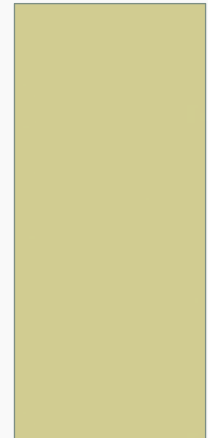


DISTRIBUTED ANTENNA SYSTEMS & RIGHTS OF WAY LICENSING

Complaints at the Public Utility Commission of Texas

**APPLICABILITY OF LOCAL GOVT. CODE
CHAPTER 283 TO WIRELESS SERVICES**



HERRERA & BOYLE, PLLC
AHERRERA@HERRERABOYLELAW.COM

816 CONGRESS AVE., #1250
512-474-1492

PUBLIC UTILITY COMMISSION OF TEXAS JURISDICTION

- **PUCT has jurisdiction necessary to enforce Ch. 283 (§ 283.058)**
- **PUCT has jurisdiction necessary to ensure that Ch. 283 is enforced in competitively (§ 283.058)**

WHAT'S CHANGED?

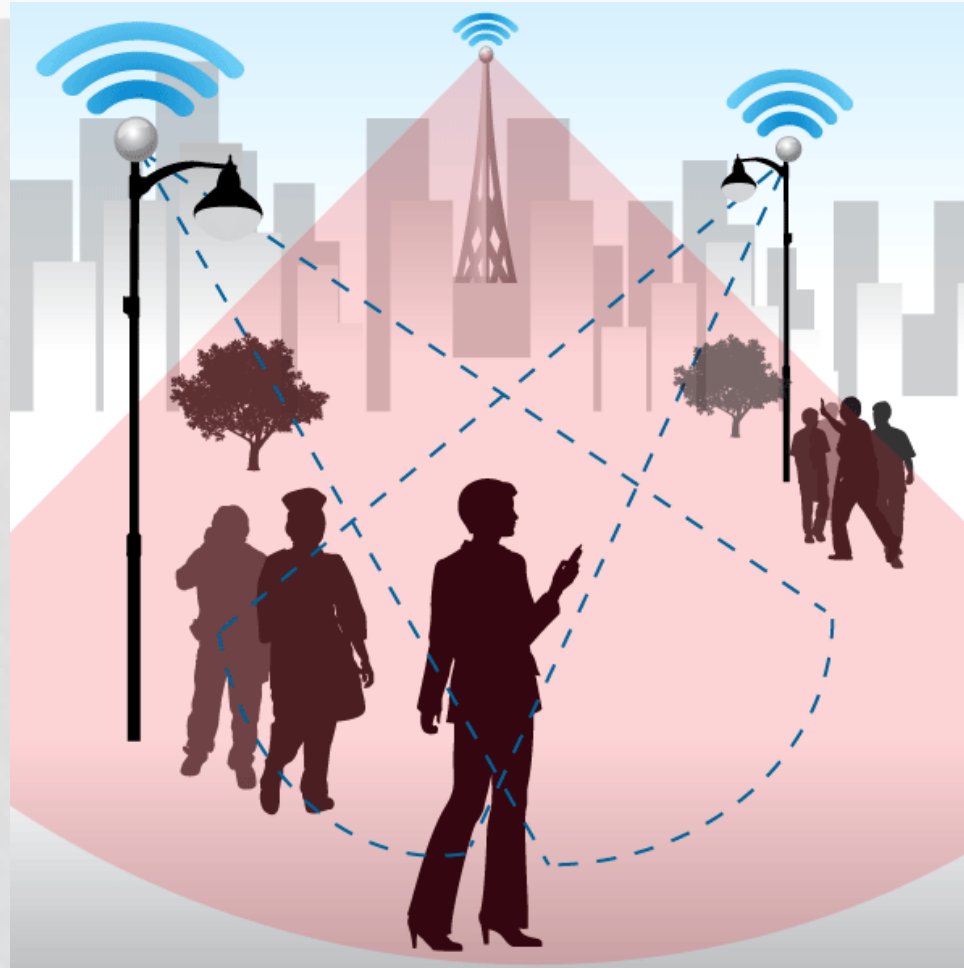
- **Wireless industry moving to smaller antennas**
- **Distributed Antenna Systems (DAS)**
- **DAS supplement and augment wireless networks**

WHAT'S CHANGED?



outdoor distributed antenna system
(ODAS)

WHAT'S CHANGED?



WHAT'S CREATING TENSION?

- **“Certificated Telecommunications Provider” (“CTP”) - Certificate from PUCT to offer “local exchange service” or provide “voice services”**
- **CTPs focus on distinction between “offering” service and providing service**

WHAT'S CREATING TENSION?

- **PUCT grants certificate that mirrors language in Ch. 283: authorizes entity to “offer” local exchange service or provide voice services**
- **But there is no requirement that CTP actually provide local exchange service**

WHAT'S CREATING TENSION?

- **CTP enters market with no apparent intention to provide local exchange service**
- **But there is no requirement that CTP actually provide local exchange service**

WHAT'S CREATING TENSION?

- **Chapter 283 of Local Govt. Code allows CTP to install certain facilities in city's rights of way without need for franchise or payment of franchise fees**
- **Some CTPs use privileges of Ch. 283 to install facilities "wireless" facilities in city's rights of way**

WHAT'S CREATING TENSION?

- **But history of Chapter 283 shows it is limited to wireline services**
- **Some CTPs now contend that Ch. 283 allows them to install “wireless” facilities by virtue of their certificate from the PUCT**

COMPLAINTS AT PUCT

- **ExteNet vs. City of Houston,
PUCT Docket No. 45280**
- **Crown Castle vs. City of Dallas,
PUCT Docket No. 45470**

June 17, 2016

COMPLAINTS AT PUCT

Contend that they can install *wireless* facilities in city's ROW without need for consent from city and without paying fees outside Ch. 283 of the Local Govt. Code

COMPLAINTS AT PUCT

Contend that by not granting permits to construct/install facilities, the cities are discriminating against them relative to other CTPs

COMPLAINTS AT PUCT

ExteNet and Crown Castle contend that, because each has a certificate from PUCT, they may install wireless facilities in city's ROW

COMPLAINTS AT PUCT

“... Does chapter 283 apply where a certificated telecommunications provider has installed, or proposes to install, in the public right of way a wireless distributed antenna system, including fiber optic cables and an antenna?”

COMPLAINTS AT PUCT

**PUCT bifurcated proceeding
into two phases:**

PHASE I:

- **What facilities and services being provided?**
- **Does Ch. 283 apply?**

COMPLAINTS AT PUCT

PUCT bifurcated proceeding into two phases:

PHASE II:

- **What fees apply?**
- **Is city violating Ch. 283 by requiring license agreement??**

COMPLAINTS AT PUCT

PUCT bifurcated proceeding into two phases:

PHASE II (cont'd):

- **Is the city discriminating against these CTPs?**
- **What enforcement remedy is available under Ch. 283**

COMPLAINTS AT PUCT

**Expect decision by
PUCT in about Feb.
2017.**

COMING TO A CITY NEAR YOU

- **Not limited to larger cities**
- **Likely to occur in mid-market cities, too.**