

By: King of Parker

H.B. No. 3179

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the promotion of fair competition and intermodal parity
3 among communications service providers, including assessment on
4 the sale of communications service and municipal and state
5 authority with regard to the providers.

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

7 SECTION 1. (a) The legislature finds that rapid advances
8 in, and the convergence of technologies in, the communications
9 industry, including landline, wireless, satellite, and Internet
10 transmissions, require that existing regulatory and compensation
11 structures be conformed to ensure that competing services are
12 treated fairly in the marketplace. In particular, fee assessment
13 and tax treatment of competing voice and video services have
14 developed in a patchwork manner that is not competitively neutral
15 among competing communications service providers.

16 (b) It is the policy of this state to:

17 (1) promote competition in the communications market
18 of this state so that customers may benefit from innovations in
19 service quality and market-based pricing;

20 (2) ensure that providers of communications services
21 are treated in a competitively neutral and nondiscriminatory
22 manner;

23 (3) promote intermodal parity so that customers may
24 benefit from advances in technology;

1 (4) ensure that providers of communications services
2 are treated in a technology neutral and nondiscriminatory manner;

3 (5) establish a uniform method of applying fees and
4 assessments among competing communications service providers;

5 (6) replace existing compensation structures with a
6 new compensation structure that reflects the existing competitive
7 environment and the latest technological advancements; and

8 (7) provide municipalities with a stable source of
9 revenue based on the sales of communications services within the
10 municipalities.

11 SECTION 2. Subtitle E, Title 2, Tax Code, is amended by
12 adding Chapter 153 to read as follows:

13 CHAPTER 153. ASSESSMENT ON COMMUNICATIONS SERVICES

14 Sec. 153.001. DEFINITIONS. In this chapter:

15 (1) "Communications service" means the transmission,
16 conveyance, or routing of a video service or voice service by or
17 through any electronic, radio, satellite, cable, optical,
18 microwave, or other medium or method irrespective of when devised,
19 regardless of the protocol used for such transmission or
20 conveyance.

21 (2) "Communications service provider" means any
22 person or group of persons engaged in the provision of
23 communications services, without regard to certification status or
24 ownership of a communications network.

25 (3) "Intermodal communications assessment" means the
26 assessment described in Section 153.002.

27 (4) "Sale" means a sale as defined by Section 151.005.

1 (5) "Taxable item" means a taxable item as defined by
2 Section 151.010.

3 (6) "Video service" means cable television service as
4 defined by Section 151.0033 and includes Internet protocol enabled
5 video service.

6 (7) "Voice service" means telecommunications services
7 as defined by Section 151.0103 and includes Internet protocol
8 enabled voice service.

9 Sec. 153.002. ASSESSMENT ON COMMUNICATIONS SERVICES.

10 (a) An intermodal communications assessment is imposed on
11 each sale of a communications service that is a taxable item in this
12 state. The assessment rate shall be 3.95 percent.

13 (b) The intermodal communications assessment is due and
14 payable quarterly. Returns are to be filed on or before the last day
15 of the month following the end of the quarter.

16 (c) The comptroller may require a communications service
17 provider to provide information necessary to fulfill the
18 comptroller's duties under this chapter or to ensure a
19 communications service provider's compliance with the
20 communications service provider's obligations under this chapter.
21 Information provided to the comptroller under this chapter is
22 confidential and exempt from disclosure under Chapter 552,
23 Government Code.

24 (d) The comptroller, on request by a municipality, shall
25 provide information relating to the amount of the intermodal
26 communications assessment remitted to the comptroller under this
27 chapter during the preceding or current calendar year by each

1 communications service provider providing communications services
2 within the municipality. Information received by a municipality
3 under this section is confidential and exempt from disclosure under
4 Chapter 552, Government Code, and may be used by a municipality only
5 for the purpose of economic forecasting or for internal auditing of
6 an intermodal communications assessment collected under this
7 chapter.

8 (e) A communications service provider that is required to
9 pay an intermodal communications assessment may identify as a
10 separate line item on each regular bill of each subscriber the
11 amount of the intermodal communications assessment imposed on the
12 transaction between the communications service provider and the
13 subscriber.

14 Sec. 153.003. TRUST ACCOUNT. The comptroller shall deposit
15 intermodal communications assessments collected under this chapter
16 to the credit of a separate account in the general revenue fund for
17 distribution to municipalities and the office of Rural Community
18 Affairs as provided by Section 153.004.

19 Sec. 153.004. DISTRIBUTION OF INTERMODAL COMMUNICATIONS
20 ASSESSMENT. (a) On a quarterly basis, the comptroller shall
21 distribute to each municipality, including municipalities
22 incorporated after the effective date of this Act, its share of
23 intermodal communications service assessment collections
24 determined by this chapter. Sourcing, allocation, and distribution
25 of the assessment on behalf of a municipality shall be done by the
26 comptroller in the same manner as sourcing, allocation, and
27 distribution of any telecommunications service or other service

1 that is taxable, or taxable at the option of a municipality, under
2 Chapter 321 or Chapter 151 of this Code. To the extent that the
3 assessment captures in its base amount services not presently
4 taxable under Chapter 321 or Chapter 151 of this Code, the
5 comptroller shall by rule establish sourcing, allocation, and
6 distribution guidelines for each service that are consistent with a
7 similarly taxable service.

8 (b) On a quarterly basis, the comptroller shall distribute
9 to the rural development fund to be administered by the office of
10 Rural Community Affairs the share of collections generated by the
11 payment of the intermodal communications assessment for
12 communications services provided in unincorporated areas.
13 Disbursements from the rural development fund shall be distributed
14 by the Office of Rural Community Affairs in accordance with the
15 following requirements:

16 (1) broadband service must be provided to rural areas
17 that are without broadband service;

18 (2) the selection of a broadband service provider must
19 be made through a competitive bidding process; and

20 (3) the selection of broadband service must be made on
21 a technology-neutral basis.

22 Sec. 153.005. ENFORCEMENT. The comptroller and a
23 municipality are entitled to ensure that a communications service
24 provider complies with this chapter, including the right to
25 initiate legal action against a communications service provider for
26 payment of the intermodal communications assessment.

27 Sec. 153.006. SAVING CLAUSE. (a) If any part of the

1 intermodal communications assessment provided by this chapter or
2 the application of the assessment to any communications service
3 provider is for any reason held to be unconstitutional, void, or
4 invalid, the validity of the remaining portions of this chapter or
5 its application to other communications service providers shall not
6 be affected, it being the intent of the legislature that no portion
7 of the remainder of this chapter shall become inoperative or fail by
8 reason of a unconstitutionality, voidness, or invalidity of any
9 other portion, and all provisions of this chapter are declared to be
10 severable for that purpose.

11 (b) Notwithstanding Subsection (a), if any communications
12 service provider is determined by law to be exempt from the payment
13 of any portion of the intermodal communications assessment, the
14 assessment rate shall be adjusted by the comptroller to the extent
15 necessary to maintain the same level of intermodal communications
16 assessment collections that would have been collected but for the
17 exemption; provided, however, that the assessment rate may not
18 exceed five percent. The remaining communications service
19 providers shall be afforded an adjustment that ensures competitive
20 neutrality in the application of the assessment.

21 SECTION 3. It is the policy of this state to:

22 (1) promote competition in the marketplace so that
23 customers may benefit from innovations in service quality and
24 market-based pricing of communications services;

25 (2) reduce the barriers to entry for providers of
26 communications services so that the number and types of services
27 offered by providers continue to increase through competition;

1 (3) ensure that all communications service providers
2 have nondiscriminatory access to public rights-of-way, buildings,
3 utility poles, and conduits owned by public entities;

4 (4) preserve municipal authority to manage a public
5 right-of-way within the municipality to ensure the health, safety,
6 and welfare of the public; and

7 (5) grant a municipality the authority to adopt rules
8 by ordinance uniformly applicable to all communications service
9 providers to ensure compliance with certain requirements imposed on
10 video service providers granted a state-authorized franchise.

11 SECTION 4. Subtitle C, Title 2, Utilities Code, is amended
12 by adding Chapter 65 to read as follows:

13 CHAPTER 65. MUNICIPAL REGULATION OF COMMUNICATIONS SERVICE

14 PROVIDERS

15 Sec. 65.001. DEFINITIONS. In this chapter:

16 (1) "Certificated provider" means a person who has
17 been issued a certificate under Chapter 54.

18 (2) "Communications network" means a component or
19 facility that is, in whole or in part, physically located within a
20 public right-of-way and used to offer video or voice services.

21 (3) "Communications service" means the transmission,
22 conveyance, or routing of a video service or voice service by or
23 through any electronic, radio, satellite, cable, optical,
24 microwave, or other medium or method irrespective of when devised,
25 regardless of the protocol used for such transmission or
26 conveyance.

27 (4) "Communications service provider" means a person

1 or group of persons engaged in the provision of communications
2 services, without regard to ownership of a communications network.

3 (5) "Franchise" means an initial authorization, or
4 renewal of an authorization, issued by a franchising authority,
5 regardless of whether the authorization is designated as a
6 franchise, permit, license, resolution, contract, certificate,
7 agreement, or otherwise, that authorizes the construction or
8 operation of a communications network in the public rights-of-way.

9 (6) "Franchisee" means a communications service
10 provider that has been granted a franchise.

11 (7) "Franchise fee" means the amount of compensation
12 paid to a franchising authority by a franchisee under the terms of
13 the franchise.

14 (8) "Public improvement project" means construction
15 or improvement activity in the public rights-of-way undertaken by a
16 municipality or on behalf of a municipality or in conjunction with
17 another governmental entity for any public purpose, excluding those
18 solely undertaken for beautification purposes.

19 (9) "Public right-of-way" means the area on, below, or
20 above a public roadway, highway, street, public sidewalk, alley,
21 waterway, or utility easement in which a municipality has an
22 interest.

23 (10) "Video service" means cable television service as
24 defined by Section 151.0033, Tax Code, and includes Internet
25 protocol enabled video service.

26 (11) "Voice service" means telecommunications
27 services as defined by Section 151.0103, Tax Code, and includes

1 Internet protocol enabled voice service.

2 Sec. 65.002. REQUIREMENTS APPLICABLE TO VIDEO SERVICE
3 PROVIDERS. (a) A communications service provider that owns a
4 communications network or that leases or otherwise uses a
5 third-party communications network, including that of an
6 affiliate, to deliver video service within the municipality shall,
7 not later than 90 days after a request by a municipality in which
8 the communications service provider offers digital video service at
9 a 750-megahertz capacity, provide the municipality with access to
10 public, educational, and governmental access channels for
11 noncommercial programming as follows:

12 (1) up to three channels for a municipality with a
13 population of at least 50,000; and

14 (2) up to two channels for a municipality with
15 population of less than 50,000.

16 (b) Notwithstanding Subsection (a), the number of channels
17 required to be provided by each video service provider shall not be
18 less than the number of channels a municipality receives under the
19 terms of any franchise immediately preceding the effective date of
20 this chapter, regardless of whether the franchise is terminated
21 under this chapter. If a franchise existing on the effective date
22 of this chapter contains a provision to reduce the number of
23 channels, the reduced number of channels shall be the maximum that
24 the municipality may require from each video service provider.

25 (c) If a communications service provider described by
26 Subsection (a) and offering video service is also a certificated
27 provider or an affiliate of a certificated provider, then, within a

1 reasonable period of time, the communications service provider
2 shall provide video service to the same areas where the
3 certificated provider uses its communications network on the
4 effective date of this chapter to provide voice service. The
5 service provider may not discriminate against low-income,
6 minority, or rural residents of the municipality in the sequence in
7 which it fulfills that service requirement. If the communications
8 service provider is not a certificated provider or an affiliate of a
9 certificated provider, then video service shall be offered, within
10 a reasonable period of time, to the same areas served by a
11 communications service provider on the effective date of this
12 chapter that is not a certificated provider or an affiliate of a
13 certificated provider in a sequence that does not discriminate
14 against low-income, minority or rural residents of the
15 municipality.

16 (d) A video service provider or an affected person may seek
17 enforcement of the requirement described in Subsection (c). A
18 video service provider or affected person seeking to enforce the
19 requirement may seek enforcement by initiating a proceeding with a
20 court of competent jurisdiction or through arbitration in
21 accordance with the rules of the American Arbitration Association.

22 (e) A communications service provider described by
23 Subsection (a) shall abide by any customer service requirements
24 that may be established by the municipality where the video service
25 is provided, except that the customer service requirements may not
26 exceed the customer service requirements set forth in 47 C.F.R.
27 76.309(c).

1 (f) If a communications service provider complies with the
2 requirements of this section, the provider shall be considered to
3 have a state-authorized franchise to provide video service in the
4 municipality in which the video service is being provided and shall
5 not be subject to municipal franchise requirements.

6 (g) A municipality in which video service is provided may
7 enforce, by ordinance, the requirements provided by Subsections
8 (a)-(e); provided, however, that a municipality may not prefer or
9 give advantage to any video service provider or discriminate
10 against any video service provider in any manner in the enforcement
11 of the requirements. The enforcement shall be uniformly applied,
12 by ordinance, to all video service providers within the
13 municipality. A municipality's authority to regulate the
14 activities of a video service provider is limited to enforcement of
15 the requirements imposed on a video service provider by this
16 section, except that a municipality may impose a requirement that a
17 communications service provider providing video service within the
18 municipality register with the municipality and maintain a current
19 point of contact and other requirements consistent with federal
20 law, which may include:

21 (1) requiring reports, on request, as to compliance
22 with customer service standards;

23 (2) reasonable sanctions for noncompliance with the
24 requirements described in Subsections (a), (b), and (e), which
25 sanctions must be proportionate to the noncompliance; and

26 (3) guidelines regarding the use of the public,
27 educational, and governmental access channels.

1 (h) Nothing in this section prohibits a municipality from
2 exercising its police power under Section 65.008 with respect to a
3 communications service provider. A court of competent jurisdiction
4 shall have jurisdiction to enforce and determine the lawfulness of
5 any ordinance adopted by a municipality under this section.

6 Sec. 65.003. SANCTIONS FOR FAILURE TO COMPLY WITH FRANCHISE
7 REQUIREMENTS. (a) If a communications service provider that has
8 been granted a state-authorized franchise to provide video service
9 in a municipality fails to comply with the requirements described
10 in Section 65.002(a), (b), or (e), the municipality in which the
11 video service is provided may impose reasonable sanctions for the
12 failure; provided, however, that a municipality must adhere to the
13 procedures provided by this section.

14 (b) The municipality must give written notice to the
15 communications service provider of its intent to impose a sanction
16 and must describe the nature of the noncompliance. Not later than
17 90, days after the notice is issued, the communications service
18 provider must correct the noncompliance or object in writing and
19 state its reasons for the objection.

20 (c) If the municipality does not receive a satisfactory
21 response from the communications service provider as provided by
22 Subsection (b), the municipality may seek to impose reasonable
23 sanctions following a public hearing. The municipality shall cause
24 to be served on the communications service provider, not later than
25 30 days before the hearing, a written notice specifying the time and
26 place of the hearing and stating the municipality's intent to
27 impose sanctions.

1 (d) At the hearing, the communications service provider
2 shall be provided a fair opportunity for full participation,
3 including the right to be represented by legal counsel, to
4 introduce relevant evidence, to require the production of evidence,
5 to compel the relevant testimony of officials, agents, employees,
6 or consultants of the municipality, to compel the testimony of
7 other persons as permitted by law, and to question or cross-examine
8 witnesses. A complete verbatim record and transcript shall be made
9 of the hearing.

10 (e) Not later than 30 days after the public hearing, the
11 communications service provider shall submit its proposed findings
12 and conclusions in writing. The municipality shall determine
13 whether there has been noncompliance, whether such noncompliance is
14 excusable, and whether noncompliance has been corrected or will be
15 corrected by the communications service provider.

16 (f) If the municipality determines that sanctions should be
17 imposed, the municipality shall promptly notify the communications
18 service provider with a written decision setting forth the reasons
19 for the imposition of sanctions. The communications service
20 provider may appeal the determination to a court of competent
21 jurisdiction, which shall have the power to review the decision of
22 the municipality in the same manner as the decision of a state
23 agency is reviewed under Section 2001.174, Government Code. The
24 appeal must be taken within 60 days of the provider's receipt of the
25 determination by the municipality.

26 Sec. 65.004. TERMINATION OF FRANCHISE BY VIDEO SERVICE
27 PROVIDER. A video service provider may elect to terminate a

1 franchise by providing written notice to the affected municipality.
2 The termination shall be effective as of the date the municipality
3 receives the notice. If the video service provider has credit
4 remaining from prepaid franchise fees, the provider may deduct the
5 amount of the remaining credit from any future fees or taxes it must
6 pay to the municipality, either directly or through the
7 comptroller.

8 Sec. 65.005. CERTIFICATED PROVIDERS; TERMINATION OF
9 FRANCHISE. (a) A certificated provider is not subject to municipal
10 franchise authority.

11 (b) A certificated provider may elect to terminate a
12 franchise by providing written notice to the affected municipality.
13 The termination shall be effective as of the date the municipality
14 receives the notice.

15 Sec. 65.006. NONDISCRIMINATION BY MUNICIPALITY. (a) A
16 municipality shall allow a communications service provider to
17 install a communications network within a public right-of-way and
18 shall provide the communications service provider with open,
19 comparable, nondiscriminatory, and competitively neutral access to
20 the public right-of-way. All use of a public right-of-way by the
21 communications service provider is nonexclusive and subject to
22 Section 65.008.

23 (b) A municipality may not discriminate against a
24 communications service provider regarding:

25 (1) the authorization or placement of a communications
26 network in a public right-of-way;

27 (2) access to a building; or

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

2 (c) A municipal utility may not charge a pole attachment
3 rate or underground conduit rate that exceeds the fee the utility
4 would be permitted to charge if the utility's rates were regulated
5 under federal law and the rules of the Federal Communications
6 Commission.

7 Sec. 65.007. PROHIBITION ON FEES AND NONMONETARY
8 COMPENSATION. (a) A municipality may not require any monetary
9 compensation, nonmonetary compensation, facilities, value, in-kind
10 support, free service, or other thing of value for the right or
11 privilege of a communications service provider to occupy or use a
12 public right-of-way.

13 (b) A municipality may not require a communications service
14 provider to pay the municipality any fee or assessment, including
15 any application, permit, excavation, or inspection fee or any fee
16 for the support of public, educational, or governmental access
17 channels.

18 Sec. 65.008. MUNICIPAL POLICE POWER; OTHER AUTHORITY. (a)
19 A municipality may enforce police power-based regulations in the
20 management of a public right-of-way that apply to all persons
21 within the municipality. A municipality may enforce police
22 power-based regulations in the management of the activities of a
23 communications service provider only to the extent that they are
24 reasonably necessary to protect the health, safety, and welfare of
25 the public. Police power-based regulation of a communications
26 service provider's use of the public right-of-way must be
27 competitively neutral and may not be unreasonable or

1 discriminatory. A municipality may not impose regulations on
2 activities that are within the sole business discretion of the
3 communications service provider, including:

4 (1) requirements that particular business offices
5 located in the municipality;

6 (2) requirements for the filing of reports and
7 documents with the municipality that are not required by state or
8 federal law and that are not related to the use of the public
9 right-of-way; provided, however, that a municipality may request
10 maps and records of the location of the portions of a communications
11 network that occupy public rights-of-way;

12 (3) the inspection of a communications service
13 provider's business records; and

14 (4) the approval of transfers of ownership or control
15 of a communications service provider's business, except that a
16 municipality may require that a communications service provider
17 maintain a current point of contact and provide notice of a transfer
18 within a reasonable time.

19 (b) Notwithstanding any other law, a municipality may
20 require the issuance of a construction permit, without cost, to a
21 communications service provider that is locating facilities in or
22 on a public right-of-way within the municipality. The terms of the
23 permit shall be consistent with construction permits issued to
24 other persons excavating in a public right-of-way.

25 (c) In the exercise of its lawful regulatory authority, a
26 municipality shall promptly process all valid and administratively
27 complete applications of a communications service provider for a

1 permit, license, or consent to excavate, set poles, locate lines,
2 construct facilities, make repairs, affect traffic flow, obtain
3 zoning or subdivision regulation approvals, or other similar
4 approvals and shall make every reasonable effort to not delay or
5 unduly burden the provider in the timely conduct of its business.

6 (d) If there is an emergency necessitating response work or
7 repair, a communications service provider may begin the repair or
8 emergency response work or take any action required under the
9 circumstances without prior approval from the affected
10 municipality, if the communications service provider notifies the
11 municipality as promptly as possible after beginning the work and
12 later obtains any approval required by a municipal ordinance
13 applicable to emergency response work.

14 Sec. 65.009. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY;
15 NOTICE OF LIABILITY. (a) A communications service provider shall
16 indemnify and hold a municipality and its officers and employees
17 harmless against any and all claims, lawsuits, judgments, costs,
18 liens, losses, expenses, fees (including reasonable attorney's
19 fees and costs of defense), proceedings, actions, demands, causes
20 of action, liability, and suits of any kind and nature, including
21 personal or bodily injury (including death), property damage, or
22 other harm for which recovery of damages is sought, that is found by
23 a court of competent jurisdiction to be cause solely by the
24 negligent act, error, or omission of the communications service
25 provider, any agent, officer, director, representative, employee,
26 affiliate, or subcontractor of the communications service
27 provider, or their respective officers, agents, employees,

1 directors, or representatives, while installing, repairing, or
2 maintaining facilities in a public right-of-way. The indemnity
3 provided by this subsection does not apply to any liability
4 resulting from the negligence of the municipality or its officers,
5 employees, contractors, or subcontractors. If a communications
6 service provider and the municipality are found jointly liable by a
7 court of competent jurisdiction, liability shall be apportioned
8 comparatively in accordance with the laws of this state without,
9 however, waiving any governmental immunity available to the
10 municipality under state law and without waiving any defenses of
11 the parties under state law. This subsection is solely for the
12 benefit of the municipality and the communications service provider
13 and does not create or grant any rights, contractual or otherwise,
14 to any other person or entity.

15 (b) A communications service provider or municipality shall
16 promptly advise the other in writing of any known claim or demand
17 against the communications service provider or the municipality
18 related to or arising out of the communications service provider's
19 activities in a public right-of-way.

20 Sec. 65.010. RELOCATION OF COMMUNICATIONS FACILITY LOCATED
21 IN PUBLIC RIGHT-OF-WAY. (a) In this section:

22 (1) "Communications facility" means the equipment and
23 components of a communications network provider, and includes the
24 property owned, operated, leased, licensed, used, controlled, or
25 supplied for, by, or in connection with the provider's business
26 operations.

27 (2) "Communications network provider" means a

1 publicly, privately, or cooperatively owned entity that provides
2 voice, video, telephone, telegraph, communications, cable,
3 information, broadband, or another form of advanced
4 telecommunications services.

5 (3) "Public improvement project" means a construction
6 or improvement activity in a public right-of-way undertaken by or
7 on behalf of a municipality or in conjunction with another entity
8 for any public purpose, other than a construction or improvement
9 activity undertaken solely for beautification purposes.

10 (4) "Public right-of-way" means the area on, below, or
11 above a public roadway, highway, street, public sidewalk, alley,
12 waterway, or utility easement in which the municipality has an
13 interest.

14 (b) A municipality must design public improvement projects
15 to minimize the relocation of any communications facility. If a
16 municipality determines during the design of a public improvement
17 project that, based on available information, the relocation of any
18 portion of a communications facility may be necessary, the
19 municipality shall provide the communications network provider:

20 (1) written notice of the planned public improvement
21 project at a point in the design stage that allows the
22 communications network provider sufficient time to offer planning
23 and design alternatives; and

24 (2) plans and drawings of the project that are
25 sufficient to enable the communications network provider to develop
26 plans for and determine the cost of the necessary relocation.

27 (c) On the municipality's request, a communications network

1 provider shall provide the municipality information concerning the
2 provider's facility location. After the municipality and the
3 provider have exchanged information regarding the design and
4 facility location, the municipality shall give the provider an
5 opportunity to discuss potential design alternatives that may avoid
6 facility relocation.

7 (d) Notwithstanding any other provision of law, the
8 governing body of a municipality may require a communications
9 network provider to relocate the provider's facility that is
10 located in a public right-of-way at the provider's sole expense to
11 accommodate a public improvement project.

12 (e) A communications network provider shall relocate its
13 facility as required by the municipality if the municipality:

14 (1) gives the provider 30 days' written notice of the
15 municipality's determination that the facility must be relocated;

16 (2) specifies the new location for the facility along
17 the public right-of-way; and

18 (3) prescribes a reasonable time for relocating the
19 facility that is not earlier than the 90th day after the date the
20 provider receives the information required by Subdivisions (1) and
21 (2).

22 (f) The notification requirements and time limitations
23 provided by this chapter do not apply to the relocation of a
24 communications facility the necessity of which is discovered during
25 the construction process of a public improvement project if the
26 relocation is due to inaccurate or insufficient information
27 provided to a municipality by a communications network provider and

1 if the requirements of this section were met initially.

2 (g) The time for relocation prescribed by the municipality
3 under Subsection (e)(3) may be extended by mutual agreement of the
4 municipality and the communications network provider.

5 (h) A municipality shall make a good faith effort to obtain
6 available third-party funding for a communications facility
7 relocation. If any part of the public improvement project is
8 financed with federal funds, the funds allocated for communications
9 facility relocations shall be used to pay for the relocation of the
10 communications facility.

11 (i) Before the fourth anniversary of the completion date of
12 the relocation of a portion of a communications facility as
13 certified by a municipality, the municipality may not require a
14 communications network provider to relocate that portion of the
15 facility unless the relocation is required by an imminent threat to
16 public health or safety. If the relocation of a portion of a
17 communications facility is necessary before the fourth anniversary
18 of the certified completion date, the municipality shall pay in
19 advance for this relocation.

20 (j) This section does not limited the authority of a
21 municipality and a communications network provider to enter into an
22 agreement that establishes the terms for relocating a
23 communications facility, including terms that preempt a provision
24 of this section.

25 (k) For purposes of this section, a requirement to buy an
26 existing aerial communications facility owned by a communications
27 network provider may not be considered to be a municipal public

1 improvement project.

2 (l) A municipality's exercise of authority under this
3 section must be competitively neutral and may not be unreasonable
4 or discriminatory.

5 (m) This section does not affect a municipality's authority
6 under an agreement, ordinance, or statute to require the relocation
7 of another type of utility facility located in a public
8 right-of-way.

9 (n) To the extent of a conflict between this section and
10 another law relating to the relocation of a utility, this section
11 controls.

12 Sec. 65.011. CHAPTER 283 REPEALED. Chapter 283 of the Local
13 Government Code is hereby repealed; provided, however, that a
14 municipality shall be authorized to conduct an authorized review of
15 a certificated provider to ensure compliance with the access line
16 reporting requirements of such chapter before its repeal, so long
17 as the municipality commences its authorized review within ninety
18 (90) days after the filing of a certificated provider's report of
19 access lines.

20 Sec. 65.012. CHAPTER 62 REPEALED. Chapter 62 of the
21 Utilities Code is hereby repealed.