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March 24, 2021

VIA EMAIL

Mayor James R. Bozajian
Mayor pro Tem Mary Sue Maurer
Councilmember Peter Kraut,
David J. Shapiro, and Alicia Weintraub
City of Calabasas
100 Civic Center Way
Calabasas, California 91302

Re: Draft Wireless Telecommunications Facilities Ordinance
Council Agenda Item 12, March 24, 2021

Dear Mayor Bozajian, Mayor pro Tem Maurer, and Councilmembers:

We write on behalf of Verizon Wireless regarding the draft ordinance regulating wireless facilities (the "Draft Ordinance"). Verizon Wireless appreciates the City's initiative to streamline the permit process. While administrative approval of stealth facilities is appropriate, several Draft Ordinance standards should be modestly revised to encourage new deployments where needed. For example, the general requirement to place all associated equipment underground is unreasonable for small cells, whereas a reasonable volume of associated equipment on the side of a pole poses little visual impact. Right-of-way facilities should be allowed along any street, while subject to a reasonable review radius for preferred options.

We urge the Council to direct staff to accept the modest revisions we propose, or in the alternative, to defer adoption of the Draft Ordinance. Our comments are as follows.

Stealth Requirements

Various Draft Ordinance provisions require "stealth" design to the maximum extent feasible, collectively applying to all new facilities. Draft Ordinance §§ 17.31.030(A)(1)(i), 17.31.030(A)(1)(n), 17.31.030(E), 17.31.040(F)(2), 17.31.070(F)(15), 17.31.070(G)(6).

The definition of "stealth facility" includes numerous subjective criteria, such as "blend into the surrounding environment" and "architecturally integrating." Draft Ordinance §

17.31.100. These could be used to deny facilities that otherwise meet specific design criteria and are consistent with the *Design Guidelines.*

Further, the definition of "stealth" requires that "equipment shall be placed underground to the maximum extent feasible." This directly contradicts the Draft Ordinance right-of-way standard of Section 17.31.030(A)(1)(e), which allows pole-mounted equipment up to six cubic feet. It also contradicts the *Design Standards,* which show photos of "successful" right-of-way facilities with pole-mounted equipment.

For small cells, such blanket undergrounding requirements are unreasonable because small equipment boxes on the side of a pole are not "out-of-character" compared to other right-of-way infrastructure. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 (September 27, 2018), ¶¶ 86-87 (the "Infrastructure Order").

Whether permitted under Tier 1 or the small wireless facility permit option, small cells are "stealth" by virtue of their small size. *To avoid unfounded denials, the definition of "stealth facility" should be amended to include a reasonable volume of pole-mounted associated equipment (e.g., up to six cubic feet).*

17.31.030 – Standards for Right-of-Way Facilities

The following standards of Section 17.31.030(A)(1) apply to any facility in the right-of-way, whether approved with a Tier 1 permit or a small wireless facility permit.

A(1)(e). Allowance for six cubic feet of pole-mounted equipment. This should be clarified so as not to include antennas. *The term should be revised to "pole-mounted associated equipment."*

A(1)(g). Antenna and equipment height. This restricts antennas to seven feet above a light pole and only two feet above other poles. The two-foot limit is technically infeasible for utility poles, where carriers may deploy four-foot antennas that provide expanded coverage, and where antennas must be elevated at least six feet above electric conductors per Public Utilities Commission General Order 95 (referenced in the same section). Technically infeasible standards for small cells are unreasonable and prohibitive according to the FCC. *See* Infrastructure Order, ¶¶ 86-87. *This provision should be revised to allow antennas above utility poles to extend up to four feet over the pole, plus any state-mandated separation distance.*

This section also bars equipment below 16 feet on any pole, which would preclude small radio units or electric meters often mounted between 7 and 16 feet. This also is unreasonable per the FCC's order, because small cell equipment is not "out-of-character" compared to other right-of-way infrastructure, as discussed above. *Ibid.* We note that the draft Guidelines show photos of "successful" right-of-way facilities with associated

equipment on the side on the pole below 16 feet (Figures 25 and 32). *This limit should be deleted.*

A(1)(h). New pole setback from occupied structures. By requiring a new "tower or monopole" to be set back 150% of its height from structures designed for occupancy (which could include homes, stores or offices), this standard could bar new poles along many rights-of-way. This would contradict Public Utilities Code Section 7901 that grants telephone corporations a statewide right to place their equipment, including new poles, along any right-of-way. *This section should be deleted.*

A(1)(j). Underground equipment. Outside scenic corridors or historic districts, this provision requires equipment to be underground if possible, or otherwise in a ground cabinet up to five feet tall and 15 feet square. This would bar pole-mounted radio units, which, as noted above, are not "out-of-character" among right-of-way infrastructure. With our edit suggested above, Section 17.31.030(A)(1)(e) would limit pole-mounted associated (non-antenna) equipment to a reasonable volume of six cubic feet, minimizing visual impact. *This section should be modified to allow a reasonable volume of associated equipment on a pole (six cubic feet) before undergrounding is considered.*

A(1)(n). Pole preference list. This ranked list first prefers collocation with existing wireless facilities, which generally is infeasible in the right-of-way due to limited space on a pole, as well as state-mandated safety clearances and signal interference concerns. The next preference is steel/concrete poles, such as light standards which are owned by Southern California Edison. If the City favors Edison-owned poles over other options, it would contradict California Government Code Section 65964(c) which bars cities from limiting wireless facilities to sites owned by particular parties.

The list does not provide for placement on existing wood utility poles (likely an oversight, as new wood poles are allowed). Verizon Wireless may place its equipment on existing wood utility poles as a member of the Southern California Joint Pole Committee.

Least-favored are new poles, allowed only if an applicant proves they are the least intrusive means to close a significant gap. This contradicts Public Utilities Code Section 7901 that grants telephone corporations the right to place new poles in the right-of-way. *This list should be deleted. The City should simply favor existing poles over new poles, while allowing a new pole if there is no feasible existing structure along the right-of-way within 250 feet.*

G. Allowed locations. Table 17.31.1 summarizes allowed locations, but does not list all zones in the City (omitting, for example, the RM–residential multifamily zone). Tier 1 permits are available in all listed zones and along arterial roads and collector streets, but small cells permits are available in only certain zones (none residential) and along only arterial streets. Barring right-of-way facilities in certain zones or along most streets contradicts Public Utilities Code Section 7901, which grants telephone corporations a

statewide right to place their equipment along any right-of-way. *For the right-of-way, Both Tier 1 and small wireless facility permits should be available in any zone, and along arterial, collector and local streets. See our comment on Section 17.31.070(G)(2) below about applying a 250-foot review radius for evaluation of any preferred options.*

17.31.040 – Tier 1 Permit Process

Our comments on the following four submittal requirements also apply where they are found under Sections 17.31.050(D) (Tier 2), 17.31.060(D) (modifications) and 17.31.070(C) (small cells).

D(3). Independent consultant deposit. This could lead to unnecessary charges by third-party consultants. However, the FCC determined that small cell fees must represent "a reasonable approximation of costs," and that unreasonable costs include "exorbitant consultant fees." Infrastructure Order, ¶¶ 50, 56, 76. *This section should be revised to allow applicants to review and approve a consultant's scope of work and maximum fees prior to paying a deposit.*

D(6). Engineer's noise study. Many wireless ordinances forgive this requirement if there is no sound-generating equipment. *For silent facilities, applicants should be allowed to submit manufacturer specifications confirming no noise in lieu of an engineer's report.*

D(9). Submittal of hypothetical buildout under Section 6409. This requires the plans to depict any maximum future increase that might be allowed through the Section 6409 modification process. However, this is not relevant to a pending application, and it is not tied to any findings for approval. *This requirement should be deleted.*

D(10). Penalty of perjury. Requiring an affirmation of future radio frequency emissions compliance under penalty of perjury is excessive. It is impossible for any individual as an affiant to make such future predictions. The FCC has jurisdiction over matters related to radio frequency exposure compliance. The requirement for an affirmation under penalty of perjury exceeds the City's authority. *The "penalty of perjury" language should be stricken.*

E. Application deemed withdrawn. The City cannot unilaterally terminate a duly-filed application after 30 days if an applicant has not responded to a notice of incomplete application. The FCC's "Shot Clock" rules plainly state that the clock resumes running (or, for small cells, restarts) on the day an applicant responds to a notice of incomplete application. *See* 47 C.F.R. §§ 1.6003(d)(1), (2); 47 C.F.R. § 1.6100(c)(3). The FCC did not impose a time limit for a response. Verizon Wireless would consider early termination to be an unwarranted denial subject to legal action, not a "withdrawal." *This preempted provision should be deleted. This comment also applies to Sections 17.31.050(E), 17.31.060(D), and 17.31.070(D).*

17.31.060 – Minor Modification Permit Process

D. Application review, notice and hearing. The FCC found that review of "eligible facilities requests" to collocate or modify facilities is "obligatory and non-discretionary," or administrative in nature. *See In Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Etc.,* 29 FCC Rcd. 12865 (FCC October 17, 2014), ¶¶ 188-89, 227, 232. There is no benefit of public comment to review of the objective "substantial change" criteria for a minor modification permit processed under FCC rules. *The requirements for public notice and a Director's hearing should be deleted.*

17.31.070 – Small Wireless Facility Permit Process

C(7). Submittal of prior permits. For a new small cell, there is no reason to require prior permits. This section references federal law (Section 6409, 47 U.S.C. § 1455) regarding eligible facilities requests to collocate or modify a facility, which is inapplicable to new small cells. *This section should be deleted.*

D. Application review. This section requires the Director to send notice of application to property owners within 300 feet. By comparison, the Tier 1 permit process is truly ministerial, with no notice, and the City should revise the small wireless facility permit process accordingly. *The provision for notice should be deleted.*

F(2). Structure height. These height limits misconstrue the FCC's definition of "small wireless facilities." 47 C.F.R. § 1.6002(l). The FCC's limit to 50 feet or 10 percent over structure height applies to new poles, not existing poles. The height of existing poles is correctly stated in item (F)(5), which aligns with the FCC's definition. *This section should be deleted.*

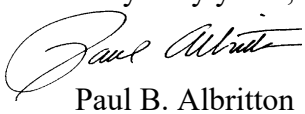
F(8). Location standards. This refers to Table 17.31.1 under Section 17.31.030(G), which specifies permit requirements by zone, and does not allow a small wireless facility permit in residential zones, or along collector or local streets. As noted above, Public Utilities Code Section 7901 grants telephone corporations a statewide right to use any right-of-way. Further, all facilities meeting the FCC's definition of "small wireless facilities" should be reviewed under a uniform process, regardless of location. Rather than barring small wireless facility permits in certain zones or along most streets, the City should adopt reasonable location preferences by revising Section G(2), per our next comment. *This section should be deleted.*

G(2). Location preferences for small cells. While the 250-foot review radius for preferred locations is appropriate, this provision should not reference the preference list of Section 17.31.050(C)(2) under the restrictive Tier 2 permit process (which does not address residential zones). Instead, the City should adopt a distinct preference list for small cells and right-of-way facilities, preferring non-residential zones over residential, and arterial/collector streets over local streets. This would avoid a prohibition of service,

while giving the City reasonable control over location via the 250-foot review radius. *A preference list should rank locations as follows, in order: commercial, special purpose, then residential zones; and arterial, collector, then local streets.*

Verizon Wireless appreciates the opportunity to provide comment on the Draft Ordinance. We urge the Council to direct staff to accept the modest revisions we have proposed.

Very truly yours,



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cc: Michael Russo
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