

MUNICIPALITY OF ANCHORAGE



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Mayor Ethan Berkowitz

April 7, 2017

Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Via electronic filing

Re: *In the Matter of Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*
WT Docket No. 16-421

Dear Chairman Pai:

The Municipality of Anchorage (“Municipality”), a home rule municipality under the laws of the state of Alaska, respectfully submits its Reply Comments to the Comments of Competitive Carriers Association filed March 8, 2017.

The Municipality is the largest city in Alaska, with a population of about 300,000, representing about 40% of the state’s total population. Its footprint is 1,961 square miles and includes Joint Base Elmendorf-Ft. Richardson, a combined US Air Force and Army installation. It operates the largest cargo seaport in the state, handling about 80% of the goods that come into the state. It also operates a small boat harbor. It operates an electric utility, a water and waste water utility, a small plane airport, and a solid waste services utility. The central hub and depot for the state-owned railroad, and the Anchorage International Airport, which houses major cargo hubs for FedEx and UPS, are both within its borders. There are at least 5 other airstrips within its boundaries and five major lakes used for floatplanes of all kinds. The Municipality operates a large police force, fire department and state of the art E911 dispatch center. A significant majority of tourism in the state is initiated in the Municipality. Backed by Chugach National Park, the Municipality’s resources are often used in response to injuries, fire, and other emergencies within the Park – with many of the responses triggered from cellphone notifications. The Municipality maintains hundreds of miles of recreational trails within its boundaries and is home to three downhill ski resorts\areas. The Municipality can have strong winter blizzards which close roads and schools, and is within a very active earthquake zone. The Municipality, as much as any other entity, appreciates the need for quality, effective telecommunication services.

In 2015, the Municipality started a project to amend its land use code relative to cell installations. Ultimately, after stakeholder meetings and public hearings that included industry, the Municipality adopted AO No. 2015-142(S-1) on June 21, 2016. Stated goals of the new ordinance included:

Simplify the process for obtaining necessary permits for telecommunication facilities while at the same time protecting the legitimate interests of Anchorage citizens;

Encourage low-impact development of telecommunication facilities by prioritizing concealed towers and alternative technology in residential districts, and co-location in nonresidential districts.¹

Previously, the Municipality had not actively encouraged use of its ROWs for cell installations. Part of the changes in the new ordinance include more opportunities for carriers to apply for administrative permits, including use of the Municipality's ROWs. Among other advantages, these permits require no public hearing. And, these permits are not prohibitively expensive.² Although many types of cell facilities can apply for an administrative permit, including for installations in ROWs, not one permit application for use of the Municipality's ROW has been filed. This, despite the Municipality's goal of granting administrative permits within 5 business days of receiving a complete application.

In its Comments, the Competitive Carriers Association (CCA) singled out the Municipality in two respects. First, CCA states: "For example, under Anchorage's municipal code, the higher an antenna is located on a pole, the larger its footprint is considered, this rule is ill-suited for regulating small cell deployments and collocations."³

The CCA provides no citation or factual support for this statement. The Municipality cannot determine what law on its books would create the inference that the higher an antenna is located, the larger its "footprint" is "considered." There is nothing in the Municipality's land use code that determines or limits the footprint for a support structure. The engineering required for a footprint is purely a function of applicable building codes. The Municipality uses the International Building Code, 2012 edition.⁴

The only limitation on telecommunication facilities that are specifically placed on a utility pole installation that might relate to a "footprint" is in Anchorage Municipal Code ("AMC") 21.05.040K.8.f.iii., which specifies if engineering for a small antenna installation requires a replacement of the utility pole itself, then the new pole cannot have a diameter greater than 1.5 times the old pole - assuming the carrier is looking to make the installation under a simplified administrative permit application. First, this is not dictated by the height of the antenna; it is only dictated by the carrier's decision to replace the old pole. Second, the aesthetic and socio-economic values of using utility poles

¹ AO No. 2015-142(S-1).

² An array can be administratively permitted for \$265.50. AMCR 21.20.007K.

³ Comments of Competitive Carriers Association, page 29.

⁴ Anchorage Municipal Code Title 23.

already in place is defeated if larger towers can be erected in their place through a simple administrative permit.

If a tower needs to be in the ROW as a replacement for a utility pole, to the detriment of municipal uses, then it makes sense to expect carriers to demonstrate the need through a more formal, and public, process. This is especially true when many of these ROWs are mere easements on private property and in the immediate view and use of homeowners. It does not make sense to administratively permit something that is more than a common utility pole and can seriously inhibit municipal uses of the public ROW and grossly inhibit the property owner's use and enjoyment of their yards in ways that were not foreseeable.

Carriers are free to apply for other forms of permits for larger structures, which are permitted as principal or accessory uses by right, or after administrative site plan review, or through a conditional use permit process, depending on the tower type and zoning district.⁵ As noted at page 8 of CCA's Comments, fn. 18, small cell systems are ideally suited for placement on lower level infrastructure like utility poles, walls, and rooftops "without creating the visual and physical impacts of macrocell towers."

The Municipality does consider total height of a tower to include the highest point of the facility (including antenna), not just the top of the support structure.⁶ This height affects which zoning districts a tower can go into⁷, subject to the modification provisions in 47 U.S.C. 1455(a) and its implementing regulations. Reasonable height limitations are not prohibited by federal law. Height limitations are not particularly meaningful if they do not consider the entirety of the installation. We see nothing in the federal rules that contradicts this.

Second, the CCA Comments also state: "The Municipality of Anchorage's code governing small cell deployment on a pole or ROW also makes deployment impractical; the code defines macro and micro cells so that a 'small cell' is treated like a microcell, and hence subject to more stringent deployment rules."⁸

The Municipality does define small cell to include microcell.⁹ It also defines *small antennae* as follows:

Antenna only, small (Micro). One or more antennas used for wireless communication and not attached to a Type 1-4 tower, with a volume of equal to or less than three cubic feet per antenna. This use includes facilities commonly known as "small cell" and "DAS."¹⁰

However, contrary to CCA's statement, these small cell and antenna installations are not subject to "more stringent deployment rules." Instead, these small antennas are encouraged over other forms of installations because they are not as aesthetically or socio-economically damaging as other, larger installations. They generally enjoy easier permitting and are allowed through administrative permits in

⁵ AMC Tables 21.05-1 and 21.05-3.

⁶ AMC 21.05.040K.7.c.i.

⁷ Id.

⁸ Comments of Competitive Carriers Association, page 30, citing AMC 21.05.040[K.]8.3(e) and (f).

⁹ AMC 21.14.040.

¹⁰ AMC 21.05.040K.1.f.

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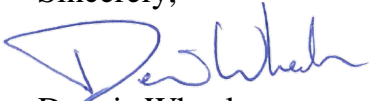
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far more locations.¹¹ The CCA cites to AMC 21.05.040K.8.e. (for large antenna) and AMC 21.05.040K.8.f.(for small antenna) as if the differences between these two code subsections supports its assertion. CCA is misreading the code. Under subsection e.i., large antennas (without a tower structure) have to be concealed when in, or within 150 feet of, residential districts. Small antennas do not have to be concealed. Under subsection e.ii., large antennas have to be painted to match the building they are attached to. Small antennas do not have to be painted to match when attached to buildings.

Under subsection f., small antenna enjoy a significant advantage: in addition to being allowed wherever large antenna are, with the same or lower requirements, they can be readily placed on utility poles within ROW through an administrative permit. Large antenna cannot. Subsection f. simply describes the minimum standards necessary for a small antenna to get approval via an administrative permit.

CCA points to no cost data, or delayed or denied permit application of any kind, or any carrier demand letter or request, or request for variance or exception involving the Municipality. CCA's Comments pointing to the Municipality's land use code as evidence of "overly-narrow local definition of 'small antenna' rendering service 'impractical' or 'uneconomic'"¹² is misplaced.

Sincerely,



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Counsel for Municipality of Anchorage

cc: William Falsey, Municipal Attorney

¹¹ See, e.g. AMC 21.05.040K8.f., AMC Table 21.05-1, AMC Table 21.05-3.

¹² Comments of CCA, page 29.