

From: [Debbie Tarry](#)
To: [Jesse Salomon](#)
Subject: RE: Telephone Franchise
Date: Friday, June 20, 2014 4:57:25 PM

Jesse –

Here is a response to your question:

Who is being taxed. Utility taxes are imposed against the utility company, although the company will be happy to break out the local tax on billing statements. The court in Lane v. Seattle noted that the ratepayer class representatives challenging Seattle's water utility tax increase to pay for hydrants had tenuous standing since the ratepayer's were not actually taxed.

What is being taxed. First, our ability to apply our 6% franchise fee to telecommunications companies and service providers is blocked by RCW 35.21.860:

No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.16.010, or service provider for use of the right-of-way, except:

- **(a)** A tax authorized by RCW 35.21.865 may be imposed; [6% utility tax]
- **(b)** A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW.

To add to the confusion, this statute does allow a franchise fee for cable companies which provide many of the same service as wireless or fiber optic telecoms through internet cable modems.

Regular 6% utility tax? No it will not be tax revenue of 6% on total retail revenue generated in Shoreline, due to a federal restriction on taxing the internet. Even the service provider can find the taxation of telecom service confusing. You will recall the recent nationwide ratepayer class action against AT&T Mobility that charged the company had miscoded internet data service and paid utility taxes in contravention of the federal Internet Tax Freedom Act (ITFA). Even after suit was filed for a refund of these taxes from local jurisdictions, including Shoreline, the company sent a retraction of some of its claim, stating that certain bundled accounts were included in the refund claim that had been properly taxed after all. So although .860 (a) allows a utility tax under state law, federal law limits that tax for data service over the internet that is not voice telecommunication.

We inquired of TWTC if they had a projection for taxable service revenues under the proposed franchise, but given they are a start up with no marketing yet in Shoreline, they could not make an estimate

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From: Jesse Salomon
Sent: Tuesday, June 17, 2014 7:46 PM
To: Debbie Tarry
Subject: Telephone Franchise

.... Franchise application and right-of-way permits for new system improvements. In

addition, 6% of gross revenue for subscribers to TWTC's telephone operations is subject to the City' utility tax under SMC 3.32.

I'm not clear on what and whom we are taxing here. I am reading that we can't charge a franchise fee. Is there a revenue difference from what is proposed here and a regular 6 percent utility tax?

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Sent from my iPad