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Via Electronic Mail

January 8, 2019

City Council
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

Re: AT&T's Initial Comments on Proposed Ordinance to Allow and Regulate Wireless Communication Facilities in the Public Right-of-Way and Corresponding Design Standards

Dear Mayor Armato and Councilmembers,

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T"), to provide initial comments on the City of Hermosa Beach ("City") Proposed Ordinance to Allow and Regulate Wireless Communication Facilities in the Public Right-of-Way (the "Proposed Ordinance") and Corresponding Design Standards (the "Proposed Design Standards"). The Proposed Ordinance is set for a first reading before the City Council tonight, January 8, 2018. The Proposed Ordinance and the Proposed Design Standards were first made available for public review by AT&T and other wireless service providers just last Thursday, January 4, 2019. Accordingly, these comments are preliminary and AT&T reserves the right to submit further comment.

As set forth herein, while AT&T commends the City on the effort to update its wireless regulations in light of recent developments in technology and applicable laws, there are numerous issues with the Proposed Ordinance and the Proposed Design Standards that should be considered and addressed before the Proposed Ordinance and the Proposed Design Standards are adopted by the City. AT&T therefore is requesting that the hearing on the Proposed Ordinance the Proposed Design Standards be continued, in order to permit AT&T and others to complete a more thorough review and comment on the Proposed Ordinance and the Proposed Design Standards, and provide staff with time to address those comments in the draft.

A. Introduction

AT&T commends the City for recognizing the importance of fostering provision of high-quality communications services to its residents and businesses. With more than 70% of Americans relying exclusively or primarily on wireless telecommunications, it is especially important to

encourage responsible deployments. And with AT&T's selection by FirstNet as the wireless service provider to build and manage the nationwide first responder wireless network, each new or modified facility will strengthen first responder communications.

The Telecommunications Act of 1996, enacted in part to streamline wireless deployments on a national basis, establishes key limitations on local regulations. Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 requires the City to approve certain eligible facilities requests to modify existing wireless facilities. The FCC recently issued its small cell deployment order and promulgated regulations, which goes into effect next week, A*ccelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, FCC 18-133* (September 27, 2018) (the "FCC Order"). Under the FCC Order, local regulations of small cell siting must be (1) reasonable, (2) no more burdensome than those applied to other infrastructure deployments, (3) objective, and (4) published in advance. AT&T has a statewide franchise right to place facilities in the public rights-of-way, so long as they do not incommode public use. AT&T's state law right is subject only to the City's reasonable and nondiscriminatory time, place, and manner regulations.

As set forth herein, certain provisions of the Proposed Ordinance and the Proposed Design Standards are in conflict with these federal and state laws, and require revision on that basis. Certain other provisions require revision because of a lack of clarity or consistency between the Proposed Ordinance and the Proposed Design Standards.

B. Comments on Proposed Ordinance

- The City should make clear in the Proposed Ordinance that wireless facilities that are compliant with the Proposed Ordinance and the Proposed Design Standards are permitted in the right-of way adjacent to residential districts. The City had previously interpreted its existing Wireless Ordinance to prohibit wireless installations in the right-of way adjacent to residential districts. AT&T has argued that this interpretation is erroneous and in conflict with federal law. AT&T's understanding is that the Proposed Ordinance is intended in part to address this by permitting such installations, and, while the issue is addressed in the staff report, it is not clearly addressed in the Proposed Ordinance.

- It appears that the City proposes to adopt the FCC's definition for "small wireless facility," which AT&T supports. The City also should adopt accompanying definitions for "antenna," "antenna equipment," "antenna facility," "collocation," "facility" and "structure." AT&T can supply the appropriate definition language upon request.

- Section 12.18.040(a) of the Proposed Ordinance improperly prohibits all but small cell facilities and facilities qualifying as eligible facility requests ("EFRs") in the public rights-of-way. Section 12.18.080(a)(1)(iii) requires a finding that the facility is a small cell. These

provisions must be revised to avoid violating state and federal laws. Specifically, distributed antenna system ("DAS") facilities should also be included and permitted. AT&T believes the City does not intend to prohibit DAS since the Proposed Design Standards concern DAS (see Section 4(C)(2)(a)), but the language of the Proposed Ordinance is inconsistent in this regard.

- The City must be able to act within applicable FCC shot clocks, including two new shot clocks specific to small cells as set forth in the FCC Order. AT&T encourages the City to evaluate its processes to ensure it will be able to comply.

- Requirements for wireless siting applications must be specific and published in advance. It is not appropriate to include open-ended catchall provisions such as proposed in Section 12.18.070(b)(1).

- Section 12.18.070(e) must be revised or eliminated. The City may not reject an application due to incompleteness. The FCC has made clear that the City cannot prohibit filings. Instead, the City should codify (or at least refer to) the applicable shot clock procedure for handling incomplete applications.

- Section 12.18.080(c) authorizes the City to engage a consultant. The City should not delegate its authority to consultants. AT&T's experience is that consultants often drive up City costs (which may not be passed through to applicants under the FCC Order to the extent they exceed reasonable costs). If consultants are needed, the City should limit engagements to review of technical matters such as structural analysis and review of compliance with FCC radio frequency exposure standards.

- Section 12.18.090 provides that facility operation shall commence no later than ninety (90) days after the completion of installation, or the wireless encroachment permit will expire without further action by the City. This requirement may be impractical in that AT&T may have to wait for Edison to provide power to the facility in order to commence operation. This is outside of AT&T's control, and could take months from the time of application in order to receive power. This requirement should be eliminated.

C. Comments on Proposed Design Standards

- Section 2 of the Proposed Design Standards requires a pre-application meeting. While certainly AT&T sees value in working with City staff, the City cannot mandate such a meeting. The FCC made clear that mandatory pre-application procedures do not toll the shot clocks. Under the FCC Order, the City would violate the Telecommunications Act's requirement for action within a reasonable period of time by taking more than 60 or 90 days to review a small cell siting application inclusive of any required pre-application process.

- Section 4(B)(1) requires wireless facilities to be "designed in the least visible means possible and to be compatible with support structure/surroundings." These standards are too subjective to be enforced.

- Section 4(B)(4) requires concealment. The City must take care not to impose discriminatory requirements. To the extent the City does not require other infrastructure deployments (e.g., electric distribution facilities) to be concealed, this provision must be revised.

- Under Section 4(C), the City prohibits wireless facilities in certain locations. Such blanket bans violate AT&T's state and federal rights. The City may prefer certain locations, but cannot prohibit facilities in portions of the City.

- Section 4(C)(2)(b) provides that, when locating in an alley, the wireless facility shall be placed at a height above the roof line of adjacent buildings, and when locating in a walk-street, the facility shall be placed below the roof line of the adjacent buildings. However, Section 4(B)(2) limits the facility height to no more than 10% or 10 feet, whichever is greater, above the height otherwise permitted in the adjacent zoning district. Where facilities are places on utility poles, for example, there would likely be insufficient area between the adjacent roofline and the existing equipment on the pole to locate the wireless facilities. This renders this provision unreasonable and discriminatory.

- Section 4(C)(5) prohibits strand-mounted facilities. This provision should be eliminated. It is unreasonable, discriminatory, and subjective.

- Section 4(J) requires landscaping. This provision should be eliminated. It is unreasonable, discriminatory, and subjective, and not logical for right-of-way facilities.

- Section 5(A) prohibits attachments to decorative poles and traffic poles. The City should reevaluate these prohibitions. The FCC Order clearly applies to all government owned or controlled structures within the right-of-way. Many jurisdictions favor decorative pole designs for small cells. It makes sense to allow traffic light installations that permit the wireless provider to cover multiple directions from one location, which a mid-block location may not support. And concerns of interference are separately addressed.

- Section 5(A)(2) requires a minimum five (5) foot horizontal radius from the base of the pole shall remain clear of obstructions. This amount of space is not available at every location. This provision should be eliminated or modified to account for feasibility.

- Section 5(B)(1) prohibits shrouds mounted to the side of the pole. This provision should be eliminated. It is unreasonable, discriminatory, and subjective.

- Section 5(C)(1) limits attachments to joint-use poles to facilities "designed to the satisfaction of the Director." This clause should be deleted. It is entirely subjective and discriminatory.

- Section 5(E)(1)(a) requires new poles to function for another purpose. This must be eliminated as it is discriminatory and unreasonable.

D. Conclusion

AT&T understands and appreciates the City's desire to develop its wireless regulations. As technologies advance and the types of facilities needed to meet increasing demands change, the City and wireless providers will be better served by policies that foster flexibility in siting wireless technologies.

AT&T is confident that the City can, after thoughtful consideration of the issues, develop a lawful ordinance, and we welcome the opportunity to work with the City to that end. However, at this juncture, in light of the substantial revisions needed to the Proposed Ordinance and the Proposed Design Standards, and in order to provide AT&T and others with sufficient time to review and comment, AT&T requests that the hearing be continued and staff be directed to work with AT&T and the wireless industry to revise the Proposed Ordinance and the Proposed Design Standards to be consistent with federal and state law.

Very truly yours,

/s/ Emily L. Murray

Emily L. Murray

ELM

cc: Kim Chafin, Planning Manager
Nicole Ellis, Associate Planner
Lauren Langer, Associate City Attorney