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April 13, 2021

**VIA EMAIL**

Chair Susan Rowinski  
Commissioners Clifford Robbins,  
Rafael Reyes, Adam Loraine,  
and Kimiko Narita  
Sustainability & Infrastructure Commission  
City of San Mateo  
330 West 20th Avenue  
San Mateo, California 94403

Re: Draft Design Standards and Application Requirements  
Wireless Facilities in the Right-of-Way  
SIC Agenda Item 2, April 14, 2021

Dear Chair Rowinski and Commissioners:

We write on behalf of Verizon Wireless regarding the draft *Design Standards and Application Requirements* for wireless facilities in the right-of-way (the “Draft Standards”). Verizon Wireless appreciates the City’s initiative to expedite review of small cell applications through code amendments that streamline the permit procedures.

To ensure that the Draft Standards accommodate typical small cells required for service, several criteria should be revised to be feasible and reasonable, consistent with Federal Communications Commission (“FCC”) regulations. A few of the application requirements are inconsistent with the overall permit process and contradict state and federal law. Below, we provide suggested revisions. We urge the Commission to defer recommendation of the Draft Standards, application requirements, and conditions of approval, to allow staff to make needed revisions.

In its 2018 Infrastructure Order, the FCC confirmed that a city’s aesthetic criteria for small cells must be “reasonable,” that is, technically feasible and meant to avoid “out-of-character” deployments, and also “published in advance.” *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”). Following a challenge by local governments, the Ninth Circuit Court of Appeals upheld these FCC requirements last year. *See City of Portland*

*v. United States*, 969 F.3d 1020 (9<sup>th</sup> Cir. 2020). Local governments have filed a petition for review of the appellate court's decision by the Supreme Court.

Our comments on the Draft Standards are as follows.

### **Site location, pole selection (p. 3)**

To avoid a prohibition of service, the lists of preferred locations and pole types should be accompanied by a reasonable review radius to limit the search distance for any more-preferred options. In the right-of-way, small cells serve targeted areas with a limited coverage footprint. Steering a small cell too far from a proposed location would leave a target coverage area underserved or unserved, constituting a prohibition of service in violation of federal law. *See* 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II); *see also* Infrastructure Order, ¶¶ 37-40.

The search area should be limited to a reasonable distance that will ensure a small cell can meet its coverage objective. For example, the City of Concord adopted a 250-foot review radius last year. *We suggest that these location and pole preferences be prefaced: "An applicant may use a less-preferred location or pole if there is no preferred option within 250 feet along the subject right-of-way that is available and technically feasible."*

### **Design standards (pp. 4-6)**

In our comments below, we mention several standards that may contradict Public Utilities Commission General Order 95, which regulates installations on utility poles that carry electric lines. If a City standard is infeasible due to General Order 95 constraints, it is unreasonable according to the FCC's Infrastructure Order, as described above. *For utility poles, we suggest that the City add a blanket exception allowing applicants to deviate from standards as necessary to comply with General Order 95.*

**1. Least obtrusive.** The vague requirement to use designs that are "less obtrusive," or that have been adopted by other cities, disregards San Mateo's responsibility to develop its own small cell standards that are published in advance. As new technology is available, the City should work with wireless carriers to amend the Design Standards, instead of deferring to other cities' regulations (which may contradict state or federal law). *This item should be deleted.*

**2. Pole heights minimized.** While this provision properly acknowledges the antenna separation distance above utility pole conductors required by General Order 95, it also must allow for the antenna itself. Pole-top antennas may be placed on utility poles that do not carry electricity. *The phrase should be revised to read: "...four feet, plus the minimum separation from supply lines required by CPUC General Order 95...."*

**3. View obstruction.** This requires that facilities "not obstruct views from habitable living areas," as feasible. Such vague, subjective standards can be used to deny small

cells that otherwise satisfy reasonable, specific standards. The Design Standards impose other, specific measures to minimize visual impacts for facilities on existing and new poles. Small equipment components are not “out-of-character” compared to other infrastructure along the right-of-way, such as existing utility or streetlight poles. *This item should be deleted.*

**12. Noise.** This strict requirement not to exceed ambient noise levels would demand silent facilities, essentially prohibiting some installations, and it is much more stringent than the permissible sound levels of Code Section 7.30.040. We note that, in a contradiction, the utility pole standards of Page 20 allow equipment fans to emit noise consistent with City standards. Noise-baffling equipment should not be mandated, because applicants must design their facilities to satisfy local noise regulations, or risk denial. *This section should simply require right-of-way facilities to comply with the Code’s sound levels, as measured at the nearest property line.*

**13. Antennas.** This provision requires placement of antennas at the top of a pole, shrouded as feasible, but this poses issues for both utility poles and streetlight or new poles.

First, on utility poles that carry electricity, antennas are now mounted to the middle of the pole in the communication utility zone, below electric conductors. This is because PG&E no longer allows antennas on top of the pole in the space it controls, so mandating a pole-top antenna would be technically infeasible and unreasonable. For such mid-mount antennas, General Order 95 Rule 94.4(E) requires that they be separated at least two feet horizontally from the pole centerline, so the antennas are placed at the end of a short mounting arm. *This provision must be revised to accommodate mid-mount antennas on utility poles, allowing for the 2-foot horizontal separation distance.*

Second, for streetlight poles and new poles, this provision should be revised to reflect new 4G and 5G small cell designs. A typical 4G pole-top “cantenna” is manufactured in its own sleek radome, and does not require an additional shroud that would only add bulk. For 5G service, three small antennas may be flush-mounted to the side of a pole, facing different directions where they provide service, sometimes below a pole-top 4G cantenna. A shroud would add substantial mass if covering multiple 5G antennas (plus a 4G antenna). Further, 5G antennas cannot be covered because that impedes their high-band signal. This standard may be technically infeasible and unreasonable. *At a minimum, this provision should allow an exception to shrouding if technically infeasible. Verizon Wireless would be pleased to provide design examples of 4G and 5G small cells to guide revision of the antenna design standards.*

**17. Utilities.** The City should not forbid new aerial lines where there are already lines attached to a utility pole. An additional line is not “out-of-character,” and the standard would be unreasonable. This attempts to regulate the electric and communication backhaul lines belonging to other companies, installed under separate franchises or permits. *The City should allow new aerial lines where already attached to utility poles.*

### **Streetlight poles (pp. 13-14)**

**Shroud, antenna.** As noted above, a shroud adds bulk when covering multiple antennas, and may be infeasible for 5G antennas, which typically are placed on the side of a pole. *The City should work with wireless carriers to develop antenna standards that reflect typical small cells required for service.*

### **Utility poles (pp. 20-21)**

**Antenna.** As noted in our comment above on Design Standard 13, the City must allow antennas to be mounted to the middle of a utility pole on a short mounting arm, if required by PG&E rules or state safety regulations. Otherwise, the requirement is technically infeasible and unreasonable. *This provision must be revised to accommodate mid-mount antennas on utility poles, allowing the 2-foot separation distance.*

**Equipment cabinet.** The utility pole standards refer to an “on-pole” equipment cabinet and a volume up to 17 cubic feet, but the City should instead use the FCC’s term “associated” equipment for non-antenna gear, referenced on Page 4 of the Design Standards, which allows pole-mounted equipment.

### **Freestanding pole placement requirements (p. 26)**

**3. View obstruction.** Some of the placement requirements are safety-related, while others are aesthetic. The aesthetic requirement “not to significantly create a new obstruction to property sight lines” is vague, and unnecessary considering that the following standard, 4, favors placement along property lines or secondary frontages. *This item should be deleted.*

**13. Prohibition in residential areas, and near schools and parks.** This broadly prohibitive language regarding residential areas, schools and parks contradicts the site location preferences of Page 3 (which should be qualified by a 250-foot review radius to avoid a prohibition of service). This provision contradicts Public Utilities Code Section 7901 that grants telephone corporations a statewide right to place their equipment along any right-of-way, including new poles. If strictly applied, it would constitute a prohibition of service in conflict with the federal Telecommunications Act. *This item should be deleted.*

### **Application Requirements**

**Project purpose and technical objectives.** This information bears no relation to the required findings and standards for right-of-way facilities. The City cannot require such information regarding need because Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless a statewide right to place their equipment along any right-of-way. Further, the FCC determined that small cells are needed to enhance

service, introduce new services and densify networks, which are Verizon Wireless's objectives in placing small cells in San Mateo. The FCC also disfavored dated service standards based on "coverage gaps" and the like, so the coverage/capacity information, propagation maps, drive test data and network maps sought by this submittal requirement are preempted. Infrastructure Order, ¶¶ 37-40. *This submittal requirement should be deleted.*

**Alternative site analysis.** This is inconsistent with the location and pole preferences on Page 3, which should be qualified by a reasonable 250-foot review radius, as we explained above. If a proposed small cell is in the most-preferred location that can serve its target coverage area, there is no reason to analyze alternatives. As noted, propagation maps and "search ring" information are inapplicable to small cells in the right-of-way, and should not be required for review of alternatives. *This submittal requirement should be deleted. Instead, the City should require applicants to evaluate any more-preferred locations or poles within 250 feet along the right-of-way, and to demonstrate that they are technically infeasible or unavailable.*

### **Section 6409 Modifications (Eligible Facilities Requests)**

Per FCC rules, the City must approve a Section 6409 modification request provided it does not involve a "substantial change" to an "existing" facility, as defined by the FCC. 47 C.F.R. §§ 1.6100(b)(5), 1.6100(b)(7). The findings of proposed ordinance Section 17.10.110(d) are consistent with FCC rules, but we note that the City cannot apply any other findings or subjective standards to Section 6409 approvals.

**Notice (p. 9).** The FCC confirmed that approval of qualifying Section 6409 modifications is "obligatory and non-discretionary," or, administrative in nature. *See Report and Order FCC 14-153*, 29 FCC Rcd. 12865 ¶¶ 188-89, 227, 232 (FCC October 17, 2014). Because Section 6409 review is administrative, and review of the "substantial change" criteria is objective, there is no benefit of public notice for these modification applications. *The notice provision should be revised to exempt Section 6409 applications.*

**Conditions of approval (p. 9).** The FCC allows cities to condition eligible facilities requests on only reasonable, codified health and safety regulations. *Id.*, ¶ 188. Many conditions of approval of Appendix C, including some specific to Section 6409 approvals, exceed the health- and safety-related conditions allowed by the FCC, including indemnification, performance bonds, underground utilities, record retention, and any excessive encroachment permit conditions. *The City should limit conditions of approval for Section 6409 approvals to codified health and safety factors only.*

**Conditions of approval, B(1), no term extension for Section 6409 approvals.** The City is granting a wireless facility permit for Section 6409 approvals. This condition would unreasonably limit the presumptive 10-year minimum permit term under

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Government Code Section 65964(b). Also, this condition is not related to health and safety. *This condition should be deleted.*

Verizon Wireless appreciates the City's collaborative approach to updating is code and standards for wireless facilities in the right-of-way. We urge the Commission to defer recommendation of the Draft Standards, application requirements, and conditions of approval, and to direct staff to work with industry on needed revisions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", written in a cursive style.

Paul B. Albritton

cc: Barbara Choi, Esq.  
Tracy Scramaglia