

185756

Moore-Love, Karla

From: Alan Willis [brotheral73@comcast.net]
Sent: Tuesday, November 27, 2012 2:42 PM
To: Adams, Mayor; Commissioner Fritz; Commissioner Saltzman; Leonard, Randy; Commissioner Fish
Cc: letters@oregonian.com; Moore-Love, Karla
Subject: "No" on landline tax

To the Mayor and members of the City Council -

I don't know why I am bothering to write to you. You haven't once voted on a matter the way I would have preferred you vote, and in almost every case none of you has bothered to even respond to my communications.

But, if a majority of you might see your way clear to do so, this lifelong Portlander - a normally happy tax-and-spend liberal in the People's Republic of Portland - would humbly ask you to defeat the proposal to impose a new tax surcharge (or whatever the proper nomenclature is) on home telephone land lines. It is unfair, it is unfounded, and, as one of the last people in the world with a telephone landline, I don't think you should do anything to make them less popular; it is already a royal pain in the patoot to figure out whether to call my niece, my nephew or one of their parents' cell phone numbers, when all I really want to do is talk to one of them in their home.

I hope, this time, you might actually join me in defeating this ill-founded proposal.

And, if you ever get around to actually voting in favor of Hayden Island development, you and I might wind up on the same page.

Happy holidays - but without a new landline tax -

Alan Willis

1132 SW 19th Ave. Unit 801
Portland, OR 97205

185756

Parsons, Susan**From:** Melinda Glover [melinda.glover@gmail.com]**Sent:** Tuesday, November 27, 2012 2:39 PM**To:** Parsons, Susan**Subject:** Ordinance 1352

I received a phone call/message yesterday regarding the ordinance that is going to increase the rate of licensing fees for telephone and utilities providers.

These fee are passed along directly to the consumers and amount to a tax increase.

PLEASE pass along to the council my personal opposition to this ordinance that imposes yet more costs upon the citizens of Portland.

More taxes, more fees, higher utility rates. I can't afford anymore. Can you? If I could sell my house and move away from Portland I would do it today, and I was born here and have lived here most of my life. It's gotten too expensive, and the priorities have gotten very skewed. The outer east side where I live is unrecognizable from what it was even 20 years ago. Yet they are talking about creating a new urban renewal zone around PSU. I work at PSU. I am well aware that there is plenty of development going on down here. Portland does not need to put more millions into the south end of downtown. How about putting something into east county? I used to love my hometown, but now I would run away from it if I could.

This is the first message like this I have written, and I have always considered myself a liberal, but the way the city is run these days is putting an unnecessarily heavy burden on its citizens. The sewer tax should be reduced now that the infrastructure has been repaired. We have enough bike lanes for now. I don't want my taxes paying for more. Arts in the schools are important--but the new tax is absolutely the wrong way to support them. It's too much.

Thank you for reading this and passing it to the Council.
Dissolutioned Portlander,

--

Melinda Glover

TAX RATE/BASE FOR TELECOMMUNICATIONS UTILITIES

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

| NAME (print) | ADDRESS AND ZIP CODE | Email |
|----------------------------|--|------------------------------------|
| ✓ TERRY PARKER | P.O. Box 13503 PORT 97213 | parker12012@gmail.com |
| ✓ ADAM GRZYBICKI | 1001 SW 5 th AVE, SUITE 1100, PDX 97204 | AG1365@ATT.COM |
| ✓ Jo Ann Hardesty | | |
| Jo Ann Hardesty | 1219 Commercial St Salem | FAH |
| ✓ Marc Farrar | 9605 SW Nimbus Ave. Beaverton OR 97008 | marc.farrar@cable.comcast.com |
| ✓ DAVID C OLSON | 5031 SW Birch Hills Hwy, PORT, OR 97221 | cableworks.c21@gmail.com |
| Charles JOHNSON | | simcha@gmx.us |
| ✓ ROSS WAGGONER | 150 NW 30 th , GRES HAM | ROSS.WAGGONER@FTR.COM |
| ✓ Tied Gilman | 1201 NE Lloyd Blvd, Ste 500 PDX 97232 | tied.gilman@integrattek.com.com |
| ✓ MARK TRINCHERO | 1300 SW 5 th , Suite 2300, Portland OR 97207 | marktrinchero@dwt.com |
| ✓ Larry McMillin | 1801 California St. Denver, CO 80202 | larry.mcmillin@ centurylink.com |

TAX RATE/BASE FOR TELECOMMUNICATIONS UTILITIES

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

| NAME (print) | ADDRESS AND ZIP CODE | Email |
|----------------|---------------------------------------|------------------------------------|
| ✓ Chris Denzin | 310 SW Park Ave Portland, OR 97205 | Christopher.Denzin@centurylink.com |
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TERRY PARKER
P.O. BOX 13503
PORTLAND, OREGON 97213-0503

185756

Subject: Testimony to the Portland City Council on the proposal to increase the telecommunications utilities tax rate, November 15, 2012.

When the agreement was made with the Federal Government to reform the Portland Police Bureau, you Mr. Mayor said "I will find the money." However after throwing around millions of taxpayer dollars on bicycle infrastructure for freeloading bicyclists, adding to the streetcar system and subsidizing it's unsustainable operation, and for a grossly over priced and now defunct sustainability center along with a host of other social engineering spending; the City of Portland is now swimming in debt and basically out of money.

Raising taxes is not the same as finding the money! Moreover, any new taxes assessed on the telecommunication companies will be passed through to their customers. It is simply unfair and unjust to raise taxes on the people that can least afford it such as the senior citizens on fixed incomes and the low income households that still have telephone land lines. These groups are already paying excessive water, sewer and garbage rates; for the unconstitutional arts head tax if it is not successfully challenged in court; excessive taxes on their homes now including the new PPS school bond tax, the Multnomah County Library District Tax, for urban renewal, for the police and fire retirement fund, etc and a continuum of increased taxes that are being added on each year. To quote an elderly couple that was in one of the Portland Plan Meeting round table discussion groups: "We are here to see what they (*you*) are doing to us now, We can't afford to live here anymore." Many senior citizens are just barely hanging on struggling to keep their homes. Are you trying to do a cleansing so financially distressed people will have to leave Portland?

Look outside the window. The occupiers laying around on the sidewalks all have cell phones. If anybody should be paying more taxes, it is the young creative types that are the chief beneficiaries of your taxpayer funded social engineering programs. As an example: bicycle infrastructure which is not paid for by the users takes up considerably more space in the public right-of-ways than does telecommunication infrastructure. It also must be maintained with taxpayer dollars. If a proposed \$35.00 arts head tax can raise \$12 million annually, then an annual \$35.00 adult bicycle license and registration fee – better yet, an annual \$50.00 adult bicycle license and registration fee - could easily raise a significant amount of money without being totally absorbed by administrative costs.

Once again the process is broken. I first found out about this proposal in The Oregonian this past weekend. With it coming before council less than a week after notification, where is the public discussion and vetting process? The way this tax is being implemented is no less than financially raping those who end up paying the tax. The legacy left behind by this is administration will be the greatly increased the cost of living for Portlanders. To quote Margaret Thatcher: "Socialism fails when you run out of other people's money." There must be far more just and equitable way to fund the police bureau reforms.

Respectively submitted,

Terry Parker – Northeast Portland

FOR: PORTLAND CITY COUNCIL

FROM: David C. Olson, cableworks.c21@gmail.com (503) 422-7551

SUBJ: CC Agenda #1308, Thursday November 15, 2012, 3:00 pm Time Certain

<http://www.mywireless.org/state-issues/state-tax-rankings/> (visited 11/15/2012)

State Tax Rankings

Taxes and Fees on Monthly Wireless Service, July 2012

| Rank | State | State/Local Sales Tax | State-Local Wireless Rate | Federal Rate (USF) | Combined Federal/ State/ Local Rate |
|------|-----------------------|--------------------------|------------------------------|-----------------------|--|
| 1 | <u>Nebraska</u> | 7.00% | 18.67% | 5.82% | 24.49% |
| 2 | <u>Washington</u> | 9.10% | 18.62% | 5.82% | 24.44% |
| 3 | <u>New York</u> | 8.25% | 17.85% | 5.82% | 23.67% |
| 4 | <u>Florida</u> | 7.25% | 16.59% | 5.82% | 22.41% |
| 5 | <u>Illinois</u> | 8.88% | 15.94% | 5.82% | 21.76% |
| 6 | <u>Rhode Island</u> | 7.00% | 14.68% | 5.82% | 20.50% |
| 7 | <u>Missouri</u> | 7.58% | 14.29% | 5.82% | 20.11% |
| 8 | <u>Pennsylvania</u> | 7.00% | 14.13% | 5.82% | 19.95% |
| 9 | <u>South Dakota</u> | 6.00% | 13.13% | 5.82% | 18.95% |
| 10 | <u>Kansas</u> | 8.13% | 13.11% | 5.82% | 18.93% |
| 11 | <u>Arizona</u> | 7.20% | 12.98% | 5.82% | 18.80% |
| 12 | <u>Maryland</u> | 6.00% | 12.77% | 5.82% | 18.59% |
| 13 | <u>Utah</u> | 6.80% | 12.67% | 5.82% | 18.49% |
| 14 | <u>Texas</u> | 8.25% | 12.15% | 5.82% | 17.97% |
| 15 | <u>Alaska</u> | 2.50% | 12.09% | 5.82% | 17.91% |
| 16 | <u>Tennessee</u> | 9.25% | 11.63% | 5.82% | 17.45% |
| 17 | <u>D.C.</u> | 6.35% | 11.62% | 5.82% | 17.44% |
| 18 | <u>Arkansas</u> | 8.88% | 11.54% | 5.82% | 17.36% |
| 19 | <u>Oklahoma</u> | 8.45% | 11.48% | 5.82% | 17.30% |
| 20 | <u>New Mexico</u> | 7.60% | 11.08% | 5.82% | 16.90% |
| 21 | <u>North Dakota</u> | 6.25% | 10.96% | 5.82% | 16.78% |
| 22 | <u>California</u> | 8.25% | 10.95% | 5.82% | 16.77% |
| 23 | <u>Indiana</u> | 7.00% | 10.86% | 5.82% | 16.68% |
| 24 | <u>Colorado</u> | 7.51% | 10.82% | 5.82% | 16.64% |
| 25 | <u>Kentucky</u> | 6.00% | 10.54% | 5.82% | 16.36% |
| 26 | <u>South Carolina</u> | 7.75% | 10.07% | 5.82% | 15.89% |
| 27 | <u>Minnesota</u> | 7.71% | 9.53% | 5.82% | 15.35% |
| 28 | <u>Mississippi</u> | 7.00% | 9.23% | 5.82% | 15.05% |

| Rank | State | State/Local Sales Tax | State-Local Wireless Rate | Federal Rate (USF) | Combined Federal/ State/ Local Rate |
|------|----------------------------------|--------------------------|------------------------------|-----------------------|--|
| 29 | <u>New Jersey</u> | 7.00% | 8.91% | 5.82% | 14.73% |
| 30 | <u>Georgia</u> | 7.50% | 8.78% | 5.82% | 14.60% |
| 31 | <u>North Carolina</u> | 7.00% | 8.51% | 5.82% | 14.33% |
| 32 | <u>New Hampshire</u> | 0.00% | 8.21% | 5.82% | 14.03% |
| 33 | <u>Vermont</u> | 6.50% | 8.10% | 5.82% | 13.92% |
| 34 | <u>Ohio</u> | 7.25% | 8.04% | 5.82% | 13.86% |
| 35 | <u>Iowa</u> | 6.50% | 7.95% | 5.82% | 13.77% |
| 36 | <u>Massachusetts</u> | 6.25% | 7.85% | 5.82% | 13.67% |
| 37 | <u>Wyoming</u> | 5.50% | 7.79% | 5.82% | 13.61% |
| 38 | <u>Michigan</u> | 6.00% | 7.69% | 5.82% | 13.51% |
| 39 | <u>Hawaii</u> | 4.00% | 7.53% | 5.82% | 13.35% |
| 40 | <u>Alabama</u> | 9.50% | 7.49% | 5.82% | 13.31% |
| 41 | <u>Connecticut</u> | 6.35% | 7.41% | 5.82% | 13.23% |
| 42 | <u>Maine</u> | 5.00% | 7.27% | 5.82% | 13.09% |
| 43 | <u>Wisconsin</u> | 5.55% | 7.24% | 5.82% | 13.06% |
| 44 | <u>Louisiana</u> | 9.00% | 7.21% | 5.82% | 13.03% |
| 45 | <u>Virginia</u> | 5.00% | 6.60% | 5.82% | 12.42% |
| 46 | <u>West Virginia</u> | 6.00% | 6.38% | 5.82% | 12.20% |
| 47 | <u>Delaware</u> | 0.00% | 6.28% | 5.82% | 12.10% |
| 48 | <u>Montana</u> | 0.00% | 6.09% | 5.82% | 11.91% |
| 49 | <u>Idaho</u> | 6.00% | 2.28% | 5.82% | 8.10% |
| 50 | <u>Nevada</u> | 7.79% | 2.13% | 5.82% | 7.95% |
| 51 | <u>Oregon</u> | 0.00% | 1.85% | 5.82% | 7.67% |
| | U.S. Simple Average | 6.44% | 10.15% | 5.82% | 15.97% |
| | U.S. Weighted Average | 7.33% | 11.36% | 5.82% | 17.18% |

Source: *Wireless Taxes and Fees Continue Growth Trend* □ by Scott Mackey.



CenturyLink
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Larry H. McMillin
Associate General Counsel

November 15, 2012

The Honorable Mayor Sam Adams & Commissioners
City of Portland
City Hall
Portland, OR 97204

Re: Proposed Revision to Portland City Code Chapter 7.14

Dear Mayor and Commissioners:

CenturyLink has been provided with a copy of the proposed revision to Portland City Code Chapter 7.14 being considered today under First Reading by the Commissioners.

The current version of the Utility License Law imposes a tax on utilities providing services in the City through use of wire, cable, conduit or other wireline technology. The current version of the Utility License Law does not apply to either wireless telecommunications providers or to other utility providers with wireline facilities but who pay a per lineal foot franchise fee to the City.

The home rule police and tax powers of the City of Portland as to the imposition of fees and taxes on local telecommunications carriers are expressly limited by the terms of Oregon Revised Statutes 221.515 which provides as follows:

221.515 Privilege tax on telecommunications carriers; maximum rate; deduction of additional fees.

(1) The council of every municipality in this state may levy and collect from every telecommunications carrier operating within the municipality and actually using the streets, alleys or highways, or all of them, in such municipality for other than travel, a privilege tax for the use of those streets, alleys or highways, or all of them, in such municipality in an amount which may not exceed seven percent of the gross revenues of the telecommunications carrier currently earned within the boundaries of the municipality. The privilege tax authorized in this section shall be for each

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year, or part of each year, that such telecommunications carrier operates within the municipality.

(2) **As used in this section, “gross revenues” means those revenues derived from exchange access services, as defined in ORS 403.105, less net uncollectibles from such revenues.**

(3) **A telecommunications carrier paying the privilege tax authorized by this section shall not be required to pay any additional fee, compensation or consideration, including the free use or construction of telecommunications facilities and equipment, to the municipality for its use of public streets, alleys, or highways, or all of them, and shall not be required to pay any additional tax or fee on the gross revenues that are the measure of the privilege tax. As used in this subsection, “use” includes, but is not limited to, street openings, construction and maintenance of fixtures or facilities by telecommunications carriers.** As used in this subsection, “additional fee, compensation or consideration” does not include commissions paid for siting public telephones on municipal property. **To the extent that separate fees are imposed by the municipality on telecommunications carriers for street openings, construction, inspection or maintenance of fixtures or facilities, such fees may be deducted from the privilege tax authorized by this section.** However, telecommunications carriers shall not deduct charges and penalties imposed by the municipality for noncompliance with charter provisions, ordinances, resolutions or permit conditions from the privilege tax authorized by this section.

(4) For purposes of this section, “telecommunications carrier” has the meaning given that term in ORS 133.721.
(emphasis added)

Oregon law is clear that the City of Portland may not charge a local exchange telephone company any fees or tax in excess of 7% of local exchange revenues for the right to place its network facilities in the public right of way.

The current version of the Utility License Law acknowledges this limitation as it applies to CenturyLink’s local exchange telephone company. The proposed amendment to Chapter 7.14 attempts to expand the base of revenues subject to tax by the City to all revenues of a local exchange company. Because this proposed amendment does not extend the Utility License tax to wireless and all other providers of telecommunications services in the City, it is clear that the proposed amendment maintains the Utility License Law as a “privilege tax for the use of” the public streets, alleys and rights of way and thus is subject to the limits of O.R.S. 221.515.

Through prior correspondence with City staff, we understand the City believes the current amendment is permitted under Oregon law on the basis of the decision of the Oregon Supreme Court in *US WEST Communications, Inc. v. Eugene*, 336 Ore. 181, 81 P.3d 702 (2003). The position of staff ignores a critical factor in that decision.

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While the Oregon Supreme Court upheld the City of Eugene “registration fee” as applied to services other than local exchange service, such fee or tax was imposed upon *all* telecommunications carriers providing services in Eugene and not simply on wireline service providers. For this reason, the Eugene registration fee was not a tax or fee for the use of the public rights of way, but rather was a general tax for all entities engaged in a particular type of business.

This exclusion of wireless carriers from the operation of the City tax is important for both legal reasons as outlined above and also as a matter of basic fairness and equity. Wireless telecommunications services are directly competitive with the local telephone services offered by local exchange telephone companies. This is clear from the fact that, according to a recent survey by a federal government agency, 38.2% of Oregon households have only wireless telecommunications service.¹ In fact, as the City observes in its justification for the proposed amendment, “Utility license fee revenue from telecommunications utilities has dropped significantly over time, from over \$6 million in 1999 to \$2.1M in 2012.” It should be no surprise to anyone that the reduction in revenue is due to the increasing role of wireless telecommunications in a competitive communications market. Consequently, it is not appropriate for the City to tax wireline providers while exempting their direct competitors. Both types of carriers are subject to regulation as utilities by the Federal Communications Commission. Local exchange carriers are subject to still additional regulations by state utility authorities.

CenturyLink has read the statements by the City that the proposed amendment is a matter of fairness. Unfortunately, the City has presented only a limited picture of the different regulatory burdens and tax obligations placed on local exchange companies under both Oregon and federal law. The regulatory and tax schemes are different as among local exchange telephone companies, competitive local exchange companies, interexchange telephone companies, competitive access carriers and cable providers and still different as to wireless telecommunication providers. It is not appropriate to present the Oregon statutory limits on the municipal taxation of local exchange carriers as preferential treatment. The City points to only one factor and ignores other regulatory and tax burdens imposed upon local exchange carriers and not on other wireline carriers and certainly not on wireless telecommunications providers.

As an example of the differing tax burdens, local exchange carriers are subject to central assessment for Oregon property tax so that the assessed value includes intangible interests. In contrast, cable companies are assessed only on their tangible assets and wireless carriers are not assessed on the value of their spectrum licenses. As a result, CenturyLink pays a much greater amount in local property taxes,

¹ National Health Statistics Report No. 61, Center for Disease Control and Prevention, U.S. Department of Health and Human Services (October 12, 2012)

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including taxes paid to the City of Portland on the same dollars invested in network equipment than its competitors. The Commissioners should take note that the Oregon Supreme Court will hear arguments in January in a case where Comcast challenged the efforts of the Department of Revenue to assess cable companies on the same basis as other wireline service providers.²

The regulatory burdens are also quite different. Local telephone companies are subject to significant regulation by the Oregon Public Utility Commission as well as the Federal Communications Commission. As an example, local telephone companies must sell most of their services at regulated wholesale rates to competitive local exchange providers whereas cable companies do not have to open their networks to sell to competitors.

CenturyLink respects the rights of state and local governmental bodies to levy taxes and fees in order to fund necessary government functions. However, we believe such taxes and fees should be imposed in a competitively neutral manner that does not favor one means of providing telecommunications services over another. We are extremely disappointed that the City has chosen under its existing Utility License Law to grant preferential treatment to wireless communications providers as those services substantially compete with our local wireline telephone services. There is no legal or equitable reason to enlarge that preferential treatment under the proposed amendment to Chapter 7.14.

We also would note that, by law, CenturyLink is required to pass through to its customers all local taxes and fees in excess of 4% of local exchange access services. O.R.S. 759.219 and O.A.R. 860-22-0042. We believe it appropriate in representing our customers to resist taxes and fees imposed contrary to law.

Very truly yours,



Larry H. McMillin

cc: Karen Stewart

² Comcast Corporation v. Department of Revenue, Oregon Supreme Court Case No. S059764. Scheduled for argument before the Court on January 8, 2013, on appeal by the Department of Revenue from a decision of the Oregon Tax Court in Case No. TC 4909 (August 10, 2011).