



Legislative UPDATE

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Wireless Towers in the Rights-of-Way?

Your city could soon see a forest of wireless antenna poles and towers in its rights-of-way if two wireless telecommunications infrastructure companies have their way at the Texas Public Utility Commission (PUC). And the companies want to install the poles and towers to support their systems on the public property for free.

Last October, a wireless tower builder known as Extenet filed a complaint against the City of Houston at the PUC. The complaint asks the PUC to order the city to allow the company to install equipment for a “small” antenna, as part of a distributed antenna system (DAS), in the city’s rights-of-way on their own poles or existing utility poles. A similar complaint was filed in December against the City of Dallas by a company known as Crown Castle.

The legal aspects of the case are complex, but the underlying premise is not. The case is about wireless antenna poles and towers being installed in the rights-of-way by a private company wanting to profit from the free use of taxpayer-owned property.

The companies claim that a 16-year-old law, Chapter 283 of the Texas Local Government Code, gives them the power to move forward with their plans. Chapter 283 has never been applied to allow wireless equipment installation in the rights-of-way. Moreover, these same companies have previously installed wireless facilities in the rights-of-way only after obtaining a city’s consent.

Chapter 283 significantly altered the procedures under which cities collect compensation from local wireline telecommunications providers that use city rights-of-way. Chapter 283 replaced telecommunications franchise agreements with a new system of compensation based on retail, end-user “access lines” for the formerly city franchised wireline providers. Essentially, a PUC certified telecommunications provider (CTP) may use the rights-of-way and pays compensation for the use of the ROWs based on how many retail end-user lines it operates in a city, known as

“access lines.” The new access line system represented a relatively successful compromise in 1999 in the context of a rapidly changing, and recently deregulated telecommunications industry.

Extenet is arguing that, because it is a CTP, its use of the rights-of-way is governed by Chapter 283, including installation of wireless equipment. However, because Extenet has no retail end-use customers, it has no access lines, and thus pays no access line fees under Chapter 283 for that installation.

If your city has not been approached by these or similar companies, it may soon be. City consent has always been required before any company can use any public property, including use of the public rights-of-way, for private use (e.g., water tower leases for antenna). That authority could be lost if Extenet is successful at the PUC. Every Texas city could be affected by the outcome of the complaint. The League, likely in conjunction with the Texas Cities Coalition for Utilities Issues, will be filing comments in the PUC proceeding.

In addition to the state-level threats discussed above, federal legislation with a similar goal has been introduced. The federal Mobile Now Act, which is pending in the U.S. Senate’s Commerce, Science & Transportation Committee, would preempt local authority over the siting of wireless equipment and set limits on compensation paid for putting that equipment in public rights-of-way. The U.S. Conference of Mayors has prepared a [letter in opposition](#) to the bill that allows mayors to sign on electronically.

TCEQ Accidental Discharge Rules

Last month, Texas Commission on Environmental Quality (TCEQ) commissioners approved the publication of proposed rules implementing Senate Bill 912, which was passed during the 84th Legislature. The bill relates to volume-based exemptions from reporting requirements for certain accidental discharges or spills from wastewater treatment facilities or collections systems.

The proposed rules allow any single, accidental discharge or spill of treated or untreated domestic wastewater that occurs at a wastewater treatment or collection system owned or operated by a local government to be reported to the TCEQ monthly, as a summary of spills, provided the following conditions are met:

1. the spill volume is 1,000 gallons or less;
2. it is not associated with another accidental discharge or spill;
3. it is controlled or removed before entering water in the state;
4. it does not adversely affect a public or private source of drinking water;
5. it will not endanger human health or safety or the environment; and
6. it is not otherwise subject to local regulatory control and reporting requirements.

Additionally, the proposed rules require the owner or operator of the facility or collection system to use one of three standard methods in the proposed rule when calculating the volume of a discharge or spill. The proposed rules will also require the TCEQ to consider the compliance

history of the individual and to establish procedures for formatting and submission of the monthly summary. Because the proposed rules essentially track the language in S.B. 912, the League will not file comments.

The [proposed rules](#) are scheduled to be published in the Texas Register today, which opens the [public comment](#) period. Comments are due by March 7, 2016. The TCEQ will hold a public hearing on March 1, 2016, in Austin at the TCEQ headquarters located at 12100 Park 25 Circle, Building E, Room 201S, at 2:00 p.m.

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