

**MINUTES OF THE  
TELECOMMUNICATIONS TAX POLICY SUBCOMMITTEE  
REVENUE AND TAXATION INTERIM COMMITTEE**  
Thursday, October 4, 2001 – 8:30 a.m. – Room 131 State Capitol

**Members Present:**

Sen. Curtis S. Bramble, Senate Chair  
Rep. Wayne A. Harper, House Chair  
Rep. Judy Ann Buffmire  
Rep. David Clark

**Members Absent:**

Sen. Ron Allen

**Staff Present:**

Mr. Bryant R. Howe, Research Analyst  
Ms. Rebecca L. Rockwell, Associate General  
Counsel

**Note:** A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

**1. Call to Order**

Chair Harper called the meeting to order at 8:35 a.m.

**2. Invited Testimony from State and Local Governments and Other Interested Organizations**

Mr. Rick Coleman and Ms. Maria Stahle, Office of the Legislative Auditor General, presented results of an audit of the "9-1-1" emergency communication system. This audit was completed in December 1999. Mr. Coleman told the Subcommittee that the audit recommendations included (1) increasing the state level input and coordination of the "9-1-1" system, (2) improving the fee collection process by centralizing the collection of the fee, and (3) clarifying certain policies regarding use of the "9-1-1" fees.

Mr. Coleman reported that one of the issues highlight by the audit was the diversity between jurisdictions on how the revenues from the "9-1-1" fee are used. The current state law is vague and some local agencies may be using the fees in ways that the Legislature did not intend. For example, should the fee be used to pay for dispatcher salaries or just the equipment required to operate the 9-1-1 fee system? Finally, the report recommended that a process be established to review the current fee structure. He said there is no clear rationale for the current fee of 53 cents per line per month. Wireless and wireline phones pay the same fee, although there are different service levels for these different types of phones. He asked if the fee is intended to fund a statewide emergency communication system or to fund local programs.

Sen. Bramble asked for recommendations on what revenue from the fees should be used for. Mr. Coleman replied that this is policy decision for the Legislature. Mr. Coleman indicated that the state of Texas has a formal allocation system that covers all costs for: first equipment, second personnel, and third other costs; and said this could be a possible model for Utah to follow.

Rep. Clark asked if the vague state law was due to technology changes since the law was written, and whether the purposes for the fees should be specifically defined. Mr. Coleman said that the Legislature should specify what the fees should be used for. Larger PSAPs are able to cover costs that a smaller PSAP cannot cover. Ms. Stahle commented that defining what the fees should be used for is the first step in determining the appropriate fee level.

Rep. Buffmire said that she has had contacts with dispatchers complaining about job stress and burnout and asked whether another fee to cover all the costs should be considered. She said that rural areas will have higher fixed costs. She questioned the extent to which they should be involved in allocating these funds and noted that it is important that any state involvement not make matters worse.

Mr. Bruce Johnson, Commissioner, Tax Commission (Utah State Tax Commission), told the Subcommittee that he agreed with much of the testimony given at the Subcommittee's October 3 meeting. The Tax Commission works hard to make it easy to comply with tax laws. However, it is not easy for telecommunications companies to comply with the various laws and regulations governing the several different taxes and fees they must pay.

Mr. Johnson said that with regards to property tax valuation methodologies, the unitary methodology has been consistently upheld by the courts as a valid method for determining the value of certain companies. The unitary method does capture some intangible value but every effort is made to separate that value from the final valuation decision. If a taxpayer is able to clearly identify an intangible value, it is removed. However, it is a difficult process to remove all intangible value. There is no doubt that intangibles are not subject to the property tax and the Tax Commission does its best not to include these values. He said county assessors are the most vocal supporters of the unitary assessment method and if the responsibility for assessment of utilities was to be transferred to the counties, county assessors could also use the unitary methodology. He commented that while progress is being made, disputes still occur and they probably always will.

Rep. Buffmire asked Mr. Johnson if the tax commission was willing to collect the "9-1-1" fee in addition to the poison control fee. Mr. Johnson said that the Tax Commission was willing to collect this fee if directed to do so by the Legislature.

Mr. Johnson recommended that the Legislature enact legislation to conform state laws with the federal Mobile Telecommunications Sourcing Act.

Mr. Paul Morris, City Attorney, West Valley City, and Mr. Roger Tew, Consultant, appeared before the Subcommittee on behalf of the League (Utah League of Cities and Towns).

Mr. Morris told the Subcommittee that the League wants to create a database of every address in the state. This database would be created and maintained by the League but would be accessible to industry. With a centralized database, the industry can access address information and apply the correct rates and make the correct payments. He said the recently enacted Federal Mobile Telecommunications Sourcing Act calls for such a system. As the protocols for this data system are being developed nationally, this Utah database will be based on these national protocols.

Rep. Harper asked about single source of payment of fees. Mr. Morris suggested that an interlocal entity be created to receive the payment and disburse to the cities. Mr. Tew said that taxpayers would also be afforded audit protection and compliance protection through the use of the database system. Taxpayers would also be held harmless for any errors caused by use of the database.

Mr. Dave Thomas, Chief Civil Deputy, Summit County, appeared before the Subcommittee representing the Utah Association of Counties. He stated that counties are at a disadvantage with regards to collecting revenue from use of right-of-ways. For example, Chalk Creek road in Summit County is a major right-of-way for east-west cables and fiber optic lines. However, these right-of-ways are quickly being filled at the preclusion of other pipes for gas, water, sewer, for which they were originally acquired. Counties in Utah cannot levy a franchise tax. Counties would like ability to do what cities are allowed to do. Right-of-ways are being used and it would be preferable to acquire new right-of-ways without having to use General Fund revenues. He asked whether it would be a violation of federal law to deny access to right-of-way due to capacity limitations. Federal law requires that all utilities be required to be treated the same. This could be a source of future litigation. He stated there is some question as to whether or not "fair and reasonable compensation" includes the ability to acquire future right-of-ways.

Mr. Thomas noted with regards to "9-1-1" fees, the counties have always supported a consolidated system with one dispatch center per county. Existing state agencies are already in place for any coordination services of "9-1-1." In addition, the current fee of 53 cents may be too low. Emergency dispatch services are being subsidized by general county revenues.

Mr. Jim McMinimee and Mr. Neal Christensen appeared before the Subcommittee representing the UDOT (Utah Department of Transportation). Mr. McMinimee discussed the fees imposed on telecommunications on state routes are for administrative cost and inspection fees. He noted that this is on state highways only, not interstate freeways and that there are different fees for relocation of existing utility lines

Mr. McMinimee stated that prior to the federal Telecommunications Act of 1996, federal law did not allow any encroachment by utilities on interstate highways. During its 1999 General Session, the Legislature enacted legislation to allow UDOT to impose fees for use of interstate highway right-of-ways. Access only applies to telecommunications providers. UDOT may receive compensation in the form of cash or in-kind services or capacity and if it receives cash, those funds are deposited in the State Transportation Fund.

Rep. Clark asked about testimony that the Subcommittee received on October 3 from a telecommunications company regarding about a high right-of-way fee that it was required to pay to use a interstate highway right-of-way. Mr. Christensen replied that all of the interstate right-of-ways were evaluated by land values and "cross the fence" comparison, discounted 40 percent, then allocated in five zones. There is a specific formula for which a provider can determine the cost per mile, and there is also a 10 percent return value.

Rep. Clark asked if there is an ongoing revenue stream or a only one-time charge. Mr. Christensen said it depends on how the utility prefers to structure the payments. Under current law, these payments may include an in-kind value that must be equal to a cash value.

Mr. Wes Quinton, Vice President, Utah Taxpayers Association, addressed the Subcommittee regarding the \$1 per month fee. He stated that he has been researching whether legislative authority exist for the \$1 per month cell phone tax. He said he believes that, at best, the authority is questionable and, at worst, there is no authority.

Mr. Quinton said that a cell phone is a type of radio service, not a traditional telephone service described in state law. If the Legislature determines that cell phones should be taxed, then the Legislature should determine what the rate should be, for example, would it include just local services, or roaming and long distance services. An industry should not be taxed just for the sake of revenue enhancement. Any legislative action should include simplification measures and a consolidation of fees and taxes and show caution about increasing the "9-1-1" surcharge. These earmarked taxes never lead to a reduction in General Fund taxes.

Rep. Buffmire said that most consumers consider cell phones to be a type of telephone service, not a radio service.

Sen. Bramble agreed that earmarked tax revenues never reduce the need for General Fund tax revenues.

Mr. Jeff Fox, Utah Consumers Agenda, told the Subcommittee that he was on the rights-of-way task force and asked how effective are these fees in promoting competition. The first recommendation was \$500 per mile in rural areas, \$1000 per mile in suburban areas, and \$1500 for urban areas. But the final recommendation was much different. One of the issues for the Subcommittee are fees on right-of-ways in interstate systems.

## **2. Subcommittee Discussion and Direction for Future Action**

Chair Harper summarized the testimony given to the subcommittee today and on October 3. He stated that there are both short-term and long-term issues to be addressed. Some of these issues include

1. Are Utah tax policies treating all businesses equitably? Does the unitary method of assessment for property tax purposes improperly capture intangible values?
2. Are municipalities and counties appropriately imposing fees for use of public right-of-ways? Should these fees only be used to pay for the administrative costs associated with the use of the right-of-way or should local jurisdictions also be allowed to collect "rent" for use of right-of-ways?
3. Should counties be given authority to impose franchise fees?
4. Should "9-1-1" fees be considered as "General Fund revenues" or "dedicated revenues"? Should local jurisdictions use "9-1-1" fee revenues for public safety dispatching costs in addition to the cost of "9-1-1" equipment?
5. Should state government take a more active role in coordinating "9-1-1" services across the state through UCA-DPS or Comprehensive Emergency Management?
6. Telecommunications companies pay taxes and fees to: (a) every local jurisdiction in which it operates, (b) the Tax Commission, and (c) the PSC (Utah Public Service Commission). Should these various fees and taxes be consolidated into one tax? Should there be a single point of collection, such as the Tax Commission?

7. What changes to Utah law are needed to conform with the federal Mobile Telecommunications Sourcing Act?
8. Does Section 11-26-1, Utah Code, give municipalities the authority to impose the \$1 per month fee on mobile telephone service?
9. Should a centralized customer address database be established for use by telecommunications companies to simplify the collection of taxes and fees imposed by local jurisdictions. If so, is this a substitute or a complement for single point collection and consolidation of taxes and fees?
10. Should Section 10-1-203.4, Utah Code, be either modified or repealed?
11. Should the state establish a repository for municipal franchise fees and tax ordinances at either the PSC or the Tax Commission? (This would be repository of all local laws and ordinances imposing a tax or fee that a telecommunications company is responsible for collecting or remitting.)
12. Should telephone bills be used to collect money to pay for social programs?
13. Should Section 69-2-5, Utah Code, be amended to make it uniform?
14. Should the PSC regulate the mobile telecommunications industry? Should the PSC end regulation of the "land line" telecommunications industry?
15. Should telephone companies be charged a gross receipt tax instead of a property tax?
16. Should sales of telecommunications equipment be exempt from the sales and use tax?
17. Does the Legislature need to refine statutory regulation to prohibit "right-of-way fees" and incorporate that revenue into the franchise fee to recover costs of right-of-way administration?
18. Is UDOT's rule governing charges for use of interstate highway right-of-ways and Section 72-7-108, Utah Code, appropriate and equitable? Are changes needed to either the statute or rule?

Chair Harper suggested that the Subcommittee discuss and prioritize these issues at its next meeting. He also asked the League for more information on the proposed address database.

Rep. Clark noted that the industry has expressed concerns about the property tax issues. This should also be discussed, but maybe not in the short-term.

Chair Harper suggested that Subcommittee members call staff with any other study items.

Sen. Stephenson asked if the Subcommittee would like the parties to meet and try to develop some consensus items. Chair Harper agreed with this suggestion.

Minutes of the Telecommunications Tax Policy Subcommittee  
October 4, 2001  
Page 6

The Subcommittee scheduled its next meetings for October 25, 2001 at 8:30 a.m. and November 13, 2001 at 1:00 p.m.

**MOTION:** Rep. Buffmire move to adjourn. The motion passed unanimously.

Chair Harper adjourned the meeting at 11:00 a.m.

