

By: Crabb

H.B. No. 1923

A BILL TO BE ENTITLED

AN ACT

relating to nondiscriminatory and competitively neutral treatment of operators of competitive broadband networks by municipalities.

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

SECTION 1. Chapter 60, Utilities Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. NONDISCRIMINATORY AND COMPETITIVELY NEUTRAL
TREATMENT OF OPERATORS OF COMPETITIVE BROADBAND NETWORKS BY
MUNICIPALITIES TO PROMOTE INTERMODAL COMPETITION

Sec. 60.201. STATE POLICY; APPLICATION OF SUBCHAPTER. (a) It is the policy of this state to promote facilities-based intermodal competition and ensure that providers of competing voice, data, and video services do not have an unfair advantage based on the application of governmental policies, practices, or assessments.

(b) Except to the extent, if any, expressly provided by this subchapter, this subchapter may not be construed as granting authority to the commission or to a municipality to regulate:

(1) the price, service offerings, or terms and conditions of service of a broadband network; or

(2) the voice, data, information, or video service offerings of a broadband network operator.

(c) This subchapter applies only to a broadband network located wholly or partly within a public right-of-way.

1 Sec. 60.202. DEFINITIONS. In this subchapter:

2 (1) "Access line" has the meaning assigned by Section
3 283.002, Local Government Code.

4 (2) "Broadband network" means a network that is:

5 (A) capable of transmitting two-way data at
6 speeds of at least 1.5 megabits a second; and

7 (B) used to offer voice, video, or data services.

8 (3) "Broadband network operator" means an entity that
9 owns or operates a broadband network.

10 (4) "Certificated telecommunications provider" has
11 the meaning assigned by Section 283.002, Local Government Code.

12 (5) "Public right-of-way" means the area on, below, or
13 above a public roadway, highway, street, public sidewalk, alley,
14 waterway, or utility easement in which the municipality has an
15 interest. The term does not include the airwaves above a
16 right-of-way with regard to wireless communications.

17 Sec. 60.203. OFFSET FOR PAYMENT OF DOUBLE ASSESSMENT. (a)
18 A broadband network operator may use this section to ensure fair
19 competition between providers of voice services and providers of
20 video services to the extent parity does not exist between the
21 right-of-way fees applied to the voice and video services of
22 competing broadband network operators.

23 (b) If a certificated telecommunications provider provides
24 access lines using a broadband network owned by an affiliated
25 broadband network operator that is not a certificated
26 telecommunications provider, the broadband operator may deduct
27 from any franchise or license fees the operator pays to a

1 municipality an amount equal to the amount of fees paid to that
2 municipality by the affiliated certificated telecommunications
3 provider under Chapter 283, Local Government Code.

4 (c) If a broadband network operator is a certificated
5 telecommunications provider and has a municipal franchise or
6 license under which the provider pays the municipality for use of
7 the public rights-of-way and the broadband network is used to
8 provide access lines within the municipality in addition to the
9 franchised or licensed services, the operator may deduct from the
10 operator's franchise or license fees an amount equal to the amount
11 of the fees the operator paid to the municipality under Chapter 283,
12 Local Government Code.

13 Sec. 60.204. PROHIBITION ON DISCRIMINATION BY
14 MUNICIPALITY. (a) A municipality may not, directly or indirectly,
15 prefer or provide an advantage to a broadband network operator.

16 (b) A municipality shall provide a broadband network
17 operator with open, comparable, nondiscriminatory, and
18 competitively neutral access to the municipality's public
19 rights-of-way.

20 (c) To ensure competitive neutrality in the treatment of the
21 services of competing broadband network operators, a municipality
22 may apply to all video service providers that lease or otherwise use
23 a broadband network to deliver video services to an end-use
24 customer's premises within the municipality the same contract and
25 fee requirements that the municipality may require of a cable
26 operator under federal law.

27 (d) If a municipality enters into or grants, or has entered

1 into or granted, a franchise, permit, license, or other agreement
2 of any kind with a broadband network operator that contains a
3 provision that differs from a provision contained in an existing
4 franchise, permit, license, or other agreement between the
5 municipality and another broadband network operator, the broadband
6 network operator to which the more burdensome obligation applies
7 has the right to accept the different provision and incorporate
8 that provision into the operator's franchise, permit, license, or
9 other agreement. A broadband network operator that intends to
10 exercise that right shall deliver to the municipality written
11 notice of that intent. The notice must state each provision the
12 operator intends to accept and incorporate.

13 (e) If a municipality enters into or grants, or has entered
14 into or granted, a franchise, permit, license, or other agreement
15 of any kind with a broadband network operator that contains a
16 provision imposing an obligation that is less burdensome than an
17 existing obligation imposed by the municipality on another
18 broadband network operator, the broadband network operator to which
19 the more burdensome obligation applies has the right to reasonably
20 quantify the difference in the value of those obligations and
21 deduct that amount from payments made to the municipality under the
22 franchise, permit, license, or other obligation. A broadband
23 network operator that intends to exercise that right shall deliver
24 to the municipality written notice of that intent. The notice must
25 state the amount the operator intends to deduct. If the
26 municipality does not agree with the amount of the deduction, the
27 municipality shall notify the operator of that disagreement in

1 writing not later than the 10th business day after the date the
2 municipality receives the notice from the operator.

3 (f) If a municipality exempts a broadband network operator
4 or video service provider from a duty to obtain a franchise,
5 license, or permit or to enter into an agreement to provide service
6 in the municipality, the municipality may not impose that duty on
7 any other broadband network operator or video service provider.

8 (g) A municipality shall require a broadband network
9 operator offering video service or a video service provider subject
10 to municipal franchise authority to serve the same geographical
11 area within a reasonable period as any existing broadband network
12 operator is required to serve.

13 (h) A municipality may not discriminate against a broadband
14 network operator regarding:

15 (1) the authorization or placement of a facility in a
16 public right-of-way;

17 (2) access to a building; or

18 (3) a municipal utility pole attachment rate or term.

19 (i) A municipality or municipally owned utility may not
20 charge a pole attachment rate or underground conduit rate that
21 exceeds the rate the utility would be permitted to charge if the
22 utility's rates were regulated under federal law and the rules of
23 the Federal Communications Commission.

24 Sec. 60.205. PROHIBITION ON OTHER FEES AND NONMONETARY
25 COMPENSATION. (a) A municipality may not require a broadband
26 network operator to provide free service or any nonmonetary
27 compensation for the right or privilege to occupy or use the public

1 right-of-way.

2 (b) If a municipality receives free service or other
3 nonmonetary compensation under an existing franchise or other
4 agreement between the municipality and a broadband network
5 operator, the municipality shall grant the broadband network
6 operator a credit, offset, or deduction against a franchise fee or
7 similar charge in an amount comparable to the value of the free
8 service or other nonmonetary compensation.

9 (c) If a broadband network operator pays a franchise or
10 license fee or otherwise compensates a municipality for the right
11 or privilege of using the public right-of-way, the municipality may
12 not require the broadband network operator to pay the municipality
13 any other fee, including an application, permit, excavation, or
14 inspection fee. This subsection does not exempt a broadband
15 network operator that is also a certificated telecommunications
16 provider from the obligation to pay fees under Chapter 283, Local
17 Government Code.

18 (d) A municipality may not require a broadband network
19 operator to pay any compensation for the right or privilege to use
20 the public right-of-way in an amount that is greater than the amount
21 expressly authorized by federal law.

22 Sec. 60.206. REGULATORY AUTHORITY OF MUNICIPALITY. (a) A
23 municipality may enforce police-power-based regulations in the
24 management of a public right-of-way only to the extent that the
25 regulations apply to all persons within the municipality. A
26 municipality may enforce police-power-based regulations in the
27 management of the activities of a broadband network operator only

1 to the extent that the regulations are:

2 (1) reasonably necessary to protect the health,
3 safety, and welfare of the public; and

4 (2) competitively neutral and not unreasonable or
5 discriminatory.

6 (b) A municipality may not impose a regulation on an
7 activity that is within the sole business discretion of the
8 broadband network operator, including a requirement that:

9 (1) the broadband network meet or be upgraded to meet
10 certain technical specifications or standards;

11 (2) particular business offices be located in the
12 municipality;

13 (3) the operator file a report or document with the
14 municipality unless:

15 (A) federal or state law requires the operator to
16 file the report or document with the municipality; and

17 (B) the report or document is related to the use
18 of the public right-of-way;

19 (4) the operator allow the municipality to inspect the
20 operator's business records except to the extent necessary to
21 conduct a review to ensure compliance with fee obligations; or

22 (5) the operator obtain the municipality's approval of
23 a transfer of ownership or control of the business.

24 (c) Notwithstanding Subsection (b)(5), a municipality may
25 require a broadband network operator to:

26 (1) maintain a current point of contact; and

27 (2) provide notice of a transfer of ownership or

1 control of the business within a reasonable time.

2 Sec. 60.207. RELOCATION OF BROADBAND NETWORK. (a) It is
3 the policy of this state to design public improvement projects in a
4 manner that minimizes the relocation of a broadband network. If,
5 during the design of a public improvement project, a municipality
6 determines, based on information then available, that it may be
7 necessary to relocate any portion of a broadband network, the
8 municipality shall provide:

9 (1) the owner of the broadband network written notice
10 of the planned public improvement project;

11 (2) plans and drawings of the project that are
12 sufficient to enable the owner of the broadband network to develop
13 plans for the necessary relocation and to determine the cost of that
14 relocation; and

15 (3) the owner of the broadband network with an
16 opportunity to discuss potential design alternatives that could
17 avoid facility relocation.

18 (b) If, after discussing design alternatives as required by
19 Subsection (a)(3), the municipality determines, in the exercise of
20 sound engineering judgment, that a broadband network must be
21 relocated to accomplish a public improvement project, the
22 municipality and owner of the broadband network shall negotiate in
23 good faith to establish reasonable terms and conditions concerning
24 relocation of the broadband network.

25 (c) The owner of the broadband network shall bear the
26 expense of relocating the broadband network, except that if any
27 part of the public improvement project is financed with federal

1 funds, those funds, to the extent allowed by federal law, shall be
2 used to pay for the relocation of the broadband network in the same
3 proportion as those funds are used to finance the public
4 improvement project.

5 (d) A municipality may not request that the owner of a
6 broadband network relocate the same portion of a broadband network
7 before the fifth anniversary of the date that portion was last
8 relocated unless the municipality pays in advance for that
9 relocation.

10 (e) For purposes of this section, a beautification project
11 or the relocation of aerial facilities underground are not
12 considered to be a municipal public improvement project.

13 SECTION 2. This Act applies only to a franchise, permit,
14 license, or agreement that is entered into or granted on or after
15 the effective date of this Act. A franchise, permit, license, or
16 agreement that is entered into or granted before the effective date
17 of this Act is governed by the law in effect on the date it was
18 entered into or granted, and that law is continued in effect for
19 that purpose.

20 SECTION 3. This Act takes effect September 1, 2005.