



Summer Conference

June 14-16, 2017

Emerging Right of Way Issues

Small Cells are a Big Deal

Senior Assistant City Attorney
Dallas City Attorney's Office



presented by
Don Knight

Chairman of the Board
Texas Coalition of Cities For Utility Issues



What we will cover

- What is a small cell a.k.a network node?
- Steps to Prepare for SB 1004/Chapter 284
- PUC Proceedings
 - Extenet v. City of Houston
 - Crown Castle v. City of Dallas
- FCC Proceedings
 - Mobilitie Petition
 - Wireless NPRM
 - Wireline NPRM

Coming to a Right of Way near you

Small Cells aren't so small

The Players

CMRS PROVIDERS

- AT&T Mobility
- Verizon Wireless
- Sprint
- T-Mobile

WIRELESS INFRASTRUCTURE PROVIDERS

- Crown Castle
- Extenet
- Mobilitie
- Zayo
- and others...

Small Cell v. DAS

SMALL CELL

- A generic term that can apply to any cell site other than a macro site
- A single user cell site (not DAS) is usually referred to as a “small cell” site

DISTRIBUTED ANTENNA SYSTEM (DAS)

- A specific type of small cell system that can be shared by multiple wireless providers
- CMRS providers don't like DAS systems because they don't like to share facilities with their competitors



Typical Small Cell Components

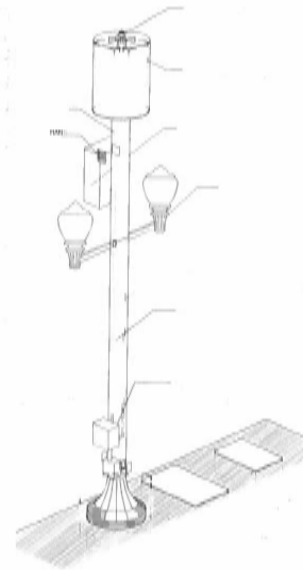
- Electric Service drop riser
- Multi-Host Antenna w/4 coax
- Antenna mount
- Fiber/Telecom Junction Box
- Radio Packs
- Grounding Bar
- Antenna Coax
- Electric Meter
- Breaker panel with disconnect

Special Thanks to John Haislet
Assistant City Attorney
College Station

Sample of Proposed DAS in the CBD



Current look



Per specifications



Proposed look

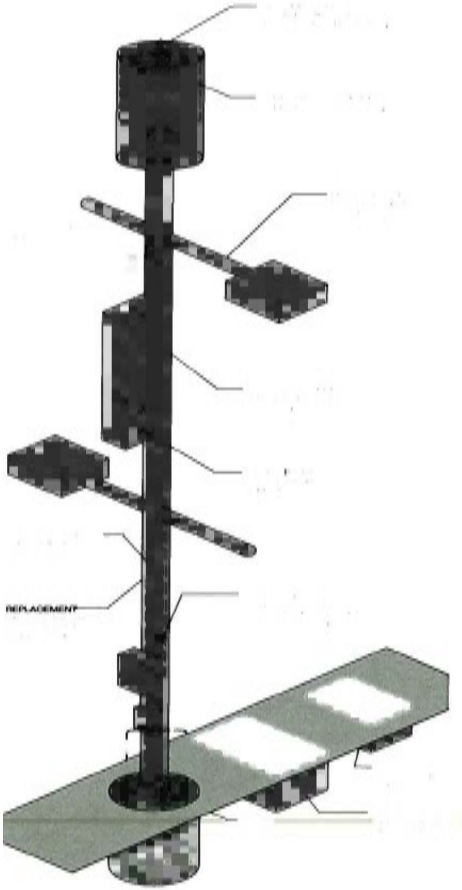
Streetlight
East on Market St. south
of Pacific

Sample of Proposed DAS in the CBD



Current look

Streetlight
Southside on Main west
of Ervay



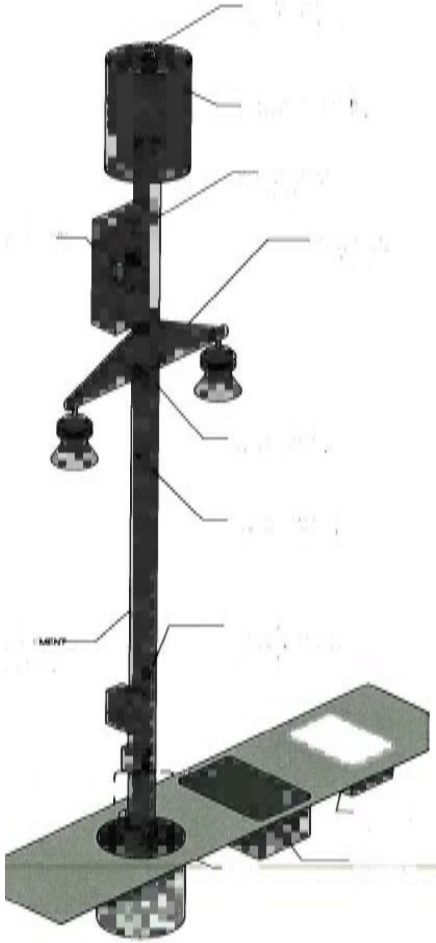
Proposed look
Per specifications

Sample of Proposed DAS in the CBD



Current look

Streetlight
Southwest corner of Field and Pacific



Proposed look
Per specifications

Example of Small Cell in Alley



Typical Alley Installation



Sample of a Pole for
Antenna Only Use



Small cell on a building

Hint: They don't have to be in the ROW



Close up of equipment boxes

Dual DAS – so much for DAS=less



Example of a cluttered small cell install

New Chapter 284 of the Texas Local
Government Code

Steps to Prepare for SB 1004

Become familiar with key provisions of Chapter 284

- Sec. 284.101 mandated access to RoW and Sec. 284.101 (a) (3) to city infrastructure ("Service poles") [traffic signals, non-decorative street lights, street signage] with agreement;
- Sec. 284.104, cannot use parks RoW and certain residential areas if street is 50 ft. wide or less, "without the municipalities' discretionary, non-discriminatory, and written consent";
- Sec. 284.105 Before installations in Historic Districts, Design Districts with decorative Poles, "must obtain advance approval from municipality". "As a condition for approval... may require reasonable design or concealment measures".
- Shot clock - Review and understand Sec. 284.154's deadlines for completeness, and time to act, as otherwise, the permit is "deemed" approved. Note the very short time to review fiber installations for completeness of 10 days, while its 30 days on network nodes; and note times to act or deemed granted.

Become familiar with key provisions of Chapter 284

- “Collocate or Collocation”, this term is confusing as it includes both new/initial installations, and adding facilities to existing installations.
- “Decorative pole”, is specific definition for certain qualified street lights that prohibits their use, as their use and access is not mandated by Sec. 284.101 (a) (3) as that section only applies to “Poles” and while “Poles” includes “Service poles”, “Service poles” does not include “Decorative poles”.

Become familiar with key provisions of Chapter 284

- "Design district". A new type of area that is generally an area that has land use controls as to certain design elements, and Decorative poles on which the city may require concealment of wireless facilities. For the City to apply stealth/concealment conditions to network nodes or node support poles in a Design district under Sec. 284.105, each City must formally zone or designate the applicable areas as Design districts that meet the statutory definition.

Become familiar with key provisions of Chapter 284

- "Historic district". In a Historic district the city may require concealment of wireless facilities, but for the City to apply s stealth/concealment conditions to network nodes or node support poles in Historic districts under Sec. 284.105, each City must formally zone or designate applicable areas as Historic Districts that meet the statutory definition.

Become familiar with key provisions of Chapter 284

- "Micro network node" - these are the tennis racket size devices cable companies have installed by lashing in the lines between poles in the rights-of-ways for several years now.
- "Municipal park". For the exclusion of Node support poles in a Municipal park RoW as allowed by Sec. 284.104 each City must formally zone or designate the applicable areas as a Municipal park.

Become familiar with key provisions of Chapter 284

- “Network node” is the broadly written term in Chapter 284 for wireless equipment, except the pole, which is a separate definition.
- “Network provider” is very broad, as it includes a “wireless provider” which is defined such that it could arguably include any entity that provides a wi-fi hot spot to the public.
- “Node support pole” is a new pole installed just to support a network node facility.

Become familiar with key provisions of Chapter 284

- "Pole" includes three other defined term items: "Node support pole", "Service pole", "Utility pole". This is key as to what is included as mandated access and use in Sec. 284.101 (a) (3).
- "Public right-of-way management ordinance", this is a RoW Ord. conforming to Ch. 284.
- "Public right-of-way rate", annual rental charge per Network node site, CPI adjusted.

Become familiar with key provisions of Chapter 284

- “Service pole” includes city traffic signal poles, non-decorative street lights, street signs.
- “Transport facility” is the physical fiber or line connection between the Network node in the right-of-way and the cellular network’s mobile switching location, which in most instances is on private property. A Transport facility is “for the purpose of providing backhaul for network nodes.”

Access: Mandated v. Limited v. Prohibited

Network Node v. Network Support Pole

- ***Sec. 284.101 (a) (1) -(2) mandated access to RoW to install Network Nodes, use utility poles and install new Node Support poles.***
- ***Sec. 284.101 (a) (3) mandated use of City Service poles-- traffic signals, non-decorative street lights, street signage, with agreement, but no access or use of Decorative poles, as defined in Sec. 284.002;***

Access: Mandated v. Limited v. Prohibited Network Node v. Network Support Pole

- Sec. 284.104 (a) *limited access* to place Node Support poles in **Municipal parks RoW** and in **certain residential areas if street is 50 ft. wide or less, “without *the municipalities’ discretionary, non-discriminatory, and written consent*”;**
- Sec. 284.104 (b), *additional restrictions* for Network nodes and Node Support poles in municipal parks or residential areas that meet the area criteria of Sec. 284.104 (a) **must comply with private deed restrictions and other private restrictions.**

Access: Mandated v. Limited v. Prohibited Network Node v. Network Support Pole

- **Sec. 284.105. *Conditional concealment restrictions*** -- Before installations of Network nodes and Node support poles in designated **Historic districts, Design districts with decorative Poles**, they "must obtain *advance approval from municipality*". "*As a condition for approval... [a city] may require reasonable design or concealment measures*".
- **Sec. 284.107. Compliance with *undergrounding requirements*.**

Access: Mandated v. Limited v. Prohibited Network Node v. Network Support Pole

- **Sec. 284.102.** General installation requirements.
- **Sec. 284.103. 55-foot max. height.**
- **Sec. 284.108 (a) (2).** Equipment must be 8 ft. above grade and (b) comply with Design manual.

Distinguish Between Types of Installations to Determine Different Shot Clocks

- Sec. 284.154. Shot clock Chart- Review and understand Sec. 284.154's deadlines for completeness, and time for the city to act, as otherwise, the permit is "deemed" approved.
- Very short time to review fiber Transport (Transfer) facility installations for completeness within 10 days v. 30 days for network nodes and Node support poles

Distinguish Between Types of Installations to Determine Different Shot Clocks

- Network nodes - 30 days to determine completeness; 60 days to approve or deny, or if not acted on by that time permit is deemed approved.
- Node Support poles - 30 days to determine completeness; 150 days to approve or deny, or if not acted on by that time permit is deemed approved

Distinguish Between Types of Installations to Determine Different Shot Clocks

- Transfer facility (fiber)-10 days to determine completeness; 21 days to approve or deny, or if not acted on by that time permit is deemed approved



- Micro network node-no permit, so no shot clock if the installation is “strung” on lines between poles or node support poles. Sec. 284.157 (a) (3).

Distinguish between types of installations to determine different application and annual fees

NETWORK NODES

- **Application Fee:** Sec. 283.156 (b). application fee is lesser of: actual cost or \$500 for up to 5 Network nodes, and \$250 for each additional Network node on a permit (up to 30, per Sec. 284.152 (b)).
- **Annual Network Node site rental rate:** Sec. 284.053 \$250 per Network Node site, with annual CPI adjustment. Sec. 284.054.

Distinguish between types of installations to determine different application and annual fees

NODE SUPPORT POLES

- **Application Fee:** Sec. 283.156 (b). application fee is lesser of: actual cost or \$1,000 for each pole.
- **Annual rental rate:** No separate rate from Sec. 284.053 \$250 per Network Node site, with annual CPI adjustment. Sec. 284.054.

Distinguish between types of installations to determine different application and annual fees

TRANSFER FACILITY

- **Application Fee:** Not clear if the Sec. 284.156 (b) application fee for a Network node applies, although likely not.
- **Annual Transfer Facility rental rate:** Sec. 284.055. \$28 monthly for each Network Node site, unless an equal or greater amount is paid under Chapter 283, Loc. Gov. Code or Chapter 66, Util. Code.

Distinguish between types of installations to determine different application and annual fees

MICRO NETWORK NODE

- **No fee *if*** the installation is “strung” on lines between poles or node support poles. Sec. 284.157 (a) (3).

Distinguish When Permits are Required

Permits are generally required, per Sec. 284.152, but no permits under Sec. 284.157 (a) (1) -(3), with notice Sec. 284.157 (d) (1)) for:

- **Routine maintenance without excavation or closing sidewalks or vehicular lanes.**

Distinguish When Permits are Required

Permits are generally required, per Sec. 284.152, but no permits under Sec. 284.157 (a) (1) -(3), with notice Sec. 284.157 (d) (1)) for:

- **Replacing or upgrading that is substantially the same size (as defined in Sec. 284.157 (b)).**
- **Micro network node no permit *if* the installation is “strung” on lines between poles or node support poles. Sec. 284.157 (a) (3).**

Designate Areas and Districts by zoning or otherwise

- Municipal parks that meet the definition in Sec. 284.002.
- Residential areas that meet the criteria of Sec. 284.104.
- Historic Districts that meet the definition in Sec. 284.002 and the criteria in Sec. 284.105.
- Design Districts that meet the definition in Sec. 284.002 and the criteria of Sec. 284.105.
- Areas that qualify for compliance with underground requirements that meet the criteria of Sec. 284.107.

Documents to be prepared or reviewed

- Pole Attachment Agreement for use of Service Poles
- Design manual
- Review of RoW Management Ordinance
- Application Forms for Wireless Facilities in the Right of Way

Pole Attachment Agreements

- a.k.a. an Agreement between city and “network provider” to access/use of municipal “Service Poles”
- “Service Poles” is a defined term in sec. 284.002 (22) and includes city traffic lights, non-decorative street lights and traffic signs
- While access and use of “Service Poles is “mandated” by Sec. 284.101 (a) (3), the City can have a more detailed agreement. The agreement must be consistent with and not in conflict with Chapter 284 to use "Service poles"

Pole Attachment Agreements

- This agreement can be very short i.e., simply requiring compliance with RoW ord. and Design Manual, or more detailed, e.g., based on language used in the Houston Master License Agreement Template, conformed to be consistent with Ch. 284.
- Note: While city police powers are retained in Sec. 284.301, they are subject to the extent they do not conflict with Chapter 284, in accordance with Sec. 284. 151, arguably a general preemption of police powers by Ch. 284. Therefore, if there is any dispute on any conflict between the RoW Ord. and Chap. 284, litigation may ensue. Sec. 284.110, reiterates no discrimination among providers.

Design Manual

- Authorized by Sec. 284.108.
- Also see Sec. 284.102 and Sec. 284.103 regarding general limitations in installations
- Sec. 284.107 requires compliance with a city's undergrounding requirements.
- Pole minimum spacing and a single network per pole restrictions by cities are allowed according to testimony by an AT&T attorney and the House sponsor at House hearing on the bill

Review ROW Management Ordinance and Conform to Chapter 284

- Sec. 284.101 (b) requires compliance with a city's RoW Management Ordinance.
- RoW Management Ordinance is defined in Sec. 284.002 (19) as an ordinance that complies with Subchapter C [Sec. 284.101-284.110]. City should review and if necessary, update its RoW Management Ordinance to ensure it will be enforceable pursuant to Chapter 284.

Application Forms

- Forms should distinguish between wireless facilities in RoW, as opposed to private property.
- *For those on private property* distinguishing between new installations, and modifications, and for those that are modifications distinguishing between substantial changes and those that are not “substantial changes” under FCC Rules for Section 6409 unilateral expansion purposes and different FCC shot clocks.

Application Forms

- *For those in RoW Chap. 284* shot clock applies, and application and annual rental fees vary – forms must distinguish between:
 - “Network node” installations.
 - “Node support poles” installation.
 - “Transport facility” installations.

Application Forms

- Include contact info. for notification by city of CPI changes to Right of Way fees.
- Permits must require same information requested of other telecoms, except to show compliance with Chapter 284, per Sec. 284.153.
- **No permit as to “Micro network nodes” *if* the installation is “strung” on lines between poles or node support poles. Sec. 284.157 (a) (3).**

Constitutional
Questions posed by
SB1004

- Texas Constitution Article III, Sec. 52
Sec. 52. COUNTIES, CITIES OR OTHER POLITICAL CORPORATIONS OR SUBDIVISIONS; LENDING CREDIT; GRANTS; BONDS. (a) Except as otherwise provided by this section, **the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever,** or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of premiums on nonassessable property and casualty, life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State.

Constitutional
Questions posed by
SB1004

- Texas Constitution Article III, Sec. 52
Sec. 52. COUNTIES, CITIES OR OTHER POLITICAL CORPORATIONS OR SUBDIVISIONS; LENDING CREDIT; GRANTS; BONDS. (a) Except as otherwise provided by this section, **the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever,** or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of premiums on nonassessable property and casualty, life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State.

Extenet v. City of Houston

Crown Castle v. City of Dallas

Texas PUC Small Cell Proceedings

Interim Order – Extenet v. City of Houston

- The Public Utility Commission entered an Interim Order May 10th.
- The order is not final; as it is the subject of a motion for rehearing.
- What the PUC found is that ExteNet has no access lines and the PUC's order expressly declined to find that ExteNet provided backhaul lines.
- Not having backhaul lines and having no access lines, the question remains: How is ExteNet going to compensate the City for use of the City's ROW?

Interim Order – Extenet v. City of Houston

- Extenet argues that under Extenet v. City of Houston order they do not need to pay to be in the ROW or obtain a license to be in the ROW from the City
- PUC's critical Conclusions of Law are Nos. 6, 9 and 10
- However these Conclusions of Law fail to answer that fundamental question of how ExteNet will pay compensation for use of city ROW

Interim Order – Extenet v. City of Houston

Conclusion of Law No. 6

- ExteNet is providing telecommunications service.

Conclusion of Law No. 6

- Doesn't identify which telecom service ExteNet provides; so, one cannot discern from that conclusion that ExteNet is indeed providing a service to which access lines may be attributed. And given that the PUC found ExteNet has no access lines and is not providing backhaul service, the fact alone that ExteNet is providing telecommunications service is not conclusive of ExteNet's rights under Chapter 283.

Interim Order – Extenet v. City of Houston

Conclusion of Law No. 9

A CTP is required to pay compensation to the municipality in the amount determined by chapter 283 and the Commission's rules established under chapter 283.

Conclusion of Law No. 9

- This conclusion simply states what we can all agree to: Chapter 283 governs where Chapter 283 applies. But that conclusion doesn't conclude that the telecom service ExteNet provides over its antenna and fiber is covered by Chapter 283. Indeed, Conclusion of Law refers generically to a "CTP," but no where does it refer to ExteNet.

Interim Order – Extenet v. City of Houston

Conclusion of Law No. 10

Chapter 283 implements a uniform method for compensating municipalities for the use of the public rights of way that is, among other things: (a) administratively simple to municipalities and telecommunications providers, (b) is consistent with state and federal law, (c) is competitively neutral, and (d) is nondiscriminatory.

Conclusion of Law No. 10

- This conclusion does nothing more than to paraphrase the policy embodied in Chapter 283. But it provides no guidance with regard to ExteNet's rights or obligations in relation to use of the City's ROW.

Interim Order – Extenet v. City of Houston

- While Chapter 284 is not effective until Sep. 1, 2017, it addresses the very use of the ROW that ExteNet proposes to employ.
- As the Interim Order was issued before SB 1004 became law, the PUC has yet to address how the legislature could see a need for a new Chapter 284 if existing Chapter 283 already covered those same facilities.

Crown Castle v. City of Dallas

- SOAH ORDER NO. 5 LIFTING ABATEMENT AND SCHEDULING PREHEARING CONFERENCE on June 20, 2017
- Stay tuned...

We're the Federal Government and we're here to help you
stop thwarting broadband deployment...

FCC Proceedings

Wireless NPRM – FCC 17-38

Federal Communications Commission

FCC 17-38

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Accelerating Wireless Broadband Deployment by) WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)

NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY

Adopted: April 20, 2017

Released: April 21, 2017

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Chairman Pai and Commissioner O’Rielly issuing separate statements;
Commissioner Clyburn concurring and issuing a statement.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1

Wireline NPRM – FCC 17-37

Federal Communications Commission

FCC 17-37

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Accelerating Wireline Broadband Deployment by) WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)

NOTICE OF PROPOSED RULEMAKING, NOTICE OF INQUIRY, AND REQUEST FOR COMMENT

Adopted: April 20, 2017

Released: April 21, 2017

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission: Chairman Pai and Commissioner O’Rielly issuing separate statements; Commissioner Clyburn concurring and issuing a separate statement.

TABLE OF CONTENTS

	Para.
I. INTRODUCTION.....	1
II. NOTICE OF PROPOSED RULEMAKING	3
A. Title, Attachment Reference	2

A.	Pole Attachment Reforms	3
1.	Speeding Access to Poles	6
2.	Re-examining Rates for Make-Ready Work and Pole Attachments	32
3.	Pole Attachment “Shot Clock” For Pole Attachment Complaints	47
4.	Reciprocal Access to Poles Pursuant to Section 251.....	52
B.	Expediting the Copper Retirement and Network Change Notification Process	56
1.	Copper Retirement	57
2.	Network Change Notifications Generally	66
3.	Section 68.110(b)	70
C.	Streamlining the Section 214(a) Discontinuance Process.....	71
1.	Applications That “Grandfather” Existing Customers	73
2.	Applications to Discontinue Previously Grandfathered Legacy Data Services	85
3.	Clarifying Treatment Under Section 214(a) of Carrier-Customers’ End Users	90
4.	Other Part 63 Proposals	95
III.	NOTICE OF INQUIRY	100
A.	Prohibiting State and Local Laws Inhibiting Broadband Deployment	100
B.	Preemption of State Laws Governing Copper Retirement.....	113
IV.	REQUEST FOR COMMENT.....	115
A.	The “Functional Test” Standard.....	115
B.	Determining Whether “Service” Goes Beyond a Single Offering or Product	123
C.	Comment Timeframes	124
V.	PROCEDURAL MATTERS.....	125
A.	<i>Ex Parte</i> Rules	125
B.	Initial Regulatory Flexibility Analysis.....	126
C.	Paperwork Reduction Act.....	127
D.	Filing of Comments and Reply Comments.....	128

Sprint, T-Mobile US
CEOs among the
most hated

By Kelly Hill on June 2, 2017

Telecom Tweets of the Week: RCR Wireless News

Sprint beat T-Mobile US this week, but I don't think they'll be bragging about the circumstances any time soon. Marcelo Claure edged out John Legere as one of the most-hated CEOs in America, according to analysis done by crowdsourced analytics company Owler.

The two wireless company CEOs were both in the top-five-most hated — Claure actually tied with Yahoo's Marissa Mayer, and Legere took the fourth spot. Neither one of them garnered as much dislike as United CEO Oscar Munoz, however

<http://www.rcrwireless.com/20170602/opinion/telecom-tweets-of-the-week-sprint-t-mobile-us-ceos-among-the-most-hated-tag6>



Questions?

A special thanks to Clarence West for all his help with this presentation and accompanying paper

BUT MOST OF ALL

For the many years of service to municipal government as a trusted advisor!