a) Residential Service:

Installation Fee. A one-time installation fee of \$150.00.

Customers may install service themselves at no charge.

Modem Fee. A one-time fee of \$150.00, or a monthly charge of \$8.00, will be assessed for rental and use of a Power-line communication modem.

Set-up Fee. A one-time fee of \$30.00 for set-up and activation of service.

Monthly Access Fee-a monthly access fee of \$29.95.

Additional Email Accounts. A charge of \$5.00 per month for additional email accounts in blocks of five above the amount provided at no charge.

Block of Static IP Addresses. Include a charge of \$20.00 per month for a block of eight (8) static IP Address (five public).

Internet Service Call. Consists of a trip fee of \$30.00 and for labor at \$60.00 per hour with a 1 hour minimum for repairs to damaged Telecommunications Division equipment, or when a technician is dispatched for service and the problem is not caused by the Telecommunications Division's equipment for facilities. Also, the Telecommunications Division, at its discretion may provide on-site service for Customer-owned equipment if requested by the Customer at the aforementioned rate. Upgrades to or replacement of undamaged but defective or malfunctioning Telecommunications Division-provided equipment does not involve a labor charge.

Internet Extra Parts Fee. Charged at cost plus 15% to incorporate charges for damaged Telecommunications Division equipment or for parts that are not associated with the standard installation.

Internet Extra Setup Fee. Charged at a rate of \$60.00 per hour with a 1 hour minimum to cover a non-standard installation excluding post setting and Ethernet line burying. This fee includes but is not limited to interior wall penetrations, attic or crawlspace setups.

(b) Basic Commercial Service (1 MB or less):

Installation Fee. A one-time installation fee of \$150.00. Customers may install service themselves at no charge.

Modem Fee. A one-time fee \$150, or a monthly charge of \$8.00, will be assessed for rental and use of a Power-line communication modem.

Set-up Fee. A one-time fee of \$30 for set-up and activation of service.

Monthly Access Fee-a monthly access fee of \$69.95 for commercial customers, using 1 MB or less.

Additional Email Accounts. A charge of \$5.00 per month for additional email accounts in blocks of ten above the amount provided at no charge.

Block of Static IP Addresses. Include a charge of \$20.00 per month for a block of eight (8) static IP Address (five public).

Internet Service Call. Consists of a trip fee of \$30.00 and for labor at \$60.00 per hour with a 1 hour minimum for repairs to damaged Telecommunications Division equipment, or when a technician is dispatched for service and the problem is not caused by the Telecommunications Division's equipment for facilities. Also, the Telecommunications Division, at its discretion may provide on-site service for Customer-owned equipment if requested by the Customer at the aforementioned rate. Upgrades to or replacement of undamaged but defective or malfunctioning Telecommunications Division-provided equipment does not involve a labor charge.

Internet Extra Parts Fee. Charged at cost plus 15% to incorporate charges for damaged Telecommunications Division equipment or for parts that are not associated with the standard installation.

Internet Extra Setup Fee. Charged at a rate of \$60.00 per hour with a 1 hour minimum to cover a non-standard installation excluding post setting and Ethernet line burying. This fee includes but is not limited to interior wall penetrations, attic or crawlspace setups.

(c) Commercial Point-to-Point Service (Greater than 1 MB):

Customers using point-to-point service must pay an installation fee at a labor rate of \$120.00 per hour, in addition to monthly charges for equipment and bandwidth, which will vary depending on the application.

Section 2. The following rates and charges are hereby adopted as and for the rates and charges to be used by the Telecommunications Division when charging customers for wireless internet service:

(a) Residential Service:

Installation Fee. A one-time installation fee of \$220.00 for standard installation on an outside wall only.

Equipment Fee. A monthly charge of \$20.00 will be assessed for rental and use of radio equipment.

Set-up Fee. A one-time fee of \$30.00 for set-up and activation of service.

Monthly Access Fee. A monthly access fee of \$29.95.

Additional Email Accounts. A charge of \$5.00 per month for additional email accounts in blocks of five above the amount provided at no charge.

Block of Static IP Addresses. Include a charge of \$20.00 per month for a block of eight (8) static IP Address (five public).

Internet Service Call. Consists of a trip fee of \$30.00 and for labor at \$60 per hour with a 1 hour minimum for repairs to damaged Telecommunications Division equipment, or when a technician is dispatched for service and the problem is not caused by the Telecommunications Division's equipment for facilities. Also, the Telecommunications Division, at its discretion may provide on-site service for Customer-owned equipment if requested by the Customer at the aforementioned rate. Upgrades to or replacement of undamaged

but defective or malfunctioning Telecommunications Division-provided equipment does not involve a labor charge.

Internet Extra Parts Fee. Charged at cost plus 15% to incorporate charges for damaged Telecommunications Division equipment or for parts that are not associated with the standard installation.

Internet Extra Setup Fee. Charged at a rate of \$60.00 per hour with a 1 hour minimum to cover a non-standard installation excluding post setting and Ethernet line burying. This fee includes but is not limited to interior wall penetrations, attic or crawlspace setups.

(b) Basic Commercial Service (1 MB or less):

Installation Fee. A one-time installation fee of \$220.00 for standard installation on an outside wall only.

Equipment Fee. A monthly charge of \$20.00 will be assessed for rental and use of radio equipment.

Set-up Fee. A one-time fee of \$30.00 for set-up and activation of service.

Monthly Access Fee-a monthly access fee of \$69.95 for commercial customers, using 1 MB or less.

Additional Email Accounts. A charge of \$5.00 per month for additional email accounts in blocks of ten above the amount provided at no charge.

Block of Static IP Addresses. Include a charge of \$20.00 per month for a block of eight (8) static IP Address (five public).

Internet Service Call. Consists of a trip fee of \$30.00 and for labor at \$60 per hour with a 1 hour minimum for repairs to damaged Telecommunications Division equipment, or when a technician is dispatched for service and the problem is not caused by the Telecommunications Division's equipment for facilities. Also, the Telecommunications Division, at its discretion may provide on-site service for Customer-owned equipment if requested by the Customer

at the aforementioned rate. Upgrades to or replacement of undamaged but defective or malfunctioning Telecommunications Division-provided equipment does not involve a labor charge.

Internet Extra Parts Fee. Charged at cost plus 15% to incorporate charges for damaged Telecommunications Division equipment or for parts that are not associated with the standard installation.

Internet Extra Setup Fee. Charged at a rate of \$60.00 per hour with a 1 hour minimum to cover a non-standard installation excluding post setting and Ethernet line burying. This fee includes but is not limited to interior wall penetrations, attic or crawlspace setups.

(c) **Commercial Point-to-Point Service (Greater than 1 MB):**

Customers using point-to-point service must pay an installation fee at a labor rate of \$120.00 per hour, in addition to monthly charges for equipment and bandwidth, which will vary depending on the application.

Section 3. The following rates and charges are hereby adopted as and for the rates and charges to be used by the Telecommunications Division when charging commercial or residential customers for the custom installation of fiber optic facilities:

- (a) Installation Fee. Determined by the Telecommunications Division on a time and material basis impacted by prevailing market price which may fluctuate as custom installation is required for both residential & commercial customers.
- (b) Bandwidth Charge. Prevailing market price as determined by the Telecommunications Division at the time of the sale.
- (c) Labor Rate. Determined by the Telecommunications Division.
- (d) Equipment Replacement. Any equipment damaged by the user will be billed at replacement cost.
- (e) Other. If requested by the customer, other service that is deemed feasible and appropriate by the Telecommunications Division will be billed at prevailing market rates.

- (f) Additional Email Accounts. A charge of \$5.00 per month for additional email accounts in blocks of five above the amount provided at no charge (five residential and ten commercial).
- (g) Block of Static IP Addresses. Include a charge of \$20.00 per month for a block of eight (8) static IP Address (five public).
- (h) Internet Service Call. Consists of a trip fee of \$30.00 and for labor at \$60.00 per hour with a 1 hour minimum for repairs to damaged Telecommunications Division equipment, or when a technician is dispatched for service and the problem is not caused by the Telecommunications Division's equipment for facilities. Also, the Telecommunications Division, at its discretion may provide on-site service for Customer-owned equipment if requested by the Customer at the aforementioned rate. Upgrades to or replacement of undamaged but defective or malfunctioning Telecommunications Division-provided equipment does not involve a labor charge.
- (i) Internet Extra Parts Fee. Charged at cost plus 15% to incorporate charges for damaged Telecommunications Division equipment or for parts that are not associated with the standard installation.
- (j) Internet Extra Setup Fee. Charged at a rate of \$60.00 per hour with a 1 hour minimum to cover a non-standard installation excluding post setting and Ethernet line burying. This fee includes but is not limited to interior wall penetrations, attic or crawlspace setups.

Section 4. The following rates and charges are hereby adopted as for the rates and charges to be used by the Telecommunications Division when charging commercial or residential customers for Co-Location Space in the Telecommunication Division's server room:

Space Charge. Charged at prevailing market price as determined by the Telecommunications Division at the time of sale.

Bandwidth Charge. Charged at prevailing market price as determined by the Telecommunications Division at the time of sale.

Other. If requested by the customer, other service associated with Co-Location Space that is deemed feasible and appropriate by the Telecommunications Division will be billed at prevailing market rates.

Section 5. In addition to the rates and charges set forth herein, the following non-recurring charges are hereby adopted for use by the Telecommunications Division:

Disconnect for Non-Payment	\$20.00
Same Account Reactivation	\$30.00
(after disconnection or customer-requested temporary service interruption of less than 90 days)	
Returned Check Fee	\$30.00

Late Payment Charge. A late payment charge of three percent (3%) of all amounts outstanding will be charged if the bill is not paid within 17 days following the mailing of the bill.

Section 6. Definitions. The following definitions, terms and conditions of service apply to the furnishing Broadband Over Power-line ("BPL") and wireless internet service by the Telecommunications Division:

Apartment. A lot or parcel of real estate under common ownership on which one or more buildings are situated containing a total of eight or more separate inhabitable dwelling units with facilities intended primarily for living, sleeping, cooking and eating, but excluding any nursing care or similar facility.

Basic Commercial Service Class. Shall include Customers not encompassed within the Residential Service Class, including commercial and industrial Customers, whose service requirements are 1 MB or less.

Block of Static IP Address. A set of IP addresses or Internet protocol addresses that certain electronic devices use in order to identify and communicate with each other on a computer network and the type which do not change or remain static.

Commercial Point-to-Point Service Class. Shall include Customers not encompassed within the Residential Service Class, including commercial and industrial Customers, whose service requirements exceed 1 MB.

Customer. The person, firm, corporation or other entity which has entered into an agreement with the Telecommunications Division under which it will receive BPL or wireless internet service.

Email Accounts. Electronic mail accounts to which messages can be sent often containing a unique name that the holder of the account designates and a domain name of the provider hosting the account.

Multi-Family Residence. A lot or parcel of real estate under common ownership on which one or more buildings are situated containing two or more, but less than eight, separate inhabitable dwelling units with facilities intended primarily for living, sleeping, cooking and eating, including without limitation condominium units.

Residential Service Class. Shall include Customers whose premises or building is used primarily as a residence for one or more persons (which shall include only Single Family Residences, Multi-Family Residences and Apartments) and whose service requirements are 1 MB or less.

Single Family Residence. A lot or parcel of real estate on which a building is situated containing a group of rooms

forming a single inhabitable dwelling unit with facilities intended primarily for living, sleeping, cooking and eating.

Telecommunications Division. The Telecommunications Division managed by Lebanon Utilities, a municipally owned utility located in the City of Lebanon, Indiana.

Standard Wireless Installation. Includes (1) one wireless radio, (2) a stinger or dish if necessary, (3) one mounting foot, if necessary, attached to a customer provided house, building, post or pole that is deemed safe by the installer, (4) up to 330 feet of direct bury Cat 5 cable run from the wireless radio to the customer's equipment and if necessary to be buried by the customer, (5) one grounding device outside the house at the entry point grounded with an 8 foot ground rod, (6) one sealed exterior wall penetration terminating at a wall box with Ethernet jack, if possible, and (7) one Ethernet cable from the wall jack to the Customer's equipment.

Section 7. Rate Schedules. Copies of all available rate schedules and the terms and conditions of service are on file at the business office of Lebanon Utilities. The terms and conditions of service set forth the conditions under which services are to be rendered, and governs all classes of service to the extent applicable. In case of conflict between any provision of the rate schedules and the terms and conditions of service, the provisions of the rate schedules shall prevail.

Section 8. Competitive Nature of Rates. Due to the competitive nature of the internet services market, the City further determines that the rates and charges established by this Ordinance should be the maximum rates and that it is essential for the Telecommunications Division to have flexibility to quickly

respond to changes in technology, user requirements for enhanced services and market forces in the provisions of and the pricing for its services.

Section 9. Application or Contract for Service. A written application or contract may be required by the Telecommunications Division before service will be provided, which, when accepted by the Telecommunications Division, shall, along with these terms and conditions of service, constitute the contract between it and Customer. The Telecommunications Division shall have the right to reject an application for any valid reason. No promises, agreements or representations of an agent or an employee of the Telecommunications Division shall be binding unless such promises, agreements or representations were incorporated into a written contract. The benefits and obligations under any contract shall be binding upon the successors and assigns, survivors and executors or administrators, as the case may be, of the original parties for the full term of the contract; provided, however, that no assignment shall be made by Customer without first obtaining the Telecommunications Division's prior written consent. The Telecommunications Division may require the successor either to execute an assignment agreement wherein the successor-customer assumes and agrees to be bound by the original contract with the Telecommunications Division, or execute a new contract for service. In case of conflict between any provision of a written application or contract and these terms and conditions of service, the provisions of the written application or contract shall prevail.

Section 10. Rate Schedules and Character of Service. The Telecommunications Division, in its sole discretion, will assign customers to the Residential Service Class, Basic Commercial Service Class or the Commercial Point- to-Point Service Class depending on the Customer's characteristics and service requirements. Customers located within the assigned service area boundaries of the municipal electric utility operated by Lebanon Utilities will be eligible to receive BPL service. Customers located outside the assigned service

area boundaries of the municipal electric utility operated by Lebanon Utilities will be eligible to receive wireless internet service, so long as the Telecommunications Division is able to reach the Customer with its wireless signal and the Customer is located within Boone County or six miles from the corporate limits of the City of Lebanon, Indiana.

Section 11. Termination of Service. In some instances, the contract between the Telecommunications Division and Customer will specify the parties' agreement regarding term of service. The contract term may be a period of between one and five years. In some instances, service may be provided on a month-to-month basis with no written contractual agreement or where the term of the contract is not specified.

Section 12. Payment for Service. Bills for service will be rendered monthly at intervals of approximately thirty days and are payable at the office of Lebanon Utilities. Bills will be subject to a late payment charge when not paid within 17 days following the mailing of the bill. When the seventeenth day falls on Sunday or on any legal holiday, the first business day thereafter shall be added to the seventeen day period. Failure to receive a bill shall not entitle customer to pay the bill after the designated due date has passed. Upon request, the Telecommunications Division will inform Customer of the approximate date on which Customer should receive the bill each month and, if the bill is lost, the Telecommunications Division will issue a duplicate. When the Telecommunications Division is required to re-process a check rendered for payment of a customer's bill due to non-sufficient funds, a Returned Check Charge shall be added to customer's billing.

Section 13. Taxes and Fees. Customer shall pay all taxes, fees, charges, or impositions which may be levied by any governmental authority on the service and facilities which may be provided, including taxes, fees, charges or impositions which may be imposed after the date of any contractual

arrangement between Customer and the Telecommunications Division, and further agrees that the Telecommunications Division may include such amounts in its billings to Customer for services.

Section 14. Refusal or Discontinuance of Service. The Telecommunications Division may refuse or discontinue service to Customer under the following conditions:

- (a) For failure to pay any amounts owed to the Telecommunications Division when due.
- (b) For non-compliance with or violation of any State, municipal, or Federal law, ordinance or regulation.
- (c) For use of service for any other property or purpose other than as described in the contract between Customer and the Telecommunications Division.
- (d) For neglect or refusal to provide reasonable access to the Telecommunications Division or its agents for the purpose of inspection and maintenance of equipment owned by the Telecommunications Division.
- (e) For violation of any of these terms and conditions of service or a term set forth in the contract between Customer and the Telecommunications Division.
- (t) For use of equipment in such a manner as to adversely affect the equipment of the Telecommunications Division or its services to others.
- (g) For tampering with equipment owned by the Telecommunications Division.
- (h) For unauthorized or fraudulent use of service.
- (i) For conditions that will impact the safety of employees or any other persons.

Section 15. Restoration of Service Interruptions. The Telecommunications Division

shall use reasonable efforts to maintain the facilities and equipment that it furnishes to the Customer. The Telecommunications Division will, at all times, endeavor to provide regular and uninterrupted service, but does not guarantee against variations in service characteristics or interruptions in service, occasioned by acts of God, orders of public authorities, electric outages, fires, strikes, casualty, and necessity for making repairs or replacements of the Telecommunications Division's facilities, or any other causes not within the reasonable control of the Telecommunications Division. The Telecommunications Division will endeavor to respond promptly to the Customer's location and restore any interruption of the services as soon as practicable after the Telecommunications Division receives notice from Customer of the service interruption. Access to Telecommunications Division equipment on Customer's property may be required to restore service.

Section 16. Telecommunications Division Equipment and Customer Owned-Equipment. The Customer will not, nor will Customer permit others, to rearrange, disconnect, remove, and attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Telecommunications Division, except upon prior written consent. The Telecommunications Division shall not be responsible for the installation, testing, operation, maintenance, repair and replacement of any Customer-provided equipment required for the Customer's interconnection with or use of the services. Customer is responsible for ensuring that Customer-provided equipment is compatible with the Telecommunications Division's equipment and facilities. The Telecommunications Division will provide Customer with any required information and reasonable technical assistance to facilitate such compatibility. The responsibility of the Telecommunications Division shall be limited to the furnishing, operation and maintenance of facilities and equipment furnished by the Telecommunications Division for the service(s) outlined in the contract between the Customer and the Telecommunications Division. It is understood that the Telecommunications Division may provide assistance beyond the Telecommunications Division-owned facilities as a matter of customer service, but that the Telecommunications Division is not required to do so and assumes no responsibility for such other facilities or equipment. The Customer is responsible for any damages to the Telecommunications Division equipment, unless it is determined to be caused by

improper Telecommunications Division installation. The Customer will be billed the applicable fees to cover the cost of any necessary repairs.

Section 17. Unlawful or Illegal Use of Telecommunications Division Services or Facilities. Customer shall not use the services or facilities provided by the Telecommunications Division for any unlawful or illegal purpose and agrees to indemnify and hold the Telecommunications Division harmless from any loss or damage arising from such use.

Section 18. Limitations. Except as expressly provided in a contractual agreement between Customer and the Telecommunications Division, the Telecommunications Division makes no warranties, expressed or implied, relating to its services and facilities and expressly disclaims any implied warranties or warranties imposed by law, including, but not limited to warranties of merchantability and fitness for a particular purpose. In no event shall the Telecommunications Division be liable for any indirect, special, incidental, consequential or exemplary damages relating to or arising from the provision of services to Customer, including, without limitation, damages based on loss of revenues, profits or business opportunities, whether or not the Telecommunications Division has or should have had any knowledge, actual or constructive, that such damages might be incurred.

Customer agrees to indemnify and hold the Telecommunications Division harmless for any loss or expense, including attorneys' fees, arising from damage to equipment or injury to persons related to the services and facilities provided by the Telecommunications Division, except any loss, damage, or expense arising directly from the act or omission of the Telecommunications Division.

Section 19. Collection of Delinquent Amounts. Upon Customer's failure to pay any sum due, the Telecommunications Division shall be entitled use all collection efforts to collect such sum. If suit is required for such collection

and/or to enforce the terms of a contractual agreement between Customer and the Telecommunications Division, the Telecommunications Division also shall be entitled to collect all costs of collection, including reasonable attorneys' fees.

Section 20. The rates, charges and fees set forth in this Ordinance shall be reviewed every calendar year for continued applicability and financial necessity. There is a zero percent difference in the rates and charges between property located outside the corporate boundaries of the City as compared to property located within the corporate boundaries of the City.

Section 21. Any portion of the other Ordinances in conflict with a provision in this Ordinance is hereby superseded to the extent inconsistent herewith. The provisions, rates, and charges of this Ordinance are severable. In the event any one or more of the provisions contained in this Ordinance should be invalid or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and/or the prior Ordinances of the City, shall not in any way be affected or impaired and shall remain in full force and effect. Furthermore, to the extent a rate, charge or provision in this Ordinance is declared invalid, the higher of the valid charge or the original charge or fee previously established by the City shall be effective and/or retroactive as though unaltered. The invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance, which can be given effect without such invalid part or parts.

Section 22. The provisions of this Ordinance shall take effect upon its adoption and any publication required by law.

[Signature, Voting Designation. Mayoral Approval Page to Follow]

All of which is CONSIDERED, APPROVED AND ADOPTED by the Common Council of the City of Lebanon, Indiana, this _____ day of _____, 2022.

Voting For

Voting Against

Abstain

Sierra Messenger

Sierra Messenger

Sierra Messenger

John Copeland

John Copeland

John Copeland

Brent Wheat

Brent Wheat

Brent Wheat

Mike Kincaid

Mike Kincaid

Mike Kincaid

Keith Campbell

Keith Campbell

Keith Campbell

Morris Jones

Morris Jones

Morris Jones

Dick Robertson

Dick Robertson

Dick Robertson

ATTEST:

Clerk-Treasurer, Tonya Thayer

I hereby certify that Ordinance 2022-24 was delivered to the Mayor of Lebanon on the _____ day of _____, 2022, at _____ : _____ m

Tonya Thayer, Clerk-Treasurer

I hereby APPROVE ORDINANCE 2022-24
this ___day of _____, 2022

I hereby VETO ORDINANCE 2022-24
this ___day of _____, 2022

Matthew T. Gentry, Mayor

Matthew T. Gentry, Mayor