

040217

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) DISTRICT # _____
 Recommendations of Boards, Commissions & Committees (Green) Waiver of First Requested _____
 Other Business (Pink)

TO : PRESIDENT AND BOARD OF TRUSTEES
FROM: William T. Lichter, Village Manager
DATE : May 25, 2004 **B of T** June 3, 2004
SUBJECT: PrimeCo IMF Litigation Intergovernmental Agreement
SUBMITTED BY: William T. Lichter, Village Manager

BACKGROUND/POLICY IMPLICATIONS:

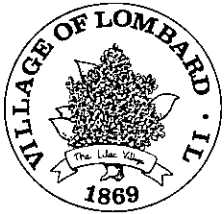
Please see attached memorandum.

Fiscal Impact/Funding Source:

Review (as necessary):

Finance Director _____ Date _____
Village Manager W.T. Lichter Date 5/25/04

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda distribution.



To: Honorable President and Board of Trustee
From: William T. Lichter, Village Manager *WTL*
Date: May 25, 2004
Subject: **PrimeCo IMF Litigation Intergovernmental Agreement**

Effective January 1, 1998, the Illinois General Assembly passed a statute allowing municipalities to replace telecommunications franchise fees with an Infrastructure Maintenance Fee (IMF). The Illinois Municipal League and other municipal groups crafted a model ordinance for municipalities to use in adopting that new fee. Legal challenges caused the General Assembly to repeal the IMF and institute a simplified state-collected telecommunications tax that went into effect on January 1, 2003. However, the aforementioned litigation nevertheless impacts all municipalities that imposed an Infrastructure Maintenance Fee.

PrimeCo (a.k.a. US Cellular) initiated the legal action challenging the IMF in 1998 in Cook County. The City of Chicago and the Village of Skokie were named as defendants. The trial court ruled that the IMF was unconstitutional both for wireless service and for landline service. On appeal, the Illinois Supreme Court agreed that the IMF is unconstitutional as applied to wireless service, but did not issue a ruling regarding landline service. The litigation has now returned to the trial court level for resolution of the following issues:

1. While the wireless IMF has been declared unconstitutional, are municipalities liable for repayment of revenues received from PrimeCo, or are municipalities protected by a variety of affirmative defenses?
2. Similar to #1, are municipalities liable for repayment of revenues received from other wireless telecommunications providers?
3. Is the IMF constitutional as applied to landline telecommunications providers?

The Village of Lombard is a party to the class action lawsuit currently pending in Cook County. The attached intergovernmental agreement provides for Lombard's participation in the joint defense as well as a sharing of litigation costs. Costs have been determined on a per capita basis. Lombard's share of the costs as reflected in the agreement would be \$10,580.50.

Approval of the intergovernmental agreement is recommended.

RESOLUTION
R _____ 04

RESOLUTION APPROVING AN INTERGOVERNMENTAL
AGREEMENT WITH OTHER MUNICIPALITIES AND
COUNCILS OF GOVERNMENT THAT HAVE
CHOSEN NOT TO OPT OUT OF THE
PRIMECO LITIGATION

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement for the Sharing of Litigation Expenses, as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to authorize the Agreement for the Sharing of Litigation Expenses; and

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

Section 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said document as attached hereto.

Section 2: That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto.

ADOPTED this _____ day of _____, 2004.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this _____ day of _____, 2004.

William J. Mueller
Village President

Resolution R-_____-04
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ATTEST:

Barbara Johnson
Acting Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

AGREEMENT FOR THE SHARING OF LITIGATION EXPENSES

This Agreement is hereby entered into by each municipality and Council of Government (referred to herein as "COG") executing a signature page confirming that they are a party to this Agreement and accept all terms herein.

Whereas, various telephone service providers in the State of Illinois, customers of wireless telephone service providers and customers of landline telephone service providers have been engaged in litigation against various municipalities and other public agencies of the State of Illinois in relation to the enforceability and constitutionality of the Municipal Telecommunications Infrastructure Maintenance Fee Act, 35 ILCS 635/1 *et seq.*, (hereinafter referred to as the "IMF") (said litigation collectively referred to as the "Litigation");

Whereas, in June 2001, the Illinois Supreme Court held the IMF to be unconstitutional as applied to customers of wireless service providers, however, the Court did not decide the issue of the constitutionality of the IMF as applied to customers of landline service providers;

Whereas, on March 28, 2003, the Circuit Court of Cook County certified the Litigation as a class action (a) identifying plaintiffs as members of three sub-classes, and (b) identifying defendant municipalities as members of three sub-classes, as specified in the court's order of March 28, 2003 (and as clarified in the court's order dated August 5, 2003);

Whereas, the Circuit Court of Cook County appointed the Village of Skokie as the defendant class representative for all three defendant sub-classes and appointed Jack Siegel of Holland and Knight LLC as defendant class counsel unless a municipality enters an appearance through separate counsel;

Whereas, the parties hereto have decided not to opt-out of the Litigation and therefore agree to jointly provide funds and cover the costs of legal fees and other expenses associated with the Litigation;

Now, therefore, in consideration of the mutual promises and obligations, the parties hereby agree to the following terms and provisions:

1. Recitals. The above stated Recitals are restated and incorporated herein as if stated in full.
2. Definitions. The following words or terms shall have the meaning ascribed to them:

"Attorneys" shall mean the law firm Holland and Knight LLC, including Jack Siegel, Iain Johnston and such other attorneys of the law firm. "Attorneys" shall also mean any other attorney appointed by a court to be a class counsel for the any of the defendant sub-classes or the defendant class.

"Attorneys Fees" shall mean the fees billed by the Attorneys.

"Defense of the Litigation" shall mean all efforts by the Attorneys to defend against the allegations made by a plaintiff, including but not limited to presentation of defenses on legal issues and damages, affirmative defenses, counter claims or set-offs.

"Municipality" or "Municipalities" shall mean a municipality that is a defendant in the Litigation and a party to this Agreement, or in the plural, collectively all municipalities that are parties to this Agreement.

"Shared Costs" means the costs incurred in the Defense of the Litigation that the Municipalities have agreed to share and as defined in paragraph 3 below and limited in paragraph 4.

3. Shared Costs. The Municipalities will jointly share all costs and expenses associated with the Defense of the Litigation, including but limited to Attorney's Fees, out of pocket expenses incurred by the Attorneys, cost advances made by the Attorneys, paralegal expenses, court costs, court reporter and transcript expenses, expert fees and expenses and any and all expenses incurred in the Defense of the Litigation (hereinafter referred to as the "Shared Costs").
4. Excluded Costs. Shared Costs does not include the following costs and expenses:
 - A. Fees billed by attorneys other than attorneys appointed as class counsel, or a sub-class counsel, by a court;
 - B. Salaries of employees or other compensation paid to agents of a municipality that may expend time or effort on behalf of the Defense of the Litigation; or
 - C. Any cost or expense associated with any lawsuit or legal proceeding other than the Litigation.
5. Governance. A Committee of Municipalities shall have the primary responsibility for providing guidance to the Attorneys and for communicating with the parties to this Agreement. The Committee shall be comprised of representatives of Municipalities and a representative from each Council of Government (herein referred to as "COG") that is a party to this Agreement. Each COG shall designate two representatives of Municipalities that are members of the respective COG to serve on the Committee. In the event two or less COGs are parties to this Agreement, then each COG will designate three representatives of Municipalities. Representation on the Committee of parties that are not a member of a COG shall be determined by the Committee.
6. Committee of Municipalities. The Committee of Municipalities shall review all invoices or bills submitted in relation to the Shared Costs and approve them for payment. The Committee may reject any invoice or bill that it determines is not appropriate or correct. The Committee shall establish a methodology for assessing and collecting each Municipalities' share of the Shared Costs. The methodology for assessing the Shared Costs shall be on a per capita basis utilizing the Municipalities' population. Each COG shall have the responsibility of communicating and collecting the assessments from the Municipalities that are members the respective COG.
7. Payment. Each Municipality shall make a payment for Shared Costs in amount equal to its population times twenty-five cents (population x \$.25). Such other payments shall be

made at the time, and in the amounts, as determined by the Committee of Municipalities. At such time as all Litigation is ended, any funds remaining shall be returned to the Municipalities on a per capita basis. Nothing in this Agreement precludes a Municipality from withdrawing from this Agreement, however, the withdrawing Municipality shall not be entitled to withdraw any of the initial amount paid pursuant to the first sentence of this paragraph.

8. COG. Any and all expenses incurred by a COG shall be borne solely by the respective COG and shall not be considered Shared Costs, except the Committee of Municipalities may determine that the COG should be reimbursed for the expense. No COG shall be obligated for Shared Costs and no assessment shall be made to a COG.
9. Counterpart. It is contemplated that this Agreement will be executed through the use of counterparts and such execution is authorized.

In Witness whereof, the below named Municipality/COG, agrees to be a party to the Agreement for the Sharing of Litigation Expenses and the authorized municipal/COG officials have duly executed and affixed their signatures hereto.

<u>Village of Lombard</u> Name of Municipality or COG	
By: _____ Signature of Official	_____ Date
_____ Print Name of Official	
<u>Village President</u> Title	
Attest:	
By: _____ Signature of Official	_____ Date
_____ Print Name	
<u>Acting Village Clerk</u> Title	
Population: <u>42,322</u> X \$0.25 per capita = \$ <u>10,580.50</u> (contribution)	