



July 30, 2019

Verizon Reference Number: "Los Altos 001"

Re.: Proposed Verizon Small Cell Equipment on new replacement PG&E Utility Pole at 155 Almond Avenue

Dear Property Owner / Resident Manager:

More delays, call failures, interrupted calls and slow downloads will result unless we add more wireless facilities, because of the rapidly increasing use of smart phones, tablets, health monitors and other mobile devices.

Despite its importance to our regional economy, Santa Clara county lags significantly behind cities such as Sacramento and Modesto in mobile network service quality. Verizon's planned enhancements are designed to provide improved capacity for the future as well as improve existing in-building connectivity.

These enhancements will assist not only Verizon customers but anyone who takes a call from a customer and the emergency service providers, **police, fire and ambulances**, who rely on their service. Thereby, it is essential that our first responders maintain high-speed, reliable communications for our public safety.

This letter serves to provide specific information about Verizon Wireless installation proposed on a new replacement utility pole: in front of 155 Almond Avenue, Los Altos, CA 94022.

Below is a list of equipment to be added on or near the proposed new replacement utility pole:

- Install (1) new canister antenna on (N) 55' replacement utility pole.
- Install (1)(N) shroud on (N) utility pole.
- Install (N) RRU inside (N) shroud.
- Install (1)(N) radio 2205 and (1) radio 2208 inside (N) shroud.
- Install (1)(N) 6302 power supply unit inside (N) shroud.
- Install (1)(N) distribution panel on (N) utility pole.
- Install (1)(N) utility disconnect switch on (N) utility pole.
- Install (1) PG&E smart meter on (N) utility pole
- Install FCC signage
- Install ground rods and buss bar
- Install (3)(N) conduits for power, telco and coax.

Please note, that the Federal Communications Commission (FCC) sets safety guidelines for wireless facilities and due to the small size of this type of installation and it being low wattage, the emissions from small cells are a small fraction of FCC permitted levels in any publicly-accessible area. Information about safety from cellular facilities. See FCC website for additional information at: <http://www.fcc.gov/oet/rfsafety/rf-faqs.html>.

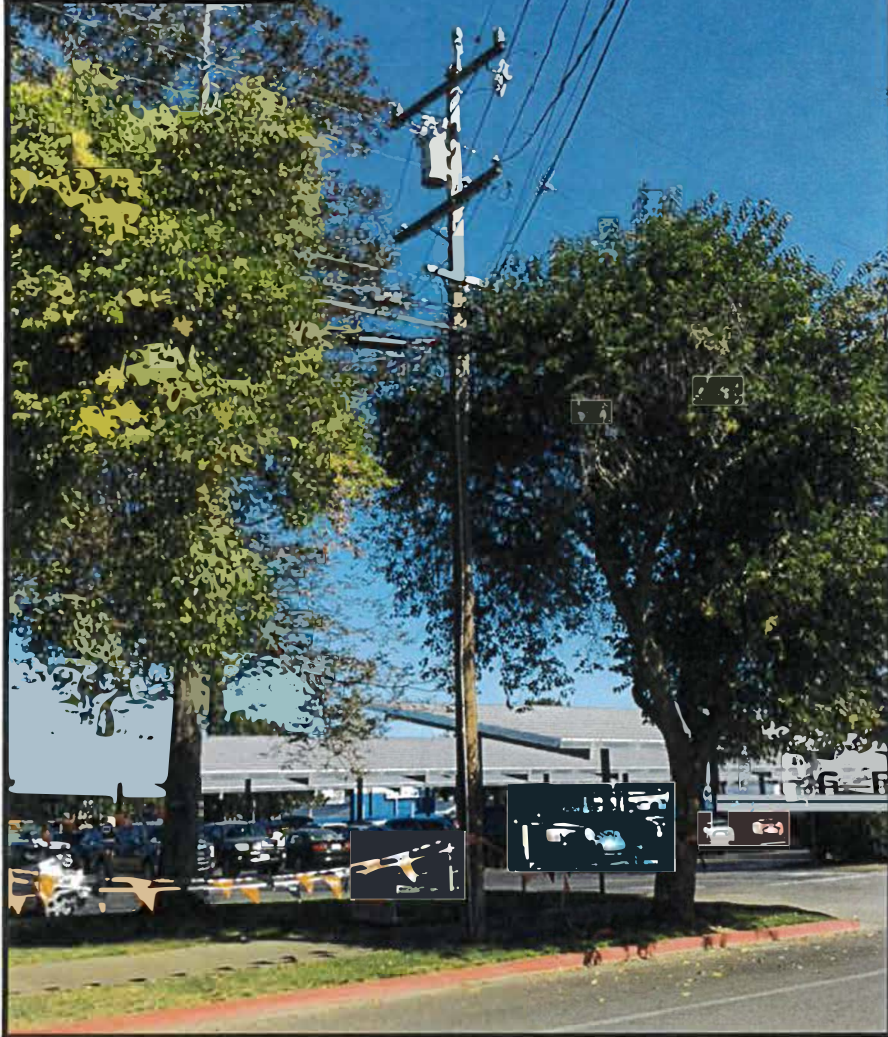
If you would like to request further information, please contact the following:

projects@TheCBRGroup.com / 925-246-3212
(Please reference "Los Altos 001")

Thank you and we look forward to any questions and/or comments you may have.

Cc: City of Los Altos

EXISTING



PROPOSED



CA_LOS_ALTOS_001
155 ALMOND AVE
LOS ALTOS, CA 94022
Location Code: 427814

**VIEW 1: LOOKING NORTH EAST ALONG
ALMOND AVE**

PHOTOSIMS PRODUCED 6/20/2019



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Martinez, CA 94553
info@thecbrgroup.com

MACKENZIE & ALBRITTON LLP

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TELEPHONE 415 / 288-4000
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July 29, 2019

VIA EMAIL

Mayor Lynette Lee Eng
Vice Mayor Jan Pepper
Councilmembers Jeannie Bruins,
Anita Enander and Neysa Fligor
City Council
City of Los Altos
1 North San Antonio Road
Los Altos, California 94022

Re: Draft Ordinance and Design Guidelines, Wireless Facilities in the Right-of-Way
Council Agenda Item 4, July 30, 2019

Dear Mayor Eng, Vice Mayor Pepper and Councilmembers:

We write on behalf of Verizon Wireless regarding the draft ordinance regulating wireless facilities in the right-of-way (the “Draft Ordinance”) and related draft design guidelines (the “Draft Guidelines”). Verizon Wireless is concerned that several provisions contradict the recent Federal Communications Commission (“FCC”) order addressing appropriate approval criteria for small cells, the type of facility typically installed in the right-of-way. For example, subjective standards contradict the FCC’s requirement for objective review of small cells, and technically infeasible standards are unreasonable according to the FCC. Location preferences that lack a clear scope of review may eliminate many residential rights-of-way in conflict with state law. Given their minimal impact, the potential filing of small cell applications poses no emergency that warrants an urgency ordinance. We encourage you to defer action on these draft regulations, and direct staff to make needed revisions.

To expedite deployment of small cells and new wireless technology, the FCC adopted its September 2018 order to provide 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 “Small Cells Order”). Among other topics, the FCC addressed aesthetic criteria for approval of qualifying small cells, concluding that they 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 meant to avoid “out-of-character deployments.” *Id.*, ¶ 87. “Objective” standards must “incorporate clearly-defined and ascertainable standards, applied in a principled manner.” *Id.*, ¶ 88.

Our comments on the Draft Ordinance and the Draft Guidelines are as follows.

Subjective Requirements Cannot Apply to Small Cells.

While administrative approval of small cells is appropriate, soliciting public comment through notice procedures would introduce subjectivity and the illusory impression that personal concerns would override objective standards. Draft Ordinance §§ 11.14.040(a)(7), 11.14.060(c)(8), 11.14.060(g). Under the Small Cells Order, the FCC determined that small cells must be reviewed under objective criteria, and for this reason, requirements for public notice should be stricken. The public’s subjective concerns cannot be a factor for objective standards which must be published in advance. *At most, notice of application should be provided to neighboring property owners for informational purposes.*

The draft regulations include several subjective standards that should be eliminated as they are preempted by the Small Cells Order. One permit finding requires no detriment to public “welfare.” Draft Ordinance § 11.14.070(a)(1)(i). Minimum standards require small cells to maintain “the integrity and character of the neighborhoods” and “minimize the intrusion on the rights of way.” Draft Ordinance § 11.14.050(c). The Draft Guidelines require that small cells be “concealed to the maximum extent feasible” and “mimic or blend with the underlying support structure,” while giving the Director discretion to require additional concealment to “blend...with the natural and/or built environment.” Draft Guidelines §§ 4(a), 4(o). These are matters of opinion that could lead to denial of small cells that otherwise satisfy objective criteria.

Under objective criteria, a facility either complies, or it does not. Applicants should be confident that their designs will comply, not left to guess what the City may decide based on its discretion. The FCC discouraged such guesswork. Small Cells Order, ¶ 88. *All subjective standards should be stricken from the Draft Ordinance and Draft Guidelines.*

Location Restrictions Must Be Revised to Avoid Violating State and Federal Law.

The preference for siting facilities in commercial zones and the discouragement of residential zones may lead to violations of state law. Draft Guidelines § 8(a). California Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless a statewide right to place their equipment along any right-of-way, and it does not favor or disfavor certain types of zones. If strictly applied, the discouragement of residential zones could place nearly all of Los Altos off-limits for small cells given that those zones cover most of the city. However, this would constitute a prohibition of

service under the federal Telecommunications Act, as the FCC affirmed that small cells are critical to densifying wireless networks and enhancing service. 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II); Small Cells Order, ¶¶ 37-40.

The City must provide a reasonable standard to allow siting in residential areas. The preferences for non-residential areas and use of existing infrastructure should be clarified to be objective, explaining the circumstances where a less-preferred location or a new pole would be allowed. A clear scope of location review will avoid unfounded denials that may result in a prohibition of service. *We suggest that less-preferred options be allowed if there is no preferred option within 200 feet along the subject right-of-way that is available and technically feasible to support a small cell.*

We note that location and setback restrictions requested by certain members of the public and included in Mill Valley's recently-adopted ordinance (attached to your prior City Council staff report) are illegal and unenforceable. Any requirement to place small cells on arterial roadways rather than residential streets in Los Altos is infeasible where small cells must be placed close to end users. Similarly, Section 7901 provides telephone corporations the right to place facilities on "any public road or highway," and residential roadways cannot be categorically excluded. Arterial roadways such as El Camino Real may not be under the City's control. Similarly, setbacks like those imposed by Mill Valley "materially inhibit" the provision of wireless services in violation of the FCC's Small Cells Order. The City Council must avoid including similar "feel-good" provisions that cannot be enforced under state or federal law. Indeed, Mill Valley's ordinance contains an exception that allows for facilities where denial would constitute such a prohibition of service.

Equipment Standards Must Be Revised To Be Reasonable.

The FCC determined that undergrounding requirements, similar to aesthetic requirements, must be reasonable, non-discriminatory and objective. Small Cells Order, ¶¶ 86, 90. The draft regulations limit placement of small cell associated equipment in areas where utilities are already underground. Draft Ordinance § 11.14.050(c); Draft Guidelines § 4(g). These standards are unreasonable in two ways. First, undergrounding is generally technically infeasible due to sidewalk space constraints and undue environmental and operational impacts for required active cooling and dewatering equipment. Second, small equipment boxes on the side of a pole are not "out-of-character" among typical infrastructure in the right-of-way, including on poles that remain in undergrounded areas such as street light poles. *We suggest that the City allow up to five cubic feet of small cell associated equipment on poles in undergrounded areas.*

For small cells on utility poles, the requirement to place all equipment within one antenna shroud is technically infeasible and unreasonable. Draft Guidelines § 4(b). Remote radio unit ("RRU") models for such installations cannot fit within narrow antenna shrouds along with antennas, cables and other small network components. This requirement contradicts another provision, Draft Guidelines Section 4(e), that allows a

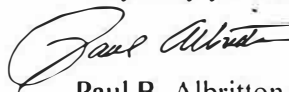
workable volume of associated equipment on a pole if vertically arranged. *Draft Guidelines Section 4(b) should be stricken.*

Other equipment shrouding requirements should be revised to be feasible. Draft Guidelines §§ 5(b), 5(e). Because wireless electric meters and disconnect switches cannot be covered per PG&E rules, such power equipment cannot be “completely contained” in a single, uniform equipment shroud. The limit of a shroud’s protrusion to 18 inches off a pole will curtail the dimensions of RRUs within, precluding RRU models on utility poles required for service. Lastly, the limit of equipment shrouds to nine cubic feet contradicts Draft Guidelines Section 4(e) which specifically excludes concealment shrouding from the equipment volume calculation. With RRUs of adequate size and wattage, typically placed on the side of a pole, a small cell’s coverage area improves, and fewer such facilities are required to serve an area. A narrow vertical shroud, painted to match a pole, can conceal RRUs and other network components sufficiently to minimize visual impacts. The proposed restrictive or contradictory standards pose infeasible limits. *Draft Guidelines Sections 5(b) and 5(e) should be stricken in favor of a standard requiring equipment shrouding to the extent technically feasible.*

We note that several provisions of the Draft Guidelines limit height of small cells to 50 feet. Draft Guidelines §§ 4(n), 7(g). This contradicts the FCC’s definition of “small wireless facilities,” recited in the Draft Ordinance, which allows a modest increase over 50 feet for structures 10 percent taller than adjacent structures or extension of existing structures by 10 percent. Draft Ordinance § 11.14.020; 47 C.F.R. § 1.6002(1). These provisions should be revised to acknowledge the small cell height allowances established by the FCC.

The Draft Ordinance and Draft Guidelines require several revisions to comply with the FCC’s Small Cells Order and state law. We urge you to defer any action on the draft regulations, and direct staff to confer with industry on needed revisions.

Very truly yours,



Paul B. Albritton

cc: Christopher Diaz, Esq.
Gail Karish, Esq.



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July 30, 2019

VIA E-MAIL

City of Los Altos City Council
Los Altos City Hall
1 North San Antonio Road
Los Altos, CA 94022

Re: AT&T's Comments on Los Altos' Wireless Facilities in Public Rights-of-Way
Urgency Ordinance and Resolution Adopting Design and Development
Standards for Small Wireless Facilities

Dear Mayor Lee Eng, Vice Mayor Pepper and Councilmembers Bruins, Enander and Fligor:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the City of Los Altos' wireless facilities in public rights-of-way urgency ordinance ("Proposed Ordinance") and resolution adopting design and development standards for small wireless facilities ("Proposed Resolution"). AT&T appreciates the City's efforts to revise its wireless facilities siting regulations to address small cells, particularly given developments in technology and applicable laws, including the Federal Communications Commission's *Infrastructure Order* and regulations.¹ With more than 72% of Americans relying exclusively or primarily on wireless telecommunications in their homes, and 70% of 911 calls made from mobile phones, it is especially important to encourage responsible deployments consistent with applicable law. And with AT&T's selection by

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) ("*Infrastructure Order*").

FirstNet as the wireless service provider to build and manage the nationwide first responder wireless network, each new facility will help strengthen first responder communications.

The Proposed Ordinance and Proposed Resolution need to be revised to comply with applicable laws. AT&T respectfully asks that the City consider these and other comments from the wireless industry to help make needed changes. AT&T offers the following summary of applicable laws along with specific comments on these proposed regulations.

Key Legal Concepts

The Federal Telecommunications Act of 1996 (“Act”) establishes key limitations on local regulations. The Act defines the scope and parameters of the City’s review of AT&T’s applications. Under the Act, the City must take action on AT&T’s applications “within a reasonable period of time.”² The FCC has established and codified application “shot clocks” to implement this timing requirement.³ And the FCC has made clear that the City must grant all necessary approvals and authorizations within the applicable shot clock.⁴ The Act also requires that the City’s review of AT&T’s applications must be based on substantial evidence.⁵ Under the Act, state and local governments may not unreasonably discriminate among providers of functionally equivalent services.⁶

The Act also prohibits a local government from denying an application for a wireless telecommunications facility where doing so would “prohibit or have the effect of prohibiting” AT&T from providing wireless telecommunications services.⁷ The FCC has ruled that an effective prohibition occurs when the decision of a local government materially

² 47 U.S.C. § 332(c)(7)(B)(ii).

³ See 47 C.F.R. §§ 1.6001, *et seq.*

⁴ See *Infrastructure Order* at ¶¶ 132-137.

⁵ 47 U.S.C. § 332(c)(7)(B)(iii).

⁶ 47 U.S.C. § 332(c)(7)(B)(i)(I).

⁷ 47 U.S.C. § 332(c)(7)(B)(i)(II).

inhibits wireless services.⁸ The FCC explained that the “effective prohibition analysis focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.”⁹ Thus, a local government “could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services.”¹⁰

Under this *Infrastructure Order*, the FCC established a standard for appropriate fees related to small cells: (1) fees must be a reasonable approximation of costs, (2) costs must be objectively reasonable, and (3) fees must be non-discriminatory.¹¹ The FCC also established a standard for local aesthetic regulations that they must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.¹²

AT&T has a statewide franchise right to access and construct telecommunications facilities in the public rights-of-way. Under Public Utilities Code Section 7901, AT&T has the right to access and construct facilities in public rights-of-way in order to furnish wireless services, so long as it does not “incommodate” the public use of the public right-of-way. And under Section 7901.1, AT&T’s right is subject only to the City’s reasonable and equivalent time, place, and manner regulations.

⁸ See *Infrastructure Order* (The FCC rejected all coverage gap tests for an effective prohibition) at ¶ 40, n. 94; see also, *In the Matter of California Payphone Association Petition for Preemption, Etc.*, Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).

⁹ *Infrastructure Order* at n. 95.

¹⁰ *Id.* at ¶ 37.

¹¹ See *Infrastructure Order* at ¶ 86.

¹² See *id.* at ¶ 86.

Specific Comments on the City's Proposed Urgency Ordinance

1. Other Permits Required. The Proposed Ordinance requires an applicant to apply for additional permits and approvals required by applicable law. The FCC has made clear that all associated permits and approvals are subject to the applicable shot clock.¹³

2. Appeals. In Section 11.14.040(b), any adversely affected person may appeal the City's actions. The City must take final action, inclusive of appeals, within the applicable shot clocks. While AT&T recognizes that the City has provided a short appeal timeframe, the City should consider eliminating appeals for small cells and eligible facilities requests that may otherwise add unnecessary pressure on the City to meet the FCC's shot clocks.

3. Independent Consultants. Section 11.14.070(c) of the Proposed Ordinance allows the City to select and retain an independent consultant in connection with application review. While AT&T appreciates the City's desire to thoroughly review applications, consultants can unnecessarily increase the cost of deployment and slow down the permitting process. Use of consultants should limit review to appropriate and objective criteria, such as a structural safety assessment or compliance with FCC regulations of radio frequency emissions. And the City should be mindful that the cost of a consultant may not pass through to an applicant as only objectively reasonable costs can be passed on through application fees.¹⁴

4. Timing of Installation. Section 11.14.080(a)(3) requires installation and construction to be completed within 30 days following the day construction commenced. Because construction completion can be impacted by numerous variables, some of which are uncontrollable, the City should instead simply require the applicant to work diligently to completion.

5. Insurance. Section 11.14.080(a)(13) requires insurance. AT&T should be permitted to self-insure.

¹³ See *Infrastructure Order* at ¶¶ 132-137, 144.

¹⁴ See *id.* at ¶ 70 (FCC warned that "any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual 'cost' to the government").

6. Indemnification. The City should not seek indemnity from an underlying property owner, as it does under Section 11.14.080(a)(14) of the Proposed Ordinance. Not only does this risk interfering with existing leases, it also has the effect of interfering with prospective economic relations between AT&T and property owners within the City. In addition, the indemnification provision needs to carve out exceptions to indemnity in instances of the City's own negligence. And AT&T must retain the right to select its own counsel.

7. Abandonment. Section 11.14.080(a)(28) states that providers have 90 days to remove all equipment after abandonment. But this same section also says that facilities not removed within 30 days after abandonment are a nuisance. To avoid confusion, the City should consistently allow 90 days to remove a facility after abandonment.

8. Attorney's Fees. The provision for attorney fees under Section 11.14.080(a)(31) is unreasonable and likely discriminatory. This should be eliminated.

Specific Comments on the City's Proposed Resolution

1. Types of Small Wireless Facilities Permitted in Los Altos. AT&T objects to Section 3 of the Proposed Resolution, which permits only three types of small wireless facilities in Los Altos, including attachments to wooden (or other material) utility poles and utility lines, placement on streetlights and traffic signal control poles and new freestanding poles. The City cannot dictate the utility infrastructure that AT&T deploys in a more burdensome way than applied to other infrastructure deployments by restricting the type of pole materials and support structures available for deployment. Further, prohibiting installations on other types of poles in the City could adversely impact aesthetics where nearby existing poles are made of different materials or nearby structures.

2. Collocation. In Section 4(c) of the Proposed Resolution, the City permits only one small wireless facility per structure. This is inconsistent with Section 11.14.080(a)(29) of the Proposed Ordinance, which encourages collocation. And while there typically is not sufficient available space to place two small cells on the same vertical support structure, AT&T is

concerned that this provision could be applied to prohibit 5G deployments on poles already housing 4G facilities.

3. Concealment. Many of the City's design standards in the Proposed Resolution for small wireless facilities require concealment. But under the FCC's aesthetic standard for small cells, concealment cannot be required to a greater extent than imposed on other infrastructure deployments in the rights-of-way, and there are non-concealed electric distribution facilities throughout the City's rights-of-way.

4. Volume of Exterior Mounted Accessory Equipment. Section 4(e) limits the volume of accessory equipment. This section must be revised to allow up to 28 cubic feet of equipment to be consistent with the FCC rule, 47 C.F.R. §1.6002(l)(3).

5. Undergrounding. Several provisions in the Proposed Resolution, and in the Proposed Ordinance, mandate undergrounding of equipment. These requirements must be revised to the extent necessary to avoid unlawful discrimination or effectively prohibiting wireless services in violation of the Act. Wireless facilities cannot operate with all equipment underground. Antennas must be above ground to broadcast and receive and radio units must be placed above ground near antennas to function properly.

6. Prohibition on Ground-Mounted Electric Meters. Section 4(j) of the Proposed Resolution prohibits ground-mounted electric meters. But sometimes ground-mounted electric meter pedestals are the only feasible option for providers based on the electric provider's requirements. AT&T will certainly work with the City on design, but the City must avoid blanket prohibitions and dictating AT&T's infrastructure choices.

7. Prohibition on Attachments to Decorative Streetlights. The City should strike the proposed ban on attachments to decorative streetlights in Section 4(k) of the Proposed Resolution. First, the FCC made clear that its interpretations apply to all government owned or controlled structures within the right-of-way.¹⁵ These categorical bans on attaching facilities to certain structures will effectively prohibit wireless services in certain parts of the City in violation of the Act. Moreover, many jurisdictions favor decorative pole designs for

¹⁵ *Infrastructure Order* at ¶ 69.

small cells, subject to a requirement that new or replacement decorative poles housing small cells are designed to look similar to nearby decorative poles.

8. Accessory Equipment. AT&T objects to Section 5(e), which restricts all equipment within a single shroud not to exceed 9 cubic feet in volume. This unduly limits equipment configurations and site design, is likely too small for current technology and will not accommodate future technology. To avoid unlawful prohibitions of wireless services, these provisions must be revised to incorporate more flexibility into the Proposed Resolution.

9. Additional Antenna Shroud Measurements. Section 5(f) and Section 6(c) also state that antenna shrouds cannot be more than five cubic feet in size and cannot measure more than four feet tall. Again, the City must build more flexibility into the Proposed Resolution. For instance, AT&T often places antennas and radios in a single top-mounted concealment shroud, which is a design that cities typically favor. But this design may not meet these restrictions.

10. Pole Top Attachments. Section 7(h) of the Proposed Resolution requires antennas on new poles to be installed above the pole. There may, however, be several reasons that inhibit installations on the top of the pole. For instance, top-mounted antennas may not be technically feasible or network parameters may prevent pole-top installation. Also, AT&T may only have rights to certain space on the pole, or the pole owner may impose restrictions on AT&T that prevent extending the height of the pole. This requirement should, therefore, be limited to the extent practical and feasible.

11. New Poles. AT&T objects to Section 7(c) of the Proposed Resolution stating that new poles not located within open space areas must be designed to resemble existing standalone streetlights. This requirement is unreasonable and discriminatory to the extent not applied to other infrastructure deployments.

12. Location Preferences. Section 8(a) lists the City's location preferences for small wireless facilities. The City can articulate appropriate location preferences, but AT&T has a legal right to place its facilities in the public rights-of-way. Further, the FCC's aesthetic

standard for small cells precludes the City from requiring this type of analysis for wireless applications when the City does not require it from other infrastructure deployments.

As a practical matter, the City should reconsider naming residential districts as the City's least preferred location for siting wireless facilities. Small cells are low-profile, low-power facilities that need to be placed near where residents rely on wireless connectivity the most: in their homes. To the extent application of this preference materially inhibits AT&T from serving customers, it will violate the Act as an effective prohibition.

13. Distance Between Small Wireless Facilities. The City must eliminate Section 8(h) of the Proposed Resolution, which requires a minimum of 500 feet between small wireless facilities. This type of requirement is both prohibitory and discriminatory. Moreover, this separation requirement is unreasonable and certainly not needed for concealed sites.

14. Engineering Design Standards. AT&T objects to Section 9(h) of the Proposed Resolution, which states that AT&T must install conduit sweeps for future service. This requirement is unreasonable as AT&T cannot be required to install additional conduit sweeps for other infrastructure deployments.

Conclusion

The City needs to take time to revise its Proposed Ordinance and Proposed Resolution to come in line with applicable laws. By addressing the items we raise here, the City will go a long way toward encouraging deployments consistent with state and federal policies and to the great benefit of the City's residents and businesses.

Sincerely,



Ann Ahrens Beck

cc: Gail Karish, City Attorney