

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DA 20554

In the Matter of

Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the costs of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF THE CITY OF CHULA VISTA, CALIFORNIA**

These Comments are filed by the City of Chula Vista, CA in response to the notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding.

**INTRODUCTION**

The City of Chula Vista is the second largest City in the County of San Diego with a population of 244,000. Broadband service providers include Cox, Pacific Bell Telephone Company d/b/a AT&T California (New Cingular), T-Mobile, Verizon, Sprint Nextel, Cricket Wireless, Global Crossings, New Horizons and NextG Networks.

**TIMELINESS AND EASE OF PERMITTING PROCESS**

The City of Chula Vista has streamlined permit process for new facilities within City owned property and City rights-of-way once the provider has entered into a Master Communication Site License Agreement. The “Master” uses a collaborative process to address all the common issues upfront and establishes a thorough consistent submittal and review processes. A Master approach allows each application to focus on just the remaining unique site issues and expedites the process to as little as 4 weeks. It also establishes a relationship with knowledgeable applicants on how streamlined the process can be when they approach the City prepared. The Shot Clock Ruling has not resulted in faster processing as Chula Vista’s streamlined process is designed to take advantage of the City’s Master process and provides additional financial and time incentives to locate within property “owned or controlled” by the City. The application process for a provider, once they have entered into a master license agreement, begins once they submit a site specific plan. This plan is reviewed by a landscape architect and an engineering technician to ensure that the proposed facilities are complementary to the adjacent landuses and do not conflict with existing infrastructure. With proper submittal

by the applicant the turnaround time from application to permit issuance is as little as 1 month in part because the business terms have been agreed upon and the focus of the review is on those issues unique to the site that may not be already covered by the Master Site License Agreement. The construction permit for work within the right-of-way doubles as the encroachment permit. The applicant concurrently processes a building permit where the structural and electrical aspects are reviewed and approved. Once the two permits are issued the contractor commences work with inspection provided by the public works inspector. The public works inspector ensures that the contractor repairs the trenching within the street, the landscaping in the parkways and that the traffic control is satisfactory. The same inspector is used for all sites on property owned and controlled by the City, which provides the applicant with consistency and familiarity, enhancing the schedule.

#### REASONABLENESS OF CHARGES

Effort associated with broadband installations within the right-of-way or on City owned property are directly reimbursed by the provider based on an initial \$4,000 deposit. Any funds not used in the processing and inspection of the permit are refunded to the providers. At their discretion the applicant can, and often does request that inspections and approvals be performed after hours and holidays to meet their schedule.

#### QUALITATIVE INFORMATION

There is a dearth of information on the negative public safety effects of wireless broadband based on a cumulative analysis of all providers. Each installation meets FCC guidelines for EMF but nowhere is the cumulative effect of all providers analyzed. Additionally, the citizens desire and invest significant resources in undergrounding to eliminate or reduce congestion and visual blight caused by above ground appurtenances. The proliferation of service providers can add to service quality and competitive price but can also add to the expense and complexity of local undergrounding projects and aesthetics. The City of Chula Vista has a fiduciary duty to its citizens to provide a right-of-way free from hazards, including those impacts from the proliferation of broadband infrastructure and EMF<sup>1</sup>. If the FCC is going to make a ruling to streamline broadband it should have a look into the possible harmful effects attributed to too much broadband. There is a balance that must be achieved between a competitive broadband marketplace and public health. The FCC could address this issue by providing municipalities with an upper limit on the number of broadband service providers for an area beyond which public health has priority over broadband communications. For example, once 20 broadband service providers are serving a geographical area there is no longer a need for another provider and Municipalities can, and are encouraged, to turn the 21<sup>st</sup> application away.

#### UPDATING OF ORDINANCES AND STATUTES

The City of Chula Vista is currently considering criteria and standards for the siting and operation of electrical generating facilities of various types, including emergency and back-up facilities. As a long time leader in reducing greenhouse gas emissions,

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<sup>1</sup> Los Angeles Times, June 1, 2011 "Study links cellphones to possible cancer risk", Shari Roan and Ellen Gabler, (attached)

(according to the Climate Registry verified process, Chula Vista is 47% below 1990 levels for municipal emissions) this involves looking for ways to encourage broadband providers to use cleaner methods for back-up power other than diesel (natural gas, solar/batteries, or possibly B80 diesel), however, at this time there have been no modifications to the ordinance for telecommunications facilities design criteria since adoption in 2003 as given below:

***Title 19.89.060 Development criteria.***

*The following is development criteria for all wireless telecommunications facilities located within the city:*

***A. Design Standards.***

*1. Height. Wireless telecommunications facilities are subject to the height limitation stipulated in this title and shall be as short as technologically feasible. Notwithstanding the application of such height limitations, the planning commission (but not the zoning administrator) may allow stealth design facilities to exceed the zone district height limit upon a specific finding that the proposed height is the only technologically feasible option for providing service to an area.*

*2. Stealth Technology and Design. Wireless telecommunications facilities shall utilize all practical means to conceal or minimize the visual impact thereof, including:*

*a. Smallest Technology. The facility shall use and maintain the physically smallest practical devices to achieve the needs of the wireless telecommunications network.*

*b. Most Efficient Technology. The facility shall use and maintain the most efficient devices to achieve the needs of the wireless telecommunications network. In this context, "most efficient" means using the smallest number of facilities needed to achieve the needs of the network.*

*c. Stealth Design. The facility shall be designed to be visually unobtrusive and blend into the surrounding area in a manner compatible with the local community character. Sites shall be maintained in good repair and appearance, and, to the extent possible, shall be improved and upgraded on a regular basis. Any proposed change that deviates from the original approval shall be submitted to the city's zoning administrator for over-the-counter review and approval.*

*3. Co-Location. Wireless telecommunication facilities shall be co-located to the extent practicable. They should also be constructed and sited to accommodate the future co-location of other facilities. Conditional use permit applications for wireless telecommunications facilities that are not to be co-located shall contain a written statement that a good faith effort was made to attempt co-location at another site. Such statement shall also declare the justification for deciding not to co-locate.*

*Likewise, conditional use permit applications for wireless telecommunication facilities that are not to be constructed and sited to accommodate the future co-location of other facilities shall contain a written statement declaring the justification for failing to do so.*

*Co-location is discouraged, but not prohibited, for sites located on a residential lot in a single-family or two-family residential zone.*

*4. Parking Displacement. Wireless telecommunications facilities shall not reduce available parking space below that which is required by applicable zoning laws.*

*5. Setbacks. All components of all wireless telecommunications facilities shall meet the setback requirements of the zoning district in which it is proposed to be located.*

*6. Colors and Materials. Colors and materials shall be chosen to minimize visibility. All externally visible elements of a facility, including the antenna and supporting equipment, shall be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure and/or its surroundings, so as to make the antenna and related equipment as visually unobtrusive as possible. Proposed colors shall be identified by manufacturer and color name or number.*

*7. Visual Integration of Antennas. Facade-mounted antennas shall be architecturally integrated into the style and character of the structure, and painted and textured to match or complement the existing structure. Roof-mounted antennas shall be constructed at the minimum height possible to serve the provider's service area, shall be designed to minimize visibility from the surrounding areas, and painted and textured to match or complement the existing structure or building.*

*8. Freestanding Facilities. Freestanding facilities, including ground-mounted antennas and monopoles, are discouraged and may be used only when no other alternative is feasible. When allowed, freestanding facilities shall be designed to the minimum functional height and width. Lattice towers are prohibited.*

*9. Landscaping. When portions of the facility are exposed to public view, they shall be landscaped with visual buffering, such as plant materials, walls and/or mounds that screen the view of the facility from public rights-of-way, public parklands and nearby residential properties. Existing mature growth trees and natural landforms on the site shall be preserved to the maximum extent feasible. Native plantings are to be used to the maximum extent possible.*

*10. Equipment Enclosures. All equipment shall be placed completely underground when feasible or located inside an existing building. If such placement is not feasible, the equipment shall be completely enclosed within a solid-walled enclosure or building. Enclosures may not exceed 10 feet in height measured from the base of the foundation*

*unless a greater height is necessary to maximize architectural integration and shall be screened by landscaping. Any visible cabinets, cables, air conditioning units, fencing, etc., shall be painted and textured to match the surrounding area so as to minimize visibility.*

*11. Preventive Design. All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions or visual blight.*

*12. Access to Facilities. All wireless telecommunication facilities shall be accessed from nonresidential streets or rights-of-way to the maximum extent practical. Any constructed access shall be sited to avoid residential areas, streets or rights-of-way to the maximum extent practical.*

*13. Construction Methods. All wireless telecommunication facilities shall be built in accordance with uniform building code standards and, to the extent feasible, be protected against damage by fire, flooding, and earthquake. Reasonable measures shall be taken to keep wireless facilities in operation in the event of a natural disaster.*

*14. Signs. Other than required safety warning signs, no signs shall be placed on facilities or equipment.*

*15. Modifying or Upgrading Facilities. When modifying or upgrading wireless facilities, existing antennas and equipment shall, to the extent feasible, be replaced with antennas and equipment of equal or greater technical capacity and reduced size so as to reduce visual and noise impacts.*

#### *B. Operation and Maintenance.*

*1. Security Lighting. Security lighting shall be kept to a minimum. Any security lighting that may spill into residential zoning districts is discouraged and shall only be activated by a motion detector.*

*2. Grounds Maintenance. All facilities and related equipment shall be maintained in good working order and free from trash, debris, graffiti and any form of vandalism. Any damaged equipment shall be repaired or replaced within 30 calendar days of sustaining such damage. Graffiti shall be removed within 48 hours of being notified by the city or others of its existence. Facilities containing landscaping elements shall be maintained in good condition at all times. Damaged, dead or decaying plant materials shall be removed and replaced within 30 calendar days of sustaining such damage.*

*3. Facility Maintenance. Routine maintenance of equipment located in residential zones or within 100 feet of a residential district, not requiring the facility to be taken "off line," shall be conducted only during the weekday hours of 8:00 a.m. to 5:00 p.m., holidays excepted. In*

*other areas, and when a facility must be taken "off line," routine maintenance may be conducted at any time. Emergency repairs and maintenance shall be conducted only in the cases of power outages and equipment failure or malfunction.*

*4. Noise Attenuation. Each wireless telecommunications facility shall be operated in a manner that will minimize noise impacts to surrounding residents and persons using nearby parks, trails, and similar recreation areas. To achieve this objective, all air conditioning units and any other equipment emitting noise that is audible from beyond the property line on which a facility is located shall be enclosed or equipped with noise attenuation devices that reduce the noise to the lowest feasible level. Backup generators shall only be operated during periods of power outages or for testing. (Ord. 2895 § 1, 2003).*

#### CONCLUSION

The City of Chula Vista would like to thank the Commission for its efforts to better understand the practices and policies surrounding local governments' management of the public rights of way. We strongly urge the Commission to consider our comments regarding the downside effects of too much broadband, as well as those submitted by communities across the country, before taking any action that may adversely affect local governments' rights of way authority. The Commission must resist moving forward in any other contexts to act on any of the issues raised in the NOI until the record in this proceeding is complete.

Respectfully submitted,

City of Chula Vista



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Attachment 1: Los Angeles Times, June 1, 2011 "Study links cellphones to possible cancer risk", Shari Roan and Ellen Gabler,

## **Study links cellphones to possible cancer risk**

**An agency within the World Health Organization finds that 'limited' evidence exists to indicate prolonged cellphone use may increase risk for two types of tumors, one of them cancerous.**

June 01, 2011 | By Shari Roan and Ellen Gabler, Los Angeles Times

Cellphone users may be at increased risk for two types of rare tumors and should try to reduce their exposure to the energy emitted by the phones, according to a panel of 31 international scientists convened by an agency within the World Health Organization.

Studies so far do not show definitively that cellphone use increases that risk, said the authors of the consensus statement issued Tuesday by the WHO. But "limited" scientific evidence exists, they said, to suggest that the radiofrequency energy released by cellphones may increase the risk of glioma, a type of brain cancer, and acoustic neuroma, a noncancerous tumor of the nerve that runs from the ear to the brain.

Both are rare: In the U.S., about 10,000 to 12,000 people develop a glioma each year and about 3,000 develop acoustic neuroma tumors. The risk roughly doubles after a decade of cellphone use, according to some studies. But the number of cellphone users worldwide — there are an estimated 5 billion cellphones — means a potential cancer link should be taken very seriously, said Dr. Jonathan Samet, chairman of the department of preventive medicine at USC's Keck School of Medicine and the chairman of the panel that issued the report.

"What we have here is a warning from a public health point of view," Samet said. "We have half the world's population already using cellphones, and people are using them younger and longer. We clearly need to keep track of this."

Other scientists said they remained skeptical of the link, which is mired in contradictory science, and that they found the decision by the WHO perplexing.

"I find the conclusions surprising given that there is increasingly strong evidence that cellphone use has no association with brain cancer occurrence," said David A. Savitz, a professor in the departments of epidemiology and obstetrics and gynecology at Brown University and a researcher on environmental exposures and health. "With few exceptions, the studies directly addressing the issue indicate the lack of association."

Cellphone use was categorized as possibly carcinogenic to humans by the International Agency for Research on Cancer, which develops scientific cancer-prevention strategies for the WHO. The agency's other four categories for the various risk factors analyzed are: carcinogenic to humans, probably carcinogenic to humans, not classifiable, and probably not carcinogenic to humans.

Scientists have long debated the potential cancer risk linked to cellphone use, but this statement marks the first time an independent group of scientists has taken anything other than a neutral stand.

"This is a major scientific consensus conference that has basically implicated cellphone radiation with increased tumor risk," said Joel M. Moskowitz, director of the Center for Family and Community Health at UC Berkeley's School of Public Health and a longtime advocate of more research on the potential cellphone-cancer link. "I think they are particularly concerned about cellphones just because of the widespread utilization. It's not like it's some esoteric chemical used by industry that they think may be carcinogenic. Everyone is exposed to cellphones."

The panel based its conclusions primarily on data from the multi-country Interphone studies that were coordinated by the International Agency for Research on Cancer as well as research by Swedish cancer researcher Lennart Hardell. The Interphone data showed that people who used a cellphone for 10 or more years had a doubled risk of glioma, a cancer that arises in the tissue surrounding and insulating brain cells. One study showed a 40% increase risk of gliomas for people who used a cellphone an average of 30 minutes a day over a 10-year period.

A 2004 study put the increased risk of acoustic neuromas at twice the normal risk after 10 years of cellphone use and higher for tumors on the side of the head where the phone is typically placed.

There is too little evidence to draw conclusions about other types of cancer, the report stated, including a 2009 study by Israeli researchers that linked cellphone use and cancer of the salivary gland.

But Savitz said the data are not compelling even for gliomas and acoustic neuromas. The more studies that are published on cellphones and health, he said, the more evidence accumulates that there is no increased cancer risk.

Many scientific questions remain, such as the lifetime risk for people who begin using cellphones as children and how cancer cells might arise from radiofrequency energy. But although the report will probably spur more calls for research, it's not clear how much it will affect government policies, the cellphone industry or consumers, experts said.

Groups representing the wireless industry downplayed the significance of the report, noting that the WHO placed radiofrequency electromagnetic fields in the "possibly carcinogenic" category, along with 265 other risk factors studied, including gasoline and occupational exposure to dry cleaning.

Coffee and pickled vegetables are also listed as "possibly carcinogenic," noted John Walls, vice president for CTIA-the Wireless Assn., in a statement issued Tuesday.

"This is not groundbreaking. It is a review of what already existed," Walls said in an interview. "It's not the revelation that some would like to make it out to be."

The report acknowledged public interest in the issue and listed measures for consumers, such as using headsets, speaker phones or text messaging, to reduce the amount of radiation reaching the brain. Radiofrequency energy drops off quickly, Moskowitz said: Moving a cellphone from 1 inch to 10 inches away from the head reduces radiofrequency energy a hundredfold.

A summary of the panel's findings will be released online at the WHO website and published in the July 1 issue of the journal *Lancet Oncology*.

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*Gabler is a writer for the Chicago Tribune.*