Stanley J. Usovicz
Regional Director
External Affairs

verizon

63 High Street
Danvers, MA 01923

Phone 978 750-5656
stanley.j.usovicz@verizon.com

Cambridge Pole and Conduit Commission
831 Massachusetts Avenue, First Floor,
Cambridge, Massachusetts 02139

Dear Commissioners:

Thank you for the opportunity to comment on the proposed *Policy Regarding Small Cell Wireless Installations on Public Ways* ("Draft Policy"). Verizon Wireless has reviewed the version of the Draft Policy attached to the Commission's "Amended Notice of Vote" issued on May 20, 2019 and offers the following initial comments, while fully reserving all of its rights under federal, state and local laws and regulations:

Threshold Issue: As an initial issue, the Draft Policy leaves unclear whether it applies (in whole or part) to the placement of small cell attachments on poles in the right of way that are not owned by the City, e.g. installations on existing or replacement wooden utility poles owned and maintained by Verizon and Eversource for the provision of communications and electrical service. At the May 16, 2019 meeting, the Commission itself was uncertain, and individual members apparently disagreed on, whether the Draft Policy applied only to City-owned poles or also to utility company-owned poles. Verizon Wireless urges the Commission not to apply the Draft Policy to private utility pole attachments, and notes that the Commission has, to date, handled petitions for wireless attachments to private utility poles under its existing grant of location procedures. The Commission's authority under state law to regulate utility installations in the right of way does not authorize it to impose different and unfavorable substantive and procedural provisions on applications for wireless attachments to utility poles. Furthermore, Massachusetts General Laws Chapter 166, Section 25A comprehensively addresses the placement of wireless attachments on utility poles and does not envision a role for municipal regulation of such attachments.

I. Application Process

.

A. Fees. 1. *Application Fees*: Verizon Wireless acknowledges that the proposed application fees are consistent with the fee amounts that the Federal Communications Commission presumed to be reasonable in its *Third Report and Order* dated September 26, 2018.[1] However, the additional requirement that "in the event the City's costs in reviewing any Application exceed

[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*").

the amounts provided in this section, Applicants shall be responsible for those costs" is not consistent with the premise that the application fee represents the average cost to the City of an application and should be deleted.

2. *Annual Recurring Fees*: Verizon Wireless objects to the proposed Annual Recurring Fee to the extent that it is not based on the City's actual cost of administering the City's right-of-way in a way that benefits carriers with small cell pole attachments in a manner that is not shared by others. In particular, to the extent that the City intends to apply the recurring fee to installations on private utility poles, the City should explain the basis for doing so. It is unclear what costs the City would incur that are attributable to such installations, as required in order to justify this annual charge under the FCC Third Report and Order or under state law (which does not authorize such charges as a general revenue raising mechanism).

B. Siting Policy: The Commission's Siting Policy addresses grant of location procedures for the installation of telecommunications services in the right-of-way. It is not intended or suited for application to wireless attachments on existing or replacement utility poles or City-owned poles. To the extent that there are certain specific requirements of the existing Siting Policy that the Commission reasonably would apply to wireless attachments, those should be specifically incorporated into the Draft Policy so that interested parties know what they are and comment on them.

C. and D. Pre-Application Public Notice Requirements: The requirement for pre-application notice to other wireless providers and to abutting property owners within 150 feet is unreasonable and overly burdensome. Pre-application notice to other wireless providers serves no beneficial purpose. It will not have the effect of increasing collocation. It is also unreasonable and unprecedented in any Massachusetts land use permitting context to require notice by sheriff if a certified mailing is not effectuated.

F. Determination of Completeness: It is unreasonable and serves no beneficial purpose to declare that an application is "deemed withdrawn" if it is "incomplete" 30 days after it is submitted. It will not always be feasible for an applicant to complete a technically defective application within 20 days after receiving notice that an application is incomplete. Furthermore, because "shot clock" periods are tolled when the applicant is notified that the application is incomplete, there is no prejudice to the City in allowing the application to remain pending until the missing information is filed or the application is actually withdrawn at the applicant's request.

G. Notice of Hearing: The requirement to notify all abutters and other providers within one business day after the hearing date is scheduled is extremely unreasonable and serves no legitimate purpose. Abutter notice should be provided under the same procedures as apply to other Commission applications. This provision of the Draft Policy also states that a failure to provide this notice "may result in denial of the Application." This is an unreasonable and extreme remedy for an omitted notice; a more reasonable approach would be to permit the hearing to be continued at the applicant's request so the defective notice can be supplemented.

H. "Common Project" Requirement: This requirement appears to be borrowed from grant of location procedures for conduit installations, and is similar to provisions some jurisdictions have applied to wireless macro towers. It is unreasonable to apply this in the context of wireless attachments to existing or replacement utility poles or City-owned poles. As a practical matter, it would not be possible to complete the contemplated process within the shot clock deadlines that apply to the review of small cell installations.

I. Amended Application: This provision purports to allow the Commission Chair to unilaterally, in her "sole discretion" deem that any amendment to an application (whether material or not) be treated as a new application resetting the shot clock. This should be limited to only material changes, which should be defined so that there is appropriate guidance for deciding whether the change warrants treatment as a new application. The decision whether an application has been so materially changed should be presented to the entire commission for decision according to guidance provided in the policy, not reserved to the "sole discretion" of a single member.

J. Application Denial: It is unclear what "reliability concerns" means in subsection (ii). To the extent that this provision implies that the Commission may evaluate the performance of the service from the proposed wireless facility, it exceeds the Commission's authority. Verizon Wireless also strongly objects to subsection (v) which purports to authorize the Commission to deny an application if "there are more convenient locations such that the location applied for is not needed as determined by the Commission." The Commission does not have any authority to determine what locations Verizon Wireless or other carriers need for their network. In addition, this provision is impermissibly vague because it provides no guidance to applicants as to as to whether a location will satisfy the City's standards.

II. Application **Components**

C. License Agreement: This provision appears to contemplate an individual license agreement for each location that is the subject of an application. If the regulations are intended to encompass applications for wireless attachments on privately owned utility poles, the license requirement should not apply to an application to attach to such a pole because the City has no interest or rights in such a pole to license. For wireless attachments to City-owned poles, it would be preferable to have a master license agreement with the City that applies to all locations the Commission approves, without requiring a separate agreement for each location.

D. Equipment Descriptions: Verizon Wireless objects to the requirement that it submit equipment specifications other than a general description of the type of equipment and its dimensions, weight and proposed height and location on the pole. The Commission has no authority over or need for information on expected life of carrier equipment, coverage area, specific antenna or RRU model, call capacity of equipment, bandwidth, backhaul rate, or whether there are multiple fiber paths, In addition, the requirement for "rendering and elevation" of equipment as well as before and after photosimulation views "from four different angles" is burdensome to applicants and goes beyond what could reasonably be needed for the Commission, other City agencies or the public to evaluate what a proposed installation will look like.

E. and F. Detailed Maps: Verizon Wireless objects to the requirement that applicants provide maps showing the areas a proposed installation "will service," the "amount of cellular coverage in the area" and coverage gaps. None of these are relevant to any authority the Commission has to evaluate pole attachments under the grant of location process. This requirement is also contrary to the *Third Report and Order,* which makes clear that these are not issues for consideration. (*See Third Report and Order* at paragraphs 37 and 40 and note 84).

H. RF Affidavit and Coverage Maps Verizon Wireless objects to the requirement that an application include an affidavit from a radio frequency engineer outlining the network/network service requirements in the City and how the applicant's proposed facilities will address that need. It likewise objects to the requirement that coverage maps of any type be required as part of a small cell application. These are burdensome requirements, do not provide information that the Commission needs to conduct its review of small cell attachments under the grant of location process, and are contrary to the *Third Report and Order* which makes clear these are not issues for consideration. (*See Third Report and Order* at paragraphs 37 and 40 and note 84).

I. Insurance Certificates: Verizon Wireless does not object to insurance requirements for wireless attachments on City-owned poles, but the proposed requirements are overly prescriptive and would be better addressed as part of the license agreement each wireless provider would have for such sites, rather than under the Draft Policy since they are business rather than regulatory matters. For example, Verizon Wireless would cover the City as a blanket additional insured rather than naming them as an additional insured. Another carrier might propose an acceptable variant for another element of the proposed requirements. Verizon Wireless does object to these requirements to the extent that they are intended to apply to small cell attachments on private utility poles; there is no reasonable or legitimate basis for imposing insurance requirements on wireless providers that are not applied to other entities attaching to such structures.

J. Description of Why the Proposed Location is Superior: This requirement is too vague, general and subjective. The City can legitimately consider some potential impacts of a particular proposed facility on the use of the public way (for example whether an installation will encroach on the travelled way, or will block passage on a sidewalk), but if the Commission has particular concerns about potential impact on the public way that it wants addressed in an application, it should specify what those are. "Visual aspects" is impermissibly vague and not tied to any standards. To the extent that the Commission has authority to regulate on the basis of appearance, it should specify what that authority is and what the standards are, as required by the *Third Report and Order.* (*See Third Report and Order* at paragraphs 84 and 86). "Proximity to residential buildings" is also an impermissibly vague and subjective standard. In addition, it appears to be a veiled effort to regulate the siting of small cell facilities on the basis of the environmental effects of radio frequency emissions, which is prohibited under federal law to the extent that the facility complies with Federal Communications Commission regulations concerning such emissions.

L. Description of Efforts to Collocate: It appears that this provision may be intended to address requests for new poles in the right of way. Attaching a small cell facility to an existing utility pole or City-owned pole would appear to comply with the Siting policy.

III. Annual Recertification and Affidavit

B. Annual "re-certification and public way fee" It is unclear whether this $270 fee is the same as the "Annual Recurring Fee" mentioned in Section I. If it is an additional $270 fee, it violates the Third Report and Order. In addition, the City does not have authority under state law to charge a fee merely for the use of the public way. It is also unclear what costs the City would incur for "recertification" of a wireless attachment, particularly since the Draft Policy calls for the applicant to provide certain certifications but does not mention any certification process that the Commission will perform.

C. Installations No Longer in Use: This provision states that any installation no longer in use is "in default." Default is not typically a regulatory concept, and it is unclear what a provider would be "in default" of if it ceases to use a small cell facility. To the extent that this provision is intended as a determination that an installation no longer in use should be treated as being abandoned and lose its authorization, it should provide for a reasonable period, such as 180 days, for the provider to either resume operation of the facility or remove its equipment.

V. Design and Location

B. Siting Requirements: Several of these siting requirements are overly restrictive, vague, or are likely to have the effect of entirely precluding siting solutions or precluding solutions that are more desirable from the standpoints of both the City and the carrier.

Subsection (i) requiring a separation distance of 150 feet from another installation will as a practical matter prevent multiple providers from serving the same street segment or intersection.

Subsection (ii) preventing locating "directly adjacent" to a preexisting City pole with a previously approved installation is vague because it does not define "directly adjacent." To the extent that it is intended to prevent a provider from locating on a City pole if the next City pole in line already has an installation on it, this provision is discriminatory and will also as a practical matter prevent multiple providers from serving the same street segment or intersection.

Subsection (vi) preventing the location of equipment in the "amenity zone" of the sidewalk is overly restrictive and prescriptive. There may be situations in which this location provides a desirable and acceptable siting solution.

Subsection (vii) states that an installation cannot "incommode the public way," which is a vague and subjective standard (see prior comment on this issue above).

Subsection (ix) states that an installation shall not be placed less than 6 feet away from edge of any driveway and should be 15 feet from the edge of the curb, where possible. The restriction on location of a pole mounted-installation within 6 feet of a driveway is unreasonable to the extent that there are existing utility poles or City-owned poles within that distance. Locating installations at least 15 feet from the edge of the curb will be impossible in most cases, and very

few existing utility poles or City light poles are set 15 feet back from the curb, making this inconsistent with the direction in subsection (viii) that installations should be in a straight line with existing utility poles, street lights and street trees. This requirement is also in tension with the requirement of subsection (v) that installations not be less than 6 feet from a building wall and the requirement of subsection (vi) that they should not be located in the "pedestrian walking zone" of a sidewalk.

Subsection (x) states that an installation cannot be "in front" of a residence window, door opening, porch or balcony. The term "in front" is vague and not limited by distance, and unreasonable to the extent that there are already utility poles or City light poles that would be considered "in front" of such features.

Subsection (xi) forbids locating an installation where "it might limit the City's ability to plant future street trees." *Subsection (xii)* forbids locating an installation where "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." These prohibitions are too open-ended and vague, and should be limited to locations where the City has actual plans for a specific improvement at a designated location that the proposed installation will actually interfere with.

Subsection (xiii) requiring removal of an installation to accommodate a City redevelopment or change to a street, sidewalk, square "or other area" should be revised to provide for advance notice and a reasonable timeframe for removal and to state that the City will cooperate to facilitate the relocation in order to avoid service interruption.

Subsection (xiv) is not clear, so it is not possible to evaluate whether this is a reasonable restriction. A drawing may be helpful in understanding what is intended.

Subsection (xv) refers to an application requirement for "properties under the jurisdiction of the Cambridge Historical Commission." Any pole-mounted installation addressed under the Draft Policy is on City right-of-way, so this requirement would be inapplicable except to the extent that the right-of-way location or pole in question and the proposed installation are actually subject to Cambridge Historical Commission jurisdiction.

Subsection (xvi) is vague in stating that installations should not be placed "in front of" certain locations, including store windows, entrances and exits. The term "in front" is vague and not limited by distance, and is unreasonable to the extent that there are already utility poles or City light poles that would be considered "in front" of such features.

Subsection (xviii) requiring that installations not interrupt "sight lines" and be a minimum of 15 feet from the street curb or public alley of an intersecting street is arbitrary and overly prescriptive and unreasonable to the extent that there are existing street lights and utility poles within that distance. If the purpose is to avoid interfering with the sight lines of drivers at intersections as a public safety measure, the provision should be clarified to specifically address that performance standard, however, that issue appears to be well-covered in subsection xix.

Subsection (xx)—Verizon Wireless objects to this requirement to the extent that it is intended to prioritize siting of installations on City-owned poles or property over private utility poles. If that is not the intent, the provision should be clarified.

VI Pole **Design and Overall Height**

A. Required upgrade of replacement poles Verizon Wireless objects to the requirement that carriers replace single luminaire poles with double luminaire poles unless the City is willing to offset any additional cost of the upgraded pole. Such a requirement amounts to an impermissible tax.

C., D. and E. Pole and Antenna Height: Verizon Wireless objects to these provisions to the extent that they impose requirements that are inconsistent with and more limiting than those in the FCC regulations for small cell facilities at 47 C.F.R. § 1.1312(e)(2).

VII Equipment Cabinet, Equipment Shroud, Antenna and Antenna Shroud

A. Undergrounding of Equipment: Verizon Wireless objects to this requirement as overly burdensome, unreasonably costly, and impractical. Among other reasons, the underground equipment vault is larger and will require bigger excavations, there are weather related access and deterioration concerns and potential trip hazards from hatches.

B. Pole Mounted Equipment: Verizon Wireless objects to these provisions to the extent that they impose requirements that are inconsistent with and more limiting than those in the FCC regulations for small cell facilities at 47 C.F.R. § 1.1312(e)(2). In addition, these requirements are overly prescriptive.

C. Height of Pole Mounted Equipment: These requirements are overly prescriptive and may not be feasible in all cases, depending on the location of other existing attachment.

E. Size of Antennas: Verizon Wireless objects to these provisions to the extent that they impose requirements that are inconsistent with and more limiting than those in the FCC regulations for small cell facilities at 47 C.F.R. § 1.1312(e)(2).

F. Wiring and Cable Installation: It is not clear what the City means when it calls for "associated wiring and cable" to be "installed within the Installation." Presuming this means that wiring must be installed within the pole, Verizon Wireless objects to this requirement to the extent that it would apply to installations on private utility poles.

G., H. I. Antenna Enclosures. Verizon Wireless objects to these provisions to the extent that they impose requirements that are inconsistent with and more limiting than those in the FCC regulations for small cell facilities at 47 C.F.R. § 1.1312(e)(2). In addition, these provisions are overly prescriptive.

General Comment

As a general point, the Draft Policy would be improved by clarification that design and siting requirements are applicable only to the extent feasible, and by the addition of a waiver provision. The Commission should provide itself with the ability to relax or waiver dimensional and other standards in order to accommodate a proposal that is superior to a complying design in other ways, or otherwise acceptable. This is a typical and important element of wireless siting regulations that is missing from the current version of the Draft Policy.

Thank you for the opportunity to provide these comments.

Sincerely,

Stanley J. Usovicz

Copy to:
Paul Olson, Verizon Wireless
Michael S. Giaimo