TEXAS PUBLIC POLICY FOUNDATION

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TO THE ISSUES

FRANCHISE FEES

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THE ISSUE

Municipal franchise fees are levied on a variety of consumer services by cities for the use of the public right-of-way (ROW). These fees, which are levied on retail services such as telephone, cable/video, gas and electricity, have cost Texas consumers more than $4.6 billion over the last 10 years. Franchise fees are projected to raise more than $500 million in FY 2008 for Texas' 10 largest cities.

Though some courts (and local governments) have said that franchise fees are "essentially a form of rent: the price paid to rent use of public right[s] of way," it is wrong to think of them in this way. Governments are not private landlords seeking to extract maximum profits from private property, but guardians of the public interest. As such, governments should not seek to extract maximum rents from the public for the public's use of the ROW. High rates cost consumers money, disrupt the most efficient use of the ROW, and reduce the quality and availability of services to the public.

The monopoly position of local governments has long allowed them to extract revenues far in excess of the cost of managing the ROW, along with costly in-kind services unrelated to the management of the ROW. The Texas Legislature has noticed this problem and repeatedly stepped in to change the way cities manage the ROW and the way cities collect revenue. The Legislature has passed separate laws regulating the various franchise fee agreements, most recently for cable/video franchises in 2005.

While the Legislature has improved the franchise process, it has left franchise fees at high levels. So while the process is now more efficient, consumers still pay fees that provide revenues for cities far above what it costs to manage the public ROW.

For instance, the most recent budget for the City of Dallas shows approximately $723,000 budgeted for street cut permitting and ROW construction oversight. Yet Dallas estimates that it will receive $125 million in FY 2008 from franchise fees. While there may be some other costs associated with ROW management, even a doubling of the ROW expenses listed in the city budget would bring ROW management costs to only a little more than 1 percent of the revenue from franchise fees.

In addition to franchise fees, companies pay for the use of the ROW in various other ways that can at times rival the expense of franchise fees. These charges and expenses are the ones that relate directly to the costs of operating in the ROW. In fact, for the majority of services provided in the ROW, 100 percent of the franchise fees go directly into general revenue and have nothing to do with management of the ROW.

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THE FACTS

- ★ Franchise fees have cost consumers in Texas' 10 largest cities more than $4.6 billion over the last 10 years.
- ★ Franchise fees have become divorced from paying for the cost of managing the ROW and have instead become just another revenue source for cities.
- ★ Franchise fees are separate from the actual costs incurred of occupying and managing the public ROW. These include 1) pole attachment charges, 2) construction costs associated with the relocation and expansion of roads and other government facilities, 3) make-ready engineering and construction costs, 4) relocating, removing, or altering facilities in the ROW, and 5) permitting costs.
- ★ Local governments, which have many other sources of revenue, have sufficient "budget bandwidth" to accommodate a reduction in franchise fees.

RECOMMENDATIONS

- ★ To maximize the availability of services available to consumers through the public rights-of-way, franchise fees should be based on the marginal costs cities incur for managing the ROW.
- ★ Franchise fees should generally be levied only on the entity that owns the poles or conduits that occupy the ROW.
- ★ Entities that use poles or conduits owned by other entities should pay for the use of the ROW through pole connection charges and associated fees, rather than through franchise fees.
- ★ The reduction of franchise fees under the marginal cost model should be phased in over a period of several years in order to give cities time to adjust their budgets.
- ★ In return for the reduction of franchise fees, entities that occupy the ROW should bear full responsibility for relocation costs associated with municipal projects.

RESOURCES

- *Testimony Presented to the House Committee on Regulated Industries: Regarding Telecommunications Taxes and Technology Deployment* by Bill Peacock, Texas Public Policy Foundation (June 2008) http://www.texaspolicy.com/pdf/2008-07-HRI-Testimony-bp.pdf.
- *Taxes and Fees on Telecommunications Services in Texas* by Paul Bachman, Sarah Glassman, and David G. Tuerck, Ph.D., Texas Public Policy Foundation (Apr. 2007) http://www.texaspolicy.com/pdf/2007-03-RR06-telecomtaxes-BHill.pdf.
- *Allocating Public ROW Slots* by Thomas Hazlett, Texas Public Policy Foundation (Jan. 2007) http://www.texaspolicy.com/pdf/2007-01-PB01-ROW-hazlett.pdf.
- *Paying for the Use of the Public Right-of-Way* by Bill Peacock, Texas Public Policy Foundation (June 2006) http://www.texaspolicy.com/pdf/2006-06-PP-telecomROW-bp.pdf.
- *Texas Telecom Deregulation: Seeking a Level Playing Field* by Bill Peacock, Texas Public Policy Foundation (Apr. 2006) http://www.texaspolicy.com/pdf/2006-04-27-testimony.pdf.
- *Texas Telecommunications Taxes: An Overview* by Bill Peacock, Texas Public Policy Foundation (Feb. 2006) http://www.texaspolicy.com/pdf/2006-02-PP-telecom1-BP.pdf.
- "Tax Match: The States vs. the Services" by Marvin Kirsner, *Telecommunications Online: Americas Issue* (Oct. 2005) http://www.gtlaw.com/pub/articles/2005/kirsnerm05c.pdf.

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