CITY OF
Tulsa
A New Kind of *Energy™*

Right of Way Telecommunication Occupancy Fees
As of September 30, 2013

City of Tulsa Internal Auditing
June 2014

Right of Way Telecommunication Occupancy Fees

As of June 30, 2013

City of Tulsa Internal Auditing

Ron Maxwell, CIA, CFE
Chief Internal Auditor

Cathy Criswell, CPA, CIA
City Auditor

AUDIT TEAM:
Cecilia Ackley, CPA Internal Audit Manager
Mary Ann Vassar, CPA Senior Internal Auditor

Introduction / Background

The Office of the City Auditor (OCA) performed an audit of franchise fees, and issued a separate report covering this topic titled *Franchise Tax*. AT&T pays fees using an optional right of way (ROW) occupancy linear footage basis, rather than a percentage of gross revenue. This report discusses various aspects of these AT&T ROW occupancy fees.

T.R.O. Title 11, Chapter 12 establishes right of way occupancy ordinances to fulfill several purposes, among them to 'ensure costs incurred by the City to acquire, maintain and manage the rights-of-way (ROW) are properly allocated among the various users'. To allocate ROW cost, occupancy fees are calculated using an ordinance-required method which identifies and allocates related costs, indexes them to the most recent Consumer Price Index, calculates a 5 year average cost, then computes this cost per foot. This cost computation is required by ordinance to be filed annually by the Mayor with the City Clerk.

Scope and Objectives

The scope of this report addresses review and testing right of way processes, internal controls, ordinance compliance and recovery rate methods in place for the major telecommunication occupant's fees. The objectives of this audit were:
- To document and evaluate adequacy of internal controls and processes in place to calculate, collect, record and monitor major occupant telephone utility ROW occupancy fees
- To assess compliance with ordinances governing major telecommunication occupant ROW occupancy fees.

Audit Methodology

A sample of major telecommunication ROW occupant payments was reviewed to determine fees were correctly calculated, billed/collected and recorded. Major payor Right of Way payment activity from July 2011 through August 2013 was reviewed to determine consistent payments were occurring. Roles, responsibilities and tasks related to telecommunication ROW revenue were reviewed to determine they were established and appropriately segregated. Methods used to monitor, forecast and budget such revenue were assessed for completeness and validity. Telecommunications fee related ordinances were assessed for compliance, and implementation of ordinance changes.

Summary and Conclusions

Internal controls and processes to collect and record major telephone payor ROW occupancy fees are functioning adequately. Ordinance required annual review, calculation and filing of cost per linear foot recovery rates to adjust ROW occupancy fees did not occur in 2013. Cost structure and linear footage assumptions and information were not available to perform this review/filing. Responsibility for a limited, minimum confirmation of the assumptions required for this computation should be considered, particularly if any additional changes to costs or departmental structure occur. Outdated references to roles and departments in the former Public Works department need to be deleted from Right of Way ordinances. For further detail of these issues, **please refer to the Audit Findings and Management Responses** section of this report.

Audit Findings and Management Responses

1. Documentation was not available to complete the annual 2013 Right of Way recovery rate and cost per linear foot filing required by T.R.O. Title 11, Chapter 12, Section 1206 of City ordinance.

To update and assess right of way occupancy linear footage fees, this ordinance requires an annual review, computation and filing of the recovery rate per linear foot to bill right of way occupants.   The computation allocates percentages of ROW indirect, overhead, legal, degradation/boring and capital costs, applies a Consumer Price Index (CPI) factor to arrive at an average 5 year cost, and computes this cost per ROW linear foot.   The computation is required to be reviewed by the Mayor and filed annually with the City Clerk's office.

Streets and Stormwater management determined numerous recovery rate changes had recently occurred and were primarily caused by two events: cost account changes due to the elimination of a unified Public Works department and changes over time in ROW linear feet patterns.   Management deferred filing an adjustment to the ROW recovery rate until these changes could be fully determined and incorporated into the filing.

A lack of retained documentation regarding original cost and linear footage rationales triggered the need for extensive research, which was conducted by Streets and Stormwater management with Finance Division support. To date, **this research resulted in identifying 41 cost account changes totaling $16.5 million as well as a 2.3 million linear footage change.**

These changes were needed to fulfill the ordinance's requirement for allocating existing right of way costs among various users. **If the computation had not been updated, the applicable portion of ROW costs would not have been identified for allocation and proportional fee recovery.**   The revised cost per linear foot is now complete, and the draft filing is under review by the City Council prior to codifying the related ordinance changes. We would like to recognize Streets and Stormwater management as well as the Finance division for their efforts.

RECOMMENDATION:
 We recommend the following actions be taken to ensure correct cost recovery and compliance in the future:
- The rationale, assumptions and data used to compile and calculate ROW recovery rates should be thoroughly documented and retained in a location known to Streets and Stormwater personnel.
- Consideration of brief written recovery rate guidelines to be shared department-wide in Streets and Stormwater may be warranted to prevent disruption and non-compliance if management turnover or further restructure occurs.

<u>RESPONSE:</u>

Agree – The Streets and Stormwater Department is drafting "Guidelines for Calculating the Right of Way Occupancy Fee" for future City staff to follow when computing the inputs for the Right of Way Occupancy per linear foot computation. These guidelines will include why certain data is required for the computation, where the data can be found and if/how the data needs to be adjusted before it is included in the computation. The drafting of the "Guidelines for Calculating the Right of Way Occupancy Fee" should be completed by July 1, 2014.

2. Roles and responsibilities to document and periodically confirm ROW recovery rationale and assumptions need to be clarified and more fully defined.

Related to research on missing rationale for ROW recovery assumptions discussed at **FINDING 1.**, we noted roles, responsibilities and tasks for documentation of these items are vested in the ROW Administrator. However, the Administrator cannot fully perform in this role, as he does not have the information to determine changed cost structure when restructure causes a reallocation. Previous management in this area did not document the rationale and assumptions for the recovery rate calculation, which are needed to perform revisions when change occurs over time. Additionally, minimal periodic confirmation of existing allocation percentages, cost accounts and linear footage patterns is not an established task.

Absence of specific requirements to periodically confirm cost and footage assumptions may result in inaccurate over-or-under allocation of right of way cost. Under allocation would result in the City absorbing ROW costs intended to be charged to occupants; this could reduce general fund revenues.

Lack of specific information needed to carry out an update of cost and footage information may cause future needed amendments or additions to be similarly difficult and/or delayed, resulting in further non-compliance with ordinance requirements. The need for amendments may be triggered by restructure of any of the various departments included in ROW allocated cost.

RECOMMENDATION:
We recommend Streets and Stormwater consider more formally describing and assigning ROW recovery documentation responsibility, and that such enhancements be shared department-wide. Minimal, cost effective confirmation of costs, allocation and linear footage used in ROW recovery should also be considered.

RESPONSE:
Agree – While the Streets and Stormwater Department agrees that the "Guidelines for Calculating the Right of Way Occupancy Fee" need to be more formally described and its responsibilities fully documented. First, we believe that the Finance Department should be responsible for the documentation and periodical conformation of the assumptions, allocation percentages, and linear foot patterns needed to calculate the Right of Way occupancy formula. Second, the drafting of the "Guidelines for Calculating the Right of Way Occupancy Fee" should be combined with the rewriting of the Right of Way ordinance so that the responsibilities and procedures are shared with the correct division, departments and sections within the Finance and Streets and Stormwater Department. While the drafting of the "Guidelines for Calculating the Right of Way Occupancy Fee" should be completed by July 1, 2014 the rewriting of the Right of Way Occupancy Management ordinance will take considerable more time. The draft should be presented to City Legal for review by December 2015.

3. **Right of Way ordinance provisions contain references to eliminated departments and personnel.**

Title 11, Chapter 12 governing right of way (ROW) occupancy management contains references to the duties of the Public Works Director, Right of Way Administrator, and Public Works department. These personnel and department were eliminated in 2011, and the ordinance needs revision.

RECOMMENDATION:
We recommend the ordinance be updated to ensure it reflects current City structure and to clarify roles, responsibilities and authorities of personnel responsible for ROW monitoring and compliance.

RESPONSE:
Agree – The Streets and Stormwater Department is in the process of drafting a revision to T.R.O. Title 11, Chapter 12, Rights of Way Occupancy Management Ordinance of the City of Tulsa. This ordinance deals with the administration and enforcement within the City's Rights of Way. While the original ordinance divided the responsibility between the Telecommunications, Public Works and Finance Departments, the revised ordinance shall divide the responsibilities between the Community Development Division and the Finance Division.
   a. The Community Development Division shall oversee all issues regarding administration, registration and issuance of Right of Way occupancy permits. The maintenance of occupancy facility information, administration records and all other duties related to the maintenance of Right of Way Occupancy Records. The Community Development Division shall oversee the administration and enforcement of matters related to Right of Way construction permits and the enforcement of engineering standards as outlined by the City of Tulsa.
   b. The Finance Division shall be responsible for the administration and enforcement of all insurance requirements and the calculation, invoicing and collecting of all Right of Way Occupancy fees.
The draft of the ordinance rewrite should be presented to City Legal for review by December 2015.

DISTRIBUTION LIST

Mayor
Councilor, District 1
Councilor, District 2
Councilor, District 3
Councilor, District 4
Councilor, District 5
Councilor, District 6
Councilor, District 7
Councilor, District 8
Councilor, District 9
City Auditor
Mayor's Chief of Staff
City Manager
Press Secretary
Finance Director
Controller, Accounting Division
Director of Public Facilities and Transportation
Director of Streets and Stormwater
Director of Engineering Services
Treasury Division Manager
MRO Project Managers
Revenue Enforcement Administration Manager
Street Operations and Inspections Manager
Senior Administrative Services Officer - Finance
Council Administrator
Council Secretary
External Auditor
Mayor's Audit Committee
Internal Auditing Staff