Texas Public Policy Foundation

Keeping Texas Competitive

A Legislator's Guide to the Issues 2013-2014

Local Right of Way Fees

The Issue

For years, Texas municipalities have imposed franchise fees upon telecom and utilities providers to provide revenue that supports general city expenditures. These fees are much higher than needed to support the use of the city rights of way by these companies. Ostensibly charged as a form of "rent" for use of public right of way to benefit taxpayers of a city, these fees are simply a tax charged to those citizens in their role as consumers.

In 2011, the cost of the right of way (ROW) fees to consumers and businesses in the 10 largest Texas cities was more than $530 million. Since 2008, the cost to consumers has totaled more than $2 billion. Rather than serving as benefit to taxpayers, these excessive fees represent a major cost to consumers, as well as a bar to new competitive entrants into these markets.

The problem is not in the charging of fees for use of public land; however, the revenue generated far exceeds what is necessary to maintain the ROWs. Instead, the money becomes a general use fund for the cities, at the consumers' ultimate expense, and acts as a tax on those who pay for the services that use ROWs.

Despite municipality claims to the contrary, "rent" is an inaccurate way to describe the function of franchise fees. 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 usually created 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.

Today's excessive franchise fees stymie competition and strain consumer budgets. Charging a fee to cover the cost of providing ROW access is appropriate; charging Texas consumers over $2 billion since 2008 to essentially use their own property is not.

The Facts

- Since 2008, Texas municipalities have charged $2 billion dollars in franchise fees to companies for right of way access, a burden ultimately borne by consumers.
- The fees raised far exceed the cost for ROW maintenance.
- The revenue obtained by these fees often goes to entirely unrelated projects.
- GDP grew by just 1.6%.

Recommendation

- ROW fees should be significantly reduced, limited to recouping the marginal cost of using the ROW.

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Resources

The Municipal Right-of-Way Fee: A Heavy Burden on Texas Consumers by Bill Peacock and John Di Pietro, Texas Public Policy Foundation (July 2012).

Local Franchise Fees Generate Hundreds of Millions for Cities, by Bill Peacock & Jordan Brownwood, Texas Public Policy Foundation (Jan. 2011).

Texas Public Policy Foundation

900 Congress Ave., Ste. 400, Austin, Texas 78701 | 512.472.2700 phone 512.472.2728 fax | www.TexasPolicy.com