

1-1 By: Hancock S.B. No. 1004
 1-2 (In the Senate - Filed February 22, 2017; March 6, 2017,
 1-3 read first time and referred to Committee on Business & Commerce;
 1-4 April 3, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 3, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1004 By: Hancock

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the deployment of network nodes in public right-of-way;
 1-22 authorizing fees.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subtitle A, Title 9, Local Government Code, is
 1-25 amended by adding Chapter 284 to read as follows:

1-26 CHAPTER 284. DEPLOYMENT OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY

1-27 SUBCHAPTER A. GENERAL PROVISIONS

1-28 Sec. 284.001. FINDINGS AND POLICY. (a) The legislature
 1-29 finds that:

1-30 (1) network nodes are instrumental to increasing
 1-31 access to advanced technology and information for the citizens of
 1-32 this state;

1-33 (2) this state has delegated to each municipality the
 1-34 fiduciary duty, as a trustee, to manage the public right-of-way for
 1-35 the health, safety, and welfare of the public, subject to state law;

1-36 (3) network nodes often may be deployed most
 1-37 effectively in the public right-of-way;

1-38 (4) network providers' access to the public
 1-39 right-of-way and the ability to attach network nodes to poles and
 1-40 structures in the public right-of-way allow network providers to
 1-41 densify their networks and provide next-generation services;

1-42 (5) expeditious processes and reasonable and
 1-43 nondiscriminatory terms, conditions, and compensation for use of
 1-44 the public right-of-way for network node deployments are essential
 1-45 to state-of-the-art wireless services;

1-46 (6) network nodes help ensure that this state remains
 1-47 competitive in the global economy;

1-48 (7) the timely permitting of network nodes in the
 1-49 public right-of-way is a matter of statewide concern and interest;

1-50 (8) requirements of this chapter regarding fees,
 1-51 charges, rates, and public right-of-way management, when
 1-52 considered with fees charged to other public right-of-way users
 1-53 under this code, are fair and reasonable and in compliance with 47
 1-54 U.S.C. Section 253; and

1-55 (9) to the extent this state has delegated its
 1-56 fiduciary responsibility to municipalities as managers of a
 1-57 valuable public asset, the public right-of-way, this state is
 1-58 acting in its role as a landowner in balancing the needs of the
 1-59 public and the needs of the network providers by allowing access to
 1-60 the public right-of-way to place network nodes in the public

2-1 right-of-way strictly within the terms of this chapter.
2-2 (b) It is the policy of this state to promote the adoption of
2-3 and encourage competition in the provision of wireless services by
2-4 reducing the barriers to entry for providers of services so that the
2-5 number and types of services offered by providers continue to
2-6 increase through competition.
2-7 (c) It is the policy of this state that municipalities:
2-8 (1) retain the authority to manage the public
2-9 right-of-way to ensure the health, safety, and welfare of the
2-10 public; and
2-11 (2) receive from network providers fair and reasonable
2-12 compensation for use of the public right-of-way.
2-13 Sec. 284.002. DEFINITIONS. In this chapter:
2-14 (1) "Antenna" means communications equipment that
2-15 transmits or receives electromagnetic radio frequency signals used
2-16 in the provision of wireless services.
2-17 (2) "Applicable codes" means:
2-18 (A) uniform building, fire, electrical,
2-19 plumbing, or mechanical codes adopted by a recognized national code
2-20 organization; and
2-21 (B) local amendments to those codes to the extent
2-22 not inconsistent with this chapter.
2-23 (3) "Collocate" and "collocation" mean the
2-24 installation, mounting, maintenance, modification, operation, or
2-25 replacement of network nodes in a public right-of-way on or
2-26 adjacent to a pole.
2-27 (4) "Decorative pole" means a streetlight pole
2-28 specially designed and placed for aesthetic purposes and on which
2-29 no appurtenances or attachments, other than temporary holiday or
2-30 special event attachments, have been placed or are permitted to be
2-31 placed according to nondiscriminatory municipal codes.
2-32 (5) "Historic district" means an area that is zoned or
2-33 otherwise designated as a historic district under municipal, state,
2-34 or federal law.
2-35 (6) "Law" means common law or a federal, state, or
2-36 local law, statute, code, rule, regulation, order, or ordinance.
2-37 (7) "Macro tower" means a guyed or self-supported pole
2-38 or monopole greater than the height parameters prescribed by
2-39 Section 284.103 and that supports or is capable of supporting
2-40 antennas.
2-41 (8) "Micro network node" means a network node that is
2-42 not larger in dimension than 24 inches in length, 15 inches in
2-43 width, and 12 inches in height, and that has an exterior antenna, if
2-44 any, not longer than 11 inches.
2-45 (9) "Municipally owned utility pole" means a utility
2-46 pole owned or operated by a municipally owned utility, as defined by
2-47 Section 11.003, Utilities Code, and located in a public
2-48 right-of-way.
2-49 (10) "Network node" means equipment at a fixed
2-50 location that enables wireless communications between user
2-51 equipment and a communications network. The term:
2-52 (A) includes:
2-53 (i) equipment associated with wireless
2-54 communications; and
2-55 (ii) a radio transceiver, an antenna, a
2-56 battery-only backup power supply, and comparable equipment,
2-57 regardless of technological configuration; and
2-58 (B) does not include:
2-59 (i) an electric generator;
2-60 (ii) a pole; or
2-61 (iii) a macro tower.
2-62 (11) "Network provider" means:
2-63 (A) a wireless service provider; or
2-64 (B) a person that does not provide wireless
2-65 services and that is not an electric utility but builds or installs
2-66 on behalf of a wireless service provider:
2-67 (i) network nodes; or
2-68 (ii) node support poles or any other
2-69 structure that supports or is capable of supporting a network node.

3-1 (12) "Node support pole" means a pole installed by a
3-2 network provider for the primary purpose of supporting a network
3-3 node.

3-4 (13) "Permit" means a written authorization for the
3-5 use of the public right-of-way or collocation on a service pole
3-6 required from a municipality before a network provider may perform
3-7 an action or initiate, continue, or complete a project over which
3-8 the municipality has police power authority.

3-9 (14) "Pole" means a service pole, municipally owned
3-10 utility pole, node support pole, or utility pole.

3-11 (15) "Private easement" means an easement or other
3-12 real property right that is only for the benefit of the grantor and
3-13 grantee and their successors and assigns.

3-14 (16) "Public right-of-way" means the area on, below,
3-15 or above a public roadway, highway, street, public sidewalk, alley,
3-16 waterway, or utility easement in which the municipality has an
3-17 interest. The term does not include:

3-18 (A) a private easement; or

3-19 (B) the airwaves above a public right-of-way with
3-20 regard to wireless telecommunications.

3-21 (17) "Public right-of-way management ordinance" means
3-22 an ordinance that complies with Subchapter C.

3-23 (18) "Public right-of-way rate" means an annual rental
3-24 charge paid by a network provider to a municipality related to the
3-25 construction, maintenance, or operation of network nodes within a
3-26 public right-of-way in the municipality.

3-27 (19) "Service pole" means a pole, other than a
3-28 municipally owned utility pole, owned or operated by a municipality
3-29 and located in a public right-of-way, including:

3-30 (A) a pole that supports traffic control
3-31 functions;

3-32 (B) a structure for signage;

3-33 (C) a pole that supports lighting, other than a
3-34 decorative pole; and

3-35 (D) a pole or similar structure owned or operated
3-36 by a municipality and supporting only network nodes.

3-37 (20) "Transport facility" means each transmission
3-38 path physically within a public right-of-way, extending with a
3-39 physical line from a network node directly to the network, for the
3-40 purpose of providing backhaul.

3-41 (21) "Utility pole" means a pole or similar structure
3-42 that provides:

3-43 (A) electric distribution with a voltage rating
3-44 of not more than 34.5 kilovolts; or

3-45 (B) services of a telecommunications provider,
3-46 as defined by Section 51.002, Utilities Code.

3-47 (22) "Wireless service" means any service, using
3-48 licensed or unlicensed wireless spectrum, including the use of
3-49 Wi-Fi, whether at a fixed location or mobile, provided to the public
3-50 using a network node.

3-51 (23) "Wireless service provider" means a person that
3-52 provides wireless service to the public.

3-53 Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES.

3-54 (a) Except as provided by Section 284.109, a network node to which
3-55 this chapter applies must conform to the following conditions:

3-56 (1) each antenna that does not have exposed elements
3-57 and is attached to an existing structure or pole:

3-58 (A) must be located inside an enclosure of not
3-59 more than six cubic feet in volume;

3-60 (B) may not exceed a height of three feet above
3-61 the existing structure or pole; and

3-62 (C) may not protrude from the outer circumference
3-63 of the existing structure or pole by more than two feet;

3-64 (2) if an antenna has exposed elements and is attached
3-65 to an existing structure or pole, the antenna and all of the
3-66 antenna's exposed elements:

3-67 (A) must fit within an imaginary enclosure of not
3-68 more than six cubic feet;

3-69 (B) may not exceed a height of three feet above

4-1 the existing structure or pole; and
 4-2 (C) may not protrude from the outer circumference
 4-3 of the existing structure or pole by more than two feet;
 4-4 (3) the cumulative size of other wireless equipment
 4-5 associated with the network node attached to an existing structure
 4-6 or pole may not:
 4-7 (A) be more than 28 cubic feet in volume; or
 4-8 (B) protrude from the outer circumference of the
 4-9 existing structure or a node support pole by more than two feet;
 4-10 (4) ground-based enclosures, separate from the pole,
 4-11 may not be higher than three feet six inches from grade, wider than
 4-12 three feet six inches, or deeper than three feet six inches; and
 4-13 (5) pole-mounted enclosures may not be taller than
 4-14 five feet.
 4-15 (b) The following types of associated ancillary equipment
 4-16 are not included in the calculation of equipment volume under
 4-17 Subsection (a):
 4-18 (1) electric meters;
 4-19 (2) concealment elements;
 4-20 (3) telecommunications demarcation boxes;
 4-21 (4) grounding equipment;
 4-22 (5) power transfer switches;
 4-23 (6) cut-off switches; and
 4-24 (7) vertical cable runs for the connection of power
 4-25 and other services.
 4-26 (c) Equipment attached to node support poles may not
 4-27 protrude from the outer edge of the node support pole by more than
 4-28 two feet.
 4-29 (d) Equipment attached to a utility pole must be installed
 4-30 in accordance with the National Electrical Safety Code, subject to
 4-31 local code revisions, and the utility pole owner's construction
 4-32 standards.

4-33 SUBCHAPTER B. USE OF PUBLIC RIGHT-OF-WAY
 4-34 Sec. 284.051. APPLICABILITY OF SUBCHAPTER. This subchapter
 4-35 applies only to activities related to transport facilities,
 4-36 activities of a network provider collocating network nodes in the
 4-37 public right-of-way or installing, constructing, operating,
 4-38 modifying, replacing, and maintaining node support poles in a
 4-39 public right-of-way, and municipal authority in relation to those
 4-40 activities.
 4-41 Sec. 284.052. EXCLUSIVE USE PROHIBITED. A municipality may
 4-42 not enter into an exclusive arrangement with any person for use of
 4-43 the public right-of-way for the construction, operation,
 4-44 marketing, or maintenance of network nodes or node support poles.
 4-45 Sec. 284.053. ANNUAL PUBLIC RIGHT-OF-WAY RATE. (a) A
 4-46 public right-of-way rate for use of the public right-of-way may not
 4-47 exceed an annual amount equal to \$250 multiplied by the number of
 4-48 network nodes installed in the municipality's corporate
 4-49 boundaries.
 4-50 (b) At the municipality's discretion, the municipality may
 4-51 charge a network provider a lower rate or fee if the lower rate or
 4-52 fee is:
 4-53 (1) nondiscriminatory;
 4-54 (2) related to the use of the public right-of-way; and
 4-55 (3) not a prohibited gift of public property.
 4-56 Sec. 284.054. PUBLIC RIGHT-OF-WAY RATE ADJUSTMENT. (a) In
 4-57 this section, "consumer price index" means the annual revised
 4-58 Consumer Price Index for All Urban Consumers for Texas, as
 4-59 published by the federal Bureau of Labor Statistics.
 4-60 (b) A municipality may adjust the amount of the public
 4-61 right-of-way rate not more often than annually by an amount equal to
 4-62 one-half the annual change, if any, in the consumer price index.
 4-63 The municipality shall provide written notice to each network
 4-64 provider of the new rate, and the rate shall apply to the first
 4-65 payment due to the municipality on or after the 60th day following
 4-66 that notice.
 4-67 Sec. 284.055. USE OF PUBLIC RIGHT-OF-WAY AND APPLICABLE
 4-68 RATE. (a) A network provider that wants to connect a network node
 4-69 to the network located in a public right-of-way may:

5-1 (1) install its own transport facilities subject to
5-2 Subsection (b); or

5-3 (2) obtain transport service from a person that is
5-4 paying municipal fees to occupy the public right-of-way that are
5-5 the equivalent of not less than \$28 per node per month.

5-6 (b) A network provider may not install its own transport
5-7 facilities unless the provider:

5-8 (1) has a permit to use the public right-of-way; and

5-9 (2) pays to the municipality a monthly public
5-10 right-of-way rate for transport facilities in an amount equal to
5-11 \$28 multiplied by the number of the network provider's network
5-12 nodes for which the installed transport facilities provide backhaul
5-13 unless or until the time the network provider's payment of
5-14 municipal fees exceeds its monthly aggregate per-node compensation
5-15 to the municipality.

5-16 (c) A public right-of-way rate required by Subsection (b) is
5-17 in addition to any public right-of-way rate required by Section
5-18 284.053.

5-19 Sec. 284.056. COLLOCATION OF NETWORK NODES ON SERVICE
5-20 POLES. A municipality shall allow collocation of network nodes on
5-21 service poles on nondiscriminatory terms and conditions and at a
5-22 rate not greater than \$20 per year per service pole.

5-23 SUBCHAPTER C. ACCESS AND APPROVALS

5-24 Sec. 284.101. RIGHT OF ACCESS TO PUBLIC RIGHT-OF-WAY.

5-25 (a) Except as specifically provided by this chapter, and subject
5-26 to the requirements of this chapter and the approval of a permit
5-27 application, if required, a network provider is authorized, as a
5-28 permitted use, without need for a special use permit or similar
5-29 zoning review and not subject to further land use approval, to do
5-30 the following in the public right-of-way:

5-31 (1) construct, modify, maintain, operate, relocate,
5-32 and remove a network node or node support pole;

5-33 (2) request the modification or replacement of a
5-34 utility pole or node support pole; and

5-35 (3) collocate on a pole.

5-36 (b) A network provider taking an action authorized by
5-37 Subsection (a) is subject to applicable codes, including applicable
5-38 public right-of-way management ordinances.

5-39 Sec. 284.102. GENERAL CONSTRUCTION AND MAINTENANCE
5-40 REQUIREMENTS. A network provider shall construct and maintain
5-41 network nodes and node support poles described by Section 284.101
5-42 in a manner that does not:

5-43 (1) obstruct, impede, or hinder the usual travel or
5-44 public safety on a public right-of-way;

5-45 (2) obstruct the legal use of a public right-of-way by
5-46 other utility providers;

5-47 (3) violate nondiscriminatory applicable codes;

5-48 (4) violate or conflict with the municipality's
5-49 publicly disclosed public right-of-way design specifications; or

5-50 (5) violate the federal Americans with Disabilities
5-51 Act of 1990 (42 U.S.C. Section 12101 et seq.).

5-52 Sec. 284.103. GENERAL LIMITATION ON PLACEMENT OF POLES. A
5-53 network provider shall ensure that each new, modified, or
5-54 replacement utility pole or node support pole installed in a public
5-55 right-of-way in relation to which the network provider received
5-56 approval of a permit application does not exceed the greater of:

5-57 (1) 10 feet in height above the tallest existing
5-58 utility pole located within 500 linear feet of the new pole in the
5-59 same public right-of-way; or

5-60 (2) 50 feet above ground level.

5-61 Sec. 284.104. INSTALLATION IN RESIDENTIAL AREAS. (a) A
5-62 network provider may not install a new node support pole in a
5-63 public right-of-way without the municipality's discretionary,
5-64 nondiscriminatory, and written consent if the public right-of-way
5-65 is adjacent to a street or thoroughfare that is:

5-66 (1) not more than 50 feet wide; and

5-67 (2) adjacent to single-family residential lots or
5-68 other multifamily residences or undeveloped land that is designated
5-69 for residential use by zoning or deed restrictions.

6-1 (b) In addition to the requirement prescribed by Subsection
6-2 (a), a network provider installing a network node or node support
6-3 pole in a public right-of-way described by Subsection (a) shall
6-4 comply with private deed restrictions and other private
6-5 restrictions in the area that apply to those facilities.

6-6 Sec. 284.105. INSTALLATION ON DECORATIVE POLES OR IN
6-7 HISTORIC DISTRICTS. (a) A network provider must obtain advance
6-8 approval from a municipality before collocating new network nodes
6-9 or installing new node support poles on decorative poles or in an
6-10 area of the municipality zoned or otherwise designated as a
6-11 historic district. As a condition for approval of new network nodes
6-12 or new node support poles on a decorative pole or in a historic
6-13 district, a municipality may require reasonable design or
6-14 concealment measures for the new network nodes or new node support
6-15 poles. A municipality may request that a network provider explore
6-16 the feasibility of using certain camouflage measures to improve
6-17 the aesthetics of the new network nodes, new node support poles, or
6-18 related ground equipment, or any portion of the nodes, poles, or
6-19 equipment, to minimize the impact to the aesthetics on decorative
6-20 poles or in a historic district.

6-21 (b) This section may not be construed to limit a
6-22 municipality's authority to enforce historic preservation zoning
6-23 regulations consistent with the preservation of local zoning
6-24 authority under 47 U.S.C. Section 332(c)(7), the requirements for
6-25 facility modifications under 47 U.S.C. Section 1455(a), or the
6-26 National Historic Preservation Act of 1966 (16 U.S.C. Section 470
6-27 et seq.), and the regulations adopted to implement those laws.

6-28 Sec. 284.106. EQUIPMENT CABINETS. A network provider shall
6-29 ensure that the vertical height of an equipment cabinet installed
6-30 as part of a network node does not exceed the height limitation
6-31 prescribed by Section 284.003, subject to approval of the pole's
6-32 owner if applicable.

6-33 Sec. 284.107. COMPLIANCE WITH UNDERGROUNDING REQUIREMENT.
6-34 (a) A network provider shall, in relation to installation for
6-35 which the municipality approved a permit application, comply with
6-36 nondiscriminatory undergrounding requirements, including
6-37 municipal ordinances, zoning regulations, state law, private deed
6-38 restrictions, and other public or private restrictions, that
6-39 prohibit installing aboveground structures in a public
6-40 right-of-way without first obtaining zoning or land use approval.

6-41 (b) A requirement or restriction described by Subsection
6-42 (a) may not be interpreted to prohibit a network provider from
6-43 replacing an existing structure.

6-44 Sec. 284.108. DESIGN MANUAL. (a) A municipality may adopt
6-45 a design manual for the installation and construction of network
6-46 nodes and new node support poles in the public right-of-way that
6-47 includes additional installation and construction details that do
6-48 not conflict with this chapter.

6-49 (b) A network provider shall comply with a design manual, if
6-50 any, in place on the date a permit application is filed in relation
6-51 to work for which the municipality approved the permit application.
6-52 A municipality's obligations under Section 284.154 may not be
6-53 tolled or extended pending the adoption or modification of a design
6-54 manual.

6-55 Sec. 284.109. EXCEPTIONS. Subject to Subchapter D, a
6-56 network provider may construct, modify, or maintain in a public
6-57 right-of-way a network node or node support pole that exceeds the
6-58 height or distance limitations prescribed by this chapter only if
6-59 the municipality approves the construction, modification, or
6-60 maintenance subject to all applicable zoning or land use
6-61 regulations and applicable codes.

6-62 Sec. 284.110. DISCRIMINATION PROHIBITED. A municipality,
6-63 in the exercise of the municipality's administrative and regulatory
6-64 authority related to the management of and access to the public
6-65 right-of-way, must be competitively neutral with regard to other
6-66 users of the public right-of-way.

6-67 SUBCHAPTER D. APPLICATIONS AND PERMITS

6-68 Sec. 284.151. PROHIBITION OF CERTAIN MUNICIPAL ACTIONS.
6-69 (a) Except as otherwise provided by this chapter, a municipality

7-1 may not prohibit, regulate, or charge for the installation or
7-2 collocation of network nodes in a public right-of-way.

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

7-9 (c) A municipality may not institute a moratorium, in whole
7-10 or in part, express or de facto, on:

7-11 (1) filing, receiving, or processing applications; or

7-12 (2) issuing permits or other approvals, if any, for
7-13 the installation of network nodes or node support poles.

7-14 Sec. 284.152. AUTHORITY TO REQUIRE PERMIT. (a) Except as
7-15 otherwise provided by this chapter, a municipality may require a
7-16 network provider to obtain one or more permits to install a network
7-17 node, node support pole, or transport facility in a public
7-18 right-of-way if the permit:

7-19 (1) is of general applicability to users of the public
7-20 right-of-way;

7-21 (2) does not apply exclusively to network nodes; and

7-22 (3) is processed on nondiscriminatory terms and
7-23 conditions regardless of the type of entity submitting the
7-24 application for the permit.

7-25 (b) A network provider that wants to install or collocate
7-26 multiple network nodes inside the territorial jurisdiction of a
7-27 single municipality is entitled to file a consolidated permit
7-28 application with the municipality for not more than 30 network
7-29 nodes and receive a single permit for the installation or
7-30 collocation of those network nodes.

7-31 Sec. 284.153. GENERAL PROCESS RELATING TO PERMIT
7-32 APPLICATION. (a) Except as otherwise provided by this section, a
7-33 municipality may not require an applicant to provide more
7-34 information to obtain the permit than a telecommunications utility
7-35 that is not a network provider is required to provide unless the
7-36 information directly relates to the requirements of this chapter.

7-37 (b) As part of the standard form for a permit application, a
7-38 municipality may require the applicant to include applicable
7-39 construction and engineering drawings and information to confirm
7-40 that the applicant will comply with the municipality's publicly
7-41 disclosed public right-of-way design specifications and applicable
7-42 codes.

7-43 (c) A municipality may require an applicant to provide:

7-44 (1) information reasonably related to the provider's
7-45 use of the public right-of-way under this chapter to ensure
7-46 compliance with this chapter;

7-47 (2) a certificate that the network node complies with
7-48 applicable regulations of the Federal Communications Commission;
7-49 and

7-50 (3) certification that the proposed network node will
7-51 be placed into active commercial service by or for a network
7-52 provider not later than the 60th day after the date the construction
7-53 and final testing of the network node is completed.

7-54 Sec. 284.154. MUNICIPAL REVIEW PROCESS. (a) A
7-55 municipality shall process each permit application on a
7-56 nondiscriminatory basis.

7-57 (b) Not later than the 30th day after the date the
7-58 municipality receives an application for a permit for a network
7-59 node or node support pole, or the 10th day after the date the
7-60 municipality receives an application for a permit for a transport
7-61 facility, the municipality shall determine whether the application
7-62 is complete and notify the applicant of that determination. If the
7-63 municipality determines that the application is not complete, the
7-64 municipality shall specifically identify the missing information.

7-65 (c) A municipality shall approve an application that does
7-66 not require zoning or land use approval under this chapter unless
7-67 the application or the corresponding work to be performed under the
7-68 permit does not comply with the municipality's applicable codes.

7-69 (d) A municipality must approve or deny an application for a

8-1 node support pole not later than the 150th day after the date the
 8-2 municipality receives the complete application. A municipality
 8-3 must approve or deny an application for a network node not later
 8-4 than the 60th day after the date the municipality receives the
 8-5 complete application. A municipality must approve or deny an
 8-6 application for a transport facility not later than the 21st day
 8-7 after the date the municipality receives a complete application.
 8-8 An application for a permit for a node support pole, network node,
 8-9 or transport facility is considered approved if the application is
 8-10 not approved or denied on or before the applicable date for approval
 8-11 or denial prescribed by this subsection.

8-12 (e) A municipality that denies a complete application must
 8-13 document the basis for the denial, including the specific
 8-14 applicable code provisions on which the denial was based. The
 8-15 municipality shall send the documentation by electronic mail to the
 8-16 applicant on or before the date the municipality denies the
 8-17 application.

8-18 (f) Not later than the 30th day after the date the
 8-19 municipality denies the application, the applicant may cure the
 8-20 deficiencies identified in the denial documentation and resubmit
 8-21 the application without paying an additional application fee, other
 8-22 than a fee for actual costs incurred by the municipality.
 8-23 Notwithstanding Subsection (d), the municipality shall approve or
 8-24 deny the revised completed application after a denial not later
 8-25 than the 90th day after the date the municipality receives the
 8-26 completed revised application. The municipality's review of the
 8-27 revised application is limited to the deficiencies cited in the
 8-28 denial documentation.

8-29 Sec. 284.155. TIME OF INSTALLATION. (a) A network
 8-30 provider shall begin the installation for which a permit is granted
 8-31 not later than nine months after final approval and shall
 8-32 diligently pursue the installation to completion.

8-33 (b) Notwithstanding Subsection (a), the municipality may
 8-34 place a longer time limit on completion or grant reasonable
 8-35 extensions of time as requested by the network provider.

8-36 Sec. 284.156. APPLICATION FEES. (a) A municipality may
 8-37 charge an application fee for a permit only if the municipality
 8-38 requires the payment of the fee for similar types of commercial
 8-39 development inside the municipality's territorial jurisdiction
 8-40 other than a type for which application or permit fees are not
 8-41 allowed by law.

8-42 (b) The amount of an application fee charged by a
 8-43 municipality may not exceed the lesser of:

8-44 (1) the actual, direct, and reasonable costs the
 8-45 municipality determines are incurred in granting or processing an
 8-46 application that are reasonably related in time to the time the
 8-47 costs of granting or processing an application are incurred; or

8-48 (2) \$100 per application covering up to five network
 8-49 nodes and \$50 for each additional network node per application.

8-50 (c) In determining for purposes of Subsection (b)(1) the
 8-51 amount of the actual, direct, and reasonable costs, the
 8-52 municipality may not:

8-53 (1) include costs incurred by the municipality in
 8-54 relation to third-party legal or engineering review of an
 8-55 application; or

8-56 (2) direct payments or reimbursement of third-party
 8-57 public right-of-way rates or fees charged on a contingency basis or
 8-58 under a result-based arrangement.

8-59 Sec. 284.157. CERTAIN WORK EXEMPTED. (a) Notwithstanding
 8-60 any other provision of this chapter, a municipality may not require
 8-61 a network provider to submit an application, obtain a permit, or pay
 8-62 a rate for:

8-63 (1) routine maintenance that does not require
 8-64 excavation or closing of sidewalks or vehicular lanes in a public
 8-65 right-of-way;

8-66 (2) replacing or upgrading a network node or pole with
 8-67 a node or pole that is substantially similar in size or smaller and
 8-68 that does not require excavation or closing of sidewalks or
 8-69 vehicular lanes in a public right-of-way; or

9-1 (3) the installation, placement, maintenance,
9-2 operation, or replacement of micro network nodes that are strung on
9-3 cables between existing poles or node support poles, in compliance
9-4 with the National Electrical Safety Code.

9-5 (b) For purposes of Subsection (a)(2):

9-6 (1) a network node or pole is considered to be
9-7 "substantially similar" if:

9-8 (A) the new or upgraded network node, including
9-9 the antenna or other equipment element, will not be more than 10
9-10 percent larger than the existing node, provided that the increase
9-11 may not result in the node exceeding the size limitations provided
9-12 by Section 284.003; and

9-13 (B) the new or upgraded pole will not be more than
9-14 10 percent higher than the existing pole, provided that the
9-15 increase may not result in the pole exceeding the applicable height
9-16 limitations prescribed by Section 284.103;

9-17 (2) the replacement or upgrade does not include
9-18 replacement of an existing node support pole; and

9-19 (3) the replacement or upgrade does not defeat
9-20 existing concealment elements of a node support pole.

9-21 (c) The determination under Subsection (b)(1) of whether a
9-22 replacement or upgrade is substantially similar is made by
9-23 measuring from the dimensions of the network node or node support
9-24 pole as approved by the municipality.

9-25 (d) Notwithstanding Subsection (a):

9-26 (1) a municipality may require advance notice of work
9-27 described by that subsection;

9-28 (2) a network provider may replace or upgrade a pole
9-29 only with the approval of the pole's owner; and

9-30 (3) the size limitations may not in any event exceed
9-31 the parameters prescribed by Section 284.003 without the
9-32 municipality's approval in accordance with Section 284.109, with
9-33 the municipality acting on behalf of this state as the fiduciary
9-34 trustee of public property.

9-35 SUBCHAPTER E. ACCESS TO MUNICIPAL STRUCTURES

9-36 Sec. 284.201. USE OF MUNICIPALLY OWNED UTILITY POLES.

9-37 (a) The governing body of a municipally owned utility shall allow
9-38 collocation of network nodes on municipally owned utility poles on
9-39 nondiscriminatory terms and conditions and pursuant to a negotiated
9-40 pole attachment agreement, including any applicable permitting
9-41 requirements of the municipally owned utility.

9-42 (b) The annual pole attachment rate for the collocation of a
9-43 network node supported by or installed on a municipally owned
9-44 utility pole shall be based on a pole attachment rate consistent
9-45 with Section 54.204, Utilities Code, applied on a per-foot basis.

9-46 (c) The requirements of Subchapters B, C, and D applicable
9-47 to the installation of a network node supported by or installed on a
9-48 pole do not apply to a network node supported by or installed on a
9-49 municipally owned utility pole.

9-50 SUBCHAPTER F. EFFECT ON OTHER UTILITIES AND PROVIDERS

9-51 Sec. 284.251. DEFINITIONS. In this subchapter:

9-52 (1) "Cable service" and "video service" have the
9-53 meanings assigned by Section 66.002, Utilities Code.

9-54 (2) "Electric cooperative" has the meaning assigned by
9-55 Section 11.003, Utilities Code.

9-56 (3) "Electric utility" has the meaning assigned by
9-57 Section 31.002, Utilities Code.

9-58 (4) "Telecommunications provider" has the meaning
9-59 assigned by Section 51.002, Utilities Code.

9-60 (5) "Telephone cooperative" has the meaning assigned
9-61 by Section 162.003, Utilities Code.

9-62 Sec. 284.252. EFFECT ON INVESTOR-OWNED ELECTRIC UTILITIES,
9-63 ELECTRIC COOPERATIVES, TELEPHONE COOPERATIVES, AND
9-64 TELECOMMUNICATIONS PROVIDERS. Nothing in this chapter shall govern
9-65 attachment of network nodes on poles and other structures owned or
9-66 operated by investor-owned electric utilities, electric
9-67 cooperatives, telephone cooperatives, or telecommunications
9-68 providers. This chapter does not confer on municipalities any new
9-69 authority over those utilities, cooperatives, or providers.

10-1 Sec. 284.253. EFFECT ON PROVIDERS OF CABLE SERVICES OR
10-2 VIDEO SERVICES. (a) An approval for the installation, placement,
10-3 maintenance, or operation of a network node or transport facility
10-4 under this chapter may not be construed to confer authorization to
10-5 provide:

10-6 (1) cable service or video service without complying
10-7 with all terms of Chapter 66, Utilities Code; or

10-8 (2) information service as defined by 47 U.S.C.
10-9 Section 153(24), or telecommunications service as defined by 47
10-10 U.S.C. Section 153(53), in the public right-of-way.

10-11 (b) Except as provided by this chapter, a municipality may
10-12 not adopt or enforce any regulations or requirements that would
10-13 require a wireless service provider, or its affiliate, that holds a
10-14 cable or video franchise under Chapter 66, Utilities Code, to
10-15 obtain any additional authorization or to pay any fees based on the
10-16 provider's provision of wireless service over its network nodes.

10-17 SUBCHAPTER G. GENERAL CONDITIONS OF ACCESS

10-18 Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS.

10-19 (a) Subject to this chapter and applicable federal and state law,
10-20 a municipality may continue to exercise zoning, land use, planning,
10-21 and permitting authority in the municipality's boundaries,
10-22 including with respect to utility poles.

10-23 (b) A municipality may exercise that authority to impose
10-24 police-power-based regulations for the management of the public
10-25 right-of-way that apply to all persons subject to the municipality.

10-26 (c) A municipality may impose police-power-based
10-27 regulations in the management of the activities of network
10-28 providers in the public right-of-way only to the extent that the
10-29 regulations are reasonably necessary to protect the health, safety,
10-30 and welfare of the public.

10-31 Sec. 284.302. INDEMNIFICATION. The indemnification
10-32 provisions of Sections 283.057(a) and (b) apply to a network
10-33 provider accessing a public right-of-way under this chapter.

10-34 Sec. 284.303. RELOCATION. Except as provided in existing
10-35 state and federal law, a network provider shall relocate or adjust
10-36 network nodes in a public right-of-way in a timely manner and
10-37 without cost to the municipality managing the public right-of-way.

10-38 Sec. 284.304. INTERFERENCE. (a) A network provider shall
10-39 operate all network nodes in accordance with all applicable laws,
10-40 including regulations adopted by the Federal Communications
10-41 Commission.

10-42 (b) A network provider shall ensure that the operation of a
10-43 network node does not cause any harmful radio frequency
10-44 interference to a Federal Communications Commission-authorized
10-45 mobile telecommunications operation of the municipality operating
10-46 at the time the network node was initially installed or
10-47 constructed. On written notice, a network provider shall take all
10-48 steps reasonably necessary to remedy any harmful interference.

10-49 SECTION 2. (a) In this section, "collocation," "network
10-50 node," and "public right-of-way" have the meanings assigned by
10-51 Section 284.002, Local Government Code, as added by this Act.

10-52 (b) Agreements between a municipality and a network
10-53 provider for the deployment of network nodes in the public
10-54 right-of-way are public/private contracts, and accordingly those
10-55 contracts shall be conformed as provided by this section.

10-56 (c) Subject to Subsection (d) of this section, the rates,
10-57 terms, and conditions of contracts entered into before the
10-58 effective date of this Act shall apply to all network nodes
10-59 installed and operational before the effective date of this Act.

10-60 (d) For all network nodes installed and operational on or
10-61 after the effective date of this Act:

10-62 (1) if a rate, term, or condition of a contract
10-63 related to the construction, collocation, operation, modification,
10-64 or maintenance of network nodes does not comply with the
10-65 requirements of Chapter 284, Local Government Code, as added by
10-66 this Act, a municipality shall amend the contract to comply with the
10-67 requirements of Chapter 284, Local Government Code, as added by
10-68 this Act, and the amended rates, terms, or conditions shall take
10-69 effect for those network nodes on the six-month anniversary of the

11-1 effective date of this Act; and
11-2 (2) the rates, terms, and conditions of each contract
11-3 executed on or after the effective date of this Act shall comply
11-4 with the requirements of Chapter 284, Local Government Code, as
11-5 added by this Act.

11-6 SECTION 3. This Act takes effect immediately if it receives
11-7 a vote of two-thirds of all the members elected to each house, as
11-8 provided by Section 39, Article III, Texas Constitution. If this
11-9 Act does not receive the vote necessary for immediate effect, this
11-10 Act takes effect September 1, 2017.

11-11 * * * * *