

Ordinance

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March 8, 2021

**VIA EMAIL (KFALLON@CITYOFMALDEN.ORG;  
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City Solicitor Kathryn Fallon  
City of Malden  
Legal Department  
215 Pleasant Street  
4<sup>th</sup> Floor – Room 420  
Malden, MA 02148

**Re: Proposed Municipal Code Amendment (the “Amendment”) to Section  
11.24.020 of the City of Malden Municipal Code (the “Code”)**

Dear Solicitor Fallon:

The purpose of this letter is to respond to the recent Amendment on behalf of my client Celco Partnership d/b/a Verizon Wireless (“Verizon”). At its meeting on February 16, 2021, the City Council considered the Amendment, which proposed several changes to the Code governing small cell facilities, before referring it to the Rules and Ordinance Committee for deliberation. As explained in more detail below, the Amendment introduces several requirements that either (a) are prohibited by the federal Telecommunications Act of 1996 (the “Act”) and the regulations of the Federal Communications Commission (“FCC”) authorized by and adopted pursuant to the Act, or (b) should be rejected to reflect legal concerns related to the carriers’ pole licenses and security issues. As a result, my client requests that the Amendment be revised as described in this letter.

**I. Summary of Amendment**

The Amendment proposes the following changes:

- A. In Section F, which governs dimensions and appearance requirements, add “Small Cell antennas cannot be mounted closer than 12 feet from the nearest window, deck, or other publicly-accessible area. In addition, while the antenna shape is akin to a rounded cone, these antennas are directional in nature with the signal primarily focused up and down streets, and not directly into the residence behind the pole.”

- B. In Section L, which governs the contents of any small cell facility petition, add that the applicant is required to attach a notice of public meeting to the subject utility pole.
- C. Add language requiring a warning sticker on the small cell facility with specific dimensional and appearance requirements.
- D. Require that each applicant must pay either for a street tree or an “in-lieu fee” of no less than \$75 for each small cell facility.
- E. Require that all small cell facilities be posted to the City’s GIS system and accessible to the public.

I address each requirement below.

**II. The Proposed Language in Section F Prohibiting Small Cell Facilities Within 12 Feet of Certain Parts of Buildings and Small Cell Antennas Facing Residential Buildings Is Prohibited by the Act**

The language proposed in Section F of the Code that would prohibit small cell antennas from being closer than 12 feet from “the nearest window, deck, or other publicly-accessible area” is logistically too difficult to implement, creating a condition that would “materially inhibit” the deployment of small cell facilities. As you know, Section 253(a) of the Act states that no local government or ordinance may “prohibit or have the effect of prohibiting the ability of any entity to provide... telecommunications services” and Section 332(c)(7)(B)(i)(II) of the Act states that local government regulation “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” FCC’s Declaratory Ruling and Third Report and Order, FCC 18-133 (the “2018 FCC Order”) states that a local ordinance “will have the effect of prohibiting wireless telecommunications services if it material inhibits the provision of such services.”<sup>1</sup> Requiring that carriers measure distances from all nearby windows, decks, and publicly accessible areas as part of their field work prior to submitting an application is such a material inhibition.

The utility poles available to carriers are already greatly limited by: the number of poles available in the search area; the topography around the poles that affect coverage; the buildings and trees that potentially block the small cell’s signal; the poles that the local utility company is willing to license; etc. Adding the determination of which architectural details fall under the Amendment’s language – Does a balcony count? If it is a small attic window, does that count? – is a logistical problem that materially inhibits carriers from providing telecommunications services by both (a) creating uncertainty in the pole selection process, and (b) further eliminating available poles from the small pool of poles still available after the applicant’s review and selection process.

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<sup>1</sup> Federal Communications Commission; In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; WT Docket No. 17-79; WC Docket No. 17-84; FCC 18-133; September 27, 2018; ¶37 (the “2018 FCC Order”).

In contrast, other municipalities have instituted a standard setback from any part of a residential building, which eliminates the uncertainty in this provision. Carriers need only check whether the proposed small cell will be within a defined distance of a nearby residence, which is easier to administer. For example, the Waltham small cell ordinance prohibits installation of a small cell facility within 4 feet of a residential building.<sup>2</sup>

With regard to the language proposed in Section F that would prohibit carriers from directing their small cell antennas toward residential buildings, the FCC has identified this exact local regulatory activity as prohibited by the Act. The 2018 FCC Order specifically describes “increased in-building use of wireless services” as “necessitating deployment of small cells in order to ensure quality service to wireless callers within such buildings.”<sup>3</sup> As such, municipal ordinances that prevent carriers from “improving service capabilities” inside residential buildings violate the Act because “an effective prohibition includes materially inhibiting additional services or improving existing services.”<sup>4</sup>

### **III. The Proposed Language in Section L that Would Require Applicants to Post a Notice of the Public Hearing Would Force Applicants to Impermissibly Exceed Their Pole Licenses**

Although it is not unreasonable to require applicants to notice a public hearing, carriers may not install equipment (including signage) that exceeds their pole licenses. Those licenses are limited to the small cell equipment, and the pole owners would likely object to applicants attaching notices to the poles as it exceeds their licensed premises and rights on the poles. This requirement should be rejected because enacting it would impermissibly force carriers to violate the terms of their contracts with utility pole owners.

Even if an applicant were permitted by its license to install a notice on the subject utility pole, it is unreasonable to require that applicants maintain the notices on the pole. Every utility pole is in the public right of way, and applicants are not able to exercise control over any pole sufficient to ensure that a passerby will not remove posted notices. The thousands of empty staples on any given utility pole are testament to the hundreds of notices and bulletins placed on a pole that were subsequently removed without the authorization of the poster. Moreover, pole owner employees routinely remove items posted on their poles.

Additionally, as a practical matter, there is no direct relationship between when an application is submitted to the City, the date of the meeting when the City Council refers the application to the Public Properties Committee (the “Committee”), and the date of the application’s public hearing before the Committee. For example, the City received Verizon applications for small cell facilities on January 28, 2021, but the Council did not refer those applications to the Committee

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<sup>2</sup> City of Waltham General Ordinances, §13-72(e)(1)(f).

<sup>3</sup> 2018 FCC Order, *supra* note 1, at ¶40.

<sup>4</sup> *See Id.*, at ¶37.

until its meeting on March 2, 2021, despite the Council holding two other meetings after submission. Additionally, it is not uncommon for applicants to learn on a Thursday or Friday that the Committee will hold a public hearing the following Tuesday. Due to these scheduling issues, applicants should not be required to post any notice more than 24-48 hours before a public hearing. Any additional notice time would create a material inhibition for carriers because they would not be able to satisfy the notice requirements under the Code and would therefore be prohibited from installing small cell facilities required to improve service capabilities and address coverage and capacity gaps.

**IV. The Provision Requiring Warning Stickers on Small Cell Antennas is Pre-empted by Federal Law**

Municipalities are pre-empted from regulating the signage on small cell facilities by FCC regulations, which require signage in areas based on the FCC's emissions standards. "In situations where an untrained person is transient through a location where occupational/controlled limits apply, he or she must be made aware of the potential for exposure."<sup>5</sup> In compliance with this requirement, Verizon posts the relevant signage, an example of which is enclosed. The FCC regulations governing signage pre-empt municipal efforts to require further signage where emissions are an issue and where emissions satisfy FCC requirements. If such FCC regulations were *not* pre-empted, there could be significant confusion among telecommunications professionals who rely on clear and uniform signage to know when they are in an area with higher than normal emissions levels so they can take appropriate precautions. As such, the Amendment's language requiring particular signage at small cell locations should be removed.

**V. The Amendment's Proposed Tree or "In-Lieu Fee" Requirement is Prohibited by the 2018 FCC Order**

The language in the Amendment that would require each applicant to plant a tree in the right-of-way or pay at least \$75 toward a tree for each approved small cell facility is prohibited by the 2018 FCC Order. It states:

Another type of restriction that imposes substantial burdens on providers, but does not meaningfully advance any recognized public-interest objective, is an explicit or implicit *quid pro quo* in which a municipality makes clear that it will approve a proposed deployment only on condition that the provider supply an "in-kind" service or benefit to the municipality... Such requirements impose costs, but rarely, if ever, yield benefits directly related to the deployment. Additionally, where such restrictions are not cost-

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<sup>5</sup> 47 C.F.R §1.310(e)(2).

based, they inherently have “the effect of prohibiting” service, and thus are preempted by Section 253(a).<sup>6</sup>

Additionally, in the absence of a cost study supporting higher rates, the City’s application fee is the highest permitted under the 2018 FCC Order – \$500.00 for an application with up to 5 small cells and \$100 for each small cell thereafter in the application – so charging an additional fee to petitioners is prohibited by the Act.<sup>7</sup>

#### **VI. The GIS System Raises Important Security and Accuracy Concerns**

Verizon objects to the proposal in the Amendment that all small cell facilities be posted in the City’s GIS system and accessible to the public. First, the system would be inaccurate over time as some small cells are approved but not installed. Second, there are security concerns with making maps of telecommunications infrastructure widely accessible by the public. Verizon does not provide maps of its small cell or macro facilities publicly and urges the City to reconsider this requirement.

#### **VII. Conclusion**

For the reasons explained above, we request that the City Council:

- 1) Reject the proposed 12-foot setback “from the nearest window, deck, or other publicly-accessible area” and the proposed language prohibiting small cell antennas that face residential buildings;
- 2) Reject the requirement that notices posted at a subject utility pole be required;
- 3) Reject the proposed signage requirement;
- 4) Reject the proposed language requiring an applicant to buy a tree or pay \$75; and
- 5) Reject the requirement that locations of telecommunications network infrastructure be publicly identified in the City’s GIS system.

Thank you for your assistance in this matter. Please feel free to contact me if you have any questions or if you would like to discuss the information in this letter further. I am happy to help in any way.

Very truly yours,



John F. Weaver

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<sup>6</sup> 2018 FCC Order, *supra* note 1, at n252.

<sup>7</sup> *Id.*, at ¶79; Malden Municipal Code, §11.24.020(L)(1).

City Solicitor Kathryn Fallon

March 8, 2021

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Enclosure

cc: John McNaught, Assistant City Solicitor

S. Conway

P. Foley

S. Usovicz

S. Lee (w/o enclosure)

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Ordinance

Verrill Dana LLP  
One Federal Street  
Boston, MA 02101

March 9, 2021

Attn: Chairperson Craig Spadafora  
Malden Rules and Ordinance Committee

Malden City Hall  
215 Pleasant Street  
Malden, MA 02148

**Re: Comments on Proposed Amendments to Small Cell Ordinance (Sec. 11.24.020)**

Dear Chairperson Craig Spadafora and Members of the Rules & Ordinance Committee:

ExteNet Systems, Inc. (“ExteNet”), respectfully submits these comments regarding the proposed amendments to the Malden Revised Ordinance Section 11.24.020 Siting and Installation of Wireless Communications Equipment. ExteNet is a nationwide provider of network infrastructure for wireless carriers and has wireless facilities in forty-two communities in Massachusetts. In Malden, the City has recently approved fifteen (15) Grant of Location applications for ExteNet’s proposed small wireless facilities. ExteNet provides the following recommendations concerning the proposed amendments.

ExteNet appreciates the City’s concerns regarding proper facility siting. As more small wireless facilities are located in the public rights of way in mixed use and residential areas, ExteNet understands that residents and City officials have concerns regarding the siting of those facilities. At each site of a deployment plan, ExteNet works diligently to ensure that its wireless facilities comply with all applicable federal safety requirements.

ExteNet also wishes to ensure that the City has a full understanding of the recent developments in federal law intended to facilitate the current deployment of national wireless service through small cell and Fifth Generation (5G) wireless technology. In 2018, the Federal Communications Commission (“FCC”) issued a Report and Order that ensures local regulations and permitting of small wireless facilities do not impede the U.S.’s national interest in the deployment of 5G (“Small Cell Order”).<sup>1</sup> The Small Cell Order expressly forbids local regulations that “prohibit or effectively prohibit” the deployment of small wireless facilities.<sup>2</sup>

<sup>1</sup> *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket Nos. 17-79, 17-84, 33 FCC Rcd. 9088 (Sept. 26, 2018) (“Small Cell Order”) at para. 1.

<sup>2</sup> See *Small Cell Order*, at paras. 15, 37; 47 U.S.C. §§ 253(a); 332(c)(7)(B)(i)(II).

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Included within the category of effective prohibitions are restrictions on wireless facility deployments intended to improve existing service.<sup>3</sup>

### 1. Small Wireless Facilities and Proximity to Buildings

Among the proposed amendments, the Committee is considering a proximity requirement relative to small wireless facility antennas and adjacent buildings: no small cell antennas may be located “closer than 12 feet from the nearest window, deck, or other publicly-accessible area.”<sup>4</sup>

The proposed 12-foot minimum distance is likely to deprive many Malden residents in closely-settled residential areas of improved wireless service. As the Committee is well-aware, many areas in Malden have less than 10 feet of frontage between houses and public ways and utility poles. In those areas, the 12-foot minimum distance would likely serve as an effective prohibition on small cell wireless attachments. This would result in a lack of improved wireless service and a violation of federal law. The 12-foot minimum distance is also an arbitrary distance with no rational relationship to the FCC’s radio frequency (RF) safety standards.

Pursuant to FCC RF requirements, ExteNet prepares computer models of the RF emissions from each of its sites and certifies all sites compliance with the FCC’s national RF regulations. ExteNet understands that maintaining a physical perimeter around a building that is free of wireless facilities will allow homeowners and others the ability to conduct maintenance and construction around the structure. To that end, ExteNet’s proposed language includes a 6-foot general safety distance.

ExteNet proposes the following modifications to the proposed proximity requirement:

Small cell antennas cannot be mounted closer than 8 feet from the nearest window, deck, or other publicly-accessible area, unless the petitioner demonstrates that the proposed wireless facility will comply with the compliance distances set forth by the Federal Communications Commission (FCC); provided that no small cell antenna may be within a 6-foot general safety distance from the nearest window, deck or other publicly-accessible area.

The above language will ensure that no community or neighborhood will be disadvantaged and denied access to improved wireless service, and will comply with the FCC Small Cell Order. ExteNet’s recommended language also better recognizes the current state of small wireless technology. Small wireless facilities have directional antennas that significantly reduce exposure to residents living adjacent to these facilities, because the antennas are installed pointing away from residences and other structures, minimizing the RF exposure to residents inside the nearby structure.

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<sup>3</sup> ExteNet understands that the Committee considered a previously proposed amendment that would have banned 5G wireless facilities from all residential areas. A residential 5G ban would constitute a prohibition of service and would violate the Small Cell Order. 47 U.S.C. § 332(a) (“No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting” wireless service.”); *see Small Cell Order*, paras. 15, 37.

<sup>4</sup> Malden Rules and Ordinance Committee Agenda for March 9, 2021, at 2.



ExteNet strongly recommends that Committee enact ExteNet's proposed modifications to the proposed amendment's proximity requirement.

## 2. Node and RF Signs

The FCC regulates the coloring and types of signs that must appear on wireless facilities, based on the type of facility and its RF emissions. To ensure that Malden's small cell ordinance does not conflict with federal law, ExteNet proposes the following revisions to the proposed amendment concerning node and RF signage:

NOTICE AND NODE ID SIGNS: Utilize the smallest and lowest visibility radio frequency (RF) notification signs required by FCC regulations. For the Node ID sign, avoid the use of large and highly visible site (node) identification signs.

## 3. Tree Planting Fee

ExteNet strives to minimize the impacts from its wireless facilities on adjacent street trees. In addition, siting wireless facilities close to street trees is often counter to the goal of improving wireless service using small wireless facilities. In all cases, however, whether tree trimming is necessary to accommodate a wireless facility is subject to the electric utility's discretion. Therefore, there is no reasonable relationship between ExteNet's proposed location for a small wireless facility and a utility's tree trimming discretion.

The Small Cell Order requires that all local permitting fees are a "reasonable approximation" of the government's actual costs of administering wireless facility permits.<sup>5</sup> In contrast, the proposed street tree fee would apply to all small wireless facilities, including the sites that have no impact on street trees. The proposed fee is not related to the actual costs or impacts imposed by wireless facilities, and therefore would violate the Small Cell Order. ExteNet recommends that the Committee reject the proposed amendment's street tree provision.

ExteNet appreciates the Committee's consideration of these comments. Please do not hesitate to call with any questions or to further discuss ExteNet's recommendations.

Sincerely,



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Geoffrey G. Why  
*Attorney for ExteNet Systems, Inc.*

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<sup>5</sup> *Small Cell Order*, para. 50 (requiring that permitting fees "are a reasonable approximation of the state or local government's costs," among other criteria.).



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**617/548-1332 mobile**

March 8, 2021

**VIA EMAIL (EMAIL)**

The Honorable Members of the Malden City Council  
Malden City Hall  
215 Pleasant Street  
Malden, Massachusetts 02148

**Re: Proposed Municipal Code Amendment (the "Amendment") to Section 11.24.020 of the City of Malden Municipal Code (the "Code")**

Dear Councilor:

I am writing to provide information and context regarding the Amendment that was proposed at the Council meeting on February 16, 2021. The Amendment contains several changes to the Code governing small cell facilities. As explained in more detail below, the Amendment introduces several requirements that either (a) are prohibited by the federal Telecommunications Act of 1996 (the "Act") and the regulations of the Federal Communications Commission ("FCC"), or (b) should be rejected to reflect legal concerns related to the carriers' pole licenses and security issues. As a result, I recommend that the Amendment be revised as described in this letter.

**I. Summary of Amendment**

The Amendment proposes the following changes:

- A. In Section F, which governs dimensions and appearance requirements, add "Small Cell antennas cannot be mounted closer than 12 feet from the nearest window, deck, or other publicly-accessible area. In addition, while the antenna shape is akin to a rounded cone, these antennas are directional in nature with the signal primarily focused up and down streets, and not directly into the residence behind the pole."

- B. In Section L, which governs the contents of any small cell facility petition, add that the applicant is required to attach a notice of public meeting to the subject utility pole.
- C. Add language requiring a warning sticker on the small cell facility with specific dimensional and appearance requirements.
- D. Require that each applicant must pay either for a street tree or an “in-lieu fee” of no less than \$75 for each small cell facility.
- E. Require that all small cell facilities be posted to the City’s GIS system and accessible to the public.

I address each requirement below.

**II. The Proposed Language in Section F Prohibiting Small Cell Facilities Within 12 Feet of Certain Parts of Buildings and Small Cell Antennas Facing Residential Buildings Is Prohibited by the Act**

The language proposed in Section F of the Code that would prohibit small cell antennas from being closer than 12 feet from “the nearest window, deck, or other publicly-accessible area” is logistically too difficult to implement, creating a condition that would likely “materially inhibit” the deployment of small cell facilities. As you know, Section 253(a) of the Act states that no local government or ordinance may “prohibit or have the effect of prohibiting the ability of any entity to provide... telecommunications services” and Section 332(c)(7)(B)(i)(II) of the Act states that local government regulation “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” FCC’s Declaratory Ruling and Third Report and Order, FCC 18-133 (the “2018 FCC Order”) states that a local ordinance “will have the effect of prohibiting wireless telecommunications services if it material inhibits the provision of such services.” Requiring that carriers measure distances from all nearby windows, decks, and publicly accessible areas as part of their field work prior to submitting an application is such a material inhibition.

The utility poles available to carriers are already greatly limited by: the number of poles available in the search area; the topography around the poles that affect coverage; the buildings and trees that potentially block the small cell’s signal; the poles that the local utility company is willing to license; etc. Adding the determination of which architectural details fall under the Amendment’s language – Does a balcony count? If it is a small attic window, does that count? – is a logistical problem that materially inhibits carriers from providing telecommunications services by both (a) creating uncertainty in the pole selection process, and (b) further eliminating available poles from the small pool of poles still available after the applicant’s review and selection process.

This language also fails to draw a distinction between residential buildings and commercial buildings, where Councilors have not expressed similar concerns. For example, last year the Council approved a small cell facility by 490 Eastern Avenue that was approximately 8' from the warehouse there. Other municipalities have instituted a standard setback from any part of a residential building, which eliminates the uncertainty in this proposal. Carriers need only check whether the proposed small cell will be within a defined distance of a nearby residence, which is easier to administer. For example, the Waltham small cell ordinance prohibits a small cell facility from being installed within 4 feet of a residential building.

With regard to the language proposed in Section F that would prohibit carriers from directing their small cell antennas toward residential buildings, the FCC has identified this action as prohibited under the Act. The 2018 FCC Order specifically describes “increased in-building use of wireless services” as “necessitating deployment of small cells in order to ensure quality service to wireless callers within such buildings.” As such, municipal ordinances that prevent carriers from “improving service capabilities” inside residential buildings violate the Act because “an effective prohibition includes materially inhibiting additional services or improving existing services.”

This is an important protection for your constituents. Following national trends, more and more people in Malden are forgoing land line service to rely exclusively on wireless communications in their homes. Carriers need to be able to provide in-home wireless service to those people. Prohibiting small cells from providing that service hurts them and diminishes public safety as they may be unable to contact emergency services.

### **III. The Proposed Language in Section L that Would Require Applicants to Post a Notice of the Public Hearing Would Force Applicants to Impermissibly Exceed Their Pole Licenses**

When considering the requirement that applicants post notice of a public hearing on a subject pole, I recommend that the Council reject this requirement in light of the contractual obligations that carriers encounter regarding their pole installations. Carriers may not install equipment (including signage) that exceeds their pole licenses. Those licenses are limited to the small cell equipment, and the pole owners would likely object to applicants attaching notices to the poles as it exceeds their licensed premises and rights on the poles..

Even if an applicant were permitted by its license to install a notice on the subject utility pole, no applicant can effectively maintain notices on a pole. Every utility pole is in the public right of way, and applicants are not able to exercise control over any pole sufficient to ensure that a

passerby will not remove posted notices. The thousands of empty staples on any given utility pole are testament to the hundreds of notices and bulletins placed on a pole that were subsequently removed without the authorization of the poster. Moreover, pole owner employees routinely remove items posted on their poles.

Additionally, as a practical matter, there is no direct relationship between when an application is submitted to the City, the date of the meeting when the City Council refers the application to the Public Properties Committee (the "Committee"), and the date of the application's public hearing before the Committee. For example, the City received Verizon Wireless applications for small cell facilities on January 28, 2021, but the Council did not refer those applications to the Committee until its meeting on March 2, 2021, despite the Council holding two other meetings after submission. Additionally, it is not uncommon for applicants to learn on a Thursday or Friday that the Committee will hold a public hearing the following Tuesday. Due to these scheduling issues, applicants should not be required to post any notice more than 24-48 hours before a public hearing. Any additional notice time would create a material inhibition for carriers. They would not be able to satisfy the notice requirements of the Code and would therefore be prohibited from installing the small cell facilities required to improve service capabilities and address coverage and capacity gaps.

#### **IV. The Provision Requiring Warning Stickers on Small Cell Antennas is Pre-empted by Federal Law In Order to Protect Wireless Telecommunications Workers**

Municipalities are pre-empted from regulating the signage on small cell facilities by FCC regulations, which require signage in areas based on the FCC's emissions standards. Although pre-emption is a matter of constitutional law, in this situation, public safety *demand*s this pre-emption. If such FCC regulations were not pre-empted, there could be significant confusion among telecommunications professionals who rely on clear and uniform signage to know when they are in an area with higher than normal emissions levels so they can take appropriate precautions. As such, I recommend that the Amendment's language requiring particular signage at small cell locations be removed.

**V. The Amendment's Proposed Tree or "In-Lieu Fee" Requirement is Prohibited by the 2018 FCC Order**

The language in the Amendment that would require each applicant to plant a tree in the right-of-way or pay at least \$75 toward a tree for each approved small cell facility is prohibited by the 2018 FCC Order. It states:

Another type of restriction that imposes substantial burdens on providers, but does not meaningfully advance any recognized public-interest objective, is an explicit or implicit *quid pro quo* in which a municipality makes clear that it will approve a proposed deployment only on condition that the provider supply an "in-kind" service or benefit to the municipality... Such requirements impose costs, but rarely, if ever, yield benefits directly related to the deployment. Additionally, where such restrictions are not cost-based, they inherently have "the effect of prohibiting" service, and thus are preempted by Section 253(a).

Additionally, in the absence of a cost study supporting higher rates, the City's application fee is the highest permitted under the 2018 FCC Order – \$500.00 for an application with up to 5 small cells and \$100 for each small cell thereafter in the application – so charging an additional fee to petitioners is prohibited by federal law.

**VI. The GIS System Raises Important Security Concerns**

I do not recommend that the Council require that small cell facilities be added to the City's GIS. There are security concerns with making maps of locations of telecommunications network infrastructure widely accessible by the public. Verizon urges the City to reconsider this requirement.

**VII. Conclusion**

For the reasons explained above, I recommend that the City Council:

- 1) Reject the proposed 12-foot setback "from the nearest window, deck, or other publicly-accessible area" and the proposed language prohibiting small cell antennas that face residential buildings;
- 2) Reject the requirement that notices posted at a subject utility pole be required;
- 3) Reject the proposed signage requirement;
- 4) Reject the proposed language requiring an applicant to buy a tree or pay \$75; and

Usovicz  
March 8, 2021  
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- 5) Reject the requirement that locations of telecommunications network infrastructure be publicly identified in the City's GIS system.

Please let me know if you would like to discuss my recommendations in this letter. I am happy to be of service to the Council.

Very truly yours,

Stan Usovicz

cc: The Honorable Gary Christenson, Mayor