CITY OF LAREDO
CITY COUNCIL WORKSHOP
CITY OF LAREDO PUBLIC LIBRARY
CONFERENCE ROOM
1120 E. CALTON ROAD
LAREDO, TEXAS 78040

M99-W-05 **M I N U T E S** **March 26, 1999**

I. CALL TO ORDER

With a quorum present Mayor Pro-tem Louis H. Bruni called the meeting to order.

II. ROLL CALL

IN ATTENDANCE:

Louis H. Bruni,	Mayor Pro-tem, District II
Eliseo Valdez,	Councilmember, District V
Joe A. Guerra,	Councilmember, District VI
Mario G. Alvarado,	Councilmember, District VII
Consuelo "Chelo" Montalvo,	Councilmember, District VIII
Gustavo Guevara, Jr.,	City Secretary
Jaime L. Flores,	City Attorney

ABSENCES:

Motion to excuse Mayor Flores, Cm. Agredano, Cm. Galo, and Cw. Moreno.

Moved : Cm. Guerra
Second: Cm. Alvarado
For: 4 Against: 0 Abstain: 0

III. Presentation by Ms. Andrea McWilliams on State Legislative matters relating to Telecommunications and Electrical Utility Restructuring with possible action.

Larry Dovalina gave an overview of the Municipal Franchise Fees. He stated that bills pertaining to telecommunications issues as well as to electric utilities have a significant impact on cities. One area that would be impacted the most is the use of rights-of-way, which traditionally have been regulated by the cities.

Different terminology such as land use agreements, municipal fees, or license agreement have been used to denote franchise fee agreements. In fact, any fees charged by a municipal entity

for land that is held in trust by the city for the community, and it's allowed for private usage (in this case utilities companies) to be used under certain conditions are franchise fees.

Franchise fees constitute the third largest revenue producer for cities; moreover, in our particular case we collect about $8 million/year. If a bill eroding the cities' authority to collect franchise fees gets introduced in the legislation, we will loose revenue, and the loss of revenue will directly impact our taxes. The city will then have the option of either reducing its services or increasing other sources of income in order to make up for the difference. Obviously, increasing taxes would be easier.

Currently, some bills that would take away from cities the ability to collect franchise fees are being considered. On the other hand, bills that will keep the amount of money that cities collect are also being considered. Utility companies and other providers are traditionally trying to get the most that they can for the least amount of money. The franchise documents and the licenses that they use, all describe in detail how these entities should use the rights-of-way.

Most of the bills being sponsored by the different utilities companies want to limit the amount of monies that cities charge, but they also attempt to erode the authority of home rule settings set by the cities to protect the use of the rights-of-way. If the state comes in and allows state-wide franchising, local authority from every city would be eliminated.

A. <u>MUNICIPAL FRANCHISE FEES OVERVIEW</u>

Compensation for use of municipal rights-of-way is required under Art. 3. Sec. 52 of the Texas Constitution. Although the Constitution does not bar standardizing fee structures, compensation should be adequate. Cities must be able to count on franchise fees as a revenue source that enjoys a built-in growth factor. Franchise fees currently amount to between 15 and 30% of municipal general fund revenues; any reduction in these revenues could cause a corresponding increase in property taxes. Generally the rights-of-way use fees have been based on a percentage of the utility monopoly's gross receipts in the city area. Such approach is considered acceptable when monopolies deliver a basic service. For example, state law requires electric utility companies to pay cities at least 2% of their gross receipts. Up until 10 years ago, franchise fees for telephone companies were also based on a percentage of gross receipts; however,

as technological advances allowed for new services such as call-waiting, caller ID, wireless services, etc., the process of what constituted the gross receipts base became more complicated.

B. FRANCHISING

Historically, franchising has been a special right or privilege granted by the state or a city to operate a certain business within the jurisdiction of the entity granting the franchise, which may also authorize the use of the public rights-or-way. Many cities have included in their charters a requirement to have a franchise prior to the use of public rights-of-way, and require compensation for that use. Typically, all city "franchise agreement" takes the form of a contract, as authorized by city ordinance, which is formally signed or accepted by the franchisee. Franchising in Texas, at least in the case of cities, began in the late 1800's with the franchising of ferries and electric trolley cars. By the turn of the century, cities were granting franchises to telegraph and telephone companies, and then to electric and gas companies. The Courts determined that there could be no use of city streets, even by a public utility, without consent from a city.

C. RIGHTS-OF-WAY

In 1858, legislature delegated to incorporated local governments the authority to control the streets. In response to the rise in telegraph technology, in 1874, the state legislature adopted statutes allowing telegraph companies to use the public rights-of-way and authorized cities to regulate the construction, location, and height of the wires in the public rights-of-way within their jurisdictions. Cities were subsequently expressly given the authority to enter into franchise agreements with private entities for public rights-of-way usage, to set conditions for the usage, and to receive reasonable compensation for that use. In accordance with the state law, public rights-of-way in unincorporated areas may be used without any compensation being paid.

D. PUBLIC UTILITY COMMISSION

The Texas Public Utility Commission ("PUC" or Commission) has exclusive jurisdiction in Texas to grant the right to provide telecommunication and electric services. However, the PUC does not have jurisdiction to grant the use of rights-of-way in cities to telecommunication or electric service providers.

E. LEGAL BASIS FOR TELECOMMUNICATIONS FRANCHISE FEE PAYMENTS

Historically, cities have collected fees from utility companies for using city property to place poles, wires, and underground cable. State law (VACS Art. 1175) gives Texas home-rule cities the power to control and receive compensation for the use of any street, alley, or highway by a utility company. In 1978, the PUC ruled that telecommunications utilities could reasonably pass through to customers local gross receipts taxes (ie., franchise fees), but required that the taxes appear as a separate line item on city customer bills. The PUC also ruled that the municipal charge could not apply to ratepayers living outside the city boundaries.

The Texas Public Utility Regulatory Act of 1995 (PURA 95), which revamped telecommunications law to allow for the transition to competition, preserves the historical right of cities from becoming telecommunication providers and prohibits discrimination against a telecommunication utility. The Federal Telecommunications Act (FTA) of 1996 also guarantees the right of state or local governments to manage public rights-of-ways and to receive fair and reasonable compensation on competitively neutral basis. Under the federal statute, state or local jurisdictions may not prevent any entity from becoming a telecommunications provider.

About one-third of the 161 telecommunications operating certificates issued since deregulation have gone to providers that own their facilities. These include Kingsgate, AT&T, MCI Metro, Sprint, GTE, and Southwestern Bell.

Mr. Dovalina commented that what has happened in the telecommunications industry is now about to happen with the electric industry.

Cm. Guerra suggested that we focus more on the issues that potentially would impact us, because if this bill does become norm, we would deal with more than one company. Also he mentioned that the State of California has gone through a electrical power deregulation, and perhaps we could get some information from them.

Mr. Dovalina replied that the California example is the worst example; therefore, Texas State Legislature has stayed away from electrical restructuring because of what happened with the California deregulation implemented three years ago. Texas Legislature has chosen the Pennsylvania example, which just came on line this year, and although it is successful, it is unproved.

Cm. Valdez wanted to know if there was any type of legislation addressing the kind of problems that we are having with CP&L in which they are paying for the rights-of-way, but in turn they are subleasing it. Also, wanted to know if there was any legislation addressing telecommunications issues pertaining to what we have on the bridge and to the hook-up to Mexico.

Mr. Dovalina replied that for both issues it comes down to the contract executed between the city and the corporation providing the service. It depends on how detailed and specific is the contract written. He explained that a common problem deals with old franchises in which the franchise agreements have not been thoroughly revised. For example, the CP&L franchise agreement with the City of Laredo is a two-page contract.

Ms. Andrea McWilliams explained that presently the legislation is considering deregulating the electric market. So they are not yet deregulating the electric market, but are deregulating telecommunications. That's why in this legislative session the municipal franchise fee agreements have become such a big issue on telecommunications. There are several bills addressing that municipalities should retain their ability to collect franchise, and there are also bills eroding the ability to do that. The dangerous thing about that is that if they take away the ability to collect those municipal franchise fees, the cities will have to recoup that money somewhere else.

Ms. McWilliams went over two of the proposed telecommunications bills HB 1614 and HB 1777.

A. <u>MUNICIPAL FRANCHISE AGREEMENTS</u>

For decades the telecommunications industry and municipalities across the state have shared in a partnership allowing citizens to subscribe to an essential service while enjoying revenues received for access to their rights-of-way. In recent years, the Texas Legislature (HB 2128 in 1995) and Congress, (1996 Federal Telecommunications Act) have enacted laws directed at opening the local market to competition among telecommunications utilities. In short, HB 2128 opened up the doors to competition in the telecommunications industry and allowed new entrants into the market while ensuring the municipalities their historic rights to compensation for access. The 1996 FTA opened up local phone serve competition leaving intact the authority of a State or Local government to manage the public rights-of-ways.

Expanding technology and compliance with such laws have

raised questions regarding the continuing effectiveness of the current method of granting such authority to telecommunications utilities, and whether further legislative action should be implemented to better serve the public, cities, and the telecommunications industry.

The Speaker and the Lt. Governor appointed members of the legislature to study these and other municipal franchise-related issues. The Legislative Committee on Municipal Franchise Agreements for Telecommunication Utilities met for two years, collecting information and testimony from citizens, municipalities and telecommunications utilities throughout the stare regarding the current method on municipal franchise agreements. The interim committee also sought to find what effect these agreements were having on the cities and telecommunications cost and revenues. An interim report was published which offered numerous recommendations regarding municipal franchise agreements.

Two important pieces of legislation have been filed on this session as a result of the interim report.

1) HB 1614 by Rep. Bill Carter, R-Ft. Worth relates to the provision of local exchange telephone service in a municipality and the management by the municipality of public rights-of-way used by the providers of that service.

2) HB 1777 by Rep. Steve Wolens, D-Dallas, relates to compensation a municipality may receive from a provider of communication services in a municipality.

B) <u>HB 1614</u>

- Franchise requirement is prohibited if a right-of-way is not used.

- Creates a work group composed of 5 telecommunication utilities (large and small) and 5 municipalities (large and small to submit to the PUC a general use ordinance for use in all franchise agreements. If the work group at a date certain (November 1, 1999) does not submit a general ordinance agreement, or an agreement that does not comply with Chapter 283 of the Local Government Code, the PUC shall develop a general use ordinance.

- The municipality may not collect a franchise fee from the telecommunications provider unless the municipality adopts the general use ordinance and the municipality and

telecommunications provider complies with the ordinance.

- Reselling of services, leasing the facilities of another provider, or interconnecting or transmitting a signal from a wireless carrier to the network of a wireless carrier does not constitute use of a public rights-of-way.

- The municipality collects a franchise fee based on the cost of managing the right-of-way. Costs are delineated in the bill and include:
  a) Regulating the time or location of excavation to preserve effective traffic flow;
  b) Requiring a provider to place its facilities underground, rather than overhead;
  c) Recovery of appropriate share of increased street repair and paving costs;
  d) Enforcing zoning regulations; and
  e) Indemnifying the municipality against any claims of injury resulting from excavation by a provider.

- Municipalities allocate cost among certificated telecommunication providers on the basis of the number of access lines served by the providers and recover costs on a rate from each access line within the right-of-way.

- Municipalities can collect fees from franchises, permits, licenses, and other fees at the rate they received these fees in 1998.

- A municipality can receive more revenues if there is an increase in the number of access lines.

- The PUC determines, annually, the number of access lines in a municipality and may perform audits.

C) HB 1777
- Compensation for use of a public right-of-way includes current fees collected and requires a telecommunication provider to include an amount equal to four percent of the provider's gross receipts from the sales of communication services within the municipality.

- Provides that municipalities may include reasonable compensation from providers who do not use public rights-of-way within the municipality but provide services within the municipality of an amount equal to 2% of the provider's gross receipts from the sale of services within the municipality.

- A municipality by ordinance may require all providers of communication services within the municipality to pay reasonable compensation for the costs to municipalities of exercising police power regulation over the provider. The compensation required may not exceed an amount equal to 1% of the provider's gross receipts from the sale of communication services within the municipality.

- The municipality may not require the provider to pay for any other fee, tax, or charge, including street rental fee, franchise fee, or license, permit, or consent fee for use of public right-of-way, for the right to provide serve within the municipality or for the cost of providing police power over the provider.

- Municipalities may repeal an ordinance authorizing the imposition of charges stated above and adopt a new ordinance that imposes compensation to a provider based on the value of the provider's use of right-of-way. The amount may not exceed the amount equal to the value as determined by a study by the municipality.

- Franchise agreements made before the enactment of the legislation are not affected. Municipalities may continue to enforce agreements and collect franchise fees until their expiration.

D) CURRENT STATUS OF LEGISLATION:

HB 1614 is pending in the Land and Resource Management Committee. It is expected that action on the bill (amended and voted on) will take place on Monday, March 29, 1999. The HB 1777 has been referred to House State Affairs and a hearing is pending.

Local rights-of-way issues were discussed, as well as issues on how the above bills may affect the future of the telecommunications industry.

Ms. McWilliams stated that aggregation elements of electric companies are very important for certain bills. She then explained certain points listed on the summary of Senate Bill 7.

SUMMARY OF SENATE BILL 7 BY SIBLEY (3/25/99)

- S.B. 7 introduces retail electric competition in ERCOT on January 1, 2002 for customers of Investor Owned Utility (IOU).

Non-ERCOT territories will be subject to competition once the PUC determines (i) there is an ISO; (ii) there is a generally applicable tariff that guarantees open and nondiscriminatory access for all users; and (iii) no company owns, operates, or controls more than 20% of the installed generation capacity in the region.

- S.B. 7 requires IOU's to separate their businesses into 3 separate companies: a power generation company; a retail electric provider; and a transmission and distribution utility. Only the transmission and distribution company will continue to be regulated by the PUC after January 1, 2002.

- Rates are frozen at rates in effect September 1, 1999 until January 1, 2002. Excess earnings will be applied against stranded cost liability.

- The PUC is given broad authority to protect consumer rights, including the right to a single bill for all electric services received.

- When competition begins, the utility will cease to sell electricity as a regulated entity.

- A provider of last resort will be designated by the PUC to offer service under a standard package at rates set by the PUC to ensure that all customers are served. The bill includes an anti-"redlining" provision.

- S.B. 7 addresses market power in generation by requiring a capacity auction. Utilities must auction 15% of the output of their installed generation. They may not sell to their affiliated marketer.

- Additionally, by the date of competition, no generating company may own and operate more than 20% of the generating capacity in a qualifying power region. As a result of floor amendments in the Senate, it appears all companies now either meet this threshold or are so close that it is meaningless unless they acquire more generation.

- The PUC is instructed to establish a code of conduct governing the relationship between a regulated utility and its unregulated affiliates.

- Securitization is available for up to 75% of estimated stranded costs (approximately $4.5 billion) and for 100% of qualified regulatory assets (approximately $1.2 billion) at

any time after September 1, 1999. The remainder may be recovered through a non-bypassable charge for no more than 15 years. There will be a true up on stranded costs two years after the start of competition. A market based rate must be used to finalize stranded costs and they may be securitized at that point.

- Utilities may also recover the cost to improve air emissions from their plants as part of their stranded cost program.

- Utilities with negative stranded costs may use those dollars to improve or expand transmission or distribution facilities or to improve air quality. If they choose to do neither, their negative stranded costs are to be returned to their customers.

- The utility affiliate retail electric provider will charge residential and commercial rates which are 5% less than the utility's January 1, 1999 rates. These nondiscountable rates will remain in effect the lesser of 60 month or when 40% of residential and commercial consumption is provided by nonaffiliated providers. This is the "price to beat."

- A system benefit fund, not to exceed 50 cents per MWH, will provide funding for customer education, low income assistance, and property tax replacement.

- The PUC is instructed to adopt rules regarding program to assist low income electric customers through reduced rates and targeted energy efficiency programs.

- S.B. 7 establishes a portfolio requirement for renewable energy. Retail electric providers, municipally owned utilities, and electric cooperatives must obtain a minimum of 1.65% of their annual energy requirements from renewable technologies by 1/1/2003, 2.15% by 1/1/2005, 2.75% by 1/1/2007, and 5% by 1/1/2009. Renewable technologies include solar, wind, and hydro, among others. The PUC will establish a renewable energy credits trading program to enable parties to meet their requirements.

- All customers who have not chosen a new provider on the effective date will be assigned to the utility affiliate. This is a huge windfall for the IOU's.

- The utilities will be unable to offer any product different from the "price to beat" in their own service territory during the transition period, but will be free to compete in other

open territories.

- ERCOT utilities must offer pilots beginning 1/1/2001 for 5% of the load of all customer classes. utilities outside of ERCOT may be required to offer pilots on the same terms.

- Metering does not become competitive until 2 years after the start of competition although a customer may request an additional meter from a retail electric provider during that period.

- The General Land Office is permitted to take its royalty gas in kind and use it to provide electricity to certain state agencies, universities, and schools.

- Cooperatives and municipals can opt in, but are not mandated to participate.

Mr. Dovalina suggested that we should instruct our legislative liaison to continue monitoring the bill, and try to talk to the house committee and see if they can influence the outcome of the meeting. Also, the liaison needs to protect the issues that the city is concerned with, so that any bill that may come out would benefit both the city and the electric industry.

IV. ADJOURNMENT

Motion to adjourn. Adjournment time: 1:20 p.m.

Moved : Cm. Guerra
Second: Cm. Valdez
For: 4 Against: 0 Abstain: 0

I hereby certify that the above minutes contained in pages 01 to 11 are true, complete, and correct proceedings of the City Council Workshop held on March 26, 1999. A certified copy is on file at the City Secretary's Office.

Gustavo Guevara, Jr.
City Secretary

Minutes approved: April 19, 1999