

## Local Franchise Fees Generate Hundreds of Millions for Cities: Consumers Are Footing the Bill

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Texas consumers pay some of the nation’s highest “utility” taxes, with telecommunications services being taxed more than alcohol and just slightly less than tobacco.<sup>1</sup>

Municipal franchise fees, which are levied on services such as telephone, cable, water, and electricity for their use of the public right-of-way (ROW), make up a significant portion of these taxes. The cost to consumers amounts to hundreds of millions of dollars every year.

In 2010, consumers in Texas’ 10 largest cities will pay approximately \$429 million in franchise fees, which translates to over \$154 per household. Over the past three years, these cities have collected a total of almost \$1.3 billion in these fees.

Franchise fees are a product of an era when many service providers enjoyed monopoly markets. Cities, for instance, saw providers as “natural monopolies” that due to the high costs of building and maintaining sufficient infrastructure could garner a sufficient profit only if they had complete, unopposed control of their markets.<sup>2</sup>

After years of successful utility deregulation, compounded with rapid advances in technology, this theory was proven false. Increased competition led to lower prices, expanded service range, and improved quality.

The rationale for municipal franchise fees varies—either that they make it possible for cities to manage transmission lines and pipes, or that cities are merely maximizing the “rent” for the ROW that their citizens should expect—but maximized revenue generation seems to be the real motive. Former New York City Mayor John Lindsay once characterized cable franchises as “urban oil wells beneath our city streets.”<sup>3</sup> As cities become more dependent on revenue from franchise fees, these levies will likely become more difficult to abate, or even prevent from increasing. Cities profit greatly from franchise fees. In 2009, Dallas earned \$125 million and Houston earned \$184 million.<sup>4</sup> Of that money, Dallas spent just \$637,000 on right-of-way maintenance,<sup>5</sup> while Houston spent \$3 million in total (not just ROW) infrastructure maintenance.<sup>6</sup>

The disparity between funds collected and costs of maintaining ROWs is vast. Franchise fee revenue is independent of the

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### Municipal Franchise Fees Across Texas

	2008	2009	2010	Total
Houston	\$194,669,913.00	\$193,827,955.00	\$190,541,052.00	\$579,038,920.00
San Antonio	\$28,386,813.00	\$29,299,815.00	\$28,976,795.00	\$86,663,423.00
Dallas	\$108,411.00	\$102,696.00	\$96,244.00	\$307,351.00
Austin	\$35,577,058.00	\$33,633,691.00	\$34,082,500.00	\$103,293,249.00
Fort Worth	\$38,169,246.00	\$38,356,895.00	\$38,150,027.00	\$114,676,168.00
El Paso	\$56,958,897.00	\$58,265,775.00	\$60,562,865.00	\$175,787,537.00
Arlington	\$30,335,162.00	\$31,234,099.00	\$31,020,116.00	\$92,589,377.00
Corpus Christi	\$17,322,510.00	\$16,840,925.00	\$16,830,119.00	\$50,993,554.00
Plano	\$22,628,847.00	\$23,586,444.00	\$22,197,743.00	\$68,413,034.00
Laredo	\$6,793,268.00	\$7,005,906.00	\$6,618,978.00	\$20,418,152.00
<b>Total</b>	<b>\$430,950,125.00</b>	<b>\$432,154,201.00</b>	<b>\$429,076,439.00</b>	<b>\$1,292,180,765.00</b>

Source: Author’s calculations based on budget documents from cities.

actual costs of building and maintaining the ROW, and is deposited directly into the general fund and applied to unrelated expenses.

Often, land owners and local governments charge utilities to cover the costs of such ROW management procedures as pole attachment, permitting, make-ready engineering and construction, and relocating, removing, or altering facilities in the ROW. This allows municipalities to spend millions of consumers' dollars on unrelated projects.

Proponents of the franchise fee claim that the charge is not a tax, but rather rent paid to the citizens of a community. Organizations such as the Texas Coalition for Cities and the Texas Municipal League have defended this position, citing court rulings that have determined franchise fees to be "rental payments" as opposed to taxes, but it is not at all clear that this is the case.<sup>7</sup>

Once the operating costs for ROW use are obtained from service providers, the remaining revenue from that "rent" goes directly to the cities' coffers and becomes indistinguishable from other revenue sources. A decade ago, courts in Tennessee ruled in *City of Chattanooga v. BellSouth Telecommunications* that franchise fees exceeding marginal operating costs are considered taxes, not fees, and therefore must be treated as such.<sup>8</sup>

Regardless of the current legal status of franchise fees, rent is an inaccurate way to describe their function. Governments are not private landlords, whose obligation is to extract the maximum rent from users. They are defenders of the public interest.

The public ROW is not created like private development, which comes about through personal investment and a good deal of risk. The ROW is created usually through the police power of the government, solely for the benefit of the community. It is harmful for a municipality to maximize franchise fees at the expense of its own citizens, making them pay more to use their own property, disrupting the efficiency of the ROW, and obstructing the entry of new consumer technologies.

With the decline of the economy and a rise in municipal budget shortfalls, local governments have been relying heavily on funding from franchise fees. Recently, however, many municipalities are beginning to sense a decline in the revenue stream. But this reliance comes during a time when consumers are changing their video habits, relying on online and satellite content for their video and entertainment needs, and thereby lessening several tax burdens.

As technology progresses and more options become available to consumers, revenue from franchise fees will steadily decrease, and municipalities will have to compensate for that loss.

As Anaheim Mayor Curt Pringle wrote in an FCC filing earlier this year; "Cities have created an unfair tax on cable companies and limited competition in a fast-paced, competitive marketplace. Many cities have used these fees to fund essential municipal services unrelated to cable, although the fees simply are not a long-term stable source of revenue for cities."<sup>9</sup>

In other words, a competitive, efficient communications infrastructure can be far more beneficial to a community than the diminishing, unpredictable tax revenue it generates. ★

<sup>1</sup> Bill Peacock, *Texas Treats Phone Use Like a 'Sin'*, The Heartland Institute (22 Sept. 2010) [http://www.heartland.org/publications/budget%20tax/article/23658/Texas\\_Treats\\_Phone\\_Use\\_Like\\_a\\_Sin.html](http://www.heartland.org/publications/budget%20tax/article/23658/Texas_Treats_Phone_Use_Like_a_Sin.html).

<sup>2</sup> Diane S. Katz, *The Municipal Franchise Regime*, Mackinac Center for Public Policy (23 Sept. 2010) <http://www.mackinac.org/7983>.

<sup>3</sup> Thomas W. Hazlett, *Station Brakes: The Government's Campaign Against Cable Television*, Reason, <http://reason.com/archives/1995/02/01/station-brakes> (25 Sept. 2010)

<sup>4</sup> Bill Peacock, *Franchise Fees*, Texas Public Policy Foundation (19 Sept. 2010) <http://www.texaspolicy.com/pdf/2008-LegeEntry-FranchiseFees-bp.pdf>.

<sup>5</sup> City of Dallas FY 2011 Budget, Expenditure Overview (24 Sept. 2010) [http://dallascityhall.com/Budget/proposed1011/FY11\\_budget\\_overview.pdf](http://dallascityhall.com/Budget/proposed1011/FY11_budget_overview.pdf).

<sup>6</sup> City of Houston FY 2011 Budget, Public Works, and Engineering (24 Sept. 2010) [http://www.houstontx.gov/budget/11budadopt/IV\\_PWE.pdf](http://www.houstontx.gov/budget/11budadopt/IV_PWE.pdf).

<sup>7</sup> Texas Coalition of Cities for Utility Issues, *Background information on municipal public rights-of-way fees reviewed or monitored by the Public Utility Commission of Texas (PUCT)* (18 Sept. 2010) <http://www.sunset.state.tx.us/82ndreports/puc/responses/134.pdf>.

<sup>8</sup> Barrie Tabin, "Court strikes down Chattanooga's telecom franchise fee: says local fees must relate to costs incurred," *Nation's Cities Weekly* (21 Sept. 2010) <http://www.thefreelibrary.com/Court+strikes+down+Chattanooga%27s+telecom+franchise+fee%3A+says+local...a020227273>.

<sup>9</sup> Steven Titch, *A Shaky Future for Franchise Fees*, The Heartland Institute (23 Sept. 2010) [http://www.heartland.org/full/19862/A\\_Shaky\\_Future\\_for\\_Franchise\\_Fees.html](http://www.heartland.org/full/19862/A_Shaky_Future_for_Franchise_Fees.html).

