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January 7, 2019

VIA EMAIL

Mayor Mary Casillas Salas
Councilmembers John McCann,
Jill Galvez, Steve Padilla
and Mike Diaz
City Council
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910

Re: Draft Design Standards for Small Wireless Facilities
within the City's Right-of-Way
City Council Agenda Item 6, January 8, 2019

Dear Mayor Salas and Councilmembers:

We write on behalf of Verizon Wireless regarding the draft *Design Standards for Small Wireless Facilities within the City's Right-of-Way* (the "Draft Standards"). Several provisions of the Draft Standards contradict a recent Federal Communications Commission ("FCC") order addressing appropriate standards for approval of small cells. For example, subjective standards must be eliminated in favor of objective approval criteria, and various location restrictions should be reevaluated to ensure they will not pose a prohibition of service. The Draft Standards must also consider placement of small cells on existing wood utility poles, and criteria for height and equipment placement must be revised to accommodate such installations. The Council should defer adoption of the Draft Standards and work with industry on needed revisions.

To expedite deployment of small cells and new 5G technology, the FCC adopted an order in September that provides guidance on appropriate approval criteria for small cells. See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order*, FCC 18-133 (September 27, 2018) (the "Infrastructure Order").¹ Among other topics, the FCC addressed aesthetic criteria for approval of qualifying small cells, concluding that they

¹ While the Infrastructure Order and Code of Federal Regulations referenced in this letter were released on September 27, 2018, they will not be effective until January 14, 2019.

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must be: “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” *Id.*, ¶ 86. “Reasonable” standards are “technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments.” *Id.*, ¶ 87. “Objective” standards must “incorporate clearly-defined and ascertainable standards, applied in a principled manner.” *Id.*, ¶ 88. Several provisions of the Draft Standards contradict the Infrastructure Order, as we explain.

The Draft Standards include several subjective criteria that must be stricken. Maximum concealment, designs to match aesthetics of existing poles, avoidance of “distracting” appearance and a vague “visually pleasing” standard are all matters of opinion that could be used to deny facilities that otherwise meet objective standards. Draft Standards §§ 5, 9, 12(a), 19, 20. Minimizing view impacts to residential or commercial property is also a subjective determination, and further, the scope of aesthetic review is limited to impacts on the right-of-way because Public Utilities Code Sections 7901 and 7901.1 narrow the City’s purview to factors addressing public use or access of the roadway. Draft Standards § 1, 21(i). The City must ensure that any subjective standards are removed from the Draft Standards.

While the residential view criterion is inappropriate, the City may consider an objective standard for its preference to site away from residential zones. Draft Standards § 1. However, steering small cells up to 500 feet distant from a proposed location could result in a target coverage area remaining underserved or unserved. This would thwart the objectives of “densifying a wireless network, introducing new services, or otherwise improving service capabilities,” and it would pose an effective prohibition of service in violation of the Telecommunications Act. *See* 47 U.S.C. § 253(a), Infrastructure Order, ¶ 37. One unintended consequence of the 500-foot threshold is that numerous small cells could end up clustered together instead of distributed along a right-of-way. Due to conflicts with federal law as well as common sense, the 500-foot radius should be reduced to a practicable distance. We suggest that applicants proposing a small cell in a residential zone right-of-way show that there is no available or technically feasible option in a non-residential zone along the subject right-of-way up to 200 feet distant from the proposed site.

The Draft Standards contemplate use of City-owned street light poles or new poles but ignore existing wood utility poles. Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless the right to place their equipment in any right-of-way. In Chula Vista, Verizon Wireless may request use of poles controlled by San Diego Gas & Electric. The Draft Standards should accommodate utility pole designs, including associated equipment placed on a pole as allowed by SDG&E.

The Draft Standards appear to impose an absolute height limit of 35 feet for any pole-mounted small cell. Draft Standards § 17. This will pose complications for small cell antennas on utility poles, which generally are placed on top of a pole. Typically, a four-foot antenna is used, placed on top of a one-to-two-foot mounting bracket that

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conceals cables, with this equipment elevated six feet above pole-top electric supply conductors as required by Public Utilities Commission General Order 95 Rule 94. Where the 35 foot height limit precludes this placement, it is technically infeasible and therefore unreasonable. We suggest that for small cells on utility poles, the City grant a height of increase up to 12 feet. When well-elevated, the narrow cylindrical antenna of a typical small cell poses little visual impact on the streetscape, and with increased height, coverage improves and fewer small cells are required to serve an area.

Requiring all equipment to be concealed within one enclosure or shroud is infeasible for small cells that involve a single antenna above a pole plus small radio boxes placed on the side of a pole. Draft Standards § 5, 11, 12(c). Small radio units stacked vertically on the side of a utility pole are not “out-of-character” given other existing infrastructure on typical utility poles. For clarification, the city could consider a requirement that pole-mounted radio units be concealed behind a vertical screen to the extent feasible.

Some new 5G small cells consist of antennas and radios integrated in one box. Further, 5G facilities, including integrated antennas, generally cannot be enclosed within a shroud because the shroud impedes 5G signal propagation. Draft Standards §§ 11, 12(c). Shrouding requirements may be technically infeasible and therefore unreasonable.

For new poles, the various location restrictions, in combination, could preclude placement in a target service area. Draft Standards § 21. For example, a new pole must be placed 10 feet from an alleyway flare, 15 feet away from any trees, 5 feet from widest point of a drive approach, and 50 feet from traffic control devices, among other limiting factors. In particular, this could deter small cells on new poles near intersections which are optimal locations for maximum coverage. Ultimately, this could require more new small cells to serve an area. If these location restrictions are prohibitive to small cells in a target area, they contradict the Infrastructure Order as well as Public Utilities Code Section 7901 that grants telephone corporations such as Verizon Wireless the right to place new poles along any right-of-way. The City should revisit these location restrictions and revise them to accommodate small cells on new poles where required for service.

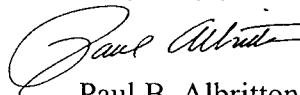
While the Draft Standards allow for deviations from standards, applicants must demonstrate that a small cell is the “least visually intrusive design and location feasible” to close a coverage gap. Draft Standards, p. 1. For facilities that meet the FCC’s definition of small cell, the City cannot require these special findings. *See* 47 C.F.R. § 1.6002(l). All qualifying small cells must be evaluated under objective criteria, and not only is the “least visually intrusive” standard entirely subjective, it invites comparison of alternatives, leaving applicants to guess at the outcome of their proposals which the FCC found contradicts objective criteria. Infrastructure Order, ¶ 88. Further, the coverage gap standard is a narrow, dated standard for prohibition of service that the FCC disfavored. The FCC disagreed that the Telecommunications Act limits the federal prohibition of service standard to “protecting only against coverage gaps or the like” as determined

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through a “‘coverage gap’-based approach,” and the FCC disregarded federal circuit court interpretations relying only on a significant gap in coverage. *Id.*, ¶¶ 38, 40. Were the City to deny a qualifying small cell that meets reasonable and objective aesthetic criteria, it would impede “introduction of services or the improvement of existing services,” posing an effective prohibition of service in violation of the Telecommunications Act. *Id.*, ¶ 37. Rather than contemplating deviations, the City should revise the proposed regulations to accommodate typical small cells required for service.

The Draft Standards require revision to comply with the Infrastructure Order. The Council should decline adoption of the Draft Standards and direct staff to work with industry on workable criteria that accommodate typical small cell designs. Verizon Wireless would appreciate the opportunity work with the City and other industry stakeholders to establish workable guidelines.

Very truly yours,



Paul B. Albritton

cc: Glen Googins, Esq.
Miranda Evans