
Summary of SB 1004

SB 1004 adopts a new Chapter 284 of the Local Government Code. Similar to Chapter 283, these provisions concern the installation of equipment, specifically wireless network equipment, in public right-of-way, providing a state-wide regulatory scheme and limiting individual cities' abilities to further regulate this equipment. These provisions are applicable to the installation of "network nodes" (equipment that enables wireless communications between the communications network and the user's equipment) and related equipment, and applies to both the "wireless service provider", who provides the service directly to the public, and to "network providers", which are entities who do not provide service to the end-user, but whom build the equipment on behalf of a wireless service provider.

A full outline of the bill is below, but generally, it is important to note that the fees we can charge these users are limited to an application or permit fee, calculated based on the equipment installed (See Sec. 284.156), and an annual fee calculated based on \$250 X the number of network nodes installed in the city's ROW. Cities may require that providers apply for a permit, and require compliance with the city's right-of-way management ordinance and design manual, but cannot apply zoning regulations to the installation of such equipment, or require a license agreement. If providers desire to place equipment on city service poles (i.e. traffic lights, signage, light poles) the City can require a collocation agreement, a sample of which is provided. In the event the city owns and operates a city-run electric or telephone utility, the City-owned utility may negotiate with the provider on a pole-attachment agreement, subject to the provisions of this chapter.

Cities are prohibited from enacting any type of moratorium on these requests, and there are specific time limitations which apply to the processing of applications. (See Sec. 284.154). The bill goes into effect September 1, 2017, and provides that any current agreements or ordinances remain applicable to network nodes which are operational before that date; for all network nodes installed and operational on or after September 1st, any current ordinances or agreements must be amended to comply with the provisions of Chapter 284 no later than March 1, 2018.

Steps Forward:

There are a number of city-members of Texas Coalition of Cities for Utility Issues (TCCFUI) which are considering legal action to challenge this statute. Unless and until any such challenge is sustained, we recommend the following:

Each city should take inventory of what provisions it has currently adopted which are applicable to the public right-of-way, including zoning ordinances. Amendments should be made, as necessary, to ensure this type of equipment is exempted from zoning provisions, and right-of-way ordinances should be amended to reflect the changes enacted in this bill. We will assist cities in amending current right-of-way ordinances, or with drafting comprehensive right-of-way ordinance, for those cities which have not previously adopted such provisions. We also encourage city staff to ascertain whether any of this equipment is presently installed within the city's ROW, and specifically, if it is operational as of September 1, 2017. If so, then the ordinances/agreements applicable to such equipment will remain applicable until March 1, 2018.

City staff should work with the city attorney to finalize the adoption of a design manual, consistent with the provisions of Chapter 284. The City should also develop an application and permitting procedure applicable to this equipment, making sure that the applications are processed within the necessary time limits. In developing the permitting policy/procedure, it is imperative that staff is cognizant of important timing deadlines included in Ch. 284:

- **Time starts when an application is filed:** City must review and approve or deny by strict deadlines.
- **Determine if application is complete within:**
 - o 10 days of an application for placement of a *transport facility*
 - o 30 days for a *network node or node support pole*.
 - o If a permit is deemed incomplete, must notify applicant of the incompleteness by the applicable deadline, with the specific missing information.
 - o Applicant has 30 days to resubmit a cured completed application without fee (other than for actual costs incurred by city), and city must approve or deny a revised completed resubmittal within 90 days of receipt.
- **Time to Act:** Once determined complete, the **permit is deemed granted** by law if city does not approve/deny within:
 - o 21 days - transport facility permit (fiber/coaxial cable connecting nodes).
 - o 60 days - node network permit.
 - o 150 days - node support pole permit.
- **If a permit is denied:**
 - o city must provide applicant an email with the specific reasons for denial,
 - o applicant has 30 days to resubmit cured application without fee (other than for actual costs incurred by city);
 - o city's review is limited to emailed reasons for denial; and
 - o city must approve or deny completed resubmittal within 90 days of receipt.

Documents to Consider:

In addition to this summary, I have prepared/provided the following documents to further implementation of these changes:

1. Proposed Right-of-Way Ordinance(s) (TM 87733, "Comprehensive", and TM 87732, "Amending"): There are two options to consider, (including changes provided by NCTCOG), a comprehensive Right-of-Way ordinance, for those cities which do not have any ROW management provisions currently, and an amending ordinance, which will apply to those cities which do have a current ROW ordinance, but have not amended it to reflect changes to the LGC, including Ch. 283 and Ch. 284.

Note that, in addition to adopting such an ordinance/amendment, the City will need to amend its Master Fee Schedule, to reflect the application fee and annual fee, and may need to revise its

zoning ordinance. The fees are included in the “amending ordinance”, but this area is highlighted in Section 2 of the Comprehensive Ordinance, as such changes will include additional fees, depending on the preference of the individual cities. In regards to the wireless facilities, the fees should be as follows:

“Small cell application fee (This fee shall not exceed and is capped by statutory limits)
\$500.00 (1-5 network nodes); \$250.00 (each additional network node); \$1,000.00 per pole

Small cell user fees (this fee shall not exceed and is capped by statutory limits) \$250.00
annually for each network node; \$20.00 per year for city pole attachment.

Transport Facility monthly user fee (This fee shall not exceed and is capped by statutory limits)
\$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, until the time the network provider’s payment to the City exceeds its monthly aggregate per month compensation to the City”

2. Design Manual (TM 87731): I have provided a copy of the proposed format for a design manual offered by TCCFUI. The form provided complies with the state law as enacted, but is very technical and will need to reflect each city’s preferences.

3. Collocation Agreement (TM 87730): Several cities have already been approached by network providers seeking to install equipment on city poles. As noted in the memo, we cannot require a license agreement for this use, but are authorized to require the vendor to enter into a “collocation agreement”. A sample of such an agreement has also been provided.

Outline of Ch. 284

SB 1004 – Adoption of Chapter 284, Local Government Code, “Deployment of Network Nodes in Public Right-of-Way”

This provision affects the ability of cities to regulate “network nodes”, which are defined as ‘equipment at a fixed location that enables wireless communications.

Sec. 284.003, Limit on Size:

- Antennas attached to existing structure or pole w/o exposed elements:
 - o Must be in enclosure not more than 6 cubic feet in volume
 - o May not be more than 3’ higher than existing pole/structure
 - o May not exceed 2’ from the circumference than existing pole/structure
- Antennas w/ exposed elements must fit within existing structure/pole, w/ elements
- Other wireless equipment attached to existing equipment
 - o No more than 28’ cubic volume
 - o Protrude circumference of existing equipment by more than 2’
- Ground based enclosures:
 - o No higher than 3’6”, no wider than 3’6”
- Pole Mounted equipment:
 - o No taller than 5’

Section 284.051, Applicable:

- Network provider collocating network nodes in public ROW

Section 284.052, Exclusivity: city may not enter into exclusive use agreement for ROW

Section 284.053, Rate:

- Annual Rate may not exceed \$250 x # of network nodes installed by network provider in city's entire ROW
- City may charge lower amount if not give, related to use of ROW, discriminatory

Section 284.054, Adjustment: may adjust rate annually by rate not to exceed ½ annual change in CPI, must provide 60 days notice

Section 284.055, Use of ROW and Rate:

- (a) If wanting to connect a node to network: may install transport facilities, subject to (b), or use some service of others: fees not less than \$28/month for occupying ROW
- (b) To install own transport facility:
 - o Has permit to use ROW, and
 - o Pays monthly ROW fee (\$28 x # of network nodes in ROW for which installed facilities provide service, unless or until time network provider's payment exceeds its monthly aggregate per node compensation to the city)

Section 284.056, Collocation on Service Poles:

- Subject to agreement, City must allow on poles, at rate not greater than \$20 per year, per service pole

Section 284.057, City may not require other fees/permits

Section 284.101, Right of Access to ROW: permitted, w/o need for special permit, zoning review, other land use regulations, to:

- Construct, maintain, relocate network node to support pole
- Modify, replace utility pole or node support
- Collocate on pole
- But must comply w/ applicable ROW ordinance(s)

Section 284.102, Construction & Maintenance Requirements:

- Nodes and poles may not:
 - o Obstruct/hinder travel/safety on ROW
 - o Obstruct ROW use by other utility providers
 - o Violate non-discriminatory codes
 - o Conflict with ROW design specifications
 - o Violate Americans with Disabilities Act

Section 284.103, Limitation on Placement of Poles:

- No more than 10 feet higher than existing pole located w/in 500 linear feet of new pole, OR 55 feet above ground level

Section 284.104, Parks & Residential Areas:

- Must have city's consent if in park or adjacent to street that is no more than 50 feet wide and adjacent to single-family residential lots, multifamily properties, or undeveloped land designated for residential use by zoning or deed
- Must comply with private deed restrictions

Section 284.105, Historic/Design Districts:

- Must have approval from city before installing in historic or design district
- City may require reasonable design or concealment measures

Section 284.106, Equipment Cabinets: may not exceed size limitations in Sec 284.003

Section 284.107, Underground Requirement: installation of underground equipment must comply with underground requirements

Section 284.108, Design Manual:

- City may adopt manual including additional installation and construction details
- Design manual may include:
 - o Requirement that industry standard pole load analysis is completed and submitted, indicating pole with safely support load
 - o Requirement that network node equipment placed on new and existing poles be more than 8' above ground level

Section 284.109, Exceptions: may exceed height/distance requirements with city approval

Subchapter D, Applications & Permits

Section 284.151, Prohibitions of Municipal Actions: city may not impose other fees, approvals; no moratoriums

Section 284.152, Require Permits:

- City may require permit, if permit is of general applicability, does not exclusively apply to network nodes, and nondiscriminatory
- Provider seeking to locate multiple nodes is entitled to file consolidated permit for not more than 30 nodes

Section 284.153, Process relating to application:

- May not require more information than a non-service provider telecommunications utility is required to provide, unless the information is directly related to the requirements of this chapter
- City may require applicant to include:
 - o construction and engineering drawings and information to confirm that the applicant will comply with city's publicly disclosed ROW specifications and applicable codes
 - o Information reasonably related to provider's use of ROW to ensure compliance with this chapter
 - o A certificate that the network node complies with FCC regs, and

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

Section 284.154, Municipal Review Process:

- City must determine and notify applicant if application is complete:
 - No later than 30 days after the date the city receives the application for permit for network node or node support pole, OR
 - No later than 10 days after date city receives application for permit for transport facility
 - If not complete, City must specifically identify what is missing
- City must approve application not subject to zoning or land use approval unless application does not comply with city's ROW ordinance, ROW design manual, or other applicable codes
- City must approve or deny application:
 - For node support pole, within 150 days after city receives complete application
 - For network node, within 60 days after city receives complete application
 - For transport facility, within 21 days after city receives complete application
 - Application not approved within these deadlines is deemed approved on the last respective approval date
- If City denies application:
 - Must document basis for denial, including specific code provisions or other regs
 - Must send documentation, by email, to the applicant, on or before denial date
 - Applicant has 30 days from date of denial to cure deficiencies and resubmit application w/o paying another application fee, other than fee for actual costs incurred by city
 - City has 90 days to approve/deny revised application; review is limited to deficiencies cited in initial denial application

Section 284.155, Time of Installation:

- Installation must begin no later than 6 months after final approval; provider must "diligently pursue installation to completion"
- City may place longer time limit of completion, or grant reasonable extension of time

Section 284.156, Application Fees:

- City may charge an application fee for permit only if City requires payment of fee for similar types of commercial development, other than type for which application fees not authorized
- Application fee may not exceed the lesser of:
 - Actual, direct, and reasonable costs the city determines are incurred in granting or processing application that are reasonably related in time to the time the costs of granting or processing an application are incurred; or
 - \$500 per application covering up to 5 network nodes, \$250 for each additional network node per application, and \$1,000 per application for each pole
 - In determining "actual, direct and reasonable costs", city may not include costs incurred in relation to 3rd party legal or engineering review, or direct payment or

reimbursement of 3rd party public ROW rates or fees charged on a contingency basis or under a result-based arrangement

Section 284.157, Work Exempted:

- City cannot require application, permit or fees for:
 - o Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in ROW
 - o Replacing or upgrading network node or pole with a node or pole that is substantially similar in size or smaller that does not require excavation or closing of sidewalks or vehicular lanes in ROW
 - o 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 Nat'l Electrical Safety Code
 - Network node or pole is “substantially similar” if:
 - New node, equipment will not be more than 10% larger than existing node, provided increase does not exceed Sec. 284.003 size limitations
 - New pole will not be more than 10% higher, and does exceed 284.103 height limitation
 - Replacement or upgrade doesn't include replacement of existing pole, and
 - Replacement or upgrade doesn't defeat existing concealment element of node support pole
- City can require:
 - o Advance notice of work
 - o Approval of pole's owner
 - o Compliance with size limitations

Subchapter E: Access to City-Owned Poles

Section 284.201, Use of City-Owned Poles:

- City must allow collocation of network nodes on city-owned utility poles on nondiscriminatory terms and conditions, pursuant to pole attachment agreement, including applicable permitting requirements of city utility
- Annual Pole Attachment rate for collocation of network node on city-owned pole, shall be based on pole attachment rate consistent with Section 54.204 Utilities Code, on per-foot basis

Subchapter F: Effect on Other Utilities and Providers

Section 284.252, Effect on Investor-Owned Utilities, Cooperatives – not applicable to these utilities

Section 284.253, Effect on Providers of Cable Services or Video Services

- Approval of network node or transport facility may not confer authorization to provide:
 - o Cable/video service w/o complying with Ch. 66 Utilities Code
 - o Info/Telecommunication Service under 47 USC

- City cannot require wireless service provider that holds franchise to obtain additional authorization or pay additional fees based on provision of wireless service over nodes

Subchapter G: General Conditions of Access

Section 284.301, Local Police-Power Based Regulations

- Subject to this Chapter, city may continue to apply zoning, land use, permitting authority
- City may exercise authority to impose police-power-based regulations for management of ROW that apply to all persons subject to City
- City may impose police-power based regs in management of ROW that apply to everyone
- City may impose police-power based regs in management of activities of network provider in ROW only to extent regulations are reasonably necessary to protect the health, safety and welfare of public

Section 284.302, Indemnification: Section 283.057 indemnification provisions apply to network provider accessing a ROW

Section 284.303, Relocation: Relocating should be done in timely manner without cost to city

Section 284.304, Interference: Network provider shall insure no interference

Other Provisions:

- Rates, terms and conditions of agreements and ordinances entered into or enacted before September 1, 2017 shall apply to all network nodes installed and operational before September 1, 2017 until March 1, 2018
- For all nodes installed and operational on or after September 1, 2017:
 - o If rate, term or condition of agreement or ordinance related to network nodes doesn't comply with these provisions, city must amend the agreement or ordinance to comply with requirements of this chapter; amended terms, rates, etc shall take effect for those network nodes on or before March 1, 2018