

Nicole Murati Ferrer
Chairperson

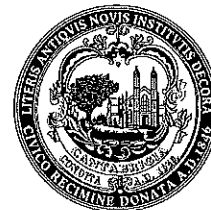
Stephen Lenkauskas
City Electrician

Terrence James Shea
Superintendent of Streets

CITY OF CAMBRIDGE

POLE AND CONDUIT COMMISSION

831 Massachusetts Avenue, Cambridge, Massachusetts 02139



Elizabeth Y. Lint
Executive Director of
License Commission

POLE AND CONDUIT COMMISSION'S MEETING MINUTES Thursday, October 17, 2019, 10:00 a.m.

Michael J. Lombardi Building
831 Massachusetts Avenue
Carmelia M. Vicente Conference Room (Basement Level)
Cambridge, Massachusetts

Meeting Started at approximately 10:02 a.m.

Commission Members Present (All Present): Nicole Murati Ferrer, Stephen Lenkauskas, and Terrence James Shea.

License Commission Staff Present: Elizabeth Y. Lint.

Noticed Matters:

- 1) Discussion of City of Cambridge Pole and Conduit Commission's Policy Regarding Small Cell Wireless Installations on Public Ways ("Small Cell Policy"), including but not limited to:
 - (a) Small Cell Policy in its current form (attached as Exhibit 1(a), 10 pages);
 - (b) Proposed and amended Small Cell Policy (attached as Exhibit 1(b), 24 pages); and
 - (c) Comments/proposed amendments submitted by the public after October 1, 2019 up to the date of posting of the agenda (attached as Exhibit 1(c), 41 pages).

Present: Paula Foley on behalf of Verizon; Joe Shannon, Crown Castle; Haran Rashes, ExteNet; Edmund Donnelly, AT&T; and Eric Hill, City of Cambridge Historical Commission.

Documents Considered: All Exhibits.

Summary: The meeting was held as a roundtable. The Commission discussed the contents of Exhibit 1(c) in the order received – Verizon, Crown Castle, ExteNet and AT&T. The entire substance of the comments was not discussed just the items on which the Commission needed more information or clarification. Each person was encouraged to provide input regardless of which company's comments were being discussed.

An issue was raised as to the characterization of the \$270.00 annual fee as a "recertification and public way fee." Per state law, a fee is allowed, but not for the use of the public way, unless it is cost based. The \$270.00 fee is reasonable, under FCC regulations. The pole would be the same for both privately owned and city poles.

Verizon, and others agreed, with the recommendation of adding a waiver provision to provide the Commission more flexibility in certain situations and will be reviewed further.

Technical review and approval requirements: Pursuant to the law and FCC regulations, the Commission can ask why a particular location of small cell installations is selected but cannot deny the application based on the response. It is hard to demonstrate the need for the selection, i.e. coverage vs. capacity. The FCC states it is the carrier's belief of what is needed what is relevant and controlling. The policy's mandate that this be established by a professional is inappropriate.

It is improbable that companies will seek an attachment just for the sake of it or for monopolizing an area since it is very costly for a company to do so. Sometimes the applicant does not even get a clear answer from its client/carrier as to why they want to attach to a particular location. Coverage justification is irrelevant; if there is already a pole, they want to use it so as not to have to go on the next one down.

The common project provision as well as the "inform other providers prior to submitting an application" raises anti-trust issues. AT&T cannot ask Verizon to join them in a project. Once a node is installed, the "neutral host provider" (Extenet and Crown Castle), can ask another company to join in if there is space. This comes under 6409. The designs change on almost a weekly basis. The concept of a common project is difficult because they do not know what the need will be down the road.

Antenna dimensions and pole height: All companies raised an issue with the provisions and dimensions. All recommended adopting the FCC standards, which are volumetric. Clarification is being sought as the height of the poles varies. The highest city owned pole is 30 feet. The policy would basically make it impossible for any installations. It was suggested any dimensional restrictions are not appropriate pursuant to FCC regulations.

All companies expressed the need to see the "License Agreement." Questions were raised as to whether the License Agreement would trigger the shot clock or create violations of the shot clock. Questions were raised as to who would have the authority to issue/execute the agreements. There needs to be clarification whether the License Agreement is only as to installations on City-owned poles. Also, will the agreement be location specific or company specific. It was suggested the agreement be a standard agreement between the City and the company and each location be listed on an amendable appendix.

Location and siting standards: Most of the city does not have 15' feet between the curb and the pole. There needs to be clarification as to whether this is meant for newly installed poles or current poles or both. If it includes current poles, no installations will be possible. Also is the 15 feet from the intersection or the edge of the curb. There was a suggestion that if the dimension remains that it would be only applicable for new installations.

Procedural Requirements: The certified mail proposal is too cumbersome, burdensome, onerous, costly and inefficient. Certified mail not always deliverable and takes a long time. The companies also raised legal issues with the notification to other providers prior to the application being filed. There needs to be a way to ensure colocation efforts are made. It was suggested that after filing of the application, the applicant would contact all existing or applied for (pending projects) sites within 500 feet of the proposed site. There would still be a need for proof of service to the other providers, and also there is an issue as to whether the applicant would have knowledge of pending applications.

The companies understood the Commission's intent to have co-location but questioned whether the policy requirement as written raises anti-trust and colluding issues. The other challenged raised was that a company may not have a reason to be at a particular location when a company first applies but it may months down the line.

Questions were raised that if the language regarding notice by constable, whether that was an alternative or whether it was required if the certified mail was returned as undeliverable. If the latter all companies raised legal challenges and practical issues regarding this provision. A suggestion was made that first-class mail should be used for all notices required by the policy and if the Commission wanted a "certification" other than an affidavit from the applicant attesting to it, then it could require a Certificate of Mail from the Post Office. An issue as to large condominiums and the mailings to each owner versus the condo association was discussed.

Deeming an application denied or withdrawn after 30 days is an issue. The recommendation is to make it 45 or 60 days, unless applicant notifies Commission that they want to extend time. FCC deems application automatically tolled if incomplete. There is also an issue with deeming an application withdrawn when there is no requirement for the applicant to complete it or "restart" the shot clock within any period of time.

Definitions: There should be a section of definitions. If there are any terms that have been identified for clarification, or if there are others, they should be clarified.

Tolling Agreement: The companies were torn as to the Tolling Agreement. AT&T argued the set timelines were too broad and long. ExteNet asked for a more malleable agreement that would provide the companies the ability to toll an application for more than the days on the proposed agreement. It was suggested the Tolling Agreement could be made more malleable by keeping the deadlines on the proposed one as the "minimum amount" and insert a line for more days to be identified as the extension. There is no sense in tolling for just one month since most of the times the defect in the application cannot be completed within one month.

Grounds for Denying an Application: The term "safety concerns" is vague and could lead to discriminatory evaluating standards. For example, as written there is the potential to have an application denied because the bracket is not acceptable, when in fact it is being denied because the Commission decides there is "a more convenient location." An affidavit from license professional stating this is the best available location and the structure will hold it should suffice.

Emissions: The policy, as written, confused some as it appeared the Commission was attempting to regulate emissions. The policy should be clarified so that it is clear the intent is to have a certification from the applicant that says the installation complies with the FCC emission standards.

Future Development: The notice of 600 days to a company to relocate its current small cell policy because of the City's need to develop an area is too small. Notice of 180 days would be more appropriate but still tight as there is engineering involved and it may be done but will take time to find a location and then have it approved. There was also an issue raised with making the companies reapply and pay to relocate based on the City's request to have a small cell move because of the City's needs.

The Historical Commission presented that there are only 2 Historical Districts in the City of Cambridge and that it would only review applications for installations in those areas only. The Historical

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Commission only reviews for design and appropriateness, and thereafter if they approve issue a Certificate of Appropriateness. Most reviews are administrative and take at least 5 weeks. The requests for the certificate are done online. The companies all argued that these type of "pre-approvals" and "pre-requisites" trigger the shot clock.

Color: clarify the policy to state that the color on a pole will be matched as close as possible as it is impracticable and impossible to sometimes match the color.

There was a question as to when an application is denied when the denial becomes effective. More clarification was requested to show that the Commission's intent is to make the denial the date that the Chair's decision is served upon the applicant. The companies just want clarification so that the appeal timeline is clear.

Insurance: Proof of self-insurance should be enough. A company can present alternative forms of proof that their self-insurance would comply with the amounts currently in the policy.

Traffic Signal Poles: It was unclear as to why these were excluded from a structure on which attachments are possible. There was a question as to whether it was valid to exclude them with no apparent reason. It was also suggested the FCC regulation may not allow the Commission to exclude these.

150' feet radius: There was a suggestion as with the other dimension standards to review this and expand upon it. If it is kept as the distance standard it was suggested a clause should be placed to waive this for installations within intersections.

6409- Eligible Facilities request: this is not contemplated in the policy and it should be. A request was made for the Commission to approve these administratively as the FCC does not provide the Commission the authority to deny them so long as they comply with the dimensions set forth by the FCC.

A suggestion was made that the policy does not contemplate growth and change in the field. For example, within a year or so there will be deployment of 5G technology which will look very different. It is anticipated there will be a 3-panel antenna, which could possibly be smaller. However, a new 5G deployment may not be co-located, so there may have to be flexibility. There will be an integrated radio and there may not be a shroud.

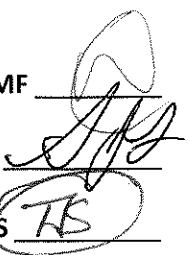
Decision: Taken under advisement. The Commission did not adopt the revised version of the policy or vote on any of the suggestions made. The Commission will seek the advice of legal counsel as to the legal challenges raised and any changes the Commission seeks to make or implement based on the comments submitted and the testimony provided. The Commission asked and encouraged the companies not to file any small applications until after 10/31/19 when it intended to put up for vote any changes to the policy. The revised policy would be posted with the 10/31/19 agenda. The Commission's intent is to also share the license agreement together with any revisions.

Commission's Approval of Minutes:

NMF

SL

TJS



Handwritten signatures for NMF, SL, and TJS. The signature for NMF is a large, stylized 'NMF'. The signature for SL is a stylized 'SL'. The signature for TJS is a stylized 'TJS' with a circle around the 'T'.

Date Minutes Approved:

OCT 31 2019

Date Approved Minutes Posted:

OCT 31 2019