

AN ACT

relating to the deployment of network nodes in public right-of-way;
authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 9, Local Government Code, is
amended by adding Chapter 284 to read as follows:

CHAPTER 284. DEPLOYMENT OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 284.001. FINDINGS AND POLICY. (a) The legislature
finds that:

(1) network nodes are instrumental to increasing
access to advanced technology and information for the citizens of
this state and thereby further an important public policy of having
reliable wireless networks and services;

(2) this state has delegated to each municipality the
fiduciary duty, as a trustee, to manage the public right-of-way for
the health, safety, and welfare of the public, subject to state law;

(3) network nodes often may be deployed most
effectively in the public right-of-way;

(4) network providers' access to the public
right-of-way and the ability to attach network nodes to poles and
structures in the public right-of-way allow network providers to
densify their networks and provide next-generation services;

(5) expeditious processes and reasonable and

nondiscriminatory terms, conditions, and compensation for use of the public right-of-way for network node deployments are essential to state-of-the-art wireless services and thereby further an important public policy of having reliable wireless networks and services;

(6) network nodes help ensure that this state remains competitive in the global economy;

(7) the timely permitting of network nodes in the public right-of-way is a matter of statewide concern and interest;

(8) requirements of this chapter regarding fees, charges, rates, and public right-of-way management, when considered with fees charged to other public right-of-way users under this code, are fair and reasonable and in compliance with 47 U.S.C. Section 253;

(9) to the extent this state has delegated its fiduciary responsibility to municipalities as managers of a valuable public asset, the public right-of-way, this state is acting in its role as a landowner in balancing the needs of the public and the needs of the network providers by allowing access to the public right-of-way to place network nodes in the public right-of-way strictly within the terms of this chapter; and

(10) as to each municipality, including home-rule municipalities, this state has determined that it is reasonable and necessary to allow access to the public right-of-way for the purposes of deploying network nodes to protect and safeguard the health, safety, and welfare of the public as provided by this chapter.

1 (b) In order to safeguard the health, safety, and welfare of
2 the public, it is the policy of this state to promote the adoption
3 of and encourage competition in the provision of wireless services
4 by reducing the barriers to entry for providers of services so that
5 the number and types of services offered by providers continue to
6 increase through competition.

7 (c) It is the policy of this state, subject to state law and
8 strictly within the requirements and limitations prescribed by this
9 chapter, that municipalities:

10 (1) retain the authority to manage the public
11 right-of-way to ensure the health, safety, and welfare of the
12 public; and

13 (2) receive from network providers fair and reasonable
14 compensation for use of the public right-of-way and for collocation
15 on poles.

16 Sec. 284.002. DEFINITIONS. In this chapter:

17 (1) "Antenna" means communications equipment that
18 transmits or receives electromagnetic radio frequency signals used
19 in the provision of wireless services.

20 (2) "Applicable codes" means:

21 (A) uniform building, fire, electrical,
22 plumbing, or mechanical codes adopted by a recognized national code
23 organization; and

24 (B) local amendments to those codes to the extent
25 not inconsistent with this chapter.

26 (3) "Collocate" and "collocation" mean the
27 installation, mounting, maintenance, modification, operation, or

1 replacement of network nodes in a public right-of-way on or
2 adjacent to a pole.

3 (4) "Decorative pole" means a streetlight pole
4 specially designed and placed for aesthetic purposes and on which
5 no appurtenances or attachments, other than specially designed
6 informational or directional signage or temporary holiday or
7 special event attachments, have been placed or are permitted to be
8 placed according to nondiscriminatory municipal codes.

9 (5) "Design district" means an area that is zoned, or
10 otherwise designated by municipal code, and for which the city
11 maintains and enforces unique design and aesthetic standards on a
12 uniform and nondiscriminatory basis.

13 (6) "Historic district" means an area that is zoned or
14 otherwise designated as a historic district under municipal, state,
15 or federal law.

16 (7) "Law" means common law or a federal, state, or
17 local law, statute, code, rule, regulation, order, or ordinance.

18 (8) "Macro tower" means a guyed or self-supported pole
19 or monopole greater than the height parameters prescribed by
20 Section 284.103 and that supports or is capable of supporting
21 antennas.

22 (9) "Micro network node" means a network node that is
23 not larger in dimension than 24 inches in length, 15 inches in
24 width, and 12 inches in height, and that has an exterior antenna, if
25 any, not longer than 11 inches.

26 (10) "Municipally owned utility pole" means a utility
27 pole owned or operated by a municipally owned utility, as defined by

1 Section 11.003, Utilities Code, and located in a public
2 right-of-way.

3 (11) "Municipal park" means an area that is zoned or
4 otherwise designated by municipal code as a public park for the
5 purpose of recreational activity.

6 (12) "Network node" means equipment at a fixed
7 location that enables wireless communications between user
8 equipment and a communications network. The term:

9 (A) includes:

10 (i) equipment associated with wireless
11 communications;

12 (ii) a radio transceiver, an antenna, a
13 battery-only backup power supply, and comparable equipment,
14 regardless of technological configuration; and

15 (iii) coaxial or fiber-optic cable that is
16 immediately adjacent to and directly associated with a particular
17 collocation; and

18 (B) does not include:

19 (i) an electric generator;

20 (ii) a pole; or

21 (iii) a macro tower.

22 (13) "Network provider" means:

23 (A) a wireless service provider; or

24 (B) a person that does not provide wireless
25 services and that is not an electric utility but builds or installs
26 on behalf of a wireless service provider:

27 (i) network nodes; or

1 (ii) node support poles or any other
2 structure that supports or is capable of supporting a network node.

3 (14) "Node support pole" means a pole installed by a
4 network provider for the primary purpose of supporting a network
5 node.

6 (15) "Permit" means a written authorization for the
7 use of the public right-of-way or collocation on a service pole
8 required from a municipality before a network provider may perform
9 an action or initiate, continue, or complete a project over which
10 the municipality has police power authority.

11 (16) "Pole" means a service pole, municipally owned
12 utility pole, node support pole, or utility pole.

13 (17) "Private easement" means an easement or other
14 real property right that is only for the benefit of the grantor and
15 grantee and their successors and assigns.

16 (18) "Public right-of-way" means the area on, below,
17 or above a public roadway, highway, street, public sidewalk, alley,
18 waterway, or utility easement in which the municipality has an
19 interest. The term does not include:

20 (A) a private easement; or

21 (B) the airwaves above a public right-of-way with
22 regard to wireless telecommunications.

23 (19) "Public right-of-way management ordinance" means
24 an ordinance that complies with Subchapter C.

25 (20) "Public right-of-way rate" means an annual rental
26 charge paid by a network provider to a municipality related to the
27 construction, maintenance, or operation of network nodes within a

public right-of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

(A) a pole that supports traffic control functions;

(B) a structure for signage;

(C) a pole that supports lighting, other than a decorative pole; and

(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "Wireless service" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

(25) "Wireless service provider" means a person that provides wireless service to the public.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES.

1 (a) Except as provided by Section 284.109, a network node to which
2 this chapter applies must conform to the following conditions:

3 (1) each antenna that does not have exposed elements
4 and is attached to an existing structure or pole:

5 (A) must be located inside an enclosure of not
6 more than six cubic feet in volume;

7 (B) may not exceed a height of three feet above
8 the existing structure or pole; and

9 (C) may not protrude from the outer circumference
10 of the existing structure or pole by more than two feet;

11 (2) if an antenna has exposed elements and is attached
12 to an existing structure or pole, the antenna and all of the
13 antenna's exposed elements:

14 (A) must fit within an imaginary enclosure of not
15 more than six cubic feet;

16 (B) may not exceed a height of three feet above
17 the existing structure or pole; and

18 (C) may not protrude from the outer circumference
19 of the existing structure or pole by more than two feet;

20 (3) the cumulative size of other wireless equipment
21 associated with the network node attached to an existing structure
22 or pole may not:

23 (A) be more than 28 cubic feet in volume; or

24 (B) protrude from the outer circumference of the
25 existing structure or pole by more than two feet;

26 (4) ground-based enclosures, separate from the pole,
27 may not be higher than three feet six inches from grade, wider than

three feet six inches, or deeper than three feet six inches; and

(5) pole-mounted enclosures may not be taller than five feet.

(b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):

(1) electric meters;

(2) concealment elements;

(3) telecommunications demarcation boxes;

(4) grounding equipment;

(5) power transfer switches;

(6) cut-off switches; and

(7) vertical cable runs for the connection of power and other services.

(c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.

(d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

SUBCHAPTER B. USE OF PUBLIC RIGHT-OF-WAY

Sec. 284.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to activities related to transport facilities for network nodes, activities of a network provider collocating network nodes in the public right-of-way or installing, constructing, operating, modifying, replacing, and maintaining node support

1 poles in a public right-of-way, and municipal authority in relation
2 to those activities.

3 Sec. 284.052. EXCLUSIVE USE PROHIBITED. A municipality may
4 not enter into an exclusive arrangement with any person for use of
5 the public right-of-way for the construction, operation,
6 marketing, or maintenance of network nodes or node support poles.

7 Sec. 284.053. ANNUAL PUBLIC RIGHT-OF-WAY RATE. (a) A
8 public right-of-way rate for use of the public right-of-way may not
9 exceed an annual amount equal to \$250 multiplied by the number of
10 network nodes installed in the public right-of-way in the
11 municipality's corporate boundaries.

12 (b) At the municipality's discretion, the municipality may
13 charge a network provider a lower rate or fee if the lower rate or
14 fee is:

15 (1) nondiscriminatory;

16 (2) related to the use of the public right-of-way; and

17 (3) not a prohibited gift of public property.

18 Sec. 284.054. PUBLIC RIGHT-OF-WAY RATE ADJUSTMENT. (a) In
19 this section, "consumer price index" means the annual revised
20 Consumer Price Index for All Urban Consumers for Texas, as
21 published by the federal Bureau of Labor Statistics.

22 (b) A municipality may adjust the amount of the public
23 right-of-way rate not more often than annually by an amount equal to
24 one-half the annual change, if any, in the consumer price index.
25 The municipality shall provide written notice to each network
26 provider of the new rate, and the rate shall apply to the first
27 payment due to the municipality on or after the 60th day following

1 that notice.

2 Sec. 284.055. USE OF PUBLIC RIGHT-OF-WAY AND APPLICABLE
3 RATE. (a) A network provider that wants to connect a network node
4 to the network using the public right-of-way may:

5 (1) install its own transport facilities subject to
6 Subsection (b); or

7 (2) obtain transport service from a person that is
8 paying municipal fees to occupy the public right-of-way that are
9 the equivalent of not less than \$28 per node per month.

10 (b) A network provider may not install its own transport
11 facilities unless the provider:

12 (1) has a permit to use the public right-of-way; and

13 (2) pays to the municipality a monthly public
14 right-of-way rate for transport facilities in an amount equal to
15 \$28 multiplied by the number of the network provider's network
16 nodes located in the public right-of-way for which the installed
17 transport facilities provide backhaul unless or until the time the
18 network provider's payment of municipal fees to the municipality
19 exceeds its monthly aggregate per-node compensation to the
20 municipality.

21 (c) A public right-of-way rate required by Subsection (b) is
22 in addition to any public right-of-way rate required by Section
23 284.053.

24 Sec. 284.056. COLLOCATION OF NETWORK NODES ON SERVICE
25 POLES. A municipality, subject to an agreement with the
26 municipality that does not conflict with this chapter, shall allow
27 collocation of network nodes on service poles on nondiscriminatory

terms and conditions and at a rate not greater than \$20 per year per service pole.

Sec. 284.057. PROHIBITION ON OTHER COMPENSATION. A municipality may not require a network provider to pay any compensation other than the compensation authorized by this chapter for the right to use a public right-of-way for network nodes, node support poles, or transport facilities for network nodes.

SUBCHAPTER C. ACCESS AND APPROVALS

Sec. 284.101. RIGHT OF ACCESS TO PUBLIC RIGHT-OF-WAY.

(a) Except as specifically provided by this chapter, and subject to the requirements of this chapter and the approval of a permit application, if required, a network provider is authorized, as a permitted use, without need for a special use permit or similar zoning review and not subject to further land use approval, to do the following in the public right-of-way:

(1) construct, modify, maintain, operate, relocate, and remove a network node or node support pole;

(2) modify or replace a utility pole or node support pole; and

(3) collocate on a pole, subject to an agreement with the municipality that does not conflict with this chapter.

(b) A network provider taking an action authorized by Subsection (a) is subject to applicable codes, including applicable public right-of-way management ordinances.

Sec. 284.102. GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS. A network provider shall construct and maintain network nodes and node support poles described by Section 284.101

in a manner that does not:

(1) obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;

(2) obstruct the legal use of a public right-of-way by other utility providers;

(3) violate nondiscriminatory applicable codes;

(4) violate or conflict with the municipality's publicly disclosed public right-of-way design specifications; or

(5) violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

Sec. 284.103. GENERAL LIMITATION ON PLACEMENT OF POLES. A network provider shall ensure that each new, modified, or replacement utility pole or node support pole installed in a public right-of-way in relation to which the network provider received approval of a permit application does not exceed the lesser of:

(1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or

(2) 55 feet above ground level.

Sec. 284.104. INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS. (a) A network provider may not install a new node support pole in a public right-of-way without the municipality's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a municipal park or is adjacent to a street or thoroughfare that is:

(1) not more than 50 feet wide; and

(2) adjacent to single-family residential lots or

1 other multifamily residences or undeveloped land that is designated
2 for residential use by zoning or deed restrictions.

3 (b) In addition to the requirement prescribed by Subsection
4 (a), a network provider installing a network node or node support
5 pole in a public right-of-way described by Subsection (a) shall
6 comply with private deed restrictions and other private
7 restrictions in the area that apply to those facilities.

8 Sec. 284.105. INSTALLATION IN HISTORIC OR DESIGN DISTRICTS.

9 (a) A network provider must obtain advance approval from a
10 municipality before collocating new network nodes or installing new
11 node support poles in an area of the municipality zoned or otherwise
12 designated as a historic district or as a design district if the
13 district has decorative poles. As a condition for approval of new
14 network nodes or new node support poles in a historic district or a
15 design district with decorative poles, a municipality may require
16 reasonable design or concealment measures for the new network nodes
17 or new node support poles. A municipality may request that a
18 network provider comply with the design and aesthetic standards of
19 the historic or design district and explore the feasibility of
20 using certain camouflage measures to improve the aesthetics of the
21 new network nodes, new node support poles, or related ground
22 equipment, or any portion of the nodes, poles, or equipment, to
23 minimize the impact to the aesthetics in a historic district or on a
24 design district's decorative poles.

25 (b) This section may not be construed to limit a
26 municipality's authority to enforce historic preservation zoning
27 regulations consistent with the preservation of local zoning

1 authority under 47 U.S.C. Section 332(c)(7), the requirements for
2 facility modifications under 47 U.S.C. Section 1455(a), or the
3 National Historic Preservation Act of 1966 (54 U.S.C. Section
4 300101 et seq.), and the regulations adopted to implement those
5 laws.

6 Sec. 284.106. EQUIPMENT CABINETS. A network provider shall
7 ensure that the vertical height of an equipment cabinet installed
8 as part of a network node does not exceed the height limitation
9 prescribed by Section 284.003, subject to approval of the pole's
10 owner if applicable.

11 Sec. 284.107. COMPLIANCE WITH UNDERGROUNDING REQUIREMENT.
12 (a) A network provider shall, in relation to installation for
13 which the municipality approved a permit application, comply with
14 nondiscriminatory undergrounding requirements, including
15 municipal ordinances, zoning regulations, state law, private deed
16 restrictions, and other public or private restrictions, that
17 prohibit installing aboveground structures in a public
18 right-of-way without first obtaining zoning or land use approval.

19 (b) A requirement or restriction described by Subsection
20 (a) may not be interpreted to prohibit a network provider from
21 replacing an existing structure.

22 Sec. 284.108. DESIGN MANUAL. (a) A municipality may adopt
23 a design manual for the installation and construction of network
24 nodes and new node support poles in the public right-of-way that
25 includes additional installation and construction details that do
26 not conflict with this chapter. The design manual may include:

27 (1) a requirement that an industry standard pole load

1 analysis be completed and submitted to the municipality indicating
2 that the service pole to which the network node is to be attached
3 will safely support the load; and

4 (2) a requirement that network node equipment placed
5 on new and existing poles be placed more than eight feet above
6 ground level.

7 (b) A network provider shall comply with a design manual, if
8 any, in place on the date a permit application is filed in relation
9 to work for which the municipality approved the permit application.
10 A municipality's obligations under Section 284.154 may not be
11 tolled or extended pending the adoption or modification of a design
12 manual.

13 Sec. 284.109. EXCEPTIONS. Subject to Subchapter D, a
14 network provider may construct, modify, or maintain in a public
15 right-of-way a network node or node support pole that exceeds the
16 height or distance limitations prescribed by this chapter only if
17 the municipality approves the construction, modification, or
18 maintenance subject to all applicable zoning or land use
19 regulations and applicable codes.

20 Sec. 284.110. DISCRIMINATION PROHIBITED. A municipality,
21 in the exercise of the municipality's administrative and regulatory
22 authority related to the management of and access to the public
23 right-of-way, must be competitively neutral with regard to other
24 users of the public right-of-way.

25 SUBCHAPTER D. APPLICATIONS AND PERMITS

26 Sec. 284.151. PROHIBITION OF CERTAIN MUNICIPAL ACTIONS.
27 (a) Except as otherwise provided by this chapter, a municipality

1 may not prohibit, regulate, or charge for the installation or
2 collocation of network nodes in a public right-of-way.

3 (b) A municipality may not directly or indirectly require,
4 as a condition for issuing a permit required under this chapter,
5 that the applicant perform services unrelated to the installation
6 or collocation for which the permit is sought, including in-kind
7 contributions such as reserving fiber, conduit, or pole space for
8 the municipality.

9 (c) A municipality may not institute a moratorium, in whole
10 or in part, express or de facto, on:

11 (1) filing, receiving, or processing applications; or
12 (2) issuing permits or other approvals, if any, for
13 the installation of network nodes or node support poles.

14 Sec. 284.152. AUTHORITY TO REQUIRE PERMIT. (a) Except as
15 otherwise provided by this chapter, a municipality may require a
16 network provider to obtain one or more permits to install a network
17 node, node support pole, or transport facility in a public
18 right-of-way if the permit:

19 (1) is of general applicability to users of the public
20 right-of-way;

21 (2) does not apply exclusively to network nodes; and

22 (3) is processed on nondiscriminatory terms and
23 conditions regardless of the type of entity submitting the
24 application for the permit.

25 (b) A network provider that wants to install or collocate
26 multiple network nodes inside the territorial jurisdiction of a
27 single municipality is entitled to file a consolidated permit

1 application with the municipality for not more than 30 network
2 nodes and receive permits for the installation or collocation of
3 those network nodes.

4 Sec. 284.153. GENERAL PROCESS RELATING TO PERMIT
5 APPLICATION. (a) Except as otherwise provided by this section, a
6 municipality may not require an applicant to provide more
7 information to obtain the permit than a telecommunications utility
8 that is not a network provider is required to provide unless the
9 information directly relates to the requirements of this chapter.

10 (b) As part of the standard form for a permit application, a
11 municipality may require the applicant to include applicable
12 construction and engineering drawings and information to confirm
13 that the applicant will comply with the municipality's publicly
14 disclosed public right-of-way design specifications and applicable
15 codes.

16 (c) A municipality may require an applicant to provide:

17 (1) information reasonably related to the provider's
18 use of the public right-of-way under this chapter to ensure
19 compliance with this chapter;

20 (2) a certificate that the network node complies with
21 applicable regulations of the Federal Communications Commission;
22 and

23 (3) certification that the proposed network node will
24 be placed into active commercial service by or for a network
25 provider not later than the 60th day after the date the construction
26 and final testing of the network node is completed.

27 Sec. 284.154. MUNICIPAL REVIEW PROCESS. (a) A

1 municipality shall process each permit application on a
2 nondiscriminatory basis.

3 (b) Not later than the 30th day after the date the
4 municipality receives an application for a permit for a network
5 node or node support pole, or the 10th day after the date the
6 municipality receives an application for a permit for a transport
7 facility, the municipality shall determine whether the application
8 is complete and notify the applicant of that determination. If the
9 municipality determines that the application is not complete, the
10 municipality shall specifically identify the missing information.

11 (c) A municipality shall approve an application that does
12 not require zoning or land use approval under this chapter unless
13 the application or the corresponding work to be performed under the
14 permit does not comply with the municipality's applicable codes or
15 other municipal rules, regulations, or other law that is consistent
16 with this chapter.

17 (d) A municipality must approve or deny an application for a
18 node support pole not later than the 150th day after the date the
19 municipality receives the complete application. A municipality
20 must approve or deny an application for a network node not later
21 than the 60th day after the date the municipality receives the
22 complete application. A municipality must approve or deny an
23 application for a transport facility not later than the 21st day
24 after the date the municipality receives a complete application.
25 An application for a permit for a node support pole, network node,
26 or transport facility shall be deemed approved if the application
27 is not approved or denied on or before the applicable date for

1 approval or denial prescribed by this subsection.

2 (e) A municipality that denies a complete application must
3 document the basis for the denial, including the specific
4 applicable code provisions or other municipal rules, regulations,
5 or other law on which the denial was based. The municipality shall
6 send the documentation by electronic mail to the applicant on or
7 before the date the municipality denies the application.

8 (f) Not later than the 30th day after the date the
9 municipality denies the application, the applicant may cure the
10 deficiencies identified in the denial documentation and resubmit
11 the application without paying an additional application fee, other
12 than a fee for actual costs incurred by the municipality.
13 Notwithstanding Subsection (d), the municipality shall approve or
14 deny the revised completed application after a denial not later
15 than the 90th day after the date the municipality receives the
16 completed revised application. The municipality's review of the
17 revised application is limited to the deficiencies cited in the
18 denial documentation.

19 Sec. 284.155. TIME OF INSTALLATION. (a) A network
20 provider shall begin the installation for which a permit is granted
21 not later than six months after final approval and shall diligently
22 pursue the installation to completion.

23 (b) Notwithstanding Subsection (a), the municipality may
24 place a longer time limit on completion or grant reasonable
25 extensions of time as requested by the network provider.

26 Sec. 284.156. APPLICATION FEES. (a) A municipality may
27 charge an application fee for a permit only if the municipality

1 requires the payment of the fee for similar types of commercial
2 development inside the municipality's territorial jurisdiction
3 other than a type for which application or permit fees are not
4 allowed by law.

5 (b) The amount of an application fee charged by a
6 municipality may not exceed the lesser of:

7 (1) the actual, direct, and reasonable costs the
8 municipality determines are incurred in granting or processing an
9 application that are reasonably related in time to the time the
10 costs of granting or processing an application are incurred; or

11 (2) \$500 per application covering up to five network
12 nodes, \$250 for each additional network node per application, and
13 \$1,000 per application for each pole.

14 (c) In determining for purposes of Subsection (b)(1) the
15 amount of the actual, direct, and reasonable costs, the
16 municipality may not:

17 (1) include costs incurred by the municipality in
18 relation to third-party legal or engineering review of an
19 application; or

20 (2) direct payments or reimbursement of third-party
21 public right-of-way rates or fees charged on a contingency basis or
22 under a result-based arrangement.

23 Sec. 284.157. CERTAIN WORK EXEMPTED. (a) Notwithstanding
24 any other provision of this chapter, a municipality may not require
25 a network provider to submit an application, obtain a permit, or pay
26 a rate for:

27 (1) routine maintenance that does not require

excavation or closing of sidewalks or vehicular lanes in a public right-of-way;

(2) replacing or upgrading a network node or pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or

(3) the installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles, in compliance with the National Electrical Safety Code.

(b) For purposes of Subsection (a)(2):

(1) a network node or pole is considered to be "substantially similar" if:

(A) the new or upgraded network node, including the antenna or other equipment element, will not be more than 10 percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by Section 284.003; and

(B) the new or upgraded pole will not be more than 10 percent higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by Section 284.103;

(2) the replacement or upgrade does not include replacement of an existing node support pole; and

(3) the replacement or upgrade does not defeat existing concealment elements of a node support pole.

(c) The determination under Subsection (b)(1) of whether a

1 replacement or upgrade is substantially similar is made by
2 measuring from the dimensions of the network node or node support
3 pole as approved by the municipality.

4 (d) Notwithstanding Subsection (a):

5 (1) a municipality may require advance notice of work
6 described by that subsection;

7 (2) a network provider may replace or upgrade a pole
8 only with the approval of the pole's owner; and

9 (3) the size limitations may not in any event exceed
10 the parameters prescribed by Section 284.003 without the
11 municipality's approval in accordance with Section 284.109, with
12 the municipality acting on behalf of this state as the fiduciary
13 trustee of public property.

14 SUBCHAPTER E. ACCESS TO MUNICIPALLY OWNED UTILITY POLES

15 Sec. 284.201. USE OF MUNICIPALLY OWNED UTILITY POLES.

16 (a) The governing body of a municipally owned utility shall allow
17 collocation of network nodes on municipally owned utility poles on
18 nondiscriminatory terms and conditions and pursuant to a negotiated
19 pole attachment agreement, including any applicable permitting
20 requirements of the municipally owned utility.

21 (b) The annual pole attachment rate for the collocation of a
22 network node supported by or installed on a municipally owned
23 utility pole shall be based on a pole attachment rate consistent
24 with Section 54.204, Utilities Code, applied on a per-foot basis.

25 (c) The requirements of Subchapters B, C, and D applicable
26 to the installation of a network node supported by or installed on a
27 pole do not apply to a network node supported by or installed on a

municipally owned utility pole.

SUBCHAPTER F. EFFECT ON OTHER UTILITIES AND PROVIDERS

Sec. 284.251. DEFINITIONS. In this subchapter:

(1) "Cable service" and "video service" have the meanings assigned by Section 66.002, Utilities Code.

(2) "Electric cooperative" has the meaning assigned by Section 11.003, Utilities Code.

(3) "Electric utility" has the meaning assigned by Section 31.002, Utilities Code.

(4) "Telecommunications provider" has the meaning assigned by Section 51.002, Utilities Code.

(5) "Telephone cooperative" has the meaning assigned by Section 162.003, Utilities Code.

Sec. 284.252. EFFECT ON INVESTOR-OWNED ELECTRIC UTILITIES, ELECTRIC COOPERATIVES, TELEPHONE COOPERATIVES, AND TELECOMMUNICATIONS PROVIDERS. Nothing in this chapter shall govern attachment of network nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunications providers. This chapter does not confer on municipalities any new authority over those utilities, cooperatives, or providers.

Sec. 284.253. EFFECT ON PROVIDERS OF CABLE SERVICES OR VIDEO SERVICES. (a) An approval for the installation, placement, maintenance, or operation of a network node or transport facility under this chapter may not be construed to confer authorization to provide:

(1) cable service or video service without complying

1 with all terms of Chapter 66, Utilities Code; or

2 (2) information service as defined by 47 U.S.C.
3 Section 153(24), or telecommunications service as defined by 47
4 U.S.C. Section 153(53), in the public right-of-way.

5 (b) Except as provided by this chapter, a municipality may
6 not adopt or enforce any regulations or requirements that would
7 require a wireless service provider, or its affiliate, that holds a
8 cable or video franchise under Chapter 66, Utilities Code, to
9 obtain any additional authorization or to pay any fees based on the
10 provider's provision of wireless service over its network nodes.

11 SUBCHAPTER G. GENERAL CONDITIONS OF ACCESS

12 Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS.

13 (a) Subject to this chapter and applicable federal and state law,
14 a municipality may continue to exercise zoning, land use, planning,
15 and permitting authority in the municipality's boundaries,
16 including with respect to utility poles.

17 (b) A municipality may exercise that authority to impose
18 police-power-based regulations for the management of the public
19 right-of-way that apply to all persons subject to the municipality.

20 (c) A municipality may impose police-power-based
21 regulations in the management of the activities of network
22 providers in the public right-of-way only to the extent that the
23 regulations are reasonably necessary to protect the health, safety,
24 and welfare of the public.

25 Sec. 284.302. INDEMNIFICATION. The indemnification
26 provisions of Sections 283.057(a) and (b) apply to a network
27 provider accessing a public right-of-way under this chapter.

1 Sec. 284.303. RELOCATION. Except as provided in existing
2 state and federal law, a network provider shall relocate or adjust
3 network nodes in a public right-of-way in a timely manner and
4 without cost to the municipality managing the public right-of-way.

5 Sec. 284.304. INTERFERENCE. (a) A network provider shall
6 operate all network nodes in accordance with all applicable laws,
7 including regulations adopted by the Federal Communications
8 Commission.

9 (b) A network provider shall ensure that the operation of a
10 network node does not cause any harmful radio frequency
11 interference to a Federal Communications Commission-authorized
12 mobile telecommunications operation of the municipality operating
13 at the time the network node was initially installed or
14 constructed. On written notice, a network provider shall take all
15 steps reasonably necessary to remedy any harmful interference.

16 SECTION 2. (a) In this section, "collocation," "network
17 node," "network provider," and "public right-of-way" have the
18 meanings assigned by Section 284.002, Local Government Code, as
19 added by this Act.

20 (b) Public/private agreements between a municipality and a
21 network provider for the deployment of network nodes in the public
22 right-of-way on fair and reasonable terms as provided by Chapter
23 284, Local Government Code, as added by this Act, and corresponding
24 ordinances governing that deployment, are necessary to protect the
25 health, safety, and welfare of the public by facilitating robust
26 and dependable wireless networks. Accordingly, those agreements
27 and ordinances shall be conformed as provided by this section.

1 (c) Subject to Subsection (d) of this section, the rates,
2 terms, and conditions of agreements and ordinances entered into or
3 enacted before the effective date of this Act shall apply to all
4 network nodes installed and operational before the effective date
5 of this Act.

6 (d) For all network nodes installed and operational on or
7 after the effective date of this Act:

8 (1) if a rate, term, or condition of an agreement or
9 ordinance related to the construction, collocation, operation,
10 modification, or maintenance of network nodes does not comply with
11 the requirements of Chapter 284, Local Government Code, as added by
12 this Act, a municipality shall amend the agreement or ordinance to
13 comply with the requirements of Chapter 284, Local Government Code,
14 as added by this Act, and the amended rates, terms, or conditions
15 shall take effect for those network nodes on the six-month
16 anniversary of the effective date of this Act; and

17 (2) the rates, terms, and conditions of each agreement
18 executed, and each ordinance enacted, on or after the effective
19 date of this Act shall comply with the requirements of Chapter 284,
20 Local Government Code, as added by this Act.

21 SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1004 passed the Senate on April 6, 2017, by the following vote: Yeas 29, Nays 0, two present not voting; and that the Senate concurred in House amendment on May 25, 2017, by the following vote: Yeas 29, Nays 0, two present not voting.

Secretary of the Senate

I hereby certify that S.B. No. 1004 passed the House, with amendment, on May 18, 2017, by the following vote: Yeas 140, Nays 6, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor