

By: Hancock

S.B. No. 1004

A BILL TO BE ENTITLED

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;

(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

1 the public right-of-way for network node deployments are essential  
2 to state-of-the-art wireless services;

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

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

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

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

19 (b) It is the policy of this state to promote the adoption of  
20 and encourage competition in the provision of wireless services by  
21 reducing the barriers to entry for providers of services so that the  
22 number and types of services offered by providers continue to  
23 increase through competition.

24 (c) It is the policy of this state that municipalities:

25 (1) retain the authority to manage the public  
26 right-of-way to ensure the health, safety, and welfare of the  
27 public; and

1           (2) receive from network providers fair and reasonable  
2 compensation for use of the public right-of-way.

3           Sec. 284.002. DEFINITIONS. In this chapter:

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

7           (2) "Applicable codes" means:

8                   (A) uniform building, fire, electrical,  
9 plumbing, or mechanical codes adopted by a recognized national code  
10 organization; and

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

13           (3) "Collocate" and "collocation" mean the  
14 installation, mounting, maintenance, modification, operation, or  
15 replacement of network nodes in a public right-of-way on or  
16 adjacent to a pole.

17           (4) "Decorative pole" means a streetlight pole  
18 specially designed and placed for aesthetic purposes and on which  
19 no appurtenances or attachments, other than temporary holiday or  
20 special event attachments, have been placed or are permitted to be  
21 placed according to nondiscriminatory municipal codes.

22           (5) "Historic district" means an area that is zoned or  
23 otherwise designated as a historic district under municipal, state,  
24 or federal law.

25           (6) "Law" means common law or a federal, state, or  
26 local law, statute, code, rule, regulation, order, or ordinance.

27           (7) "Macro tower" means a guyed or self-supported pole

1 or monopole greater than the height parameters prescribed by  
2 Section 284.103 and that supports or is capable of supporting  
3 antennas.

4 (8) "Micro network node" means a network node that is  
5 not larger in dimension than 24 inches in length, 15 inches in  
6 width, and 12 inches in height, and that has an exterior antenna, if  
7 any, not longer than 11 inches.

8 (9) "Municipally owned utility pole" means a utility  
9 pole owned or operated by a municipally owned utility, as defined by  
10 Section 11.003, Utilities Code, and located in a public  
11 right-of-way.

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

15 (A) includes:

16 (i) equipment associated with wireless  
17 communications;

18 (ii) a radio transceiver, an antenna, a  
19 battery-only backup power supply, and comparable equipment,  
20 regardless of technological configuration; and

21 (iii) coaxial or fiber-optic cable that is  
22 immediately adjacent to and directly associated with a particular  
23 collocation; and

24 (B) does not include:

25 (i) an electric generator;

26 (ii) a pole; or

27 (iii) a macro tower.

1           (11) "Network provider" means:

2                   (A) a wireless service provider; or

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

6                           (i) network nodes; or

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

9           (12) "Node support pole" means a pole installed by a  
10 network provider for the primary purpose of supporting a network  
11 node.

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

17           (14) "Pole" means a service pole, municipally owned  
18 utility pole, node support pole, or utility pole.

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

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

26                   (A) a private easement; or

27                   (B) the airwaves above a public right-of-way with

1 regard to wireless telecommunications.

2 (17) "Public right-of-way management ordinance" means  
3 an ordinance that complies with Subchapter C.

4 (18) "Public right-of-way rate" means an annual rental  
5 charge paid by a network provider to a municipality related to the  
6 construction, maintenance, or operation of network nodes within a  
7 public right-of-way in the municipality.

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

11 (A) a pole that supports traffic control  
12 functions;

13 (B) a structure for signage;

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

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

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

22 (21) "Utility pole" means a pole that provides:

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

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

27 (22) "Wireless service" means any service, using

1 licensed or unlicensed wireless spectrum, including the use of  
2 Wi-Fi, whether at a fixed location or mobile, provided to the public  
3 using a network node.

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

6 Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES.

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

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

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

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

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

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

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

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

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

26 (3) the cumulative size of other wireless equipment  
27 associated with the network node attached to an existing structure

1 or pole may not:

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

3 (B) protrude from the outer circumference of the  
4 existing structure or a node support pole by more than two feet;

5 (4) ground-based enclosures, separate from the pole,  
6 may not be higher than three feet six inches from grade, wider than  
7 three feet six inches, or deeper than three feet six inches; and

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

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

13 (1) electric meters;

14 (2) concealment elements;

15 (3) telecommunications demarcation boxes;

16 (4) grounding equipment;

17 (5) power transfer switches;

18 (6) cut-off switches; and

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

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

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

1           SUBCHAPTER B. USE OF PUBLIC RIGHT-OF-WAY

2           Sec. 284.051. APPLICABILITY OF SUBCHAPTER. This subchapter  
3 applies only to activities related to transport facilities for  
4 network nodes, activities of a network provider collocating network  
5 nodes in the public right-of-way or installing, constructing,  
6 operating, modifying, replacing, and maintaining node support  
7 poles in a public right-of-way, and municipal authority in relation  
8 to those activities.

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

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

18           (b) At the municipality's discretion, the municipality may  
19 charge a network provider a lower rate or fee if the lower rate or  
20 fee is:

- 21                   (1) nondiscriminatory;  
22                   (2) related to the use of the public right-of-way; and  
23                   (3) not a prohibited gift of public property.

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

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

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

11             (1) install its own transport facilities subject to  
12 Subsection (b); or

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

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

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

19             (2) pays to the municipality a monthly public  
20 right-of-way rate for transport facilities in an amount equal to  
21 \$28 multiplied by the number of the network provider's network  
22 nodes located in the public right-of-way for which the installed  
23 transport facilities provide backhaul unless or until the time the  
24 network provider's payment of municipal fees to the municipality  
25 exceeds its monthly aggregate per-node compensation to the  
26 municipality.

27       (c) A public right-of-way rate required by Subsection (b) is

1 in addition to any public right-of-way rate required by Section  
2 284.053.

3 Sec. 284.056. COLLOCATION OF NETWORK NODES ON SERVICE  
4 POLES. A municipality shall allow collocation of network nodes on  
5 service poles on nondiscriminatory terms and conditions and at a  
6 rate not greater than \$20 per year per service pole.

7 SUBCHAPTER C. ACCESS AND APPROVALS

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

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

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

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

19 (3) collocate on a pole.

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

23 Sec. 284.102. GENERAL CONSTRUCTION AND MAINTENANCE  
24 REQUIREMENTS. A network provider shall construct and maintain  
25 network nodes and node support poles described by Section 284.101  
26 in a manner that does not:

27 (1) obstruct, impede, or hinder the usual travel or

1 public safety on a public right-of-way;

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

4 (3) violate nondiscriminatory applicable codes;

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

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

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

14 (1) 10 feet in height above the tallest existing  
15 utility pole located within 500 linear feet of the new pole in the  
16 same public right-of-way; or

17 (2) 50 feet above ground level.

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

23 (1) not more than 50 feet wide; and

24 (2) adjacent to single-family residential lots or  
25 other multifamily residences or undeveloped land that is designated  
26 for residential use by zoning or deed restrictions.

27 (b) In addition to the requirement prescribed by Subsection

1 (a), a network provider installing a network node or node support  
2 pole in a public right-of-way described by Subsection (a) shall  
3 comply with private deed restrictions and other private  
4 restrictions in the area that apply to those facilities.

5 Sec. 284.105. INSTALLATION ON DECORATIVE POLES OR IN  
6 HISTORIC DISTRICTS. (a) A network provider must obtain advance  
7 approval from a municipality before collocating new network nodes  
8 or installing new node support poles on decorative poles or in an  
9 area of the municipality zoned or otherwise designated as a  
10 historic district. As a condition for approval of new network nodes  
11 or new node support poles on a decorative pole or in a historic  
12 district, a municipality may require reasonable design or  
13 concealment measures for the new network nodes or new node support  
14 poles. A municipality may request that a network provider explore  
15 the feasibility of using certain camouflage measures to improve the  
16 aesthetics of the new network nodes, new node support poles, or  
17 related ground equipment, or any portion of the nodes, poles, or  
18 equipment, to minimize the impact to the aesthetics on decorative  
19 poles or in a historic district.

20 (b) This section may not be construed to limit a  
21 municipality's authority to enforce historic preservation zoning  
22 regulations consistent with the preservation of local zoning  
23 authority under 47 U.S.C. Section 332(c)(7), the requirements for  
24 facility modifications under 47 U.S.C. Section 1455(a), or the  
25 National Historic Preservation Act of 1966 (16 U.S.C. Section 470  
26 et seq.), and the regulations adopted to implement those laws.

27 Sec. 284.106. EQUIPMENT CABINETS. A network provider shall

1 ensure that the vertical height of an equipment cabinet installed  
2 as part of a network node does not exceed the height limitation  
3 prescribed by Section 284.003, subject to approval of the pole's  
4 owner if applicable.

5 Sec. 284.107. COMPLIANCE WITH UNDERGROUNDING REQUIREMENT.

6 (a) A network provider shall, in relation to installation for  
7 which the municipality approved a permit application, comply with  
8 nondiscriminatory undergrounding requirements, including  
9 municipal ordinances, zoning regulations, state law, private deed  
10 restrictions, and other public or private restrictions, that  
11 prohibit installing aboveground structures in a public  
12 right-of-way without first obtaining zoning or land use approval.

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

16 Sec. 284.108. DESIGN MANUAL. (a) A municipality may adopt  
17 a design manual for the installation and construction of network  
18 nodes and new node support poles in the public right-of-way that  
19 includes additional installation and construction details that do  
20 not conflict with this chapter.

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

27 Sec. 284.109. EXCEPTIONS. Subject to Subchapter D, a

1 network provider may construct, modify, or maintain in a public  
2 right-of-way a network node or node support pole that exceeds the  
3 height or distance limitations prescribed by this chapter only if  
4 the municipality approves the construction, modification, or  
5 maintenance subject to all applicable zoning or land use  
6 regulations and applicable codes.

7 Sec. 284.110. DISCRIMINATION PROHIBITED. A municipality,  
8 in the exercise of the municipality's administrative and regulatory  
9 authority related to the management of and access to the public  
10 right-of-way, must be competitively neutral with regard to other  
11 users of the public right-of-way.

12 SUBCHAPTER D. APPLICATIONS AND PERMITS

13 Sec. 284.151. PROHIBITION OF CERTAIN MUNICIPAL ACTIONS.

14 (a) Except as otherwise provided by this chapter, a municipality  
15 may not prohibit, regulate, or charge for the installation or  
16 collocation of network nodes in a public right-of-way.

17 (b) A municipality may not directly or indirectly require,  
18 as a condition for issuing a permit required under this chapter,  
19 that the applicant perform services unrelated to the installation  
20 or collocation for which the permit is sought, including in-kind  
21 contributions such as reserving fiber, conduit, or pole space for  
22 the municipality.

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

- 25 (1) filing, receiving, or processing applications; or  
26 (2) issuing permits or other approvals, if any, for  
27 the installation of network nodes or node support poles.

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

6           (1) is of general applicability to users of the public  
7 right-of-way;

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

9           (3) is processed on nondiscriminatory terms and  
10 conditions regardless of the type of entity submitting the  
11 application for the permit.

12       (b) A network provider that wants to install or collocate  
13 multiple network nodes inside the territorial jurisdiction of a  
14 single municipality is entitled to file a consolidated permit  
15 application with the municipality for not more than 30 network  
16 nodes and receive a single permit for the installation or  
17 collocation of those network nodes.

18       Sec. 284.153. GENERAL PROCESS RELATING TO PERMIT  
19 APPLICATION. (a) Except as otherwise provided by this section, a  
20 municipality may not require an applicant to provide more  
21 information to obtain the permit than a telecommunications utility  
22 that is not a network provider is required to provide unless the  
23 information directly relates to the requirements of this chapter.

24       (b) As part of the standard form for a permit application, a  
25 municipality may require the applicant to include applicable  
26 construction and engineering drawings and information to confirm  
27 that the applicant will comply with the municipality's publicly

1 disclosed public right-of-way design specifications and applicable  
2 codes.

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

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

7 (2) a certificate that the network node complies with  
8 applicable regulations of the Federal Communications Commission;  
9 and

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

14 Sec. 284.154. MUNICIPAL REVIEW PROCESS. (a) A  
15 municipality shall process each permit application on a  
16 nondiscriminatory basis.

17 (b) Not later than the 30th day after the date the  
18 municipality receives an application for a permit for a network  
19 node or node support pole, or the 10th day after the date the  
20 municipality receives an application for a permit for a transport  
21 facility, the municipality shall determine whether the application  
22 is complete and notify the applicant of that determination. If the  
23 municipality determines that the application is not complete, the  
24 municipality shall specifically identify the missing information.

25 (c) A municipality shall approve an application that does  
26 not require zoning or land use approval under this chapter unless  
27 the application or the corresponding work to be performed under the

1 permit does not comply with the municipality's applicable codes.

2 (d) A municipality must approve or deny an application for a  
3 node support pole not later than the 150th day after the date the  
4 municipality receives the complete application. A municipality  
5 must approve or deny an application for a network node not later  
6 than the 60th day after the date the municipality receives the  
7 complete application. A municipality must approve or deny an  
8 application for a transport facility not later than the 21st day  
9 after the date the municipality receives a complete application.  
10 An application for a permit for a node support pole, network node,  
11 or transport facility shall be deemed approved if the application  
12 is not approved or denied on or before the applicable date for  
13 approval or denial prescribed by this subsection.

14 (e) A municipality that denies a complete application must  
15 document the basis for the denial, including the specific  
16 applicable code provisions on which the denial was based. The  
17 municipality shall send the documentation by electronic mail to the  
18 applicant on or before the date the municipality denies the  
19 application.

20 (f) Not later than the 30th day after the date the  
21 municipality denies the application, the applicant may cure the  
22 deficiencies identified in the denial documentation and resubmit  
23 the application without paying an additional application fee, other  
24 than a fee for actual costs incurred by the municipality.  
25 Notwithstanding Subsection (d), the municipality shall approve or  
26 deny the revised completed application after a denial not later  
27 than the 90th day after the date the municipality receives the

1 completed revised application. The municipality's review of the  
2 revised application is limited to the deficiencies cited in the  
3 denial documentation.

4 Sec. 284.155. TIME OF INSTALLATION. (a) A network  
5 provider shall begin the installation for which a permit is granted  
6 not later than nine months after final approval and shall  
7 diligently pursue the installation to completion.

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

11 Sec. 284.156. APPLICATION FEES. (a) A municipality may  
12 charge an application fee for a permit only if the municipality  
13 requires the payment of the fee for similar types of commercial  
14 development inside the municipality's territorial jurisdiction  
15 other than a type for which application or permit fees are not  
16 allowed by law.

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

19 (1) the actual, direct, and reasonable costs the  
20 municipality determines are incurred in granting or processing an  
21 application that are reasonably related in time to the time the  
22 costs of granting or processing an application are incurred; or

23 (2) \$100 per application covering up to five network  
24 nodes and \$50 for each additional network node per application.

25 (c) In determining for purposes of Subsection (b)(1) the  
26 amount of the actual, direct, and reasonable costs, the  
27 municipality may not:

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

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

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

11           (1) routine maintenance that does not require  
12 excavation or closing of sidewalks or vehicular lanes in a public  
13 right-of-way;

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

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

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

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

25           (A) the new or upgraded network node, including  
26 the antenna or other equipment element, will not be more than 10  
27 percent larger than the existing node, provided that the increase

1 may not result in the node exceeding the size limitations provided  
2 by Section 284.003; and

3 (B) the new or upgraded pole will not be more than  
4 10 percent higher than the existing pole, provided that the  
5 increase may not result in the pole exceeding the applicable height  
6 limitations prescribed by Section 284.103;

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

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

11 (c) The determination under Subsection (b)(1) of whether a  
12 replacement or upgrade is substantially similar is made by  
13 measuring from the dimensions of the network node or node support  
14 pole as approved by the municipality.

15 (d) Notwithstanding Subsection (a):

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

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

20 (3) the size limitations may not in any event exceed  
21 the parameters prescribed by Section 284.003 without the  
22 municipality's approval in accordance with Section 284.109, with  
23 the municipality acting on behalf of this state as the fiduciary  
24 trustee of public property.

25 SUBCHAPTER E. ACCESS TO MUNICIPALLY OWNED UTILITY POLES

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

27 (a) The governing body of a municipally owned utility shall allow

1 collocation of network nodes on municipally owned utility poles on  
2 nondiscriminatory terms and conditions and pursuant to a negotiated  
3 pole attachment agreement, including any applicable permitting  
4 requirements of the municipally owned utility.

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

9 (c) The requirements of Subchapters B, C, and D applicable  
10 to the installation of a network node supported by or installed on a  
11 pole do not apply to a network node supported by or installed on a  
12 municipally owned utility pole.

13 SUBCHAPTER F. EFFECT ON OTHER UTILITIES AND PROVIDERS

14 Sec. 284.251. DEFINITIONS. In this subchapter:

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

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

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

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

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

25 Sec. 284.252. EFFECT ON INVESTOR-OWNED ELECTRIC UTILITIES,  
26 ELECTRIC COOPERATIVES, TELEPHONE COOPERATIVES, AND  
27 TELECOMMUNICATIONS PROVIDERS. Nothing in this chapter shall govern

1 attachment of network nodes on poles and other structures owned or  
2 operated by investor-owned electric utilities, electric  
3 cooperatives, telephone cooperatives, or telecommunications  
4 providers. This chapter does not confer on municipalities any new  
5 authority over those utilities, cooperatives, or providers.

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

11 (1) cable service or video service without complying  
12 with all terms of Chapter 66, Utilities Code; or

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

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

22 SUBCHAPTER G. GENERAL CONDITIONS OF ACCESS

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

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

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

4       (c) A municipality may impose police-power-based  
5 regulations in the management of the activities of network  
6 providers in the public right-of-way only to the extent that the  
7 regulations are reasonably necessary to protect the health, safety,  
8 and welfare of the public.

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

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

16       Sec. 284.304. INTERFERENCE. (a) A network provider shall  
17 operate all network nodes in accordance with all applicable laws,  
18 including regulations adopted by the Federal Communications  
19 Commission.

20       (b) A network provider shall ensure that the operation of a  
21 network node does not cause any harmful radio frequency  
22 interference to a Federal Communications Commission-authorized  
23 mobile telecommunications operation of the municipality operating  
24 at the time the network node was initially installed or  
25 constructed. On written notice, a network provider shall take all  
26 steps reasonably necessary to remedy any harmful interference.

27       SECTION 2. (a) In this section, "collocation," "network

1 node," and "public right-of-way" have the meanings assigned by  
2 Section 284.002, Local Government Code, as added by this Act.

3 (b) Agreements between a municipality and a network  
4 provider for the deployment of network nodes in the public  
5 right-of-way are public/private contracts, and accordingly those  
6 contracts shall be conformed as provided by this section.

7 (c) Subject to Subsection (d) of this section, the rates,  
8 terms, and conditions of contracts entered into before the  
9 effective date of this Act shall apply to all network nodes  
10 installed and operational before the effective date of this Act.

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

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

22 (2) the rates, terms, and conditions of each contract  
23 executed on or after the effective date of this Act shall comply  
24 with the requirements of Chapter 284, Local Government Code, as  
25 added by this Act.

26 SECTION 3. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2017.