

## 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.

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

(c) It is the policy of this state, subject to state law and

strictly within the requirements and limitations prescribed by this chapter, that municipalities:

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

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

Sec. 284.002. DEFINITIONS. In this chapter:

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

(2) "Applicable codes" means:

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

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

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

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

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

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

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

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

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

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

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

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

(A) includes:

(i) equipment associated with wireless communications;

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

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

(B) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

(13) "Network provider" means:

(A) a wireless service provider; or

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

(i) network nodes; or

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

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

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

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

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

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

(A) a private easement; or

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

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

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the 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.

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

- (1) each antenna that does not have exposed elements and is attached to an existing structure or pole:
- (A) must be located inside an enclosure of not more than six cubic feet in volume;
- (B) may not exceed a height of three feet above the existing structure or pole; and
- (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
- (2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:
- (A) must fit within an imaginary enclosure of not more than six cubic feet;
- (B) may not exceed a height of three feet above the existing structure or pole; and
- (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
- (3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
- (A) be more than 28 cubic feet in volume; or
- (B) protrude from the outer circumference of the existing structure or pole by more than two feet;
- (4) ground-based enclosures, separate from the pole, 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 poles in a public right-of-way, and municipal authority in relation to those activities.

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

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

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

fee is:

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

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

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

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

- (1) install its own transport facilities subject to Subsection (b); or
- (2) obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than \$28 per node per month.

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

- (1) has a permit to use the public right-of-way; and
- (2) pays to the municipality a monthly public right-of-way rate for transport facilities in an amount equal to \$28 multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed transport facilities provide backhaul unless or until the time the network provider's payment of municipal fees to the municipality exceeds its monthly aggregate per-node compensation to the municipality.

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

Sec. 284.056. COLLOCATION OF NETWORK NODES ON SERVICE POLES. A municipality, subject to an agreement with the municipality that does not conflict with this chapter, shall allow 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 other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

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

Sec. 284.105. INSTALLATION IN HISTORIC OR DESIGN DISTRICTS. (a) A network provider must obtain advance approval from a municipality before collocating new network nodes or installing new node support poles in an area of the municipality zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. As a condition for approval of new network nodes or new node support poles in a historic district or a design district with decorative poles, a municipality may require reasonable design or concealment measures for the new network nodes or new node support poles. A municipality may request that a network provider comply with the design and aesthetic standards of the historic or design district and explore the feasibility of using certain camouflage measures to improve the aesthetics of the new network nodes, new node support poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in a historic district or on a design district's decorative poles.

(b) This section may not be construed to limit a municipality's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

Sec. 284.106. EQUIPMENT CABINETS. A network provider shall ensure that the vertical height of an equipment cabinet installed as part of a network node does not exceed the height limitation

prescribed by Section 284.003, subject to approval of the pole's owner if applicable.

Sec. 284.107. COMPLIANCE WITH UNDERGROUNDING REQUIREMENT.

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

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

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

(1) a requirement that an industry standard pole load analysis be completed and submitted to the municipality indicating that the service pole to which the network node is to be attached will safely support the load; and

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

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

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

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

SUBCHAPTER D. APPLICATIONS AND PERMITS

Sec. 284.151. PROHIBITION OF CERTAIN MUNICIPAL ACTIONS.

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

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

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

(1) filing, receiving, or processing applications; or

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

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

(1) is of general applicability to users of the public

right-of-way;

(2) does not apply exclusively to network nodes; and  
(3) is processed on nondiscriminatory terms and  
conditions regardless of the type of entity submitting the  
application for the permit.

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

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

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

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

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

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

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

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

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

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

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

(e) A municipality that denies a complete application must  
document the basis for the denial, including the specific



applicable code provisions or other municipal rules, regulations, or other law on which the denial was based. The municipality shall send the documentation by electronic mail to the applicant on or before the date the municipality denies the application.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Notwithstanding Subsection (a):

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

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

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

#### SUBCHAPTER E. ACCESS TO MUNICIPALLY OWNED UTILITY POLES

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

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

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

(c) The requirements of Subchapters B, C, and D applicable to the installation of a network node supported by or installed on a 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 with all terms of Chapter 66, Utilities Code; or

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

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

#### SUBCHAPTER G. GENERAL CONDITIONS OF ACCESS

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

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

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

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

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

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

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

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

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

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

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

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

(1) if a rate, term, or condition of an agreement or ordinance related to the construction, collocation, operation,

modification, or maintenance of network nodes does not comply with the requirements of Chapter 284, Local Government Code, as added by this Act, a municipality shall amend the agreement or ordinance to comply with the requirements of Chapter 284, Local Government Code, as added by this Act, and the amended rates, terms, or conditions shall take effect for those network nodes on the six-month anniversary of the effective date of this Act; and

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

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

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President of the Senate

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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.

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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.

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Chief Clerk of the House

Approved:

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Date

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Governor