ATTACHMENT 5

June 19, 2019

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Jay Paul
Senior Planner
City of Escondido
201 North Broadway
Escondido, CA 92025

Re. AT&T's Initial Comments on the City of Escondido's Proposed Guidelines for Deployment of Small Wireless Facilities in the Public Right-of-Way

Dear Mr. Paul:

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 Escondido's proposed guidelines for deployment of small wireless facilities in the public right-of-way ("Proposed Guidelines"). AT&T appreciates that the City recognizes the need to address changes in applicable state and federal laws, including the Federal Communications Commission's *Infrastructure Order*.[1] With more than 70% of Americans relying exclusively or primarily on wireless telecommunications, it is especially important to encourage responsible deployments consistent with applicable law.

Unfortunately, the Proposed Guidelines would establish new rules at odds with state and federal laws. AT&T respectfully asks that the City to pause its deliberations briefly to consider these and other comments from the wireless industry before adopting the Proposed Guidelines. AT&T offers the following summary of applicable laws along with specific comments on the Proposed Guidelines.

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

[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*").
[2] 47 U.S.C. § 332(c)(7)(B)(ii).

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 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]

In September 2018, the FCC issued its small cell deployment order and associated rules, which went into effect on January 14, 2019. Under this *Infrastructure Order*, the FCC established a standard for lawful fees, which requires that: "(1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations."[11] Thus, only objectively reasonable costs that are recovered on a nondiscriminatory basis can be included in fees. In addition to establishing a standard for lawful fees, the FCC provides a safe harbor for presumptively reasonable fees: (a) $500 for non-recurring fees for an application including up to five small cells, plus $100 for each small cell beyond five, or $1,000 for non-recurring fees for a new pole to support small cells; and (b) $270

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[3] *See* 47 C.F.R. §§ 1.6001, *et seq*.
[4] *See Infrastructure Order* at ¶¶ 132-137 (FCC concluded that shot clocks "apply to all authorizations a locality may require, and to all aspects and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment").
[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).
[8] *See Infrastructure Order* (The FCC rejected the significant gap/least intrusive means test for an effective prohibition that many courts, including the Ninth Circuit, have applied to all wireless facilities); *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] *Id*. at ¶ 50.

per small cell per year for all recurring fees.[12] 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.[13]

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 "incommode" 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.

Specific Comments on the Proposed Guidelines

1. Permit Processes. In earlier discussions with City Staff, it was AT&T's understanding that the City would establish processes and design criteria that would encourage applications for administrative decisions for small cell siting. While it appears that may be the intent with the Proposed Guidelines, the City needs to make some revisions and clarify its processes to make sure that the criteria for fitting into an administrative process are reasonable and practical.

Specifically, it is unclear whether certain dimensional criteria are absolute requirements that will result in denial of nonconforming designs, or merely the thresholds for whether a proposed facility can be heard administratively. For example, Section IV(D)(3)(b) limits pole-mounted accessory equipment to 7 cubic feet. AT&T's small cells will not meet this standard. Does this mean that AT&T's small cells are prohibited altogether, as this provision reads? Or does this mean that facilities proposed to include pole-mounted accessory equipment in excess of 7 cubic feet – including all of AT&T's small cells – cannot be handled administratively, but still qualify to be considered under the City's minor conditional use permit process? In addition, clarification is needed because Section III(B)(1)(a) of the Proposed Guidelines appears to cite an incorrect cross-reference to Escondido's Code (we believe the City means to refer to Section 33-704(k)(8)(B)).

Moreover, the City cannot prohibit or effectively prohibit all small cells. Presuming that the City does not intend that result, and instead intends to route applications that do not meet design criteria to a minor CUP process, the process is still likely unlawful because it unreasonably and unnecessarily forces all small cells into a more burdensome process than for other infrastructure deployments. This violates the FCC's Infrastructure Order. But this significant problem can be easily addressed – it arises only as a matter of an inch or two here and there. That is, if the City takes a little more time to work with AT&T and other industry members to be sure that its administrative process will accommodate real-world small cells, the Proposed Guidelines can be brought in line with the FCC's requirements with only slight changes to the dimensional criteria for antennas and equipment.

[12] *Id*. at ¶ 79.
[13] *See id.* at ¶ 86.

2. Master License Agreement. In Section III(B)(3) of the Proposed Guidelines, the City appears to require a separate master license agreement for each application that must be submitted concurrently with the small wireless facility permit and encroachment permit. The City, however, should not require a separate master license agreement for each application, and AT&T does not believe that is what the City intended. The City should revise this provision to clarify that only one city-wide master license agreement is required, which may include individual site-license agreements for each facility.

3. Acceptance of Applications. Under Section III(C), providers must submit applications in-person and only during designated times, which may be limited to as few as four hours per week. The FCC's shot clock rules and regulations do not support these significant limits on filing applications. In fact, the shot clock will start when an application is submitted – even by proffer – whether or not the City accepts the filing.[14] While AT&T will certainly work with the City and try to file its applications in-person during designated hours, the City must allow more flexibility to avoid unnecessary disputes.

4. Fees. Section III(G) allows the City to establish fees for small wireless facilities by City Council resolution. AT&T asks that the City provide a copy of its approved fee schedule so that we can check whether the fees comply with the *Infrastructure Order.*

5. Batched Applications. AT&T objects to Section III(D), which limits batched applications to five small wireless facilities and deems the entire batch denied if any application in the batch does not match the other facilities in that batch. This is inconsistent with the *Infrastructure Order* and the corresponding rule, which do not authorize batching limitations.[15] Further, denial of companion applications will violate the Telecommunications Act, which prohibits the City from denying a wireless siting application absent substantial evidence.

6. Application Processing. Section III(H), which provides the review process for small wireless facilities applications, allows the Planning Division to verify compliance with the City's design and development standards *before* the Engineering Services Department begins its review of the technical specifications. While multiple departments certainly may review an application, all reviews must take place within the shot clock and the City has only 10 days to issue an incomplete notice from the time the application is first submitted.[16] Thus, for example, if the application does not proceed to the Engineering Services Department within the first ten days, that department will be unable to pause or reset the shot clock. From a practical perspective, the City should apply a concurrent review process to ensure it can comply with the shot clock.

Section III(H) also limits applicants to one resubmittal per application. This restriction is unlawful and must be deleted. This clearly violates federal law, including FCC regulations that explicitly contemplate the possibility for multiple resubmittals.[17]

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[14] *See id*. at ¶ 145.
[15] *See* 47 C.F.R. § 1.6003(c)(2) and *Infrastructure Order* at ¶114.
[16] *Infrastructure Order* at ¶ 143.
[17] *See* 47 C.F.R. § 1.6003(d).

7. Subjective Requirements. The City's Design and Development Standards contain some subjective aesthetic standards that cannot be the basis for denial. For example, on Pages 7-9 of the Proposed Guidelines, the City requires that small wireless facilities "utilize the least intrusive design available." And on page 12, in Section IV(D)(6), the City requires antennas and equipment be "placed to minimize visibility." These requirements are overly subjective and cannot be enforced. The City also provides that if any installations are available in other jurisdictions that are "less intrusive," applicants must utilize those designs, "unless the Director or permit decision-maker determines that those installations are not feasible." In addition to being too subjective to enforce, this also violates the FCC's standard by imposing a requirement that is not published in advance (i.e., an applicant cannot know in advance how the City will apply these requirement for any particular application). Moreover, this standard fails to recognize that designs between jurisdictions may reasonably and appropriately differ from one another. While AT&T would be happy to discuss designs that are favored in other jurisdictions, the City must enact regulations specific to Escondido.

8. Prohibited Support Structures. The City should strike the proposed ban on the installation of enumerated support structures in Section IV(C) of the Proposed Guidelines, including traffic signals, archways over roads or pedestrian plazas/walkways and wooden utility poles. First, the FCC made clear that its interpretations apply to all government owned or controlled structures within the right-of-way.[18] These categorical bans on attaching facilities to certain structures will also effectively prohibit wireless services in certain parts of the City in violation of the Act.

Moreover, it makes sense to allow traffic light installations, for instance, because it permits the wireless provider to cover multiple directions from one location, which a mid-block location may not support. Further, placements on archways over roads or pedestrian walkways may be more aesthetically pleasing and may help AT&T to provide critical wireless services to customers in transit. Finally, AT&T has the right to place wood poles, and a blanket prohibition on wood poles for small wireless facilities is discriminatory.

9. Undergrounding. Several provisions in the Proposed Guidelines 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 in order to broadcast and receive and radio units must be placed above ground in order to be near enough to the antennas to function properly.

10. Locations Near Residential Units. Section IV(C)(2) on Page 9 of the Proposed Guidelines states that small wireless facilities cannot be "located closer than 40 feet from any residential unit, unless said unit has no windows or doors on any wall facing the antenna." This requirement is discriminatory to the extent not applied to other infrastructure deployments. It should also be deleted to avoid effectively prohibiting wireless services. Further, small cells are low-profile, low-power facilities that need to be placed near customers to provide and improve service.

[18] *Infrastructure Order* at ¶ 69.

11. Prohibition on Utilizing an Arm or Other Horizontal Bracket/Brace. Section IV(C)(3) on Page 9 of the Proposed Guidelines prohibits small wireless facilities that "project from a support structure by use of an 'arm' or other horizontal bracket/brace." But in some instances, arms or horizontal brackets or braces may be necessary for deployment. This prohibition is likely discriminatory and may effectively prohibit wireless services. In fact, this requirement is inconsistent with Section IV(D)(2)(g), which authorizes brackets and mounting arms. This provision should be eliminated.

12. Prohibition on Signage. Section IV(C)(8) on Page 9 of the Proposed Guidelines prohibits signage on small wireless facilities. Some signage, however may be required by law. And many jurisdictions prefer that providers post signage that identifies the site owner or operator and includes accurate contact information. This provision needs to be revised.

13. Height. Section IV(D)(1)(a) limits the overall height of small wireless facilities above a support structure in the public right-of-way to four feet above the support structure. This limit may actually harm aesthetics by preventing AT&T's ability to deploy its most stealthy facilities. For example, AT&T's typical streetlight-top design extends up to six feet above the pole top, which is a design cities typically favor. Furthermore, this overall height limit may effectively prohibit wireless services, especially in areas where lower attachment heights are unavailable on existing poles in a particular area.

14. Overly Restrictive Dimensions. Section IV(D)(2)(b) provides a maximum cumulative volume of three cubic feet for all antennas and shrouds on a small wireless facility. This requirement is inconsistent with federal law, which caps individual antenna volume at three cubic feet but neither includes the shroud in that calculation nor places a limit on cumulative volume for antennas. This Section should be revised to be consistent with the FCC's regulation.[19]

Section IV(D)(2)(c) limits top-mounted antennas and shrouds to 16 inches wide. And Section IV(D)(2)(e) limits side-mounted and flush-mounted antennas with integrated radios to 12 inches wide and 9 inches deep. These dimensions will prohibit (or route to a minor CUP process) most of AT&T's small cells. Again, just a few slight changes to these restrictions will avoid unlawful prohibitions and better suit the City's goal to encourage use of its administrative process. In addition to reviewing AT&T's actual design parameters, AT&T recommends that the City consider a process whereby pre-approved designs can be administratively approved. Doing so will prevent unnecessary disputes and be far more efficient for applicants and the City.

15. Concealment. Many of the City's design standards in the Proposed Ordinance 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. Further, some wireless components cannot be concealed. For example, certain antennas being used for the latest generation of wireless technology cannot propagate an effective signal through concealment. And to avoid effectively prohibiting wireless services any concealment requirements must be limited "to the extent technically feasible."

[19] See 47 C.F.R. § 1.6002(l).

16. Support Structure Preferences. Section IV(A) of the Proposed Guidelines provides the City's support structure preferences for antenna placement, which includes a strong preference for placement on the City's street lights. The City can articulate reasonable and nondiscriminatory location preferences, but cannot steer wireless installations onto City-owned structures. Doing so will violate California Government Code Section 65964(c), which prohibits the City from requiring "that all wireless telecommunications facilities be limited to sites owned by particular parties."

17. Accessory Equipment Volume. The City limits the volume of pole-mounted accessory equipment to 7 cubic feet in Section IV(D)(3)(b). This is not technically feasible, and therefore unreasonable, which violates the FCC's aesthetic standard. This is too small to accommodate real-world small cells, which will materially inhibits AT&T's ability to provide and improve wireless services in violation of the Telecommunications Act.

The City also restricts the size of "above-ground equipment cabinets." This term is ambiguous and needs to be clarified. AT&T believes that the City does not intend this phrase to refer to pole-mounted cabinets, even though those are "above-ground." Instead, in context, AT&T believes that the City intends this phrase to refer to ground-mounted cabinets, such as meter pedestals. In that case, AT&T does not object to the dimensions provided under Section IV(D)(3)(c). But if the City means to limit pole-mounted cabinets in this way, AT&T objects.

18. Number of Antennas, Radios and Equipment Cabinets. In Section IV(D)(4)(d), only one top mount antenna or two side-mount antennas are allowed per pole. This requirement must be deleted. Federal law does not permit local governments to impose a limit on the amount of antennas for small wireless facilities. Additionally, limiting the amount of radios will effectively prohibit deployments of the latest generation of wireless technology. To avoid dictating or prohibiting technologies, which is unlawful, the City must provide for more flexibility in its Proposed Guidelines. Moreover, such limitations – even if they were lawful – would result in proliferation of wireless facilities because these limits would force providers to install more sites to accomplish the same objectives.

19. Indemnification. The City should not seek indemnity from an underlying property owner, as it does under the City's Standard Conditions of Approval on Page 17 of the Proposed Guidelines. 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.

20. Cooperation with RF Compliance Evaluations. On Page 18 of the Proposed Guidelines, the City requires providers to complete a "written affidavit signed by an RF engineer certifying the wireless facility's compliance with applicable FCC rules and regulations." This does not comport with applicable federal law, which requires assessment reports (not affidavits) in some

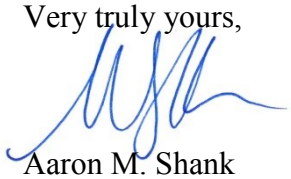
instances, but also categorically excludes other applications from the FCC's radio frequency exposure standards.

21. Electric Meter Upgrades. AT&T objects to the City's electric meter upgrade provision on Page 19 of the Proposed Guidelines. Once AT&T installs a ground-mounted electric meter, the meter is permitted to remain for ten years. AT&T will discuss removal of a ground-mounted electric meter in the context of a permit renewal.

Conclusion

AT&T appreciates the City's initial efforts to develop wireless facility siting regulations to accommodate new and emerging technologies and changes in law. 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. In addition, AT&T requests the City take a little more time to work with wireless providers to develop proper regulations that will accommodate existing facility designs.

Very truly yours,



Aaron M. Shank

From:	Salas, Adrian
To:	Jay Paul; Adam Finestone
Cc:	Friese, Tanya
Subject:	Comments - Crown Castle - Draft Wireless Design Guidelines
Date:	Wednesday, June 19, 2019 3:50:53 PM

Hi Jay and Adam,

Regarding the draft guidelines that will be before the Planning Commission on Tuesday, we would like to submit the following:

We perceive several components of the draft to be in conflict with the FCC order and Federal law, which require that small wireless facilities be held to the same processes as other users of the right-of-way.

We find many of the permitting requirements in section III-B to be prohibitive (or effectively prohibitive) of wireless service, such as prohibitions 6 and 7 on page 9. The section titled Acceptance of Applications does not include any reference to Notice of Incomplete, which is the standard way to address an application that is deemed to be missing something. Though we always try to submit fully complete applications, even if incomplete, the shot clock would not restart.

On section II. A, the draft says that the "guidelines shall be applicable to all existing small wireless facilities in the public ROW." Is the city's intent to make these rules retroactive? Clarification would be helpful here, because a retroactive standard would bring other problems with it.

Additionally, the guidelines state an MLA is needed to attach to any city-owned structure – do you have any information on that process? Are we able to start that process while the guidelines go through this process.

We appreciate the city's concerns and the opportunity to provide comments to come up with a process that works. Because of turnaround times and not receiving the draft directly, we haven't provided an exhaustive list of the issues we have – at this stage our comments are high level. Please include myself and Tanya Friese on future correspondences to industry on this topic.

Thank you!

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July 16, 2019

VIA EMAIL

James Spann
Chairman, Planning Commission
City of Escondido
201 North Broadway
Escondido, California 92025

Re: Draft Zoning Code Amendments and Guidelines, Small Cell Wireless Facilities
Planning Commission Agenda, July 23, 2019

Dear James:

We write on behalf of Verizon Wireless regarding the draft zoning code amendments (the "Draft Amendments") and draft *Guidelines for Deployment of Small Wireless Facilities in the Public Right-of-Way* (the "Draft Guidelines"). Verizon Wireless is concerned that several provisions contradict the recent Federal Communications Commission ("FCC") order addressing appropriate small cell approval criteria. 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. Other provisions contradict state law granting telephone corporations a right to place their equipment, including new poles, along any right-of-way. We urge the Commission to defer action on these draft regulations, and direct staff to work with industry on 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 Amendments and the Draft Guidelines are as follows.

Subjective Standards Cannot Apply to Small Cells.

The Draft Amendments retain several subjective standards of the existing code that are preempted with respect to small cells. Among these are "designed in scale with surrounding buildings," "aesthetic integration," vague references to "stealth" technology, and indefinite screening requirements such as "integrating architectural elements…appropriate to the specific situation." *See, e.g.,* Draft Amendments §§ 33-703(a)(1), 33-703(b)(2-3), 33-703(c), 33-704(b). These are matters of opinion that could be used to deny small cells that otherwise meet objective standards.

The Draft Guidelines introduce new subjective criteria to the process, including the "least intrusive" standard which does not provide clear design direction and leaves applicants guessing at the outcome of their applications, which the FCC discouraged. Draft Guidelines §§ IV(D), V(G); Small Cells Order, ¶ 88. The possibility that applicants must copy installations in other jurisdictions disregards the City's responsibility to develop its own objective guidelines that are published in advance.

The draft regulations must be scrubbed of any subjective standards that apply to small cells. *To be clear and objective, all small cell standards should be placed in one document, the Draft Guidelines, with quantifiable criteria such as maximum dimension thresholds.*

Location and Structure Standards Must Accommodate Small Cells in All Rights-of-Way, Including on Utility Poles.

Under the Draft Amendments, all wireless facilities including small cells are encouraged in the right-of-way. Draft Amendments § 33-703(b). However, one Draft Guidelines provision requires a 40 foot setback from residential units. Draft Guidelines § IV(C)(2) (additional prohibitions). While this does not apply if no door or window faces an antenna, it could exclude small cells from long stretches of right-of-way along home frontages with lesser setbacks. This contradicts California Public Utilities Code Section 7901 which grants telephone corporations such as Verizon Wireless a statewide right to place equipment along any right-of-way. *The prohibitive setback of Draft Guidelines Section IV(C)(2) should be stricken.*

The Draft Guidelines prefer use of street light poles over utility poles. Draft Guidelines § IV(A). However, if strictly applied, this top preference for City-owned poles would contradict California Government Code Section 65964(c) which bars local governments from limiting wireless facilities to sites owned by particular parties. Verizon Wireless has the right to place its telephone equipment on joint utility poles as a member of the Southern California Joint Pole Committee. Small cell equipment is not "out-of-character" on utility poles, given existing utility lines and infrastructure, and

denying this option would be unreasonable. Structure preferences should be relaxed to accommodate use of joint utility poles where they are found along the right-of-way, giving them a preference equal with street light poles. *Draft Guidelines Section IV(A) should be revised simply to favor existing structures in the right-of-way over new poles.*

The proposed ban on replacement wood utility poles contradicts the Small Cells Order. Draft Guidelines § IV(C)(7). Occasionally, a wood utility pole may be replaced for increased structural capacity to support the additional equipment of any public utility, not only wireless carriers. Again, small cell equipment is not "out-of-character" on a jointly-used wood utility pole where multiple utilities place their infrastructure. In contrast, a metal utility pole would look mismatched along a span of wood poles. The City cannot compel other utilities using a wood pole to relocate their equipment to an alternate type of structure. *Draft Guidelines Section IV(C)(7) is unreasonable and must be stricken.*

For new poles, the City cannot require design as a street light pole through its structure preferences. Draft Guidelines § IV(A)(4-5, 9). 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. Further, because this state law treats new poles the same as other telephone equipment, the City cannot subject new poles owned by Verizon Wireless to the more onerous process of a minor conditional use permit. Draft Guidelines § IV(D)(6). A minor conditional use permit involves public notice and a hearing which inject subjectivity to the review process, whereas the FCC requires objective review of small cells including any new poles. *We recommend that new poles be approved under the same administrative permit as for any small cell. The City should consult with wireless carriers regarding new pole designs to be the basis of objective standards.*

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 Guidelines prefer accessory equipment underground. Draft Guidelines § IV(B). While there is an exception if undergrounding is technically infeasible, this standard is unreasonable nonetheless. Undergrounding is generally impossible due to sidewalk space constraints and undue environmental and operational impacts for required active cooling and dewatering equipment. Feasibility aside, this requirement is also unreasonable because small equipment boxes on the side of a pole are not "out-of-character" among typical infrastructure in the right-of-way, including on street light poles.

Utility poles in particular offer ideal sites for small cells by consolidating new equipment on existing utility infrastructure, and the Draft Guidelines do provide for pole-

mounted accessory equipment. However, the limit to seven cubic feet may not quite accommodate required radio units and other network components. Draft Guidelines § IV(D)(3)(b). If shroud or cabinet coverings are included in volume calculations, actual network gear will be curtailed to a much smaller volume given empty space within a shroud for cables and air circulation. *To allow for typical small cell equipment required for service, the City should permit up to nine cubic feet of accessory equipment on the side of a utility pole, or five cubic feet on a street light pole, before any undergrounding is considered. Shroud or cabinet coverings should not count toward volume calculation.*

We note that the constraint on equipment to wood pole width in Draft Guidelines Section IV(D)(5)(b) would be too narrow and technically infeasible for most radio units models, and it is much less than the 20 inches allowed under aforementioned Section IV(D)(3)(b). With radios of sufficient size and wattage, a small cell's service area is increased, and fewer such facilities are required to serve an area. *Draft Guidelines Section IV(D)(5)(b) should be stricken.*

Requirements for flush-mounting of antennas cannot apply to electric utility poles where side-mounted antennas must be set off two feet from the pole centerline to comply with Public Utilities Commission General Order 95 Rule 94.4(E). Draft Guidelines §§ IV(A)(7), IV(D)(2)(e). *These requirements should be qualified, "unless greater separation is required by General Order 95."*

Height Allowances Should Be Slightly Increased to Accommodate Typical Small Cells.

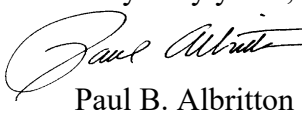
The Draft Guidelines limit height to 50 feet or four feet above support structures, whichever less. Draft Guidelines § IV(D)(1). These and other height restrictions contradict the height allowances in the FCC's definition of small cells, recited in the Draft Amendments, which are no less than 50 feet and may be more. Draft Amendments § 33-702; 47 C.F.R. § 1.6002(l).

For utility poles, antennas must be elevated at least six feet above pole-top electric supply conductors to comply with General Order 95 Rule 94.4(C). Verizon Wireless typically uses a four-foot tall antenna above a utility pole that also requires a mount underneath to attach the antenna to the pole or pole-top extension (and conceal cables). As elements associated with antennas, the mounts are also subject to separation requirements of General Order 95. Four-foot antennas provide expanded coverage, requiring fewer facilities. The proposed height limits will not accommodate four-foot antennas, their mounts and separation distances. *To comply with General Order 95 and to provide for expanded service, we recommend an additional height provision for new and replacement utility poles allowing up to twelve feet above existing pole height.*

The Draft Amendments and Draft Guidelines require several revisions to comply with the FCC's Small Cells Order and state law. Verizon Wireless would be pleased to

work with staff to develop workable regulations that accommodate typical small cells required for service. To that end, we urge the Commission to defer any action on this item, and direct staff to meet with industry.

Very truly yours,



Paul B. Albritton

cc: Adam Philips, Esq.
Adam Finestone
Bill Martin
Mike Strong

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July 16, 2019

VIA E-MAIL (*mstrong@escondido.org*)

City of Escondido Planning Commission
201 North Broadway
Escondido, CA 92025

RE: AT&T's Comments on the City of Escondido's Revised Guidelines for Deployment of Small Wireless Facilities in the Public Right-of-Way and the City's Proposed Wireless Code Amendments to Chapter 33 of the Escondido Zoning Code

Dear Chairman Spann, Vice-Chair Romo, and Commissioners Cohen, Garcia, McNair, Watson and Weiler:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the City's revised guidelines for deployment of small wireless facilities in the public right-of-way ("Proposed Guidelines"), and the City's proposed wireless code amendments to Chapter 33 of the Escondido Zoning Code ("Proposed Amendments"). AT&T commends the City taking time to revise its Proposed Guidelines and its Zoning Code in light of AT&T's previous comments and changes in applicable state and federal laws, including the Federal Communications Commission's *Infrastructure Order*.[1] AT&T appreciates the City's clarification that master license agreements are only required for attachments to City-owned structures in the right-of-way and for allowing providers to submit designs for pre-approval.

The Proposed Guidelines and Proposed Amendments still require further revisions to comply with both state and federal laws. AT&T asks that the City reconsider its comments raised in our June 19, 2019 letter to Messrs. Paul and Finestone. AT&T offers these additional comments on particularly problematic provisions that remain.

AT&T's Comments on the Proposed Guidelines and Proposed Amendments

1. Subjective Requirements. The City's revised design and development standards in the Proposed Guidelines and design standards in the Proposed Amendments contain some subjective aesthetic standards that cannot be the basis for denial. For example, multiple standards require that facilities utilize the least intrusive design available and are the least intrusive possible, and in Section IV(D)(7) of the Proposed Guidelines, the City requires antennas and

[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*").

equipment be "placed to minimize visibility." Furthermore, Section 33-703(a) requires providers to "utilize the lowest profile technology" and discourages "high-profile antenna installations." These requirements are too subjective to be enforced. The City also still provides in the Proposed Guidelines that if any installations are available in other jurisdictions that are "less intrusive," applicants must utilize those designs, "unless the Director or permit decision-maker determines that those installations are not feasible." In addition to being too subjective to enforce, this also violates the FCC's standard by imposing a requirement that is not published in advance (i.e., an applicant cannot know in advance how the City will apply these requirements for any particular application). Moreover, this standard fails to recognize that designs between jurisdictions may reasonably and appropriately differ from one another. While AT&T would be happy to discuss designs that are favored in other jurisdictions, the City must enact regulations specific to Escondido.

2. Concealment. Many of the City's design standards in the Proposed Guidelines and Proposed Amendments 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. Further, some wireless components cannot be concealed.

3. Residential Zones. Section IV(C)(2) on Page 8 of the Proposed Guidelines states that small cells cannot be "closer than 40 feet from any residential unit, unless said unit has no windows or doors on any wall facing the antenna." And Sections 33-703 and 33-706 of the Proposed Amendments discourages facilities in residential zones unless the provider submits a feasibility study and applies for a conditional use permit. Regarding small cells, these provisions are discriminatory to the extent not applied to other infrastructure deployments. They should also be deleted to avoid effectively prohibiting wireless services. Further, small cells are low-profile, low-power facilities that need to be placed near customers to provide and improve service.

4. Support Structure Preferences. Section IV(A) of the Proposed Guidelines provides the City's support structure preferences for antenna placement, which includes a strong preference for placement on the City's street lights. And Section 33-704(k)(2) says that small wireless facilities are only permitted on existing or replacement street lights if the Proposed Guidelines become unenforceable. The City can articulate reasonable and nondiscriminatory location preferences, but cannot steer wireless installations onto City-owned structures in violation of state law, which prohibits the City from requiring "that all wireless telecommunications facilities be limited to sites owned by particular parties."[2]

5. Undergrounding. Several provisions in the Proposed Guidelines and Proposed Amendments 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 in order to broadcast and receive and radio units must be placed above ground in order to be near enough to the antennas to function properly.

6. Permit Processes. The City needs to further revise its processes so that its criteria for processing small cell siting applications in an administrative process are reasonable and practical. Specifically, in Section 33-704(k)(6)(B) of the Proposed Amendments, the City clarified that a small wireless facility proposed on a new vertical structure that is not a streetlight requires more burdensome review as a minor condition use permit. This is still unlawful because it unreasonably and unnecessarily forces most or all of

[2] California Government Code Section 65964(c).

AT&T's small cells into a more burdensome process than for other infrastructure deployments. As AT&T previously noted, this significant problem can be easily addressed if the City makes small revisions to its design standards that will allow AT&T's small cells to proceed through the City's administrative permitting process. AT&T requests that the City takes a little more time to work with AT&T and other industry members to be sure that its administrative process will accommodate real-world small cells. And while AT&T commends the City for allowing providers to propose pre-approved designs, the City should still make further revisions to the Proposed Guidelines and revise the Proposed Amendments to avoid violations of the law.

Specific Comments on the Proposed Guidelines

1. Pre-approved Designs. Again, AT&T appreciates that the City will allow wireless providers to propose designs for pre-approval by the City Council, as stated in Section IV(D) of the Proposed Guidelines. AT&T suggests that the City develop a set of pre-approved designs and adopt a process by which an application that is substantially consistent with pre-approved designs will be deemed approved.

2. Acceptance of Applications. Section III(C)'s revisions state that providers must submit applications in-person and only during designated times, which is still limited to as few as eight hours per week. The FCC's shot clock rules and regulations do not support these significant limits on filing applications. In fact, the shot clock will start when an application is submitted – even by proffer – whether or not the City accepts the filing. While AT&T will certainly work with the City and try to file its applications in-person during designated hours, the City must allow more flexibility to avoid unnecessary disputes.

3. Batched Applications. AT&T objects to Section III(D), which limits batched applications to five small wireless facilities and deems the entire batch denied if any application does not match the others in that batch. This is inconsistent with the FCC's rule, which does not authorize batching limitations.[3] Further, denial of companion applications will violate the Telecommunications Act, which prohibits the City from denying a wireless siting application absent substantial evidence.

4. Fees. Section III(G) allows the City to establish fees for small wireless facilities by City Council resolution. AT&T again asks the City to provide a copy of its approved fee schedule to determine whether the fees comply with the *Infrastructure Order*.

5. Application Processing. Section III(H), which provides the review process for small wireless facilities applications, allows the Planning Division to verify compliance with the City's design and development standards *before* forwarding a copy of the application materials to the Engineering Services Department to review technical specifications. While multiple departments certainly may review an application, all reviews must take place within the shot clock, and the City has only 10 days to issue an incomplete notice from the time the application is first submitted.[4] Thus, for example, if the Planning Division does not forward application materials to the Engineering Services Department within the first ten days, that department will be unable to pause or reset the shot clock.

6. Prohibited Support Structures. The City should strike the proposed ban on the installation of enumerated support structures in Section IV(C) of the Proposed Guidelines, including traffic signals, archways over roads or pedestrian plazas/walkways and wooden utility poles. These categorical bans on

[3] *See* 47 C.F.R. § 1.6003(c)(2) and *Infrastructure Order* at ¶114.
[4] *See* 47 C.F.R. § 1.6003(d)(1).

attaching facilities to certain structures are unreasonable and will effectively prohibit wireless services in certain parts of the City in violation of the Act. Moreover, it makes sense to allow traffic light installations, for instance, because it permits the wireless provider to cover multiple directions from one location, which a mid-block location may not support. Further, placements on archways over roads or pedestrian walkways may be more aesthetically pleasing and may help AT&T provide critical wireless services to customers in transit. Finally, AT&T has the right to place wood poles, and a blanket prohibition on wood poles for small wireless facilities is discriminatory.

7. Prohibition on Utilizing an Arm or Other Horizontal Bracket/Brace. Section IV(C)(3) on Page 8 of the Proposed Guidelines prohibits small wireless facilities that "project from a support structure by use of an 'arm' or other horizontal bracket/brace." But in some instances, arms or horizontal brackets or braces may be necessary for deployment. This prohibition is likely discriminatory and may effectively prohibit wireless services.

8. Height. Section IV(D)(1)(a) limits the overall height of small wireless facilities above a support structure in the public right-of-way to four feet above the support structure. This restriction may actually harm aesthetics by limiting stealthy facilities. Furthermore, this overall height limit may effectively prohibit wireless services, especially in areas where lower attachment heights are unavailable on existing poles in a particular area. The City also should make clear that pre-approved designs do not need to comply with this height restriction.

9. Overly Restrictive Dimensions. Section IV(D)(2)(b)'s revisions provide a maximum cumulative volume of three cubic feet for all antennas and shrouds on a small wireless facility but allows top-mounted antennas and shrouds to have a maximum volume of six cubic feet "if necessary to provide a tapered transition to the pole on which it is mounted." This requirement remains inconsistent with federal law, which caps individual antenna volume at three cubic feet but neither includes the shroud in that calculation nor places any limits on cumulative volume for antennas. This Section should be revised to be consistent with the FCC's regulation.[5]

Section IV(D)(2)(c) limits top-mounted antennas and shrouds to 16 inches wide. And Section IV(D)(2)(e) limits side-mounted and flush-mounted antennas with integrated radios to 12 inches wide and 9 inches deep. These dimensions will prohibit (or route to a minor CUP process) most of AT&T's small cells. Again, just a few slight changes to these restrictions will avoid prohibitions and better suit the City's goal to encourage use of its administrative process. And again, the City should make clear that pre-approved designs do not need to comply with these restrictions.

10. Accessory Equipment Volume. As stated above, the City limits the volume of pole-mounted accessory equipment to 7 cubic feet in Section IV(D)(3)(b). AT&T reiterates that this is not technically feasible, and therefore unreasonable, which violates the FCC's aesthetic standard. This is too small to accommodate real-world small cells, which will materially inhibits AT&T's ability to provide and improve wireless services in violation of the Telecommunications Act.

11. Number of Antennas and Radios. In Section IV(D)(4)(d), only one top mount antenna or two side-mount antennas are allowed per pole. This requirement must be deleted. Federal law does not permit local governments to impose a limit on the amount of antennas for small wireless facilities. Additionally, limiting the amount of radios will effectively prohibit deployments of the latest generation of wireless technology. To avoid dictating or prohibiting technologies, which is unlawful, the City must provide for

[5] See 47 C.F.R. § 1.6002(l).

more flexibility in its Proposed Guidelines. Moreover, such limitations – even if they were lawful – would result in proliferation of wireless facilities because these limits would force providers to install more sites to accomplish the same objectives.

12. Indemnification. The City should not seek indemnity from an underlying property owner, as it does under Section V(GG) of the Proposed Guidelines. 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.

13. Electric Meter Upgrades. AT&T objects to Section V(PP) of the Proposed Guidelines. Once AT&T installs a ground-mounted electric meter, the meter is permitted to remain for ten years. AT&T will discuss removal of a ground-mounted electric meter in the context of a permit renewal.

Specific Comments on the Proposed Amendments

1. Irrigation System. In Section 33-703, providers must install a permanent irrigation system. The City must eliminate this requirement as it is unreasonable and discriminatory. AT&T will certainly replace landscaping damaged during construction but cannot be required to maintain replacement landscaping, let alone provide a new irrigation system.

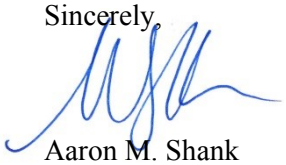
2. Maintenance. In Section 33-704(i), providers have 30 calendar days to repair or replace damaged equipment and landscaping. AT&T respectfully requests at least 60 calendar days to repair any damage.

3. Experts. Section 33-705(b) states that the City can employ experts, at the applicant's expense, to review application materials. While AT&T appreciates the City's desire to thoroughly review applications, experts can unnecessarily increase the cost of deployment and slow down the permitting process. Use of experts should limit review to appropriate and objective criteria, such as a structural safety assessment or compliance with FCC regulations of radio frequency emissions.

Conclusion

There remain some provisions of the City's Proposed Guidelines as well as the Proposed Amendments that need to be revised to come in line with applicable laws. AT&T would be happy to work with the City to develop the Proposed Guidelines and Proposed Amendments in a manner that will foster rather than frustrate responsible wireless facility deployments.

Sincerely,



Aaron M. Shank

cc: Mike Strong, Planning Commission Secretary

From: Salas, Adrian <Adrian.Salas@crowncastle.com>
Sent: Tuesday, July 16, 2019 4:22 PM
To: Adam Finestone; Jay Paul
Cc: Friese, Tanya
Subject: Comments - Escondido Wireless guidelines and Code Amendment - Crown Castle

Hi Adam and Jay,

Regarding the draft guidelines that will be before the Planning Commission on Tuesday, Crown Castle submits the following comments:

Background/trends (This might help contextualize why ubiquitous and robust coverage and capacity is necessary):
Wireless access has become a necessity of modern life. According to the Centers for Disease Control and Prevention, over half of American households are wireless-only, meaning they have no 'land line' service. Additionally, mobile data traffic has increased 238% in the last two years alone (2016-2018), and that trend is expected to continue (Accenture). Like access to good roads and highways, there are direct and indirect economic benefits associated with dependable wireless connectivity. Today's mobile revolution has expanded critical connectivity capabilities to underserved communities via their smartphones. This is particularly important for young, minority, and low-income users, as they disproportionately rely on smartphones for information or to access vital resources (Pew).

There are also public safety aspects of wireless coverage as well: 80% of 911 calls originate from a mobile device (NENA). Reliable and resilient communications connect police officers, firefighters, and other first responders by providing information they need wherever they are. The Chula Vista Police Department for example, is expanding their Drones as First Responder Program, which can be dispatched to an emergency and send HD video back to Headquarters. San Diego County has adopted a mobile strategy for communicating to citizens during emergencies through services like the SD Emergencies App, CA Shakealert, and AltertSanDiego, which provide information on disasters, maps, and shelters directly to smart phones that are "geofenced" in a particular area. This increased usage and innovation needs infrastructure to support it. We are trying to keep up with ballooning demand and provide the platform for flourishing innovative and safety-related applications.

Draft comments:
Section III-H outlines the process for incomplete applications, which calls for comments/markups from the city. However, other sections of the draft say incomplete applications will be denied. We request that those sections be made consistent with Section H.

As mentioned in our comments from 6/19/19, we find many of the permitting requirements in section IV-C to be prohibitive (or effectively prohibitive) of wireless service, such as prohibitions 1, 6 and 7 on page 8. Regarding undergrounding, once a CPUC Rule 20 project is declared, we will not pursue adding equipment, and we are responsible to underground our existing equipment. Until that declaration is made, this is an effective prohibition as undergrounding is still aspirational not planned. On the second list of prohibitions, Item 2 (40 foot buffer to residential units) – This can also be a prohibition of service in areas where setbacks are shorter than 40 feet, and would then be in conflict with federal regulation, which states: "Congress determined that state or local requirements that prohibit or have the effect of prohibiting the provision of service are unlawful and thus preempted." (47 U.S.C. §§ 253(a),

332(c)(7)(B)(i)(II). Again, over 50% of American households do not have a land line, so ubiquitous wireless coverage and capacity is needed in residential areas.

III.G - what are the fees associated with applying expected to be? Is there a cost savings for batched applications? Details on when/how fees will be established would be helpful.

IV.D.3.d.II – six cubic feet maximum is prohibitive. Again, efforts can be made to meet this under certain circumstances, but a strict limit is definitely prohibitive.

IV.D.4.d – This requirement will be prohibitive to the 5G rollout as separate antennas are needed for each service. 5G will not swap out 4G but will be complementary, especially as not all users will have 5G capabilities until they upgrade their device (which they may never do). This might also have the effect of forcing us to install new verticality rather than collocating.

IV.D.4.h – we suggest revising the language to "like for like luminaires."

**Additionally, we have reached out to the city a few times to get the MLA process started. Please advise on that request. **

References:

Centers for Disease Control and Prevention - Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2016; 2017. https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf

Accenture; How the Wireless Industry Powers the US Economy; 2018 https://api.ctia.org/wp-content/uploads/2018/04/Accenture-Strategy-Wireless-Industry-Powers-US-Economy-2018-POV.pdf

NENA – National Emergency Number Association; https://www.nena.org/page/AboutNENA

Pew Research, Mobile Fact Sheet; 2019. https://www.pewinternet.org/fact-sheet/mobile/

Thank you,

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CROWN CASTLE
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CrownCastle.com

From: MCGEE, KEVIN <km4510@att.com>
Sent: Friday, September 6, 2019 12:27 PM
To: Adam Finestone
Cc: JANSMA, JIM
Subject: RE: [EXT] RE: Escondido Small Wireless Service Facility guidelines: Recommended changes
Attachments: AT&T Comments July 16 2019.pdf

Adam,

As we discussed in our meeting on August 14, I am providing you detailed comments related to the Design Guidelines , in addition to the comments provided in the July 16, letter that was provided to the Planning Commission by our Legal Council, Aaron Shank of Porter Wright.

It is my understanding that the City of Escondido wants to provide for more opportunities for an "Administrative review" for small cell facilities, in order to provide a simple way to expedite the permitting process of these applications and to align with the September, 2018, FCC Ruling. Based upon this understanding, I believe that there are some specific "minor changes", to the "Design Standards" as outlined in Section IV.D of the Proposed Guidelines, that can be made to help the City meet this goal for an Administrative review for Small Cell facilities. I believe that if these changes to the Guidelines were to occur that a majority of facilities, could meet the Administrative Permit Process.

- **Section IV.D.2.b. Antennas.** This section limits any small cell facility to 1 (max. 3 c.f) antenna. For our initial 4G build, we will meet this requirement, as AT&T uses a 12" diameter x 24" tall, (2 c.f.) antenna for 4G. This "1 antenna limitation", does not, however, consider 5G technology which is coming soon. With 5G equipment, there will be 2, additional "antennas" that will be integrated into each of the 2, 5G radios and therefore, visually, the public will not see any additional antennas, only the 5G "radios". As I assume that the City was not aware of the 5G integrated antennas, I would recommend changing the language to 1 "separate, non-integrated antenna" and I would not include integrated antennas in the maximum 3 c.f. limitation. I would be happy to show you examples of our planned 5G equipment.
- **Section IV.D.2.e. Antennas.** This section can limit the ability for the future 5G radios to go thru the Administrative process, due to the specific dimensions listed (12" & 9"), especially, if the City requires a shroud around the radios. For example, our planned 5G radios, un-screened are 14"h x 7.5"w x 7.5"d. Without screening we can meet the dimensions, but it may be questionable if screened and we may exceed the limitation by only be " a few" inches. In addition, each carriers' equipment dimensions will vary and this should be taken into consideration.
- **Section IV.D.3.b. Accessory Equipment**. As you are aware, the FCC Ruling allows for small cell facilities to have up to 28 c.f. of accessory equipment. With this in mind, AT&T's current 4G, small cell design, for accessory equipment meets the City proposed 7, c.f. requirement, however it is possible, that by including the dimensions of the stealthing, we may exceed the proposed maximum 20" limitation, by 2 or 3 inches, in one dimension. In addition, the 7 c.f. limit, does not take the 5G equipment into consideration. If the c.f. limit for an Administrative review was increased to 10 c.f. and was flexible for the accommodation of any required "stealthing", then this would accommodate for (AT&T's) 4G & 5G accessory equipment needs at this time *and* is well below the FCC allowed, 28 c.f.
- **Section IV.D.4.d Street Lights.** This limitation states a maximum of 2 radios per pole. AT&T's 4G design in California, has 2 radio sizes. 80% of the time we design with our smaller radios. These radios, measure 8"h x 8"w x 4"d. With this design we propose 2 of these radios on each side of the pole, resulting in a total of 4 radios per pole, equaling 4 c.f. and overall dimensions of 8"w x 22"h x 4"d. The limitation of this requirement actually, deprives us from providing the optimal RF design for a particular area and also limits us from providing the "least visually intrusive means" regarding aesthetics by providing the design with the smallest resulting volume and also does not allow for 5G technology. I would propose that the limitation be restricted to a maximum cubic foot limit, ie 10 c.f., to accommodate for both 4G & 5G, vs. also limiting the number of radios or specific dimensions.
- **Section IV.D.5.a. Wooden Utility Poles.** The designs on utility poles are established by State Law related to General Order 95 and administered by the Utility pole owner. Therefore, the limitations in this section by the City are in conflict with State Law and should be removed.

- **Section IV.D.7 Orientation.** The restriction to be oriented away from residential uses, is in direct conflict with Federal Law and should be removed.

Adam, as I have stated previously, I believe that these proposed changes can accommodate the industry and also meet the City's goal to expedite the permit processing of small cell facilities, via an Administrative review, while also meeting the overall goal of the FCC for a more expeditious deployment of small cell facilities.

I would be happy to review my comments with you in person if you wish. Let me know if you would like to meet or if you have any questions.

Thank you in advance, for your consideration of AT&T's comments.

Kevin McGee
AT&T Mobility San Diego & Las Vegas
858 232-3996

From: Adam Finestone <afinestone@escondido.org>
Sent: Tuesday, August 27, 2019 9:41 AM
To: MCGEE, KEVIN <km4510@att.com>
Subject: RE: [EXT] RE: Escondido Small Wireless Service Facility guidelines meeting

Good morning Kevin,

Yes, you have time to provide that info. I've been working with our attorney's office to incorporate various modifications to the ordinance and guidelines but don't have anything ready to go yet. We are shooting for the second meeting in September (24th), though it may wind up being the first meeting in October (8th). I'll keep you posted.

Adam Finestone, AICP
Principal Planner
City of Escondido

From: MCGEE, KEVIN <km4510@att.com>
Sent: Tuesday, August 27, 2019 8:19 AM
To: Adam Finestone <afinestone@escondido.org>
Subject: [EXT] RE: Escondido Small Wireless Service Facility guidelines meeting

Adam,

Please let me know if I still have time to provide you with AT&T's equipment size and dimension information, as discussed in the 8/14 meeting.

I hope to get you this information by the end of the day today.

Also, can you let me know the timing of going back to Planning Commission.

Thank you.

Kevin McGee

AT&T Mobility San Diego & Las Vegas
858 232-3996

From: Adam Finestone <afinestone@escondido.org>
Sent: Wednesday, July 24, 2019 4:52 PM
Cc: Jay Paul <jpaul@escondido.org>; Adam C. Phillips <aphillips@escondido.org>; Bill Martin <bmartin@escondido.org>; Mike Strong <mstrong@escondido.org>; Owen Tunnell <otunnell@escondido.org>; Elizabeth N. Lopez <enlopez@escondido.org>; Vincent McCaw <vmccaw@escondido.org>
Subject: Escondido Small Wireless Service Facility guidelines meeting

The Escondido Planning Division has scheduled a meeting in order to discuss the proposed Small Wireless Facility guidelines and draft Zoning Code Amendment language with wireless industry representatives. The meeting will be held on **Wednesday, August 14th,** at **2:00pm** in the Planning Division office at City Hall (201 N. Broadway, Escondido). You are encouraged to attend to discuss concerns regarding the draft guidelines and code amendments that have been presented to you.

Please contact me if you have any questions prior to the meeting.

Thank you,

Adam Finestone, AICP
Principal Planner
Community Development | City of Escondido
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www.escondido.org

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December 3, 2019

VIA EMAIL

Adam Finestone
City of Escondido
201 North Broadway
Escondido, CA 92025

Re: AT&T's Comments on the City of Escondido's Revised Guidelines for Deployment of Small Wireless Facilities in the Public Right-of-Way and the City's Proposed Wireless Code Amendments to Chapter 33 of the Escondido Zoning Code

Dear Mr. Finestone:

I write again on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the city's revised guidelines for deployment of small wireless facilities in the public right-of-way ("Proposed Guidelines"), and the city's proposed wireless code amendments to Chapter 33 of the Escondido Zoning Code ("Proposed Amendments"). AT&T appreciates the city taking some additional time to bring its proposed wireless facility siting regulations into compliance with applicable state and federal laws, including the Federal Communications Commission's *Infrastructure Order*.[1] As written, however, these proposed regulations still would violate important state and federal laws. AT&T asks the city to reconsider comments raised in my July 16, 2019 letter to the City Planning Commission, and to revise these proposed regulations with an eye towards allowing flexibility to foster responsible deployments. AT&T offers these further comments on its top concerns with these proposed regulations.

AT&T's Top Concerns with the Proposed Guidelines and Proposed Amendments

1. Residential Zones. The Proposed Guidelines now apply a minor conditional use permit process to small cells that are located "closer than 40 feet from any residential unit, unless said unit has no windows

[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*").

or doors on any wall facing the antenna." And proposed Section 33-703 still discourages facilities in residential zones unless the provider submits a feasibility study. These requirements are improper and unnecessary. These restrictions are discriminatory to the extent not applied to other infrastructure deployments and will effectively prohibit wireless services in certain portions of the city.[2]

2. Permit Processing. The city's Proposed Guidelines still risk shot clock compliance. The city limits small cell submittals to just a few hours per week. This will effectively prohibit wireless services. And the FCC has ruled that restrictions like this that rise to the level of de facto moratoria are unlawful and do not toll the shot clock.[3] In addition, Section III(H) still allows the Planning Director to verify an application's compliance with the city's design and development standards *before* forwarding a copy of the application materials to the Engineering Services Department for review of technical information, which sets the city up to inadvertently miss shot clock deadlines. The city should apply a concurrent review process to small cell applications to ensure that the city is able to review applications within the 60-day and 90-day shot clocks for small cells.[4]

3. Prohibited Support Structures. Again, the city should strike the proposed ban on the installation of small cells on traffic signals, archways over roads or pedestrian plazas/walkways and new or replacement wooden utility poles in Section IV(D) of the Proposed Guidelines. The FCC's *Infrastructure Order* applies to all city-owned or controlled structures in the rights-of-way. Moreover, traffic light attachments preserve aesthetics by allowing providers to cover busy areas in multiple directions from one site. In addition, while AT&T typically prefers to collocate on existing poles, it has a state-law franchise right to place new poles in the rights-of-way,[5] and a blanket prohibition on wood poles for small cells is discriminatory.

4. Design Standards. Many of the city's design standards in the Proposed Guidelines still improperly limit height and sizes for small cells. Section IV(E)(1)(a) limits the overall height of small cells above a support structure in the public right-of-way to four feet above the support structure. This will not only effectively prohibit wireless services, but will eliminate the most aesthetically-pleasing small cell designs. The city also continues to limit the volume of pole-mounted accessory equipment and antennas and shrouds. These limits are too restrictive to accommodate real-world small cells. A few slight changes to the city's restrictions will avoid effectively prohibiting wireless services.

5. Number of Antennas and Radios. Section IV(E)(4)(d) does not allow more than one top-mount shroud/radome and one-side mount antenna/radio/equipment cabinet, or two side-mount

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[2] *Id*. at ¶ 86.
[3] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, FCC 18-111 (August 3, 2018), at ¶¶ 140-160; *Infrastructure Order* at ¶ 145.
[4] *See* 47 C.F.R. § 1.6003(c)(1)(i)&(iii).
[5] Cal. Pub. Util. Code § 7901.

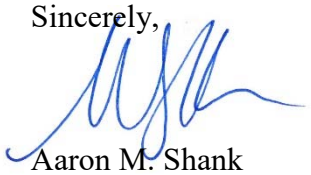
antenna/radio/equipment cabinets per pole. This violates federal law, which does not permit local governments to impose a limit on the amount of small cell antennas. The city needs to delete this requirement to avoid prohibiting certain technologies that cannot fit within this requirement.

6. Experts. Section 33-705(b) of the Proposed Amendments allows the city to employ experts, at the applicant's expense, to review applications. The FCC has cautioned municipalities against excessive charges by third party consultants, which cannot be passed on through application fees because only objectively reasonable costs can be imposed.

Conclusion

The city's Proposed Guidelines and Proposed Amendments still include numerous problems, which AT&T urges the city to revise. AT&T would be happy to work with the city to develop the Proposed Guidelines and Proposed Amendments in a manner that will encourage responsible wireless facility deployments.

Sincerely,



Aaron M. Shank

AMS:sb

From: Salas, Adrian
To: Adam Finestone
Cc: Costa, Brandon (Contractor)
Subject: [EXT] RE: Small Wireless Facilities - Proposed Zoning Code Amendment and Guidelines
Date: Tuesday, December 3, 2019 10:56:07 AM
Attachments: image001.jpg

Hi Adam.

Based on the drafts you shared, Crown Castle has the following comments:

- There are no application fees listed. Hopefully proposed fees will be in line with the FCC Order and published before PC hearing next week.
- IV.(D) 2 Facility cannot be located within 40 feet to any residential unit (unless said unit has no windows or doors facing the antenna) via admin permit. May apply with Minor Conditional Use Permit – Our concern is that if a MCUP is required, will it be reviewed and approved within shot clock times? Also, if there are there areas of the city where residential units have setbacks of only a few feet, any/all deployments in those areas would require MCUPs, and if there is blanket denial of MCUP that would constitute an effective prohibition of service.
- Traffic signals prohibited – In other cities, traffic signals have made for good siting locations as they typically provide line of site in 4 directions (which is efficient for signal propagation), while limiting visual impacts . Additionally, a traffic signal is another option for co-location, and would be preferred to siting a stand-alone pole in the ROW. We recommend removing the traffic light prohibition, or perhaps including them under an MCUP. We are happy to meet with your Public Works Department and work out any structural or maintenance related concerns.
- V.(K) Post-installation RF Certification within 90 days – As we mentioned in the public meeting last week, we have set equipment specifications, and everything we design, procure and install complies with FCC RF limits. This requirement would add considerable amount of reporting and costs. We suggest removing this requirement, or perhaps requiring one post-installation certification per design, as the same design will likely be replicated at different sites.
- V.(M) Site maintenance. Any issues shall be remedied by the applicant within 24 hours' notice – We request this be changed match other utility stated policy, and separated into urgent and non-urgent Safety issues will of course be prioritized and addressed as soon as possible. Non-safety maintenance issues will be scheduled based on crew availability and other factors. SDG&E for example, states graffiti abatement will occur within 10 days of notice.
- Master License Agreement – The guidelines state an agreement is required at time of application, yet no draft has been made available. We would like to comment on the draft in advance of the regulations becoming effective as to avoid delays later on. The Real Property Division has been contacted but no details have been shared.

My team and I really appreciated the conversation you facilitated last week, and the stakeholder involvement you are working through. We look forward to working with the City going forward.

Have a good day, and let me know if you have any follow up questions.

ADRIAN SALAS
Government Affairs Manager, San Diego
T:(858) 935-3831
M:(619) 917-6116

CROWN CASTLE
10301 Meanley Dr. Ste. 200 San Diego, CA 92131
CrownCastle.com

From: Adam Finestone <afinestone@escondido.org>
Sent: Tuesday, November 26, 2019 5:26 PM
To: Adam Finestone <afinestone@escondido.org>
Cc: Jay Paul <jpaul@escondido.org>; Mike Strong <mstrong@escondido.org>; Darren Parker <dparker@escondido.org>; Adam C. Phillips <aphillips@escondido.org>; Bill Martin <bmartin@escondido.org>
Subject: Small Wireless Facilities - Proposed Zoning Code Amendment and Guidelines

Attached is a copy of the draft Zoning Code Amendment and draft Guidelines that were distributed at the meeting last night. Any comments provided to my attention by 5 p.m. on Tuesday, December 3, will be taken into consideration prior to finalizing the draft documents for consideration by the Planning Commission at their December 10 meeting.

Please let me know if you have any questions. Thank you.

Adam Finestone, AICP
Principal Planner
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December 3, 2019

VIA EMAIL

Adam Finestone
Principal Planner
City of Escondido
201 North Broadway
Escondido, California 92025

Re: Draft Zoning Code Amendments and Guidelines, Small Cell Wireless Facilities

Dear Adam:

We write again on behalf of Verizon Wireless regarding the revised draft zoning code amendments (the "Draft Amendments") and draft *Guidelines for Deployment of Small Wireless Facilities in the Public Right-of-Way* (the "Draft Guidelines"). Verizon Wireless appreciates staff's collaborative approach to revising these proposed regulations. We provided initial comments in our July 16, 2019 letter to Planning Commission Chair James Spann. Verizon Wireless wishes to address several additional provisions that should be revised to better accommodate small cells in the right-of-way that are needed to serve Escondido residents and visitors. We ask you to consider our prior comments and the below suggestions, and to revise the Draft Amendments and Draft Guidelines prior to a public hearing.

Draft Amendments

33-708(c). Dedication of abandoned or discontinued poles to City. If Verizon Wireless places a new pole for a small cell in the right-of-way as allowed by Public Utilities Code Section 7901, the pole is its property. If a small cell is decommissioned, the code cannot require Verizon Wireless to surrender its pole to the City for free. *The second-to-last sentence of this provision should be revised to allow Verizon Wireless to remove the pole and to restore the site, or to sell the pole to the City. The same revision should apply to Draft Guidelines Section V(VV).*

Draft Guidelines

III(B)(3). Master license agreement. By requiring a City license to place "new City-owned structures," this provision appears to require that any new pole be owned by the

City. However, where a new pole is required, wireless carriers generally install, own and maintain it. As noted above and in our prior comments, Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless a statewide right to place and own new poles in the right-of-way. *While still requiring a license for any City-owned pole, this provision can be generalized and any confusion eliminated by striking the words "existing, replacement, or new."*

III(C). Acceptance of applications. This provision allows staff to refuse applications at intake that they consider to be incomplete or lacking concurrent required permit applications. This would be tantamount to denial, and it directly contradicts the FCC's new "Shot Clock" rules for small cell applications. Instead, staff should issue a written notice of incomplete application ("NOI") within 10 days following the application date, and the 60/90 day Shot Clock would *restart* when an applicant responds. Subsequent NOIs issued within 10 days after resubmittal would *pause* the Shot Clock until an applicant responds, if the subsequent NOI asks for information requested in the original NOI. 47 C.F.R. § 1.6003(d). *This provision should be revised to eliminate the option not to accept applications, and instead should incorporate the FCC's Shot Clock rules.*

IV(D)(2) (additional prohibitions). Minor use permit required for facilities within 40 feet of a residence. As noted in our prior letter, all right-of-way small cells should be approved administratively. However, a minor use permit introduces subjectivity to the approval process, whereas the FCC requires objective review of small cells.[1] This elevated level of review could lead to denials for facilities along many residential rights-of-way, but that would violate Section 7901 that grants telephone corporations use of any right-of-way. Section 7901 does not favor or disfavor certain zones, and there is no discouragement of residential areas where service is needed. *This section should be deleted.*

IV(E)(1)(b). Replacement structures must be same height as existing. As noted in our prior letter, such height restrictions contradict the height allowances in the FCC's definition of "small wireless facilities," which are no less than 50 feet. 47 C.F.R. § 1.6002(l). For utility poles, antennas must be elevated at least six feet above pole-top electric conductors to comply with General Order 95 Rule 94.4(C). Often, a utility pole is replaced to achieve this separation. *This provision should be deleted. For antennas to comply with General Order 95, we recommend an additional height provision for new and replacement utility poles allowing up to twelve feet above existing pole height.*

IV(E)(2)(b). All antennas is same shroud/radome. This is infeasible in two ways. First, 4G and 5G antennas must be vertically separated to avoid interference, rendering a single shroud to be infeasible due to excessive size. Second, in most circumstances, shrouds or radomes impede frequencies that Verizon Wireless recently licensed from the FCC for new wireless technology including 5G service, and such coverings are infeasible

[1] *See In Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018), ¶ 86-88.

for signal propagation. Any antenna standards for right-of-way facilities must accommodate new higher-frequency facilities that integrate antennas and radios in one small box, and cannot impose shrouding. *An exception should be added to excuse the antenna shrouding requirements if technically infeasible.*

IV(E)(2)(d). Antenna cumulative volume limit. This could limit total volume of all antennas to three cubic feet, but that contradicts the volume allowance in the FCC's definition of "small wireless facilities" which is three cubic feet each. 47 C.F.R. § 1.6002(l). *The reference to cumulative volume limit should be deleted.*

IV(E)(2)(e). Utility pole antenna, limit to pole width. This could effectively constrain the volume of individual antennas, also posing a conflict with the FCC's volume allowance. *The limit to utility pole width should be deleted.*

IV(E)(2)(g). Side/flush mount antennas. The 12-inch width limit also could contradict the FCC's antenna volume allowance. Both flush-mounting and the nine-inch depth limit are infeasible for electric utility poles where side-mounted antennas must be set off two feet from the pole centerline to comply with Public Utilities Commission General Order 95 Rule 94.4(E). A small cell standard that is technically infeasible is therefore unreasonable according to the FCC.[2] *This standard should be deleted.*

IV(E)(3)(b). Accessory equipment dimension limits. For utility poles, these volume and dimension restrictions may not quite accommodate required radio units available from manufacturers. Notably, the proposed depth restriction of 16 inches, factoring in the four inch pole offset required by General Order 95, could further curtail the actual depth of equipment boxes where corners would protrude too far. *We suggest a volume of nine cubic feet and, instead of a depth limit, limiting protrusion to 22 inches. The City should consult with wireless carriers regarding reasonable dimensions to accommodate typical small cell equipment.*

IV(E)(4)(g). New streetlight facility, setback of 75 feet from existing streetlights on same side of street. This could preclude small cells on long stretches of roadway that lack utility poles, and it would be prohibitive if there are no other available options nearby in the right-of-way, including existing street lights. *There should be an exception to this setback if there are no technically feasible alternatives within 200 feet along the subject right-of-way.*

IV(E)(5)(b). Antennas/equipment no wider than utility pole. This could preclude antenna and radio unit models available from manufacturers that Verizon Wireless uses for small cells on utility poles. *This provision should be deleted.*

V(P). Alleged interference with public safety communications. The City does not have the authority to require that a wireless facility suspected of causing interference be

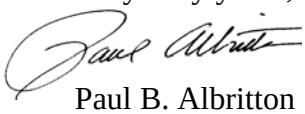
[2] *Id.*

shut down. Frequency interference is exclusively regulated by the FCC, which has established a complaint-based system requiring licensees to conduct a prompt analysis after notification of alleged interference. 47 C.F.R. § 22.972. *This condition is preempted by federal regulation and should be deleted.*

V(OO). Cooperation with RF compliance evaluations. Item 3 could compel permittees to prepare RF exposure assessment reports at any time. While a city may require a single post-installation RF exposure test (see Item 1), it cannot require repeat tests once an installed facility has been shown to comply with FCC radio frequency exposure guidelines. Such ongoing regulation of operational requirements is preempted by federal law. 47 U.S.C. § 332(c)(7)(B)(iv); *see also Crown Castle USA Inc. v. City of Calabasas* (Los Angeles Superior Court BS140933, 2014) ("…the regulation of a facility's planned or ongoing operation constitutes an unlawful supplemental regulation into an area of federal preemption.") *Item 3 should be deleted.*

Verizon Wireless looks forward to working with the City to further revise the draft regulations.

Very truly yours,



Paul B. Albritton

cc: Adam Philips, Esq.
Bill Martin
Mike Strong