CITY OF CAMBRIDGE

POLE AND CONDUIT COMMISSION

831 Massachusetts Avenue, Cambridge, Massachusetts 02139

POLE AND CONDUIT COMMISSION MEETING AGENDA

For Meeting of Thursday, October 17, 2019, 10:00 a.m.

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

The following are matters which the Chair reasonably anticipates will be discussed and for which public testimony will be accepted.

1) Discussion of City of Cambridge Pole and Conduit Commission's Policy Regarding Small Cell Wireless Installations on Public Ways ("Small Cell Policy"), including but not limited to:

(a) Small Cell Policy in its current form (attached as Exhibit 1(a), 10 pages);
(b) Proposed and amended Small Cell Policy (attached as Exhibit 1(b), 24 pages); and
(c) Comments/proposed amendments submitted by the public after October 1, 2019 up to the date of posting of the agenda (attached as Exhibit 1(c), 41 pages).

Elizabeth Lint, Executive Director of
License Commission

Agenda Posted: October 11, 2019

City of Cambridge Pole and Conduit Commission's 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 on or within public rights of way in the City ("Installations").

I. 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.

D. 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.

E. 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. If the Applicant is notified that the Application is incomplete, the time periods set forth in this Policy 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.

F. 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 Applicant shall notify all Other Providers, as applicable, of the hearing date within one business day after such hearing date is scheduled by certified mail, return receipt requested.. The Applicant shall, within one business day after such hearing date is scheduled, notify 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, 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"), by certified mail, return receipt requested of the scheduled hearing date. In the event an Applicant cannot demonstrate notice by certified mail, return receipt requested to the Abutters and Other Providers, proof of service by constable shall be required. Failure to notify all Abutters and Other Providers, as applicable, may result in denial of the Application. Alternatively, Applicant may sign an extension agreement extending the time within which the Commission may respond to the Application by one week for every extra day that the Applicant needs to notify all Abutters and Other Providers, with a corresponding agreement to extend the hearing date accordingly. In no event shall the notice to Abutter and Other Providers be received less than one week before the hearing date.

G. 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.

H. 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 (F) above. That notwithstanding, the Commission and the Applicant may enter into a tolling agreement if additional time is necessary with respect to a material change to an Application.

I. 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) safety concerns or reliability concerns, which are not related to the environmental effects of radio frequency emissions if the Applicant provides proof of compliance with federal emission regulations.
iii) failure to meet applicable engineering standards,
iv) failure to meet the Commission's design standards,
iv) failure of the Applicant to comply with all applicable laws, rules, regulations or other requirements,
v) there are more convenient or favorable nearby locations such that the applicant may densify its network through such nearby locations.
vi) any other legally valid reason to deny such Application.

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

II. 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. For installations proposed on City owned structures only, a copy of the standard License Agreement issued by the City, executed by the Applicant. Full execution by the City shall occur at the time of permit issuance, in the event of approval. For installations proposed on non-City owned structures, Applicant shall provide any license agreement or other documentation showing approval and authority for attachment to such structure from the owner of such structure, as well as sign the City's standard License Agreement for utilizing the public way, executed by the Applicant. Full Execution by the City shall occur at the time of permit issuance, in the event of approval. Further, any other required executed agreements, forms or licenses as determined and provided by the Commission.
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, distance and direction from the power sources, and maps of any proposed excavation, and extent of excavation needed.
    v. Rendering and elevation of equipment
    vi. Photo simulations, from four different angles, showing the pole and streetscape before the installation, as well as after installation.
    vii. If the equipment is proposed to be mounted upon a pole, a signed affidavit by a licensed and registered engineer that such equipment could not be installed underground, and if any of the equipment could be located underground, that such equipment is planned to be so located. If feasible,

undergrounding may or may not be required based upon the discretion of the Commission.

E. Detailed map in a digital format acceptable to the Commission with locations of the poles or other 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 evidence that the proposed Installation is needed to prevent a material inhibition of wireless services.
G. Certification by a registered professional engineer that the pole or 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, and any further evidence showing that the lack of the Installation would materially inhibit wireless services.
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 and descriptions of efforts to prevent any blocking of views from windows..
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 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.
L. 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. Further, this Policy encourages multiple wireless carriers to collocate their

wireless communications equipment and related infrastructure on an existing pole or support structure.

M. Evidence that Installation(s) shall comply with the Installation and Design Requirements of Section V. of this Policy.
N. Proof that all other Installations by the Applicant or parent company which are no longer in use has been removed or turned over to the City and the annual re-certification has been submitted for such Installations, and all fees and fines paid with regard to such Installations.
O. Documentation showing Applicant is in good standing and currently licensed by the Federal Communications Commission, and the proposed Installation shall comply with any regulations of the Federal Communications Commission.

III. 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, abandoned or is no longer authorized to operate by law or other regulation, 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, any further Applications by the Applicant will be deemed incomplete due to failure to include proof that all Installations by the Applicant or its parent company which are no longer in use have been removed or turned over to the City and the annual re-certification has been submitted and all fees and fines paid.

IV. 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. 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:

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. 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 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'. With respect

to Cobra Head poles, all antennas, equipment, wiring and cabling shall be 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 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 would limit the City's ability to plant future street trees based upon the existing City plans for planting of street trees.

xii. No Installation shall be placed where, in the determination of the City, it would 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 based upon existing City plans for installation of such facilities.

xiii. Where the City has 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 within 60 days of notice by the City, and may apply to re-install their Installation in a different location upon the City's redevelopment or change to such area.

xiv. In residential zoning districts, Installations should not be placed directly in front of a building. Where there is a side yard setback with open space or other space,

preference shall be given to applications to locate an Installation on the public way in front of a side yard setback.

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 utility or City-owned poles or other City-owned property, for Installations will be given priority, and any requests to install a new structure in the public way shall be discouraged.

xxi. Proposed Installations shall avoid areas where significant excavation is required for installation of power and conduit. Installations which will have minimal disruption to the integrity of the public way, with more limited excavation are preferred and encouraged, unless such excavation is for purposes of installing underground cabinets, antennae and other equipment.

VI. 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 for purposes of aesthetics.

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 feet high or by more than 10% of the existing pole

height, whichever is less except for "whip antennas" which shall be no higher than 30 inches high by 2 inches in diameter and shall have an antenna mount \no more than 45 inches high by 4.5 inches in diameter.

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

E. No Installation shall be higher than 30 feet or more than 10% higher than other adjacent poles, whichever is less.

VII. 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 be no more than 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 side parallel to the sidewalk. Hardware, anchors and straps to the pole shall 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. Antennas of Installations greater than 25 feet high shall be no more than 24 inches high by 16 inches in diameter.

F. Antenna's conduits, brackets and hardware shall be hidden from view. All associated wiring and cable shall be installed within the Installation, except for Installations upon a wooden pole, which in such case, wiring and cabling shall be shrouded and painted to match the wood on the pole.

G. Antennas 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, and shall be no more than 24 inches in length.

I. Antenna mounted on top of Installations that are less than 25 feet high shall be no greater than 30 inches high nor greater than 2 inches in diameter and shall have an antenna mount no greater than 45 inches high nor greater than 4.5 inches in diameter.

VIII. **Color, Finish, Signage, Logos and Decals**

A. All Installations shall match the existing and adjacent street light poles' colors.

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 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.

City of Cambridge Pole and Conduit Commission's Policy Regarding Small Cell Wireless Installations on Public Ways ("Small Cell Policy")

The City of Cambridge ("City") Pole and Conduit Commission ("Commission") hereby adopts this policy ("Policy") regarding Applications ("Application") relating to installations and upgrades which substantially change or defeat the existing concealment elements of Small wireless facilities, including communications equipment and related infrastructure on or within public rights of way in the City ("Installations"). Small wireless facilities shall include any facilities as defined in footnote 9 of the Declaratory Ruling and Third Report and Order, dated September 26, 2018 by the Federal Communications Commission.

I. Application Process

A. Applicants ("Applicants") shall submit Applications to the Commission accompanied by an Application fee of $500.00 per Application, payable to the "City of Cambridge." The $500.00 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 $100.00 per Installation after the first 5 Installations. 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 with the Application for each such new pole or other structure. Additionally, a $270.00 fee (which shall be an "Annual Recurring Fee") for each Installation shall be required to be submitted within five business days of any grant of said Application. 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, within the Applicant's knowledge after reasonable inquiry to the Commission staff and others with knowledge, 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 ("Other Providers"). Such receipts must demonstrate that notices were provided to all potential Other Providers 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.

D. Commission staff shall notify the Applicant, in writing, within 10 days, if the Application is incomplete, specifying the information needed and the relevant policy or ordinance provision or requirement. If an Applicant supplements its Application, the date of such supplementation shall be considered the new application date for purposes of any

required time requirements. With respect to the supplementation, the Commission staff shall notify the Applicant, in writing, within 10 days of the supplementation if the Application is still not complete, specifying the information needed and the relevant policy or ordinance provision or requirement. After such written notification, any required time periods shall be tolled until such time that the Applicant provides the required information. In the event an application remains incomplete thirty (30) days after any notice that the application is incomplete and the Applicant has not responded, 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. Commission staff's determination of the completeness of an Application is administrative and not substantive in nature; it does not imply or concede that the Commission will not find the Application defective and/or that it will automatically be approved by the Commission.

E. Once the Commission staff has determined that an Application is complete, the Commission staff will schedule the Application to be heard at a public hearing of the Commission to consider the Application. The Applicant shall notify all Other Providers, as applicable, of the hearing date, and of any continued or rescheduled hearing date, within three days after such hearing date is scheduled by certified mail, return receipt requested. The Applicant shall, within three days after such hearing date is scheduled, notify 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, 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"), by certified mail, return receipt requested of the scheduled hearing date, and of any continued or rescheduled hearing date. In the event an Applicant cannot demonstrate notice by certified mail, return receipt requested to the Abutters and Other Providers, proof of service by constable shall be required. Failure to notify all Abutters and Other Providers, as applicable, may result in denial of the Application. Alternatively, Applicant may sign an extension agreement extending the time within which the Commission may respond to the Application by one week for every extra day that the Applicant needs to notify all Abutters and Other Providers, with a corresponding agreement to extend the hearing date accordingly. In no event shall the notice to Abutters and Other Providers be received less than one week before the hearing date.

F. 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.

G. In the event that there are any material changes to an Application, or if the Application is amended, as determined by the Commission, any of these events shall constitute a new Application, for the purposes of any required time standards, and subject to the fees in Section (A) above. That notwithstanding, the Commission and the Applicant may enter into a tolling agreement if additional time is necessary.

H. For any reason that may be raised by either the Applicant, the Commission, Other Provider or any other interested party, the Commission and the Applicant may enter into a tolling agreement for the consideration of the Application at a future hearing before the Commission.

I. 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. safety concerns or reliability concerns, which are not related to the environmental effects of radio frequency emissions if the Applicant provides proof of compliance with federal emission regulations;

iii. failure to meet applicable engineering standards;

iv. failure to meet the Commission's design standards;

v. failure of the Applicant to comply with all applicable laws, rules, regulations or other requirements;

vi. there are more convenient or favorable nearby locations such that the applicant may densify its network through such nearby locations;

vii. false statements made in the Application or submitted therewith, or at the hearing before the Commission; and

viii. any other legally valid reason to deny such Application.

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

K. If the Commission denies the Application, such denial shall not be effective until the written decision is executed and issued to the Applicant by the Chair.

L. Any tolling agreement reached by the Applicant and the Commission must be memorialized in writing on the Commission's form entitled *Tolling Agreement Relative to Small Cell Installation Petition* ("Tolling Agreement" attached hereto as Exhibit I(L)), executed by the Applicant and submitted to the Commission within three (3) business

days of the agreement being made. Failure of the Applicant to provide an executed Tolling Agreement within three (3) business days of an Applicant's agreement to do so, shall constitute a binding agreement with the Commission that the Applicant is withdrawing the subject Application without prejudice to re-filing, and such Application shall be considered withdrawn upon expiration of such third (3rd) business day without further action of the parties.

II. 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. Full execution by the City shall occur at the time of permit issuance, in the event of approval. For installations proposed on non-City owned structures, Applicant shall provide a license agreement or other documentation showing approval and authority for attachment to such structure from the owner of such structure, as well as sign the City's standard License Agreement for utilizing the public way, executed by the Applicant. Full Execution by the City shall occur at the time of permit issuance, in the event of approval. Further, any other required executed agreements, forms or licenses as determined and provided by the Commission.

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, distance and direction from the power sources, and maps of any proposed excavation, and extent of excavation needed;

v. Rendering and elevation of equipment; and

vi. Photo simulations, 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 property on which equipment is to be located, including specific pole type, pole identification number, if applicable, and the areas it will service.

F. 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.

G. Description as to why the desired location is superior to other similar locations, 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 and descriptions of efforts to prevent any blocking of views from windows.

H. 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. Further, this Policy encourages multiple wireless carriers to collocate their wireless communications equipment and related infrastructure on an existing pole or support structure.

I. Affidavit(s) from licensed professional(s) attesting:

   i. The Applicant is in good standing and currently licensed by the Federal Communications Commission;

   ii. The proposed Installation complies with any regulations of the Federal Communications Commission;

   iii. The proposed Installation(s) complies with the maximum safe distance from the antennae and equipment for prolonged and discrete human or animal exposure under the Federal Communications Commission regulations, including but not limited to, an attestation of how many feet is considered safe and compliant

with Federal Communications Regulations in terms of radiation emissions exposure limitations with respect to a human and/or animal from the proposed antennae for one year, one month, for one day, and for one hour;

iv. That the pole or property will safely support the proposed equipment and proposed Installation(s);

v. That the Installation(s) shall comply with the City of Cambridge Noise Ordinance;

vi. That all other Installations by the Applicant or parent company which are no longer in use have been removed and the annual re-certification has been submitted for such Installations, and all fees and fines paid with regard to such Installations, and any City property, including the public way, has been restored to the condition existing prior to such Installation, in accordance with all City standards and at Applicant's expense;

vii. The network service requirements in the area of the Installation and how the proposed Installations(s) will address that need in the City, which shall include evidence of the current level of coverage in the area, how the desired Installation(s) will change the current level of coverage, and proof that the proposed Installation is needed to prevent an effective prohibition of wireless services; and

viii. That any supporting documentation proving the foregoing, including but not limited to, a detailed map (in 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, is true an accurate.

III. Annual Re-Certification and Affidavit

A. Each year, no later than January 2, the Applicant shall submit an affidavit to the Commission which shall list, by location, all Installation(s) it owns within the City by location, including pole number, 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 Installation that is 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, abandoned or is no longer authorized to operate by law or other regulation, shall be considered in default and removed and turn over to the City any of the City-owned equipment 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 as required in (C) above, any further Applications by the Applicant will be deemed incomplete due to failure to include proof that all Installations by the Applicant or its parent company which are no longer in use have been removed, and any City property, including the public way, has been restored to the condition existing prior to such Installation, in accordance with all City standards and at Applicant's expense, and the annual re-certification has been submitted and any and all outstanding fees and fines due to the City shall have been paid.

IV. 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.

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. 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:

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; and

vii. Maintaining the consistency of character of the neighborhoods in Cambridge.

B. Types of Poles.

i. Single Acorn Pole: A pole similar in design as depicted in Exhibit "V(B)(i)."

ii. Double Acorn Pole: A pole similar in design as depicted in Exhibit "V(B)(ii)."

iii. Cobra Head Pole: A pole similar in design as depicted in Exhibit "V(B)(iii)."

iv. 1907 Tear Drop Roadway Pole: A pole similar in design as depicted in Exhibit "V(B)(iv)."

v. Single Saturn Pedestrian Pole: A pole similar in design as depicted in Exhibit "V(B)(v-vi)."

vi. Double Saturn Pedestrian Pole: A pole similar in design as depicted in Exhibit "V(B)(v-vi)."

vii. Cree Edge Pole: A pole similar in design as depicted in Exhibit "V(B)(vii)."

viii. Gas Lamp Pole: A pole similar in design as depicted in Exhibit "V(B)(viii)."

ix. Large Square Light Pole: A pole similar in design as depicted in Exhibit "V(B)(ix)".

x. Vassar Street Contemporary Pole: A pole similar in design as depicted in Exhibit "V(B)(x)".

xi. The Single Acorn Pole, Double Acorn Pole, Single Saturn Pedestrian Pole, Double Saturn Pedestrian Pole, Cree Edge Pole, Vassar Street Contemporary Pole, and the Gas Lamp Poles shall be considered "Decorative Poles."

C. Siting Requirements.

All Installation(s) shall comply with the following requirements:

i. No Installations, other than a co-location, should be located closer than 150 feet radially from another Installation, unless the applicant proves with substantial evidence that locating further than 150 feet from another Installation would constitute an effective prohibition of wireless services.

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 pole with a previously approved Installation, unless the applicant proves with substantial evidence that this restriction would constitute an effective prohibition of wireless services.

iii. Installations shall be placed on existing non-decorative light poles, with preference for the 'Cobra Head' poles first, and then to '1907 Teardrop' poles, then to Large Square Light Poles. Any use of Decorative Poles shall be disfavored. The application will be denied unless the applicant proves with substantial evidence that deviating from this order of preference would constitute an effective prohibition of wireless services.

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

v. No Installation shall be located less than 6 feet from an existing building wall unless the Applicant proves with substantial evidence that this restriction would constitute an effective prohibition of wireless services.

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, unless the Applicant proves with substantial evidence that this restriction would constitute an effective prohibition of wireless services.

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

viii. 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, unless the Applicant proves with substantial evidence that this restriction would constitute an effective prohibition of wireless services.

ix. Installations shall not be placed within 6 feet of a residence's window, door openings, porches or balconies, unless the Applicant proves with substantial evidence that this restriction would constitute an effective prohibition of wireless services.

x. No Installation shall be placed where, in the determination of the City, it would limit the City's ability to plant future street trees based upon the existing City plans for planting of street trees.

xi. No Installation shall be placed where, in the determination of the City, it would 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 based upon existing City plans for installation of such facilities.

xii. Where the City has 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 within 60 days of notice by the City, and may apply to re-install their Installation in a different location upon the City's redevelopment or change to such area.

xiii. In residential zoning districts, Installations shall not be placed directly in front of a building. Where there is a side yard setback with open space or other space, preference shall be given to applications to locate an Installation on the public way in front of a side yard setback, unless the Applicant proves with substantial evidence that locating the Installation in front of a side yard setback would constitute an effective prohibition of wireless services.

xiv. For properties under the jurisdiction of the Cambridge Historical Commission, Applicants for Installations shall obtain written authorization from the Cambridge Historical Commission.

xv. 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.

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

xvii. 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.

xviii. 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.

xix. Siting for utilization of existing utility or City-owned poles or other City-owned property, for Installations will be given priority, and any requests to install a new structure in the public way shall denied unless the Applicant proves with substantial evidence that this restriction would constitute an effective prohibition of wireless services.

xx. All Installations shall comply with all local, state, and federal rules, laws and regulations.

VI. 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, Cree Edge Poles and Gas Lamp Poles, the existing pole shall be replaced with a double luminaire fixture of the same design for purposes of aesthetics. The antenna on these poles shall be of a "whip antenna" design, which antenna shall be no higher than 30 inches high by 2 inches in diameter and shall have an antenna mount no more than 45 inches high by 4.5 inches in diameter, and shall be located directly in between the luminaire fixtures.

B. If the Applicant proposes to replace an existing Decorative Pole with a new Installation, the Applicant shall replicate to the maximum extent possible the existing pole design and overall dimensions.

C. With respect to Cobra Head poles, all antennas, equipment, wiring and cabling shall be built within the pole itself, which allow for multiple carriers in one pole.

D. Any Installations at the site of an existing pole shall not extend the overall height of the pole to more than 30 feet high or by more than 10% of the existing pole height, whichever is less except for "whip antennas" which shall be no higher than 30 inches high by 2 inches in diameter and shall have an antenna mount no more than 45 inches high by 4.5 inches in diameter, and except for Installations upon Large Square Light Poles, which may be more than 30 feet high, but shall not extend the overall height of the pole to more than nearby Large Square Light Poles.

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

F. No Installation shall be higher than 30 feet or more than 10% higher than other adjacent poles, whichever is less, except for Installations upon Large Square Light Poles which may be higher than 30 feet, but which shall not extend the overall height to more than nearby Large Square Light Poles.

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

A. Where technically feasible, equipment cabinets for Installations shall be located underground, unless the Commission determines that locating such equipment underground is not technically feasible, or is inappropriate for the location in question. All such below ground equipment may not be located in the street but may be located under the sidewalk. If the applicant asserts that locating equipment and cables and wires underground is not technically feasible, the initial application shall be accompanied by an affidavit from a licensed engineer attesting to all portions of the Installation that could not be located underground, and attesting to all portions of the Installation that could be located underground.

B. Any above ground or pole mounted equipment cabinet shall be no more than 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 side parallel to the sidewalk. Hardware, anchors and straps to the pole shall 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. Antennas of Installations greater than 25 feet high shall be no more than 24 inches high by 16 inches in diameter.

F. Antenna's conduits, brackets and hardware shall be hidden from view. All associated wiring and cable shall be installed within the Installation, except for Installations upon a wooden pole, which in such case, wiring and cabling shall be shrouded and painted to match the wood on the pole.

G. Antennas 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, and shall be no more than 24 inches in length.

I. Antenna mounted on top of Installations that are less than 25 feet high shall be a "whip antenna," and be no greater than 30 inches high nor greater than 2 inches in diameter and

shall have an antenna mount no greater than 45 inches high nor greater than 4.5 inches in diameter.

J. The Installation, including but not limited to the ventilation equipment within the shroud or cabinet, must comply with the City of Cambridge Noise Control Ordinance. If an Installation is in violation of the City of Cambridge Noise Control Ordinance and cannot be brought into compliance, the Installation must be removed and any City property, including the public way, restored to the condition prior to the Installation, in accordance with all City standards, and at Applicant's expense.

VIII. Color, Finish, Signage, Logos and Decals

A. All Installations shall match the existing and adjacent street light poles' colors.

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 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.

IX. Miscellaneous Provisions

A. If an Application is granted or granted with conditions, the Applicant may be required to comply with certain conditions or be required to obtain additional permits from other City Departments prior to completing the Installation. Failure to comply with any conditions or the good faith application for required permits from other City Departments may be the basis for the revocation of a grant of location or may render a finding that in the Applicant is in non-compliance with the Small Cell Policy and the Installation(s) will not be allowed to be installed or that such Installation(s) will have to be removed and the Applicant will have to restore the public way to the condition prior to the Installation, in accordance with all City standards, and at Applicant's expense.

B. If any provision of this Small Cell Policy is deemed null, void or unenforceable by a court of competent jurisdiction, the remainder of the Small Cell Policy shall remain in full force and effect.

CITY OF CAMBRIDGE

POLE AND CONDUIT COMMISSION

831 Massachusetts Avenue, Cambridge, Massachusetts 02139

TOLLING AGREEMENT
RELATIVE TO SMALL CELL INSTALLATION PETITION

The following agreement is being made by Petitioner _____ _____(the "Petitioner") with the City of Cambridge Pole and Conduit Commission (the "Commission"), as to Petition #_____ which was before the Commission for its consideration on _____. The Petitioner and the Commission enter this Tolling Agreement ("Agreement") willingly, voluntarily and pursuant to the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996), codified in various sections of Title 47 of the Code of Laws of the United States (the "Act"), the Federal Communication Commission's Declaratory Report and Third Report and Order, dated September 26, 2018, M.G.L. c. 166, §22, the Commonwealth of Massachusetts' Special Acts of 1922, Chapter 213, the Cambridge Municipal Code Chapter 15.16, the Commission's Policy Regarding Small Cell Wireless Installations on the Public Way (the "Small Cell Policy"), and other applicable federal, state and local laws, rules regulations, or orders.

The Commission and the Petitioner (collectively hereinafter referred to as "the Parties") hereby mutually agree that the Petition will be continued to the Commission's next available hearing, which shall not be more than sixty (60) days from the date of the execution of this Agreement, and any deadlines required by federal, state, or local law shall be extended for a period of seventy-five (75) days from the date of execution of this Agreement;

(a) The Agreement is only valid as to the Petition identified above;

(b) The Agreement may be subsequently amended by the Parties in writing; and

(c) If any provision of this Agreement is deemed null, void or unenforceable by a court of law of competent jurisdiction over the matter, the remainder of the provisions shall remain in full force and effect.

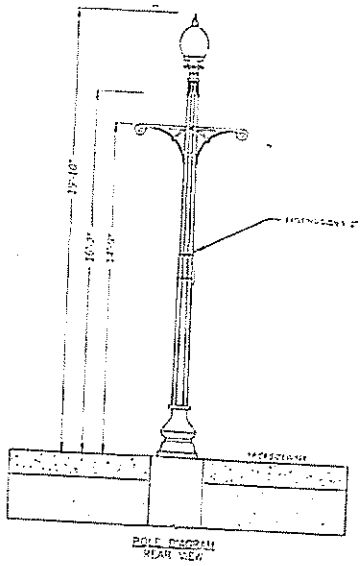
For the City of Cambridge Pole and Conduit Commission:

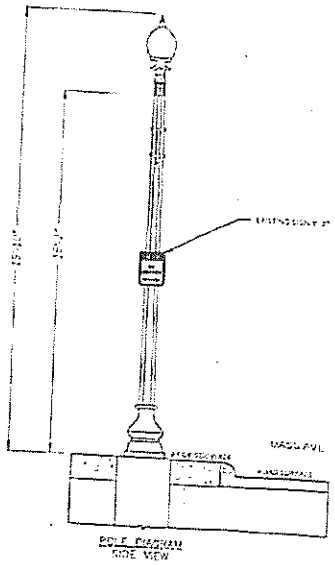
_____ Dated: _____
, Chairperson/Commissioner
Duly Authorized

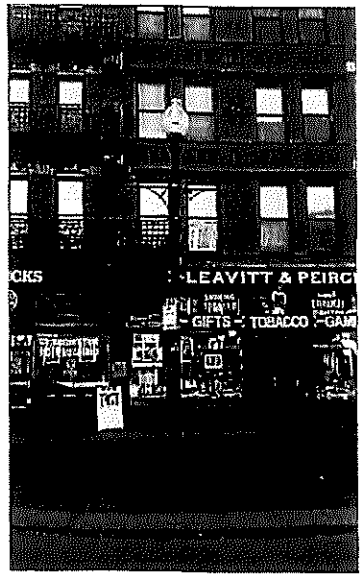
For the Petitioner:

_____ Dated:_____
Print Name:_____
Title:_____
Duly Authorized

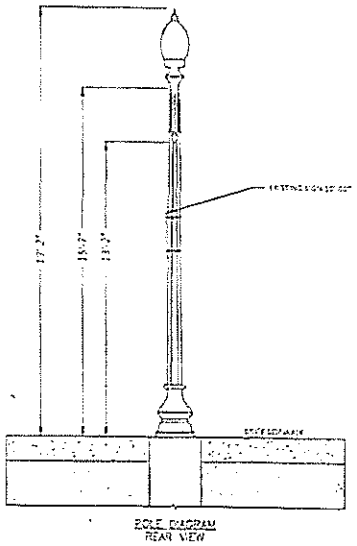
Single Acorn

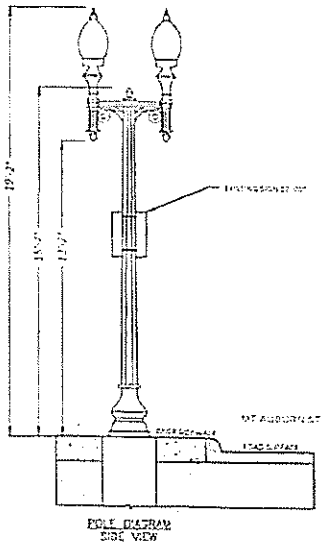




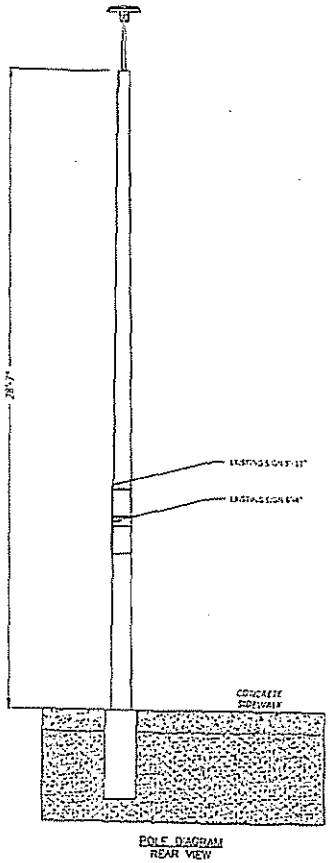


Double Acorn

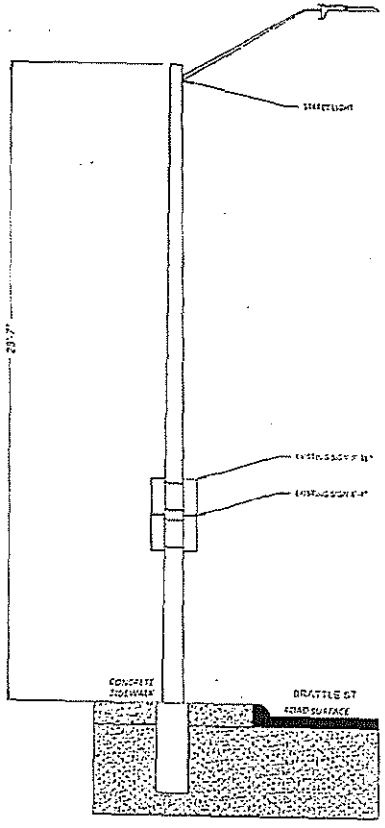




Cobra Head Pole

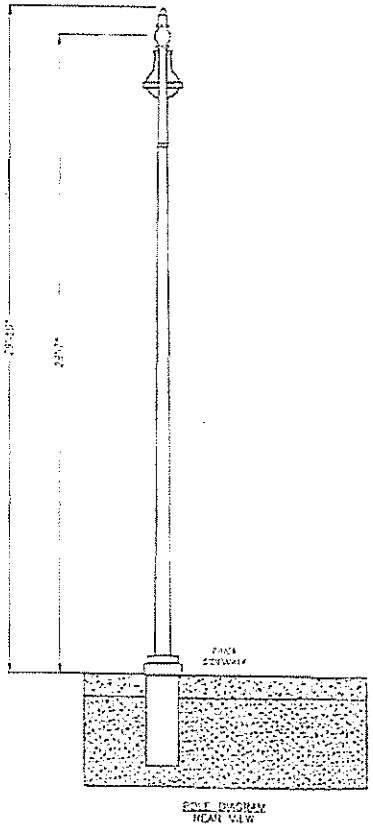


POLE DIAGRAM
REAR VIEW

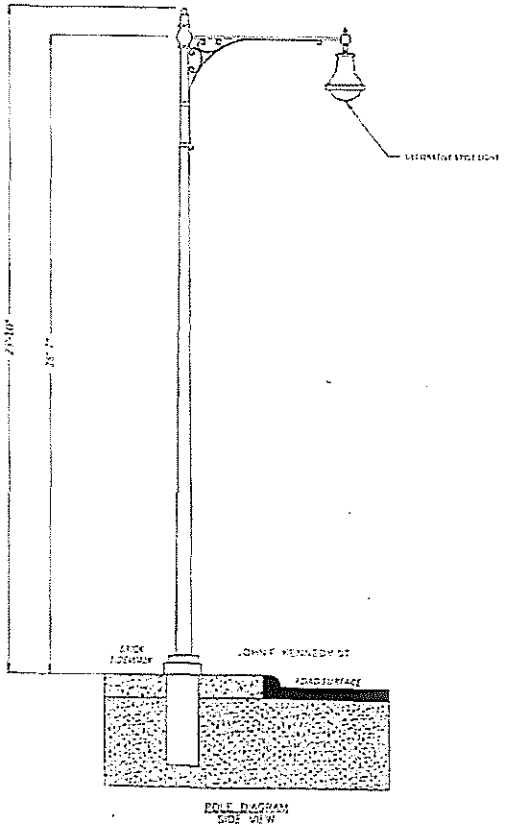


POLE DIAGRAM
SIDE VIEW

1907 Tear Drop



POLE DIAGRAM
REAR VIEW



POLE DIAGRAM
SIDE VIEW

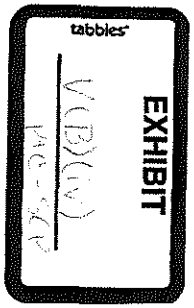


EXHIBIT
tabbies
V(B)(v-vi)
P+C-SCP

Selux Saturn

Saturn Cutoff LED

Mounting

selux

Single (1)
Die-cast aluminum fitter base secured to pole with three stainless steel, Allen head set screws.

EPA = 1.3ft² (0.12m²)
Weight = 39lbs. (17.7kg)

Single Arm Mount (1A)
Die-cast aluminum single luminaire mounting arm secured to pole with four stainless steel, Allen head set screws. Outer slip fitter for 3½" O.D. tenon.

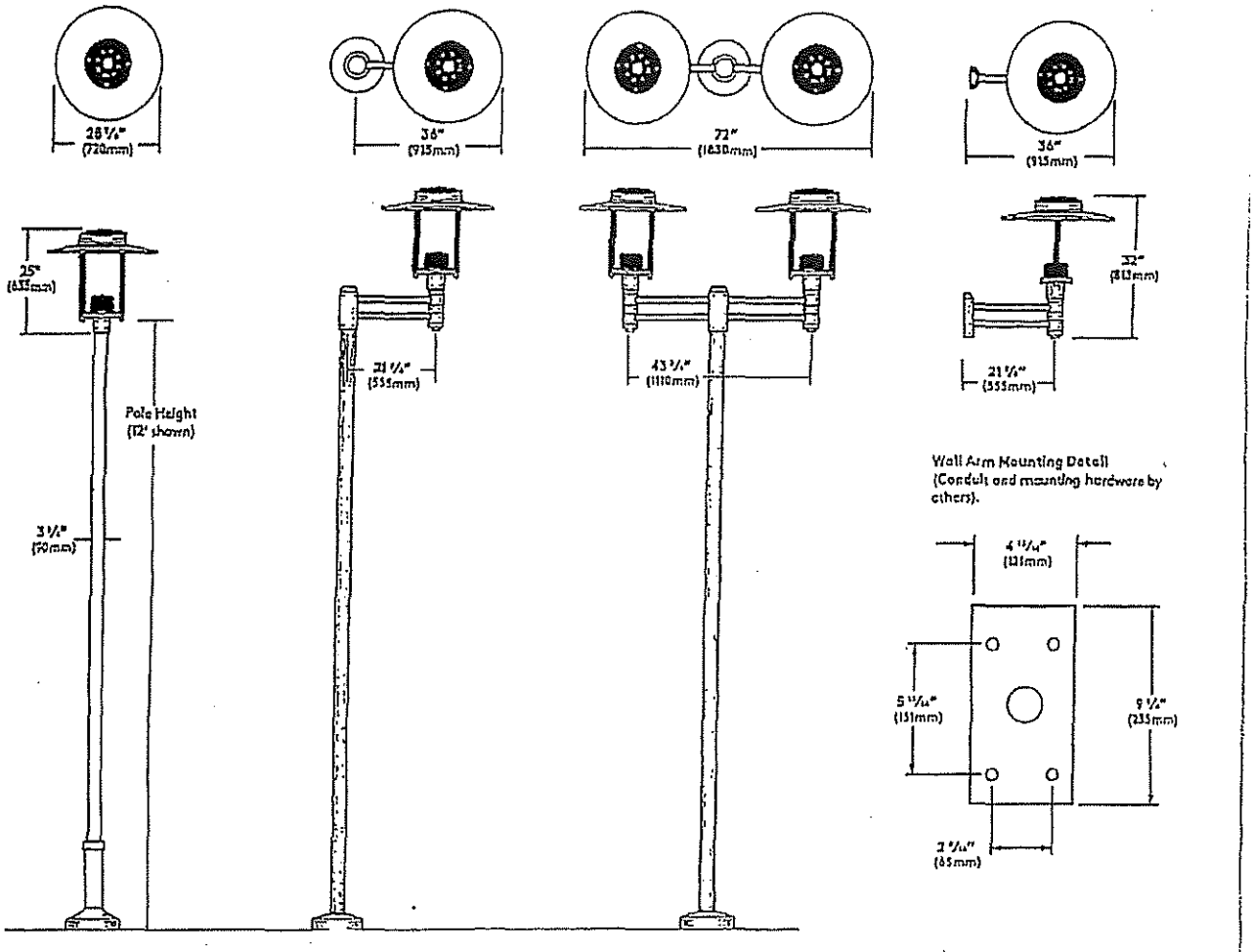
EPA = 2.3ft² (0.21m²)
Weight = 53lbs. (24.0kg)

Double (2)
Die-cast aluminum double luminaire mounting arm secured to pole with four stainless steel, Allen head set screws. Outer slip fitter for 3½" O.D. tenon.

EPA = 4.2ft² (0.39m²)
Weight = 176lbs. (79.8kg)

Wall (W)
Die-cast aluminum double round wall mount arm. Secured to wall with ¾" diameter threaded fasteners (by others).

EPA = 2.1ft² (0.20m²)
Weight = 50lbs. (22.7kg)



Wall Arm Mounting Detail
(Conduit and mounting hardware by others).

Cree Edge

EXHIBIT

tabbies

V(B)(viii)

GAS LAMP

EXHIBIT
tabbies
V(B)(ix)
14C SCP

Large Square Light Pole

EXHIBIT
tabbies
V(B)(x)
P+C 3/21

Vassar Street Contemporary Pole

The Harvard Square Business Association
Taking Care Of The Square
WWW.HARVARDSQUARE.COM

EXHIBIT 1(c) to P&C 10/7/19 Mtg. Agenda

October 3, 2019

Nicole Murati Ferrer
Chairperson
Cambridge License Commission
831 Massachusetts Avenue, 1st Floor
Cambridge, MA 02139

Dear Chair Murati Ferrer:

As you know, I care deeply about the Square and strive to preserve the history of our iconic neighborhood while creating a path forward for the future of Harvard Square, a special place called "home" by students, businesses, residents and visitors alike.

It is no surprise that when people around the globe hear the word Harvard, they think world-class; and by taking the step to strengthen wireless connectivity in Harvard Square, we will have world-class technology that matches our reputation.

Upgrading our existing communications infrastructure with small cell solutions is crucial for public safety and economic development, and it will pave the way for next-generation networks like 5G in Cambridge.

As you know from the incident of several weeks ago, wireless connectivity is increasingly important for public safety. Eighty percent of 911 calls originate from a cell phone, and safety officials communicate with and deliver important information to the public through emergency notifications and alerts.

In the wake of the recent "shelter-in", the Harvard Square community has a heightened awareness of the need for our cell phones to work quickly. With an increased number of devices competing for the bandwidth of our current network, service degradation could occur, creating public safety issues if we do not address this shortcoming and prepare now.

Not only are small cells essential for public safety, but they are important for economic development. Our businesses around Harvard Square rely

on wireless connectivity to support mobile banking, electronic payments, online marketing, and countless other technologies.

Increasing our network coverage and capacity will benefit businesses – small and large – in our community. In Cambridge, 5G is estimated to bring an $173 million in GDP growth, create an estimated 1,061 jobs, and $93 million in network investment.
https://www.ctia.org/5g/print?state=MA

It will also be helpful during our festivals when through-put slows down due to networks being at capacity. Vendors and attendees often share their frustration with slow-downs and their desire for more capacity, to our attention.

I am grateful to the Pole & Conduit Commission for reviewing a policy that will enable the deployment of small-cell solutions throughout Cambridge. I urge you to finalize this policy which will allow for Cambridge and Harvard Square to continue to prosper. We must not only meet our communication needs for the 21st century, but exceed them.

With sincerest thanks for your consideration and best regards,

Denise Jillson
Executive Director

cc: Police Commissioner, Branville Bard
Fire Chief, Gerard Mahoney

63 High Street
Danvers, MA 01923

Stanley J. Usovicz
Manager, External Affairs

VIA ELECTRONIC MAIL AND HAND DELIVERY

October 9, 2019

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

Dear Commissioners:

Thank you for the opportunity to comment on the revised *Policy Regarding Small Cell Wireless Installations on Public Ways* that the Commission posted on October 1, 2019 ("Revised Policy"). This letter supplements the earlier comments we filed addressing the May 20, 2019 draft version of the policy and the further comments we filed on July 15, 2019 addressing the June 10, 2019 Interim Policy. Unfortunately, the Revised Policy perpetuates significant shortcomings of the Interim Policy from both a practical and legal perspective. This Policy will unreasonably burden and materially inhibit the efforts of Verizon Wireless and other wireless providers to upgrade their networks in Cambridge in order to provide enhanced wireless services to Cambridge residents and businesses.

Verizon Wireless offers the following general comments on the Revised Policy, while also renewing all of the objections (and their legal bases) made to the draft policy and the Interim Policy which are not resolved in the Revised Policy. In doing so, Verizon Wireless fully reserves all of its rights under federal, state and local laws and regulations. Verizon Wireless does not waive any of its rights by commenting or not commenting on a particular provision in this letter.

1. Annual Fee: The Revised Policy continues to require a $270 "annual recertification and public way fee" for each installation (Section III. B). As we have previously pointed out, the City lacks authority under state law to charge for the use of the public right-of-way and should remove reference to "public way" from the fee description wherever it appears in the policy. If the City intends to charge a $270 per pole "recertification fee" on an annual basis, it should be prepared to provide evidence that such a fee is reasonably incurred by the City and the amount reflects the actual cost of performing the recertification.

2. Waiver Provision: The Revised Policy continues to lack a waiver provision, which is a customary and important element of wireless siting regulations. The Commission should reserve the ability to relax or waive dimensional and other standards in order to accommodate a proposal that is superior to a complying design or otherwise acceptable despite deviation from design and location standards. This is a simple revision that would benefit both

verizon

the Commission and the applicant by leading to objectively better siting and design decisions.

3. Technical Review and Approval Requirements: The Revised Policy continues to include inappropriate review and approval standards that allow the Commission to evaluate matters of network design and technology. The Commission has no authority to base its decisions on, or require applications to include "evidence of the current level of coverage in the area, and how the desired installation(s) will change the current level of coverage and proof that the proposed installation is needed to prevent an effective provision of wireless services." It is also not entitled to request or base its decision on a map depicting "the amount of cellular coverage in the area." It is not within the Commission's purview to consider whether, in its view, an installation is "needed" for "coverage." The requested information has no bearing on whether the proposed installation meets reasonable design requirements. If a proposed location for an installation satisfies the design standards of the Revised Policy (to the extent that those standards are reasonable and conform to FCC regulations for small cell facilities), the Commission also has no authority to evaluate whether that location is "superior" to another potential location. In addition, the Commission has no authority to dictate that applicants use technology and equipment that will permit collocation of multiple applicants on a single pole or allow antennas to be located inside of a pole, or require that applicants use a "whip antenna." The Revised Policy also improperly and in defiance of the Federal Telecommunications Act contemplates the Commission conducting its own evaluation of RF emission compliance ÷— requiring as part of a "complete" application that an applicant provide an affidavit addressing not only whether an installation will comply with FCC regulations but also requiring elaboration on other topics such as limits for animal exposure over various time periods. (See e.g., Sections II.G., H., I., VI.A. and C, VII.I.).

4. Antenna and Equipment Dimensions and Pole Height: The Revised Policy continues to impose dimensional limitations that differ from and are stricter than those in the FCC regulations for small cell facilities at 47 C.F.R. § 1.1312(e)(2). The Commission should revise Sections VI. A., D., E. and F., and VII B., C., E., H, and I to conform to the FCC's specifications for small wireless facilities.

5. License Agreement: The Revised Policy, in section II.C., continues to refer to the City's "standard License Agreement" for installations on City-owned structures. We again ask the City to disclose the form of agreement it expects applicants to sign in order to locate on City-owned structures. Many communities have entered into master agreements with wireless service providers to locate on municipally owned light poles and other infrastructure. These agreements typically contemplate a separate exhibit for each approved location but do not require the execution of an entire new agreement each time a location is approved. In addition, the same paragraph continues to reference the "standard License Agreement" for "utilizing the public way." Please also provide a copy of that license agreement.

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6. Location and Siting Standards: The Revised Policy continues to have setback and separation standards that are arbitrary, internally inconsistent or impractical (See e.g., Sections V. B. vi, vii, viii, xiii, xvi). Section V.B. viii., for example, requires that an Installation be "placed at least 15 feet from the edge of the curb of a public right of way." Since there often is less than 15 feet between a curb line and private property, and since utility poles and light poles are almost always within 15 feet from the curb, this provision on its face, if enforced, would prohibit service throughout most of the City. Other standards could have the improper effect of preventing multiple wireless carriers from providing coverage at a particular intersection or heavily travelled stretch of road. (See e.g. Sections V. B. i, ii).

7. Procedural Requirements: The Revised Policy imposes procedural requirements that improperly and unreasonably single out wireless attachment applications for more burdensome procedures than other Commission applications. Arbitrary and discriminatory requirements not imposed on others include (i) sending of notices to abutters and to all other "potential" wireless providers by certified mail within three days of when the hearing is scheduled (rather than within three days of when the legal notice is published as for other applications); (ii) requiring certified mailing of additional notices to abutters and other wireless providers for continued hearings on the same application; (iii) providing notice by constable service if proof of notice by certified mailing is not available (e.g.. if a resident identified on the City's abutters list has not accepted the certified mailing); (iv) deeming an application withdrawn (regardless of whether the applicant intends to withdraw it) if an application remains incomplete 30 days after a notice that an application is incomplete. These requirements are unreasonable and do not appear to be imposed on any other grant of location applicants.

Thank you for the opportunity to provide input on the Revised Policy. We strongly encourage the City of Cambridge to reconsider its overly restrictive and unnecessarily complicated requirements for wireless service providers using existing utility poles and City street lights in the right-of-way.

Sincerely,

Stanley J. Usovicz

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

verizon

Crown Castle
1800 West Park Drive
2nd Floor
Westborough, MA 01581

October 11, 2019

Nicole Murati Ferrer
Chair, Cambridge Licensing Commission
City of Cambridge
831 Massachusetts Avenue
Cambridge, MA 02139

Re: Crown Castle's Comments on Small Cell Policy

Dear Chair Murati Ferrer,

Crown Castle applauds the great strides taken in the past few months by the City of Cambridge ("City") in developing a Small Cell Policy ("Siting Policy") that will continue the City's role as a leader in wireless deployment. The efforts by the Pole and Conduit Commission ("Commission") and the various City agencies demonstrate your commitment to ensuring the residents of the City have access to next generation technology and Crown Castle is delighted to continue working with you on the effort. With that, we submit this proposal for some further changes to the Siting Policy that would help ensure that what is finally adopted by the City is workable and complies with Federal rules.

The 30' Height Restriction Needs Clarification

Crown Castle deploys small cells on existing utility poles and on replacement light structures that are designed to "replicate the existing pole design and overall dimensions" as indicated in Section VI(B). In many cases, especially on utility poles, the existing structure is taller than 30', so after adding an antenna to the top of the pole, the height of the pole plus the antenna would also be greater than 30'. Indeed, in the pending applications before the Commission that were submitted prior to the Siting Policy, some of the utility poles in their current state without a top mounted antenna are taller than 30', so obviously, the height of the pole plus the height of the antenna would be greater than 30'. It would seem that the intent of this section is to ensure that the replacement streetlight or utility pole matches the existing streetscape to the greatest extent possible – this intent is already captured elsewhere in the Siting policy, specifically in Section VI(A) and (B). Given the above, the 30' foot height restriction is unnecessary and Section VI (D) should be removed. Alternatively, Section VI should make three clarifications: first, that the height restriction does not apply to wood utility poles; second, that the height of the luminaire for any replacement streetlight should be at the same height as the luminaire on nearby streetlights; and, third, that the overall height restriction does not include the height of the antenna extending above the luminaire.

The Equipment Cabinet's Size Restriction is too Small for Many Single Carrier Deployments; it is Far Too Small for Co-Location, and is Arbitrary

The size restriction for any aboveground or pole mounted equipment cabinet in Section VII(B) – no more than 36 inches high, no more than 18 inches wide, and no more than 12 inches deep – is too small and too strict a dimensional requirement to work effectively on many deployments. Crown Castle deploys enclosures of varying sizes depending on the technology being deployed, whether the small cell has more than one carrier co-located, and the likelihood of future co-location. Those factors influence what must be contained in the shroud and what is contained in the shroud determines the required size. To avoid creating an overly strict dimensional requirement, the FCC applies a volumetric restriction to the shroud size for Small Wireless Facilities: 28 cubic feet. 47 C.F.R. §1.1312§(e)(2). Applying this volumetric restriction provides more appropriate options with respect to deploying technology in a way that is smart and efficient.

Crown Castle has applications pending that were submitted prior to the release of the Siting Policy with a shroud that is 40" tall, by 15.75" wide, by 12" deep and the Commission has approved shrouds of this size for this project in the past. In fact, by volume, this shroud is smaller than the shroud size in the proposed ordinance (4.37 cubic feet verses 4.5 cubic feet). Moreover, the shrouds that Crown Castle has been deploying over the past few months for the colocation project is larger, but fits within the volumetric mandate from the FCC as indicated above. As Crown Castle has been advocating for many months, colocation is a smart way to deploy wireless technology to maximize the value of existing infrastructure – it limits proliferation of nodes and reduces disruption to the community. Indeed, the Siting Policy indicates a preference for colocation in a few places, specifically in Section II(L) and colocation is not possible with the shroud size restriction in the Siting Policy. For these reasons, Crown Castle urges the Commission to adopt the Federal Rule and allow equipment enclosures that do not exceed 28 cubic feet.

The Antenna Size Restriction is too Small for Colocation

The antenna size restriction in Section VII(E) is narrower and shorter than what the Commission has been approving for Crown Castle to effectively collocate multiple carriers in the City over the past few months. Again, like with the shroud size, this antenna size restriction defies the Siting Policy preference for colocation by not allowing a co-locatable antenna and the Commission should amend this section of the Siting Policy to allow an antenna that is 18" in diameter and 48" tall. With this change, Section VII(H) should be deleted and the size of the "tapered transition piece" in Section VII(G) should be changed to reflect the new diameter of the antenna: 18".

In the alternative, the Commission should adopt a volumetric size restriction which would allow for carriers to deploy the appropriate antenna for the appropriate situation. Like with the issue regarding shroud size, in those applications that were submitted prior to the Siting Policy being released, Crown Castle submitted applications for antennas that are 24.9"h by 10" in diameter which are similar to antennas that have been approved by the Commission in the past. Moreover, if the Commission adopted a volumetric restriction, the antenna that Crown Castle is proposing is, in fact, smaller by volume than the antenna that is allowable under the Siting Policy. This

is a smart change that would create a more robust Siting Policy that provides greater options to the carriers to provide high speed mobile broadband.

The Abutter Notification Requirement is Onerous and Inconsistent with the Notification Requirements Imposed on other Development Projects

The abutter notification requirement is excessively burdensome and the complex rule imposes condition that may be impossible to meet. Standard certified mail is occasionally undeliverable for a variety of reasons that are outside the control of the applicant because it requires the recipient to be home, to answer the door, and to be willing to sign the return receipt. The Post Office makes three attempts to reach the homeowner before deeming the mail undeliverable and returning to sender, but the timeline for that return is vague. In the Siting Policy, the applicant is required to prove delivery by certified mail, or in the alternative, prove personal delivery by Constable. Section I (E). Personal delivery by constable is an extraordinary requirement and unreasonable for a few reasons: first, it imposes excessive time and expense onto the applicant; second, there is no reason to believe that a constable will have better success at making a delivery than the post office; and third, it is far beyond the requirements that the City imposes on developers through other boards. Moreover, there are smarter and more reasonable alternatives: the City could require a Certificate of Mail in which the Post Office provides evidence that the applicant mailed a notice on a certain day; the City could require a posting in the newspaper by a certain day; or, the City could do the mailing and charge the applicant a reasonable fee. Any of these alternatives are more reasonable and have a higher likelihood of achieving the goal – providing actual or constructive notice – than the exceptionally burdensome combination of certified mail or personal delivery by constable.

Again, Crown Castle is delighted by the progress made by the City and is excited to continue working with the Commission to perfect this Siting Policy.

Sincerely,

Joseph Shannon
Government Affairs Manager

Cc: Steve Lenkauskas, City Electrician
TJ Shea, Superintendant of Streets
Nancy Glowa, City Solicitor
Paul Kawai, Assistant City Solicitor
Elizabeth Lint, Executive Director
Dana Clark, Cambridge License Commission

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October 11, 2019

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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") Policy Regarding Small Cell Wireless Installations in the Public Way ("Small Cell Policy"), along with Proof of Service upon interested parties. I look forward to the opportunity to discuss the Small Wireless Policy with the Commission at the October 17, 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 Small Wireless Policy. If you have any questions in this matter, I would be happy to discuss them. I can be reached at (630) 245-2064 or via e-mail at [hrashes@extenetsystems.com].

Very truly yours,

Haran C. Rashes

Enclosures
cc: Interested Parties (on attached service list)

STATE OF MASSACHUSETTS
CITY OF CAMBRIDGE
CAMBRIDGE LICENSE COMMISSION

BEFORE THE POLE AND CONDUIT COMMISSION

In the Matter of the City of Cambridge	)
Pole and Conduit Commission's Policy	)
Regarding Small Cell Wireless Installations	)
on Public Ways	/

COMMENTS OF EXTENET SYSTEMS, INC.

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Dated: October 11, 2019

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STATE OF MASSACHUSETTS
CITY OF CAMBRIDGE
CAMBRIDGE LICENSE COMMISSION

BEFORE THE POLE AND CONDUIT COMMISSION

In the Matter of the City of Cambridge	)
Pole and Conduit Commission's Policy	)
Regarding Small Cell Wireless Installations	)
on Public Ways	/

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") September 20, 2019 Notice of Procedure for Small Cell Attachment Applications ("Notice"), hereby respectfully submits the following comments and suggestions regarding the Proposed Revisions to the City of Cambridge Pole and Conduit Commission's Policy Regarding Small Cell Wireless Installations on Public Ways ("Small Cell Policy") issued for comment on October 1, 2019.[1]

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,

[1] Though the Notice stated that "[o]n or before September 27, 2019, the Commission will post the Small Cell Policy with its most up-to-date revisions and proposed changes," the Small Cell Policy was not distributed until October 1, 2019.

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. On September 26, 2018, the FCC issued a Declaratory Ruling and Third Report and Order[2] 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).

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 "[t]hat 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."[3]

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[2] *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 *Third Report and Order* became effective as of January 14, 2019. 83 Fed. Reg. 51,867 (2018).

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

According to the City Council minutes, this report was received at the September 9, 2019 City Council meeting.[4]

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 time to receive written and verbal comments as to the Draft Policy from utilities and any interested party."[5]

On May 29, 2019, ExteNet and Verizon filed extensive comments on the Draft Policy. The Commission held a Public Hearing on June 10, 2019 to hear oral comments on the Draft Policy. A revised Draft Policy was distributed at the beginning of the meeting and adopted as an interim policy without discussion. The adopted Interim Policy clearly did not consider many of the issues raised by ExteNet and Verizon.

On September 20, 2019, the Commission issued its Notice. The Notice stated that "on or before September 27, 2019, the Commission will post the Small Cell Policy with its most up-to-date revisions and proposed changes" and that written comments would be due on October 11, 2019. In addition, the Notice stated that "no new small cell attachment application can be filed prior to October 22, 2019, and if the petitioner intends for it to be heard in the month of October,

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[4] *See*, *Minutes,* City Council, September 9, 2019, Packet p. 809. ExteNet notes that despite its having participated in the November 8, 2018 meeting and having filed comments on previous Interim Small Cell Policies issued by the Commission, it was not served with notice of, nor invited to, the Transportation and Public Utilities Committee public hearing which was held on July 24, 2019, at which time this report was publicly considered.

[5] *See*, Amended Notice of Vote, issued May 20, 2019.

the petition must be filed no later than October 25, 2019." The proposed Small Cell Policy addressed in these Comments was issued by the Commission on October 1, 2019.

II. THE COMMISSION MUST ISSUE A WRITTEN DECISION

When the Commission approved the Draft Policy, the Commission did so with little or no comment. At the June 10, 2019 Commission Public Hearing in the Matter, though the Commission took oral comment, it was clear that the Commission had already made its determination as evidenced by the introduction at the start of that meeting of revisions to the Draft Policy. Those revisions were adopted as the Draft Policy at the conclusion of that meeting, without change. ExteNet must therefore question whether its May 29, 2019 comments were even read and considered.

The United States Supreme Court has held that an agency "would be arbitrary and capricious if the agency has relied on factors [it was] not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[6] In the absence of any record demonstrating that the Commission considered the points and arguments raised by ExteNet and other commenters any adopted policy would be arbitrary and capricious on its face. Thus, this Commission is required to issue a comprehensive order explaining why its policy should withstand scrutiny in light of the comments raised herein and by others.

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[6] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43; 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983).

III. LEGAL ISSUES THE COMMISSION MUST TAKE INTO ACCOUNT

A. The *Third Report and Order* is Presently in Effect

On January 10, 2019, the Court of Appeals for the Tenth Circuit denied a request by several cities to stay the *Third Report and Order*,[7] and, as Federal Courts have recognized, "the Declaratory Ruling (*Third Report and Order*) is therefore presently in effect."[8] While the *Third Report and Order* is under review by the Ninth Circuit Court of Appeals,[9] without any further direction from that Court, this area of law is a settled area of law."

B. The Standard for Effective Prohibition

The *Third Report and Order* clarified what is meant in the Act by the term "effective prohibition." In its *Third Report and Order*, the FCC declared that an effective prohibition occurs where a municipal legal requirement "materially limits or inhibits any competitor's or potential competitor's ability to compete in a fair and balanced legal and regulatory environment."[10] The FCC rejected the rulings of those Federal Circuit Courts that have "held that a denial of a wireless siting application will 'prohibit or have the effect of prohibiting' the provision of small wireless service under Section 332(c)(7)(B)(i)(II) only if the provider can establish that it has a significant gap in service coverage in the area and a lack of feasible alternative locations for siting facilities."[11] The effective prohibition test now applies not only when a provider is attempting to fill a gap in

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[7] *City of San Jose, Cal. v. FCC*, No. 18-9568 (10th Cir. Jan. 10, 2019).

[8] *Eco-Site LLC v. County of Pueblo*, No 17-cv-02535 (D. Colo. May 29, 2019).

[9] *Sprint Corp. v. FCC*, No. 19-70123 (9th Circuit). On January 10, 2019, the Tenth Circuit Court of Appeals transferred the appeal of the *Third Report and Order* to the Ninth Circuit Court of Appeals. *City of San Jose, Cal. v. FCC*, No. 18-9568 (10th Cir. Jan. 10, 2019).

[10] Third Report and Order at ¶¶ 35-37.

[11] *Id.* at ¶ 35

coverage, but also when the provider proposes to densify its existing wireless network, introduce new services, or otherwise improve service capabilities.[12]

Under the new effective prohibition test, as long as a provider asserts any factor under the test, the test is met. The new effective prohibition test merely requires an Applicant to assert that the service it seeks to provide through the proposed small wireless facilities will result in additional services or improvement of existing services in the area.

Though the United States First Circuit Court of Appeals and its various constituent District Courts have previously found that "when analyzing the 'effective prohibition' question, the district court is not limited to the administrative record before the local zoning board, and it may consider additional evidence presented by the parties. Ultimately, whether an effective prohibition has occurred 'is a factual question for the trial court to resolve.'"[13] Any assertion here that the First Circuit generally requires proof that there is a "significant gap in coverage"[14] is fundamentally flawed and would be easily distinguished.

C. Moratoria are Prohibited

The FCC has found that "[e]xpress moratoria are facially inconsistent with section 253(a)."[15] In its Notice, the Commission specifically stated, "no new small cell attachment application can be filed prior to October 22, 2019, and if the petitioner intends for it to be heard in

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[12] *Id.* at ¶ 37.

[13] *Industrial Tower and Wireless, LLC v. Haddad*, 109 F.Supp.3d 284, 297 (D.Mass. 2015), citing, *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 39 (1st Cir. 2014) and *Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 52 (1st Cir. 2009).

[14] *Industrial Tower and Wireless, LLC v. Haddad*, 109 F.Supp.3d at 297.

[15] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT 17-84, WC 17-79, FCC 18-111, Aug.2, 2018. ("*Moratoria and One-Touch Make Ready Declaratory Ruling*"). at ¶ 147.

the month of October, the petition must be filed no later than October 25, 2019." In its *Moratoria and One-Touch Make Ready Declaratory Ruling* the FCC discussed temporary moratoria, such as that imposed by the Commission and found that "even moratoria that are actually time limited 'force providers either to delay or cancel their planned deployments.'"[16]

This Commission's temporary moratoria on applications constitutes an illegal action and the City is in blatant violation of Section 253 of the Act.

IV. EXTENET'S INTEREST IN THIS PROCEEDING

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 to ensure ubiquitous and high-capacity wireless broadband connectivity.

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.

In Cambridge, ExteNet currently has numerous pending applications for installation of small cell facilities in the public rights-of-way. In addition, several of ExteNet's applications have been denied by the Commission and are the subject of a pending Federal Complaint in the United States District Court for Massachusetts.[17]

ExteNet believes that the above applications should not be subject to the Small Wireless Policy if such is adopted after the applications were proffered, as such would make the Small Wireless Policy an *ex post facto* application of law, in violation of the United States Constitution.[18]

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[16] *Id.* at ¶ 148.

[17] *ExteNet Systems, Inc. v. City of Cambridge*, No. 19-cv-11863 (D. Mass.).

[18] U.S. CONST. art. 1, § 10, cl. 1.

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 Small Wireless Policy if such is approved by the City Council.

V. COMMENTS AND SUGGESTIONS

ExteNet respectfully makes the following comments and suggestions regarding the Small Cell Policy and requests that this Honorable Commission adopt these changes. In many cases, ExteNet has pointed out areas of the Small Cell Policy which need to be modified to comply with FCC rules and Federal law, while making assumptions as to the Commission's intent in drafting such language and maintaining such intent. ExteNet notes that most, if not all, of its May 29, 2019 Comments in this matter were ignored by the Commission and hopes that the Commission takes a closer look at ExteNet's current comments with to draft a policy that is legally sound and equitable to all stakeholders.

A. Definitions

The Small Cell Policy does not contain any definitions. The lack of such makes various aspects of the Small Cell Policy ambiguous and open to discussion. ExteNet proposes the addition of a Definitions Section. 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.

B. 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,"[19] without illegally discriminating against simple Applications which take considerably less time and expense than the City budgets. This line should be removed from the Small Cell Policy.

2. 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 Small Cell Policy is too restrictive and impractical.

The Small Cell Policy's requirement that competitors be notified *before* the Application is filed is rife with competitive and legal issues.[20] As written, the Small Cell Policy 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 Small Cell Policy, were to immediately file their own Application without the coordination required by the Small Cell Policy, it could cause legal and other problems for all Wireless Providers and the City. Assuming the Commission would deny

[19] Small Cell Policy at I.A.

[20] Small Cell Policy at I.C.

such an Application, as not compliant with the Small Cell 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.

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.

3. Update of Incomplete Applications

The Small Cell Policy states that "in the event an application remains incomplete thirty (30) days after any notice that the application is incomplete and the Applicant has not responded, such application shall be deemed withdrawn without prejudice, and will need to be resubmitted in full, including payment of fees accompanying a new application."[21] There is no basis in Federal Law for such an automatic withdrawal of the application. The FCC's Rules and Regulations on the matter are at 47 C.F.R. §1.6003(d)(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.

[21] Small Cell Policy at I.D.

Thus, an Applicant is under no deadline to "restart" the shot-clock. Many of the potential issues that could render an application incomplete may require extensive engineering modifications, plan revisions, or additional research that cannot be completed within 30 days.

4. Mailing of Notice

The Small Cell Policy requires that Applicants notify other providers and owners of adjacent and nearby properties within three business days after a hearing has been scheduled. [22] Three days is not a practical time frame in which to get such notices issued. It can take weeks for "certified mail receipts" to be returned to the Applicant. In addition, if a certified mail receipt is not returned, the Small Cell Policy includes an additional delaying step of requiring "proof of service by constable." The Small Cell Policy requirements for service far exceed that of Section 11 of Massachusetts General Laws, Chapter 40a.[23]

ExteNet believes that the certified mail requirement should be eliminated. With certified mail, the recipient must accept such and if not accepted, the certified mail process is not completed. ExteNet proposes that first-class mail notification should suffice. In the alternative 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.

[22] Small Cell Policy at 1.E.

[23] MASS. GEN. LAWS ch. 40A, § 11.

5. Completeness of Applications

The Small Cell Policy leaves a determination of completeness to the Commission and states that "In the event that there are any material changes to an Application, or if the Application is amended, as determined by the Commission, any of these events shall constitute a new Application."[24] Such language is contrary to the FCC's Rules and Regulations at 47 C.F.R. § 1.6003 and leaves too much discretion to the Commission.

6. Tolling Agreement

The Small Cell Policy appears to require an adhesion contract drafted by the Commission for all tolling agreements under 47 C.F.R. § 1.6003(d). In many cases, the timeframes needed for the tolling period and the terms of the tolling agreement need to be flexible for both the City and the Applicant's benefit. ExteNet believes that individual modifiable tolling agreements should be allowed.

7. Grounds for Denial of an Application

The Commission in adopting the Small Cell Policy must be objective, and incorporate clearly-defined and ascertainable standards, applied in a principled manner. Section I.K of the Small Cell 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. The Commission must be more specific in Section I.I.ii.

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 in a footnote in the *Third Report and Order* stated, "aesthetic

[24] Small Cell Policy at 1.G.

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."[25] 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. 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."[26] The Commission's policy should recognize such.

The Small Cell 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."[27] 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 or determine whether a location is "needed"

As discussed above, in the *Third Report and Order*, the FCC has clarified what is meant in the Act by the term "effective prohibition." The FCC's clarification basically means that the Commission cannot include language in the Grounds for Denial that read "there are more convenient or favorable nearby locations such that the applicant may densify its network through

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

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

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

such nearby locations."[28] The Commission may not substitute its judgement for that of the Applicant on what is the most favorable location for the small wireless facility.

C. Content of Applications

1. Desired Location

The Small Cell Policy requests justification "as to why the desired location is superior to other similar locations."[29] 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 or service, or to dictate the design of a provider's network."[30] Thus, the criterion should be eliminated from the Small Cell Policy.

2. An FCC License is not required to build a Small Cell

Applicants who are not licensed by the FCC have an independent right to install small wireless facilities under Federal law and under authority from the Department of Telecommunications and Cable if they are certified to provide intrastate telecommunications services in Massachusetts. Thus, the requirement in the Small Cell Policy that Applicants demonstrate that they are "currently licensed by the Federal Communications Commission"[31] is illegally discriminatory and should be removed from the Small Cell Policy.

3. The Commission is legally prohibited from considering emissions

Federal law specifically states:

> 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

[28] Small Cell Policy at I.I.vi.

[29] Small Cell Policy at II.G.

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

[31] Small Cell Policy at II.I.i.

> of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.[32]

Thus, the Commission is preempted from asking an Applicant any more than an "affidavit from a licensed professional attesting,"[33] that the Applicant's proposed equipment "compl[ies] with the FCC's regulations concerning such emissions."[34]

The Small Cell Policy's requirement that Applicants prove that

> The proposed Installation(s) complies with the maximum safe distance from the antennae and equipment for prolonged and discrete human or animal exposure under the Federal Communications Commission regulations, including but not limited to, an attestation of how many feet is considered safe and compliant with Federal Communications Regulations in terms of radiation emissions exposure limitations with respect to a human and/or animal from the proposed antennae for one year, one month, for one day, and for one hour;[35]

is an over reach beyond the scope of Federal law.

4. Need in the City

As discussed above, 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 is justified. The proposed language in the Small Cell Policy at II.I.vii,

> The network service requirements in the area of the Installation and how the proposed Installations(s) will address that need in the City, which shall include evidence of the current level of coverage in the area, how the desired Installation(s) will change the current level of coverage, and proof that the proposed Installation is needed to prevent an effective prohibition of wireless services,

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[32] 47 U.S.C. § 332(c)(7)(B)(iv).

[33] Small Cell Policy at II.I.

[34] 47 U.S.C. § 332(c)(7)(B)(iv).

[35] Small Cell Policy at II.I.iii.

can only be intended to measure whether or not there is a gap in coverage and is thus inappropriate and impermissible under federal law.

D. Siting Requirements

1. Setback

The Small Cell 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, unless the Applicant proves with substantial evidence that this restriction would constitute an effective prohibition of wireless services.[36]

Where the public rights-of-way adjacent to the street are not wide enough to accommodate placement of a small wireless facility "at least 15 feet from the edge of the curb," the burden of proof should be on the Commission to show that the right-of-way at that location cannot accommodate a small wireless facility when all other factors are favorable.

2. Future Development

The Small Cell Policy states:

> Where the City has 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 within 60 days of notice by the City, and may apply to re-install their Installation in a different location upon the City's redevelopment or change to such area..[37]

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."[38]; The Due Process Clause of the Fourteenth Amendment extended this to actions of state

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[36] Small Cell Policy at V.C.viii.

[37] Small Cell Policy at V.C.xii.

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

and local governments, " . . . nor shall private property be taken for public use, without just compensation." Section V.C.xii. 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:

> 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 notice at least 180 days prior to 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. If 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.

3. Historical Commission

The Small Cell Policy asks that "[f]or properties under the jurisdiction of the Cambridge Historical Commission, Applicants for Installations shall obtain written authorization from the Cambridge Historical Commission."[39] 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

[39] Small Cell Policy at V.C.xiv.

Order."[40] This means that Cambridge Historical Commission approval must also be made within the same "shot clock" timeframe while this Commission is considering the Application.

E. Pole Design and Height

1. Height

The pole height restrictions imposed by the Small Cell Policy, at Sections VI.D through F, are 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).[41] The height requirements in the Small Cell Policy will be especially problematic for the City if the City allows the incumbent investor owned utility to install utility poles that are taller than that permitted in the Small Cell Policy, as such would be a blatant case of discrimination against small wireless providers. ExteNet suggests changing the sizes proposed in the Small Cell Policy to match the national standards adopted by the FCC. 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 Small Cell Policy uses the term "equipment cabinet" in Section VIII, but fails to recognize that some equipment, such as certain models of radios, are not mounted in traditional utility cabinets. ExteNet proposes removal of the word "cabinet" to clarify the intention of the Small Cell Policy.

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

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

3. Equipment Size

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

F. 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 antennae, cannot function when painted. Therefore, ExteNet proposes changing Section VIII.A of the Small Cell 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."

G. Miscellaneous Provisions

1. Additional Permits

The Small Cell Policy states that "the Applicant may be required . . . to obtain additional permits from other City Departments prior to completing the Installation."[42] It is important to note that the FCC has found that when

> multiple authorizations may be required before a deployment is allowed to move forward. For instance, a locality may require a zoning permit, a building permit, an electrical permit, a road closure permit, and an architectural or engineering permit for an applicant to place, construct, or modify its proposed personal wireless service facilities. All of these permits are subject to Section 332's

[42] Small Cell Policy at IX.A.

> requirement to act within a reasonable period of time, and thus all are subject to the shot clocks we adopt or codify here.[43]

This means that ALL permit approvals must be made within the same "shot clock" timeframe while this Commission is considering the Application. The FCC ruled such because if they "were to interpret Section 332(c)(7)(B)(ii) to cover only zoning permits, states and localities could delay their consideration of other permits (e.g., building, electrical, road closure or other permits) to thwart the proposed deployment." This section should be re-written to acknowledge Federal Law.

2. Savings Clause

Section IX.B of the Small Cell Policy provides:

> If any provision of this Small Cell Policy is deemed null, void or unenforceable by a court of competent jurisdiction, the remainder of the Small Cell Policy shall remain in full force and effect.

This does not recognize the authority of the FCC or potential state agencies to rule upon the validity of this policy. This clause should be reworded to state

> If any provision of this Small Cell Policy is deemed null, void or unenforceable by a court of competent jurisdiction or an agency with jurisdiction over the matters herein, such as the Federal Communications Commission, the remainder of the Small Cell Policy shall remain in full force and effect.

VI. CONCLUSION

ExteNet commends this honorable Commission for considering input into the Small Cell Policy on Small Cell Installations on Public Ways and for reviewing ExteNet's comments and suggestions. We expect the Commission will take the above offered suggestions seriously and issue a written determination on how it considered such. 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,

[43] *Third Report and Order*, ¶75.

fair, and reasonable. We urge the Commission to adopt the recommendations made by ExteNet Systems, Inc.

Respectfully Submitted,
EXTENET SYSTEMS, INC.

By: _____

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Dated: October 11, 2019

STATE OF MASSACHUSETTS
CITY OF CAMBRIDGE
CAMBRIDGE LICENSE COMMISSION

BEFORE THE POLE AND CONDUIT COMMISSION

In the Matter of the City of Cambridge	)
Pole and Conduit Commission's Policy	)
Regarding Small Cell Wireless Installations	)
on Public Ways	/

PROOF OF SERVICE

Haran C. Rashes affirms that on October 11, 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 October 11, 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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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
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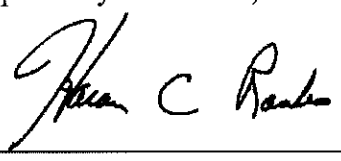
Respectfully Submitted,



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October 11, 2019

STATE OF MASSACHUSETTS
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October 11, 2019

***Via Email* [elint@cambridgema.gov]**

City of Cambridge Pole and Conduit Commission
831 Massachusetts Ave.
Cambridge, MA 02139

Re. AT&T's Comments on the City of Cambridge Pole and Conduit Commission's ("Commission") Policy Regarding Small Cell Wireless Installations on Public Ways

Dear Chairperson Murati Ferrer, Mr. Lenkauskas, Mr. Shea, and Ms. Lint:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the Commission's proposed Small Cell Policy ("Proposed Policy"), which regulates wireless facility siting in the City of Cambridge's ("City") public rights-of-way. AT&T appreciates that the City recognizes the need to address changes in applicable federal laws, including the Federal Communications Commission's *Infrastructure Order* and regulations.[1] AT&T specifically commends the City for providing template pole designs, which provides certainty to applicants. With more than 72% of Americans relying exclusively or primarily on wireless telecommunications in their homes, and 70% of 911 calls made from mobile phones, it is especially important to encourage responsible deployments consistent with applicable law.

Small cells give residents, businesses and visitors access to the latest wireless technologies with limited aesthetic impact and without cluttering the public rights-of-way. Small cells are needed to meet the ever-increasing demand for wireless services and to ready the network for 5G services. AT&T estimates that since introduction of the iPhone in 2007, mobile data usage has increased 470,000% on its network. And with AT&T's selection by FirstNet as the wireless service provider to build and manage the nationwide first responder wireless network, each new facility will help strengthen first responder communications.

The Proposed Policy requires revisions to comply with federal law and to ensure the City's residents and businesses have access to vital wireless services. AT&T respectfully asks that the City consider these and other comments from the wireless industry to help make needed

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

changes. AT&T offers the following summary of applicable laws along with specific comments on the Proposed Policy.

Key Legal Concepts

The Federal Telecommunications Act of 1996 ("Act") establishes key limitations on local regulations. The Act defines the scope and parameters of the City's review of AT&T's applications. Under the Act, the City must take action on AT&T's applications "within a reasonable period of time."[2] The FCC has established and codified application "shot clocks" to implement this timing requirement.[3] And the FCC has made clear that the City must grant all necessary approvals and authorizations within the applicable shot clock.[4] The Act also requires that any decision by the City to deny an application be in writing and based on substantial evidence.[5] Under the Act, state and local governments may not unreasonably discriminate among providers of functionally equivalent services.[6]

The Act also prohibits a local government from denying an application for a wireless telecommunications facility where doing so would "prohibit or have the effect of prohibiting" a covered service.[7] In its *Infrastructure Order,* the FCC reaffirmed its "material inhibition" effective prohibition standard.[8] The FCC explained that a local government "could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services."[9]

Moreover, the FCC explicitly rejected all "coverage gap" tests to analyze an effective prohibition as they are premised on "an unduly narrow reading of the statute [47 U.S.C. § 332(c)(7)(B)(i)(II)] and an outdated view of the marketplace."[10] In fact, the FCC expressly rejected the First Circuit's coverage gap test.[11] Instead, any analysis of an effective prohibition "focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality...."[12]

Under the *Infrastructure Order*, the FCC established a standard for lawful fees, which requires that: "(1) the fees are a reasonable approximation of the state or local government's

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[2] 47 U.S.C. § 332(c)(7)(B)(ii).
[3] *See* 47 C.F.R. §§ 1.6001, *et seq.*
[4] *See Infrastructure Order* at ¶¶ 132-137.
[5] 47 U.S.C. § 332(c)(7)(B)(iii).
[6] 47 U.S.C. § 332(c)(7)(B)(i)(I).
[7] 47 U.S.C. § 332(c)(7)(B)(i)(II).
[8] *See Infrastructure Order* at ¶¶ 35-42; *see also, In the Matter of California Payphone Assoc. Petition for Preemption, Etc.*, Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).
[9] *Infrastructure Order* at ¶ 37.
[10] *Id.* at ¶ 40.
[11] *See id.* at n. 94.
[12] *Id.* at n. 95.

costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations."[13] And the FCC provides a safe harbor for presumptively reasonable fees: (a) $500 for non-recurring fees for an application including up to five small cells, plus $100 for each small cell beyond five, or $1,000 for non-recurring fees for a new pole to support small cells; and (b) $270 per small cell per year for all recurring fees.[14] Higher fees are presumed to violate the Act.[15]

The FCC also established a standard for local aesthetic regulations applied to small cells that they must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.[16]

Specific Comments on the Proposed Policy

1. Notice to all other wireless providers and related involvement. Sections I.C requires an applicant to provide notice to all other wireless providers who may request use of the right-of-way for wireless services at the proposed location or within 500 feet of the proposed location. Section I.E further requires an applicant to update those other wireless providers of any hearing date and related schedule changes. Additionally, Section I.F provides that if another wireless provider wishes "to utilize the same location or structure as described in the Application, then the Application(s) shall together be considered a common project," and the first applicant will have a duty to coordinate all filings and responses. And under Section I.G, if the other wireless provider's plans cause a material change or amendment to the original application or the newly minted "common project," as determined by the Commission, then the project will be deemed a new application subject to relevant fees under Section I.A and a new shot clock.

While AT&T appreciates the City's desire for wireless providers to collaborate on deployment issues, Section I's noticing, updating, and "common project" requirements extend much too far. AT&T has existing network needs that dictate deployment, which cannot be held hostage at the whim of another wireless provider's "wish" to utilize the same location. AT&T evaluates potential locations, files applications, and manages the related shot clocks based on the variables it can control. The premise of the FCC's shot clocks is to provide certainty to the small wireless facility siting process. The certainty of the relevant 60 or 90 day clocks allows a responsible applicant to allocate capital and plan for permits within a certain cycle time, so long as it files and prosecutes quality applications. Section I.C-G is not consistent with the FCC's clocks and should be stricken.

2. Tolling. Section I.H notes that the parties can voluntarily agree to toll a processing deadline. While AT&T agrees that tolling can be appropriate in certain scenarios, it notes that the template Tolling Agreement attached to the Proposed Policy as Exhibit I(L) requires that "any deadlines required by federal, state, or local law shall be extended for a period of seventy-five (75) days from the date of execution of this Agreement." A default of 75 days is much too long

[13] *Id.* at ¶ 50.
[14] *Id.* at ¶ 79.
[15] *Id.*
[16] *See id.* at ¶ 86.

and is not reasonable, especially for an application to collocate a small wireless facility that is subject to a 60-day clock. In the limited instances when a tolling agreement is appropriate, the agreement often tolls the applicable shot clock only until the next available decision date (for example, the next available agenda if there is a required hearing).

3. Basis of denial. Section I.I.vi states that a denial may be based on a determination by the City that "there are more convenient or favorable nearby locations. . . ." AT&T suggests that the City cross reference the location preferences stated in Section V.C, assuming that would be the basis for the City's determination.

4. Timing of writing. Section I.K provides that if the Commission denies an application, the denial is not effective until the written decision is executed and issued to the applicant. Based on the decision in *T-Mobile South, LLC v. City of Roswell*, 135 S. Ct. 808 (2015) (holding that reasons for denial do not have to be in the same writing that conveys the denial, but must be given in a written document essentially contemporaneous with the issuance of the denial), the City may want to clarify that any denial will be in writing and will be issued contemporaneously with any denial.

5. Standard License Agreements. Section II.C requires an applicant to include in its application a signed copy of the relevant standard License Agreement, whether it be to collocate on a City structure or access the right-of-way, as amended by the City from time-to-time. AT&T reserves it right to object to any provision in a standard City agreement that is inconsistent with federal law, state law, or a decision or regulation of the FCC.

6. Insurance. Section II.F requires an applicant to carry certain insurance minimum coverages and name the City as an insured on the policies. AT&T requests that it be able to satisfy this requirement by showing proof of adequate self-insurance, which is a common adjustment to these types of regulations.

7. RF emissions affidavit. Section II.I requires an applicant to provide an affidavit from a licensed professional attesting that the "proposed Installation(s) complies with the maximum safe distances from the antenna[s] and the equipment for prolonged and discrete human or animal exposure under the Federal Communications Commission regulations, including but not limited to, an attestation of how many feet is considered safe and compliant with Federal Communications Commission regulations in terms of radiation emissions exposure limitations with respect to a human and/or animal from the proposed antenna[s] for one year, one month, for one day, and for one hour." The FCC's rules regarding RF emissions, relevant proceedings, and local government guides can all be found at the following page from the FCC's website: https://www.fcc.gov/general/radio-frequency-safety-0. AT&T will provide an affidavit from a licensed professional attesting that its proposed antennas comply with the relevant FCC rules, which are located in the FCC's OET Bulletin 65. The City, however, is without jurisdiction to regulate RF emissions, and it cannot require an attestation beyond compliance with the FCC rules.

8. Demonstration of need. Sections II.I.vii and viii require an applicant to show how a proposed facility will address identified network service needs and provide maps demonstrating evidence of current "cellular coverage," including how the facility is necessary to prevent an effective prohibition of wireless service. AT&T only places facilities where there is a current or forecasted need. If this requirement is more directed at neutral host infrastructure providers, and the City wants to discourage sites without an existing wireless carrier tenant, there are other ways in which to address the concern.

Under current federal law, Section II.I.vii would require an applicant to show that a proposed Installation is needed so as not to "materially limit[] or inhibit[] the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment," which is the "material inhibition" effective prohibition standard the FCC reaffirmed in paragraph 35 of its *Infrastructure Order*. The FCC explained that a legal requirement can "materially inhibit" the provision of covered services even if it is not an insurmountable barrier. Discussing federal appellate court interpretations that have caused confusion regarding the meanings of Sections 253 and 332, the FCC stated, "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. . . . Thus, an effective prohibition includes materially inhibiting additional services or improving existing services."[17] Therefore, contrary to the demonstration of need evidence required in Sections II.I.vii and viii, the "material inhibition" effective prohibition standard can be satisfied by densifying or improving network capabilities. Sections II.I.vii and viii should be amended accordingly.

9. Traffic signal poles. Section IV.D prohibits Installations on any traffic signal pole or other related infrastructure or equipment. In paragraph 69 of the *Infrastructure Order,* the FCC made clear that its interpretations apply to all government owned or controlled structures within the right-of-way. Specifically, the FCC clarified that its interpretations apply to "a provider's use of the ROW to deploy Small Wireless Facilities including, but not limited to, fees for access to the ROW itself, and fees for the attachment to or use of property within the ROW owned or controlled by the government (*e.g.*, street lights, traffic lights, utility poles, and other infrastructure within the ROW suitable for the placement of Small Wireless Facilities)." Later in paragraph 92 the FCC stated, "We confirm that our interpretations today extend to state and local governments' terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within such ROW, such as new, existing and replacement light poles, traffic lights, utility poles, and similar property suitable for hosting Small Wireless Facilities." Moreover, it makes sense to allow traffic light installations because it permits the wireless provider to cover multiple directions from one location, which a mid-block location may not support. The City should delete Section IV.D. to ensure the Proposed Policy includes traffic signal poles and is consistent with the *Infrastructure Order.*

[17] *Id.* at ¶ 37.

10. Aesthetic requirements. Sections V-VIII establish various aesthetic requirements. Under the *Infrastructure Order*, all non-fee based requirements must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.[18] Thus, AT&T objects to the extent any of the City's non-fee, aesthetic requirements violate this standard. The following are specific concerns in the Proposed Policy:

- 150' minimum spacing requirement. AT&T seeks clarification regarding Section V.C.i's requirement that "[n]o Installations, other than co-location, should be located closer than 150 feet radially from another Installation," unless the applicant can prove an effective prohibition. First, it is bad policy to impose any minimum spacing requirements. 5G technology will require facilities to be placed closer to where customers and their connected devices use the wireless network. Requiring applicants to establish a federal effective prohibition claim each time they seek to place a small wireless facility within 150' of another Installation, which as defined in the Proposed Policy includes other wireless providers' facilities, does not encourage investment or expedite deployment. Second, it is unclear what "other than co-location" means in this context. Does the City mean other than facilities collocated on the same structure or collocated on any other vertical structure within 150'?[19] Or is the intent to prohibit new poles in the right-of-way within 150' of an existing Installation? Moreover, this separation requirement is likely more burdensome than applied to other infrastructure deployments and is certainly not needed for concealed sites. AT&T respectfully suggests striking Section V.C.i in its entirety.

- 15' from right-of-way curb. Section V.C.viii requires Installations be placed at least 15' from the edge of the right-of-way curb, unless the applicant proves an effective prohibition. From a practical perspective, there are limited instances where existing streetlights, for example, are more than 15' from the right-of-way curb. AT&T appreciates the public safety concern but respectfully suggests that the default safe distance be reduced. In addition, this requirement appears to be more burdensome than those applied to other infrastructure deployments like electrical distribution facilities.[20]

- Preference to utilize existing utility or City-owned poles or property. Section V.C.xix states that proposed Installations utilizing existing utility or City-owned poles or property will be given priority over any request to install a new structure in the right-of-way. The section also states that a request for a new pole shall be denied unless the applicant proves an effective prohibition claim under federal law. As outlined in comment No. 8 above concerning demonstration of need, the FCC's material inhibition standard applies to efforts to densify the network and improve existing service, as well as rolling out new wireless services. Requiring an applicant to prove up an effective prohibition claim every

[18] *See id.* at ¶ 86.
[19] Collocation is not defined in the Proposed Policy but is defined by the FCC to include "mounting or installing an antenna facility on a pre-existing structure" regardless of whether the pre-existing structure already has an antenna facility on it. 47 C.F.R. § 1.6002(g)(1).
[20] *See Infrastructure Order* at ¶ 86.

time a new pole is necessary is bad policy that may likely lead to delay and potential litigation. Further, AT&T questions whether the City requires the electric distribution company to make the same showing before setting a new pole. If the requirement is more burdensome than those applied to other infrastructure deployments, it is unlawful.

- Height limits. Sections VI.D-F set forth specific height limits. Many small cells can be placed on poles at or below the stated limits, but some may need to be higher depending on specific circumstances and location conditions. The City should consider building in flexibility to the height requirement to allow slight increases, such as extension no more than10 feet above the height of poles in the "surrounding streetscape" as needed to provide service.

- Preference for equipment cabinets to be placed underground. AT&T cannot underground its antennas, its radios (which must be in close proximity to antennas to function properly), or cables and wires between its antennas and radios. The City should amend Section VII.A so that applicants do not need a licensed engineer to attest to this common fact with every application.

Conclusion

AT&T greatly appreciates the City's efforts to develop up-to-date wireless facility siting regulations. The City should adopt standards consistent with the *Infrastructure Order*, and it must take care to avoid effectively prohibiting AT&T from providing or improving wireless services. AT&T would be happy to meet with City officials to discuss ways to incorporate amendments to the Proposed Policy consistent with state and federal policies and to the great benefit of the City's residents and businesses.

Sincerely,

/s/ Jeffrey M. Slade

Jeffrey M. Slade