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August 8, 2019

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Petition for Declaratory Ruling of Verizon**

Dear Ms. Dortch:

Verizon is filing the attached Petition for Declaratory Ruling seeking preemption of Clark County, Nevada's fees for wireless carriers' use of public rights-of-way and attachments to assets within those rights-of-way. Since the Commission adopted its *Small Cell Order* last September concluding that fees exceeding reasonable costs are barred by Section 253 of the Communications Act, Verizon has worked with dozens of local governments to densify our wireless networks with small cells and upgrade to 5G technology under the terms of the *Small Cell Order*.

Unfortunately, Verizon has been unable to reach an agreement with Clark County. Despite numerous and prolonged attempts to negotiate a lawful agreement with the County, it continues to insist on rates that far exceed any reasonable approximation of cost. Although Verizon now feels compelled to seek relief through this petition, we continue to prefer a negotiated solution and would welcome mediation with the assistance of Commission staff.

Should you have any questions, please contact the undersigned.

Sincerely,

cc:	Aaron Goldberger	Donald Stockdale
	Erin McGrath	Suzanne Tetreault
	Will Adams	Garnet Hanly
	Umair Javed	Bill Davenport

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20544**

In the Matter of	)
	)
Petition for Declaratory Ruling that Clark	)
County, Nevada Ordinance No. 4659 Is	)
Unlawful under Section 253 of the	)
Communications Act as Interpreted by the	)
Federal Communications Commission and Is	)
Preempted	)

**PETITION FOR DECLARATORY RULING OF VERIZON**

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Dated: August 8, 2019

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## **SUMMARY**

The Commission should declare that the high recurring fees charged by Clark County, Nevada for placing and maintaining small wireless facilities in public rights-of-way are unlawful. These fees materially inhibit the provision of telecommunications services by Verizon, violate Section 253 of the Communications Act, and are preempted.

Verizon has provided wireless telecommunications service in Clark County for years and already has deployed 418 wireless facilities in the County, including 99 small wireless facilities, a significant number of which are in the public rights-of-way or on public assets. But, in order to more fully serve the community, Verizon currently plans to deploy hundreds of additional small wireless facilities in Clark County over the next three years to enhance its 4G network and build out a 5G network – and deploying within the County rights-of-way and on County-owned assets is key to that effort.

Verizon has complied with a number of regulatory requirements to provide wireless telecommunications service in Clark County. It maintains a personal wireless services business license in the County that it obtained prior to 2019, under which it remits to the County more than \$1,000,000 annually in gross revenue fees. It also pays an annual siting fee to Clark County of \$700 per pole.

Clark County now has enacted an Ordinance, effective last month, that will threaten Verizon's ability to continue to deploy wireless facilities and provide service to the community. The Ordinance substantially and unlawfully increases the already high recurring fees charged to deploy wireless facilities in County rights-of-way.



Among other requirements, the Ordinance imposed the following three recurring fee categories that apply when a wireless provider deploys small wireless facilities in the County rights-of-way:

- A wireless site license fee for each small wireless facility installed in the public rights-of-way and which varies by the “right-of-way design district” in which the small wireless facility is located (the fees range from \$700/year/facility to as high as \$3960/year/facility);
- A master wireless use license fee equal to five percent (5%) of gross revenues collected each calendar quarter (the “gross revenue-based use fee”). But if the provider has a business license pursuant to Title 6 of the County Code, in lieu of the master wireless use fee, the provider pays a fee equal to five percent (5%) of the provider’s gross revenues from the first fifteen dollars of each customer’s monthly access line charge; and
- An annual fee of \$500 per small wireless facility installed in a County public right-of-way or on other assets that the County inspects.

The wireless site license fee is subject to an automatic annual fee increase of two percent (2%) per year, unassociated with any demonstration or finding that costs are increasing.

The recurring fee provisions in the Ordinance violate Section 253. Section 253 provides that states and local governments may not “prohibit or have the effect of prohibiting the ability of any entity to provide any intrastate or interstate telecommunications services.” In its *Small Cell Ruling/Order*,<sup>1</sup> the Commission interpreted Section 253 to require that a state or local government’s fees for use of public rights-of-way and attachments to municipally owned assets: (1) be a reasonable approximation of the government’s actual and direct costs “specifically related to or caused by the deployment” of the provider’s facilities in the state or local government’s rights-of-way; (2) include only objectively reasonable costs; and (3) be non-

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<sup>1</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, 33 FCC Rcd 9088 (2018) (“*Small Cell Ruling/Order*”). While the *Small Cell Ruling/Order* is under appeal, it is fully effective and the request for judicial stay of the *Small Cell Ruling/Order* was denied. See *City of San Jose, California, et al., and City of New York v. FCC*, Order, No. 18-9568 (10th Cir., Jan. 10, 2019).

discriminatory. The Commission adopted a presumption that, if the total of all recurring fees including “any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW” were \$270 or less per year per small wireless facility, the fees would not violate Section 253.

The County’s recurring fees far exceed the Commission’s presumption. In addition, the Ordinance’s recurring fees fail each of the three criteria established by the Commission. The recurring fees are not cost-based, are not objectively reasonable, and are discriminatory. Consequently, the recurring fees materially inhibit the provision of telecommunications services by Verizon under Section 253, as interpreted by the Commission, and must be preempted.

The Commission should declare the County’s public rights-of-way use fees violate Sections 253(a) and (c), and the Commission should therefore preempt under Section 253(d), as follows:

1. Clark County’s recurring fees materially limit or inhibit the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment. These recurring fees constitute an effective prohibition on the provision of telecommunications services, violate Section 253 and the *Small Cell Ruling/Order*, and thus are preempted;
2. The wireless site license fees and annual fee adjustment are discriminatory because they impose the same fee on providers of telecommunications services for a small wireless facility installation whether it is installed on a third-party structure or a County owned structure. Because mounting small wireless facilities on third party owned structures imposes lower costs on Clark County, these fees are discriminatory, violate Section 253 and the *Small Cell Ruling/Order*, and are thus preempted;
3. Because the gross revenue-based use fee (or personal wireless business license fee) is based on gross revenues and not on the costs imposed by the provider on the County’s management and administration of the public rights-of-way, the fee is inherently discriminatory, violates Section 253 and the *Small Cell Ruling/Order*, and thus is preempted.

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Petition for Declaratory Ruling that Clark )  
County, Nevada Ordinance No. 4659 Is )  
Unlawful under Section 253 of the )  
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Federal Communications Commission and Is )  
Preempted )

The Commission should find that Clark County, Nevada’s recurring fees for wireless telecommunications carriers’ use of the public rights-of-way and attachment to public assets within those rights-of-way established in the County’s Wireless Communications Facility Ordinance are unlawful and are preempted.<sup>2</sup> The recurring fees effectively prohibit the provision of wireless telecommunications services in violation of Section 253(a) of the Communications Act. Contrary to the Commission’s 2018 *Small Cell Ruling/Order* interpreting Section 253, the County’s recurring fees materially inhibit the provision of telecommunications services by wireless providers to whom the fees are charged because: (i) they do not reasonably approximate the County’s actual and direct costs associated with a provider’s use of the public rights-of-way and other assets; (ii) they consequently are not limited to the County’s objectively reasonable costs; and (iii) they are inherently discriminatory. Verizon thus requests that the Commission declare that the County’s recurring fees violate Sections 253(a) and (c), and the

<sup>2</sup> See Clark County Code, Title 5, Chapter 5.02 (adopted Jan. 7, 2019, effective July 1, 2019). A copy of the Ordinance is attached hereto as Exhibit 1.

Commission should therefore preempt under Section 253(d). Under these circumstances, the Commission should declare that Clark County may not charge recurring fees to Verizon that exceed the presumptively reasonable annual rate of \$270, as set forth in the *Small Cell Ruling/Order*.

## I. INTRODUCTION AND BACKGROUND

The United States is competing to win the race to 5G, and the stakes are huge.<sup>3</sup> The Commission has focused intensively on freeing up more spectrum for 5G and the competitive

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<sup>3</sup> See, e.g., “Remarks by President Trump on United States 5G Deployment,” (Apr. 12, 2019), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-united-states-5g-deployment/> (visited Aug. 6, 2019) (“We cannot allow any other country to out-compete the United States in this powerful industry of the future.”); “Remarks of FCC Chairman Ajit Pai At the White House,” Washington, DC (Apr. 12, 2019), available at <https://www.fcc.gov/document/chairman-pai-remarks-5g-white-house-event> (visited Aug. 6, 2019) (“America must win the race to 5G.... We want the good-paying jobs that develop and deploy 5G technologies to be created here. We want these technologies to give our economy a leg up as we compete against the rest of the world.”) (“Pai 5G Remarks”); *Wired* Opinion Article of FCC Commissioner Jessica Rosenworcel, “Choosing the Wrong Lane in the Race to 5G,” (June 10, 2019), available at <https://www.wired.com/story/choosing-the-wrong-lane-in-the-race-to-5g/> (visited Aug. 6, 2019) (“the next iteration of wireless service—5G—is truly important for our future civic and commercial life”); “Thune Discusses State of 5G Technology in Commerce Hearing,” Thune Press Release (Feb. 6, 2019), available at <https://www.thune.senate.gov/public/index.cfm/2019/2/thune-discusses-state-of-5g-technology-in-commerce-hearing> (visited Aug. 6, 2019) (“This is an issue of enormous consequence, I believe, to our global competitiveness, our economy, and the country that embraces and gets ahead and wins the race on 5G.”); “Thune and Schatz Reintroduce the STREAMLINE Small Cell Deployments Act,” Thune Press Release (June 3, 2019), available at <https://www.thune.senate.gov/public/index.cfm/2019/6/thune-and-schatz-reintroduce-the-streamline-small-cell-deployment-act> (visited Aug. 6, 2019) (“Developing and deployment of the next generation of wireless technology will provide more Americans with access to the internet while giving us the chance to continue our global leadership and create millions of new jobs,” said [Senator] Schatz.”); “The 5G Ecosystem: Risks & Opportunities for DoD,” Defense Innovation Board (Apr. 2019), available at <https://innovation.defense.gov/Meetings/smdpage7387/3/> (visited Aug. 6, 2019) (The global “leader of 5G stands to gain hundreds of billions of dollars in revenue over the next decade, with widespread job creation across the wireless technology sector” and “5G has the potential to revolutionize other industries as well....The country that owns 5G will own” innovation in critical technologies and “set the standards for the rest of the world.”).

provision of wireless telecommunications services.<sup>4</sup> The Commission also removed barriers that some local governments have erected, or may erect, to deploying small wireless facilities,<sup>5</sup> which are essential components of competitive 5G networks.<sup>6</sup>

The Communications Act unambiguously reflects Congress's and the national government's commitment to ensuring a competitive telecommunications marketplace. Congress's pro-competitive intent is clear in Communications Act provisions, such as those that direct the Commission to: grant forbearance from a rule when doing so would "enhance competition among providers of telecommunications services;"<sup>7</sup> use measures "that promote competition in the local telecommunications market;"<sup>8</sup> and "maximize open competition" in the market for cable services.<sup>9</sup> Competitive markets are particularly important in the context of 5G networks as the anticipated benefits and enhanced capabilities of these networks promise jobs, service quality, and improved economies that will benefit the nation.<sup>10</sup>

Congress was clear that its pro-competitive mandates may not be thwarted by state or local governments when it adopted Section 253 as part of the Telecommunications Act of 1996. Section 253(a) explicitly prohibits state and local governments from taking actions that hinder competition in the telecommunications market: "[n]o State or local statute or regulation, or other

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<sup>4</sup> See Pai 5G Remarks, *supra*.

<sup>5</sup> See *Small Cell Ruling/Order*, 33 FCC Rcd at 9091, n.9 (2018) (defining "small wireless facilities").

<sup>6</sup> See Pai 5G Remarks.

<sup>7</sup> 47 U.S.C. §160(b).

<sup>8</sup> 47 U.S.C. §1302(a).

<sup>9</sup> 47 U.S.C. §544(c).

<sup>10</sup> Accenture Strategy, *Smart Cities – How 5G Can Help Municipalities Become Vibrant Smart Cities*, (2017), available at <https://www.accenture.com/us-en/insight-smart-cities> (visited June 20, 2019) ("Smart Cities Report").

State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any provider to provide any interstate or intrastate telecommunications service.”<sup>11</sup> The Commission has exercised its authority to interpret the “effective prohibition” language of Section 253 to enforce Congress’s bar on state and local government actions that hinder the provision of telecommunications services.

In a Declaratory Ruling issued last August, the Commission concluded that state and local moratoria on telecommunications services and facilities deployment are barred by Section 253(a) of the Act, because they “prohibit or have the effect of prohibiting the ability of any entity to provide any intrastate or interstate telecommunications services.”<sup>12</sup> One month later, in its *Small Cell Ruling/Order*, the Commission issued a Declaratory Ruling interpreting Section 253 and Section 332(c)(7)<sup>13</sup> of the Communications Act that confirmed, among other things, that “a state or local legal requirement will have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services.”<sup>14</sup> The Commission also clarified “that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service.”<sup>15</sup>

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<sup>11</sup> 47 U.S.C. § 253(a).

<sup>12</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, et al.*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, ¶ 4 (2018) (“*Moratorium Ruling*”). This decision also applied to deployments of wireline facilities in state and local government rights-of-way.

<sup>13</sup> 47 U.S.C. § 332(c)(7).

<sup>14</sup> *Small Cell Ruling/Order*, ¶ 37.

<sup>15</sup> *Id.* The Commission explained “covered service” means “a telecommunications service or a personal wireless service for purposes of Section 253 and Section 332(c)(7), respectively.” *Id.* at ¶ 37, n.87.

The Commission interpreted Section 253 and Section 332(c)(7) to provide that state and local government fees and other charges related to the deployment of facilities used to provide telecommunications services are unlawful unless (1) the fees are a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) the fees are non-discriminatory.<sup>16</sup> As the Commission noted, this standard, as applied to wireless network infrastructure, addresses “conduct that threatens to limit the deployment of 5G services.”<sup>17</sup> To aid both providers and state and local governments, with the hope of minimizing disputes, the Commission also adopted a presumption that an annual fee of \$270 per small wireless facility for “all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW,” in combination, would not violate Section 253.<sup>18</sup> The Commission stated that “there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253.”<sup>19</sup>

Since last fall, Verizon worked with dozens of local government agencies to densify our wireless networks with small wireless facilities and upgrade to 5G technology. Many local governments are excellent partners in these efforts. They understand the importance of expediting small wireless facility installations at reasonable cost. Residents and businesses in these areas are already reaping the benefits of our upgraded networks. And when we are able to deploy promptly, Verizon is helping the United States become the global leader in 5G. As the Commission has recognized, wireless networks deploying advanced 5G capabilities are expected

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<sup>16</sup> *Id.* at ¶ 50.

<sup>17</sup> *See id.* at ¶ 6.

<sup>18</sup> *Id.* at ¶¶ 78-80.

<sup>19</sup> *Id.* at ¶80.

to promote innovative service offerings, provide significant economic benefits, and improve service quality, speed, and latency.<sup>20</sup>

Unfortunately, some local governments refuse to comply with the Commission's *Small Cell Ruling/Order* and *Moratorium Ruling*, even though they are the law of the land. Clark County, Nevada, is one such example. After the Commission's *Small Cell Ruling/Order*, Clark County adopted its new Ordinance that, on its face, violates the Commission's rulings. As detailed below, the recurring fee provisions of the Ordinance impose non-cost-based and discriminatory fees that will materially inhibit Verizon's ability to provide telecommunications services over its wireless network in a fair and balanced legal and regulatory environment. Clark County thereby is effectively prohibiting Verizon from providing such services in violation of Section 253 – and thus depriving consumers in the County of the benefits of 5G and other wireless services.

Verizon communicated with the County on repeated occasions about its concerns with the Ordinance, including the unlawful nature of the recurring fee provisions, but to no avail. Because we seek to deploy small wireless facilities expeditiously in the County to enhance our telecommunications service to residents, businesses, and other institutions, we are compelled to file this petition asking the Commission to find that the Ordinance's recurring fees violate Section 253(a), as interpreted by the Commission's *Small Cell Ruling/Order*, and thus must be preempted under Section 253(d).<sup>21</sup>

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<sup>20</sup> See *id.* at ¶¶ 1-2, 24-25; see also, e.g., Smart Cities Report, *passim*.

<sup>21</sup> Section 253(d) provides that, “[i]f . . . the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.” 47 U.S.C. § 253(d).



## **II. FACTUAL BACKGROUND**

### **A. Verizon's Current and Future Operations in Clark County**

Verizon currently provides telecommunications services, including personal wireless services, using small wireless facilities<sup>22</sup> in Clark County. Verizon estimates that today it has 418 wireless communications facilities (including 99 small wireless facilities) deployed in Clark County, a significant number of which are deployed in the County's public rights-of-way or on structures owned by the County.<sup>23</sup>

With respect to those deployments in County rights-of-way and on other public assets, Verizon has to date deployed under a ten-year wireless use license agreement (the "Verizon - County Use Agreement") entered into in December 2015. The agreement allows Verizon to "locate, place, attach, install, operate, control, and maintain" small wireless facilities on County streetlight poles generally throughout the County's rights-of-way, subject to payment of a fee of \$700/year per pole plus electrical power usage costs for each Clark County streetlight Verizon uses.<sup>24</sup> Verizon also has an existing business license with the County under Chapter 6.13 of the County Code and remits more than \$1,000,000 annually in related business license fees, which are based on Verizon's gross revenues (charges on the first fifteen dollars per subscriber).<sup>25</sup>

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<sup>22</sup> See 47 C.F.R. § 1.6002(l) (defining "small wireless facilities").

<sup>23</sup> See Declaration of Adam McNair, ¶ 4 (Aug. 7, 2019) ("McNair Declaration"), attached hereto as Exhibit 2.

<sup>24</sup> *Verizon - County Use Agreement*, at 1, and §§ 4.1, 5.1 and 5.2. This fee is subject to an annual increase equal to two and a half percent (2.5%) of the annual rent for the immediately preceding year. *Verizon - County Use Agreement* §§ 1.9 and 5.3.

<sup>25</sup> See McNair Declaration, ¶ 6. Under Clark County Code, Chapter 6, Title 6.13.030, attached hereto as Exhibit 3, Verizon collects this fee from its customers and remits it to the County. Even though the alternative business license fee is collected from customers, it still must be taken into account in evaluating the overall burden imposed by the Ordinance for at least two reasons. First, as discussed in Section II.C., *infra*, the Ordinance provides that payment of the business license fee is a substitute for paying the gross revenue-based use fee – which is a fee

Verizon needs to deploy additional small wireless facilities in Clark County – including hundreds of new small cell nodes over the next three years, as well as more than 200 miles of fiber optic cable connecting those sites.<sup>26</sup> Deploying in County rights-of-way and on County-owned structures is key to that deployment. And, in turn, the 5G capabilities resulting from that deployment promise to bring substantial benefits to the County’s residents, businesses, and institutions, allowing them to enjoy faster wireless Internet connections, lower latency, greater capacity, enhanced video applications, and faster network response times that can enable a host of new services and capabilities.<sup>27</sup>

#### **B. Verizon Participated in the Clark County Ordinance Adoption Proceedings**

Verizon tried to convince the County not to adopt the Ordinance and its unlawful high recurring fees. In December 2018, several months after the Commission had released its *Small Cell Ruling/Order*, the County formally introduced the Ordinance.<sup>28</sup> But, even before then, Verizon had maintained a consistent presence at the County hearings and meetings, including attending meetings in September and October 2018, before the Ordinance was formally

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assessed to compensate the County for use of the rights-of-way. Second, if the business license fee were not counted as a recurring fee, then Commission limits on right-of-way and siting fees could be avoided by simply converting what would have been carrier obligations into customer obligations that carriers would be required to bill and collect.

<sup>26</sup> *Id.* at ¶ 7.

<sup>27</sup> *Id.*

<sup>28</sup> *See, e.g.*, Clark County Board of Commissioners, Agenda Item No. 43 (Jan. 7, 2019), attached hereto as Exhibit 4 and available at [http://clark.granicus.com/MinutesViewer.php?view\\_id=17&clip\\_id=6124&doc\\_id=06ed3eba-1434-11e9-b021-0050569183fa](http://clark.granicus.com/MinutesViewer.php?view_id=17&clip_id=6124&doc_id=06ed3eba-1434-11e9-b021-0050569183fa) (visited Aug. 6, 2019) (noting that the Ordinance was introduced at a December 4, 2018 County Commissioners meeting). As discussed below, the County used a consultant to provide recommendations on a new ordinance to cover the deployment of small wireless facilities. The consultant presented its report to the County Commissioners in December 2017.

introduced.<sup>29</sup> We repeatedly expressed concerns about the proposed Ordinance’s apparent conflict with the Commission’s *Small Cell Ruling/Order*.<sup>30</sup> On September 20, 2018, Verizon submitted a business impact statement to the County detailing how the Ordinance would harm Verizon’s plans to deploy small wireless facilities to improve its network capabilities and service offerings for citizens of the County.<sup>31</sup> Verizon highlighted its concerns that the County’s proposed fee structure was not based on the County’s relevant costs and far exceeded the Commission’s presumptively reasonable fee of \$270 per attachment per year as required by the *Small Cell Ruling/Order*.<sup>32</sup> Notwithstanding the opposition from Verizon and other wireless providers, on January 7, 2019, the County adopted the Ordinance and established a July 1, 2019 effective date.<sup>33</sup>

After the Ordinance was adopted, Verizon corresponded with the Clark County District Attorney to try to address the problematic Ordinance provisions.<sup>34</sup> In a letter dated March 12, 2019, Verizon again highlighted the Commission’s determination that fees for small wireless facilities deployed in public rights-of-way must be based on the County’s costs associated with

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<sup>29</sup> Declaration of Nicholas Magnone (Aug. 6, 2019) (“Magnone Declaration”), ¶ 5, attached hereto as Exhibit 5. Clark County held meetings with wireless carriers prior to formally introducing the Ordinance at the Clark County Board of Commissioners’ December 4, 2018 agenda meeting. *See, e.g.*, Wireless Carrier Meeting, Clark County Department of Business License, Transcript (Sept. 20, 2018), available at <http://www.clarkcountynv.gov/business-license/franchise-services/Documents/180920Meeting.pdf#search=Wireless%20Carrier%20Meeting%20Sept%2E%2020%2C%202018> (visited Aug. 6, 2019).

<sup>30</sup> *See* Magnone Declaration, ¶ 5.

<sup>31</sup> Letter from Danielle C. Agee, Esq., General Counsel, South Central Market, Verizon to Mr. Michael Harwell, Clark County (Sept. 20, 2018), attached hereto as Exhibit 6.

<sup>32</sup> *See* Magnone Declaration, ¶ 5.

<sup>33</sup> *See* Exhibit 1.

<sup>34</sup> *See* Magnone Declaration, ¶ 7.

the wireless provider's use of the public rights-of-way.<sup>35</sup> Verizon requested that the County provide cost-based support for the various recurring fees, and asked whether Verizon's existing wireless use license agreement would remain in effect or be replaced by a new agreement based on the Ordinance.<sup>36</sup> The Clark County District Attorney responded on March 22, 2019, stating only that the County was "unable to provide answers to your questions at this time," offering as a dubious excuse the pending appeal of the Commission's *Small Cell Ruling/Order* which the County had joined, and the potential for statewide legislation that purportedly might affect the County's Ordinance.<sup>37</sup>

On or around May 3, 2019, the County notified Verizon that it planned to transition the current agreements to new Master Wireless Use License agreements in preparation for the effective date of the Ordinance and, to that end, provided Verizon with a new draft Master Wireless Use License agreement template incorporating provisions from the Ordinance.<sup>38</sup> On July 1, 2019, the County notified Verizon by email that there was a new site license application form referencing and implementing the Ordinance, and that old forms of the application are now obsolete.<sup>39</sup> The County subsequently asked whether Verizon plans to transition to the new application form.<sup>40</sup>

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<sup>35</sup> *Id.* The March 12, 2019 letter is attached hereto as Exhibit 7.

<sup>36</sup> *Id.*

<sup>37</sup> See Letter from Lucinda L. Coumou, Chief Deputy District Attorney, Office of the District Attorney, Clark County to Danielle C. Agee, Esq., General Counsel, South Central Market, Verizon (Mar. 22, 2019), attached hereto as Exhibit 8; Magnone Declaration, ¶ 8.

<sup>38</sup> Magnone Declaration, ¶ 9.

<sup>39</sup> *Id.* at ¶ 9. The e-mail is attached hereto as Exhibit 9.

<sup>40</sup> Magnone Declaration, ¶ 9.

### **C. Clark County Ordinance Requirements and Fees**

The Ordinance requires wireless providers to pay a number of recurring fees for deploying small wireless facilities in the public rights-of-way.<sup>41</sup> First, a wireless provider must obtain a wireless site license approval and pay a recurring fee for each small wireless facility deployed in the public rights-of-way or on other public assets.<sup>42</sup> These fees range from \$700 to \$3960 per small wireless facility per year, based on the district in which the facility is located:

- a. Las Vegas Boulevard District -- \$990 per quarter or \$3960 per year
- b. Central Communications District -- \$990 per quarter or \$3960 per year
- c. Residential District -- \$475 per quarter or \$1900 per year
- d. Commercial District -- \$475 per quarter or \$1900 per year
- e. Rural District -- \$175 per quarter or \$700 per year
- f. Manufacturing District -- \$475 per quarter or \$1900 per year; and
- g. Wireless Service Improvement District -- \$175 per quarter or \$700 per year.<sup>43</sup>

In addition, beginning July 1, 2020, the wireless site license fee is subject to an automatic annual increase of two percent (2%) of the prior year's fee. The fee applies to a wireless provider's use of the public rights-of-way regardless of whether the wireless provider is attached to Clark County facilities, attached to its own antenna structures located in the public-rights-of-way, or is using third-party facilities located in the Clark County public rights-of-way.<sup>44</sup>

Second, a wireless provider must obtain a master wireless use license agreement with the County that governs "a licensee's construction, installation, and operation of wireless

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<sup>41</sup> Clark County Code, Title 5, Chapter 5.02, *et. seq.*

<sup>42</sup> Clark County Code, Title 5, Chapter 5.02.080.

<sup>43</sup> Clark County Code, Title 5, Chapter 5.02.080, 5.02.210(b), and 5.02.210(e). In addition to paying the recurring fees, carriers must comply with specific design criteria – some of which vary by right-of-way design district and others of which are generally applicable – governing the types of poles permitted, pole height limits, antenna types, and placement of cables, lines and equipment. *See, e.g.,* Clark County Code, Title 5, Chapter 5.02.140, 5.02.210(b).

<sup>44</sup> *See, e.g.,* Clark County Code, Title 5, Chapter 5.02.080(a).

communications facilities in the County's rights-of-way or on municipal facilities.”<sup>45</sup> To acquire and maintain the master use license agreement, a wireless provider must pay recurring gross-revenues use fees of five percent (5%) of gross revenues collected by the provider.<sup>46</sup> This fee purportedly “compensate[s] the county for a licensee’s entry upon and deployment of equipment within the ROW or on any municipal facilities.”<sup>47</sup>

The Code explains that the gross revenue-based use fee is not required if the provider already pays a business license fee based on gross revenues pursuant to the applicable business licensing provisions of County Code Title 6.<sup>48</sup> Any fee paid under a pre-existing business license pursuant to Chapter 6.13 is in lieu of the gross revenue-based use fee, but nonetheless also should be viewed as partial compensation to the County “for a licensee's entry upon and deployment of equipment within the ROW or on any municipal facilities.”<sup>49</sup> As discussed above, Verizon already holds and pays more than \$1,000,000 annually for its business license in the County. Because the County will accept the personal wireless business license fee in lieu of the gross revenues-based use fee for entry upon and deployment within the ROW, the business license fee should be considered a fee imposed by the County for the wireless provider’s use of the public rights-of-way.<sup>50</sup>

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<sup>45</sup> Clark County Code, Title 5, Chapter 5.02.030.230, 5.02.060.

<sup>46</sup> Clark County Code, Title 5, Chapter 5.02.210(a), (d). The wireless provider also must pay a fee of \$1,000 per application.

<sup>47</sup> Clark County Code, Title 5, Chapter 5.02.210(a). As discussed below, certain providers that are already licensed, pursuant to the business license requirements of Chapter 6.13, and are remitting fees as a personal wireless service provider, do not have to pay the gross revenue-based use fee.

<sup>48</sup> Clark County Code, Title 5, Chapter 5.02.210(c).

<sup>49</sup> Clark County Code, Title 5, Chapter 5.02.210(a).

<sup>50</sup> See FN 25, *supra*.

Third, the Ordinance requires an additional charge of at least \$500 annually for an annual inspection of small wireless facilities installed in public rights-of-way.<sup>51</sup> Although described as an annual inspection, the Ordinance permits inspections to be conducted more frequently should the County believe there is “a reasonable basis for additional inspections,” thus creating the possibility that the annual inspection fees will be higher.<sup>52</sup>

**D. Clark County’s Use of External Consultant Smart Works to Develop Its Fees**

Verizon requested information to better understand the basis for the recurring fees in the Ordinance, but the County refused to provide cost information. Even so, the basis for the recurring fees in the Ordinance is obvious from the County’s website, which hosts a report developed by the County’s consultant explaining the basis for the recurring fees.

The County engaged the services of Smart Works Partners (“Smart Works”), a consulting company, to assist the County in developing the Ordinance’s licensing requirements and fees. On December 19, 2017, Smart Works presented to the County Board of Commissioners its “Broadband Master Plan Recommendations” (“Smart Works Broadband Plan”).<sup>53</sup> Smart Works

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<sup>51</sup> Clark County Code, Title 5, Chapter 5.02.210(g), 5.02.250.

<sup>52</sup> Clark County Code, Title 5, Chapter 5.02.250.

<sup>53</sup> CNX, “Broadband Master Plan Recommendations, Clark County, Board of County Commissioners,” (December 19, 2017) (“Smart Works Broadband Plan”), attached hereto as Exhibit 10 and available at [http://clark.granicus.com/MinutesViewer.php?view\\_id=18&clip\\_id=5686](http://clark.granicus.com/MinutesViewer.php?view_id=18&clip_id=5686) (Item No. 74, visited Aug. 6, 2019) (Smart Works previously operated under the business name “Connected Network Exchange” and “CNX”); Clark County Board of Commissioners Agenda Item No. 74 (Dec. 19, 2017), attached hereto as Exhibit 11 and available at [http://clark.granicus.com/MinutesViewer.php?view\\_id=18&clip\\_id=5686](http://clark.granicus.com/MinutesViewer.php?view_id=18&clip_id=5686) (visited Aug. 6, 2019).

proposed initiatives designed to allow the County to capitalize on the County's assets to promote the small wireless facility deployment necessary for wireless broadband service.<sup>54</sup>

Smart Works's proposals to the County make clear that the fees are not cost-based. The Smart Works Broadband Plan does not identify or even consider costs underlying the management and administration of wireless providers' use and occupation of the public rights-of-way. Instead, it focuses on existing and potential County revenues and, in short, charging the highest amounts that Smart Works thought applicants might pay. The Broadband Plan identified the County's current public right-of-way fees, described as "standard market rates" ranging from \$500 - \$700, the upper end of which is consistent with the \$700 annual fee included in the Verizon - County Use Agreement, but well above the rates the Commission has presumed to be reasonable.<sup>55</sup>

From there, Smart Works recommended the County adopt fees in significant parts of the County that were substantially higher than even those "standard market rates." It recommended adopting fees to capture "fair market value" reflecting a significantly increased fee structure.<sup>56</sup> It identified three categories of geographically-based siting fees (Resort District, Standard Market, and Rural/Broadband Underserved areas), and recommended increasing the annual attachment fees for the first two areas by multiples ranging from 5.0 to 7.92.<sup>57</sup> It recommended increasing the Resort District annual recurring fee from \$500 - \$700 to \$3960 per pole and

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<sup>54</sup> *Smart Works Broadband Plan* at 2.

<sup>55</sup> *Id.* at 4.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* The \$3960 annual fee for the Resort District is almost eight times greater than the initially proposed \$500 fee for poles in this area. Similarly, the \$2500 "Standard Market" annual fee is five times greater than the initially proposed \$500 fee.



increasing the “Standard Market” annual fee from \$500 - \$700 to \$2500 per pole.<sup>58</sup> The highest recurring fees ultimately adopted by the County in the Ordinance are identical to those proposed by Smart Works. The fees in the other districts were increased through the Ordinance, largely in line with Smart Work’s recommendations.

The Smart Works recommendations identified an intent to use fee increases not just to recover the costs of administering and managing providers’ use of the public rights-of-way and municipal facilities, but to generate additional revenue to pursue some of the County’s public policy objectives.<sup>59</sup> For example, Smart Works advised the County that the fees could be used to support other County programs, including to fund “smart community initiatives.”<sup>60</sup> Smart Works also proposed that each of the fees for using public rights-of-way and other public assets be subject to a 10 percent term escalation every five years.<sup>61</sup> Assuming this escalation would have been a once-every-five-year event, the County’s adopted two percent annual escalation factor represents an even greater increase.<sup>62</sup>

The Smart Works Broadband Plan draws no connection between the proposed fees and fee adjustments and the costs of Clark County’s administration of the public rights-of-way. Nor

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<sup>58</sup> *Id.* at 4.

<sup>59</sup> *Id.* at 2, 5, 8.

<sup>60</sup> *Id.* at 2, 5, 8 (noting that Clark County could use the increased right-of-way fee revenues to “Help Fund Expansion of Wireless Facilities to Close the Digital Divide and Fund Smart Community Initiatives” and to “Use Increased Revenue to Promote Services to Broadband Underserved Areas and Fund Smart Community Initiatives”).

<sup>61</sup> *Id.* at 5.

<sup>62</sup> Thus, after four years, the wireless site license fees under the Ordinance will be 8.24% higher than in year one, using compound annual interest, whereas under Smart Works Broadband Plan, they would still be the same as in year one. Indeed, not only will the wireless site license fees increase two percent each year, rather than rise only once per five years, as Smart Works proposed, but after the fifth year, using compound interest, the fees will increase to a level 10.4 percent higher than in the first year, rather than 10%.

did Smart Works address any cost or other basis for the gross revenue-based use fee (or the alternative business license fee) or the Annual Inspection Fee, both of which were adopted in the Ordinance.

### **III. SECTION 253 AND THE COMMISSION'S *SMALL CELL RULING/ORDER* GOVERN THE LAWFULNESS OF CLARK COUNTY'S RECURRING FEES**

Responding to state and local regulations that hamper 5G network and service deployment, the Commission took action in 2018 to clarify what regulatory actions, including fees for use of the public rights-of-way and other assets, violate Section 253. As a threshold matter, the Commission reaffirmed its earlier determination that state and local government actions that “materially inhibit” the provision of telecommunications service constitute effective prohibition under Section 253.<sup>63</sup> The Commission also concluded that state and local government fees for “use and occupation” of public rights-of-way can constitute “effective prohibitions” in violation of section 253 and identified three criteria that fees must satisfy. Finally, the Commission adopted presumptions for “fair and reasonable” fees for small wireless facility attachments and for certain pole placements and replacements.<sup>64</sup>

The Commission explained that the “materially inhibits” standard applies both when a provider is seeking to fill a coverage gap and when the provider is “densifying a wireless network, introducing new services or otherwise improving service.”<sup>65</sup> Even absent express

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<sup>63</sup> See *Small Cell Ruling/Order*, ¶¶ 35-42 (reaffirming the Commission’s interpretation of the “effective prohibition” standard of Sections 253(a) and 332(c)(7)(B) and adoption of the “materially inhibits” review standard in *California Payphone Ass’n*, 12 FCC Rcd 14191 (1997) (“California Payphone Decision”).

<sup>64</sup> *Id.* at ¶¶ 78-80.

<sup>65</sup> *Id.* at ¶ 37.

barriers to entry, regulations that impose a financial burden or result in competitive disparity, such as advantaging a particular service or facility, could present an effective prohibition.<sup>66</sup>

Recognizing that 5G will require significant increases in wireless small facility deployments, the Commission recognized that fees imposed by state and local governments, both recurring and non-recurring, could operate to effectively prohibit the provision of telecommunications service in violation of Section 253.<sup>67</sup> The Commission found that, to avoid effectively prohibiting the provision of telecommunications service under Section 253(a) and to meet the requirements of Section 253(c), fees for use and occupation of the public rights-of-way must: (1) constitute a reasonable approximation of the local government’s actual and direct costs in connection with a provider’s use of the public right-of-way and other assets to deploy telecommunications facilities; (2) only include objectively reasonable costs; and (3) be non-discriminatory.<sup>68</sup> By costs, the Commission explained that it meant “those costs specifically related to and caused by the deployment.”<sup>69</sup>

The Commission also adopted an annual recurring fee amount of \$270 per small wireless facility, at or below which a state or local government’s public right-of-way fees presumably

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<sup>66</sup> *Id.* at ¶ 39.

<sup>67</sup> *Id.* at ¶¶ 43, 49.

<sup>68</sup> *Id.* at ¶ 50 and n.131. *See also* ¶¶ 11, 32 (explaining “fees are only permitted to the extent that they represent a reasonable approximation of the local government’s objectively reasonable costs, and are nondiscriminatory”), and 69 (“The requirement that compensation be limited to a reasonable approximation of objectively reasonable costs and be non-discriminatory applies to all state and local government fees paid in connection with a provider’s use of the right-of-way to deploy Small Wireless Facilities.”).

<sup>69</sup> *Id.* at n.131. The Commission described “actual and direct” costs as those “objectively reasonable” costs actually “incurred by the government” and found that the right-of-way fee recovering those costs cannot reflect market-based charges. *Id.* at ¶ 55.

would not violate Section 253.<sup>70</sup> The Commission explained that fees for access to public rights-of-way and attachments to structures within them fall within the presumption only if “all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW,” in combination, do not exceed \$270.<sup>71</sup> The Commission stated its expectation “that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253.”<sup>72</sup> The Commission elaborated that, “[i]n those limited circumstances, a locality could prevail in charging fees that are above [the presumptive fee] level by showing that such fees nonetheless comply with the [three prong standard].”<sup>73</sup>

#### **IV. THE COMMISSION MUST PREEMPT THE RECURRING FEES IN THE CLARK COUNTY ORDINANCE**

Contrary to Section 253 and the Commission’s *Small Cell Ruling/Order*, the County adopted recurring fees that are not cost-based, are not objectively reasonable even in the few instances where they might arguably reflect costs, and are inherently discriminatory. Because the County’s recurring fees each fail to satisfy one or more of the Commission’s three criteria, the fees are unlawful under Section 253(a), and the Commission must preempt the enforcement of the fees under Section 253(d).

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<sup>70</sup> *Id.* at ¶¶ 78-80.

<sup>71</sup> *Id.* at ¶ 79.

<sup>72</sup> *Id.* at ¶ 80.

<sup>73</sup> *Id.* at ¶ 80; *see also id.* at n.234.

**A. The Clark County Recurring Fees Far Exceed the Commission's Presumptively Reasonable Annual \$270 Small Wireless Facility Fee**

The recurring fees in the Ordinance far exceed the Commission's presumptively reasonable recurring fee level. As explained above in Section II.C, the Ordinance has three recurring fees. Because all are recurring charges for access to and use of the public rights-of-way for the deployment of small wireless facilities, they must all be considered together when assessing whether the County's recurring fees are entitled to the Commission's presumption of reasonableness. Those fees as they apply to Verizon far exceed the Commission's presumed reasonable annual \$270 per small wireless facility per year fee.

The wireless site license fees range from \$700 per year to \$3960 per year. This fee alone far exceeds the Commission's presumed reasonable charge. And the wireless site license fee is subject to a two percent escalation each year, meaning the \$3960 annual fee would increase by \$79.20 in the first year alone.

When considered together with the County's other recurring fees, the fees even further exceed the presumptively reasonable rate. The annual inspection fee is at least \$500 and, on a per facility basis, the personal wireless business license fee Verizon remits is several times that amount.<sup>74</sup> Consequently, the annual recurring fees, based on Verizon's current number of wireless communications facilities, would start at several thousand dollars and go up from there,

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<sup>74</sup> Verizon submits more than \$1,000,000 per year for its personal wireless business license. *See* McNair Declaration, ¶ 6. When divided by the number of wireless communications facilities (including small wireless facilities) that Verizon currently has deployed in the County's public rights-of-way, Verizon estimates that the effective personal wireless business license fee per deployed facility is many multiples more than the Commission's presumed reasonable fee level. *See id.* at ¶¶ 4, 6. Even if Verizon deploys the hundreds of additional small wireless facilities it plans in Clark County, and assuming its gross revenues do not change, the effective personal wireless business license fee per small wireless facility still will be significantly higher than the presumed reasonable recurring fee of \$270.

depending on the County district in which the facility is located. Even if Verizon were to deploy the hundreds of additional small wireless facilities it currently plans, the per facility fees still would be thousands of dollars per year, with the exact amounts again depending on the County district in which the facility is located. Each of these recurring fees far exceeds the County's costs and the presumptively reasonable level of \$270 per small wireless facility fee established by the Commission.

**B. The Clark County Public Right-of-Way and Other Assets Fees are Not Cost-Based**

The Commission ruled in the *Small Cell Ruling/Order* that a state or local government's recurring fees that exceed the presumed reasonable level might nonetheless be justified as cost-based pursuant to the three-part test articulated in the order. The County bears the burden to prove the fees are a reasonable approximation of the County's costs, and it cannot do so. Despite Verizon's requests, the County refused to provide any support suggesting that its recurring public right-of-way and other assets fees are cost-based. As explained below, each recurring fee reflects a non-cost-based calculation methodology. Consequently, the recurring fees required by the Ordinance do not satisfy the first prong of the Commission's criteria – reasonably approximating Clark County's actual and direct cost. It is also highly unlikely that the remaining fee, the Annual Inspection Fee, would qualify as cost-based, when compared to similar fees in other jurisdictions.

***1. Wireless Site License Fees*** - The wireless site license fees are not cost-based. The Ordinance sets fee levels ranging from \$700 to \$3960 per small wireless facility, which respectively are almost three and up to thirteen times the Commission's presumptively reasonable \$270 annual small wireless facility recurring fee. This alone makes it highly unlikely

that that the fee was “based on a reasonable approximation of costs.”<sup>75</sup> In fact, the presentation by Smart Works described in Section II.D above confirms that the wireless site license fees are not cost-based.

The Smart Works Broadband Plan provided to the Clark County Board identified “current licensing fees” of \$700 per year for poles in “resort” areas.<sup>76</sup> Smart Works recommended that these fees increase to \$3,960 per year for poles in the “resort” areas, and these fees were intended to “Capture Fair Market Value for the Use of County Assets,” rather than recover the County’s costs.<sup>77</sup> Notably, these recommended fees are identical to the wireless site license fees for “Las Vegas Boulevard” and the “Central Communications District” that the County adopted in January of 2019 and that are the subject of this Petition.<sup>78</sup> While the wireless site license fees are lower in other districts, either \$700 or \$1900 annually, they suffer from the same deficiency. The Smart Works Business Plan does not identify the costs associated with managing and administering use of the public rights-of-way in recommending rates for these districts. Instead, the sole consideration is raising revenues to advance policy objectives.

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<sup>75</sup> *Small Cell Ruling/Order*, n.234.

<sup>76</sup> *Smart Works Broadband Plan* at 4.

<sup>77</sup> *Id.* at 4.

<sup>78</sup> See Clark County Code, Title 5, Chapter 5.02.210(2). See also, Clark County Board of Commissioners Agenda Item No. 61 (Dec. 18, 2018), Exhibit 12 and available at <https://agenda.co.clark.nv.us/sirepub/mtgviewer.aspx?meetid=1952&doctype=agenda> (visited Aug. 6, 2019) (The County recommended a public hearing on the Ordinance and noted “On December 19, 2017, The Board received a report and recommendations from Connected Nation Exchange (CNX) (now known as Smart Works Partners) on wireless communications facilities within the County rights-of-way. The recommendations included adopting design standards, implementing changes to the County Code and revising the license fee structure.”) (visited Aug. 6, 2019)

The large difference in rates among the districts reinforces the conclusion that wireless site license fees are not cost-based. The Ordinance establishes an annual per pole rate of \$700 for poles in the “Rural District” and the “Wireless Service Improvement District,”<sup>79</sup> as compared to a \$3960 annual fee for the “Las Vegas Boulevard” and the “Central Communications District.” One would expect relatively uniform ongoing costs of managing and administering the use of the public rights-of-way and other public assets in all districts once facilities are deployed. The differential – \$3260, which is more than 400% difference between the highest and lowest annual pole rates – reflects a premium based on something other than an actual difference in costs associated with the wireless provider’s use of the public right-of-way and other assets on Las Vegas Boulevard as compared to the Wireless Service Improvement District. The actual and direct costs of administration and managing telecommunications carrier use of the public rights-of-way and other assets on an ongoing basis, once facilities are deployed, do not vary so greatly from one district to another.

2. **Annual Fee Adjustment** - The automatic annual adjustment equal to two percent (2%) of the prior year’s wireless site license fee also is not cost-based.<sup>80</sup> The annual percentage fee increase is identical each year without reference to any changes in the County’s costs. It strains credulity that the costs to the County associated with a wireless provider’s use of the public rights-of-way or other public assets will increase by approximately two percent (2%) year in and year out in each district. The more likely explanation for the annual adjustment is unrelated to actual cost increases associated with the wireless provider’s use of the public rights-of-way, given that the fee itself is unrelated to costs.

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<sup>79</sup> Clark County Code, Title 5, Chapter 5.02.210(2).

<sup>80</sup> Clark County Code, Title 5, Chapter 5.02.210(5).



Because the underlying wireless license site fee is not cost-based, neither is the annual adjustment to the fee. To the contrary, there is no reason to believe an automatic percentage-based increase to a non-cost-based fee will somehow approximate any increased costs to the County attributable to a particular wireless provider's use of the public rights-of-way. Indeed, in four years' time, the increase alone in the wireless site license fee for the Las Vegas Boulevard and Central Communications District would be \$326.43, exceeding the Commission's presumed reasonable recurring fees in total.

3. **Gross Revenue-Based Use Fee** – The gross revenue-based use fee and, where applicable, the personal wireless business license fee are not cost-based. Clark County has not demonstrated – nor likely could it -- that a wireless provider's gross revenues are somehow correlated to the costs that the wireless provider imposes on the rights-of-way by deploying small wireless facilities. While deploying a wireless network imposes some costs on the local government's administration and management of the public rights-of-way, there is almost no possibility that the percentage of gross revenues collected from a particular carrier matches the reasonable costs incurred by the County to manage the rights-of-way.

Tellingly, the Commission has noted, citing several court cases, that “gross revenue fees generally are not based on the costs associated with an entity's use of the ROW” and found that “where that is the case, [the fees] are preempted under Section 253(a).”<sup>81</sup> Among those cases is *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, where the court ruled that a gross-revenue based fee for use of the right-of-way violated Section 253 because it did not reflect the actual

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<sup>81</sup> *Small Cell Ruling/Order*, ¶ 70 (citing, e.g., *Municipality of Guayanilla*, 450 F.3d 9, 21 (1<sup>st</sup> Cir. 2006); *Bell Atlantic–Maryland, Inc. v. Prince George's County*, 49 F. Supp. 2d 805, 818 (D. Md. 1999); *AT&T Comm'n's of the Sw. v. City of Dallas*, 8 F. Supp. 2d 582, 593 (N.D. Tx. 1998)).

costs resulting from use of the rights-of-way.<sup>82</sup> There, a city ordinance assessed a right-of-way use fee equal to five percent (5%) of revenues derived from calls that used any portion of the rights-of-way.<sup>83</sup> The court explained that the fee violated Section 253 because, among other reasons, “nothing in the record indicates that the ordinance accounts for the actual use of public rights of way. . . . [T]he 5% fee applies to the entire revenue derived from all calls that use any portion of the rights of way, regardless of the actual extent of use.”<sup>84</sup>

Similarly, neither the gross revenue-based use fee nor the alternative business license fee reasonably approximates the County’s actual and direct costs associated with a wireless provider’s use of the County’s public rights-of-way.

**4. Annual Inspection Fee** - The annual inspection fee is not likely a cost-based fee. The County has provided Verizon no information, despite its repeated requests, regarding the cost basis for this fee. That the fee is uniformly \$500, without regard to whether the wireless communications facility is attached to public property or to the structure of a third party in the public right-of-way, supports a conclusion that this fee was set without regard to the reasonable costs of inspection. In the case of an attachment to a third-party structure, the County’s inspection activities and therefore its costs per small wireless facility or other wireless communications facility would presumably be less, especially if there are multiple wireless communications facilities on the third party structure. Given that the annual inspection fee itself is higher than the Commission’s presumptively reasonable fee, the burden falls on the County to

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<sup>82</sup> *Municipality of Guayanilla*, 450 F.3d. 9.

<sup>83</sup> *Id.*, 450 F.3d. at 22.

<sup>84</sup> *Id.*, 450 F.3d. at 22-23.

demonstrate that the annual inspection fee is a reasonable approximation of the costs of the County's relevant inspection activities.

**C. Clark County's Public Right-of-Way and Other Assets Fees Do Not Reflect Objectively Reasonable Costs**

Under the Commission's three-part test adopted in the *Small Cell Ruling/Order*, if the recurring fees are a reasonable approximation of direct and actual costs, the second part of the test requires that the costs recovered are themselves objectively reasonable.<sup>85</sup> Because the County has failed to provide any information regarding its costs of administering its public rights-of-way, it is not possible to conclude that any of the recurring fees are a reasonable approximation of the County's actual relevant costs or that they are themselves objectively reasonable.

**D. The Clark County Public Right-of-Way and Other Assets Fees Are Discriminatory**

The County's recurring fees are unlawfully discriminatory in two ways. First, the wireless site license fees and annual fee adjustment are inherently discriminatory because they impose the same fee on providers of telecommunications services for a small wireless facility installation located on the facilities of a third-party in the public rights-of-way and for a small wireless facility installation attached to public facilities, even though the two types of installations impose very different costs on Clark County. In the former case, the County has no building or antenna structure to maintain to which the provider attaches its small wireless facility. As a result, the wireless provider installed on a third party's facilities imposes a lower cost on Clark County than does the wireless provider that installs small wireless facilities on

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<sup>85</sup> See *Small Cell Ruling/Order*, ¶ 50. Because the recurring fees do not meet the first prong of the Commission's standard requiring that fees "reasonably approximate" the County's costs, the Commission does not need to review the second prong.

public assets within Clark County's public rights-of-way.<sup>86</sup> To avoid discrimination, the County's recurring fees should be lower for a wireless provider attached to the facilities of the third-party in the rights of way.

Second, the gross revenue-based use fee (or, where applicable, the personal wireless business license fee) is inherently discriminatory because it is structured to impose different fees on providers that impose the same costs on the County to manage and/or maintain the rights-of-way. The fee imposed by the Ordinance through the gross revenue-based use fee or business license fee is based on a percentage of each provider's revenues (which are likely to be different), which means that each provider will be charged a different fee even though the costs it imposes are the same. Under Section 253 and the *Small Cell Ruling/Order*, such providers should not pay different recurring fees.<sup>87</sup> Charging two wireless providers different recurring fees for imposing the same costs when using the public rights-of-way is discriminatory in violation of Section 253 and the *Small Cell Ruling/Order*.<sup>88</sup>

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<sup>86</sup> See McNair Declaration, ¶ 8.

<sup>87</sup> See *Small Cell Ruling/Order*, ¶ 77.

<sup>88</sup> Likewise, where two providers impose different costs on the public rights-of-way but pay substantially the same recurring fee because their gross revenues are similar, that too is discriminatory in violation of Section 253 and the *Small Cell Ruling/Order*.

## V. CONCLUSION

For the foregoing reasons, the Commission should find that Clark County's recurring fees are not based on a reasonable approximation of the County's costs to manage and maintain its rights-of-way. The recurring fees effectively prohibit the provision of telecommunications services violating Section 253 and the *Small Cell Ruling/Order*, and they are therefore preempted. The Commission should declare that, because Clark County's recurring fees are not based on a reasonable approximation of its reasonable costs, the County may not charge recurring fees that exceed the presumptively reasonable annual rate of \$270, as set forth in the *Small Cell Ruling/Order*.

Respectfully submitted,

VERIZON



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August 8, 2019

## **Exhibits**

- 1) Clark County Code Chapter 5.02
- 2) Declaration of Adam McNair, Verizon (Aug. 7, 2019)
- 3) Clark County Code Chapter 6
- 4) Clark County Board of Commissioners Agenda Item No. 43 (Jan. 7, 2019)
- 5) Declaration of Nicholas Magnone, Verizon (Aug. 6, 2019)
- 6) Verizon Business Impact Statement Submission to Clark County (Sept. 20, 2018)
- 7) Letter from Danielle C. Agee, General Counsel, South Central Market, Verizon to Steve Wolfson, Clark County District Attorney, Office of the District Attorney, Las Vegas, NV (Mar. 12, 2019)
- 8) Letter from Lucinda L. Coumou, Chief Deputy District Attorney, Office of the District Attorney, Clark County to Danielle C. Agee, Esq., General Counsel, South Central Market, Verizon (Mar. 22, 2019)
- 9) Email from Ty Doram, Assistant Manager, Clark County Public Works, Traffic Management Division to Verizon with new Site License Application (July 1, 2019)
- 10) CNX, "Broadband Master Plan Recommendations, Clark County, Board of County Commissioners," (Dec. 19, 2017)
- 11) Clark County Board of Commissioners Agenda Item No. 74 (Dec. 19, 2017)
- 12) Clark County Board of Commissioners Agenda Item No. 61 (Dec. 18, 2018)

# **EXHIBIT 1**

BILL NO. 12-4-18-3 (A)

SUMMARY – An ordinance to amend Title 5 of the Clark County Code by deleting Chapter 5.02 - Cable Television Services, Including CATV and Open Video Services, and replacing it with a new Chapter 5.02 – Rights-of-Way Management - Wireless Communications Facilities; providing for application and issuance of master wireless use and site license approvals; setting standards for design, installation, operation, maintenance and removal of wireless communications facilities in the public rights-of-way; establishing fees for wireless communications facilities in the public rights-of-way; and providing for other matters properly related thereto.

ORDINANCE NO. 4659  
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 5 OF THE CLARK COUNTY CODE BY DELETING CHAPTER 5.02, - CABLE TELEVISION SERVICES, INCLUDING CATV AND OPEN VIDEO SERVICES, AND REPLACING IT WITH A NEW CHAPTER 5.02 - RIGHTS-OF-WAY MANAGEMENT - WIRELESS COMMUNICATIONS FACILITIES; PROVIDING FOR APPLICATION AND ISSUANCE OF MASTER WIRELESS USE AND SITE LICENSE APPROVALS; SETTING STANDARDS FOR DESIGN, INSTALLATION, OPERATION, MAINTENANCE AND REMOVAL OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; ESTABLISHING FEES FOR WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK,  
STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. Title 5 of the Clark County Code is hereby amended by deleting  
Chapter 5.02 in its entirety and adding a new Chapter 5.02 as follows:



CHAPTER 5.02 – RIGHTS-OF-WAY MANAGEMENT –  
WIRELESS COMMUNICATIONS FACILITIES

**Sections:**

**5.02.010 – Purpose.**

The purpose of this Chapter of the Code is to:

- (A) Establish a local policy concerning Rights-of-Way management for Wireless Communications Facilities.
- (B) Permit and manage reasonable access, in a nondiscriminatory manner, to Rights-of-Way in unincorporated Clark County for Wireless Communications Facilities.
- (C) Manage physical capacity of the Rights-of-Way held in public trust by the County.
- (D) Establish design standards to provide for a consistent and aesthetically pleasing appearance of Wireless Communications Facilities in the County Rights-of-Way within specific, defined districts.
- (E) Recover public costs of permitting private use of County Rights-of-Way.
- (F) Ensure all providers of Wireless Communications Facilities within the County comply with all ordinances, rules and regulations of the County.

**5.02.020 – Implementation.**

The provisions of this chapter shall become effective on July 1, 2019.

### **5.02.030 - Definitions.**

For the purpose of this Chapter of the Code, the following words and terms defined in this Section shall apply. Terms, phrases, words, and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "must", "shall" and "will" are mandatory and "may" is permissive.

#### **5.02.030.010 – Abandoned**

"Abandoned" means the relinquishing of Facilities owned by a Licensee or when a Licensee intends to permanently cease all business activity associated with its Wireless Communications Facilities within the Rights-of-Way.

#### **5.02.030.020 – Affiliate**

"Affiliate" means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in a Licensee; (b) each person or entity in which a Licensee has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls a Licensee. An "Affiliate" shall in no event mean any creditor of a Licensee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, a Licensee.

#### **5.02.030.030 – Applicant**

"Applicant" means the person who submits a completed Application and required supporting materials as set forth in this Chapter for a Business License, a Master Wireless Use License Agreement, a Wireless Site License Approval, or a permit to install and operate a Wireless Communications Facility.

#### **5.02.030.040 - Application**

"Application" means all written documentation, statements, representations and warranties provided to the County, in accordance with this Chapter, by a Person, which may be relied upon by the County in making its determination of whether to grant or deny a Business License, a Master Wireless Use License Agreement, a Wireless Site License Approval, or a permit to install and operate a Wireless Communications Facility.

#### **5.02.030.050 – Assignment or Transfer**

"Assignment" or "Transfer" means any transaction in which: (a) any ownership or other right, title or interest of more than 50% in a Licensee or its Network is transferred, sold, assigned, leased or sublet, directly or indirectly, in whole or in part; (b) there is any change or transfer of control of a Licensee or its Network; (c) the rights and/or obligations held by a Licensee under a Master Wireless Use License Agreement are transferred, directly or indirectly, to another party; or (d) any change or substitution occurs of more than 50% of the managing general partners of a Licensee, if applicable. An "Assignment" shall not include a mortgage, pledge or other encumbrance as security for money owed nor shall it

include the use of a Licensee's Equipment by third parties or attachment of third-party owned Equipment to Municipal Facilities by a Licensee.

**5.02.030.060 – Business License**

"Business License" means the written authorization required by the County for any person who commences, carries on, engages in, or conducts a business, occupation, trade, or employment, as delineated in Title 6 of the Code, within unincorporated areas and unincorporated towns within Clark County, Nevada.

**5.02.030.070 – Clark County Code, Code or County Code**

"Clark County Code" or "Code" or "County Code" means the titles, chapters and sections of the Clark County Code and ordinances referenced herein, or their successor titles, chapters and sections, adopted by the County Commission, and as amended from time to time.

**5.02.030.080 – Commence Construction or Commence Installation**

"Commence Construction" or "Commence Installation" means that time and date when the first connection is physically made to a Municipal Facility for overhead facilities, when trenching is initiated for underground facilities, or when foundations are excavated for transmission facilities, whichever occurs first, if applicable, provided the appropriate permits are issued for such work.

**5.02.030.090 – Commence Operation**

"Commence Operation" means that time and date, after construction or installation completion, when the Facility is first used to provide service.

**5.02.030.100 – Commercial Mobile Radio Service, CMRS or Commercial Mobile**

**Service**

“Commercial Mobile Radio Services” or “CMRS” or “Commercial Mobile Service” means the commercial mobile service as defined in 47 United States Code § 332(d) that is authorized to be provided by persons licensed by or registered with the PUCN.

**5.02.030.110 – Construction Completion or Installation Completion**

“Construction Completion” or “Installation Completion” means that time and date when all Facilities have been installed and all public Rights-of-Way and properties have been restored to their former appearance and condition in a manner acceptable to the County.

**5.02.030.120 - County**

“County” means the County of Clark, a political subdivision of the State of Nevada.

**5.02.030.130 – County Commission**

“County Commission” means the Board of County Commissioners of the County.

**5.02.030.140 – County Manager**

“County Manager” means the County Manager appointed by County Commission to perform such administrative functions of the County government as may be required of him/her by the County Commission, or his/her designee.

**5.02.030.150 – Decorative Streetlight Pole**

“Decorative Streetlight Pole” means any Streetlight Pole that: (a) is made from a material other than metal; or (b) incorporates artistic design elements not typically

found in standard metal Streetlight Poles. Decorative Streetlight Poles may not be used for the Network without prior written approval by County. The term Decorative Streetlight Pole includes any historically or architecturally significant or designated Streetlight Poles owned by the County located in ROW.

**5.02.030.160 – Director of Business License or Director of Public Works**

"Director of Business License" or "Director of Public Works" means the County departmental director of the department specifically named, or his/her designee.

**5.02.030.170 - Equipment**

"Equipment" means the radio units, conduits, antennas, backhaul equipment, and any other device, whether referred to singly or collectively, to be installed and operated by a Licensee as part of its Wireless Communications Facility.

**5.02.030.180 – Federal Communications Commission or FCC**

The "Federal Communications Commission" or "FCC" means the independent agency of the United States government created by federal statute to regulate interstate communications by radio, television, wire, satellite, and cable, and its predecessors and successors.

**5.02.030.190 – Gross Revenue**

"Gross Revenue" shall mean and include any and all income and other consideration of whatever nature in any manner actually collected from any third party and received by a Licensee or its Affiliates from or in connection with the provision of a Network enabling Commercial Mobile Radio Services or Telecommunications Services via Equipment within County Rights-of-Way, either directly by a Licensee or indirectly through its Affiliates or by its wireless

service provider customers, to customers of such Network within the County, including any imputed revenue derived from commercial trades and barter equivalent to the full retail value of goods and services provided by a Licensee. Gross Revenue shall not include: (a) sales, ad valorem, or other types of “add-on” taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government; (b) non-collectable amounts due a Licensee or its Affiliates; (c) refunds or rebates; (d) non-operating revenues such as interest income or gain from the sale of an asset; (e) any payments, reimbursements or pass-throughs from any third party to a Licensee for utility charges, taxes and other pass-through expenses, or in connection with maintenance work performed or Equipment installed by a Licensee; (f) site acquisition, construction management or supervision fees related to the installation of a Licensee’s Facilities; and (g) contributions of capital by any third party to reimburse a Licensee in whole or in part for the installation of a Licensee’s Facilities.

#### **5.02.030.200 – Information Service**

“Information Service” has the same meaning as that term is defined in 47 United States Code § 153(24).

#### **5.02.030.210 - Laws**

“Laws” means any and all applicable statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, or orders of the County or other governmental agency having joint or several jurisdiction over the parties to a Master Wireless Use License Agreement.

or Wireless Site License Approval as such laws may be amended from time to time.

**5.02.030.220 – Licensee**

“Licensee” means a Person who has obtained a fully executed Master Wireless Use License Agreement with the County and is eligible to apply for a Wireless Site License Approval.

**5.02.030.230 – Master Wireless Use License Agreement or MLA**

“Master Wireless Use License Agreement” or “MLA” means an agreement between a person and the County that generally defines the terms and conditions which govern their relationship with respect to a Licensee’s construction, installation, and operation of Wireless Communications Facilities in the County’s Rights-of-Way or on Municipal Facilities.

**5.02.030.240 – Municipal Facilities**

“Municipal Facilities” means Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, or electroliers owned by the County that are located within the ROW and may refer to such facilities in the singular or plural, as appropriate to the context in which used. Municipal Facilities do not include traffic signal poles, school zone flashers, pedestrian bridges or any related appurtenances or shared power sources.

**5.02.030.250 - Network**

“Network” means the Equipment installed or operated by a Licensee to serve its customers in the County.



#### **5.02.030.260 - Person**

"Person" means a natural person, any form of business or social organization and any other nongovernmental legal entity, including, but not limited to, the estate of a natural person, a corporation, partnership, association, trust, or unincorporated organization. The term "person" does not include a government, governmental agency, or political subdivision of a government.

#### **5.02.030.270 – Public Improvement**

"Public Improvement" means new or existing roadways and pavements, sidewalks, curbs and gutters, landscaping, street lights, foundations, poles and traffic signal conduits, water mains, sanitary and storm sewers, tunnels, subways, people movers, viaducts, bridges, underpasses, and overpasses, or other public facilities across, along, over or under any street or streets, or other such improvements which are to be used by the general public.

#### **5.02.030.280 – Public Utilities Commission of Nevada or PUCN**

"Public Utilities Commission of Nevada" or "PUCN" means the Public Utilities Commission of the State of Nevada, and its predecessors and successors.

#### **5.02.030.290 – Remediation Compliance Date**

The Remediation Compliance Date shall be the date by which the Licensee is required to have its Wireless Communications Facilities in the ROW, either installed on a Municipal Facility or constructed by a Licensee or others, in compliance with the requirements of this Chapter, which is:

- (A) for Facilities within the Las Vegas Boulevard District, as defined in Subsection 5.02.030.310, the earlier of December 31, 2023, or the completion of the Public Works / Las Vegas Valley Water District repaving project of Las Vegas Boulevard scheduled to be completed by 2023;
- (B) for Facilities within the Central Communications District, as defined in Subsection 5.02.030.310, December 31, 2021; and
- (C) for Facilities within all other ROW Design Districts, as defined in Subsection 5.02.030.310, the date that the Licensee replaces or upgrades its Wireless Communications Facilities for a particular location.

**5.02.030.300 – Right-of-Way, Rights-of-Way or ROW**

"Right-of-Way" or "Rights-of-Way" or "ROW" means public property, including air space, dedicated, granted, held, prescriptively used, or authorized by patent of the United States of America, for County public Street, and public utility purposes, except as limited by any underlying grant and except public Streets predominantly used for public freeway or expressway purposes, including, without limitation, the Clark County 215 Bruce Woodbury Beltway, and except for any property owned, operated, maintained and/or administered by the Department of Aviation, including, without limitation, airport roadways, sidewalks and streetlights.

### **5.02.030.310 – ROW Design Districts**

“ROW Design Districts” are geographic areas of the County where certain design standards and Wireless Site License Fees apply. The ROW Design Districts are identified as follows:

**(A) District 1 - Las Vegas Boulevard District – The Las Vegas**

Boulevard District shall be the area beginning at the intersection of Las Vegas Boulevard South and Sahara Avenue and ending at the intersection of Las Vegas Boulevard South and Sunset Road.

**(B) District 2 - Central Communications District - The Central**

Communications District shall be the area excluding the Las Vegas Boulevard District and beginning at the intersection of West Sahara Avenue and Sammy Davis Jr. Boulevard; then south on Sammy Davis Jr. Boulevard to Desert Inn Road; then west on Desert Inn Road to Valley View Boulevard; then south on Valley View Boulevard to Spring Mountain Road; then west on Spring Mountain Road to Arville Street; then south on Arville Street to West Russell Road; then east on West Russell Road to South Valley View Boulevard; then south on South Valley View Boulevard to West Sunset Road; then east on West Sunset Road to Eastern Avenue; then north on Eastern Avenue to East Russell Road; then west on East Russell Road to Paradise Road; then north on Paradise Road continuing north on to Swenson Street and continuing north on to Joe W. Brown Drive to Sahara Avenue;

then west on Sahara Avenue to the beginning point at Sammy Davis, Jr. Boulevard.

(C) **District 3 - Residential District** – The Residential District shall be the Single Family Districts established in Section 30.36.010 (1)(A) of the County Code that are outside of the Central Communications District.

(D) **District 4 – Commercial District** – The Commercial District shall be all Zoning Districts established in Section 30.36.010 of the County Code that are outside of the Central Communications District and excluding the Residential District, Rural District, Manufacturing District and Wireless Service Improvement District.

(E) **District 5 - Rural District** – The Rural District shall be the areas of the County identified as rural areas that are outside of the Central Communications District.

(F) **District 6 - Manufacturing District** – The Manufacturing District shall be all Zoning Districts established in Section 30.36.010 (3) of the County Code that are outside of the Central Communications District.

(G) **District 7 - Wireless Service Improvement District** – The Wireless Service Improvement District shall be the areas of the County identified as experiencing a lack of or insufficient wireless coverage that are outside of the Central Communications District.

The areas in each district are inclusive of the Rights-of-Way on both sides of the streets, excluding any rights-of-way that are located within the jurisdictional boundaries of an incorporated city. The ROW Design District that is associated with a particular Municipal Facility shall be the District closest to that Municipal Facility. If the Municipal Facility is equal distance from the boundaries of two different ROW Design Districts the more restrictive District will be applicable. The lower the District number means the ROW Design District is more restrictive (i.e., District 1 is more restrictive than District 2, District 2 is more restrictive than District 3, etc.).

#### **5.02.030.320 – Smart Pole**

“Smart Pole” means a structure designed to blend into the surrounding environment and constructed so that all of the Equipment is located internally inside the pole and is not visible on the exterior of the structure.

#### **5.02.030.330 - Street**

"Street" means the surface, the air space above the surface and the area below the surface of the full width of the Rights-of-Way, including sidewalks and thoroughfares, places or ways of any kind used by the public or open to the public as a matter of right for the purpose of vehicular traffic or vehicular and pedestrian traffic, except for those on property owned, operated, maintained and/or administered by the Department of Aviation.

#### **5.02.030.340 – Streetlight Pole**

“Streetlight Pole” shall mean any standard-design metal pole that has a mast arm for the support of a light fixture, is owned by the County, and is used for street

lighting purposes. Streetlight Pole does not include traffic signal poles, school zone flashers, or any related appurtenances, nor any pole supporting a streetlight that is made from any material other than metal.

#### **5.02.030.350 – Telecommunications Services**

“Telecommunications Services” means telecommunications services as defined in 47 U.S.C. § 153(53).

#### **5.02.030.360 – Wireless Communications Facility or Facilities or WCF**

“Wireless Communications Facility” or “Facilities” or “WCF” means antennas, transmitters, poles, pipes, wires, cables, conduits, amplifiers, instruments, equipment, and other appliances used in connection therewith or appurtenant thereto to provide Commercial Mobile Radio Services or Telecommunications Services via Equipment.

#### **5.02.030.370 – Wireless Service Provider**

“Wireless Service Provider” means a Person who provides Personal Wireless Services as defined in 47 U.S.C. § 332(c)(7)(C)(i).

#### **5.02.030.380 – Wireless Site License Approval or SLA**

“Wireless Site License Approval” or “SLA” means an approval applied for by a Licensee and issued by the County that specifically defines the terms and conditions which govern their relationship with respect to a Licensee’s construction, installation, and operation of Wireless Communications Facilities for each specific site in the County’s Rights-of-Way or on Municipal Facilities. All of the terms and conditions of Master Wireless Use Agreements shall be incorporated by reference into each SLA executed between the parties.

**5.02.040 - Business License Required.**

No Master Wireless Use License Agreement will be approved until an Applicant has first obtained a Business License issued by the Director of Business License, after Application and compliance with all applicable requirements of Title 6 of the County Code. The Application processing fee for a Business License is as set forth in County Code Title 6. In addition to the requirements of Title 6 of this Code, an Application for a Business License by an Applicant proposing to use the County Rights-of-Way shall include:

- (A) A statement setting forth all agreements and understandings existing between the Applicant and any person with respect to the Applicant's acting as an agent or representative of another person regarding use of Rights-of-Way;
- (B) For a corporation, a list of officers and directors of the Applicant;
- (C) For a partnership, a list of all partners and their relative interests in the partnership;
- (D) A statement of whether any of the persons listed in Subsections (a), (b) and (c) of this Section has had a franchise, Rights-of-Way license or similar agreement declined, suspended or revoked, and, if so, the government agency issuing this decision, the date, time, place and reasons given; and
- (E) A copy of the order and certificate of public convenience and necessity from the PUCN, if such certificate is required by the laws of the state of Nevada or, if applicable, a copy of the letter of registration from the PUCN.

**5.02.050 – Master Wireless Use License Agreement Required.**

No person shall be eligible to apply for a Wireless Site License Approval to construct, install, operate, or maintain Wireless Communications Facilities in, over, or under any Rights-of-Way or

on municipal property without obtaining a Master Wireless Use License Agreement granted by the County Commission.

**5.02.060 - Application for a Master Wireless Use License Agreement.**

The following procedures will apply to all Applications for new Master Wireless Use License Agreement or renewals thereof:

- (A) The Applicant shall make a written request to the County Manager for a Master Wireless Use License Agreement on an Application form, which may be updated from time to time, and is available at the Business License Department office.
- (B) In addition to other information required by the Application for a Master Wireless Use License Agreement, the Applicant will provide:
  - (1) A copy of all certificates or letters of registration issued by the PUCN pertaining to Applicant's activity.
  - (2) A copy of all Clark County business licenses pertaining to Applicant's activity in the Rights-of-Way.
- (C) An Applicant shall pay to the County the Master Wireless Use Agreement Application Fee provided in Section 5.02.210. Failure to pay the Application fees will cause the Application(s) to be deemed incomplete, and the County will not process such Application(s) until the Application fees are paid.
- (D) When an Application is certified as complete by the County Manager and a Master Wireless Use License Agreement has been finalized, the MLA shall be presented before the County Commission for approval or denial. Upon County Commission approval and full execution of a Master Wireless Use License



Agreement, an Applicant is deemed to be a Licensee and is then eligible to apply for a Wireless Site License Approval.

**5.02.070 – Wireless Site License Approval Required.**

No person shall construct, install, operate, or maintain Wireless Communications Facilities in, over, or under any Rights-of-Way or on Municipal Facilities without obtaining a Wireless Site License Approval issued by the County. A written Wireless Site License Approval is required for each Wireless Communications Facility. Wireless Site License Approvals authorize a Licensee's installation of a Wireless Communications Facility in the Public Rights of Way and are non-exclusive.

**5.02.080 - Application for a Wireless Site License Approval.**

The following procedures will apply to all Applications for new Wireless Site License Approval or renewals thereof:

- (A) Wireless Site License Application. The Department of Public Works shall prepare and make publicly available an Application form requesting information necessary for the County to consider an Application for installation of a Wireless Communications Facility on Municipal Facilities or on third party or Licensee owned structures in the Rights-of Way, including, but not limited to, a list of persons, if known at the time of the Application, that will be using the Applicant's or Applicant's customer's Facilities in the Rights-of-Way to provide Wireless Communications Services.

(B) **Wireless Site License Application Fee.** Licensee shall pay to the Department of Public Works the Wireless Site License Application Fee listed in Section 5.02.210. Failure to pay the Application fees will cause the Application(s) to be deemed incomplete, and the County will not process such Application(s) until the Application fees are paid.

(C) **County Decision.** If the Application is approved, the Department of Business License shall issue an SLA. If the Application is denied, the Department of Business License shall notify a Licensee in writing identifying the specific reasons why the Application is not in compliance with the MLA or the Code. Delivery of either the SLA or a denial notification as provided for in this Section may be made to a Licensee by electronic methods such as e-mail to the e-mail address referenced in the SLA Application.

(D) **Execution by the County.** The Board of County Commissioners authorizes the Director of Business License or the Director's designee to sign and execute SLAs on behalf of the County.

#### **5.02.090 – Master Wireless Use License Agreement and Wireless Site License Approval**

##### **Conditions.**

A Master Wireless Use License Agreement, and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement, shall incorporate all provisions of this Chapter of the Code.

- (A) Any Master Wireless Use License Agreement granted pursuant to this Chapter, and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement, shall be nonexclusive.
- (B) All provisions of this Chapter and a Master Wireless Use License Agreement and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be binding upon the Licensee, its successors, or assignees.
- (C) A Master Wireless Use License Agreement and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be construed in favor of the County and no privilege or exemption shall be inferred from the granting of any Master Wireless Use License Agreement unless it is specifically mentioned in this Chapter of the Code or in the Master Wireless Use License Agreement.
- (D) The granting of any Master Wireless Use License Agreement pursuant to this Chapter of the Code and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be a privilege and shall not impart to a Licensee any right of property in any Rights-of-Way. SLAs shall be construed to have granted the nonexclusive permission and authority to use specific portions of the Right-of-Way and Municipal Facilities as identified in an SLA and as provided in this Chapter of the Code for the construction, operation, and maintenance of Facilities underground, on the surface, or above ground. In no event shall this Chapter of the Code or any MLA or SLA be construed to have granted permission or authority to use any facilities outside of Rights-of-Way.

- (E) A Licensee shall at all times during the term of the Master Wireless Use License Agreement and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement be subject to all lawful exercise of the police power by the County. This includes any and all ordinances, rules or regulations which the County has adopted or may adopt, upon notice to a Licensee of at least thirty (30) days before adoption and an opportunity for the Licensee to be heard before adoption if requested by a Licensee within fifteen (15) days after receipt of the notice, and which apply to the public generally and to the Licensee. Any conflict between the provisions of this Chapter of the Code and any other present or future lawful exercise of County police powers shall be resolved in favor of the County police powers.
- (F) Any privilege claimed under this Chapter of the Code, any Master Wireless Use License Agreement, or any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be equal to the privilege claimed under of any other Wireless Use License under this Chapter of the Code or Nevada Revised Statutes Chapters 709 and 711 and shall be subordinate to any other prior lawful occupancy of the Rights-of-Way.
- (G) Any right or power in, or duty assigned to any officer or employee of the County by virtue of this Chapter of the Code shall be subject to transfer by the County Commission to any other officer or employee of the County.
- (H) A Master Wireless Use License Agreement and any Wireless Site License Approvals executed pursuant to a valid Master Wireless Use License Agreement shall be subject to all requirements of County ordinances, rules, regulations, and

specifications heretofore or hereafter enacted or established to the maximum extent allowed by law.

- (I) A Licensee shall not construct, install, operate, or maintain any Wireless Communications Facility in, over, or under any County Rights-of-Way or on Municipal Facilities without obtaining any and all necessary federal, state, and County licenses or permits.
- (J) A Licensee shall maintain records and allow for audits as provided in County Code Title 6.
- (K) Licensee shall be solely responsible for obtaining all additional necessary Rights-of-Way and easements, leases, licenses or approvals, either public or private, which may be necessary prior to the beginning of construction of a Wireless Communications Facility.
- (L) In the County's sole discretion, specific units of the County's Municipal Facilities and Rights-of-Way may be determined by the County to be necessary for the County's exclusive existing or future use and will be unavailable for use by others.
- (M) In the event of the early termination of any SLA by the County, the County will reimburse Licensee the unused portion of the applicable Wireless Site License Fee after proration based on the number of whole months remaining until the next June 30 for which payment was made in advance by the Licensee.
- (N) Licensee shall have the right to terminate any SLA upon ninety (90) days prior written notice to the County. In the event of early termination by the Licensee, the Licensee shall not be entitled to any reimbursement of the applicable Wireless

Site License Fee. Removal of the applicable Equipment following termination of an SLA by Licensee shall be completed pursuant to Subsection 5.02.200 (G) of the County Code.

#### **5.02.100 - Conditions of Rights-of-Way and Wireless Communications Facilities**

##### **Installation.**

- (A) A Licensee shall comply with all improvement, design, and construction guidelines and standards contained in the Design Standards in Section 5.02.110 and the improvement standards adopted in Title 30 of the Clark County Code.
- (B) Any Wireless Communications Facility in the ROW, either installed on a Municipal Facility or constructed by a Licensee or others, shall be brought into compliance with the requirements of this Chapter by the Remediation Compliance Date, except where retroactive application of new standards is prohibited by federal, state, or local law. The County shall review each installation that has been installed prior to December 1, 2018, and provide a remediation plan detailing the action needed to bring the Wireless Communications Facility into compliance. Wireless Communications Facilities not brought into compliance by the Remediation Compliance Date, shall be removed at the Licensee's cost and the Licensee must pay the Failure to Comply with a Remediation Plan Fee listed in Section 5.02.210. The Director of Business License may, at the Director's sole discretion, extend the time in which the Licensee must comply and/or suspend the Remediation Plan Fee for good cause.

- (C) Prior to any work being performed within the Rights-of-Way, a Licensee shall obtain an encroachment permit pursuant to the applicable provisions of Title 30 of the County Code.
- (D) When the public improvement designs prepared by a Licensee are more detailed than, or are not covered by, the standards adopted in Design Standards in Section 5.02.110 or in Title 30 of the Clark County Code, plans and specifications for construction, reconstruction, installations, and repairs of Public Improvements shall be sealed by a Nevada registered professional engineer.
- (E) Except in the case of an emergency, a Licensee, who is the initiator of a project in a Street or easement upon which property within the Residential District are located and maintained, shall notify residents who are located adjacent to the proposed project at least seven (7) days prior to the date that the Licensee proposes to commence construction. Such notice shall be by one of the following: (i) written notice in person, (ii) by posted notice on the Street where the proposed project is scheduled to be built (which notice is to be large enough to be clearly read by passing motorists), (iii) by door hanger, or (iv) by mail, with a description of the proposed project and the name of the Licensee together with its business phone number.
- (F) All Public Improvement work performed by a Licensee in Rights-of-Way shall be inspected, completed and accepted in accordance with Design Standards in Section 5.02.110 and the improvement standards adopted in Title 30 of this Code.
- (G) It is specifically declared that it is not intended by any of the provisions of any part of this Chapter of the Code to create for the public, or any member thereof, a

third-party beneficiary hereunder, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Chapter of the Code. The duties, obligations, and responsibilities of the County with respect to third parties shall remain as imposed by the general law of the state of Nevada.

- (H) Any inspections or subsequent approvals undertaken by the County pursuant to this Chapter of the Code are undertaken solely to ensure compliance with this Chapter of the Code and are not undertaken for the safety or other benefit of any individual or group of individuals as members of the public. Provisions in this Chapter of the Code dealing with inspection or approval by the County do not expand the County's general law duties.
- (I) In the case of damage caused by a Licensee to any Rights-of-Way, a Licensee shall at no cost or expense to the County repair, replace and restore the damaged area in accordance with current improvement standards adopted in Title 30 of this Code.
- (J) A Licensee shall not acquire any vested right or interest in any particular Rights-of-Way location for any of its facilities constructed, operated, or maintained in any existing or proposed Rights-of-Way, even though such location was approved by the County.
- (K) Whenever, in case of emergency, it becomes necessary to remove any of a Licensee's Facilities, no charge shall be made by a Licensee against the County for loss, damage, restoration, and repair.
- (L) A Licensee shall place identification markers on all its Wireless Communications Facilities located in the Rights-of-Way. The County shall publish specifications



for identification markers to be used in connection with Wireless Communications Facilities and identification markers that meet the specifications shall be deemed approved by the County. A Licensee shall be responsible for periodically inspecting its Wireless Communications Facilities to ensure they are tagged with approved permanent identification markers. Should the County encounter any of Licensee's Wireless Communications Facilities without approved permanent identification markers, the County may notify Licensee, provided that the County can identify the Facilities as belonging to Licensee. The County's notification to the Licensee will be in writing, which may be by electronic methods, including e-mail to the e-mail address referenced in the Application for the applicable Facilities, and identify the Wireless Communications Facilities requiring permanent identification markers, and Licensee will have one hundred twenty (120) days from receipt of notice to place such markers.

(M) Reconstruction, removal or relocation of a Licensee's Facilities to accommodate a Public Improvement shall be provided for in the following manner:

(1) The County or Las Vegas Valley Water District, Kyle Canyon Water District, Big Bend Water District or Clark County Sanitation District shall issue to a Licensee written notice of a need to reconstruct, remove, or relocate any of Licensee's Facilities which may be in conflict with an existing or proposed Public Improvement in order to accommodate the installation, maintenance, or use of the Public Improvement. Such written notice shall include project information equivalent in detail to fifty percent

(50%) or more of final design for the Public Improvement. A Licensee shall, within thirty (30) days after receiving such written notice from the County, or District as described in this paragraph, present to the Director of Public Works a notice of intent to reconstruct, remove, or relocate said facilities, and shall, within six (6) months after receipt of written notice from the County or district, or such shorter time period as may be reasonable, reconstruct, remove, or relocate said facilities. Upon request from a Licensee identifying a recommended location for its Facilities, the Director of Public Works shall provide that location or an alternate location within the Rights-of-Way for a Licensee, if space is available.

- (2) Within thirty (30) days after receipt of such written notice from the County, or District as described in paragraph (M)(1) of this Section, a Licensee may present a written application and supporting documentation to the Director of Public Works for an extension of time in which to complete reconstruction, removal or relocation of its facilities. The Director of Public Works may grant additional time beyond the time period provided that the additional time requested is due to service, equipment, or material delivery constraints beyond the control and without the fault or negligence of a Licensee, or that the project described in the written notice is of such a size that the work to be performed by a Licensee cannot be completed within the allowable time.
- (3) If after the issuance of the initial written notice, the County, or District, as described in paragraph (M)(1) of this Section, makes a substantial change

in the design of the public improvement project, including, but not limited to, changes in elevation, changes affecting Rights-of-Way alignment and widths of alignment, the County or District, as described in paragraph (M)(1) of this Section, shall notify a Licensee of the details of the substantial change. If a Licensee determines that such change would cause a delay in reconstruction, removal or relocation of its facilities beyond the time provided, a Licensee may, within thirty (30) days from receipt of notice of such change, petition the Director of Public Works for an extension of time in which to complete reconstruction, removal or relocation of facilities. If the additional time is requested due to service, equipment, or material delivery constraints beyond the control of a Licensee, or if the Public Improvement design change is of such a scope that the work to be performed by a Licensee cannot be completed within the time period allowed, the Director may grant an extension of time. If the request for extension of time is denied, a Licensee may appeal the denial to the County Manager within thirty (30) days from receipt of notice of denial. The decision of the County Manager shall be final.

(4) The County or District, as described in paragraph (M)(1) of this Section, shall provide a Licensee with a final design of the public improvement as soon as it becomes available.

(5) If Licensee fails to reconstruct, remove, or relocate its Facilities as required by this Section within the time period agreed upon, the County may reconstruct, remove, or relocate said Facilities and charge the cost of

reconstruction, removal, or relocation to a Licensee. The County will not be held liable for any losses or damages due to reconstruction, removal, or relocation of such Facilities.

#### **5.02.110 – ROW Design Standards for ROW Design Districts**

Sections 5.02.120, 5.02.130 and 5.02.140 contain the purposes and design requirements for Wireless Communications Facilities to be installed and operated in the ROW Design Districts. In addition to the standards outlined in those Sections, all development shall be subject to any applicable requirements in Title 30 of the Code.

#### **5.02.120 – ROW Structure Types Defined**

##### **(A) Type 1 - Exterior Installations.**

Type 1 - Exterior Installations are Wireless Communications Facilities in which the antennas, cables and lines, and radio equipment may be mounted to the exterior of a Municipal Facility or third-party structure without any concealment or stealth materials required.

##### **(B) Type 2 - Concealed Installations.**

Type 2 - Concealed Installations are Wireless Communications Facilities in which a Licensee is required to conceal the antennas to the extent technologically feasible in a manner that is designed to match the color and design of the Municipal Facility or third-party structure to which the Wireless Communications Facility is being installed.

**(C) Type 3 - Replacement Smart Poles.**

Type 3 - Replacement Smart Poles are structures required within the Central Communications District. Type 3 - Replacement Smart Poles shall be designed so that, to the extent technologically feasible, all of a Licensee's Equipment, including all antennas, cables, lines, radios, and utility equipment necessary for a complete assembly to be integrated into and located in the interior of a pole. Type 3 - Replacement Smart Poles shall be of similar architectural features and be substantially similar in appearance to the Municipal Facility being replaced or and shall include exact replacement of the lighting fixtures, or substantially similar as approved by Public Works, if there are lighting fixtures installed on the existing Municipal Facility.

**(D) Type 4 - New Smart Poles.**

Type 4 - New Smart Poles are structures allowed when a Licensee is authorized to install a new structure in the Rights-of-Way. The Type 4 - New Smart Poles shall be designed so that, to the extent technologically feasible, all of a Licensee's Equipment, including all antennas, cables, lines, radios, and utility equipment necessary for a complete assembly to be integrated into and located in the interior of a pole. Type 4 - New Smart Poles shall be of similar architectural features and be substantially similar in appearance to the Municipal Facility adjacent to the proposed Wireless Communications Facility and shall include the exact lighting fixtures, or

substantially similar as approved by Public Works, if there are Lighting Fixtures installed on the adjacent Municipal Facility.

**(E) Type 5 - Multicarrier Smart Poles.**

Type 5 - Multicarrier Smart Poles are structures required when a Licensee is replacing an existing Municipal Facility within the Las Vegas Boulevard Design District. Each Type 5 - Multicarrier Smart Poles shall be designed to accommodate more than one Licensee to a shared antenna, provided that a shared antenna is technologically feasible, and the Equipment for the operation of a Wireless Communications Facility for more than one Licensee. Type 5 - Multicarrier Smart Poles shall be designed for all of a Licensee's Equipment, including all antennas, cables, lines, radios, and utility equipment necessary for a complete assembly to be integrated into and located in the interior of a pole. The mast arm and luminaire must be the same make and model as the unit(s) being replaced. Type 5 - Multicarrier Smart Poles shall be of similar architectural features and be substantially similar in appearance to the Municipal Facility being replaced and shall include exact replacement of the Lighting Fixtures if there are Lighting Fixtures installed on the existing Municipal Facility.

**5.02.130 – GENERAL ROW DESIGN STANDARDS.**

The following ROW Design Standards apply to the development of Wireless Communications Facilities in all ROW Design Districts:

(A) Use of Existing Structures.

In accordance with Section 5.02.150, Municipal Facilities are preferred. Use of available and suitable Municipal Facilities in the Rights-of-Way is required if they are located within three hundred (300) linear feet from a Licensee's proposed Wireless Communications Facility. If an existing Municipal Facility is located within three hundred (300) linear feet from a Licensee's proposed Wireless Communications Facility and cannot accommodate the Licensee's proposed installation, the Municipal Facility shall, upon the County's approval, be replaced and shall comply with any Design Standards in this Chapter applicable to the ROW Design District in which the proposed Wireless Communications Facility is located.

(B) Replacement of Municipal Facilities.

(1) Subject to the ROW Design Standards that apply to a specific ROW Design District where a Licensee's proposed Wireless Communication Facility is located, the replacement Municipal Facilities shall be substantially similar in appearance to the Municipal Facility being replaced and shall include exact replacement of the lighting fixtures, or substantially similar as approved by Public Works, if there are lighting fixtures installed on the existing Municipal Facility.

(2) Any Type 3 - Replacement Smart Pole, Type 5 - Multicarrier Smart Pole, and any Municipal Facility replaced to increase the structural capacity or other authorized reasons shall be installed at

Licensee's sole cost. Upon completion of installation, the Licensee shall transfer ownership of a Type 3 - Replacement Smart Pole, Type 5 - Multicarrier Smart Pole, or replaced Municipal Facility to the County. Licensee(s) shall be responsible for the maintenance costs of a Type 3 - Replacement Smart Pole, Type 5 - Multicarrier Smart Pole, or replaced Municipal Facility during the Licensee's occupancy, except that any light fixture shall be maintained by the County after it is installed.

(C) New Smart Poles Installed in the Rights-of-Way.

(1) When a Type 4 - New Smart Pole is authorized by this Chapter, the Type 4 - New Smart Pole shall be designed to be architecturally compatible with the surrounding Municipal Facilities and land uses in and immediately adjacent to the ROW Design District, or otherwise integrated to blend in with existing characteristics of the site to the extent technologically feasible.

(2) When a Type 4 - New Smart Pole is authorized by this Chapter, the Type 4 - New Smart Pole shall also comply with the ROW Design Standards that apply to the specific ROW Design District where the Licensee's proposed Wireless Communication Facility is located.

(D) Separation.

Except in the Wireless Performance Improvement Districts, a Wireless Service Provider shall not operate, occupy, broadcast from, or otherwise use a Wireless Communications Facility in the Rights-of-Way that is



located within three hundred (300) linear feet of another Wireless Communications Facility that the Wireless Service Provider is operating, occupying, broadcasting from, or otherwise using in the Rights-of-Way. In addition, each Municipal Facility that a Licensee obtains a Wireless Site License Approval for must be located at least three hundred (300) linear feet from any other Municipal Facility for which the Licensee has a Site License Approval. In the event of a violation of either requirement in this Section, the County shall have the option to terminate one or both Wireless Site License Approvals and require the Licensee to remove their Wireless Communications Facility within sixty (60) days. The requirements of this Subsection on separation do not apply in the Wireless Service Improvement Districts.

(E) Minimum Mounting Heights.

- (1) Antennas. Any antennas allowed under this Section shall be mounted in such a manner that the bottom of the antennas will be at least fifteen (15) feet above grade.
- (2) Equipment Cabinets. Any equipment cabinet allowed by this Section to be mounted to the exterior of a Municipal Facility or a third-party structure, shall be: (i) mounted in such a manner that the bottom of the equipment cabinet is at least eight (8) feet above grade; or (ii) integrated into the interior of the Municipal Facility or third-party structure.

(F) Compliance with Special Overlay Zoning Districts.

A Licensee shall comply with any of the requirements of Special Overlay regulations that are required by Title 30 of the Clark County Code to be imposed on adjacent properties.

**5.02.140 – ROW DESIGN STANDARDS APPLYING TO SPECIFIC ROW DESIGN DISTRICTS**

The following ROW Design Standards apply to the development of Wireless Communications Facilities in the specific ROW Design District listed. Notwithstanding the provisions of this Section, Type 5 – Multicarrier Smart Poles are allowed in all ROW Design Districts.

**(A) LAS VEGAS BOULEVARD ROW DESIGN DISTRICT.**

(1) Pole Type Allowed.

Type 5 - Multicarrier Smart Poles are required in the Las Vegas Boulevard Design District.

(2) Height Limit.

Type 5 - Multicarrier Smart Poles shall not exceed five (5) feet in height over the Municipal Facility that is being replaced.

(3) Antennas.

The antennas shall be completely concealed by integration into the interior of a Type 5 - Multicarrier Smart Pole to the extent technologically feasible and designed to match the existing Municipal Facility or third-party structure.

(4) Equipment.

All radios, utilities, and other Equipment shall be completely concealed to the extent technologically feasible by integration into the interior of a Type 5 - Multicarrier Smart Pole.

(5) Cables and Lines.

All cables and lines shall be completely concealed to the extent technologically feasible by integration into the interior of a Type 5 - Multicarrier Smart Pole.

(B) CENTRAL COMMUNICATIONS ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 3 - Replacement Smart Poles are required. Type 4 - New Smart Poles are allowed only when there is no Municipal Facility or third-party structure that can accommodate a Licensee's proposed Wireless Communications Facility.

(2) Height Limit.

A Type 3 - Replacement Smart Poles, and, if authorized, Type 4 - New Smart Pole, shall not exceed five (5) feet over the existing Municipal Facility or third-party structure being replaced, or of those in the ROW that are nearest to the proposed location in the event a Type 4 - New Smart Pole is authorized.

(3) Antennas

The antennas shall be completely concealed by integration into the interior of the Type 3 - Replacement Smart Pole or, if authorized, the Type 4 - New Smart Pole to the extent technologically feasible and designed to match the existing Municipal Facility or third-party structure.

(4) Equipment.

All radios, utilities, and other Equipment shall be completely concealed to the extent technologically feasible and designed to match the existing Municipal Facility or third-party structure by integration into the interior of the Type 3 - Replacement Smart Pole or, if authorized, the Type 4 - New Smart Pole.

(5) Cables and Lines.

All cables and lines shall be completely concealed to the extent technologically feasible by integration into the interior of the Type 3 - Replacement Smart Pole or, if authorized, the Type 4 - New Smart Pole.

(C) RESIDENTIAL ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 2 - Concealed Installations are required in Residential ROW Design Districts when there are existing Municipal Facilities or third-party structures present and capable of accommodating a Licensee's proposed Wireless Communications Facility. Type 4 -

New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee's proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

Type 2 - Concealed Installations and, if authorized, Type 4 - New Smart Poles, shall not exceed five (5) feet over the existing Municipal Facility or third-party structure being replaced, or of those in the ROW that are nearest to the proposed location in the event a Type 4 - New Smart Pole is authorized.

(3) Antennas.

All antennas shall be enclosed in a canister or concealed to the extent technologically feasible, and designed to match the existing Municipal Facility or third-party structure. The canister housing the antennas shall be painted to match the existing Municipal Facility or third-party structure and shall not exceed six (6) cubic feet in volume and shall be mounted at the center and top of the existing Municipal Facility or third-party owned structure.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, cables, and lines, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single

cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume. The single cabinet shall be painted to match the existing Municipal Facility or third-party structure.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three (3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The conduits shall be painted to match the existing Municipal Facility or third-party structure.

(D) COMMERCIAL ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 2 - Concealed Installations are required in Commercial ROW Design Districts when there are existing Municipal Facilities or third-party structures present and capable of accommodating a Licensee's proposed Wireless Communications Facility. Type 4 - New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee's proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

A Type 2 - Concealed Installations and, if authorized, Type 4 - New Smart Poles, shall not exceed five (5) feet over the existing Municipal Facility or third-party structure being replaced, or of those in the ROW that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas.

All antennas shall be enclosed in a canister or concealed to the extent technologically feasible, and designed to match the existing Municipal Facility or third-party structure. The canister housing the antennas shall be painted to match the existing Municipal Facility or third-party structure and shall not exceed six (6) cubic feet in volume and shall be mounted at the center and top of the existing Municipal Facility or third-party structure.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, cables, and lines, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume. The single cabinet shall be painted to match the existing Municipal Facility or third-party structure.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three (3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The lines and cables shall be painted to match the existing Municipal Facility or third-party structure.

(E) RURAL ROW DESIGN DISTRICT.

(1) Pole Type Allowed.

Type 1 - Exterior Installations and Type 2 - Concealed Installations are allowed in a Rural ROW Design Districts when there are existing Municipal Facilities or third-party structures are present that can accommodate a Licensee's proposed Wireless Communications Facility. Type 4 - New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee's proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

Type 1 - Exterior Installations and, if authorized, Type 4 - New Smart Poles, shall not exceed ten (10) feet over the existing Municipal Facility or third-party structure being replaced, or of



those in the ROW that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas.

The antennas shall be flush mounted and not extend beyond six (6) inches from the vertical pole of the Municipal Facility or third-party structure and shall not exceed three (3) cubic feet in volume.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, cables, and lines, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume. The single cabinet shall be painted to match the existing Municipal Facility or third-party structure.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three (3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The conduits shall be painted to match the existing Municipal Facility or third-party structure.

**(F) MANUFACTURING ROW DESIGN DISTRICT.**

**(1) Pole Type Allowed.**

Type 1 - Exterior Installations and Type 2 - Concealed Installations are allowed in Manufacturing ROW Design Districts when there are existing Municipal Facilities or third-party structures are present that can accommodate a Licensee's proposed Wireless Communications Facility. Type 4 - New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee's proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

**(2) Height Limit.**

For Type 1 - Exterior Installations and, if authorized, Type 4-New Smart Poles, shall not exceed five (5) feet over the existing Municipal Facility or third-party structure being replaced, or of those in the ROW that are nearest to the proposed location in the event a Type 4 - New Smart Pole is authorized.

**(3) Antennas.**

The antennas shall be flush mounted and not extend beyond six (6) inches from the vertical pole of the Municipal Facility or third-party structure and shall not exceed three (3) cubic feet in volume.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, cables, and lines, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three (3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The lines and cables shall be painted to match the existing Municipal Facility or third-party structure.

**(G) WIRELESS SERVICE IMPROVEMENT ROW DESIGN DISTRICTS.**

(1) Pole Type Allowed.

Type 1-Exterior Installations and Type 2 – Concealed Installations are allowed in Wireless Service Improvement ROW Design Districts when there are existing Municipal Facilities or third-party structures are present that can accommodate a Licensee's proposed Wireless Communications Facility. Type 4-New Smart Poles are allowed if there are no existing Municipal Facilities or third-party structures within three hundred (300) linear feet from a Licensee's

proposed location of a Wireless Communications Facility location that can accommodate the proposed Wireless Communications Facility.

(2) Height Limit.

A Type 1 - Exterior Installations and, if authorized, Type 4 - New Smart Poles, shall not exceed ten (10) feet over the existing municipal facility or third-party structure being replaced, or of those in the row that are nearest to the proposed location in the event a Type 4 – New Smart Pole is authorized.

(3) Antennas

The antennas shall be flush mounted and not extend beyond six (6) inches from the vertical pole of the Municipal Facility or third-party structure and shall not exceed three (3) cubic feet in volume.

(4) Equipment.

All radios, utilities, and other Equipment, except antennas, lines, and cables, shall be placed in a single cabinet mounted to the Municipal Facilities or third-party owned structures. The single cabinet shall not extend beyond thirty (30) inches from the vertical pole of the Municipal Facility or third-party structure and the dimensions shall not exceed twenty-four (24) cubic feet in volume.

(5) Cables and Lines.

All cables and lines exteriorly installed, including any utility lines and cables, shall be placed in conduits that shall not exceed three

(3) inches in diameter and shall be flush mounted to the Municipal Facility or third-party structure. The lines and cables shall be painted to match the existing Municipal Facility or third-party structure.

**5.02.150 - Preference for Municipal Facilities.**

In any situation where a Licensee has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the ROW, it is the County's preference that a Licensee attach its Equipment to the Municipal Facilities, provided that: (a) such Municipal Facilities are at least equally functionally suitable for the operation of the Network, and (b) the Use Fee and installation costs associated with such attachment over the length of the term are equal to or less than the fee or cost to a Licensee of attaching to the alternative third-party-owned property. If no suitable Municipal Facilities or third-party-owned structures are functionally suitable within three hundred (300) linear feet from the proposed Wireless Communications Facility, a Licensee may, at its sole cost and expense, install a new structure in the Right-of-Way as part of the Licensee's Wireless Communications Facility. A new structure proposed by a Licensee shall be subject to the application procedure in Section 5.02.080. Licensee shall pay all of the applicable fees in Section 5.02.210, which shall be calculated in the same manner and amounts as if the Licensee was locating its Wireless Communications Facility on a Municipal Facility at the proposed location. In addition, any new structure proposed by a Licensee must comply with all standards and specifications contained in Section 5.02.110.

#### **5.02.160 – Collocation Capital Contribution.**

If a License proposes to locate a Wireless Communications Facility on a Municipal Facility that has been replaced or modified by another Licensee within the last three (3) years, the original Licensee that funded the original modification or replacement shall be entitled to recover fifty percent (50%) of the cost of the modification or replacement (“Capital Contribution”) from the subsequent Licensee. The subsequent Licensee shall request documentation of the cost of the Capital Contribution from the original Licensee, who shall provide said documentation within thirty (30) days from the request. The subsequent Licensee shall pay the original Licensee the Capital Contribution and present proof of the payment of the Capital Contribution to the Department of Business License before installation of their Wireless Communications Facility. If there are more than one subsequent Licensee that propose to locate on a Municipal Facility that has been replaced or modified by a Licensee within the last three (3) years, the cost of the modification or replacement shall be shared equally among all Licensees on the particular Municipal Facility.

#### **5.02.170 - Interference.**

- (A) No Interference with Rights-Of-Way and Its Uses. A Licensee in the performance and exercise of its rights and obligations under a Master Wireless Use License Agreement shall not interfere in any manner with the existence and operation of any and all public and private Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communications facilities, electroliers, cable television, location monitoring services, public safety and other

telecommunications, or utility, if the installation predates the execution of a Licensee's Wireless Site License Approval for such Municipal Facility, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws, MLA, or this Code. Upon detection of such interference not affecting any public safety equipment such as police, fire department and 911 dispatches, the County shall give a Licensee written notice of suspected interference. A Licensee shall be given seventy-two (72) hours after receipt of notice to investigate and confirm said interference, and if Licensee confirms it is the cause of said interference, then cease said interference. All operations by a Licensee shall be in compliance with all FCC requirements.

**(B) Interference with the Operations of Public Safety Equipment Prohibited.**

Any of a Licensee's Equipment installed pursuant to this Code must accept any interference caused by and may not cause any interference to the operation of any public safety equipment such as police, fire department and 911 dispatches. If any such interference occurs, a Licensee shall immediately investigate and confirm said interference, and if Licensee confirms it is the cause of said interference, then cease operation of the interfering Equipment and not operate the interfering Equipment until the interference is resolved. In the event the County's public safety equipment is deemed to interfere with a Licensee's ability to operate the Wireless Communications Facility, then a Licensee may terminate the Wireless Site License Approval without penalty.

**5.02.180 - Compliance with Laws.**

A Licensee shall comply with all applicable Laws in the exercise and performance of its rights and obligations under its Master Wireless Use License Agreement and this Chapter of the Code.

**5.02.190 - No Authorization to Provide Other Services; Ownership; Access to Rights-of-Way; Cost of Construction.**

A Licensee represents, warrants and covenants that its Equipment installed pursuant to its Master Wireless Use License Agreement or this Chapter of the Code, will be utilized solely for providing a Network to enable the provision of the Telecommunications Services identified herein and any Information Services that may be provided over the Network, and a Licensee is not authorized to and shall not use its Equipment to offer or provide any other services not specified herein. All Equipment shall be owned by a Licensee, except that by agreement with a Licensee, a third-party Wireless Service Provider customer of a Licensee ("Provider") may own the radios, antenna arrays and related cabling. A Master Wireless Use License Agreement authorizes a Licensee, or its designated agent with prior notification to the County, and no other person, to mount, operate, manage and maintain Equipment in the ROW. A Master Wireless Use License Agreement with a Licensee does not authorize a Provider to enter or access the ROW or to mount, operate, manage or maintain Equipment: (a) on Municipal Facilities, (b) on poles owned by third parties or (c) on poles owned by a Licensee. All construction, maintenance, and other activities relating in any way to the construction, installation, repair, maintenance, operation, service, replacement, removal or otherwise relating to the Equipment must be performed by a Licensee (or its contractors or agents) entirely at a Licensee's expense. This includes without limitation any restoration of affected County or third-party improvements to



their condition before a Licensee attached its Equipment, reasonable wear and tear and casualty damage excepted. Examples of restoration include landscaping and re-painting of a pole where welding or strapping may have occurred

#### **5.02.200 – Construction.**

A Licensee shall comply with all applicable federal, State, and County technical specifications and requirements and all applicable State and local codes related to the construction, installation, operation, maintenance, and control of a Licensee's Equipment installed in the ROW and on Municipal Facilities in the County.

(A) **Commencement of Installation and Operation.** Licensee shall complete construction and begin operation of a Wireless Communications Facility licensed by an SLA within one (1) year of the date of execution of the SLA. An SLA may, at the sole discretion of the Director of Business License, be cancelled or otherwise revoked if the Wireless Communications Site licensed by the SLA has not Commenced Operations within one (1) year after the date of full execution of the SLA.

(B) **Obtaining Required Permits.** The attachment, installation, or location of the Equipment in the ROW shall require permits from the Department of Public Works and any other agency or department as applicable. A Licensee shall apply for the appropriate permits and pay any standard and customary permit fees. County shall respond within a reasonable time to a Licensee's requests for permits and shall otherwise cooperate with a Licensee in facilitating the deployment of the Network in the ROW in a reasonable and timely manner. Permit conditions may

include, without limitation: (a) approval by the County of traffic control plans prepared by a Licensee for a Licensee's work in the County's ROW, (b) approval by the Nevada Department of Transportation (NDOT) of traffic control plans prepared by a Licensee for a Licensee's work within ROW controlled by NDOT, and (c) adherence to time restrictions for work in streets as specified by the County and/or NDOT.

(C) Relocation and Displacement of Equipment. By executing an MLA, a Licensee understands and acknowledges that County may require a Licensee to relocate one or more of its Wireless Communications Facilities. A Licensee shall, at the County's direction, upon sixty (60) days' prior written notice to a Licensee (or with less notice that is reasonable in the event of an emergency) relocate such Wireless Communications Facilities at a Licensee's sole cost and expense whenever County reasonably determines that the relocation is needed for any of the following purposes:

- (1) if required for the construction, modification, completion, repair, relocation, or maintenance of a County or other public agency project other than a project covered by Subsection 5.02.100 (M);
- (2) because Wireless Communications Facilities are interfering with or adversely affecting proper operation of County owned Streetlight Poles, traffic signals, communications, or other Municipal Facilities;
- (3) to protect or preserve the public health or safety; or
- (4) the Wireless Communications Facilities are not in compliance with this Chapter of the Code or any other applicable local, state, or federal

regulation. In any such case, County shall use reasonable efforts to afford a Licensee a reasonably equivalent alternate location. If a Licensee shall fail to relocate any Equipment as requested by the County within a reasonable time under the circumstances in accordance with the foregoing provision, County shall be entitled to remove or relocate the Wireless Communications Facilities at a Licensee's sole cost and expense, without further notice to a Licensee. A Licensee shall pay to the County actual costs and expenses incurred by the County in performing any removal work and any storage of a Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the County. To the extent the County has actual knowledge thereof, the Department of Public Works will inform a Licensee within a reasonable time of the displacement or removal of any Municipal Facilities on which any Equipment is located. If the Municipal Facility is damaged or downed for any reason, and as a result is not able to safely hold the Equipment, the County will have no obligation to repair or replace such Municipal Facility for the use of a Licensee's Equipment. A Licensee shall bear all risk of loss as a result of damaged or downed Municipal Facilities pursuant to Subsection 5.02.200(H) below and may choose to replace such Municipal Facilities pursuant to the provisions of Subsection 5.02.100(I) above.

(5) when there is a public demand on the County-owned power source which would exceed the capacity of the service point. In this case the Licensee shall relocate or find an alternate source of power.

(D) **Relocations at a Licensee's Request.** In the event a Licensee desires to relocate any Equipment from one Municipal Facility to another, a Licensee shall so advise the County. The County will use reasonable efforts to accommodate a Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Code.

(E) **Damages Caused by a Licensee.** A Licensee shall, at its sole cost and expense and to the satisfaction of the County: (a) remove, repair or replace any of its Equipment that is damaged, becomes detached or has not been used for a Network enabling the provision of Telecommunications Services after the initial installation of the Equipment and commencement of the operations of the Equipment for a period of more than ninety (90) days; and/or (b) repair any damage to ROW, Municipal Facilities or property, whether public or private, caused by a Licensee, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of Equipment. If a Licensee does not remove, repair or replace such damage to its Equipment or to the ROW, Municipal Facilities or other property, the County shall have the option, upon thirty (30) days' prior written notice to a Licensee, remove or cause to be removed the Equipment on behalf of a Licensee and shall charge a Licensee for the actual costs incurred by the County. If such damage causes a public health or safety emergency, as determined by the County, the County may immediately

perform reasonable and necessary repair or removal work (but not any technical work on a Licensee's Equipment) on behalf of a Licensee and will notify a Licensee as soon as practicable. Upon the receipt of a written demand for payment by the County, a Licensee shall within thirty (30) days of such receipt reimburse the County for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of an MLA or SLA.

(F) **Change in Equipment.** If a Licensee proposes to install Equipment which is different in any material way from the pre-approved configurations and Equipment specifications, then a Licensee shall submit a new Application for a Wireless Site License Approval that details the proposed modifications using the same process detailed above in Section 5.02.080. If the new Application for a Wireless Site License Approval is approved, an amended Wireless Site License Approval shall be issued in accordance with this Chapter. Notwithstanding the foregoing, the County's approval for modifications shall not be required (and no Application will be required to be submitted), except that all permits shall be obtained that are necessary to perform work within the ROW, in connection with routine maintenance or modifications that consist of upgrades or replacements of:

(i) "like-kind" Equipment which is the same (or smaller in size) in appearance, dimensions, and weight, or (ii) Equipment which is wholly contained within a Licensee's equipment cabinets so long as the weight does not exceed the approved permitted design.

(G) **Removal of Equipment.** Upon the expiration or earlier termination of an MLA, a Licensee shall promptly, safely and carefully remove the Equipment from all

Municipal Facilities and ROW within sixty (60) days. Upon the expiration or earlier termination of an SLA, a Licensee shall promptly, safely and carefully remove the Equipment from the Municipal Facilities installed pursuant to that SLA within sixty (60) days. Such obligation of a Licensee shall survive the expiration or earlier termination of an MLA or SLA. If a Licensee fails to complete this removal work on or before the sixty (60) days subsequent to the issuance of notice pursuant to this Section, then the County, upon written notice to a Licensee, shall have the right at the County's sole election, but not the obligation, to perform this removal work and charge a Licensee for the actual costs and expenses, including, without limitation, reasonable administrative costs. A Licensee shall pay to the County actual costs and expenses incurred by the County in performing any removal work and any storage of a Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the County. After the County receives the reimbursement payment from a Licensee for the removal work performed by the County, the County shall promptly make available to a Licensee the property belonging to a Licensee and removed by the County pursuant to this Section at no liability to the County. If the County does not receive reimbursement payment from a Licensee within such thirty (30) days, or if County does not elect to remove such items at the County's cost after a Licensee's failure to so remove prior to sixty (60) days subsequent to the issuance of notice pursuant to this Section, or if a Licensee does not remove a Licensee's property within thirty (30) days of such property having been made available by the County after a Licensee's payment of removal reimbursement as

described above, any items of a Licensee's property remaining on or about the ROW, Municipal Facilities, or stored by the County after the County's removal thereof may, at the County's option, be deemed abandoned and the County may dispose of such property in any manner by Law. Alternatively, the County may elect to take title to abandoned property, provided that a Licensee shall submit to the County an instrument satisfactory to the County transferring to the County the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of an MLA or SLA.

(H) Risk of Loss. A Licensee bears all risks of loss or damage or relocation or replacement of its Equipment and materials installed in the ROW or on Municipal Facilities pursuant to an SLA from any cause, and the County shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the County's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or negligence of the County, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Section 5.02.270 below. Nothing herein shall prohibit a Licensee from pursuing a claim against a third party that causes any damage to its Equipment installed in the ROW or on Municipal Facilities.

(I) Access. Prior to a Licensee accessing its Equipment for non-emergency purposes, Licensee shall provide telephonic notice to the Public Works Department at (702) 455-6000 or through other means as directed by the Public

Works Department and a Traffic Control Plan will be required. In the event of an emergency (e.g. an actual Equipment outage is occurring), a Licensee will, if time permits, attempt to provide prior telephonic notice to the Public Works Department. In the event a Licensee is unable to provide such notice, a Licensee will notify the Public Works Department within two (2) business days following the access.

- (J) **Workmanlike Manner.** A Licensee shall be responsible for doing all work in a good and workmanlike manner and must not adversely affect the structural integrity of the Municipal Facilities or other facilities or other users' facilities or equipment in the installation and maintenance of its Wireless Communications Facilities.

#### **5.02.210 - Compensation.**

A Licensee shall be solely responsible for the payment of all lawful fees in connection with a Licensee's performance under its MLA or SLAs as follows:

- (A) **Use Fee.** In order to compensate the County for a Licensee's entry upon and deployment of Equipment within the ROW or on any Municipal Facilities, a Licensee shall pay to the County, on a quarterly basis, an amount equal to five percent (5%) of Gross Revenues (the "Use Fee") collected during each calendar quarter of each year, unless a Licensee is licensed pursuant to Chapter 6.13 of the Code and is remitting fees as a provider of Personal Wireless Services. A Licensee shall make any payment of the Use Fee that may be due and owing within forty-five (45) days after each calendar quarter of each year. Within forty-



five (45) days after the termination of the MLA, the Use Fee shall be paid for the period elapsing since the end of the last quarter period for which the Use Fee has been paid and for any past due amounts. Along with each payment of the Use Fee, Licensee shall furnish to the County a statement, executed by an authorized officer of a Licensee or his or her designee, showing the amount of Gross Revenues for the period covered by the payment. If a Licensee discovers any error in the amount of compensation due, the County shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the County through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the County of any payment of the Use Fee shall not be deemed to be a waiver by the County of any breach of an MLA occurring prior thereto, nor shall the acceptance by the County of any such payments preclude the County from later establishing that a larger amount was actually due or from collecting any balance due to the County.

**(B) Wireless Site License Fees.** In addition to the Use Fee required in Section 5.02.210(A), a Licensee shall pay, on a quarterly basis, a Wireless Site License Fee for each Wireless Communications Facility contained in a Wireless Site License Approval.

**(1) Determination of Wireless Site License Fee.** The amount of each Wireless Site License Fee is determined by the ROW Design District in which it is located. The ROW Design District for each Wireless Communications Facility will be clearly identified in each Wireless Site License Approval.

**(2) Wireless Site License Fee Due for Each ROW Design District.**

The quarterly amount due for each Wireless Communications Facility located in each ROW Design District, as follows:

(a) Las Vegas Boulevard District: Nine Hundred Ninety Dollars (\$990).

(b) Central Communications District: Nine Hundred Ninety Dollars (\$990).

(c) Residential District: Four Hundred Seventy-Five Dollars (\$475).

(d) Commercial District: Four Hundred Seventy-Five Dollars (\$475).

(e) Rural District: One Hundred Seventy-Five Dollars (\$175).

(f) Manufacturing District: Four Hundred Seventy-Five Dollars (\$475).

(g) Wireless Service Improvement District: One Hundred Seventy-Five Dollars (\$175).

**(3) Commencement of Wireless Site License Fees.** The Wireless Site License Fee Commencement Date shall be one hundred and eighty (180) days after the Wireless Site License Approval has been issued.

**(4) Initial Quarterly Fee.** The first quarterly Wireless Site License Fee shall be the calendar quarter following the Wireless Site License Fee Commencement Date as determined in Section

5.02.210(B)(3) above. Subsequent quarterly fees shall be due the first day of each calendar quarter.

(5) **Annual Fee Adjustment.** Effective on July 1, 2020, and continuing annually thereafter, the Wireless Site License Fee shall be increased by an amount equal to two percent (2%) of the Wireless Site License Fee for the immediately preceding year, rounded to the nearest whole dollar.

(6) **Electric Power Fee.** The Wireless Site License Fee is inclusive of any charges for the use of the County's electric power, up to 225 maximum watts for each equipment or device as identified by the plate rating.

(C) **Business License Fee.** The Use Fee in this Section includes any business license fee based on Gross Revenues pursuant to the applicable business licensing provisions of County Code Title 6.

(D) **Wireless Master Use License Agreement Application Fee.** The Master Wireless Use License Agreement Application Fee due shall be One Thousand Dollars (\$1,000) for each Application.

(E) **Wireless Site License Application Fee.** The Wireless Site License Application Fee due for each Wireless Site License Application shall be Two Hundred Fifty Dollars (\$250) and payable for the Department of Public Works.

(F) **Work Performed by County on Behalf of a Licensee.** All work performed by the County when a Licensee fails to perform said work in a timely manner, as required by this Code or the provisions of an MLA or SLA, may be subject to an

additional fifteen percent (15%) administrative fee of the actual costs of the work performed by the County.

(G) **Annual Inspection Fee:** The Annual Inspection Fee shall be Five Hundred Dollars (\$500) per Wireless Communications Facility inspected.

(H) **Unauthorized Equipment Fee:** In the event Licensee fails to comply with Section 5.02.260 below, County may assess up to One Thousand Dollars (\$1,000) per unauthorized Equipment unit that was not authorized by the designated SLA.

(I) **Unauthorized Wireless Communications Facility Fee:** In the event Licensee fails to comply with Section 5.02.260 below, County may assess up to One Thousand Dollars (\$1,000) per unauthorized Wireless Facility that was installed without a valid, fully executed SLA.

(J) **Failure to Comply with a Remediation Plan Fee:** As provided in Section 5.02.100(B), a Licensee shall pay the County Five Hundred Dollars (\$500) for every thirty (30) days that it fails to comply with a Remediation Plan within the prescribed timeframe.

#### **5.02.220 – Incentive Agreements.**

The Director of Business License is authorized to negotiate agreements (“Incentive Agreements”) with Licensees to incentivize the development of Wireless Communications Facilities in a manner which is in the County’s public interest or in locations determined by the County, in the County’s sole discretion, to be an area that is underserved or lacking dependable and consistent radio and wireless services for use by the public. The incentive agreements

negotiated and executed pursuant to this Section may alter the compensation and fees contained in Section 5.02.210 as specified in the MLA.

**5.02.230 - Payment.**

All fees due under the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals, including, but not limited to, the Wireless Site License Application Fees, the Wireless Site License Fees, and the Use Fees shall be paid electronically or by check made payable to the Department of Business License and mailed or delivered to the Director of Business License. Each payment, either electronically or manually tendered, shall include a description of the reason for the payment. Any payment made for a specific site shall include the County's identification name and number for that site. The place and time of payment may be changed at any time by County upon sixty (60) days' written notice to a Licensee. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt by the County's Director of Business License. A Licensee assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

**5.02.240 - Delinquent Payment.**

If a Licensee fails to pay any amounts due pursuant to the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals within forty-five (45) days from the due date, a Licensee will pay, in addition to the unpaid fees, a sum of money equal to two percent (2%) of the amount due for each month and/or fraction thereof during which the

payment is due and unpaid. The remedy provisions set forth in this Section are not exclusive, and do not preclude the County Manager or designee from pursuing any other or additional remedy if payments become overdue by more than sixty (60) days.

**5.02.250 - Annual Inspection.**

The County will at intervals of not more often than once every year, unless there is a reasonable basis for additional inspections, perform inspections of any of Licensee's Wireless Communications Facilities licensed under an SLA for the purpose of verifying that the Equipment that is installed is the installation approved in the SLA. Such inspections shall be made by the County or its designated contractor, and shall be at the cost of Licensee at the rate prescribed in Subsection 5.02.210(G). If Wireless Communications Facilities are found to be in noncompliance, the provisions of Section 5.02.260 shall apply.

**5.02.260 - Unauthorized Wireless Communications Facilities and Equipment.**

If, during the term of a Licensee's Master Wireless Use License Agreement, the County discovers unauthorized Wireless Communications Facilities or Equipment placed on or within Municipal Facilities attributable to a Licensee, the fees listed in Section 5.02.210 may be assessed and the procedures listed below will be followed.

(A) **Notice.** The County shall provide specific written notice of each violation discovered.

(B) **Back Wireless Site License Fee and Penalties.** Licensee shall pay back Wireless Site License Fees for all unauthorized Wireless Communications Facilities or Equipment for a period of one (1) year, or since the date of installation

(whichever period is shortest), at the Wireless Site License Fees in effect during such periods. If Licensee is found to have: (a) repeated instances of unauthorized Wireless Communications Facilities or Equipment demonstrating a deliberate or consistent pattern of unauthorized Wireless Communications Facilities or Equipment; or (b) a significant number of poles (comprising 5% or more of Licensee's total operating sites licensed in accordance with this Chapter) with unauthorized attachments. Licensee shall be considered to be in material breach and such unauthorized attachments shall constitute an event of default pursuant to Section 5.02.300.

(C) **Application Required.** Licensee shall submit a new SLA in accordance with Section 5.02.080 of this Code within sixty (60) days of receipt of notice from the County of any unauthorized Wireless Communications Facilities or Equipment, or such longer time as mutually agreed to by the parties after an inventory. If an Application is denied, Licensee shall have sixty (60) days after Licensee's receipt of the denial to remove the unauthorized Wireless Communications Facilities or Equipment. In the event Licensee fails to submit an SLA Application within sixty (60) days, or such longer time as mutually agreed to by the parties after an inspection, or fails to remove the unauthorized attachments within sixty (60) days, the provisions of unauthorized Wireless Communications Facilities or Equipment Fees in Subsections 5.02.210 (H) and 5.02.210 (I) shall apply.

(D) **No Ratification of Unauthorized Use.** No act or failure to act by the County with regard to any unauthorized Wireless Communications Facilities or Equipment shall be deemed as ratification of the unauthorized use. Unless the

parties agree otherwise, a License for a previously unauthorized Wireless Communications Facilities or Equipment shall not constitute a waiver by the County of any of its rights or privileges under this Code or of an MLA or SLA or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

**5.01.270 - Indemnification.**

- (A) To the maximum extent permitted by Nevada law, a Licensee shall indemnify, hold harmless, and defend the County, its officers and employees, individually and collectively, from all damages, fines, liens, suits, claims, demands, actions, reasonable costs of investigation and litigation, reasonable attorneys' fees and expenses, reasonable consultants' fees and expenses, and reasonable expert witnesses' fees and expenses, judgments or liability of any kind arising out of or in any way connected with the installation, construction, operations, maintenance, or condition of the Network. A Licensee is not required to indemnify or hold harmless the County, its officers and employees as provided herein, to the extent caused by, resulting from or arising out of the active negligence or intentional actions of one or more officers or employees of the County.
- (B) A Licensee shall assume all risks in the operation of the system and shall be solely responsible and answerable for any and all injuries to persons or property arising out of the existence or performance of the Licensee's rights, duties, actions, or any and all other activities existing or performed under the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site



License Approvals executed pursuant to this Chapter. The amounts and types of required insurance coverage, as set forth in Section 5.02.290 (Insurance) of this Chapter of the Code, shall in no way be construed as limiting the scope of indemnity set forth in this Section.

- (C) A Licensee shall have no recourse whatsoever against the County for any loss, cost, expense, or damage arising out of the enforcement or lack of enforcement of any provision or requirement of the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals executed pursuant to this Chapter.
- (D) A Licensee shall indemnify, hold harmless, and defend the County, its officers and employees, individually and collectively, from damages which are incurred by or attributed to the County, including but not limited to costs, expenses, fees, and the actual amount of damage, arising from delays of such reconstruction, removal, or relocation work of a Licensee, beyond the time period provided for completion of such work, except to the extent that this provision is addressed otherwise in the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals executed pursuant to this Chapter
- (E) The County shall be liable for the cost of repair (or, if repair is not feasible, replacement) to damaged Equipment only to the extent arising from the willful misconduct of County, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. County's total liability for willful misconduct shall be limited to the Wireless Site License and Use Fees paid by a Licensee to the County in the year under which such liability arises.

#### **5.02.280 - Security for Performance.**

As security for compliance with the terms and conditions of a Licensee's Wireless Master Use License Agreement and applicable County Code provisions, a Licensee shall, no later than ten (10) days after the issuance of the first SLA by the County to install an Equipment Network, and prior to any use of the ROW, provide security to the County in the form of one of the following: (i) cash deposited with the County, (ii) an irrevocable pledge of certificate of deposit, (iii) an irrevocable letter of credit, or (iv) a performance bond, payable in each instance to the County, in a minimum amount of seventy-five thousand dollars (\$75,000), effective as of December 1, 2018, to remain in full force and effect for the term of a Wireless Master Use License Agreement, any or all of which may be claimed by the County as payment for fees, liquidated damages and penalties, in accordance with the MLA, and to recover losses resulting to the County from a Licensee's failure to perform. If bonds are used to satisfy these security requirements, they shall be in accordance with the following:

- (A) All bonds shall, in addition to all other costs, provide for payment of reasonable attorneys' fees.
- (B) All bonds shall be issued by a surety company authorized to do business in the State of Nevada, and which is listed in the U.S. Department of the Treasury Fiscal Service (Department Circular 570, Current Revision): companies holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies.
- (C) A Licensee shall require the attorney-in-fact who executes the bonds on behalf of the surety to affix thereto a certified and current copy of his or her power of attorney.

(D) All bonds prepared by a licensed nonresident agent must be countersigned by a resident agent per NRS 680A.300.

(E) All bonds shall guarantee the performance of all of a Licensee's obligations under the provisions of this Chapter or MLA, or SLA executed pursuant to this Chapter and all applicable laws.

(F) All bonds shall be substantially in the same form as approved by the County.

If at any time the County draws upon such performance security, a Licensee shall within thirty (30) days of notice from the County replenish such performance security to the original minimum amount required by this Section. If a Licensee's MLA is renewed or otherwise extended beyond its Initial Term, the minimum bond amount required by this Section shall be adjusted by an amount equal to the increase in the average annual Historic Consumer Price Index (CPI) for all Urban Consumers: U.S. City Average, Major Groups, CPI Detailed report, All Items Average, as published by the U.S. Department of Labor, Bureau of Labor Statistics, for the most recent calendar year ended on December 31 as compared to the calendar year ended on December 31 of the year immediately preceding the last adjustment or, if applicable, the original date of the MLA. Bond amount changes shall be effective as of July 1 following the Initial Term and each Renewal Term of a Licensee's Agreement and rounded up to the next one-thousand dollars (\$1,000.00).

#### **5.02.290 - Insurance.**

A Licensee shall obtain and maintain at all times during the term(s) of an MLA: (a) Commercial General Liability insurance in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations; and (b)

Commercial Automobile Liability insurance protecting Licensee in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, which limits of (a) and (b) may be met by a combination of primary excess or umbrella insurance. The Commercial General Liability insurance policy shall name the County, its commission members, officers, and employees as additional insureds for any covered liability arising out of a Licensee's performance of work under an MLA, SLA, or this Code. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced. A Licensee shall be responsible for notifying the County of such change or cancellation.

(A) **Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to a Wireless Master Use License Agreement, a Licensee shall file with the County the required original certificate(s) of insurance with endorsements, which shall state the following:

- (1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (2) that a Licensee's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the County may possess, including any self-insured retentions the County may have; and any other insurance the County does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(3) that a Licensee's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the County.

(4) The certificate(s) of insurance with endorsements and notices shall be mailed to the County Department of Business License.

**(B) Workers' Compensation Insurance.**

A Licensee shall comply with the provisions of NRS Chapter 616A through 616D regarding industrial insurance and, if required to maintain coverage for employees, a Licensee shall obtain and maintain at all times during the term of its Master Wireless Use License Agreement statutory workers' compensation and employer's liability insurance in an amount not less than the greater of: (a) any amounts required by Nevada state law, or (b) One Million Dollars (\$1,000,000) and shall furnish the County with a certificate showing proof of such coverage.

**(C) Insurer Criteria.**

Any insurance provider of a Licensee shall be admitted and authorized to do business in the State of Nevada and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**(D) Severability of Interest.**

Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the County. "Severability of

interest” or “separation of insureds” clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

#### **5.02.300 – Default and Cure Period**

- (A) **Default and Notification.** Except for causes beyond the reasonable control of a Licensee, if Licensee fails to comply with any of the material conditions and obligations imposed hereunder, and if such failure continues for more than thirty (30) days after written demand from the County to commence the correction of such noncompliance, the County shall have the right to revoke and terminate a Licensee’s Master Wireless Use License Agreement in addition to any other rights or remedies set forth in a Licensee’s Master Wireless Use License Agreement or provided by law.
- (B) **Cure Period.** If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under a Licensee’s control, the period of time in which a Licensee must cure the violation may be extended by the County Manager in writing for such additional time reasonably necessary to complete the cure, provided that: (1) a Licensee has promptly begun to cure; and (2) a Licensee is diligently pursuing its efforts to cure in the County Manager’s reasonable judgment.
- (C) **Denial of Subsequent Permits.** Whenever a Licensee is in default in any of its obligations under its Master Wireless Use License Agreement or this Chapter of the Code, the County may deny further encroachment, excavation or similar permits until such time as a Licensee cures all of its defaults.

### **5.02.310 - Assignment.**

A Master Wireless Use License Agreement, or any Wireless Site License Approval issued under a Master Wireless Use License Agreement, shall not be assigned by a Licensee without the express written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of a Licensee to an Affiliate or to any successor in interest or entity acquiring more than fifty percent (50%) of a Licensee's stock or assets by reason of a merger, acquisition or other business reorganization (collectively "Exempted Transfers") shall not require the consent of the County, provided that a Licensee reasonably demonstrates to the County's lawfully empowered designee the following criteria (the "Exempted Transfer Criteria"): (a) such transferee will have a financial strength after the proposed transfer at least equal to that of a Licensee immediately prior to the transfer; (b) any such transferee assumes all of a Licensee's obligations hereunder, including all obligations and/or defaults under an MLA or this Code occurring prior to the transfer (whether known or unknown), signed by a Licensee's and its transferee's respective officers duly authorized to do so, on a notarized form approved by the County; (c) the experience and technical qualifications of the proposed transferee, either alone or together with a Licensee's management team, in the provision of a Network enabling the provision of Telecommunications Services, evidences an ability to operate a Licensee's Network; (d) the transferee provides the County with a copy of an appropriate certificate of public convenience and necessity or letter of registration as applicable from the PUCN authorizing it to operate a Licensee's Network; and (e) the transferee has a valid County business license. A Licensee shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the County of any such proposed

Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why a Licensee believes the Exempted Transfer Criteria have been satisfied. The County shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that a Licensee gives the County its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the County has received from a Licensee and the proposed transferee any and all additional information as the County may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the County gives a Licensee notice in writing of the additional information the County requires within fifteen (15) days after the County's receipt of the original Exempted Transfer Notice. If the County fails to act upon a Licensee's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the County that Licensee has in fact established compliance with the Exempted Transfer Criteria to the County's satisfaction.

**5.02.320 - Sublease.**

- (A) A Licensee shall not sublet any interest under a Master Wireless Use License Agreement or Wireless Site License Approvals without the County's prior written consent.
- (B) Any sublease made without the County's prior written consent shall, at the County's option, be voided.



- (C) To obtain the County's consent to a sublease, a Licensee shall provide the County with written notice of: (1) the proposed effective date of the sublease, (2) a description of the portion of the premises to be sublet, (3) all of the material terms of the proposed sublease and the consideration therefor, and (4) any other information reasonably required by the County in order to evaluate the proposed sublease.
- (D) Within thirty (30) days after receiving a Licensee's notice of sublease, the County shall notify a Licensee in writing of its consent to the proposed sublease, or its refusal to consent to the proposed sublease and its reasons therefor. If the County does not provide written notice to a Licensee approving or disapproving any proposed sublease within thirty (30) days after receiving a transfer notice, the sublease shall be deemed disapproved.
- (E) The County shall not unreasonably withhold, condition or delay its consent to any proposed sublease.
- (F) Notwithstanding any subletting, a Licensee shall at all times remain fully and primarily responsible and liable for the payment of fees required under this Chapter of the Code, an MLA or an SLA and for compliance with all of a Licensee's other obligations under the provisions of this Chapter, a Master Wireless Use License Agreement, or Wireless Site License Approvals.

#### **5.02.330 - Records Required by Code.**

A Licensee will maintain complete records pursuant to the applicable provisions of Title 6 of the Clark County Code.

(A) Additional Records. The County may require such additional information, records, and documents from a Licensee from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Code, an MLA, or any SLAs. Additionally, the County may require a Licensee to provide supplemental information as needed.

(B) Production of Records. A Licensee shall provide records within twenty (20) business days of a request by the County for production of the same unless the County agrees to additional time. Such records shall be made available for review in Clark County. If any person other than a Licensee maintains records on a Licensee's behalf, a Licensee shall be responsible for making such records available to the County for auditing purposes pursuant to this Section.

#### **5.02.340 - Rights Reserved to the County.**

Without limitation upon the rights which the County might otherwise have, the County does hereby expressly reserve the rights, powers, and authorities to exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the County; and to grant multiple nonexclusive licenses within the County to other persons for the operation of systems pursuant to this Chapter of the Code and as it may be amended.

#### **5.02.350 - Severability.**

If any provision, section, paragraph, sentence, clause, or phrase of this Chapter of the Code is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Chapter of the Code. It is the intent of the

County Commission in adopting this Chapter of the Code that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end, all provisions of this Chapter of the Code are declared to be severable.

**5.02.360 - Notice.**

All notices shall be sent to a Licensee at the address indicated in the Master Wireless Use License Agreement. A Licensee shall notify the County Manager of any change of address within ten (10) working days of such occurrence. Failure to provide notification and any resulting delay in receipt of notice, shall not excuse a Licensee from any obligation imposed by this Chapter of the Code or by its MLA or SLAs, nor shall it serve as cause for reduction or removal of any fine or penalty imposed by the County.

**5.02.370 - Force majeure.**

In the event a Licensee's performance of any of the terms, conditions or obligations required by this Chapter of the Code or an MLA or any SLAs is prevented by a cause or event beyond the control of a Licensee, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof.

SECTION TWO. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of the remaining parts of this ordinance. It is the intent of the County Commission in adopting this ordinance that no portion or provision thereof shall become inoperative or fail by reason of any

invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this ordinance are declared to be severable.

SECTION THREE. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION FOUR. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the 4th day of December, 2018.

PROPOSED BY: Commissioner Steve Sisolak

PASSED on the 7th day of January, 2019.

AYES: Lawrence L. Brown III

James B. Gibson

Justin Jones

Marilyn Kirkpatrick

Tick Segerblom

Lawrence Weekly

NAYS: None

ABSTAINING: None

ABSENT: None

BOARD OF COUNTY COMMISSIONERS

BY: Marilyn Kirkpatrick  
Marilyn Kirkpatrick, Chair

ATTEST:

Lynn Marie Goya  
LYNN MARIE GOYA, County Clerk

This ordinance shall be in force and effect from and after

the 21st day of January

2019.

# **EXHIBIT 2**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20544**

In the Matter of	)
	)
Petition for Declaratory Ruling that Clark	)
County, Nevada Ordinance No. 4659 Is	)
Unlawful under Section 253 of the	)
Communications Act as Interpreted by the	)
Federal Communications Commission and Is	)
Preempted	)

**DECLARATION OF ADAM MCNAIR**

I, Adam McNair, hereby declare as follows:

1. My name is Adam McNair and I am a Senior Manager in Verizon's Network organization. I have been employed by Verizon for 20 years, and have spent all of that time working in the Network organization. In my current role, I have responsibility for small cell deployment and implementation in the Southwest region, which includes Arizona, New Mexico, southern Nevada, and part of Texas.
2. This Declaration is intended to support the facts set forth by Verizon in its Petition for Declaratory Ruling the above-referenced proceeding.
3. In my role with the Verizon Network team, I am familiar both with the facilities Verizon already has deployed in Clark County, Nevada and with Verizon's plans and needs for future deployment in the County.
4. Verizon currently provides telecommunications services, including personal wireless services, using small wireless facilities in Clark County. Verizon estimates that it currently has 418 wireless communications facilities deployed in Clark County, 99 of

which are small wireless facilities. A significant number of those wireless communications facilities are deployed in public rights-of-way and on other public assets owned by the County.

5. Verizon has deployed wireless infrastructure in County rights-of-way and on other County-owned structures under a ten-year wireless use license agreement (the “Verizon - County Use Agreement”) that was entered into in December 2015. The agreement allows Verizon to “locate, place, attach, install, operate, control, and maintain” small wireless facilities on County streetlight poles generally throughout the County’s rights-of-way, subject to payment of a fee of \$700/year per facility plus electrical power usage costs for each Clark County streetlight Verizon uses.
6. Verizon also has an existing business license with Clark County under Chapter 6.13 of the County Code and collects and remits more than \$1,000,000 annually in related business license fees, which are based on Verizon’s gross revenues (charges based on the first fifteen dollars per subscriber).
7. Verizon needs to deploy additional small wireless facilities in Clark County to support its network and bring 5G capability to the community. 5G capabilities promise to bring substantial benefits to the County’s residents, businesses, and institutions, allowing them to enjoy faster wireless Internet connections, lower latency, greater capacity, enhanced video applications, and faster network response times that can enable a host of new services and capabilities. To do so, Verizon will have to install hundreds of additional small cell nodes over the next three years – along with over 200 miles of fiber optic cable connecting these sites. Deploying in public rights-of-way and on other public assets is a part of that plan.



8. Where a provider attaches small wireless facilities to an existing third-party owned structure, that attachment imposes a lower cost on Clark County than does the wireless provider that installs small wireless facilities on County owned assets within the public rights-of-way. In the former case, the County has no building or antenna structure to maintain to which the provider attaches its small wireless facility.

I declare under penalty of perjury that the statements made above are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in blue ink that reads "Adam McNair" followed by a date "8/7/19". The signature is written over a horizontal line.

Adam McNair

August 7, 2019

# **EXHIBIT 3**

## **CLARK COUNTY CODE**

### **TITLE 6 – BUSINESS LICENSES**

#### **Chapter 6.13 – PUBLIC UTILITIES**

(Covering ordinances through Ordinance No. 4456, passed January 17, 2017)

##### **6.13.010 - Definitions.**

As used in this chapter, unless the context otherwise requires, the following words will have the meaning ascribed to them as follows:

- (1) "County" means the unincorporated area of the county including the unincorporated towns.
- (2) "Customer" or "customer located within the county," means a person who, or government that, at any place within the boundaries of the unincorporated area of the county including the unincorporated towns receives any telecommunications or personal wireless service, or uses electric energy or gas provided by a public utility. Personal wireless service shall be deemed to be received at the customer's billing address. However, effective August 1, 2002, personal wireless service shall be deemed to be received at the customer's "place of primary use" as defined herein and as defined in 4 United States Code Section 124(8) on August 1, 2002.
- (3) "Delinquent amount" means any portion of a fee collected from a customer by a public utility that is not paid to the department by the date the fee is due.
- (4) "Department" means the department of business license of Clark County.
- (5) "Interstate retail purchaser of energy" means any person who purchases electric energy or gas for consumption from a seller that is not required to be licensed as a provider of electric energy or gas pursuant to this chapter and that purchased energy is transported, transmitted, distributed or otherwise delivered to a location within the county by public utility licensed pursuant to this chapter.
- (6) "Line of access" means an "access line" as defined in NAC 703.2502.
- (7) "Month" means a calendar month, or a portion thereof, when calculating the penalty to be assessed due to the late payment of a fee.
- (8) "Person" means a natural person, any form of business or social organization and any other legal entity including, but not limited to, a corporation, partnership, association, trust, not-for-profit company or corporation, state or local governmental entity or agency, unincorporated organization, or the estate of a natural person.
- (9) "Personal wireless service" has the meaning assigned to it in 47 U.S.C. Section 332(c)(7)(C) on July 16, 1997.
- (10) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

- (A) The residential street address or the primary business street address of the customer; and
  - (B) Within the licensed serving area of the home service provider.
- (11) "Public utility" means any person that:
- (A) Is a telecommunications carrier as that term was defined in 47 U.S.C. Section 153 on July 16, 1997, if the person holds a certificate of public convenience and necessity issued by the Public Utilities Commission of Nevada and derives intrastate revenue from the provision of telecommunications service to retail customers;
  - (B) Sells or resells personal wireless service; or
  - (C) Provides electric energy or gas, whether or not the person is subject to regulation by the Public Utilities Commission of Nevada.
- (12) "Revenue" does not include:
- (A) Any proceeds from the interstate sale of natural gas to a provider of electric energy which holds a certificate of public convenience and necessity issued by the Public Utilities Commission of Nevada.
  - (B) Any revenue of a provider of a telecommunications service other than intrastate revenue that the provider collects from retail customers.
  - (C) Write offs for bad debt.
  - (D) Amounts due from the fraudulent or otherwise unlawful receipt of telecommunications service, personal wireless service, electric energy or gas which are legally uncollectible or required to be refunded.
  - (E) An excluded amount equal to forty-five percent of the revenue from customers located within the county for electric energy or gas when the public utility sells the electric energy or gas to a customer located within the county. The exclusion rate will be reduced by ten percentage points on April 1st of each year commencing on April 1, 2005, until such exclusion percentage equals zero.
  - (F) Any tax on fuel or retail sales that is collected by any public utility.
- (13) "Telecommunications service" has the meaning assigned to it in 47 U.S.C. Section 153, but does not include any telecommunications service provided by a seller or reseller of personal wireless service.

(Ord. 3189 § 1, 2005: Ord. 2840 § 1, 2002: Ord. 2734 § 1, 2002: Ord. 2093 § 1, 1998: Ord. 1963 § 4, 1997)

#### 6.13.020 - Quarterly license fee—Telecommunications service.

- (a) Every public utility providing any telecommunications service to any customer located within the county must have a valid unexpired business license issued pursuant to this code and remit to

the department a quarterly license fee that it has collected from its customers, except as provided for in Section 6.13.050 of this chapter.

- (b) The quarterly license fee required in subsection (a) of this section will be:
  - (1) Due not later than sixty calendar days after the end of each calendar quarter.
  - (2) Five percent of the gross revenue earned during the calendar quarter from customers located within the county. This rate is comprised of a four percent business license fee and a one percent right-of-way fee. Effective October 1, 2005, this rate will be comprised of a five percent business license fee.
- (c) "Gross revenue," for the purposes of this section, means all revenue earned directly or indirectly from the provision of intrastate telecommunications services to customers located within the county, except for revenue earned from the provision of services to other telecommunications carriers holding a certificate of public convenience and necessity from the Public Utilities Commission of Nevada or to sellers or resellers of personal wireless service.
- (d) Every public utility providing any telecommunications service to any customer located within the county that is subject to a franchise agreement with the county may subtract one-fourth of the amount paid in July, pursuant to the provisions of NRS 709.110, 709.230 or 709.270 from each of the four succeeding quarterly payments of business license fees due. The subtraction is limited to the total fees due under this chapter.
- (e) Every public utility that provides any telecommunications service that has an agreement with a third party for billing and/or collecting revenue and the fees pursuant to this chapter and does not receive these fees must provide the department with a copy of the agreement with the third party and is required to pay a quarterly administrative charge of twenty-five dollars that is due not later than sixty calendar days after the end of the calendar quarter.

(Ord. 3189 § 2, 2005; Ord. 2734 § 2, 2002; Ord. 2093 § 2, 1998; Ord. 1963 § 5, 1997)

#### 6.13.030 - Quarterly license fee—Personal wireless service.

- (a) Every public utility that sells or resells a personal wireless service to any customer located within the county must have a valid unexpired business license issued pursuant to this code and pay a quarterly license fee that it has collected from its customers, except as provided for in Section 6.13.050 of this chapter.
- (b) The quarterly license fee required in subsection (a) of this section will be:
  - (1) Due not later than sixty calendar days after the end of each calendar quarter.
  - (2) Five percent of the public utility's gross revenue from the first fifteen dollars charged monthly for each line of access for each of the public utility's customers located within the county. This rate is comprised of a four percent business license fee and a one percent geographic information service fee. Effective October 1, 2005, this rate will be comprised of a five percent business license fee.

- (c) "Gross revenue," for the purposes of this section, means all revenue earned from the first fifteen dollars charged monthly for each line of access for each of the public utility's customers located within the county.

(Ord. 3189 § 3, 2005: Ord. 2734 § 3, 2002: Ord. 2093 § 3, 1998: Ord. 1963 § 6, 1997)

#### 6.13.040 - Quarterly license fee—Electric energy or gas.

- (a) Every public utility providing electric energy or gas to any customer located within the county must have a valid unexpired license issued pursuant to this code and pay a quarterly license fee that it has collected from its customers.
- (b) The quarterly license fee required in subsection (a) of this section will be:
  - (1) Due not later than sixty calendar days after the end of each calendar quarter.
  - (2) Five percent of the gross revenue earned during the calendar quarter from customers located within the county. This rate is comprised of a four percent business license fee and a one percent right-of-way fee. Effective October 1, 2005, this rate will be comprised of a five percent business license fee.
- (c) "Gross revenue," for the purposes of this section, means all revenue earned directly or indirectly from the provision of electric energy or gas to customers located within the county.
- (d) Commencing with the calendar quarter beginning October 1, 2003, every interstate retail purchaser of energy shall be required to remit to the department within sixty days after the end of each calendar quarter a total fee of five percent (less the applicable exclusion rate described in this chapter) of the purchase price and transportation charge of the energy received by the public utility providing transportation, transmission, or distribution services of energy less the amount of tax paid, pursuant to this chapter, to the public utility holding a valid business license in the county that provided transportation of the energy. This fee may be offset, to the extent of the fee required by this chapter, by any taxes paid by the purchaser on such energy received at a location within unincorporated Clark County to a seller in another state with the submission of proof of payment of said taxes.

(Ord. 3189 § 4, 2005: Ord. 2840 § 2, 2002: Ord. 2734 § 4, 2002: Ord. 2093 § 4, 1998: Ord. 1963 § 7, 1997)

#### 6.13.050 - Registration requirements.

Any person conducting a telecommunications or personal wireless business whose revenue is subject to fees pursuant to this chapter that would result in or is expected to result in a total quarterly fee of less than fifty dollars may register with the department in lieu of applying for a business license, except for those persons that also have a current franchise agreement with the county to provide telecommunications or personal wireless services identified in this chapter. The registration must be filed with the department on a form specified by the directory at least thirty calendar days prior to commencing business. An annual report of revenue subject to the

fees that are imposed under this chapter per calendar quarter is due from all registrants within sixty days after the end of each calendar year. Any person who has registered or is subject to registration shall apply for a business license pursuant to this chapter within thirty calendar days after the calendar quarter that fees required to be collected under this chapter are equal to or are greater than fifty dollars.

(Ord. 3189 § 6, 2005; Ord. 2734 § 11, 2002)

6.13.060 - Fee—Paid after due—Penalty.

If any fee required to be paid by the provisions of this chapter is received by the department, after the due date, a penalty of two percent of the delinquent amount will be assessed to the public utility per month, or fraction thereof, until past due fees are paid in full to the department. A public utility to which this chapter applies shall not collect from a customer any penalties or interest assessed pursuant to this chapter.

(Ord. 3189 § 7, 2005; Ord. 2093 § 11, 1998; Ord. 1963 § 14, 1997)

6.13.070 - Fee—Total amounts.

The total amount of all fees paid pursuant to this chapter by a public utility other than a public utility that sells or resells personal wireless service shall not exceed five percent of the utility's gross revenue from customers located within the county. The total amount of fees paid pursuant to this chapter by a public utility that sells or resells personal wireless service shall not exceed five percent of its gross revenue from the first fifteen dollars charged monthly for each line of access for each of its customers located within the county. As used in this section, "fees" means the business license, right-of-way management, and geographic information system fees required to be paid by this chapter and the franchise or right-of-way fees required to be paid by any franchise or license agreement between the county and any public utility, except any amount paid pursuant to the provisions of NRS 709.110, 709.230 or 709.270.

(Ord. 3189 § 8, 2005; Ord. 2093 § 12, 1998; Ord. 1963 § 15, 1997)

6.13.080 - Department requirements.

(a) Each public utility to which this chapter applies or which intends to derive revenue from customers located within the county must, not later than the effective date of the ordinance codified in this chapter, or thirty calendar days before the public utility begins to provide service to those customers, whichever occurs later, provide to the department:

- (1) An acknowledgment that the public utility is operating or intends to operate within the county;
- (2) The date when the public utility began or intends to begin to derive revenue from customers located within the county;



- (3) A request for any information that is necessary to identify each of its customers affected by the fees imposed in this chapter and the specific form, if any, in which the information is requested; and
- (4) A list of resellers or other marketers to whom the public utility has provided open access and of public utilities to whom it intends to provide capacity.
- (b) Each public utility to which this chapter applies must, not later than sixty calendar days after the end of each calendar quarter, provide to the department a statement on the form provided by the department of the amount of revenue the public utility derived during that calendar quarter from the provision of electric energy, gas, telecommunications services, or personal wireless service to each of its customers located within the county.
- (c) In addition to the record keeping requirements described in Section 6.08.090 of this code, every public utility to which this chapter applies is required to maintain adequate accounting records and supporting documentation for distinguishing its revenue from customers located within the county from revenue derived from customers located within the incorporated cities in the county. The department may audit the amounts due from any public utility under this chapter and the public utility has the right to appeal the audit results as described in Section 6.08.095 of this code.
- (d) Within thirty days following the end of each calendar quarter commencing with the quarter ending December 31, 2003, the public utility providing electric energy or gas shall submit to the department a report listing every customer that the public utility billed for transportation, transmission or distribution charges only, and their billing addresses.

(Ord. 3189 § 9, 2005: Ord. 2840 § 3, 2002: Ord. 2734 § 12, 2002: Ord. 2093 § 13, 1998: Ord. 1963 § 16, 1997)

#### 6.13.090 - Facilities—Installation, construction or maintenance.

- (a) Installation, construction or maintenance of any public utility facility in the county's public right-of-way will be done in accordance with applicable county regulations.
- (b) Each public utility subject to this chapter must, when filing its application for a business license, submit a map and description of its system architecture that shows and describes the route and location of all facilities it uses in the county in a format compatible with the county's geographic information system as outlined in the rights-of-way master ordinance.

(Ord. 3189 § 10, 2005: Ord. 1963 § 17, 1997)

#### 6.13.100 - Existing franchise or license agreement—Terms.

Nothing in this chapter will be deemed to alter, modify or supersede the terms of any existing franchise or license agreement between the county and a public utility.

(Ord. 3189 § 11, 2005: Ord. 1963 § 18, 1997)



#### 6.13.110 - Fees—Collection.

The fees imposed upon a public utility pursuant to this chapter must be collected by the public utility directly from its customers located within the county in proportion to the amount of revenue the public utility derives from each of such customers, unless the county has elected pursuant to NRS 354.59887 to collect said fees directly from the public utility's customers located within the county. The fees may be shown on the customer's bill, individually or collectively as "Clark County fees." The fees imposed upon a public utility by this chapter may be collected from a governmental entity of the state if that entity is a customer of the public utility.

(Ord. 3189 § 12, 2005; Ord. 2093 § 14, 1998; Ord. 1963 § 19, 1997)

# **EXHIBIT 4**

## CLARK COUNTY BOARD OF COMMISSIONERS AGENDA ITEM

**Petitioner:** Jacqueline R. Holloway, Director of Business License

**Recommendation:**

**That the Board of County Commissioners continue the public hearing opened on December 18, 2018; adopt, approve and authorize the Chairman to sign an ordinance to amend Clark County Code Title 5, Chapter 5.02 concerning rights-of-way management for wireless communications facilities, providing for application and issuance of master wireless use and site license agreements, setting standards for design, installation, operation, maintenance and removal of wireless communications facilities in the public rights-of-way; establishing fees for wireless communications facilities in the public rights-of-way; provide for other matters properly relating thereto. Commission District: All (For possible action)**

**FISCAL IMPACT:**

Fund #:	1010.000	Fund Name:	General Fund
Fund Center:	1110810010	Funded PGM/Grant:	N/A
Amount:	Unknown		
Description:	N/A		
Additional Comments:	This ordinance establishes fees for installation of wireless communications facilities in the County rights-of-way by wireless communications companies that are charged per pole within certain defined districts that range from \$700 per pole per year to \$3,960 per pole per year. The increased fees are anticipated to offset the County's program management costs to monitor, maintain and enforce the deployment of wireless communications facilities within the rights-of-way.		

**BACKGROUND:**

On December 19, 2017, The Board received a report and recommendations from Connected Nation Exchange (CNX) (now known as Smart Works Partners) on wireless communications facilities within the County rights-of-way. The recommendations included adopting design standards, implementing changes to the County Code and revising the license fee structure.

County staff has been working with CNX on developing a broadband wireless plan for the County and have been working with the wireless industry on preparing an ordinance to manage wireless communications facilities in the County rights-of-way.

The proposed ordinance was introduced at the December 4, 2018 of County Commissioners meeting and a public hearing was held on December 18, 2018 at 10:00 a.m, which was held until the January 7, 2019, Board of County Commissioners meeting.

Cleared for Agenda

**1/7/2019**

Agenda Item #

**43**

Respectfully Submitted,

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JACQUELINE R. HOLLOWAY  
Director

# **EXHIBIT 5**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20544**

In the Matter of	)
	)
Petition for Declaratory Ruling that Clark	)
County, Nevada Ordinance No. 4659 Is	)
Unlawful under Section 253 of the	)
Communications Act as Interpreted by the	)
Federal Communications Commission and Is	)
Preempted	)

**DECLARATION OF NICHOLAS MAGNONE**

I hereby declare as follows:

1. My name is Nicholas Magnone. I am a Manager in Verizon's Wireless Network Engineering Municipal Engagement Team. Our team works with cities, counties, and states to deploy the latest wireless technology through small cells. My job includes working with municipal governments on various issues related to small cell deployment in the Southwest region, including in Arizona, Nevada, New Mexico, and parts of Texas. I have been employed by Verizon for 19 years and have been working in the wireless industry for 18 years.
2. I am submitting this Declaration in support of Verizon's Petition for Declaratory Ruling in the above-referenced proceeding.
3. In my role with Verizon's Wireless Network Engineering Municipal Engagement Team, I am knowledgeable about Verizon's interactions with the government of Clark County, Nevada regarding small cell deployment – both before and after the County adopted its Wireless Communications Facility Ordinance.<sup>1</sup>

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<sup>1</sup> See Clark County Code, Title 5, Chapter 5.02 (adopted Jan. 7, 2019, effective July 1, 2019).

4. Verizon communicated with Clark County representatives on repeated occasions about its concerns with the Ordinance – including that the Ordinance’s recurring fee provisions were unlawful in light of the Federal Communication Commission’s interpretations of Section 253 of the Communications Act – and how to correct them, but to no avail.
5. Before the Ordinance was adopted, Verizon maintained a consistent presence at County hearings and meetings regarding the proposed Ordinance, including attending meetings in September and October 2018 – before the Ordinance was formally introduced – and repeatedly expressed concerns about the Ordinance’s conflict with the Commission’s Small Cell Ruling/Order.<sup>2</sup> In November 2018, Verizon submitted a business impact statement to the County detailing how the proposed Ordinance would harm Verizon’s plans to deploy small wireless facilities to improve its network capabilities and service offerings for residents, businesses, and other institutions in the County. Verizon highlighted its concerns that the County’s proposed fee structure was not based on the County’s relevant costs and far exceeded the presumptively reasonable attachment fee of \$270 per year as required by the Small Cell Ruling/Order.
6. Notwithstanding the opposition from Verizon and other wireless providers and the conflict with FCC’s Small Cell Ruling/Order, Clark County proceeded to formally introduce the Ordinance in December 2018. On January 7, 2019, the County adopted the Ordinance and established a July 1, 2019 effective date.
7. After the Ordinance was adopted, Verizon corresponded with the Clark County District Attorney to try to address the problematic Ordinance provisions. In a letter dated March 12, 2019, Verizon highlighted again the Commission’s determination that fees for small

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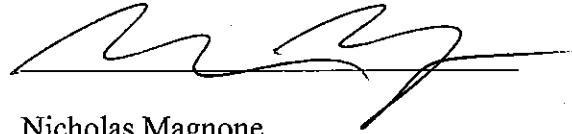
<sup>2</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, 33 FCC Rcd. 9088 (2018) (“Small Cell Ruling/Order”).

wireless facilities deployed in public rights-of-way must be based on the County's reasonable costs associated with the wireless provider's use of the public rights-of-way. Verizon requested that the County provide cost-based support for the various recurring fees, and asked whether Verizon's existing wireless use license agreement would remain in effect or be replaced by a new agreement based on the Ordinance.

8. The Clark County District Attorney responded on March 22, 2019, stating only that the County was "unable to provide answers to your questions at this time," offering as an excuse the pending appeal of the Commission's Small Cell Ruling/Order which the County had joined, and the potential for statewide legislation that purportedly might affect the County's Ordinance.
9. On or around May 3, 2019, the County notified Verizon that it planned to transition the current agreements it had with Verizon and others to new Master Wireless Use License agreements in preparation for the effective date of the Ordinance and, to that end, provided Verizon with a new draft Master Wireless Use License agreement template incorporating provisions from the Ordinance. On July 1, 2019, the County notified Verizon by email that there is a new site license application form referencing and implementing the Ordinance, and that old forms of the application are now obsolete. The County subsequently asked whether Verizon plans to transition to the new application form.



I declare under penalty of perjury that the statements made above are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'N. Magnone', written over a horizontal line.

Nicholas Magnone

August 6, 2019

# **EXHIBIT 6**



Danielle C. Agee  
General Counsel  
South Central Market  
600 Hidden Ridge  
Irving, TX 75038  
Phone: (972) 444-5480  
[danielle.agee@verizonwireless.com](mailto:danielle.agee@verizonwireless.com)

September 20, 2018

Via Email to [mikeh@clarkcountynv.gov](mailto:mikeh@clarkcountynv.gov)

Mr. Michael Harwell  
Clark County, NV

RE: Draft Chapter 5.02 – Rights-of-Way Management – Wireless Communications Facilities (the “Ordinance”)

Dear Mr. Harwell:

Thank you for the opportunity to review the Ordinance under development by Clark County, NV (the “County”) for deployment of wireless communications facilities in the County’s public rights-of-way. We believe the County plays a pivotal role in managing the use of its rights-of-way, and we do not oppose adoption of an ordinance and related documentation to accomplish the County’s legitimate objectives. However, we have concerns relating to several provisions of the Ordinance that conflict with federal law and would materially inhibit the deployment of next generation wireless technologies in the County. These comments are respectfully submitted on behalf of Verizon Wireless in connection with our desire to install additional wireless facilities in the County to meet the growing demand for wireless services. Please note the following comments and concerns:

- **ROW Design Standards (Sections 5.02.120 and 5.02.125).** These sections provide that: (a) municipal facilities are preferred for installations in the right of way, (b) use of unoccupied municipal facilities in the right-of-way is required if they are located within a 700-foot radius from a proposed communication facility, (c) if an existing municipal facility is located within a 700-foot radius from a proposed facility and cannot accommodate the proposed installation, the municipal facility shall, upon the County’s approval, be replaced and shall comply with the design standards, (d) in the “Las Vegas Boulevard Design District” (as defined in the Ordinance), if replacement poles are installed, only multi-carrier facilities are permitted and they must contain all equipment in the interior of the pole, (e) except in the “Wireless Performance Improvement District” (as defined in the Ordinance), only one of a licensee’s facilities is allowed within a 600-foot radius, (f) in the Central Communication District the design criteria dictate that all antennas and equipment must be within the pole, (g) it appears that if a licensee wants to install its own pole in the right-of-way, the design criteria dictate that all antennas and equipment must be within the pole, (h) all antennas must be at least 15 feet above ground and any equipment cabinet must be at least 8 feet from the ground. Many of these broad design standards and requirements violate Sections 253 and 332 of the Telecommunications Act by effectively prohibiting the provision of personal wireless service. Moreover, the requirement that antennas be concealed within a pole would prohibit the use of antennas and related equipment currently required for 5G deployment.

- **Applicable Fees (Section 5.02.190).** Subsection (a) requires licensees to pay a "Use Fee" equal to five (5) percent of Gross Revenues unless a licensee has obtained a Business License to provide Personal Wireless Services (and pays a similar fee), and Subsection (b) requires licensees to pay wireless site license fees ranging from \$700 to \$3,960, depending on the district where the facilities will be deployed. The Ordinance also requires licensees to pay a number of additional fees including, but not limited to, an application fee to obtain a wireless master use license agreement (\$1,000), an application fee for each wireless site license (\$250), and annual inspection fees (\$500), to name a few. In addition to constituting an effective prohibition, these fees don't appear to be reasonably related to the costs that will be incurred by the County to manage its public rights-of-way.
- **Application of Ordinance to Existing Facilities (Section 5.02.100).** This Section requires licensees to bring any wireless communications facility in the right-of-way into compliance with the requirements of this Ordinance by 12/31/19 "except where retroactive application of new standards is prohibited by federal, state, or local law." Moreover, this Section provides that facilities not brought into compliance in a timely manner shall be removed at the licensee's cost and, in addition to that, licensee shall pay a failure to comply fee equal to \$500 for every 30 days until sites are brought into compliance. It's our belief that these provisions are prohibited by federal and state law, especially in light of the fact that Verizon Wireless has an active agreement with the County and all existing facilities were installed in compliance with the previously established and published standards and requirements.

Please note that this letter does not include all of our comments to the draft Ordinance, but highlights a few significant concerns.

Verizon Wireless urges the County to work collaboratively with the industry to develop an ordinance and other documentation that can withstand legal challenge and encourage investment in next generation networks. Thank you very much for your consideration of these comments.

Sincerely,



Danielle C. Agee

DCA/jdd

# **EXHIBIT 7**



Danielle C. Agee  
General Counsel  
South Central Market  
600 Hidden Ridge  
Irving, TX 75038  
Phone: (972) 444-5480  
[danielle.agee@verizonwireless.com](mailto:danielle.agee@verizonwireless.com)

March 12, 2019

Via Email to [dainfo@clarkcountynyda.com](mailto:dainfo@clarkcountynyda.com)

Steve Wolfson  
Clark County District Attorney  
Office of the District Attorney  
200 Lewis Avenue  
Las Vegas, NV 89101

RE: Chapter 5.02-Rights-of-Way Management-Wireless Communications Facilities (the "Ordinance")

Dear Mr. Wolfson:

My name is Danielle Agee. I am Market General Counsel for Verizon's South Central Market, which includes southern Nevada. I write to you regarding the Wireless Communications Facilities Ordinance that the Clark County Board of Commissioners adopted on January 7, 2019.

I was actively involved in the discussions with County staff and the County Board of Commissioners concerning the drafting and adoption of the Ordinance. During the last two hearings on the Ordinance, on December 18, 2018 and January 7, 2019, Verizon posed some questions to the Board of Commissioners that have not yet been completely addressed. I hope you can provide insight and a formal response to two questions we have about the Ordinance. In particular:

- 1) Section 5.02.210(B) of the Ordinance requires licensees to pay wireless site license fees ranging from \$700 to \$3,960, depending on the Design District where the facilities will be deployed. The Ordinance also requires licensees to pay a number of additional fees including, but not limited to, an application fee to obtain a wireless master use license agreement (\$1,000), an application fee for each wireless site license (\$250), and annual inspection fees (\$500). During the hearing held on December 18, 2018, before passage of the Ordinance, the County's consultant (Smart Works Partners) referenced a cost study that had been conducted purportedly to help determine the fees included in the Ordinance, and presented some PowerPoint slides with some related information. We requested a copy of the cost study because, among other things, we wanted to understand if the County takes the position that the cost study supports the claim that the rates comply with the Wireless Infrastructure Order

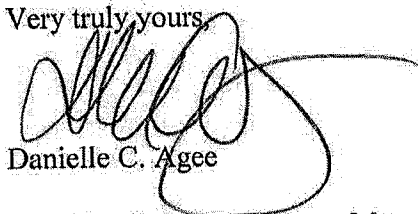
Steve Wolfson  
Clark County District Attorney  
March 12, 2019  
Page 2

issued by the FCC last September.<sup>1</sup> That Order sets presumptively reasonable fee limits of \$270 per small wireless facility per year for recurring fees, \$500 in non-recurring fees for an application of up to five facilities and \$100 for each additional facility beyond five, and \$1,000 in non-recurring fees for an application for a new pole. The rates in the Ordinance far exceed these presumptively reasonable rates, and it is difficult to imagine how such a large rate disparity for different geographical zones can be justified on a cost basis. Despite our request, the industry was not given a copy of the slides, the referenced cost study, or any other related materials. Can your office please provide a copy of Clark County's cost study and/or any other information regarding the County's costs that the County believes demonstrates compliance with the FCC's Wireless Infrastructure Order?

- 2) As you may know, Verizon has an active Wireless Use License Agreement ("License Agreement") with Clark County, effective December 1, 2015, with an initial term of ten years. This existing License Agreement grants Verizon the right to locate, place, attach, install, operate, control and maintain its wireless facilities in the County's public right-of-way. The rates in the License Agreement were established years before the adoption of the FCC Wireless Infrastructure Order. Is it the County's position that the Ordinance is designed to bring the County's rates in compliance with the FCC's order, and that the Ordinance rates would therefore replace those in the License Agreement?

Thank you very much for your consideration of these questions. Please do not hesitate to contact me if you'd like to discuss any of these issues in advance of sending a written reply. Given the urgent need to deploy small cells to densify our current network in the County and bring advanced services to County residents, please respond by March 22, 2019.

Very truly yours,



Danielle C. Agee

cc: Yolanda King – County Manager/CEO, Clark County  
(via email [ccmgr@clarkcountynv.gov](mailto:ccmgr@clarkcountynv.gov))

Jacqueline Holloway – Business License Director, Clark County  
(via email [jqrh@clarkcountynv.gov](mailto:jqrh@clarkcountynv.gov))

---

<sup>1</sup> *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order (FCC-18-133, WT Docket No. 17-79, WC Docket No. 17-84 (Sept. 26, 2018)) ("FCC Wireless Infrastructure Order").

Steve Wolfson  
Clark County District Attorney  
March 12, 2019  
Page 3

Michael Harwell – Franchise Manager, Clark County  
(via email [mikeh@clarkcountynv.gov](mailto:mikeh@clarkcountynv.gov))

Desmond Jackbir- Field Engineering Director, Verizon  
(via email [desmond.jackbir@verizonwireless.com](mailto:desmond.jackbir@verizonwireless.com))

Nick Magnone – Wireless Network, Verizon  
(via email [nick.magnone@verizonwireless.com](mailto:nick.magnone@verizonwireless.com))

Mike Bagley – Government Affairs, Verizon  
(via email [michael.bagley1@verizonwireless.com](mailto:michael.bagley1@verizonwireless.com))



# **EXHIBIT 8**



**CLARK COUNTY  
OFFICE OF THE DISTRICT ATTORNEY**

*Civil Division*

**STEVEN B. WOLFSON**  
District Attorney

500 S. Grand Central Pkwy, Suite 5075 • Las Vegas, NV 89155 • 702-455-4761 • Fax: 702-382-5178 • TDD: 702-385-7486

MARY-ANNE MILLER  
*County Counsel*

CHRISTOPHER LALLI  
*Assistant District Attorney*

ROBERT DASKAS  
*Assistant District Attorney*

By: Lucinda L. Coumou  
*Chief Deputy District Attorney*

March 22, 2019


Danielle C. Agee, Esq.  
General Counsel  
Verizon  
South Central Market  
600 Hidden Ridge  
Irving, TX 75038  
Danielle.agee@verizonwireless.com

Re: Chapter 5.02 – Rights-of-Way Management – Wireless Communications  
Facilities (the “Ordinance”)

Dear Ms. Agee:

I am in receipt of your letter dated March 12, 2019, wherein you ask several questions about the Wireless Communications Facilities Ordinance that the Clark County Board of Commissioners adopted January 7, 2019. First, it is important to note that Clark County has joined a lawsuit challenging the FCC’s order and that case is currently in the 9<sup>th</sup> circuit. Second, as I am sure you are aware, there has been a bill introduced by Assemblywoman Carlton at the Nevada Legislature that impacts this area. Assembly Bill 344 would restrict local governments’ ability to control the installation, maintenance, operation and replacement of micro wireless facilities placed within their rights of way. This bill attempts to nullify the ordinance that the Clark County Board of Commissioners just adopted in January. In light of this pending legislation, I am unable to provide answers to your questions at this time. We will be monitoring this bill and once it is either passed or defeated, I will then be better able to discuss the substance of your letter.

Sincerely,  
STEVEN B. WOLFSON  
DISTRICT ATTORNEY

BY   
LUCINDA L. COUMOU  
Chief Deputy District Attorney

LLC:ab

cc: Jacqueline R. Holloway, Director  
Clark County Department of Business License

# **EXHIBIT 9**

From: Tyronne Doram <tyd@clarkcountynv.gov>

Date: Mon, Jul 1, 2019 at 6:30 AM

Subject: [E] Revised Site License Application

To:

Good morning all,

Please find attached information package and revised Site License Application.

All previous versions of the application will be considered obsolete so please distribute these to your consultants applying for site licenses on your behalf.

Thanks,

Ty Doram

Assistant Manager

Clark County Public Works

Traffic Management Division

(702) 455-6035 Office

(702) 249-1953 Cell

(702) 380-9599 Fax



# Department of Public Works Traffic Management Division

500 S. Grand Central Pkwy. Las Vegas, NV 89155-4000 (702)455-6000

## Site License Application Information

Pursuant to Clark County Code of Ordinances Title 5.02, effective Jul 1, 2019 a Site License Approval is required to install or modify a small cell site located within the public right-of-way which includes sidewalks, medians, trails, etc. To apply for an approval, please fill out the attached Site License Application (see fig. 1) and use the following information as a reference.

Received Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Payment Received: \_\_\_\_/\_\_\_\_/\_\_\_\_ SLA #: \_\_\_\_\_

**Department of Public Works  
Traffic Management Division**  
500 S. Grand Central Pkwy. Las Vegas, NV 89155-4000 (702)455-6000  
**Site License Application (SLA)**

Licensee Name: \_\_\_\_\_ Northing: \* \_\_\_\_\_  
Site ID: \_\_\_\_\_ Easting: \* \_\_\_\_\_  
Design District: \_\_\_\_\_  
Applicant (Company / Name of Contact): \_\_\_\_\_ Signature: \_\_\_\_\_

\*Must Provide Six Coordinates in Northing/Easting, NAD 1983, State Plane Nevada East, US Survey Feet. Attach maps or additional information as necessary.

**Site Information:**  
☐ New  
☐ Existing Site

**Power Source:**  
☐ Clark County Owned Service  
☐ Customer Owned Service

If known, provide address of existing power source: \_\_\_\_\_  
If site is existing, provide latest Encroachment Permit # used for this location: \_\_\_\_\_  
If this is not the first application for this site provide original SLA # and approval date: \_\_\_\_\_

**Pole Type:**  
☐ County Owned 7 Gauge  
☐ County Owned 11 Gauge  
☐ County Owned Decorative Concrete  
☐ Upgraded

**Installation Type:**  
☐ Type 1 (Unconcealed)  
☐ Type 2 (Concealed)  
☐ Type 3 (Smart Replacement)  
☐ Type 4 (Smart Independent)  
☐ Type 5 Smart (LVB District)

Do Not Write Below This Line--For County Use Only

Service Location		Total existing load for each phase:
Meter Number	Notes	
N* _____ E* _____		
Voltage: <input type="checkbox"/> 120 <input type="checkbox"/> 240 <input type="checkbox"/> 277	Phase(s): <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3	
Service Type: <input type="checkbox"/> Pedestal <input type="checkbox"/> Pole Mounted <input type="checkbox"/> Remote Meter		
		Tested by: _____ Date: _____ Notes: _____

Page 1 of 2

Fig. 1

Incomplete applications may be rejected. Feel free to attach maps or additional information on separate pages as necessary.

If power upgrades are required, a Letter of Acknowledgement for Clark County Owned Electrical Service Modification will be provided upon request.

Fill in the upper section of page 1 completely. State plane coordinates information may be found using the [Clark County OpenWeb](#) tool. A Design District map is included as part of this package for reference. Please do not fill out any of the information in the header.

A signature from the applicant is required. Digital signatures will be accepted.

**Site Information:** For the purposes of this application, please consider any site that has not been completely built and activated as **New**. Once your site is commissioned, consider it to be **Existing**.

**Power Source:** Identify the type of power source.

**Pole Type:** Please indicate the type of facility being used. If you intend to replace the existing facility, check **Upgraded**.

**Installation Type:** Indicate the type of installation that you are proposing. Please note that certain installation types are required for certain Design Districts (refer to Table 1).

### Additional Information:

If site is existing, please provide the location of the currently used power source.

If site is existing, please provide the last encroachment permit number used to build or modify the site.

If this is not the first application for this site, please provide the original Site License Application number and date of approval.





## Department of Public Works Traffic Management Division

500 S. Grand Central Pkwy. Las Vegas, NV 89155-4000 (702)455-6000

### Site License Application Information

Right-of-Way District	Installation Type Allowed	Height Limit
Las Vegas Boulevard	Type 5	5' over existing
Central Communications	Type 3 and Type 4	5' over existing
Residential	Type 2 and Type 4	5' over existing
Commercial	Type 2 and Type 4	5' over existing
Rural	Type 1, Type 2 and Type 4	10' over existing
Manufacturing	Type 1, Type 2 and Type 4	5' over existing
Wireless Service Improvement	Type 1, Type 2 and Type 4	10' over existing

Table 1

As of Jul 1, 2019 an application fee of \$250 for all Site License Applications is required. The application fee is payable at the time of application.

The Site License Application may be submitted in person at 500 S. Grand Central Pkwy Las Vegas, NV 89155 or by email it to [InTheWorks@ClarkCountyNV.gov](mailto:InTheWorks@ClarkCountyNV.gov).

You will receive a confirmation with SLA number after payment of the \$250 application fee has been confirmed.

The application fee is payable by check, money order or purchase order. Credit Cards will not be accepted.

When the application has been approved or denied you will be notified via email.

Please call 702-455-6000 or email [InTheWorks@ClarkCountyNV.gov](mailto:InTheWorks@ClarkCountyNV.gov) with any questions.

Received Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Payment Received \_\_\_\_/\_\_\_\_/\_\_\_\_

SLA # \_\_\_\_\_



## Department of Public Works Traffic Management Division

500 S. Grand Central Pkwy. Las Vegas, NV 89155-4000 (702)455-6000

### Site License Application (SLA)

Licensee Name: \_\_\_\_\_ Northing \* \_\_\_\_\_

Site ID: \_\_\_\_\_ Easting \* \_\_\_\_\_

Design District: \_\_\_\_\_

Applicant (Company / Point of Contact) \_\_\_\_\_ Signature \_\_\_\_\_

\*Must Provide Site Coordinates in Northing/Easting, NAD 1983, State Plane Nevada East, US Survey Feet. Attach maps or additional information as necessary.

**Site Information:**

- ☐ New  
☐ Existing Site

**Power Source:**

- ☐ Clark County Owned Service  
☐ Customer Owned Service

If known, provide address of existing power source: \_\_\_\_\_

If site is existing, provide latest Encroachment Permit # used for this location: \_\_\_\_\_

If this is not the first application for this site provide original SLA # and approval date: \_\_\_\_\_

**Pole Type:**

- ☐ County Owned 7 Gauge  
☐ County Owned 11 Gauge  
☐ County Owned Decorative Concrete  
☐ Upgraded

**Installation Type:**

- ☐ Type 1 (Unconcealed)  
☐ Type 2 (Concealed)  
☐ Type 3 (Smart Replacement)  
☐ Type 4 (Smart Independent)  
☐ Type 5 Smart (LVB District)

Do Not Write Below This Line—For County Use Only

Service Location: \_\_\_\_\_

Meter Number: \_\_\_\_\_

N\* \_\_\_\_\_ E\* \_\_\_\_\_

**Voltage:**

- ☐ 120  
☐ 240  
☐ 277

**Phase(s):**

- ☐ 1  
☐ 2  
☐ 3

**Service Type:**

- ☐ Pedestal  
☐ Pole Mounted  
☐ Remote Meter

Main Breaker

Breakers

Total existing load for each phase:

Tested by: \_\_\_\_\_

Date: \_\_\_\_\_

Notes:



Received Date \_\_\_\_/\_\_\_\_/\_\_\_\_

SLA # \_\_\_\_\_



## Site Information

Pole Type: \_\_\_\_\_

Model and Manufacturer: \_\_\_\_\_

Carrier 1: \_\_\_\_\_

Estimated Power Draw in amps: \_\_\_\_\_

Carrier 2: \_\_\_\_\_

Estimated Power Draw in amps: \_\_\_\_\_

Carrier 3: \_\_\_\_\_

Estimated Power Draw in amps: \_\_\_\_\_

## Equipment Inventory

List Equipment by Manufacturer and Part Number (Radios, mux, antenna systems, etc.):

Type	Associated Carrier	Manufacturer	Model

NOTES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: Construction Must Be Completed within 12 Months of Approval Date Per County Code 5.02**

### CLARK COUNTY DEPARTMENT OF PUBLIC WORKS TRAFFIC MANAGEMENT

Location Approval

By \_\_\_\_\_ Date \_\_\_\_\_

Acceptance of Plans for Filing

By \_\_\_\_\_ Date \_\_\_\_\_

# Wireless Locations In Design Districts

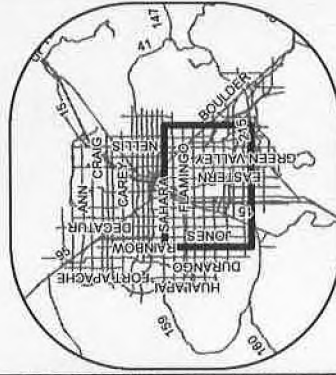


Clark County Public Works  
Geographic Information Systems

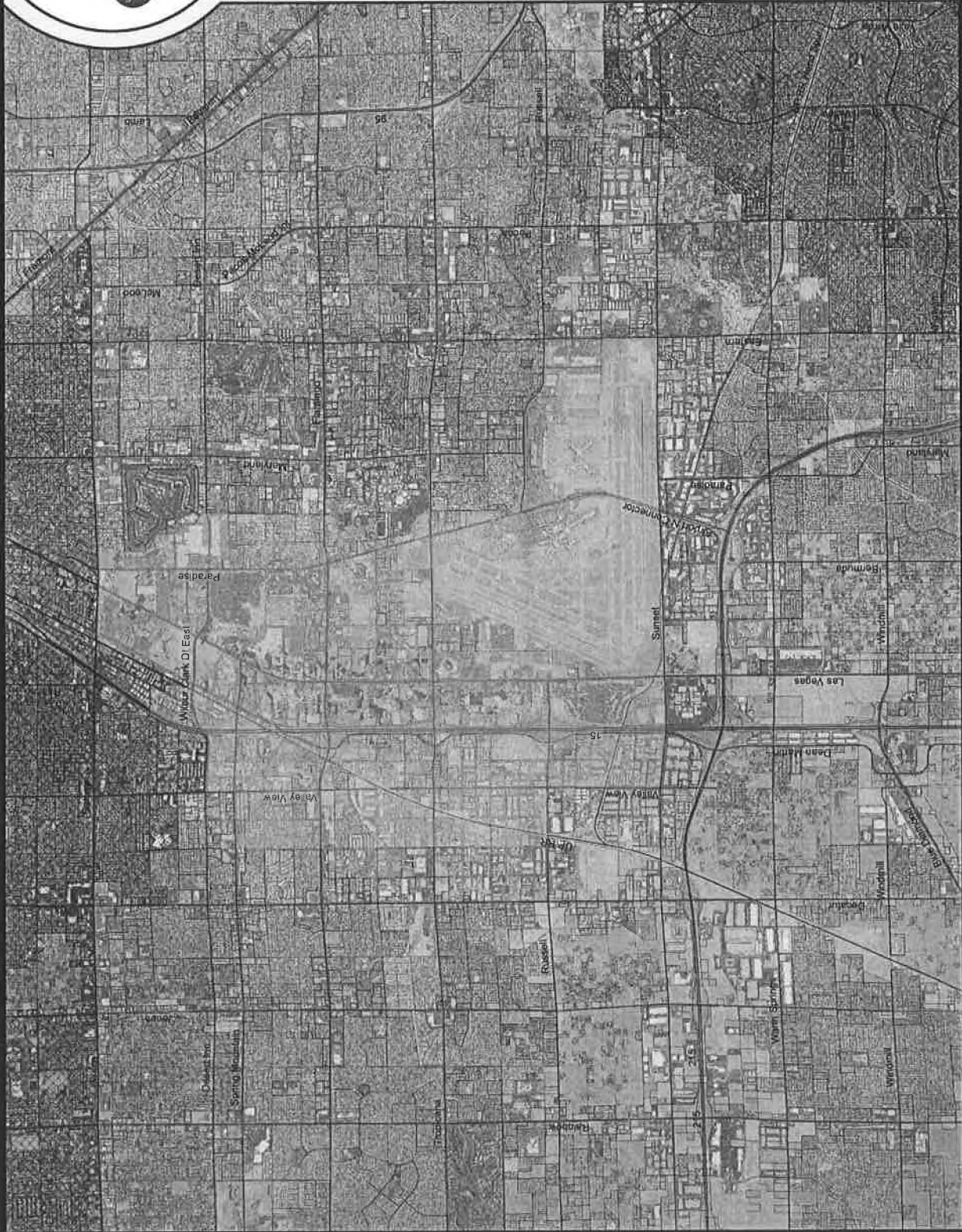
## ROW Design Districts

- ☐ Districts 1 - Las Vegas Boulevard District
- ☐ Districts 2 - Central Communications District
- ☐ Districts 3 - Residential District
- ☐ Districts 4 - Commercial District
- ☐ Districts 5 - Rural District
- ☐ Districts 6 - Manufacturing District
- ☐ Districts 7 - Wireless Service Improvement District
- ☐ Special Districts

## Location Map



This information is provided for planning purposes only. Due to the nature of the data, the accuracy of the data is not guaranteed. This map is based on GIS data.



Received Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Payment Received \_\_\_\_/\_\_\_\_/\_\_\_\_

SLA # \_\_\_\_\_



# Department of Public Works

## Traffic Management Division

500 S. Grand Central Pkwy. Las Vegas, NV 89155-4000 (702)455-6000

## Site License Application (SLA)

Licensee Name: \_\_\_\_\_ Northing \* \_\_\_\_\_

Site ID: \_\_\_\_\_ Easting \* \_\_\_\_\_

Design District: \_\_\_\_\_

Applicant (Company / Point of Contact) \_\_\_\_\_ Signature \_\_\_\_\_

\*Must Provide Site Coordinates in Northing/Easting, NAD 1983, State Plane Nevada East, US Survey Feet. Attach maps or additional information as necessary.

### Site Information:

- ☐ New
- ☐ Existing Site

### Power Source:

- ☐ Clark County Owned Service
- ☐ Customer Owned Service

If known, provide address of existing power source \_\_\_\_\_

If site is existing, provide latest Encroachment Permit # used for this location: \_\_\_\_\_

If this is not the first application for this site provide original SLA # and approval date: \_\_\_\_\_

### Pole Type:

- ☐ County Owned 7 Gauge
- ☐ County Owned 11 Gauge
- ☐ County Owned Decorative Concrete
- ☐ Upgraded

### Installation Type:

- ☐ Type 1 (Unconcealed)
- ☐ Type 2 (Concealed)
- ☐ Type 3 (Smart Replacement)
- ☐ Type 4 (Smart Independent)
- ☐ Type 5 Smart (LVB District)

Do Not Write Below This Line—For County Use Only

Service Location: \_\_\_\_\_

Meter Number: \_\_\_\_\_

N\* \_\_\_\_\_ E\* \_\_\_\_\_

### Voltage:

- ☐ 120
- ☐ 240
- ☐ 277

### Phase(s):

- ☐ 1
- ☐ 2
- ☐ 3

### Service Type:

- ☐ Pedestal
- ☐ Pole Mounted
- ☐ Remote Meter

Main Breaker

Breakers

Total existing load for each phase:

Tested by: \_\_\_\_\_

Date: \_\_\_\_\_

Notes:

Received Date \_\_\_\_/\_\_\_\_/\_\_\_\_

SLA # \_\_\_\_\_



## Site Information

Pole Type: \_\_\_\_\_

Model and Manufacturer: \_\_\_\_\_

Carrier 1: \_\_\_\_\_

Estimated Power Draw in amps: \_\_\_\_\_

Carrier 2: \_\_\_\_\_

Estimated Power Draw in amps: \_\_\_\_\_

Carrier 3: \_\_\_\_\_

Estimated Power Draw in amps: \_\_\_\_\_

## Equipment Inventory

List Equipment by Manufacturer and Part Number (Radios, mux, antenna systems, etc.):

Type	Associated Carrier	Manufacturer	Model

NOTES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: Construction Must Be Completed within 12 Months of Approval Date Per County Code 5.02**

### CLARK COUNTY DEPARTMENT OF PUBLIC WORKS TRAFFIC MANAGEMENT

Location Approval

By \_\_\_\_\_ Date \_\_\_\_\_

Acceptance of Plans for Filing

By \_\_\_\_\_ Date \_\_\_\_\_

# **EXHIBIT 10**



CNX



## BROADBAND MASTER PLAN RECOMMENDATIONS

Clark County

Board of County Commissioners

December 19, 2017





## Why a County Wireless Broadband Plan is Needed

### **Wireless Data Use is Exploding**

Demand for Mobile Data is Growing at an Estimated 80% Rate and is Predicted to Outpace Current Network Capabilities by 2020

### **Small Cell Wireless Sites Are Essential to Meet Increase Demand**

Predictions Indicate that 7.786 Million Small Cells will be Deployment by 2020

### **Clark County Assets Are Key to Small Cell Development in the County**

The County's Assets in the Right of Way Are a Predictable Grid of Infrastructure Rather than a Patchwork of Private Properties with Unpredictable Rents and Design Standards

### **A Broadband Master Plan is Critical for the Wireless Broadband Development**

These High Impact Initiatives Will Streamline the Development Process While Protecting the County's Assets and Public Interests and Generate Revenue to Help Fund Expansion of Wireless Facilities to Close the Digital Divide and Fund Smart Community Initiatives



1

## **Comprehensive Broadband Management Program**

- Implement Broadband Program Recommendations
- Manage and Facilitate Access to County Broadband Assets
- Conduct the Day to Day Program's Operations

2

## **Align Accountabilities With Functional Expertise**

- Assign Tasks to Departments Based on Their Area of Expertise
- Integrate Interdepartmental Policies and Processes

3

## **Identify, Aggregate, and Make Assets Available**

- Determine What County Assets are Available for Licensing (ROW Assets, County Buildings, Towers, and the Like)
- Establish a Comprehensive Wireless Asset Availability Program

4

## **Create a Streamlined and Efficient On-Line Workflow**

- Utilize Current Business Licensing Software to Create an Efficient, Automated, and Managed Workflow Process
- Integrate Licensing, Landlord, and Site Review and Approvals





5

## Capture Fair Market Value for the Use of County Assets

### Current Licensing Fees

	<b>Resort District:</b> \$500 to 700 – Annual/Pole
	<b>Standard Market Rate:</b> \$500 to 700 – Annual/Pole
	<b>Rural and Broadband Underserved Areas:</b> \$500 to 700 – Annual/Pole

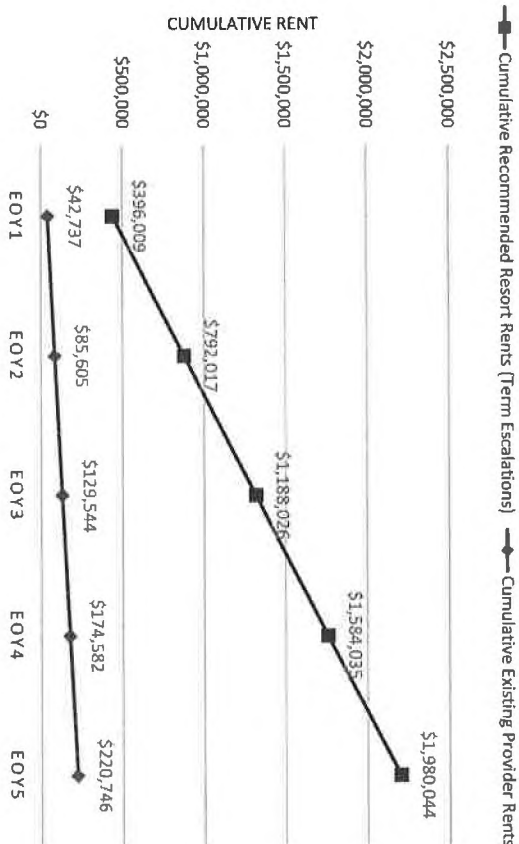
### Recommended Licensing Fee For Attachments

	<b>Resort District:</b> \$3,960– Annual/Pole
	<b>Standard Market Rate:</b> \$2,500– Annual/Pole
	<b>Rural and Broadband Underserved Areas:</b> \$700– Annual/Pole

# Licensing Recommendations

## Potential Revenue Example

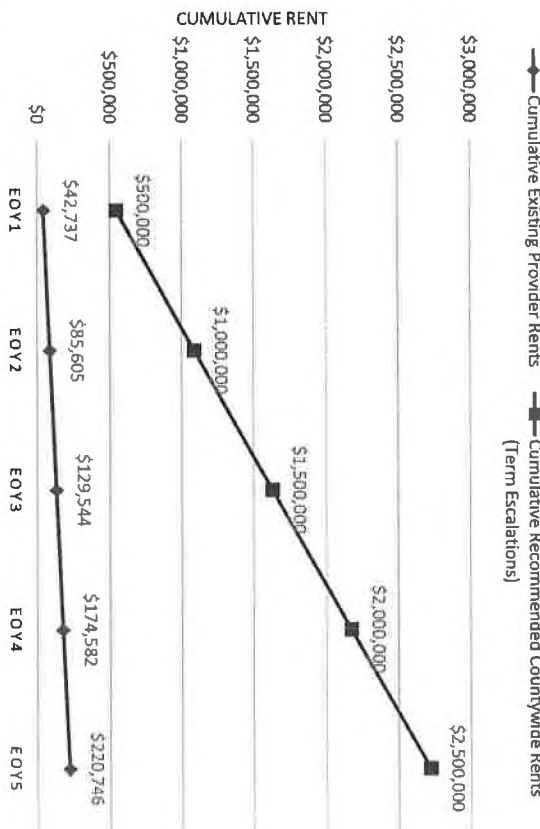
**Recommended: Resort Rate: \$3,960/yr.**



**Assumptions:**

- 100 new small cell leases on Resort area assets
- \$3,960/yr. with 10% term escalations every 5 years

**Recommended: Non-Resort Rate: \$2,500/yr.**



**Assumptions:**

- 200 new small cell leases on County-wide assets
- \$2,500/yr. with 10% term escalations every 5 years



# Licensing Recommendations



6

## Revise the Licensing Fee Structure

- Establish an Application Fee for Each Site Applied For
- Charge Fee for Licensee Structures Constructed in the ROW

7

## Create a Uniform Master License Agreement

- Use Previously Proposed Agreement as Basis for Agreement
- Remove Land Use and Design Provisions Relocate them to Zoning or Other Appropriate Code

8

## Use Site License Agreements

- Memorializes the Specific Entitlements Licensed for Each Site
- Used for All Asset Types

9

## Implement an Annual Inspection Program

- Inspect Licensees' Sites for Compliance
- Identifies Possible Safety and Contract Violations

**10**

## Implement Code Changes to Harmonize and Clarify Process

- Clarify Approval Process for Small Cell Development in and Out of the Right of Way
- Modernize the County Code to Specify Differences in Small Cell and Marco Site Development

**11**

## Adopt Design Guidelines

- Provide Collocation and Concealment Requirements (Smart Poles, Antenna Shrouding, Equipment, and the Like)
- Expedited Review for Standard Designs that Are Pre-Approved
- Variance Procedure for Non-Standard Designs
- Reduction of Current 900' Separation Requirement to 300'
- Require Use of Existing ROW Infrastructure



12

**Allow Wireless Attachments on Traffic Light Poles**

- Minimizes Clutter by Using Existing Structures
- Requires Measures to Prevent Interference and Protect Signal Operation

13

**Adopt a Comprehensive County Fiber Initiative**

- Identify, Inventory, and Map All County Inventory and Conduit
- Formalize a County Dig Once Policy
- Establish a Comprehensive 5 Year Fiber Plan
- Make Available Excess County Fiber

14

**Expand “ClarkConnect” to Allow for Inadequate Broadband Reporting**

15

**Establish an InterCounty Departmental Broadband Committee**

16

**Use Increased Revenue to Promote Services to Broadband Underserved Areas and Fund Smart Community Initiatives**

# **EXHIBIT 11**

## CLARK COUNTY BOARD OF COMMISSIONERS AGENDA ITEM

**Petitioner:** Jacqueline R. Holloway, Director of Business License

**Recommendation:**

**That the Board of County Commissioners receive a report from Connected Network Exchange (CNX) regarding the development of a Broadband Wireless Plan for unincorporated Clark County.**

**FISCAL IMPACT:**

Fund #: N/A  
Fund Center: N/A  
Description: N/A  
Added Comments:

Fund Name: N/A  
Funded Pgm/Grant: N/A  
Amount: N/A

**BACKGROUND:**

Chairman Steve Sisolak requested this item to discuss the recommendations of CNX regarding the development of a Broadband Wireless Plan for the County. On January 17, 2017, the Board received a report on wireless communication facilities within the County rights-of-way. Staff was directed to find an independent consultant that is not associated or affiliated with companies in the industry involved in providing wireless services and present an agreement to the Board for approval.

CNX is uniquely positioned to help the County develop the strategies to best manage today's new wireless broadband environment while also developing new sources of lease revenue for the County's budget. CNX is the perfect partner to help the County cultivate relationships with communications companies to increase the value and use of its assets. CNX has a unique methodology and incorporates program management for government assets to wireless, fiber and all types of broadband companies.

CNX has been engaged with the County Manager's Office and with various departments such as Comprehensive Planning, Public Works, and Information Technology and other stakeholders such as the Nevada Resort Association, the major resort casino operators and the wireless communications providers in developing their recommendations for the County.

Respectfully submitted,

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Jacqueline R. Holloway, Director

Cleared for Agenda

12/19/2017

Agenda Item #

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# **EXHIBIT 12**



## CLARK COUNTY BOARD OF COMMISSIONERS AGENDA ITEM

**Petitioner:** Jacqueline R. Holloway, Director of Business License

**Recommendation:**

**That the Board of County Commissioners conduct a public hearing; adopt, approve and authorize the Chairman to sign an ordinance to amend Clark County Code Title 5, Chapter 5.02 concerning rights-of-way management for wireless communications facilities, providing for application and issuance of master wireless use and site license agreements, setting standards for design, installation, operation, maintenance and removal of wireless communications facilities in the public rights-of-way; establishing fees for wireless communications facilities in the public rights-of-way; provide for other matters properly relating thereto. Commission District: All (For possible action)**

**FISCAL IMPACT:**

Fund #: 1010.000  
Description: General Fund  
Fund Center: 1110810010

Funded Program/Grant: N/A  
Fund Name: N/A  
Amount: Unknown

Added Comments: This ordinance establishes fees for installation of wireless communications facilities in the County rights-of-way by wireless communications companies that are charged per pole within certain defined districts that range from \$700 per pole per year to \$3,960 per pole per year. The increased fees are anticipated to offset the County's program management costs to monitor, maintain and enforce the deployment of wireless communications facilities within the rights-of-way.

**BACKGROUND:**

On December 19, 2017, The Board received a report and recommendations from Connected Nation Exchange (CNX) (now known as Smart Works Partners) on wireless communications facilities within the County rights-of-way. The recommendations included adopting design standards, implementing changes to the County Code and revising the license fee structure.

County staff has been working with CNX on developing a broadband wireless plan for the County and have been working with the wireless industry on preparing an ordinance to manage wireless communications facilities in the County rights-of-way.

The proposed ordinance was introduced at the December 4, 2018 of County Commissioners meeting and a public hearing was set for December 18, 2018 at 10:00 a.m.

Cleared for Agenda

**12/18/2018**

Agenda Item #

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Respectfully submitted,

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Jacqueline R. Holloway, Director