extenet SYSTEMS

Mobile Connectivity Everywhere

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May 29, 2019

Via Electronic and First-Class Mail
To: license@cambridgema.gov

Elizabeth Y. Lint
Executive Director
Cambridge Pole and License Commission
831 Massachusetts Ave., 1st Floor
Cambridge, MA 02139

Re: Draft Policy on Small Cell Attachments in the Public Way
Comments and Suggestions of ExteNet Systems, Inc.

Dear Ms Lint:

Attached, for filing and consideration, please find a copy of the Comments and Suggestions of ExteNet Systems, Inc. on the City of Cambridge Pole and License Commission's ("Commission") Draft Policy on Small Cell Attachments in the Public Way ("Draft Policy"), along with Proof of Service upon interested parties. I look forward to the opportunity to discuss this Draft Policy with the Commission at the June 10, 2019 Public Meeting in this matter.

I would appreciate if you would please send me copies of any other comments that are filed with the Commission regarding the Draft Policy. If you have any questions in this matter, I would be happy to discuss them. I can be reached at (734) 660-9283 or via e-mail at [hrashes@extenetsystems.com].

Very truly yours,

Haran C. Rashes

Attachment
cc: Parties on Service List (via Electronic Mail Only)
Nicole Murati Ferrer, Chairperson
Nancy Glowa, City Solicitor
Michael Hill, ExteNet
Stephen Lenkauskas, City Electrician
Linda Rooney, ExteNet
Terrance James Shea, Superintendent of Street
Tamara Slade, ExteNet
Larry Washington, ExteNet

STATE OF MASSACHUSETTS
CITY OF CAMBRIDGE
CAMBRIDGE LICENSE COMMISSION

BEFORE THE POLE AND CONDUIT COMMISSION

In Re: Draft Policy on Small Cell Attachments in the Public Way	)) /

INITIAL COMMENTS OF
EXTENET SYSTEMS, INC.

ExteNet Systems, Inc. ("ExteNet"), pursuant to the City of Cambridge ("City"), Cambridge License Commission, Pole and Conduit Commission ("Commission") May 17, 2019 Notice of Vote ("Notice"), as amended on May 20, 2019, and the schedule established therein, hereby respectfully submits the following comments and suggestions regarding the Draft Policy on Small Cell Attachments in the Public Way ("Draft Policy").

I. INTRODUCTION

In 1996, Congress enacted the Telecommunications Act of 1996, No. 104-104, 110 Stat. 56 (1996), which amended the Communications Act of 1934, codified in 47 U.S.C. §151 et seq. (hereinafter, the "Act") as a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans . . . ." Congress has declared that there is a need for wireless communication services, including "personal wireless services," as set forth in the Act, and the rules, regulations and orders of the Federal Communications Commission ("FCC") promulgated pursuant thereto. In order to foster its pro-competitive, deregulatory national policy, Congress included provisions in the Act that encourage competition by restricting the regulation

of the placement of personal wireless service facilities by State and local governments and instrumentalities thereof.

Section 332(c)(7) of the Act, 47 U.S.C. § 332(c)(7), imposes substantive and procedural limitations on State and local governments and instrumentalities thereof to ensure that the Act's pro-competitive goals are not frustrated and it expressly preempts any action or inaction by State or local governments or their agents that effectively prohibits the provision of wireless services. At the same time, Section 332(c)(7) of the Act strikes a balance between "preserve[ing] the traditional authority of state and local governments to regulate the location, construction, and modification of wireless communications facilities like cell phone towers" and "reduc[ing] . . . the impediments imposed by local governments upon the installation of facilities for wireless communications."

While Section 332(c)(7)(A) of the Act preserves "the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities," that authority is subject to significant limitations – including Section 332(c)(7)(B)(i) which states,

> The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—
>
> (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
>
> (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

On September 26, 2018, the FCC issued a Declaratory Ruling and Third Report and Order[1] to clarify the applicability of 332(c)(7)(B)(i) to municipal standards and policies regarding installation of small wireless facilities, as such are defined in 47 C.F.R. § 1.1312(e)(2). The FCC noted that among the purposes of the *Third Report and Order* was to:

- "clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 [of the Act] when it comes to the Small Wireless Facilities at issue." ¶11;
- "address[] state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332." ¶12 and,
- "address[] the 'shot clocks" the "shot clocks" governing the review of wireless infrastructure deployments," and "create a new set of shot clocks tailored to support the deployment of Small Wireless Facilities." ¶13.

In light of the *Third Report and Order,* the City Council's Transportation & Public Utilities Committee, in conjunction with the Commission, held a special meeting on November 8, 2018, the purpose of which was "to discuss the Federal Communications Commission's new policy on regulating small cell technology." The result of that Meeting was direction from the Committee "That the City Manager be and hereby is requested to instruct the City Solicitor to review the FCC Regulations on Small Cell Technology and report back to the City Council by early January."[2] The City Council has been awaiting issuance of such report since.[3]

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[1] *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT 17-29, WC 17-84, FCC 18-133, Sept. 26, 2018. ("*Third Report and Order*").

[2] *Minutes,* Transportation & Public Utilities Committee meeting, held Nov 8, 2018, ¶7.

[3] 18-137. Report on reviewing the FCC Regulations on Small Cell Technology. Vice Mayor Devereux (O-18) from 12/3/2018. *See*, *Minutes,* City Council, most recently, May 20, 2019

The FCC urged municipalities to adopt aesthetics standards, such as the Draft Policy within 180 days after the publication of the *Third Report and Order* in the Federal Register:

> We appreciate that at least some localities will require some time to establish and publish aesthetics standards that are consistent with this Declaratory Ruling. Based on our review and evaluation of commenters' concerns, we anticipate that such publication should take no longer than 180 days after publication of this decision in the Federal Register.[4]

The Third Report and Order was published in the Federal Register on October 15, 2018[5] and became effective on January 14, 2019. April 13, 2019 was the 180th day after publication.

The FCC specifically directed that

> to establish that [such policies] are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—i.e., they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance. "Secret" rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.[6]

On May 15, 2019, the Commission issued an Agenda for a Meeting on May 16, 2019 and for the first time introduced the Draft Policy. At the May 16 Commission Meeting, "[a]fter taking some public comment on the Draft Policy, the Commission found it needed additional time to consider the Draft Policy to determine whether it needed to make more edits to it, and additional

[4] *Third Report and Order* at ¶ 89.

[5] 83 Fed. Reg. 51,867 (2018).

[6] *Third Report and Order* at ¶ 88.

time to receive written and verbal comments as to the Draft Policy from utilities and any interested party."[7]

Below, ExteNet provides the following comments and suggestions regarding the Draft Policy and respectfully requests that this Honorable Commission adopt these changes. Proposed changes, which are in the best interest of the City of Cambridge and are fair and reasonable for Wireless Providers such as ExteNet to comply with, are reflected in the attached redline copy of the Draft Policy ("Redline") incorporating ExteNet's suggestions.

II. EXTENET'S INTEREST IN THIS PROCEEDING

ExteNet has a vital interest in the Draft Policy because ExteNet designs, builds, owns, manages & operates distributed network and small wireless systems which help meet the growing demand for improved mobile and wireless broadband coverage and capacity in key strategic markets across the United States – including the City of Cambridge. ExteNet's small wireless systems bring wireless network elements such as low-powered wireless antennas and access points closer to the user to ensure ubiquitous and high-capacity wireless broadband connectivity.

ExteNet owns and operates multi-carrier -- often referred to as "neutral-host" -- and multi-technology distributed network systems to ensure multiple wireless service providers can provide their 3G and 4G LTE and 5G services in the most effective and efficient manner. Utilizing our neutral host facilities, ExteNet also provides licensed and/or unlicensed spectrum to the general public on a nondiscriminatory basis. ExteNet, through its predecessor in interest, ClearLinx Network Corporation, is registered with the Massachusetts Department of Telecommunications and Cable to provide intrastate telecommunications services in Massachusetts.

[7] *See,* Notice.

In Cambridge, ExteNet currently has six (6) pending applications for installation of small cell facilities in the public rights-of-way:

- 57 Gorham Street - Attach small cell antenna shroud just above top of the pole; attach radio shroud approximately 13.5' above the ground and connect to existing power supply. Third party vendor to bring fiber to the pole. VP 25038;

- 1341 Massachusetts Avenue - Installation of a small cell wireless facility on a replacement city street light pole, including an antenna in a cylindrical shroud at the top of the pole, three radios in a shroud enclosure 12' above the ground. The replacement structure is designed to accommodate existing attachments and the proposed small cell facility. Electric service will be provided from the nearest electric manhole via underground handhole. Fiber optic cable will be provided from the nearest telecom manhole via a new handhole. VP 43891 (April 3, 2019 Application);

- 1341 Massachusetts Avenue - Installation of a small cell wireless facility on a replacement city street light pole, including an antenna at the top of the pole, and one radio in a shroud 12' above the ground. The replacement structure is designed to accommodate existing attachments and the proposed small cell facility. Electric service will be provided from the nearest electric manhole via underground handhole. Fiber optic cable will be provided from the nearest manhole via a new handhole. VP 43925 (April 4, 2019 Application);

- Right-of-way adjacent to 1607-1611 Massachusetts Avenue - Installation of a small cell wireless facility on a replacement city street light pole, including an antenna in a cylindrical shroud at the top of the pole and three radios in a shroud 12' above the ground. The replacement structure is designed to accommodate existing attachments and the proposed small cell facility. Electric service will be provided from the nearest electric manhole via underground handhole. Fiber optic cable will be provided from the nearest telecom manhole via a new handhole. VP 43971 (April 4, 2019 Application);

- 1651 Massachusetts Avenue - Installation of a small cell wireless facility on a replacement city street light pole, including an antenna in a cylindrical shroud at the top of the pole and three radios in a shroud 12' above the ground. The replacement structure is designed to accommodate existing attachments and the proposed small cell facility. Electric service will be provided from the nearest electric manhole via underground handhole. Fiber optic cable will be provided from the nearest telecom manhole via a new handhole. VP 43979 (April 4, 2019 Application); and,

- Right-of-way adjacent to 1972 Massachusetts Avenue - Installation of a small cell wireless facility on a replacement city street light pole, including an antenna in a cylindrical shroud at the top of the pole and three radios in a shroud enclosure 12' above the ground. The replacement structure is designed to accommodate existing

> attachments and the proposed small cell facility. Electric service will be provided from the nearest electric manhole via underground handhole. Fiber optic cable will be provided from the nearest telecom manhole via a new handhole. VP 43999 (April 4, 2019 Application);

ExteNet believes that the above applications should not be subject to the Draft Policy if such is adopted after the applications were proffered. However, ExteNet also anticipates that, based on customer demand, it will have additional small cell opportunities within the City of Cambridge in the near future, which will be subject to the Draft Policy if such is approved by the City Council.

III. COMMENTS AND SUGGESTIONS

ExteNet respectfully makes the following comments and suggestions regarding the Draft Policy and respectfully requests that this Honorable Commission adopt these changes. In many cases, ExteNet has attempted to modify language from the Draft Policy to comply with FCC rules, regulations, and Federal law, while making assumptions as to the Commission's intent in drafting such language and maintaining such intent.

A. Preamble

The preamble to the Draft Policy appears to be incomplete. It presently reads:

> The City of Cambridge ("City") Pole and Conduit Commission ("Commission") hereby adopts this policy ("Policy") regarding Applications ("Application") relating to installations of small cell wireless communications equipment and related infrastructure upon City-owned poles or other City-owned property on ("Installations").

The Preamble should state exactly what this policy applies to. Assuming that the Commission intends for such Draft Policy to apply to all small cell wireless communications equipment installed in the public rights-of-way under control of the City, the preamble should state so. All installations in the public rights-of-way should include installations upon both investor owned utility poles and City owned infrastructure. Proposed language for such would be:

> The City of Cambridge ("City") Pole and Conduit Commission ("Commission") hereby adopts this policy ("Policy") regarding Applications ("Application") relating to installations of small cell wireless communications equipment and related infrastructure in the public rights-of-way under control of the City ("Installations").

B. Definitions

The Draft policy does not contain any definitions. The lack of such makes various aspects of the Draft Policy ambiguous and open to discussion. ExteNet proposes the addition of a Definitions Section and has included proposed definitions in its Redline. Just as an example, throughout the Draft Policy it is not clear what is meant by a pole – is it an existing pole, a replacement pole, a new pole, or new facility? Definitions will add clarity to the Policy upon adoption.

C. Application Process

1. Rates and Fees

ExteNet is pleased to see that the Application fees and rates conform to the fees that the FCC presumes "would not be prohibited by Section 253 or Section 332(c)(7)" of the Act. *Third Report and Order,* ¶ 79. Any fees charged are required to be "(1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory." Because the fees are presumed to be a reasonable approximation of costs, they are expected to cover the City's aggregate costs. Obviously, some Applications will cost the City considerably less than the prescribed to process and some Applications will cost the City more. In the end the application fee, in the aggregate, should cover the cost of processing all applications. ExteNet questions how the policy can include language that states that "[i]n the event the City's costs in reviewing any Application exceed the amounts prescribed in this section, Applicants shall be responsible for

those costs,"[8] without illegally discriminating against simple Applications which take considerably less time and expense than the City budgets. This line should be removed from the Draft Policy.

2. Siting Policy

The Draft Policy refers to the "'Siting Policy' of the Commission."[9] An examination of the City of Cambridge Website[10] and the Licensing Commission Documents Page could not locate any such Siting Policy. The FCC was clear that any policies "must be objective—*i.e.*, they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance. 'Secret' rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm.

3. Other Wireless Providers

ExteNet agrees, in principle, that municipalities should encourage collocation of wireless service facilities on the same utility pole. In fact, as a "neutral-host" provider, ExteNet would prefer to build facilities and then lease those facilities to multiple carriers. However, the language proposed in the Draft Policy is too restrictive and impractical.

Wireless service providers — carriers such as Verizon Wireless, AT&T, Sprint, and T-Mobile — pay ExteNet to build and use ExteNet's small cell wireless facilities to assist the carriers in providing wireless telecommunications services to retail consumers. In almost all cases, ExteNet first enters into a contractual relationship with one of the carriers to build a specific

[8] Draft Policy at I.A.

[9] Draft Policy at I.B.

[10] https://www.cambridgema.gov.

installation. The carriers are competitors of each other and are, by competitive nature, adversarial to each other.

The Draft Policy's requirement that competitors be notified *before* the Application is filed is rife with competitive and legal issues.[11]

Federal Anti-trust law, and specifically the Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1 to 7, outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." In particular these include arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids. Such acts are "per se" violations of the Sherman Act; in other words, no defense or justification is allowed. If a wireless provider complied with the Draft Policy and an allegation were made that such compliance was in violation of antitrust laws, would the city indemnify the carriers complying with the Draft Policy? ExteNet does not believe the City would do so.

The Draft Policy, as written, gives competing providers opportunities to competitively undermine an Applicant.. If a competing provider were to be contacted by a prospective applicant, prior to the filing of an Application by a prospective applicant, and rather than comply with the Draft Policy, were to immediately file their own Application without the coordination required by the Draft Policy, it could cause legal and other problems for all Wireless Providers and the City. Assuming the Commission would deny such an Application, as not compliant with the Draft Policy, a Court could overturn such and, in all likelihood, would rule that the second party, which *proffered*, the application first was the rightful party to be allowed at that location.

[11] Draft Policy at I.C.

As an alternative, ExteNet proposes the following language which would accomplish what it believes are the City's goals in the original proposed language:

> The Commission highly encourages multiple wireless carriers to collocate their wireless communications equipment and related infrastructure on a utility pole or wireless support structure already in use for such purposes. Any application for such collocation will be considered by the Commission on an expedited basis.

4. Mailing of Notice

The Draft Policy requires that certified mail receipts "evidencing that notice has been made by certified mail, return receipt requested" be submitted with the Application.[12] This is not practical. While ExteNet does not disagree with the requirement that interested parties be served by certified mail, such service should be contemporaneous with the proffer of the Application to the Commission.

In the *Third Report and Order*, the FCC stated that "[w]e also find that mandatory pre-application procedures and requirements do not toll the shot clocks. . . . Much like a requirement to file applications one after another, requiring pre-application review would allow for a complete circumvention of the shot clocks by significantly delaying their start date. An application is not ruled on within "a reasonable period of time after the request is duly filed" if the state or locality takes the full ordinary review period after having delayed the filing in the first instance due to required pre-application review." ¶ 145. Because it can take weeks for "certified mail receipts" to be returned to the Applicant, such would impermissibly delay the start of the FCC mandated "shot clock." In addition, if a certified mail receipt is not returned, the Draft Policy includes an additional

[12] Draft Policy at I.D.

delaying step of requiring "proof of service by constable." The Draft Policy requirements for service far exceed that of Section 11 of Massachusetts General Laws, Chapter 40a.[13]

ExteNet proposes that Applicants be required to submit an affidavit stating that notice has been mailed by certified mail, return receipt requested, and be prepared to present the "certified mail receipts" at the required public hearing in the matter. In addition, the Commission can require publication of a notice of the Application in a newspaper of general circulation in the city within seven days of proffering the Application. Such a requirement is reflected in the attached Redline.

5. Completeness of Applications

The Draft Policy leaves a determination of completeness to the Chair of the Commission[14] and states that "if an application remains incomplete thirty (30) days after its submission, such application shall be deemed withdrawn without prejudice, and will need to be resubmitted in full, including payment of fees accompanying a new application."[15]

The FCC specifically promulgated rules regarding shot clocks and application submissions in the *Third Report and Order.* The FCC stated that "the shot clock begins to run when the application is proffered. In other words, the request is 'duly filed' at that time, notwithstanding the locality's refusal to accept it." This means that the Commissioner cannot refuse to accept the Application. Further the Draft Policy's language for acceptance and completeness does not comply with the Federal Rules stated in 47 C.F.R. § 1.6003(d):

> (d) Tolling period. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth below.

[13] MASS. GEN. LAWS ch. 40A, § 11.

[14] Draft Policy at I.G.

[15] Draft Policy at I/F.

(1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from –

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(2)(i) is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or paragraph (d)(2) of this section, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(3)(i) is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to

> the siting authority's request under paragraph (d)(1) or paragraph (d)(2) of this section.

The proposed language in the Draft Policy that "[i]n the event an application remains incomplete thirty (30) days after its submission, such application shall be deemed withdrawn without prejudice, and will need to be resubmitted in full, including payment of fees accompanying a new application,"[16] is not supported by law and is not feasible. There are many circumstances where an Applicant must make changes to an Application package to meet requirements of the City that take more than thirty days – for example new technical drawings, photo-simulations, and renderings. If an Application is deemed incomplete, it should remain so until made whole. Because the Commission has stated that they will give notice of incompleteness within 10 days, under 47 C.F.R. § 1.6003(d), the FCC "shot clock" will not start and there will be no prejudice to the City if an Application remains incomplete.

ExteNet proposes changing the Draft Policy to comply with Federal Law as reflected on the attached redline.

6. Notice of Hearing

The Draft Policy states that the "Commission Chair will schedule and convene a public hearing of the Commission to consider the Application" and requires the "Applicant [to] notify all Abutters and Other Providers, as applicable, of the hearing date within one business day after such hearing date is scheduled, and failure to notify all Abutters Other Providers, as applicable, may result in denial of the Application."[17] While it is reasonable to require the Applicant to notify interested persons of the hearing, it is not practical to require such to be accomplished within one business day of scheduling the hearing. ExteNet proposes that the Commission Chair be required

[16] Draft Policy at I.F.

[17] Draft Policy at I.G.

to notify the Applicant no less than fourteen (14) days prior to the scheduled hearing and that the Applicant be required to notify interested persons, by mail, no less than seven (7) days prior to the scheduled hearing. Seven (7) days' notice is consistent with that required under Massachusetts law for approval of electric transmission lines.

> A public hearing shall be held on the petition, and written notice of the time and place of the hearing shall be mailed at least seven days prior thereto by the clerk of the city or by the selectmen of the town to all owners of real estate abutting upon that part of the way upon, along, across or under which the line is to be constructed, as such ownership is determined by the last preceding assessment for taxation.[18]

Further, a requirement to notify "other providers" is vague and unenforceable. Applicants cannot possibly know who other providers are nor who is the proper person at such companies to notify. ExteNet's proposed changes in this regard are reflected in the attached Redline.

7. Coordinated Applications

The Draft Policy states:

> If there are any Other Providers who wish to utilize the same location or structure as described in the Application, then the Application(s) shall together be considered a common project ("Common Project"), and in the Common Project the first Applicant shall be the "Lead Provider" and shall coordinate the Applications, filings and responses of all Applications of Other Providers for the subject location involved in the Common Project, consistent with Section 7 of the Siting Policy.[19]

As stated above, coordination among providers can be competitively problematic and possibly illegal. Further, this section of the Draft Policy could cause significant delays, beyond that allowed under the FCC Shot Clock as codified in 47 C.F.R. §1.6003 if a provider seeks to join in an

[18] MASS. GEN. LAWS ch. 166, § 22.

[19] Draft Policy at I.H.

application but does not have their plans and application materials finalized at the time the initial Application is made. This section should be eliminated.

8. Changes to Applications

The Draft Policy states:

> In the event that there are any material changes to an Application, or if the Application is amended, as determined by the Commission Chair in his or her sole discretion, any of these events shall constitute a new Application, for the purposes of the time standards set forth above in Section I(H).[20]

This language discourages modification and amendment to Applications that are made after consultation with the Commission and constituents. The Commission should be encouraging Applicants to work with the Commission to modify and tweak Applications as necessary. Further placing the determination as to what is an amendment or material change solely in the determination of the Commission Chair could lead to discrimination and other appealable issues that could be avoided by eliminating this section.

9. Grounds for Denial of an Application

The FCC, in the Third Report and Order stated that

> in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—*i.e.*, they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance. "Secret" rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.[21]

[20] Draft Policy at I.I

[21] *Third Report and Order* at ¶ 88.

The Commission in adopting any policy such as the Draft Policy must be objective, and incorporate clearly-defined and ascertainable standards, applied in a principled manner. Section I.K of the Draft Policy, which states the criteria under which the Commission may deny an Application, fails to do that in several regards.

ExteNet understands the need for the Commission to protect the residents of the City from harm. However, the phrase "safety concerns or reliability concerns" is impermissibly vague. ExteNet proposes the following change to Section I.K.ii – demonstratable safety issues (the Commission notes that it is prohibited by law from considering the environmental effects of radio frequency emissions to the extent that the proposed installation will comply with FCC regulations concerning such emissions.)

The possible denial of a petition based on a "failure to meet the Commission's design standards" does not recognize that such design standards may not be technically feasible in all circumstances. The FCC stated that "aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are permissible."[22] The Commission's policy should recognize such.

The Draft Policy also states that a possible criterion for denial of an Application is that "there are more convenient locations such that the location applied for is not needed as determined by the Commission."[23] Not only does such proposed language not specify what is meant by a "more convenient location" but the proposed language also does not recognize that neither the Commission nor the City are permitted to "design" an applicant's network for them. The FCC in

[22] *Third Report and Order* at ¶ 87.

[23] Draft Policy at I.K.v.

a footnote in the Third Report and Order stated, "aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment."[24] ExteNet doubts that such a requirement is placed on the local investor owned utility, the incumbent local exchange carrier, or the franchised cable company when they seek to place equipment on utility poles. As implied in 47 U.S.C. § 332(c)(3)(A) and in *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 989 (7th Cir. 2000), "local jurisdictions do not have the authority to require that providers offer certain types or levels of service, or to dictate the design of a provider's network" if the network otherwise complies with the law.[25] The FCC addressed this in the *Third Report and Order*, noting that "there may well be legitimate reasons for states and localities to deny particular placement applications, and adjudication of whether such decisions amount to an effective prohibition must be resolved on a case-by-case basis."[26] However, where such is "not needed as determined by the Commission" would be an impermissible effective prohibition as it would be a "local legal requirement that materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service."[27] The FCC continued to point out that

> Under the California Payphone standard, a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an 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. Thus, an effective prohibition

[24] *Third Report and Order* at ¶ 88, n. 247.

[25] *Third Report and Order* at ¶ 37, n. 84.

[26] *Third Report and Order* at ¶ 73, n 217.

[27] *Third Report and Order* at ¶ 37.

> includes materially inhibiting additional services or improving existing services.[28]

Because "local jurisdictions do not have the authority to require that providers offer certain types or levels or service, or to dictate the design of a provider's network."[29] This criterion should be eliminated from the Draft Policy.

D. Content of Applications

1. Coverage Area Radius

The Draft Policy requires that Applicants specify the "typical coverage area radius"[30] of equipment. Because these are small cells, coverage area of the equipment is entirely dependent on the surrounding topology and buildings. In addition, other temporary factors, i.e.; traffic and weather, can also impact such. This requirement is appropriate for macro towers and may be a legacy entry from a macro tower policy the city examined.

2. Call Capacity of Equipment

The Draft Policy seeks the following information:

> vii. Call capacity of equipment, including:
> 1. Total RRUs
> 2. Max bandwidth per RRU
> 3. Multiple In and Multiple Out per RRU
> 4. Backhaul rate per RRU[31]

Call Capacity of equipment is dependent on many factors. Wireless Service Providers consider the factors they use to estimate such to be highly confidential and proprietary. In addition, call capacity is not necessarily consistently measurable, as such is variable based on environmental

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[28] *Id.*

[29] *Third Report and Order* at ¶ 37, n. 84.

[30] Draft Policy at II.D.vi.6.

[31] Draft Policy at II.D.vii.

factors and the type of usage the small cell is incurring from time to time (i.e., voice or data). The FCC *Third Report and Order* specifically rejects the ability of municipalities to examine and rely on a "gap in coverage" test for whether or not a new small cell facility was justified. The proposed language in the Draft Policy at II.D.vii can only be designed to measure whether or not there is a gap in coverage and is thus inappropriate and impermissible for such a policy.

One of standards accepted by the FCC for whether a standard is impermissibly illegal is if it "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment in the market"[32] In the *Third Report and Order*, the FCC clarified

> that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities. Under the *California Payphone* standard, a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an 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. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.

Because this information is proprietary, confidential, and the basis for how the proposed installation will either fill a gap in coverage, densify a network, and or improve network capabilities, it should be irrelevant to the Commission's determination and should be removed from the Draft Policy.

[32] *California Payphone Ass'n*, 12 FCC Rcd 14191, 14210,¶ 31 (1997) ("*California Payphone"*).

3. Multiple Fiber Paths to Switch

ExteNet requests that the Commission clarify what it means by, and the justification for, requesting "[i]f there are multiple fiber paths to switch."[33]

4. Photo simulations

The ExteNet redline does not reflect a change to Section II.D.x of the Draft Policy. However, ExteNet does question the need for "Photosimulations, from four different angles, showing the pole and streetscape before the installation, as well as after installation." ExteNet believes that two angles would suffice and that four angles is excessive resulting in additional costs to the Applicant.

5. Cellular Coverage and Gaps in Coverage

The Draft Policy requests a

> Detailed map in a digital format acceptable to the Commission showing the Applicant's existing and proposed Installation(s) within 500 feet of the Application site and amount of cellular coverage in the area, including the amount of cellular coverage in such area, and any gaps in cellular coverage.[34]

and requests an

> Affidavit from a Radio Frequency Engineer outlining the network/network service requirements in the City and how the Installation(s) address that need in the City. Such affidavit shall characterize the current level of coverage and how the desired Installation(s) will change the current level of coverage, through or with coverage maps, including current and proposed coverage, including a breakdown of "excellent" "good and "poor" reception area.[35]

[33] Draft Policy at II.D.viii.3.

[34] Draft Policy at II.F.

[35] Draft Policy at II.H.

As discussed above,[36] requirements to demonstrate "the amount of cellular coverage . . . and any gaps in cellular coverage" are impermissible under the FCC *Third Report and Order* and *California Payphone*. Removal of these requirements is reflected in ExteNet's attached Redline. If the purpose of Section II.H of the Draft Policy is meant to ensure that proposed wireless service facility will "comply with the [FCC's] regulations concerning" "the environmental effects of radio frequency emissions"[37] please see ExteNet's suggested changes to section II.K of the Draft Policy below.

6. Superior Locations

The Draft Policy requests justification "as to why the desired location is superior to other similar locations."[38] As discussed above,[39] "local jurisdictions do not have the authority to require that providers offer certain types or levels or service, or to dictate the design of a provider's network."[40] Thus, criteria should be eliminated from the Draft Policy.

7. Certification of Compliance

Federal law preempts a municipality from considering the environmental effects of radio frequency emissions when considering applications for placement of small wireless facilities. However, the same statute states that this restriction is only applicable "to the extent that such facilities comply with the FCC's regulations concerning such emissions."

> (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects

[36] *Supra,* p. 18.

[37] 47 U.S.C. §332(c)(7)(B)(iv)

[38] Draft Policy at II.J.

[39] *Supra*, p. 15.

[40] *Third Report and Order* at ¶ 37, n. 84.

> of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

ExteNet proposes an addition to Section II.K of the Draft Policy to include such certification.

8. Existing Structures

The Draft Policy asks Applicants to provide a

> Description of efforts to co-locate the Installation(s) on existing structures, poles, or towers which currently exist or are under construction pursuant to the Siting Policy. A good faith effort to co-locate is required and written evidence of such efforts must be submitted with the Application, all pursuant to the Siting Policy. [41]

ExteNet believes that the intent of such is to reduce the proliferation of new structures built solely for the purpose of installing small wireless facilities. Thus, this section should be modified to expressly state such.

E. <u>Annual Re-Certification and Affidavit</u>

1. Subsequent Applications

The Draft Policy states that "no further applications for Installations will be accepted by the Commission from that Applicant until such time as the annual re-certification has been submitted and all fees and fines paid." Pursuant to the *Third Report and Order*, a municipality may not ***refuse*** to accept an Application.

> If an applicant proffers an application, but a state or locality refuses to accept it until a pre-application review has been completed, the shot clock begins to run when the application is proffered. In other words, the request is "duly filed" at that time, notwithstanding the locality's refusal to accept it.[42]

[41] Draft Policy at II.L.

[42] *Third Report and Order* at ¶ 145.

ExteNet is not disputing its need to pay reasonable and legal annual fees for small cell facilities. However, because nothing in the Third Report and Order states that a municipality must grant an Application with outstanding fees owed, ExteNet recommends changing the language of Section II.L of the Draft Policy accordingly.

F. Design and Location Requirements for Installations

1. Intention

The section of the Draft Policy stating the "Intent of the Design and Location Requirements for Installations"[43] is vague and fails the objectivity requirement of the *Third Report and Order.*[44] This is corrected if the wording is changed to "Intent of the Design and Location Requirements for Installations, where practical."

G. Siting Requirements

1. Proximity to Other Installations

Section V.B.i of the Draft Policy requires that "No Installations should be located closer than 150 feet radially from another Installation." While ExteNet disagrees that there should be any limitation on distance between installations, we recognize that the FCC has stated that there "may be reasonable aesthetic requirements" for minimum spacing requirements.[45] However, this requirement, as written would also conflict with the Commission's desire to have multiple installations collocated on the same pole. If not eliminated altogether, ExteNet recommends that this requirement be changed to read, "Unless collocated on the same utility pole or city owned pole no Installations should be located closer than 150 feet radially from another Installation."

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[43] Draft Policy at V.A.

[44] *Third Report and Order* at ¶ 86.

[45] *Third Report and Order* at ¶ 91.

2. Existing Decorative Light Poles

The Draft Policy asks Applicants to comply with the following requirement:

> To the maximum extent possible, Installations shall be placed on existing non-decorative light poles such as the 'Cobra' and the '1907 Teardrop'. With respect to Cobra Head poles, preference shall be given to antennae, equipment, wiring and cabling built within the pole itself, which allow for multiple carriers in one pole, similar in design to the "Smart Fusion Pole."[46]

This requirement is vague and includes terms, such as "Smart Fusion Pole" which are undefined. Recognizing the intent of this requirement, ExteNet proposes the following alternative language:

> To the maximum extent possible, Installations that are not on wooden Utility Poles shall be placed on existing non-decorative light poles such as the 'Cobra' and the '1907 Teardrop'. Any installations on non-wooden utility poles should to the greatest extent possible, include the antennae, equipment, wiring and cabling within the pole itself and allow for multiple carriers to collocate on one pole.

3. ADA Regulations

Section V.B.iv of the Draft Policy is duplicative of Section V.B.vii.

4. Setback

The Draft Policy asks Applicants to comply with the following requirement:

> No Installation shall be placed less than 6 feet away from the edge of a driveway of a residential or commercial property; and shall be placed at least 15 feet from the edge of the curb of public right of way where possible.[47]

Recognizing that most public rights-of-way in the City are less than 15 feet in width when you exclude the sidewalk and carriage way portions, this section should be modified to emphasize that it only applies where possible, as reflected in ExteNet's Redline.

[46] Draft Policy at V.B.iii.

[47] Draft Policy at V.B.ix.

5. Future Trees

The requirement that "No Installation shall be placed where, in the determination of the City, it might limit the City's ability to plant future street trees"[48] is not a "clearly-defined and ascertainable standard" as required by the *Third Report and Order*[49] and should be deleted.

6. Future Development

The Draft Policy states:

> Where the City has a planned a redevelopment or change to a street, sidewalk, square, or other area of the City, Applicants shall remove their Installation at their own cost and may apply to re-install their Installation in a different location upon the City's redevelopment or change to such area.[50]

The United States Constitution limits the power of eminent domain in the "Takings Clause" of the Fifth Amendment. "No person shall . . . be deprived of . . . property, without due process of law."[51]; The Due Process Clause of the Fourteenth Amendment extended this to actions of state and local governments, " . . . nor shall private property be taken for public use, without just compensation." Section V.B.xiii. would be such an illegal taking if applied to existing installations on an automatic basis.

However, recognizing that the City has a need to redevelop streets, sidewalks, squares, or other areas of the City, ExteNet proposes the following replacement language which is reflected in ExteNet's Redline:

> Where the City has an approved and pending planned redevelopment or change to a street, sidewalk, square, or other area of the City, no Application shall be approved that would impact such project. Where such a project would impact an existing small cell

[48] Draft Policy at V.B.xi.

[49] *Third Report and Order* at ¶ 88.

[50] Draft Policy at V.B.xiii.

[51] U.S. CONST. amend. V.

> installation, the City shall give the Provider at least 180 days of the commencement of such project and the Provider shall either remove their Installation or move the Installation to a temporary location which shall be administratively approved by the Commission (without necessary adherence to siting policy) without public hearing and without an Application fee. Any such temporary location shall be removed within 30 days of the completion of the City project. If feasible, the Applicant may return to the original location within 30 days of the completion of the project. The original location is no longer feasible, a permanent replacement location for the Installation may be applied for, without Application fee and will be considered by the Commission in light of the inconvenience incurred by the Applicant. All costs of moving installations to accommodate such projects shall be borne by the Provider.

7. Wall Plane

ExteNet requests that the Commission clarify what it means by, and the justification for, requesting that "[i]n residential zoning districts, Installations shall not be placed within the primary street frontage wall plane as measured perpendicular to that wall plane."[52]

8. Historical Commission

The Draft policy asks that "[f]or properties under the jurisdiction of the Cambridge Historical Commission, Applicants for Installations shall apply for a certificate from the Cambridge Historical Commission."[53] ExteNet notes Section I.E of the Draft Policy already requires a copy of the Application be submitted to the Cambridge Historical Commission at the time of submission. The FCC has stated that "deployment will be kept on track by ensuring that the entire approval process necessary for deployment is completed within a reasonable period of time, as defined by the shot clocks addressed in [the] Third Report and Order."[54] This means that

[52] Draft Policy at V.B.xiv.

[53] Draft Policy at V.B.xv.

[54] *Third Report and Order* at ¶ 135.

Cambridge Historical Commission approval must also be made within the same "shot clock" timeframe while this Commission is considering the Application.

H. Pole Design and Height

1. Height

The pole height restrictions imposed by the Draft Policy, at Sections VI.C through E, would be different, and possibly at odds, with the national size definitions and regulations adopted by the FCC at 47 C.F.R. § 1.1312(e)(2) for small wireless facilities,[55] which states:

> (i) The facilities are mounted on structures 50 feet or less in height including their antennas as defined in §1.1320(d), or the facilities are mounted on structures no more than 10 percent taller than other adjacent structures, or the facilities do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
>
> (ii) Each antenna associated with the deployment, excluding the associated equipment (as defined in the definition of antenna in §1.1320(d)), is no more than three cubic feet in volume;
>
> (iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and
>
> (iv) The facilities do not require antenna structure registration under part 17 of this chapter; and
>
> (v) The facilities are not located on tribal lands, as defined under 36 CFR 800.16(x); and
>
> (vi) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §1.1307(b).

The requirements in the Draft Proposal could be especially problematic for the City if the City allows the incumbent investor owned utility to install utility poles that are taller than that

[55] *See also, Third Report and Order* at ¶ 11, n. 9.

permitted in the Draft Policy, as such would be a blatant case of discrimination against small wireless providers. ExteNet suggests changing the sizes proposed in the Draft Policy to match the national standards adopted by the FCC, as reflected in ExteNet's Redline. This would still protect the City from excessively tall poles because it includes a limitation that no installations can be more than ten percent taller than the existing facilities.

2. Equipment Cabinets

The Draft Policy uses the term "equipment cabinet" in Section VII, but fails to recognize that some equipment, such as certain model radios, are not mounted in traditional utility cabinets. ExteNet proposes removal of the word "cabinet" to clarify the intention of the Draft Policy.

3. Equipment Size

For the reasons stated above with respect to pole sizes, the Draft Policy should mirror the FCC requirements for equipment sizes. ExteNet recommends modifying Section VII.B accordingly.

4. Hiding Equipment from View

Section VII.F of the Draft Policy states that "Antennae's conduits, brackets and hardware shall be hidden from view. All associated wiring and cable shall be installed within the Installation." This is not practical or feasible for all types of installations (i.e., wooden poles). ExteNet proposes language stating this condition only applies where feasible.

IV. COLOR, FINISH, SIGNAGE, LOGOS AND DECALS

1. Color

It is not always possible or practical to match colors. Paint and dyes applied to different substances will look different from each other. In addition, certain radios and antennas, especially 5G certified antennas cannot function when painted. Therefore, ExteNet proposes changing Section VIII.A of the Draft Policy to read "Where feasible, all Installations shall match or

complement the existing or replacement pole's colors to the greatest extent possible. If the installation is a new pole, the new pole shall match the color of adjacent poles to the greatest extent possible."

2. Existing vs Replacement Poles

In order to assure that a investor owned utility pole is capable of safely supporting the weight of a small cell facility, prior to making Application to the City, Applicants work with the investor owned utility to make any changes to the pole to accommodate the wireless equipment. These changes, called "make-ready," may include minor changes, such as moving cables, or major changes such as pole replacement. In most cases, the cost of this make-ready, including pole replacement, is borne by the Applicant. Presumably, the local investor owned utility has a schedule and plan for replacement of poles in the regular course of business. Replacement of wooden utility poles is in the City's best interest as new poles are by nature safer and more reliable.

In its November 17, 2017 Report and Order, the FCC found that "replacement of a pole that was constructed with a sole or primary purpose other than supporting communications antennas with a pole that will support such antennas would have no potential to affect historic properties" and considered such the same as existing poles for the purpose of historical review.[56]

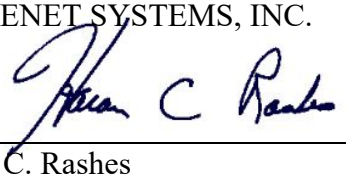
For this reason, ExteNet's proposed Definitions clarifies that there should be no distinction made between existing wooden utility poles and their replacements. This should also be clarified in the requirement regarding exposed wire and conduit in Section VIII.B of the Draft Policy, as reflected in ExteNet's Redline.

[56] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, WT 17-79, FCC 17-153, Rel. Nov. 17, 2017, ¶ 10.

V. CONCLUSION

ExteNet commends this honorable Commission for considering input into the Draft Policy on Small Cell Installations on Public Ways and for reviewing ExteNet's comments and suggestions. We look forward to working with the Commission to implement a policy that is in the best interest of the City of Cambridge and is legal, fair, and reasonable. We urge the Commission to adopt the changes recommended by ExteNet Systems, Inc.

Respectfully Submitted,
EXTENET SYSTEMS, INC.



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Dated: May 29, 2019

STATE OF MASSACHUSETTS
CITY OF CAMBRIDGE
CAMBRIDGE LICENSE COMMISSION

BEFORE THE POLE AND CONDUIT COMMISSION

In Re, Draft Policy on Small Cell Attachments in the Public Way	)) /

INITIAL COMMENTS OF
EXTENET SYSTEMS, INC.

ATTACHMENT A

REDLINE OF PROPOSED POLICY

POLICY REGARDING SMALL CELL WIRELESS INSTALLATIONS ON PUBLIC WAYS

The City of Cambridge ("City") Pole and Conduit Commission ("Commission") hereby adopts this policy ("Policy") regarding Applications ("Application") relating to installations of small cell wireless communications equipment and related infrastructure in the public rights-of-way under control of the City~~upon City-owned poles or other City-owned property on~~ ("Installations").

I. Definitions

For the purposes of this Policy, the following definitions apply:

"Applicable Code" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons, and City ordinances, regulations, and policies the extent not inconsistent with the terms of this Policy.

"Applicant" means any person, firm or corporation applying for permits or other approvals under this Policy

"Application" means a request submitted by an Applicant (i) for a Permit to collocate small wireless facilities; or, (ii) to approve the installation or modification of a utility pole for the purposes of collocating small cell wireless communications equipment and related infrastructure.

"City Owned Pole" means (i) a utility pole owned or operated by the City in the public right-of-way, including a utility pole that provides lighting or traffic control functions, or other law enforcement functions, including but not limited to light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the City in the public right-of-way that supports only wireless facilities.

"Collocate" means to install, mount, maintain, modify, operate, or replace Small Cell Wireless Facilities on or adjacent to a wireless support structure or utility pole. "Collocation," has a corresponding meaning.

"Day" means calendar day unless there is a time frame for the City to respond to a request and the last day to respond ends on a weekend, holiday, or time when all but City emergency services are closed due to weather or some unforeseen situation.

"Fee" means a one-time charge.

"New Pole" means a utility pole proposed by a wireless service provider with the purpose of carrying small cell wireless facilities. A replacement pole is not considered a new pole.

"Rate" means a recurring charge.

"Replacement Pole" means a pole proposed by a wireless service provider that will stand in lieu of an existing utility pole with the purpose of carrying small cell wireless facilities and adopting the duties of said existing utility pole. Replacement Poles are considered existing poles for the purpose of collocation and the time-frames established herein.

"Rights-of-Way" means the surface and space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, terrace, shoulders, side slopes, and public sidewalk in which the City has an interest, including any other dedicated rights-of-way for travel purposes.

"Small Cell Wireless Facility" or "Small Wireless Facilities," is as defined as "Small Wireless Facility" in 47 C.F.R § 1.1312(e)(2).

"Utility Pole" means a pole of similar structure, not owned by the City, that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control signage, or a similar function regardless of ownership. Such term shall not include structures supporting only Wireless Facilities or a City Owned Pole.

"Wireless Facility" means any unstaffed facility for the transmission or reception of wireless telecommunications services, usually consisting of an antenna array,

connection cables, an equipment facility, and a support structure to achieve necessary elevation.

"Wireless Services Provider" means a Person who provides Wireless Services or who builds wireless support structures or installs small wireless facilities.

"Wireless Services" means any services, whether at a fixed location or mobile, provided it is using Wireless Facilities.

"Wireless Support Structure" means a freestanding structure or utility pole installed solely for the purpose of collocating wireless facilities.

~~I.~~II. Application Process

A. Applicants ("Applicants") shall submit Applications to the Commission accompanied by an Application fee of $500 per Application, payable to the "City of Cambridge." The $500 fee will cover up to 5 Installations submitted with each Application. Each Application for more than 5 Installations is subject to a separate fee of $100 per Installation after the first 5 Installations. Additionally, a $270 fee (which shall be an "Annual Recurring Fee") for each Installation shall be required to be submitted with said Application. If the Application relates to a request for installation of a new non-City owned pole or other structure on or within the public right of way, a one-time $1,000.00 fee shall be required for each such new pole or other structure in addition to said Annual Recurring Fee. The amounts due under this section may be revised by the Commission from time to time, consistent with applicable law. ~~In the event the City's costs in reviewing any Application exceed the amounts prescribed in this section, Applicants shall be responsible for those costs.~~

B. ~~The Application process shall, in addition to the requirements described herein, follow the Siting Policy of the Commission ("Siting Policy").~~

C. ~~Applications shall include certified mail receipts evidencing that notice has been made by certified mail, return receipt requested, to all other wireless providers ("Other Providers"), within the Applicant's knowledge after reasonable inquiry, who may request use of the public right of way for wireless services in this location and/or within 500 feet of this location, indicating the Applicant's intent to apply for utilization of a particular pole or other structure in the public way. Such receipts must demonstrate that notices were provided to all Other Providers within the Applicant's knowledge after reasonable inquiry at the time of submission of the Application. In the event an Applicant cannot demonstrate it has provided notice by certified mail, return receipt requested, then proof of service of such notice by constable shall be required.~~The Commission highly encourages multiple wireless carriers to collocate their wireless communications equipment and related infrastructure on a utility pole or wireless support structure already in use for such purposes. Any application for such collocation will be considered by the Commission on an expedited basis.

D. Within one day of filing Applications, Applicant shall provide ~~include certified mail receipts evidencing that~~ notice ~~has been made~~ by certified mail, return receipt requested, to all owners of properties that share a common boundary with the area proposed, extending all the way to the owners of properties on either side of the area proposed in both directions for a distance of one hundred fifty feet, and to owners of property on the opposite side of the street of the area proposed, or, where the area proposed is adjacent to an intersection, notice must be given to all property owners in all directions of the public way for a distance of one hundred fifty feet as described in the previous sentence (hereinafter "Abutters"). An Affidavit stating that notice has been mailed by certified mail, return receipt requested, along with ~~All such required notices must be made at the time of the submission of the Application, and~~ an Abutters list for each location referred to in an Application must also be submitted with the Application. ~~In the event an Applicant cannot demonstrate notice by certified mail, return receipt requested, proof of service by constable shall be required.~~ Within seven days of filing the Application, Applicant shall publish of a notice of the Application in a newspaper of general circulation in the city. Applicant should be prepared to present the certified mail receipts and proof of publication at the required Public Hearing .

E. An Applicant shall provide an electronic copy of the Application at the time of the submission of the Application to each the following City departments: the Commission, the Community Development Department, the Historical Commission, and any other department that the Commission determines should receive a copy.

F. When an Application if proffered, ~~Upon receipt,~~ the Commission Chair shall make a determination as to completeness of the Application, including making a determination as to whether the Applicant has provided all the above required notices, and notify the Applicant, in writing, within 10 days, if the Application is ~~incomplete~~materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information. If the Applicant is notified that the Application is incomplete, in writing, within 10 days, of the Application being proffered the time periods set forth in this Policy shall not commence ~~shall be tolled~~ until such time as a complete Application has been submitted. ~~In the event an application remains incomplete thirty (30) days after its submission, such application shall be deemed withdrawn without prejudice, and will need to be resubmitted in full, including payment of fees accompanying a new application. Withdrawal for incompleteness shall not entitle Applicant to refund of any fees paid.~~

G. Once the Commission Chair has determined that an Application is complete, the Commission Chair will schedule and convene a public hearing of the Commission to consider the Application, such that a determination may be made on any Application for any Installation(s) on an existing structure within sixty (60) days of initial receipt of the Application by the Commission, and on a new structure within ninety (90) days

of receipt of the Application by the Commission. The Commission Chair shall notify the Applicant of the date and time of the hearing no later than fourteen (14) days before the hearing. The Applicant shall notify all Abutters ~~and Other Providers, as applicable,~~ of the hearing date and time, by United States Postal Service First Class Mail, no later than seven (7) days before the hearing and file with the Commission, in electronic format, a copy of said notice along with an Affidavit stating that notice has been mailed, along with an Abutters list for each location referred to in an Application within one business day after mailing . ~~such hearing date is scheduled, and f~~Failure to notify all Abutters ~~Other Providers, as applicable~~and file the affidavit of mailing~~,~~ may result in denial of the Application.

H. ~~If there are any Other Providers who wish to utilize the same location or structure as described in the Application, then the Application(s) shall together be considered a common project ("Common Project"), and in the Common Project the first Applicant shall be the "Lead Provider" and shall coordinate the Applications, filings and responses of all Applications of Other Providers for the subject location involved in the Common Project, consistent with Section 7 of the Siting Policy.~~

I. ~~In the event that there are any material changes to an Application, or if the Application is amended, as determined by the Commission Chair in his or her sole discretion, any of these events shall constitute a new Application, for the purposes of the time standards set forth above in Section I(H).~~

J. The Commission may grant, grant with conditions, or deny an Application. A denial may be based on criteria including but not limited to any of the following:

i) inadequate capacity of the pole or mounting structure,
ii) demonstratable safety issues (the Commission notes that it is prohibited by law from considering the environmental effects of radio frequency emissions to the extent that the proposed installation will comply with FCC regulations concerning such emissions)~~safety concerns or reliability concerns~~,
iii) failure to meet applicable engineering standards,
iv) failure to meet the Commission's design standards, unless the Applicant can demonstrate that such design standards are not technically feasible for that particular installation,
iv) failure of the Applicant to comply with all applicable laws, rules, regulations or other requirements,
v) ~~there are more convenient locations such that the location applied for is not needed as determined by the Commission,~~
vi) any other legally valid reason to deny such Application.

K. Any approval granted to an Applicant shall be only for the specific Applicant and Application.

~~II.~~III. Content of Applications

Applications shall include the following information, in digital form:

A. Applicant's name, address, telephone number and email address.

B. Names, addresses, telephone numbers, and email addresses of anyone acting on behalf of the Applicant with respect to the Application.

C. A copy of the standard License Agreement issued by the City, executed by the Applicant. Execution by the City shall occur at the time of permit issuance, in the event of approval.

D. Detailed drawings and descriptions of the equipment to be installed, whether mounted on poles or on the ground, or otherwise, including:

i. Type of equipment
ii. Specifications of equipment (including but not limited to dimensions and weight)
iii. Equipment mount type and material
iv. Power source or sources for equipment, including necessary wires, cables, and conduit
v. Expected life of equipment
vi. Coverage area of equipment, including:
    1. Amount of antennas
    2. Antenna model
    3. Antenna length
    4. Remote Radio Unit ("RRU")
    5. Antenna height
    ~~6. Typical coverage area radius~~
~~vii. Call capacity of equipment, including:~~
    ~~1. Total RRUs~~
    ~~2. Max bandwidth per RRU~~
    ~~3. Multiple In and Multiple Out per RRU~~
    ~~4. Backhaul rate per RRU~~
viii. Hardening, including:
    1. If there is battery backup
    2. If there is generator backup
    3. If there are multiple fiber paths to switch
ix. Rendering and elevation of equipment
x. Photosimulations, from four different angles, showing the pole and streetscape before the installation, as well as after installation.

E. Detailed map in a digital format acceptable to the Commission with locations of the poles or other City-owned property on which equipment is to be located, including specific pole identification number, if applicable, and the areas it will service.

F. Detailed map in a digital format acceptable to the Commission showing the Applicant's existing and proposed Installation(s) within 500 feet of the Application site ~~and amount of cellular coverage in the area, including the amount of cellular coverage in such area, and any gaps in cellular coverage~~.

G. Certification by a registered professional engineer that the pole or City-owned property will safely support the proposed equipment.

H. ~~Affidavit from a Radio Frequency Engineer outlining the network/network service requirements in the City and how the Installation(s) address that need in the City. Such affidavit shall characterize the current level of coverage and how the desired Installation(s) will change the current level of coverage, through or with coverage maps, including current and proposed coverage, including a breakdown of "excellent" "good and "poor" reception area.~~

I. Insurance certificates with the following minimum coverages: General liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 in the aggregate, worker's compensation insurance not less than the amount of $100,000 per accident and $500,000 per illness or the statutorily required amount, whichever is greater, and umbrella insurance in an amount not less than $5,000,000. The City must be an additionally named insured, and such policies shall indicate that the insurance company shall provide thirty (30) business days' prior written notice to the City of lapse or cancellation. All insurance carriers shall carry an A.M. Best rating of "A-" or better. Such insurance shall provide for the waiver by the insurance carrier of any subrogation rights against City, its agents, servants and employees.

J. ~~Description as to why the desired location is superior to other similar locations, from a community perspective, including, but not limited to:~~

~~i. Aspects showing that the Installation will not incommode the public way;~~

~~ii. Visual aspects; and~~

~~iii. Proximity to residential buildings.~~

K. An affidavit from the Applicant which certifies that it will maintain the Installation(s) in good repair and according to Federal Communications Commission standards, including the FCC's radio frequency emissions regulations, and will remove any Installation not in such good repair, or not in use, within 60 days of being no longer in good repair or no longer in use. Such affidavit should be accompanied by a report

from a Radio Frequency Engineer stating that the proposed equipment will be in compliance with the FCC's radio frequency emissions regulations.

L. If the Applicant proposes installation of a New Pole, the Applicant must provide a d~~D~~escription of efforts to co-locate the Installation(s) on existing structures, poles, or towers which currently exist or are under construction pursuant to the Siting Policy. A good faith effort to co-locate on existing facilities is required and written evidence of such efforts must be submitted with the Application, all pursuant to the Siting Policy.

M. Installation(s) shall comply with the Installation and Design Requirements of Section V. of this Policy.

~~III.~~IV. Annual Re-Certification and Affidavit

A. Each year on January 1 the Applicant shall submit an affidavit to the Commission which shall list, by location, all Installation(s) it owns within the City by location, and shall certify the following: (1) each Installation that remains "in use;" (2) that such Installations remain covered by insurance; and/or (3) each such Installations are no longer in use.

B. The Applicant shall pay an annual re-certification and public way fee of $270 per Installation to the Commission.

C. Any Installation which is no longer in use shall be considered in default and removed or turned over to the City after all small cell Installation equipment has been removed at the discretion of the City, as provided in the License Agreement to be entered into with the City.

D. Where such annual re-certification has not been timely submitted, or an Installation no longer in use has not been removed or turned over to the City after all small cell Installation equipment has been removed at the discretion of the City, as provided in the License Agreement to be entered into with the City, the Commission will not approve any ~~no~~ further applications for Installations ~~will be accepted by the Commission~~ from that Applicant until such time as the annual re-certification has been submitted and all fees and fines paid.

~~IV.~~V. Prohibitions

A. No Installations will be permitted to be installed on double poles;

B. No Installations will be permitted to be installed on poles which result in non-compliance with any applicable federal, state and/or local laws, rules and regulations;

C. No Installations shall remain upon the City right of way or on City property which has not been certified as "in use" in the annual re-certification affidavit; and

D. No Installations will be permitted to be installed on any traffic signal pole or other related infrastructure or equipment.

E. An Applicant may submit an Application inconsistent with the foregoing prohibitions, but only if accompanied by evidence sufficient to demonstrate that the otherwise-prohibited Installation must be considered by the City in order to avoid a prohibition or effective prohibition on the provision of service, as defined by applicable federal law.

~~V.~~VI. Design and Location Requirements for Installations

The purpose of the Design and Location Requirements for Installations is to preserve the character of Cambridge's neighborhoods and commercial corridors.

A. Intent of the Design and Location Requirements for Installations, where practical:

i. Minimizing visual as well as physical clutter to the maximum extent possible.
ii. Maintaining public open spaces and parks clear of visual clutter of communication and signage elements.
iii. Discouraging placement of Installations on decorative pedestrian municipal street lights.
iv. Standardizing components of Installations, e.g., size, scale, color, location to be consistent with character of existing public infrastructure in the public right of way.
v. Avoiding siting of Installations in front of designated historic structures, landmarks, parks or impacting view corridor to major natural, cultural, or historic resources.
vi. Reducing visual clutter as much as possible by collocating Installations onto existing infrastructure.
vii. Maintaining the consistency of character of the neighborhoods in Cambridge.

B. Siting Requirements. All Installation(s) shall comply with the following requirements:

i. Unless collocated on the same utility pole or city owned pole ~~No~~ no Installations should be located closer than 150 feet radially from another Installation.
ii. In commercial districts and major city squares such as Harvard Square, Central Square, Inman Square, Porter Square and Kendall Square, Installation should not be located directly adjacent to a preexisting City pole with a previously approved Installation.
iii. To the maximum extent possible, Installations shall be placed on existing non-decorative light poles such as the 'Cobra' and the '1907 Teardrop'. Any installations on non-wooden utility poles should to the greatest extent

possible, include the antennae, equipment, wiring and cabling within the pole itself and allow for multiple carriers to collocate on one pole.~~With respect to Cobra Head poles, preference shall be given to antennae, equipment, wiring and cabling built within the pole itself, which allow for multiple carriers in one pole, similar in design to the "Smart Fusion Pole."~~

iv. ~~All equipment associated with an Installation shall be consistent with ADA regulations.~~

v. No Installation shall be located less than 6 feet from an existing building wall.

vi. No equipment associated with the Installation, including backup power supply or base equipment ~~cabinet~~ shall be installed in the pedestrian walking area or amenity zone of the sidewalk, where site furniture including seating or bike racks are located.

vii. Installations shall not obstruct ADA access and circulation including maintaining clear landing at the top of crosswalk curb ramps and minimum distance between the base of the new Installation and any other obstruction such as building walls or other elements and shall not incommode the public way.

viii. Where possible, Installations shall be in a straight line with existing utility poles, street lights and street trees in the right of way.

ix. No Installation shall be placed less than 6 feet away from the edge of a driveway of a residential or commercial property; and shall be placed at least 15 feet from the edge of the curb of public right of way where the public right-of-way is wide enough to accommodate such a restriction~~possible~~.

x. Installations shall not be placed in front or within 6 feet of a residence's window, door openings, porches or balconies.

xi. ~~No Installation shall be placed where, in the determination of the City, it might limit the City's ability to plant future street trees.~~

xii. No Installation shall be placed where, in the determination of the City, it might limit the City's ability to install any city infrastructure, transportation elements or facilities including bike lanes, bike racks or other street furniture and the like.

xiii. ~~Where the City has a planned a redevelopment or change to a street, sidewalk, square, or other area of the City, Applicants shall remove their Installation at their own cost and may apply to re-install their Installation in a different location upon the City's redevelopment or change to such area~~. Where the City has an approved and pending planned redevelopment or change to a street, sidewalk, square, or other area of the City, no Application shall be approved that would impact such project. Where such a project would impact an existing small cell installation, the City shall give the Provider at least 180 days of the commencement of such project and the Provider shall either remove their Installation or move the Installation to a temporary location which shall be administratively

approved by the Commission (without necessary adherence to siting policy) without public hearing and without an Application fee. Any such temporary location shall be removed within 30 days of the completion of the City project. If feasible, the Applicant may return to the original location within 30 days of the completion of the project. The original location is no longer feasible, a permanent replacement location for the Installation may be applied for, without Application fee and will be considered by the Commission in light of the inconvenience incurred by the Applicant. All costs of moving installations to accommodate such projects shall be borne by the Provider.

xiv. In residential zoning districts, Installations shall not be placed within the primary street frontage wall plane as measured perpendicular to that wall plane.

xv. For properties under the jurisdiction of the Cambridge Historical Commission, Applicants for Installations shall apply for a certificate from the Cambridge Historical Commission.

xvi. Applicants of proposed Installations must consider other optional siting locations to avoid placing Installations in-front of storefront windows, primary entrances, exits, in front of primary walkways or area in such a manner that would hinder service to the building or delivery.

xvii. In residential zoning districts, new poles for Installations must be located at the lot line between properties.

xviii. New Installations shall not be placed where they obstruct the sight line of any intersecting street or public alley. A minimum of fifteen feet (15') shall be maintained between the new Installation and the outside edge of the street curb or public alley.

xix. The design and location of Installations shall be consistent with the current Manual on Uniform Traffic Control Devises (MUTCD) and adopted Cambridge standards for intersections' sight lines triangles.

xx. Siting for utilization of existing City-owned poles or other City-owned property for Installations will be given priority.

~~VI.~~VII. Pole Design and Overall Height

A. If Installation are proposed to be mounted on any of the City's existing single Acorn or single Saturn poles, the existing pole shall be replaced with a double luminaire fixture of the same design.

B. If the Applicant proposes to replace an existing decorative pole with a new Installation, the Applicant shall replicate the existing pole design and overall dimensions.

C. Any installations at the site of an existing pole shall not extend the overall height of the pole to more than ~~30~~ 50 feet high or by more than 10% of the existing pole height,

~~whichever is less except for~~ including "whip antennas" which shall be no higher than 30 inches high by 2 inches in diameter and shall have a pole extension no more than 45 inches high by 4.5 inches in diameter for antenna mount.

D. In residential zoning districts, top mounted antennae on Installations shall not increase the height of the existing pole by more than 5 feet.

E. No new wireless support structure Installation shall be higher than ~~30~~ 50 feet or more than 10% higher than other adjacent poles, whichever is less.

~~VII.~~VIII. Equipment ~~Cabinet~~, Equipment Shroud, Antenna and Antenna Shroud

A. Where technically feasible, equipment ~~cabinets~~ for Installations shall be located underground. All such below ground equipment may not be located in the street but may be located under the sidewalk.

B. Any above ground or pole mounted equipment ~~cabinet~~ shall, in the aggregate, be no more than 28 cubic feet in volume ~~36 inches high, no more than 18 inches wide and no more than 12 inches deep.~~ Any above ground or pole mounted equipment ~~cabinet~~ shall be installed with the ~~18 inches~~ wider side parallel to the sidewalk. Hardware, anchors and straps to the pole shall, as far as practical, match the pole color and finish.

C. Equipment ~~cabinets~~ shall be pole mounted at least 10 feet high on Installations which are less than 25 feet high, or at least 12 feet high on Installations which are greater than 25 feet high.

D. Pole mounted equipment ~~cabinets~~ shall not be mounted on the street side of the Installation.

E. Antennae of Installations shall be no more than 60 inches high by 16 inches in diameter.

F. Where feasible, Antennae's conduits, brackets and hardware shall be hidden from view. If the utility pole or city owned pole can accommodate such, and for any new wireless support structure, ~~A~~all associated wiring and cable shall be installed within the Installation.

G. Antennae mounted on Installation which are greater than 25 feet high shall include a tapered transition piece between the antenna and the pole top for a seamless extension of the existing pole. The tapered transition piece shall be no more than 16 inches in diameter and 24 inches high.

H. Antenna enclosures on Installations that are more than 25 feet high shall be no wider than 150 percent of the diameter of the pole or support structure and shall not be more than 16 inches in diameter or whichever is less.

I. Antenna mounted on top of Installations that are less than 25 feet high shall be no higher than 30 inches high by 2 inches in diameter and shall have a pole extension of no more than 45 inches high by 4.5 inches in diameter for the antenna mount.

~~VIII.~~IX. Color, Finish, Signage, Logos and Decals

A. Where feasible, ~~All~~ all Installations shall match or complement the existing or replacement ~~and adjacent street light~~ pole's~~'~~ colors to the greatest extent possible. If the installation is a new pole, the new pole shall match the color of adjacent street light poles to the greatest extent possible.

B. No exposed wires or conduit shall be permitted on any Installation except on ~~existing~~ wooden poles; and Installations ~~are~~ installed on ~~existing~~ wooden poles~~, they~~ must conform to the utilities' 'Construction Requirements for Distributed Antenna Systems (DAS) on Electric Distribution Poles'.

C. No Signage/Decals or Logos of the Applicant, other than FCC required signage, shall be placed on any Installation.

i. Signage: Unless required otherwise by state, federal or local laws, rules or regulations, signage shall not exceed 4 inches by 6 inches and must be attached or anchored with material to match the pole color and finish of the Installation. Applicant shall only post its or the manufacturer's name, location, pertinent and emergency contact information in an area on the ~~cabinet~~ equipment that is visible to the public and shall do so only as permitted or required by state, federal or local laws, rules or regulations. Where no equipment ~~cabinet~~ exists on an Installation, the signage shall be located at the base of the Installation.

ii. Applicants shall remove or paint over manufacturer decals without compromising the surface, color or finish of the Installation's base material. The color and finish of the Installation shall match or be as approved by Cambridge Historical Commission staff. No advertisement for the Applicant or manufacturer of the Installation shall be allowed except displaying information as permitted or required by federal, state or local laws, rules or regulation.

iii. Required equipment warning stickers: applicants shall use only the smallest and lowest visibility warning stickers allowed by federal, state, local laws, rules or regulations.

iv. Equipment cooling fans: In residential zoning districts, if equipment cooling fans are required, the Applicant shall use equipment cooling fans with the lowest noise level and shall not exceed the levels allowed in the City's noise ordinance.

STATE OF MASSACHUSETTS
CITY OF CAMBRIDGE
CAMBRIDGE LICENSE COMMISSION

BEFORE THE POLE AND CONDUIT COMMISSION

In Re, Draft Policy on Small Cell Attachments in the Public Way	)) /

PROOF OF SERVICE

Haran C. Rashes affirms that on May 29, 2019 he served copies of ExteNet Systems, Inc.'s Initial Comments in the above-captioned matter via electronic mail upon the persons and e-mail addresses listed on the attached service list. In addition, on May 29, 2019 copies of ExteNet Systems, Inc.'s Initial Comments were served via United States Postal Service First Class Mail upon the following persons:

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Chairperson
Cambridge Pole and License Commission
831 Massachusetts Ave., 1st Floor
Cambridge, MA 02139

Stephen Lenkauskas
City Electrician
Cambridge Pole and License Commission
831 Massachusetts Ave., 1st Floor
Cambridge, MA 02139

Terrance James Shea
Superintendent of Streets
Cambridge Pole and License Commission
831 Massachusetts Ave., 1st Floor
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Elizabeth Y. Lint
Executive Director
Cambridge Pole and License Commission
831 Massachusetts Ave., 1st Floor
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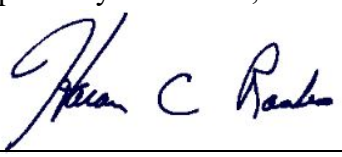
Nancy Glowa
City Solicitor
City of Cambridge
795 Massachusetts Ave., 3rd Floor
Cambridge, MA 02139

Respectfully Submitted,



Haran C. Rashes
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ExteNet Systems, Inc.
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May 29, 2019

STATE OF MASSACHUSETTS
CITY OF CAMBRIDGE
CAMBRIDGE LICENSE COMMISSION

BEFORE THE POLE AND CONDUIT COMMISSION

In Re, Draft Policy on Small Cell Attachments in the Public Way)
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