



## CITY OF PORTLAND, OREGON

### Office of Cable Communications and Franchise Management

Dan Saltzman, Commissioner  
David C. Olson, Director

1120 S.W. Fifth Ave., Room 1305 • Portland, OR 97204  
Phone: 503-823-0039 • Fax: 503-823-5370 • TDD: 503-823-6868  
[www.portlandonline.com/cable](http://www.portlandonline.com/cable)

November 24, 2008

TO: Mayor & City Council  
THROUGH: Commissioner Dan Saltzman  
FROM: David C. Olson, Director  
SUBJ: Office of Cable Communications & Franchise Management  
PCC Chapter 7.14 ULF housekeeping amendments

#### EXECUTIVE SUMMARY

City Code Chapter 7.14, the Utility License Fee or "ULF", provides a substantial component of the City's General Fund. The ULF has been in place since the 1940's and has not been substantively revised since July, 1990. The current Code contains significantly outdated language. For example, it still refers to telegraph and steam, utility services that have not operated for years. The current ULF lacks orderly procedures for administration, collections, financial review, and appeal. Commissioner Saltzman directed the Cable Office to revise the ULF to conform to current City practices ***WITHOUT any substantial change in the scope of the current ULF.*** After more than a year of work and consultation with industry, the Cable Office is proposing various housekeeping amendments. ***Council adoption of these housekeeping revisions will not create a greater or lesser class of ULF payers than exists under the existing ULF.*** With favorable Council action, the revised and updated ULF procedures will improve the program from an administrative standpoint, and provide more detailed procedures for the ULF, consistent with the City's business license program.

Attached to this memorandum are the proposed PCC Chapter 7.14 ULF housekeeping amendments as filed (Attachment A), the current form of PCC Chapter 7.14 (Attachment B); and summarized comments from industry with staff responses where applicable (Attachment C).

#### OVERVIEW OF LEGAL BASIS, PROCESS, GOALS & MAJOR ISSUES

1. Council's legal basis for Utility License Fee program. Portland's City Charter allows the Council to impose licenses to raise revenues, or for regulatory purposes, or both. City Charter 2-105(a)(17). The City Council has exercised this authority through both the Business License Law under PCC Chapter 7.02 and the Utility License Fee under PCC Chapter 7.14.
2. Limits under federal and state law are not generally applicable to the ULF. The ULF is not an exercise of statutory authority "provided" or delegated to the City by state or federal law. Therefore, the City is not required to "track" authority provided by Oregon statute, as noted in the Oregon Court of Appeal's decision in the *Eugene v. AT&T* case. Federal constraints governing fees assessed specifically on telecommunications providers under the 1996 Federal Telecommunications Act are similarly not applicable. The City has successfully defended the ULF against multiple legal challenges in recent years.
3. ULF compared to the Business License Law ("BLL"). The BLL is a tax on net income upon entities doing business in the City of Portland. The ULF is a tax on the gross revenues of utilities operating

within Portland. The BLL is administered by the Revenue Bureau, while the ULF is administered by the Cable Office. The City Council in 1986 determined to house the ULF and franchising programs together in the Cable Office, providing a single point of contact at the bureau level for all utilities, including those that may be subject to both franchising and ULF requirements. Payments to the City under the ULF are not "double-taxed". There is an offsetting exemption under the Business License Code for revenues subject to the ULF. PCC 7.02.400. Revenues which are subject to a franchise fee are generally allowed to be deducted against a utility's tax calculations under the ULF.

4. The ULF should be updated to be consistent with Business License procedures. The Council has updated the BLL numerous times over the years to provide orderly administration, collections, financial review and appeal procedures. The ULF has not been procedurally updated in many years. The current form of the ULF does not reflect the standardized administrative provisions which characterize the BLL. It has become apparent in the City's successful defense of various legal challenges to its franchising and ULF programs that the ULF should be updated to include standardized provisions, similar to the BLL.
5. Commissioner Saltzman directed the Cable Office to draft housekeeping amendments to the ULF without expanding or contracting its scope. In 2007, Commissioner Saltzman directed the Cable/Franchise Office to complete the narrow task of developing necessary ULF "housekeeping" amendments to update and modernize the ULF Code to be consistent with other City programs, including the BLL. Commissioner Saltzman specifically charged the Office to not substantially change the scope of the existing ULF, nor substantially alter the ULF's application to the existing class of utilities subject to the ULF.
6. Review of ULF housekeeping amendments with industry and ULF payers. The Office has reviewed the housekeeping amendments with ULF payers, utilities, and interested parties throughout the past year, including hosting meetings and providing for multiple periods of review and comment. Industry comments have provided helpful suggestions and improvements for the draft ULF housekeeping amendments. Some industry comments, however, appeared designed for other purposes, such as questioning the scope and underpinnings of the existing ULF. Even in the final round of comments, several industry commenters re-argued legal positions challenging the ULF as currently constituted, and posing indirect challenges to the City's Business License program (on which the administrative procedures of the ULF housekeeping amendments have been largely modeled).

#### CONCLUSION.

The Office of Cable Communications & Franchise Management looks forward to favorable Council action on the ULF housekeeping amendments. Please let me know if you have any questions.

#### Attachments:

- A. PCC Chapter 7.14 Housekeeping Amendments (Ordinance to be filed for 12/10/08 Council First Reading) (10 pages)
- B. PCC Chapter 7.14 – Current ULF Code *for reference* (un-amended) (5 pages)
- C. Industry Comments & Cable/Franchise Office Staff Responses (7 pages)

**ATTACHMENT A**  
**PCC Chapter 7.14 ULF Housekeeping Amendments**  
*To be filed for First Reading, City Council, December 10, 2008*

**ORDINANCE No.**

Update Public Utilities code policies and practices (Ordinance; replace Code Chapter 7.14)

The City of Portland ordains:

**Section 1.** The Council finds:

1. City Code Chapter 7.14 the Utility License Fee or "ULF" has been in existence since the 1940's and has not been substantively revised since 1989. Among other things, the current Code Chapter still refers to telegraph and steam utilities that have not operated within the City for a number of years. Outdated Code language also exists in the areas of administration, collections, financial review, and appeal.
2. The ULF Code provisions should be revised to conform to current City practices and provide processes and procedures for ULF Licensees consistent with other City programs including the City's business license program.
3. Revenue from the ULF remains a substantial component of the City's General Fund.

NOW, THEREFORE, the Council directs:

- a. Effective January 15, 2009 Chapter 7.14, Public Utilities, is hereby amended by substituting the following chapter for existing Chapter 7.14:

**Chapter 7.14 Utility License Law**

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**7.14.005 Short Title.**

Chapter 7.14 of the Portland City Code shall be known as the Utility License Law.

**7.14.010 Fees for Revenue.**

The term "license" as used in the Utility License Law shall not be construed to mean a regulatory permit. The fees prescribed in the Utility License Law are for general revenue purposes and are not regulatory permit fees.

**7.14.020 License Required.**

Any person, including any bureau of the City, operating a utility within the City shall obtain a license for such business covering the period of the calendar year, from January 1 through December 31, or if application is made after January 1 of any year, then for the balance of the same calendar year.

**7.14.030 Administration.**

- A. The Utility License Law shall be administered by the Director. The Director may adopt procedures, forms, and written policies for administering the Utility License Law.
- B. Authority granted to the Director may be delegated, in writing, to employees or agents of the Bureau.
- C. The Director may, upon request, issue written interpretations of how the Utility License Law applies in general or to specific circumstances.
- D. Nothing in the Utility License Law precludes the informal disposition of controversy by the Director in writing, whether by stipulation or agreed settlement.
- E. The Director may implement procedures, forms, and written policies for administering the provisions of the Utility License Law.
- F. The Director may adopt rules relating to matters within the scope of this Chapter to administer compliance with Utility License Law.
  - 1. Before adopting a new rule, the Director must hold a public hearing. Prior to the hearing, the Director will notify Licensees. Such notice, which may be provided by mail or electronic means, must be distributed to Licensees not less than ten nor more than thirty days before the hearing. The notice must include the place, time and purpose of the public hearing, a brief description of

the subjects covered by the proposed rule, and the location where copies of the full text of the proposed rule may be obtained.

2. At the public hearing, the Director will receive oral and written testimony concerning the proposed rule. The Director will either adopt the proposed rule, modify, it or reject it, taking into consideration the testimony received during the public hearing. If a substantial modification is made, additional public review will be conducted, but no additional public notice is required if an announcement is made at the hearing of a future hearing for a date, time and place certain at which the modification will be discussed. Unless otherwise stated, all rules are effective upon adoption by the Director. All rules adopted by the Director will be filed in the Bureau's office. Copies of all current rules will be posted on the Bureau's website and made available to the public upon request.

3. Notwithstanding Subsections 1 and 2, the Director may adopt an interim rule without prior public notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, stating the specific reasons for such prejudice. An interim rule adopted pursuant to this Subsection is effective for a period of not longer than 180 days.

#### **7.14.040 Definitions.**

**A. "Bureau"** means the Office of Cable Communications and Franchise Management of the City of Portland, Oregon, along with its employees and agents, or such other bureau as the City Council may designate.

**B. "Director"** means the Bureau Director.

**C. "Exchange access services"** means:

1. Telephone exchange access lines or channels which provide local access from the premises of a subscriber in the City to the local telecommunications network to effect the transfer of information; and

2. Unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in Subsection 1.

**D. "Gross revenue"** means any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts, from the sale of electrical energy, gas, district heating or cooling, or water, or sewage disposal and treatment service, and for use, rental, or lease of operating facilities of the utility engaged in such business, from the furnishing or sale of communications or associated services by or from a telecommunications or cable communications business.

1. Gross revenue of a telecommunications utility means revenues derived from exchange access services.

2. Gross revenues do not include proceeds from:

a. The sale of bonds, mortgages, or other evidence of indebtedness, securities, or stocks, or sales at wholesale by one utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer; or

b. Public purpose charges collected by a utility selling electrical energy or gas. For purposes of this Subsection, "public purpose charges" means a charge or surcharge to a utility customer that the utility is required or authorized to collect by federal or state statute, administrative rule, or by tariff approved by the Oregon Public Utility Commission, that raises revenue for a public purpose and not as compensation for either the provision of utility services or for the use, rental, or lease of the utility's facilities within the City. "Public purpose" includes energy efficiency programs, market transformation programs, low-income energy efficiency programs, carbon offset programs and other types of programs designed to benefit utility customers within Oregon and the City.

**E. "Licensee"** means any person or entity coming within the provisions of the Utility License Law, whether or not application has been made or a utility license has been issued.

**F. "Telecommunications utility"** has the meaning provided in ORS 759.005(9) (2007).

**G. "Utility"** means the business of supplying electrical energy, gas, district heating or cooling, water, cable, communications, or other services through or associated with telecommunications utility, telephone or coaxial cable, sewage disposal and treatment, and other operations for public service but does not include transportation service, railroad operations, or services otherwise licensed under this Title.

#### **7.14.050 Application and Issuance.**

**A.** Any person, including any bureaus of the City, operating a utility coming within the provisions of the Utility License Law shall file an application for a utility license on forms supplied by the Bureau.

**B.** A person is not required to apply for or obtain a utility license if all its revenues earned from operations as a utility otherwise meet the criteria for deduction under Section 7.14.070. The Director may exercise the authority under Section 7.14.080 to require reports and review records to determine whether revenues are qualified for deduction under Section 7.14.070.

**C.** Applications for utility licenses shall be filed with the Bureau on or before December 31 for each subsequent calendar year. In the case of any person operating a utility coming within the provisions of the Utility License Law which commences operations within the City after January 15, 2009, the person operating such utility shall apply for a utility license on or before the date of commencing such operations. The application shall include such information as the Director may require in order to determine whether the utility has paid the license fee owed.

D. Upon receiving a completed application, together with any payment due, the Director shall issue a utility license to the applicant. A utility license shall be valid for no longer than one year. Each utility license shall expire on December 31 of the year of issuance.

E. The Director shall prepare application forms and make them publicly available. Failure to receive or secure a form shall not relieve any person from the obligation to obtain a license and pay a license fee under the Utility License Law.

**7.14.060 Fees and Payment.**

A. Except as provided in Sections 7.14.065 and 7.14.070, the fee for a utility license shall be measured by a percentage of the gross revenues earned by the utility for each quarter year period of licensed operation. The percentage for each type of utility shall be as follows:

Electrical Utility	5.0 percent
Gas Utility	5.0 percent
Sewer Utility	7.5 percent
District Heating or Cooling Utility	5.0 percent
Water Utility	7.5 percent
Telecommunications Utility	7.0 percent
Cable Communications Utility	5.0 percent

The licensee shall compute the license fee by multiplying the percentage applicable to the type of operation in which such utility engages, by the gross revenues received during the quarter.

B. The licensee shall pay the utility license fee to the Bureau on the following basis: on or before May 15 the fee for the period extending from January 1 through March 31, inclusive, of the same calendar year; on or before August 15 the fee for the period extending from April 1 through June 30, inclusive, of the same calendar year; on or before November 15 the fee for the period extending from July 1 through September 30, inclusive, of the same calendar year; on or before February 15 the fee for the period extending from October 1 through December 31, inclusive, of the preceding calendar year. All such payments shall be subject to the deductions set forth in Section 7.14.070.

C. A licensee commencing operations as provided in Subsection 7.14.050 C. shall make the initial payment to the Bureau on or before the payment date following the first quarter year period after commencing operations. In the event a licensee terminates operations which come within the provisions of the Utility License Law, the final payment shall be made on or before the 45th day following the date of such termination.

**7.14.065 Limitations.**

In any single year, the license fees paid by City of Portland water and sewer utilities shall not exceed \$12,809,321 from the City's sewer utilities, and \$4,184,153 from the City water utility until those fee payments equal 5% of gross revenues at which point they will increase to equal 5% of gross revenues those fees. The directors of the Bureau of Environmental Services and

Portland Water Bureau are authorized to adopt administrative rules establishing mechanisms to implement this limitation.

#### **7.14.070 Deductions.**

**A.** A licensee may deduct from the utility license fee required in the Utility License Law the amount of any payments made or accrued to the City for the period upon which the utility license fee is computed, under any provision of franchise, permit, or ordinance in lieu of franchise granted by the City Council. A licensee may not deduct amounts paid to the City for interest charges or penalties. This Subsection shall not relieve any licensee from paying in accordance with the provisions of a franchise, temporary revocable permit, Charter provision or ordinance when the amount to be paid thereunder exceeds the amount of the utility license fee required under the Utility License Law.

**B.** A licensee may not deduct from the utility license fee the value of any right given to City to use poles, conduits, or ducts to other facilities in common with the licensee. A licensee may not deduct from the utility license fee any permit or inspection fee imposed under any Code provision or ordinance of the City.

#### **7.14.080 Reports and Review of Records.**

**A.** Each person paying a utility license fee shall simultaneously file a report to the Bureau in a form satisfactory to the Director. The report shall show the licensee's calculations of the license fee, the licensee's gross revenues earned within the corporate limits of the City, and any deductions against the licensee's gross revenues or the amount of the utility license fee. Such reports shall be verified by the licensee or an authorized agent to the effect that all statements made therein are true.

**B.** If a person asserts that any provision of federal, state or local law imposes a limit upon the amount of utility license fees which the City may impose or require from a licensee, the licensee claiming to be within such limitation shall identify in its utility license fee report the specific federal, state or local law, and the service it provides that it claims is subject to the exception.

**C.** Every person required to be licensed under the Utility License Law shall keep and preserve for not less than three (3) years such documents and records, including state and federal income or excise tax returns, accurately supporting the information required to be reported on the licensee's application and calculation of utility license fee for each license year.

**D.** The Director shall have authority to arrange for and conduct reviews of all financial records relevant to the calculation of a licensee's payments to the City under the Utility License Law. The Director shall make all requests for review in writing. The Director may determine the scope of review in each instance.

**1.** The Director may examine any books, papers, records, invoices, and other data needed to determine the accuracy of any license fee due. Such records and documentation shall be open



for inspection or examination by the Director or a duly authorized agent. The Director shall have the authority, after notice, to:

- a. Require the attendance of any person required to be licensed under the Utility License Law, or officers, agents, or other persons with knowledge of the person's business operations, at any reasonable time and place the Director may designate;
- b. Take testimony, with or without the power to administer oaths to any person required to be in attendance. The Director may designate employees who shall have the power to administer oaths. Such employees shall be notaries public of the State of Oregon; and,
- c. Require proof for the information sought, necessary to carry out the provisions of the Utility License Law.

2. If a licensee has not provided copies of all information reasonably within the scope of the review to the Director within 30 days from the date of the written request, the licensee shall provide the Director with access to the requested records within the Portland metropolitan region, during normal business hours, upon 48 hours prior written notice.

3. If the Director requests in writing that the licensee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and the licensee fails, refuses or neglects to provide copies within 30 days of receipt of the Director's written request, then the three (3) year periods under Subsections 7.14.080 C. and 7.14.120 A. shall be extended by one day for each day or part thereof beyond 30 days that the licensee fails to provide, or fails to cause to be provided, such requested information.

4. If any licensee fails, refuses or neglects to provide or make records available to the Director for determining the amount of utility license fees due or payable, the Director may determine the amount of the utility license fees due or payable based upon readily-available facts and information. The Director shall notify the licensee in writing of the amount of such fee so determined, together with any penalty or interest due. The total of such amounts shall thereupon become immediately due and payable. The licensee may seek to establish the correct amount by appeal to the Code Hearings Officer under Section 7.14.090. In such an appeal, the licensee shall have the burden of establishing that the Director's determination is incorrect, either in whole or in part.

**7.14.085 Refunds by City to Licensee.** Whenever the amount of any utility license fee, penalty, or interest has been erroneously collected or paid to the Bureau under the Utility License Law, it may be refunded, provided the licensee files with the Bureau a verified claim in writing therefor, stating the specific reason upon which the claim is founded, within 3 years from the date of payment. The claim shall be made on forms provided by the Bureau. If the claim is approved by the Bureau, the excess amount collected or paid may be credited against any amounts due and payable under the Utility License Law from the licensee from whom the overpayment was collected or by whom it was paid, until the licensee is repaid.

**7.14.090 Appeals.**

A. Any person who has received a written determination from the Director applying the provisions of the Utility License Law may appeal such determination of the Director to the Code Hearings Officer of the City as provided in Chapter 22.10 of this Code.

B. The filing of any notice of appeal shall not stay the effectiveness of the Director's determination unless the Code Hearings Officer so directs.

**7.14.100 Interest.**

A. If a person fails to pay to the City all or any part of the utility license fee on or before the date on which the fee is due, interest shall be due on the entire unpaid amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original due date of the fee to the 15<sup>th</sup> day of the month following the date of payment. Payment of interest charges shall be due at the same time as the unpaid utility license fee is due.

B. For purposes of calculating interest under Subsection 7.14.100 A., the amount of the utility license fee due shall be reduced by the amount of any fee payments received by the Bureau on or before the due dates for fee payment established in the Utility License Law.

C. Interest amounts properly assessed in accordance with this Section may not be waived or reduced by the Director.

**7.14.110 Civil Penalties.**

A. The Director may assess civil penalties for any of the following violations of the Utility License Law:

1. Any failure to file a license application at the time required under the Utility License Law;
2. Any failure to pay the utility license fee when due;
3. Any failure to file a utility license fee report when due;
4. Any failure to provide or make available all books, financial records, papers, invoices, documents, data and related information when required by the Director; or,
5. For any person to make any false statement on any license application or utility license fee report or to provide false information in any investigation or audit conducted pursuant to the Utility License Law.

B. The Director may assess civil penalties for any violation under Subsection 7.14.110 A. of up to two percent (2%) of the utility's gross revenues subject to the Utility License Law for the period during which the violation occurred.

C. In assessing civil penalties under this Section, the Director shall produce a written decision, identifying the violation, the amount of the penalty, and the basis for the decision. In making such determination, the Director shall consider the following criteria:

1. The extent and nature of the violation;
2. Any benefits to the licensee and any impacts to the City or the general public, financial or otherwise, resulting from the violation;
3. Whether the violation was repeated and continuous, or isolated and temporary;
4. Whether the violation appeared willful (characterized primarily by substantial acts of commission) or negligent (characterized primarily by substantial acts of omission);
5. The magnitude and seriousness of the violation;
6. The City's costs of investigating the violation and correcting or attempting to correct the violation; and,
7. Any other factors the Director deems relevant in the particular case.

D. The Director may waive or reduce any civil penalty for good cause, according to and consistent with written policies.

#### **7.14.120 Collection of Delinquencies.**

A. Upon written approval of the Commissioner in Charge, the Director may have the City Attorney institute legal proceedings in the name of the City to collect any utility license fee or any amount of fee, interest or civil penalties. Any collection action must be filed within three years after the amount required to be collected becomes due and payable to the City, or within three years after any written determination by the Director becomes final, that is otherwise subject to appeal under Section 7.14.090.

B. In addition to other enforcement authority, upon written approval of the Commissioner in Charge, the Director may have the City Attorney institute legal proceedings to enforce the Utility License Law or any determinations made by the Director under the Utility License Law.

#### **7.14.130 Confidential Financial Information.**

Except as otherwise required by law, the Bureau, the Auditor, or any officer, employee, or agent of the City, shall not divulge, release, or make known in any manner any financial information submitted or disclosed to the Bureau under the Utility License Law. Nothing in this section shall be construed to prohibit:

A. The disclosure to, or the examination of, financial records by City officials, employees or agents for the purpose of administering or enforcing the terms of the Utility License Law, or

collecting utility license fees imposed under the terms of the Utility License Law, or collecting City business license fees;

**B.** The disclosure to the utility licensee or its authorized representative of its financial information, including amounts of utility license fees, penalties, or interest, after filing of a written request by the utility licensee or its authorized representative and approval of the request by the Director;

**C.** The disclosure of the names and addresses of any persons to whom utility licenses have been issued;

**D.** The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular utility licensee quarterly reports;

**E.** The disclosure of financial information to the City Attorney or other legal representatives of the City, to the extent the Director deems disclosure or access necessary for the performance of the duties of advising or representing the Bureau; or,

**F.** The release of such information in the filing of any legal action by or on behalf of the Bureau to obtain payment on unpaid license fees, interest and penalties, or to enforce any determination by the Director.

Passed by Council,  
Commissioner Dan Saltzman  
Prepared by David Olson  
November 24, 2008

**GARY BLACKMER**  
Auditor of the City of Portland  
By  
Deputy

**ATTACHMENT B**  
**PORTLAND CITY CODE ("PCC") CHAPTER 7.14**  
**(Current PCC 7.14 shown un-amended *for reference*)**  
<http://www.portlandonline.com/auditor/index.cfm?c=28809>  
**November 24, 2008**

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**Chapter 7.14 Public Utilities**

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**7.14.010 License Required.**

Any person, including the City, operating a public utility as herein defined within the corporate limits of the City, shall obtain a license for such business covering the period of the calendar year, from January 1 through December 31, or if application is made after January 1 of any year, then for the balance of the same calendar year.

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**7.14.020 Definitions.**

(Amended by Ordinance Nos. 154857, 157530, 160949, and 163203 effective July 1, 1990.)

**A. Gross revenue.** As used in this Chapter, "gross revenue" includes any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts, from the sale of electrical energy, gas, steam or water, or sewage disposal and treatment service, and for use, rental, or lease of operating facilities of the public utility engaged in such business; from the furnishing or sale of communications or associated services by a telegraph business, or from a telecommunications or cable television business.

**B. Gross revenue of a telecommunications utility** means revenues derived from exchange access services.

**C.** Gross revenues do not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities, or stocks, or sales at wholesale by one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer.

**D. Public utility.** As used in this Chapter, the term, "public utility" includes the business of supplying electrical energy, gas, heat or steam, water, cable television, communications, or other services through or associated with telecommunications utility, telephone or telegraph or coaxial cable, sewage disposal and treatment, and other operations for public service but does not include transportation service, railroad operations, or service otherwise licensed under this Title.

**E. Telecommunications utility.** As used in this Chapter, "telecommunications utility" has the meaning provided in ORS 759.005(1) (1989).

**F. Exchange access services.** As used in this Chapter, "exchange access services" means:

1. Telephone exchange access lines or channels which provide local access from the premises of a subscriber in the City to the local telecommunications network to effect the transfer of information; and

2. Unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in paragraph 1 hereof.

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**7.14.030 Application Issuance.**

(Amended by Ordinance No. 154857, effective July 1, 1983.) Any person, including the Bureau of Water of the City and the sewage disposal bureaus of the City, operating a public utility coming within the provisions of this Chapter shall make application for a license hereunder on forms supplied by the Bureau of Licenses and file the application in the Bureau. The initial application hereunder shall be made on or before July 1, 1946, for the remainder of the calendar year 1946; application for license shall be made on or before December 31, 1946, for the following calendar year, and on or before December 31 for each subsequent calendar year, except in the case of a public utility coming within the provisions of this Chapter which commences operations within the City after July 1, 1946. A person operating such utility shall make application for license on or before the date of commencing such operations. The Bureau of Licenses shall thereupon issue the license applied for.

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**7.14.040 Fees and Payment.**

(Amended by Ordinance Nos. 154857, 157321, 160856, 160949, 163203, 172263, 174508 and 175847, effective July 1, 2000.) The fee for such license shall be measured by a percentage of the gross revenues received by the public utility for each quarter year period of licensed operation. Such percentage for each type of public utility shall be as follows beginning July 1, 1990:

Electrical Utility	5.0 percent
Gas Utility	5.0 percent
Sewer Utility	7.50 percent
Steam Utility	5.0 percent
Water Utility	7.50 percent
Telecommunications Utility	7.0 percent
Telegraph Utility	5.0 percent
Cable Television Utility	5.0 percent

The licensee shall compute the license fee by multiplying the percentage applicable to the type of operation in which such utility engages, by the gross revenues received during the quarter. The resultant fee shall be paid to the City Treasurer on the following basis: on or before May 15 the fee for the period extending from January 1 through March 31, inclusive, of the same calendar year; on or before August 15 the fee for the period extending from April 1 through June 30, inclusive, of the same calendar year; on or before November 15 the fee for the period extending from July 1 through September 30, inclusive, of the same calendar year; on or before February 15 the fee for the period extending from October 1 through December 31, inclusive, of the preceding calendar year. All such payments shall be subject to the deductions set forth in Section 7.14.050. A licensee commencing operations as provided in Section 7.14.030 shall make the initial payment on or before the payment date following the quarter year period within which operations are commenced. In the event a licensee terminates operations which come within the provisions of this Chapter, the final payment shall be made on or before the 45th day following the date of such termination.

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**7.14.045 Limitations.**

(Added by Ordinance No. 178717, effective October 1, 2004.) In any single year, the license fees paid by City of Portland water and sewer utilities shall not exceed \$12,809,321 from the City's sewer utilities, and \$4,184,153 from the City water utility until those fee payments equal 5% of gross revenues at which point they will increase to equal 5% of gross revenues those fees. The directors of the Bureau of Environmental Services and Bureau of Water Works are authorized to adopt administrative rules establishing mechanisms to implement this limitation.

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**7.14.050 Deductions.**

(Amended by Ordinance No. 157321, effective June 10, 1985.) The licensee may deduct from the license fee required in this Chapter the amount of any payments made or accrued to the City for the period upon which the license fee is computed, under any provision of franchise, permit, or ordinance in lieu of franchise, and the value of any services, including free telephone service rendered to the City under the terms of a franchise, permit or ordinance in lieu of franchise, but excluding the value of any right given to City to use poles, conduits, or ducts to other facilities in common with the licensee, nor may any licensee deduct any permit or inspection fee imposed under any Code or ordinance of the City, and a telephone utility licensee may not deduct the fees agreed to be paid the City for street telephone booths. This Section shall not be deemed to relieve any licensee from paying in accordance with the provisions of a franchise, permit, Charter provision or ordinance when the amount to be paid thereunder exceeds the amount of the license fee required under this Chapter.

#### **7.14.060 Report of Gross Revenues.**

(Amended by Ordinance No. 158792, effective July 17, 1986.) Coincidentally with the payment of the license fee required herein, the licensee shall file with the City Bureau of Licenses a report of the gross revenues of the licensed public utility, setting forth the revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the license fee is computed. Within 30 days from the date such report is filed, or such additional time as the Council may allow, the Bureau of Licenses shall investigate the report and determine the accuracy of the amount reported. The Council, the Commissioner of Finance or the Commissioner of Public Utilities may require such additional investigation to be made by themselves or their agent, either simultaneously or subsequently as they may deem appropriate. For the purpose of such investigation the licensee shall make available for investigation all records and books of the company for verification of the reports of the company and the fees paid by the company. However, neither the payment nor a failure to make such investigation shall be deemed to estop the City in any way, or prevent subsequent investigation by any officer or agent of the City, and collection of any amount due. If the fee paid is determined to be excessive, the licensee shall be entitled to a refund of the excess paid. If the fee paid is found to be insufficient, the Bureau of Licenses shall notify the licensee of the amount of the deficiency, and demand payment of the amount.

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#### **7.14.070 Appeal and Collection.**

(Amended by Ordinance No. 158792, effective July 17, 1986.) Within 10 days from the date of notice by the Bureau of Licenses that the fee paid is insufficient and payment demanded, the licensee may appeal to the Council from such demand, in writing and specifying the grounds of such appeal. If no such appeal be taken and the Council decides adversely to the licensee, or decides that any other amount is due, thereafter the Bureau of Licenses shall proceed to collect the amount determined to be due and unpaid.

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#### **7.14.080 Additional Penalty.**

In lieu of any other penalties prescribed in this Code, Charter Section, franchise or ordinance provision, if the licensee fails to make payment of the fee deficiency determined to be due and unpaid in accordance with the provisions of Section 7.14.070 within 10 days of such final determination (unless the grace period is extended by the Council) the Commissioner of Public Utilities may suspend the license issued to the licensee. If any person operates a public utility coming within the provisions of this Chapter without a license as required herein or during a period of suspension, such person shall be liable for a license fee, computed at 2 percent of the gross revenues plus the appropriate percentage of the revenues for the type of business in which such utility engages as set forth in Section 7.14.040, received during the period on which the fee for the operations is computed.



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**7.14.090 Interest on License Fee.**

(Added by Ordinance No. 157728; amended by 162425, effective Sept. 28, 1989.)

**A. Late Payments.** If a public utility fails to pay to the City the utility license fee on or before the date on which the fee is due, interest shall be owed on the license fee from the due date to the date on which the City receives the license fee, compounded daily. The interest rate shall be equal to one percent over the existing prime interest rate as set by First Interstate Bank of Oregon, N.A., for the period during which the license fee is delinquent. Payment of interest shall be due at the same time that the utility pays the delinquent utility license fee to the City.

**B. Audit charges.** If a public utility fails to properly report the true amount of gross revenue from all accounts within the City of Portland as determined by representatives of the City after review of the utility's reports, interest will be owed on the under reported gross revenue calculated from the first day of the calendar quarter in which the error occurred to the date of billing by the City, compounded quarterly. The interest rate shall be equal to one percent over the existing prime interest rate as set by First Interstate Bank of Oregon, N.A., for the period during which the gross revenue was under reported. Payment of interest shall be due at the same time that the utility is required to make payment of any insufficiency of the license fee.

## ATTACHMENT C

### SUMMARY

#### INDUSTRY COMMENTS and STAFF RESPONSES

##### PCC Chapter 7.14 ULF Housekeeping revision

(Industry comments were in response to 10/24/08 ULF draft)

*NOTE: Unless otherwise indicated, all paragraph #s (e.g. "TM ¶1") refer to numbered paragraphs in the Staff Transmittal Memorandum ("TM") dated November 24, 2008, to which this is an Attachment.*

#### COMCAST

- *Received: 11/10*
- *Commenter: Sanford Inouye, VP, Comcast Government Affairs*
- *Summary of Comments: Comcast CDV ("Comcast Digital Voice") is "not classified as a telecommunications service under state and federal law", and therefore Comcast has "serious concerns" if City applies ULF to Comcast CDV. The FCC is "currently considering" classification issues (Comcast here apparently refers to the 2004 FCC NPRM on VoIP, which is nearly 5 years old). Any ULF assessment should be completely offset by existing cable franchise fee payments. All providers of comparable services should be assessed equally (including wireless & VoIP). Comcast should not be required to pay both Business License Fee and ULF.*

*Cable/Franchise Staff response: See: TM ¶1, 2, 3. Comcast's objections are based on assumptions that the City's assessment of the ULF is controlled by the Federal Telecommunications Act or could be affected by FCC classification issues. Neither of these assumptions are correct from a legal standpoint. Moreover, Comcast's cable television services franchise fee payments have nothing to do with the ULF and do not offset Comcast's liability under the ULF for providing communications services in the City. Comcast's suggestion that the City should consider assessing "comparable" services are policy arguments which the Council may consider at a future time, but which are not within the scope of the proposed ULF housekeeping amendments. No substantive changes are being proposed to the scope of the ULF code under the proposed amendments. Current ULF code language, which will remain in place, provides that the communications services being offered by Comcast in the City of Portland are subject to the ULF. Regardless of Council action on the ULF housekeeping amendments, the Cable/Franchise Office will bring forward for Council consideration in the near future the necessary action to enable the City to commence an enforcement proceeding against Comcast in this regard, including interest and penalties for prior ULF payments due to the City and not remitted. Finally, the Business License Fee and the ULF include offsetting exemptions (see TM ¶3), so Comcast's complaint regarding being subject to both the ULF and the Business License fee is without merit.*

#### INTEGRA (ELI)

- *Received: 11/6*
- *Commenter: Theodore Gilliam, Senior Corporate Counsel, Integra*
- *Summary of Comments: No comments by Integra at this time, Integra understands City will continue with ELI franchise methodology, Integra requests*

copies of other industry comments, Integra may comment at Council meeting where ULF revisions are considered.

Cable/Franchise Staff response: *No response necessary.*

#### **NORTHWEST NATURAL**

- *Received:* 11/7
- *Commenter:* Jeff Condit, NW Natural attorney
- *Summary of Comments:* Overall, the amendments appear “salutary”. Current ULF language excluding wholesale sales of electrical energy should be extended to exclude wholesale sales of natural gas.

Cable/Franchise Staff response: *See: TM ¶ 5. No substantive changes are being proposed in the current scope and application of the ULF. NW Natural makes a policy argument here, but the ULF housekeeping amendments are not designed to expand or contract the current scope of the ULF. Inclusion of NW Natural’s suggested language would alter the current scope of the ULF (by formally reducing the scope of ULF coverage by including an additional exemption). The Cable/Franchise office has been charged with bringing forth ULF housekeeping amendments which do not reduce or expand the current scope of the ULF, so while the Council is at liberty at any future time to consider NW Natural’s suggestion as a policy matter, such a change is not consistent with the purposes of the current ULF housekeeping amendments.*

#### **PACIFICORP (PP&L)**

- *Received:* 11/7
- *Commenter:* Norman Ross, Tax Director, PacifiCorp
- *Summary of Comments:* PacifiCorp appreciates open process and opportunity to work with City staff. Concerns remain over (1) use of “earned” versus “received” income because PacifiCorp uses accrual system; (2) language excluding pole attachment revenue (which was in an earlier draft of the ULF revisions) should be included; and (3) some corrections and clarifications are suggested.

Cable/Franchise Staff response: *See: TM ¶ 5. Staff appreciates the constructive participation of PacifiCorp in this process, and the corrections and clarifications submitted by PacifiCorp. We have incorporated PacifiCorp’s corrections, including use of “earned” revenue. However, staff’s position on formally excluding pole attachment revenue can be summarized as follows: Although substantive changes revising the scope of the ULF Code were indeed being considered by the City in earlier phases of the ULF review process (2004-2005), this occurred during a period when the City was actively considering expanding the overall scope of the ULF (including classes of payers), and thus the City could afford to entertain suggestions of this type regarding additional ULF exemptions or exclusions in light of the overall positive revenue impact to the City of the changes in the scope of the ULF being considered at that time. However, under staff’s current charge, no substantive changes to the scope of the ULF are being included to any great extent in these housekeeping amendments to the ULF code. As background, a review of ordinances amending the ULF code, as far back as the 1980’s, shows that existing language including revenues “from use, rental, or lease of operating facilities” within the ULF has been in the code for decades. Thus, a change which would exclude joint pole use revenue is not consistent with the limited purposes of the current ULF*

housekeeping amendments. However, staff is not proposing at this time any treatment of pole attachment revenue different from the City's historic treatment of such revenue.

#### **PORTLAND GENERAL ELECTRIC (PGE)**

- *Received:* 11/7
- *Commenter:* Deane Funk, Manager, Local Government Affairs
- *Summary of Comments:* Earlier City ULF draft (c. 2005-2006) excluded pole attachment revenue after lengthy discussion with industry. This discussion should be honored in the final draft and pole attachment revenue should be excluded in accordance with earlier draft.

*Cable/Franchise Staff response: See: TM ¶ 5 and staff response to PacifiCorp, above. A change which would exclude joint pole use revenue (which is not excluded in current code) is inconsistent with the limited purposes of the current ULF housekeeping amendments. However, staff is not proposing at this time any treatment of pole attachment revenue different from the City's historic treatment of such revenue.*

#### **QWEST**

- *Received:* 11/7
- *Commenter:* Meshach Y. Rhoades, Senior Attorney, Qwest Legal (Denver)
- *Summary of Comments:* Qwest claims (1) ULF Code is not clear as to which competitive telecom carriers are included; (2) Qwest questions overall purposes of ULF; (3) Qwest questions manner of deduction of franchise fee payments for linear-foot franchisees; (4) Qwest also raises questions about apparent change in definition of "exchange access revenues." and (5) Qwest asks Council to "forgo adoption" of revisions to the ULF until Qwest's "basic" questions are answered. Qwest also has "additional concerns relating to the non-fee provisions such as review of records, penalties and administrative discretion" but feels "it is necessary to first address and resolve the basic issues" as identified.

*Cable/Franchise Staff response: See: TM ¶1, 2, 3, 4. As has been explained repeatedly throughout this process, the ULF is a tax. The purpose of the ULF is to raise revenues for the City. The ULF has been in place for decades. No substantive changes are being proposed to the scope of the ULF code or its current impact on Qwest. It is not necessary or required that ULF code language track with state statute, because the ULF is not an exercise of statutory authority, but of authority given to the Council by the City Charter. The legal distinctions being re-asserted by Qwest here were rejected by the courts in litigation brought by Qwest challenging the ULF. As to changes in the definition of "exchange access", this is updated language included only to track with the language in ORS 401.710(6) (2007), which was revised by the Oregon Legislature in 2007. As the Transmittal Memorandum makes clear, the associated administrative changes are to track with existing practices under the City's Business License Law. The City has thus far not enforced the ULF against linear-foot franchisees, but no substantive changes are being proposed to ULF code that would change this issue one way or the other. Qwest should contact Cable/Franchise staff if Qwest has additional questions or if additional clarification is needed.*

## VERIZON NORTHWEST (wireline)

- *Received:* 11/10
- *Commenter:* David Mielke, Verizon
- *Summary of Comments:* Verizon Northwest raises multiple issues with the ULF (both in its current form and with proposed revisions). Many of these issues have been raised or alleged by Verizon on numerous occasions in previous phases of this proceeding. Staff's overall response, followed by an issue-by-issue listing of Verizon's comments and Staff's response, are embedded below.

*Cable/Franchise Staff overall response: See: TM ¶1, 2, 3, 4, 5, 6. Verizon appears to fundamentally misapprehend both the purposes of the ULF housekeeping amendments as well as the legal context for the ULF. For purposes of clarification, however, staff offers the following responses to the issues raised by Verizon:*

1) *VERIZON ISSUE:* ULF potentially conflicts with state and/or federal law. *STAFF RESPONSE – Unclear what legal theory Verizon is relying upon for this assertion or what sections of state and federal law Verizon refers to.*

(2) *VERIZON ISSUE:* ULF may be a new tax requiring voter approval. *STAFF RESPONSE – The ULF is not a “new” tax, but has been in place for decades. It is unclear what legal theory Verizon is relying upon for this assertion. Moreover, even if the ULF was a “new” tax (which it is not), there is no general legal requirement in Oregon that “new” taxes be referred for voter approval. Verizon’s comment evidences a lack of depth or rudimentary research (deficits notable here and in most of Verizon’s other comments). Verizon’s comment is without merit.*

(3) *VERIZON ISSUE:* Scope of annual license requirement may be read to apply to wireless providers, businesses, MDUs and homeowner’s associations. *STAFF RESPONSE – No substantive changes are being proposed to the ULF code. Current administrative practice is that the ULF does not apply to these types of services and providers. Verizon’s comment is without merit.*

(4) *VERIZON ISSUE:* Director’s rulemaking authority is “unfettered” and Council should instead consider and approve all ULF rules at a public hearing. *STAFF RESPONSE – This comment is directed at proposed Sec. 7.14.030, which tracks the existing administrative authority given to the Director of the Revenue Bureau in connection with the City’s Business License Program, PCC 7.02.210. To that extent, Verizon’s comments here and elsewhere appear to challenge not only the ULF housekeeping amendments, but also the existing provisions of the City’s Business License Program. Verizon’s comment is without merit.*

(5) *VERIZON ISSUE:* Director’s ability to adopt interim rules “usurps” due process requirements. *STAFF RESPONSE – This comment is directed at proposed Sec. 7.14.030, which tracks the existing administrative authority given to the Director of the Revenue Bureau under PCC.7.02.210.E. This same authority exists throughout City Code, related rulemaking in the administration of the BID property management licenses, noise control, solid waste regulations, pay day lending, sewers, secondhand dealers, signs, and towing regulatory programs. Verizon’s comment is without merit.*

(6) *VERIZON ISSUE:* “public purpose” exclusion from ULF revenues should also include “public purpose” expenditures of communications companies, including E911

and USF funding surcharges. *STAFF RESPONSE – No substantive changes are being proposed to the ULF code, and Verizon’s proposal would exclude revenues which are not presently excluded from the ULF. This is inconsistent with the purposes of the ULF housekeeping amendments. Verizon’s comment is without merit.*

(7) *VERIZON ISSUE:* All wholesale or resale transactions of communications companies should be excluded from ULF revenue base. *STAFF RESPONSE – Same comment as in prior paragraph (6). No substantive changes are being proposed to the ULF code. Verizon’s comment is without merit.*

(8) *VERIZON ISSUE:* Definition of “utility” is flawed and appears to extend licensing requirement to any entity in the City connected with a utility (presumably meaning all households and businesses in the City). *STAFF RESPONSE – No substantive amendments are being proposed to the ULF code, and the scope of the ULF is neither being expanded nor contracted. These entities are not assessed under the current ULF. Verizon’s comment is without merit.*

(9) *VERIZON ISSUE:* annual application process is “onerous and unnecessary”. *STAFF RESPONSE – Annual license renewals are a requirement of the Charter which specifies annual licenses. Portland City Charter 2-105(a)(17), states: “No license shall be granted to continue for a longer period than one year from the date thereof.” The license renewal application is a simple, single page document, and is not “onerous”. Verizon’s comment is without merit.*

(10) *VERIZON ISSUE:* all payments due under the ULF should not include any amounts under appeal. *STAFF RESPONSE – This proposal is a recommended policy choice based on the City’s prior negative experience with Qwest. The requirement reflects the significant fiscal disruption experienced by the City when Qwest unilaterally withheld ULF payments after filing a federal lawsuit challenging the utility license fee. The City eventually prevailed in this action, Qwest was required to pay its ULF obligation to the City in full with interest, and Qwest’s actions and legal theories have been consistently rejected by the courts. Verizon’s comment is without merit.*

(11) *VERIZON ISSUE:* franchise fee deduction language is not complete and should be expanded to include all other gross receipts that are exempted under a franchise (Verizon also alleges that ULF conflicts with ORS in this regard). *STAFF RESPONSE – Franchises typically do not exempt franchisees from paying taxes of general applicability such as the ULF, and franchise fees payable on the same revenue included in the ULF may be offset from ULF payments, as the ULF itself provides (both in current code and with the housekeeping amendments). The assertion that ULF must track with the statutory framework under ORS 221.515 is inaccurate. The ULF is an exercise of Charter authority, not the ORS. The City is not required to “track” with statute, as noted in the Eugene v. AT&T decision. Verizon’s comment is without merit.*

(12) *VERIZON ISSUE:* Disallowance of deduction for common use and permit/inspection fees conflicts with ORS. *STAFF RESPONSE – see prior staff response in paragraph (11). Verizon’s comment is without merit.*

(13) *VERIZON ISSUE:* Burden to prove exemptions from ULF should be on City not ULF licensee. City has no authority to “pass laws that usurp federal and state law” in this

regard. *STAFF RESPONSE – This comment is directed at proposed Sec. 7.14.080.B. This is merely a request for the licensee to identify the basis for any claimed exemptions, rather than allowing the licensee to make a blanket assertion that “state and federal law” somehow exempt them (such as Verizon has done here). Verizon’s comment is without merit.*

(14) *VERIZON ISSUE:* Director’s authority to determine scope of financial review is “unfettered discretion” and allows Director to be “judge, jury and prosecutor”. *STAFF RESPONSE – This comment is directed at proposed Sec. 7.14.080.D. This is a standard administrative delegation, allowing for audits of license fee payments. It merely sets the beginning of an administrative inquiry. Any final determinations will be subject to administrative appeal, and ultimately, judicial review. Verizon’s comment is without merit.*

(15) *VERIZON ISSUE:* Director’s authority to require Licensee officers and agents with knowledge of licensee business affairs to attend financial review is “unreasonable as it would allow the city to require a companies (*sic*) president or other executives that do not have knowledge” to attend; authority is also “unrelated to management of the ROW”. *STAFF RESPONSE – This comment is directed at proposed Sec. 7.14.080.D.1, which tracks existing authority given to the Director of the Revenue Bureau under PCC 7.02.260.A. Verizon’s comment is without merit.*

(16) *VERIZON ISSUE:* Authority to take testimony and/or administer oaths if necessary in financial reviews is “unfettered discretion to be judge, jury and prosecutor”. *STAFF RESPONSE – This comment is directed at proposed Sec. 7.14.080.D.1.b, which tracks existing authority given to the Director of the Revenue Bureau under PCC 7.02.260.B. Verizon’s comment is without merit.*

(17) *VERIZON ISSUE:* Authority of director to estimate license fees owed, subject to appeal to Code Hearings Officer “would violate a companies (*sic*) due process rights” and might be subject to abuse by being projected out for multiple years or not using methodology that is consistent with the books and records of the Licensee. *STAFF RESPONSE – the proposed administrative procedures would comply with due process: The licensee would have notice and an opportunity for a hearing, and could produce evidence at the hearing to establish the actual amount of the fee. An estimated fee would only arise in situations where the licensee was refusing to produce records or otherwise failing to respond. Verizon’s comment is without merit.*

(18) *VERIZON ISSUE:* Amount of interest on late payments specified in ULF amendments “exceeds the statutory interest rate of 9%”. *STAFF RESPONSE – This comment is directed at the proposed PCC 7.14.100, which tracks the rate for delinquent business license fees under PCC 7.02.710. The statutory interest rate is not controlling. The Council may legislatively establish different rates. The current rate under PCC 7.14.090 is also not the statutory rate.*

(19) *VERIZON ISSUE:* ULF provision that properly assessed interest amounts cannot be waived or reduced is “unreasonable and will require litigation as the only alternative: and “needs to allow for appeal to city council” or other provision allowing prompt appeal to courts. *STAFF RESPONSE – This comment is directed at proposed Sec. 7.14.100.C, which tracks existing business license practices under PCC 7.02.710.G. The Code*

*language reflects a policy determination that interest charges are to recapture "time value" of unpaid funds, which should not be subject to administrative waiver.*

(20) *VERIZON ISSUE:* ULF provision that Director may assess civil penalties for ULF violations is "unreasonable" and provides Director "unfettered discretion" that allows Director to be "judge, jury and prosecutor". later provision that Director can impose civil penalty of up to two percent of violator's gross revenues during the period in which violation occurred is also "unreasonable" and provides Director "unfettered discretion" allowing Director to be "judge, jury and prosecutor". Verizon also objects that this provision provides Director authority to impose "criminal like (*sic*) impositions" even if tax is "correctly remitted", and section is not clear on basis for measuring the 2 percent (i.e. 2% of all gross revenues or only 2% of unreported gross revenues?). *STAFF RESPONSE – This comment is directed at proposed Sec. 7.14.110. The amount of the potential penalty is a carryover of the existing potential penalty amounts under PCC 7.14.080. Verizon's comment is without merit.*

### **VERIZON WIRELESS**

- *Received:* 11/7
- *Commenter:* Stacey Sprinkle, VP State Tax Policy, MidWest area
- *Summary of Comments:* Revised draft "represents an improvement" over the previous draft, but Verizon Wireless remains concerned that revised ULF might be interpreted to apply to wireless providers. Verizon Wireless requests changes or clarifications in the ULF definition of "utility" and "gross revenues" to prevent such an interpretation and to "plainly exclude wireless providers." Verizon Wireless maintains that the "inclusion of such language....will prove beneficial to all parties by avoiding problematic interpretive questions that may arise in the future."
- *Cable/Franchise Staff response:* See: TM ¶5. *Wireless providers are not currently subject to the ULF as administered by the City. No substantive changes are being proposed to the ULF code.*