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January 8, 2019

**VIA EMAIL**

Mayor Stacey Armato  
Mayor Pro Tempore Mary Campbell  
Councilmembers Hany Fangary,  
Justin Massey and Jeff Duclos  
City Council  
City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach, California 90254

Re: Draft Ordinance and Design Standards  
Wireless Communication Facilities in the Public Right-of-Way  
Council Agenda Item 5(a), January 8, 2019

Dear Mayor Armato, Mayor Pro Tempore Campbell and Councilmembers:

We write on behalf of Verizon Wireless to provide comment on the draft ordinance regarding wireless facilities in the right-of-way (the “Draft Ordinance”) and related design standards (the “Draft Standards”). Verizon Wireless is concerned that numerous provisions contradict a recent Federal Communications Commission (“FCC”) order addressing approval criteria for small cell wireless facilities. For example, certain subjective standards contradict the FCC’s direction to evaluate small cells under objective criteria. Other standards, including strict equipment placement and undergrounding requirements, may be technically infeasible or unnecessary for small equipment components. We urge the Council to decline adoption of the Draft Ordinance and Draft Standards, and direct staff to make 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”).<sup>1</sup> 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

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<sup>1</sup> 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.

infrastructure deployments, and (3) objective and published in advance.” Infrastructure Order, ¶ 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. Numerous provisions of the Draft Ordinance and Draft Standards contradict the Infrastructure Order, as we explain.

**Public Notice and Appeals Are Inappropriate For Evaluation under Objective Standards.**

While administrative approval of qualifying small cells is appropriate, public notice is not. Draft Ordinance §§ 12.18.050(a)(8), 12.18.070(b)(9). Public input introduces subjectivity to decision-making for applications which must be reviewed under objective criteria. Soliciting public comment frustrates both the public and decision-makers. The public’s subjective personal concerns simply cannot be addressed by decision-makers implementing what must be an objective process. The public notice requirement is irrelevant to administrative approval of small cells under the FCC’s criteria, and it should be stricken.

Because appeals involve *de novo* hearings and potentially notice, they also introduce subjectivity to final decisions. Draft Ordinance § 12.18.050(b). At a minimum, any appeal record should be restricted to the materials that were considered by the Director, and the scope of Hearing Officer review should be limited to confirming whether the Director’s decision was based on reasonable, objective criteria.

**Subjective Standards Are Inappropriate and Must Be Eliminated.**

Under objective criteria, either a facility complies, or it does not. Standards that invite discretion or opinions are inappropriate and preempted by the Infrastructure Order. The Draft Ordinance includes a several subjective general standards, including “maintains the integrity and character of the neighborhoods,” “minimize the intrusion on the rights-of-way” and “minimize visual impacts.” Draft Ordinance §§ 12.18.060(c), 12.18.060(d). The Draft Standards require facilities designed “in the least visible means possible” that is “compatible with surroundings” and as “unobtrusive as possible.” Draft Standards §§ 4(B)(1), 4(B)(3), 4(D)(1), 4(D)(2). Such subjective standards must be stricken.

The requirement for “concealment elements” is subjective and will pose complications for subsequent modifications submitted as eligible facilities requests under federal law. Draft Ordinance § 12.18.060(d). Requirements for “minimizing the size” and integrating facilities into utility infrastructure are subjective, and, for eligible facilities requests, these will be preempted by the FCC’s objective substantial change thresholds for height, protrusion and volume. Draft Standards § 4(B)(4), 47 C.F.R. § 1.40001(b)(7)(i-iii). Mandating new infrastructure that “matches” surrounding

infrastructure is a subjective and unreasonable requirement that ignores the rights granted to telephone corporations to use the right-of-way, including joint utility poles. The City does not have unlimited discretion over “concealment elements” under either the Infrastructure Order or FCC rules for eligible facilities requests. Requirements to incorporate concealment elements must be stricken.

**Unreasonable Standards Must Be Removed or Revised To Accommodate Typical Small Cell Designs.**

The draft regulations suggests that wireless carriers must place small cell equipment underground where feasible. Draft Ordinance § 12.18.060(c), Draft Standards § 4(D)(2). The FCC determined that undergrounding requirements, similar to aesthetic requirements, must be reasonable, non-discriminatory and objective. Infrastructure Order, ¶¶ 86, 90. There is no reason to require undergrounding of small pole-mounted equipment components. Small equipment boxes on poles are not “out-of-character” among typical infrastructure in the right-of-way. If overly strict standards force certain wireless carriers to underground equipment, they are unreasonable and may be discriminatory in contradiction of the FCC’s directives. The alternative to place equipment “enclosed in replacement poles” suggests an integrated design, but this is infeasible for wood utility poles, and certain radio units used by Verizon Wireless may not fit within the typical integrated pole models. This alternative to undergrounding is infeasible and unreasonable.

For small cells on street light poles owned by the City or Southern California Edison (“SCE”), the requirement to place all equipment in a tubular pole-top shroud may be infeasible due to the size of Verizon Wireless’s radio units, absent a very large and bulky pole-top deployment. Draft Standards § 5(B)(1). For utility poles, limiting equipment (and any concealment) to pole width may also preclude some radio models. Draft Standards § 5(C)(2)(b). Verizon Wireless may require larger radio units for new technologies or to provide adequate service to its sizable customer base. Where standards impose technically infeasible requirements that prohibit typical small cells required for service, they are unreasonable. SCE approves only a few designs for its street light poles, and the City must ensure that design criteria accommodate these designs.

Some new 5G small cells consists 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 § 5(B)(1). Shrouding requirements may be technically infeasible and therefore unreasonable.

The Draft Standards limit small cells in the right-of-way to 10 feet or 10 percent over adjacent zone height limits, whichever greater. Draft Standards § 4(B)(2). This may 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 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 proposed 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.

**Standards for New Poles Must Align with the Infrastructure Order and State Law.**

Requiring a waiver to place a new pole imposes an additional permit hurdle that contradicts Public Utilities Code Section 7901, which grants telephone corporations the right to place new poles in the right-of-way along with other telephone equipment. Draft Ordinance § 12.18.070(d), Draft Standards § 5(E)(1). New poles should be authorized with a wireless encroachment permit only, as with any small cell. While it is appropriate to require that applicants demonstrate that no existing infrastructure can support a small cell, the scope of this review should be limited to structures within 200 feet along the subject right-of-way. Draft Standards § 4(C)(2)(d). For new poles, the City should provide objective standards rather than imposing vague, subjective camouflage or matching requirements to be determined. Draft Standards §§ 4(C)(c), 5(E)(1)(b).

The City cannot require Verizon Wireless to install a street light or other non-wireless equipment on a new pole. Draft Standards § 5(E)(1)(a). This clearly contradicts Verizon Wireless's right under Public Utilities Code Section 7901 to erect new poles in the right-of-way solely to elevate telephone equipment. The City's limited aesthetic review extends to wireless facility equipment, but lighting is not a functional requirement for wireless service.

**The City Must Comply with New FCC Shot Clock Rules, and the Construction Period Should Be Extended.**

The Director cannot reject applications that they may consider to be incomplete because this contradicts the FCC's new "Shot Clock" rules regarding timely application processing. Draft Ordinance § 12.18.070(e). If a local jurisdiction finds a small cell application to be incomplete, it must notify the applicant within 10 days after submittal, and the Shot Clock time period will restart at day zero when the applicant responds. 47 C.F.R. § 1.6003(d)(1). If the City outright rejects or closes a duly-filed though possibly incomplete application, it would run afoul of federal Shot Clock rules.

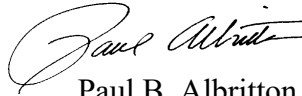
We note that as the FCC confirmed that the Shot Clock commences upon any mandatory pre-application procedure, Verizon Wireless will calculate the Shot Clock to commence upon the day it requests a required pre-application meeting or submittal appointment. Draft Standards § 2(A), 47 C.F.R. § 1.6003(e).

One condition of approval requires that a facility be constructed entirely within a 30-day period. Draft Ordinance § 12.18.090(a)(3). This unrealistic timeframe does not

account for the multiple components of facility construction, which starts with required make-ready work on an existing pole, any required pole replacement or installation of a new pole. The facility itself must be built, inspected, tested and adjusted, and the right-of-way restored if necessary. Multiple contractors may be involved. To ensure proper installation and thorough inspection, Verizon Wireless requests a 90-day build-out period to complete this work.

Numerous provisions of the Draft Ordinance and Draft Standards require removal or revision to avoid conflict with FCC's new Infrastructure Order. The City Council should decline adoption of these proposed regulations, and direct staff to work with industry on needed revisions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", with a stylized flourish at the end.

Paul B. Albritton

cc: Lauren Langer, Esq.  
Glen Kau  
Nicole Ellis  
Kim Chafin