

CLARENCE A. WEST

Counselor and Attorney at Law

4001 LOB COVE

AUSTIN, TEXAS 78730

www.cawestlaw.com Email: cawest@cawestlaw.com

Direct Dial: 512.401.3468

Voice mail: 512.547.6707

October 4, 2011

Filed via the FCC Electronic Comment Filing System

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW.
Washington, DC 20554

Re: WC Docket No. 11-59, *Notice of Inquiry Concerning Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting.*

To the Honorable Federal Communications Commission:

On Friday, September 30, 2011, for the first time, tw telcom filed Comments in this proceeding, entitled “Reply Comments”. They raised an issue not raised by any other industry commenter concerning Texas’ rights of way compensation regime, Tex. Loc. Govn’t Code, Chapter 283, and then used an unrepresentative aberration as its sole example of rights of way fees. This letter is being filed in order that the Commission may have a better understanding of rights of way compensation in Texas.

First, this is a Notice of Inquiry as to broadband deployment; there is no separate rights of way fee for broadband deployment in Texas¹;

Second, tw telcom’s example of the “high fee” is misleading, as it gives the impression it is a typical or representative fee, it is not, for two reasons:

1. The example is an aberration, as it is the most expensive configuration of voice service when the provider channelizes T-1. The fee is significantly lower when the

¹ TML, TCCFUI, *et al.*, Coalition Comments, WC Docket No. 11-59 (July 18, 2011), at 42-43. (“Texas Cities Coalition Comments (July 18, 2011)”). See also Public Utility Commission of Texas (“PUC”) Staff letter of Nov., 7, 2003, at 4. Found at: http://www.puc.state.tx.us/industry/communications/row/orders/classification_letter.pdf

customer channelizes the T-1, with *the total fee dropping to approximately \$15 or less* per month in most cities, as a private line, or may be configured as a PBX, where it is counted at 1/10th the channelized cost or a 90% reduction from tw telecom's example;²

2. tw telecom fails to note the well know example of a disproportionately low fee, on high dollar, high capacity private lines, e.g., a \$30,000 plus per month OC-48 private line has a total monthly fee of *approximately \$15 or less*.³

Thirdly, tw telecom fails to note the Public Utility Commission of Texas has statutory authority to review these fees, and is required to do so every three years, per Tex. Loc. Govn't Code, Chapter 283, §283.003 (b).

Lastly, tw telecom fails to note that in 1999, the new Tex. Loc. Govn't Code, Chapter 283 was "the result of lengthy negotiations between cities and telecommunication companies over proper compensation for use of the public rights of way [E]stablishing proper compensation that represents the best interest of all Texans", with tw telecom's predecessor being an active participant in those 1999 negotiations;⁴

These fees have been in place, as negotiated with the industry, for over a decade;

Thank you for your consideration,

/s/ Clarence A. West

Clarence A. West
Attorney for the Coalition of Texas Cities*

*Texas Municipal League, Texas Coalition of Cities for Utility Issues (TCCFUI), and the Coalition of Texas: Addison, Allen, Austin, Bedford, Colleyville, Denton, El Paso, Farmers Branch, Galveston, Grapevine, Houston, Hurst, Keller, Marshall, Missouri City, New Braunfels, North Richland Hills, Pasadena, Round Rock, Tyler, Westlake, West University Place, and Wharton.

² Texas Administrative Rules, P.U.C. Subst. R. 26.465 (d).

³ June 8, 2008 Texas Legislative Committee , House Regulated Industries Committee, Texas Cities handout; PUC Project No. 37498, *Workshop on Chapter 283 Access Line Issues*, August 13, 2010. Texas Cities workshop presentation and filings in this project.

⁴ Texas House Research Organization, May 10, 1999, HB 1777, Bill Analysis, page 5. At: <http://www.lrl.state.tx.us/scanned/hroBillAnalyses/76-0/HB1777.PDF>