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March 16, 2018

VIA EMAIL

Mary Jeyaprakash
Associate Planner
Community Development Department
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086

Re: Verizon Wireless Small Cells in the Public Right-of-Way

Dear Mary:

We write on behalf of Verizon Wireless to address your inquiries regarding coverage objectives and alternatives for wireless facilities in the right-of-way. These inquiries pertain to approved small cell facilities that have been appealed to the Planning Commission. As we explain, the City cannot require a coverage objective, propagation maps or other materials showing the need for a right-of-way facility because Verizon Wireless, as a telephone corporation, is authorized to use the right-of-way under state law. Further, because of this statewide right and another state law barring the City from limiting wireless facilities to sites owned by certain parties, the City cannot require that Verizon Wireless consider alternatives outside the right-of-way such as City-owned property.

Verizon Wireless has a statewide franchise to install its telephone equipment in the public right-of-way pursuant to Public Utilities Code Section 7901. Section 7901 plainly states that “[t]elegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway . . . in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.” Wireless carriers, such as Verizon Wireless, are “telephone corporations,” and their antenna sites are “telephone lines” as defined in California Public Utilities Code Sections 234 and 233, respectively. *See In re GTE MobilNet of San Jose, L.P.*, Decision 86-09-011, 22 CPUC 2d 25, slip op. at 6-7 (Cal. Pub. Util. Comm. Sept. 4, 1986) [holding that predecessor of Verizon Wireless was a “telephone corporation” entitled to install wireless facilities in City right-of-way pursuant to Section 7901]; *GTE Mobilnet of California L.P. v. City and City of San Francisco*, 440 F. Supp. 2d 1097, 1103 (N.D. Cal. 2006) [holding that “wireless carriers are included in the definition of

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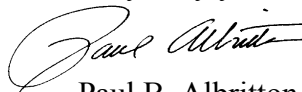
‘telephone corporation’ in Section 7901, and that the definition of ‘telephone line’ in Section 7901 is broad enough to reach wireless equipment”].

Because telephone corporations such as Verizon Wireless have a state-mandated right to use the right-of-way, cities cannot require information demonstrating the necessity of proposed facilities, nor can a city deny a right-of-way wireless facility over questions of need. A California appeals court recently restated the trial court finding that service providers such as Verizon Wireless need not demonstrate the necessity of their facilities. See *T-Mobile West LLC v. City and County of San Francisco*, 3 Cal.App.5th 334, 342-343 (2016), on review by the California Supreme Court (Case No. S238001). As a result of the trial court’s decision, San Francisco revised its right-of-way ordinance to remove the necessity standard. These decisions confirm that the City cannot require Verizon Wireless to submit materials proving the need for its wireless facilities in the right-of-way such as coverage objectives or propagation maps.

Because Verizon Wireless has a statewide right to use the right-of-way, the City cannot compel it to consider any locations outside the right-of-way such as the City corporation yard. Further, the City is prohibited from requiring “that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or City.” Gov. Code §65964(c). The City cannot require Verizon Wireless to review alternatives outside the right-of-way, nor can it deny a proposed right-of-way facility because it favors an alternative outside the right-of-way, specifically on its own property.

Verizon Wireless looks forward to working with the City to resolve the appeals of its approved applications for small cells in the right-of-way.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", written in a cursive style.

Paul B. Albritton

cc: John Nagel, Esq.