Telecommunications and Rights-of-Way

A Consumer Perspective

American Legislative Exchange Council

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Competition Policy Institute
August 19, 1998

Competition Policy Institute

CPI is an independent, non-profit organization that advocates state and federal policies to bring competition to energy and telecommunications markets in ways that benefit consumers.

- Advised by a committee of leading consumer advocates from across the country.

- Funded by grants from a variety of energy and telecommunications companies and associations.

- Complete information at <www.cpi.org>

Competition in Telecommunications

Why Should Consumers Care?

- Customer Choice
  - Consumers prefer choices rather than monopolies
  - Consumers want choice with simplicity
  - Competition will provide diverse sources of information

Competition in Telecommunications

Why should consumers care?

- New Products and Services
  - New wireless services
  - Faster Internet access
  - New video choices
- Lower Prices
  - Competition will be superior to regulation
  - Consider history of phone equipment and long distance

Inappropriate Local Regulation

Effects on consumers...

- Barriers to entry for some providers
- Higher consumer prices
- Unequal competitive playing field
- Added regulatory costs

Recent History of the Issue

How did we get here?

- Historical telecommunications arrangements
- State telecommunications legislative activity
- Telecommunications Act of 1996
- Growth in municipal regulation and taxation
- Challenges at FCC and in the courts

Language from the Telecom Act

SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Language from the Telecom Act

(c) State and Local Government Authority. Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption. If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

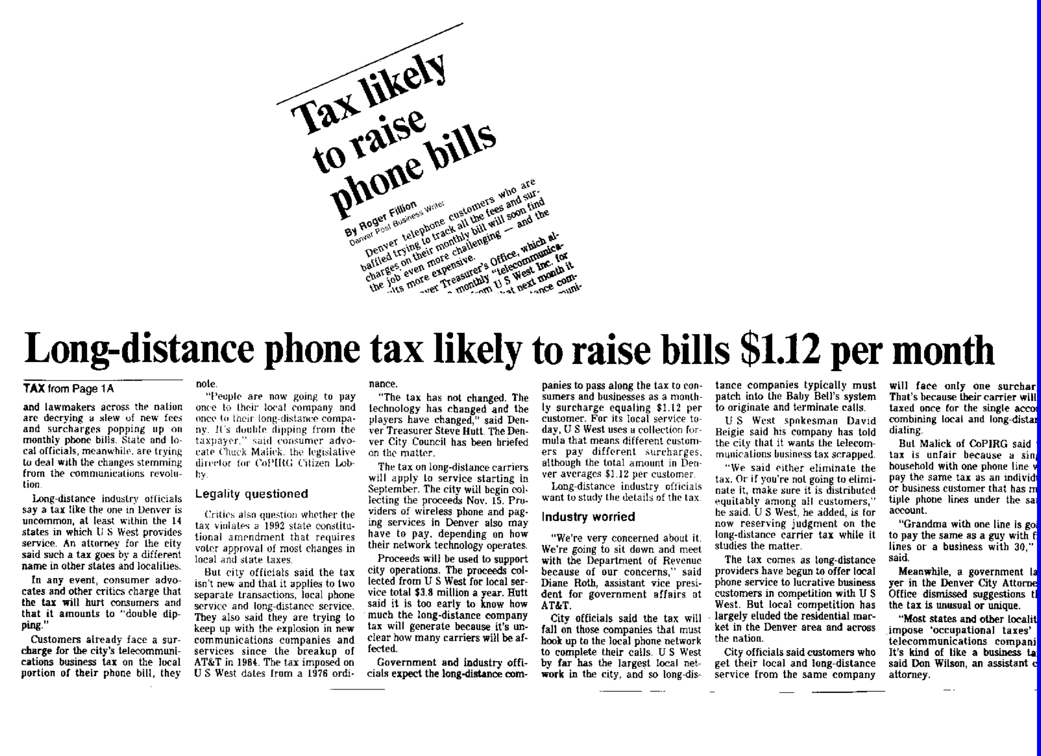
Appropriate R-O-W Management

- Regulating time and place of construction
- Imposing underground requirements
- Imposing fees for costs of maintenance and repair
- Enforcing local zoning regulations
- Requiring carriers to indemnify city against injuries during construction

Some Concerns Illustrated

- Excessive charges
- Most favored nation provisions
- Fees based on interstate revenues
- Fees levied only on new entrants
- Fees levied on resellers w/o facilities
- Fees on wireless carriers who don’t use R-O-W
- Requirements to file prices and terms of service
- In-kind services requirements
- Effective monopoly grants
- Moratoria

Breaking News...



Tax likely to raise phone bills

By Roger Fillion
Denver Post Business Writer

Denver telephone customers who are baffled trying to track all the fees and surcharges on their monthly bill will soon find the job even more challenging — and the lts more expensive.

ver Treasurer's Office, which al- monthly "telecommunica- om U S West Inc. for at next month it ance com-

Long-distance phone tax likely to raise bills $1.12 per month

TAX from Page 1A

and lawmakers across the nation are decrying a slew of new fees and surcharges popping up on monthly phone bills. State and local officials, meanwhile, are trying to deal with the changes stemming from the communications revolution.

Long-distance industry officials say a tax like the one in Denver is uncommon, at least within the 14 states in which U S West provides service. An attorney for the city said such a tax goes by a different name in other states and localities.

In any event, consumer advocates and other critics charge that the tax will hurt consumers and that it amounts to "double dipping."

Customers already face a surcharge for the city's telecommunications business tax on the local portion of their phone bill, they note.

"People are now going to pay once to their local company and once to their long-distance company. It's double dipping from the taxpayer," said consumer advocate Chuck Malick, the legislative director for CoPIRG Citizen Lobby.

Legality questioned

Critics also question whether the tax violates a 1992 state constitutional amendment that requires voter approval of most changes in local and state taxes.

But city officials said the tax isn't new and that it applies to two separate transactions, local phone service and long-distance service. They also said they are trying to keep up with the explosion in new communications companies and services since the breakup of AT&T in 1984. The tax imposed on U S West dates from a 1976 ordinance.

"The tax has not changed. The technology has changed and the players have changed," said Denver Treasurer Steve Hutt. The Denver City Council has been briefed on the matter.

The tax on long-distance carriers will apply to service starting in September. The city will begin collecting the proceeds Nov. 15. Providers of wireless phone and paging services in Denver also may have to pay, depending on how their network technology operates.

Proceeds will be used to support city operations. The proceeds collected from U S West for local service total $3.8 million a year. Hutt said it is too early to know how much the long-distance company tax will generate because it's unclear how many carriers will be affected.

Government and industry officials expect the long-distance companies to pass along the tax to consumers and businesses as a monthly surcharge equaling $1.12 per customer. For its local service today, U S West uses a collection formula that means different customers pay different surcharges, although the total amount in Denver averages $1.12 per customer.

Long-distance industry officials want to study the details of the tax.

Industry worried

"We're very concerned about it. We're going to sit down and meet with the Department of Revenue because of our concerns," said Diane Roth, assistant vice president for government affairs at AT&T.

City officials said the tax will fall on those companies that must hook up to the local phone network to complete their calls. U S West by far has the largest local network in the city, and so long-distance companies typically must patch into the Baby Bell's system to originate and terminate calls.

U S West spokesman David Beigie said his company has told the city that it wants the telecommunications business tax scrapped.

"We said either eliminate the tax. Or if you're not going to eliminate it, make sure it is distributed equitably among all customers," he said. U S West, he added, is for now reserving judgment on the long-distance carrier tax while it studies the matter.

The tax comes as long-distance providers have begun to offer local phone service to lucrative business customers in competition with U S West. But local competition has largely eluded the residential market in the Denver area and across the nation.

City officials said customers who get their local and long-distance service from the same company will face only one surchar
That's because their carrier will
taxed once for the single acco
combining local and long-distan
dialing.

But Malick of CoPIRG said
tax is unfair because a sin
household with one phone line w
pay the same tax as an individu
or business customer that has m
tiple phone lines under the sa
account.

"Grandma with one line is goi
to pay the same as a guy with f
lines or a business with 30,"
said.

Meanwhile, a government la
yer in the Denver City Attorne
Office dismissed suggestions t
the tax is unusual or unique.

"Most states and other localit
impose 'occupational taxes'
telecommunications compani
It's kind of like a business ta
said Don Wilson, an assistant c
attorney.

General Recommendations

- Telecommunications development is a matter of statewide (and national) interest.
- States should guide local governments on the level and character of any taxes, fees or charges imposed on telecommunications services.
- Local regulation of telecommunications should extend only to rights-of-way and issues of public safety.
- Taxes and fees should be reasonably related to the cost of maintaining and providing access to rights-of-way.
- Competitive neutrality should be foremost in any state policy on the issue.

Effective Laws vs. Good Policy

- The Telecommunications Act’s requirements may be clear, but there are constraints on its enforcement.
- Litigation is slow and costly.
- Congress is not likely to act.
- States must provide policy leadership.

Ingredients for Legislation

- Legislative Declaration
  - Matter of statewide interest
  - Pro-competitive purposes
- No additional franchise required
- Local regulation limited to purposes of the legislation
- Access to rights-of-way guaranteed
- Fees, taxes and charges reasonably related to cost
- Non-discriminatory and competitively neutral application of any charges
- Consider Colorado legislation as starting point