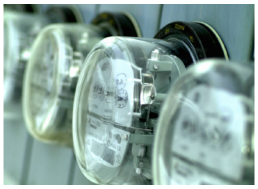

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Center for Economic Freedom

Municipal Franchise Fees: Why Are Consumers Paying Millions Every Year?

by Carine Martinez-Gouhier & Bill Peacock

Key Points

- Texas municipalities levied more than $500 million in franchise fees on consumers in 2013.
- The revenues generated by franchise fees are in excess of what is needed for maintenance of ROWs.
- These excessive levies risk creating distortions on utility markets such as barrier to entry for competitors and new technology, or consumers abandoning some services in order to cut costs.

Anyone who has scrutinized their phone, Internet, electricity, or gas bills has probably noticed additional charges adding to the price of the service, including either Franchise Fees or Right-of-Way Fees.[1] This charge is a fee levied by municipalities on the use of the public right-of-way (ROW). Companies that provide these services have to install pipelines and/or wires on public right-of-ways (either under the ground or on utility poles) in order to provide services to consumers' homes.[2]

Over the years municipalities have raised hundreds of millions of dollars in revenues each year from franchise fees. In the last six years, Texas' 10 most populous cities levied more than $3 billion in franchise fees. In 2013 alone, Houston levied an estimated $187 million, Dallas $103 million, and El Paso $42 million.

Yet only a portion of the franchise fee levies went to ROW maintenance. For instance, out of the $103.6 million collected in Dallas in 2013, only $10,229,569 was budgeted for "Right-of-Way Maintenance Contracts and Inspections Group."[3] Corpus Christi's FY 2013-14 city budget reports that franchise fee revenues amount to 8 percent of their general fund revenues.[4] Indeed, according to the Texas Municipal League, "right-of-way rental fees constitute nearly 10 percent of many Texas cities general revenues, little of it being spent on ROW maintenance." [5]

Franchise fees are authorized by law, and municipalities tend to describe them as a "rent" paid by utility providers to use the public right-of-way. But the fee is clearly more akin to a tax than it is to rent.

In Houston, for example, the franchise fees on natural gas are based on "5 percent of gross receipts on a rolling 3-year average." The 2014 Houston City Budget indicates that the "FY 2014 natural gas franchise fee estimate is $16.5 million, a decrease of 14.1 percent from FY 2013. The price of natural gas has continued to drop over the last several years, resulting in decreased

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Municipal Franchise Fees Collected by Texas 10 biggest Cities (2008-2013)

	2008	2009	2010	2011	2012	2013 (estimated)	Total 2008-2013
Houston	$183,153,695	$184,221,688	$183,858,504	$184,410,797	$186,643,531	$187,864,432	**$1,110,152,647**
San Antonio	$28,386,813	$29,299,815	$28,976,795	$28,100,000	$29,539,419	$29,656,534	**$173,959,376**
Dallas	$103,823,134	$100,074,542	$90,999,559	$102,352,196	$102,475,420	$103,604,847	**$603,329,698**
Austin	$32,838,832	$30,850,800	$32,513,604	$30,517,389	$30,289,277	$30,195,000	**$187,204,902**
Fort Worth	$39,715,763	$38,390,140	$39,787,303	$44,966,726	$41,376,609	$41,343,822	**$245,580,363**
El Paso	$40,122,253	$43,815,255	$41,285,513	$43,784,209	$43,791,329	$42,184,114	**$254,982,673**
Arlington	$28,925,283	$28,293,626	$30,369,380	$32,702,318	$30,618,948	$30,430,911	**$181,340,466**
Corpus Christi	$17,272,515	$16,071,288	$17,054,727	$16,970,857	$16,576,842	$16,885,700	**$100,831,929**
Plano	$22,628,847	$23,586,444	$21,886,667	$22,770,635	$21,895,025	$22,596,715	**$135,364,333**
Laredo	$6,478,582	$6,499,106	$6,387,908	$6,707,418	$6,785,388	$6,945,543	**$39,803,945**
Total	**$503,345,717**	**$501,102,704**	**$493,119,960**	**$513,282,545**	**$509,991,789**	**$511,707,618**	**$3,032,550,333**

Source: 2014 City Budgets and Open Records Requests

Figures include, when applicable: electric, telecom, gas, and water franchise fees.

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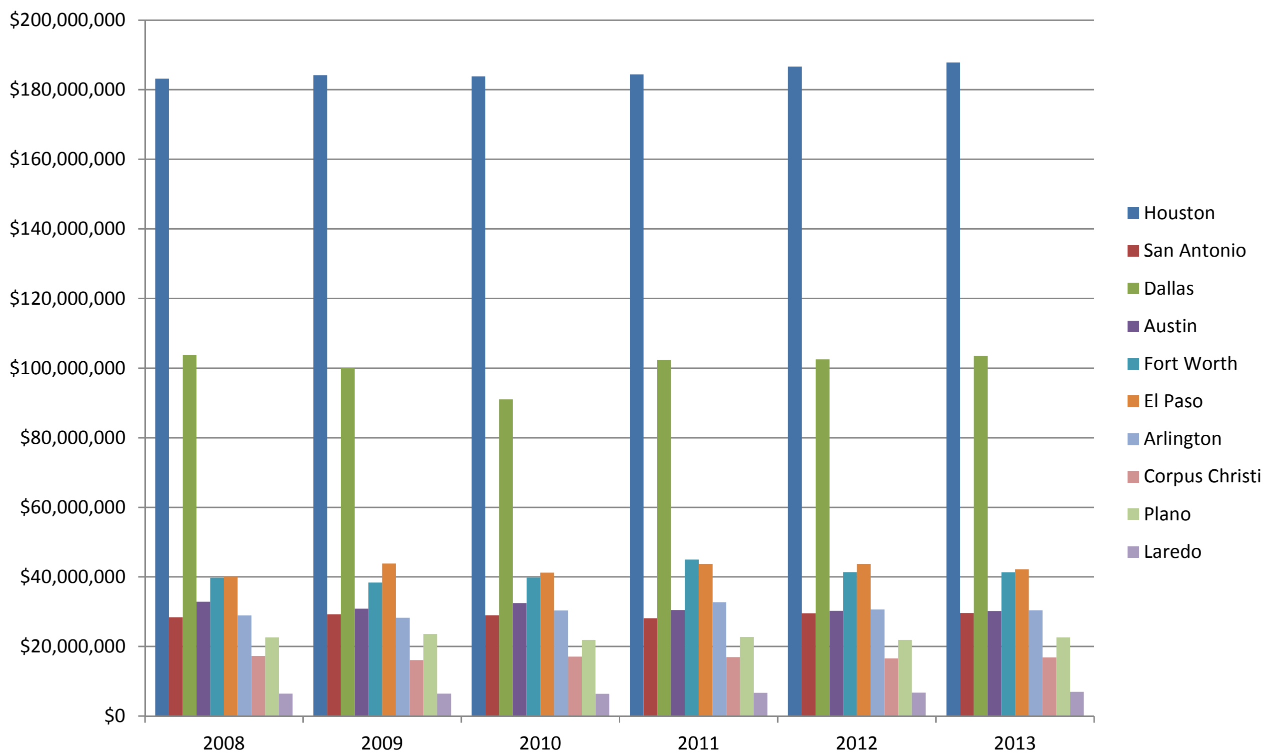

Source: 2014 City Budgets and Open Records Requests
Figures include, when applicable: electric, telecom, gas, and water franchise fees.

gross revenues for CenterPoint, which in turn results in decreased franchise fees."[6] Houston's electric franchise fees correspond to a "base franchise fee to the City of approximately $96 million per fiscal year, payable monthly, which is adjusted annually based on kilowatt-hours delivered in the City."[7] Telephone franchise fees correspond to the application of "an 'access line rate,' assigned by the Public Utilities Commission of Texas (PUCT) and adjusted annually for inflation, to the number of access lines in the municipality reported by each Certified Telecommunications Provider ("CTP") doing business in that municipality."[8] The 2014 Houston city budget reports that the "FY2014 projection of $44.6 million is a 1.1 percent decrease from FY2013's estimate, and is reflective of the continued decrease in the number of access lines being reported by CTPs."[9]

In all of these cases, it is not the use of the public right-of-way per se that determines the amount of revenues the city of Houston will receive from franchise fees, but the actual consumption of the services by consumers.

The ROW is generally created through the police power of the local government, for the benefit of its community. Municipalities are supposed to manage public ROWs in the public's interest, not as landlords that try to maximize the rent they can extract from utility providers and, ultimately, consumers. Modern telecom technology allows several services to use the same wire; in this case, there is no extra space needed and no additional use of the public ROW required for the additional services. Yet, if a phone and an Internet connections use the same wire, the fee is levied on both services.[10]

The way and the proportions in which the fee is levied raise questions on the efficiency, use, and, ultimate reason for the levy. The situation is essentially one in which consumers are paying to use their own property. These charges add up quickly on their bills.[11] Like any additional fee on a product or service, these fees might influence consumers' final decision. This is especially the case the way today's technologies give consumers increased choice in the way they can communicate and receive information.

If consumers already pay for an Internet connection (and its associated ROW fee), they do not necessarily need a landline: they can use any system of VoIP (Voice over Internet Protocol). Better yet, if they have a mobile phone, they might decide to use it instead. This flexibility already has become a concern for cities. An article on the city budget of Las Cruces, NM concludes: "No franchise fees on cell phones adds to city's revenue decline."[12] The 2014 El Paso city budget observes the same trend in the diminution of landlines in favor of cell phones, resulting in a decrease in revenues for the city.[13]

In addition to the impact on consumers' bills, then, the high level of franchise fees also has a marginal effect on franchise fee revenues to cities. The excessive fees can also risk hindering the development and spread of newer technology and of additional services. Disproportionate fees are also a deterrent to entry of additional competitors on the market.[14]

Municipalities are supposed to be the guardians of public interest; there is no reason for them to charge fees beyond what is necessary for them to keep ROW in good standing. Franchise fees should not be maximized at the expense of consumers, but instead based on the marginal cost an additional service adds to the cost of maintenance of the public ROW. ✯

Endnotes

[1] "Explanation of Taxes, Fees, Surcharges and Other Charges on Your Bill," Verizon, accessed 5 May 2014; "Understanding Your Atmos Energy Bill," Atmos Energy, accessed 6 May 2014.

[2] Thomas Hazlett, *Allocating Public ROW Slots,* Texas Public Policy Foundation (Jan. 2007).

[3] City of Dallas 2013-2014 Proposed Annual Budget, Summary of Services By Department (6 May 2014).

[4] City of Corpus Christi FY 2013-2014 Adopted Budget, General Fund (6 May 2014).

[5] "FCC Appoints Task Force to Study Right-of-Way Rental Fees," Texas Municipal League, quoted in Thomas W. Snyder and William Fitzsimmons, "Putting a Price on Dirt: The Need for Better-Defined Limits on Government Fees for Use of the Public Right-of- Way Under Section 253 of the Telecommunications Act of 1996," *Federal Communications Law Journal* Vol. 64, Iss. 1, Article 5 (2011).

[6] City of Houston FY 2013-2014 Adopted Operating Budget Volume I, General Fund Resources Summary (16 May 2014).

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Bill Peacock, *Paying for the Use of the Public Right of Way,* Texas Public Policy Foundation (June 2006).

[11] Pamela Villarreal and Kyle Buckley, *Inequities in Texas Telecom Taxation*, NCPA (26 Nov. 2013).

[12] Steve Ramirez, "No franchise fees on cell phones adds to city's revenue decline," *La Cruces Sun-News* (2 May 2014).

[13] City of El Paso FY 2014 Budget, Franchise Fees (6 May 2014).

[14] Bill Peacock and Jordan Brownwood, *Local Franchise Fees Generate Hundreds of Millions for Cities: Consumers Are Footing the Bill,* Texas Public Policy Foundation (Jan. 2011).

About the Authors

Bill Peacock is the vice president of research and director of the Texas Public Policy Foundation's Center for Economic Freedom. He has been with the Foundation since February 2005. Peacock has extensive experience in Texas government and policy on a variety of issues including, economic and regulatory policy, natural resources, public finance, and public education. His work has focused on identifying and reducing the harmful effects of regulations on the economy, businesses, and consumers. Prior to joining the Foundation, Peacock served as the Deputy Commissioner for Coastal Resources for Commissioner Jerry Patterson at the Texas General Land Office.

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