

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF THE CITY OF SANTA CLARA, CALIFORNIA

The City of Santa Clara, California (the “City”) files these reply comments in the above-captioned proceeding. On page 17 of AT&T’s Comments, AT&T states:

Local jurisdictions are even opposing AT&T’s attempt to deploy Distributed Antenna Systems (“DAS”) that use much smaller antennas placed on existing utility poles. For example, Silicon Valley and at least two cities – Mountain View and Los Altos – have taken the position that AT&T cannot place antennas on a pole-top extension extending a few feet above existing utility poles. They contend that the antennas would violate the residential height restriction – even though there is no zoning height restriction for the public rights of way, and normal zoning requirements do not usually extend to public rights of way. In fact, if that were the case, all utility poles in residential areas would exceed the zoning height limitations.¹

There is no city or town named “Silicon Valley” as referenced above, but the City of Santa Clara is near Mountain View and Los Altos, and its municipally-owned electric utility is named Silicon Valley Power (“SVP”). The reference is either to a non-existent locality or is to the City or SVP. Either way, it is inaccurate. AT&T has *never* sought access to SVP poles for placement of wireless facilities (as far as the City is aware) and neither SVP nor the City has ever

¹ *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of AT&T Inc. (July 18, 2011) (“AT&T’s Comments”).

denied such access. In fact, the City has aggressively promoted broadband deployment, and SVP has leased space on its poles to other wireless providers.

The AT&T complaint merely serves as an illustration of the points made in comments filed by national associations² urging the Commission to refrain from imposing federal regulation on local right-of-way and zoning processes: namely, there is no significant problem here.

I. INTRODUCTION

The City of Santa Clara, California (“City”) is located about 45 miles south of San Francisco, in the heart of Silicon Valley. Founded in 1852, it is now a community of about 116,000 residents. It has thriving commercial and industrial centers, with more than 9,400 businesses, including many of the world’s top technology firms such as Intel, Applied Materials, Oracle (formerly Sun Microsystems), NVIDIA, Agilent Technologies, and BAE Systems. It is consistently rated one of the most affordable cities in the nation for business. The City prides itself on offering high quality customer service in all that it does, taking what it terms a “High Tech, Human Touch, H2”™ approach to serving the community’s needs.³

Silicon Valley Power (“SVP”) is a municipal electric utility formed by the City in 1896, which has continually grown over more than 100 years, to consistently provide low cost, highly reliable electricity service to meet the very diverse needs of its residents and high tech

² *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officers Association, the American Public Works Association, and the International City/County Management Association (July 18, 2011) (“National Associations’ Comments”).

³ For more information about the City, see <http://santaclaraca.gov> and www.movetosantaclara.com.

businesses. In addition to power generation facilities, SVP's system includes 53.5 miles of transmission lines, 337.1 miles of underground distribution lines, 188.2 miles of aboveground distribution lines, and 7,999 street lights.⁴

Right of way access is handled by the City separately from access to poles and facilities owned by SVP. That is, SVP is responsible for its own equipment and facilities, while other City departments handle zoning issues and issues with respect to construction and operations of the streets. A person who wishes to use a pole owned by SVP will need an agreement with SVP. A person who wishes to use the rights of way will require a franchise from the state of California, or from the City, and must abide by requirements established by the City for use of the rights of way. These requirements have traditionally been included in an "encroachment agreement." An encroachment agreement establishes uniform requirements that apply to all uses of the rights of way (obligation to comply with safety codes, for example). Particular activities, like trenching, require permits that establish the additional requirements necessary in light of the specific work planned (traffic control plans and the like).

II. BROADBAND DEPLOYMENT WITHIN THE CITY IS WIDESPREAD AS THE CITY HAS FACILITATED NUMEROUS DEPLOYMENTS AND IS CONSTANTLY IMPROVING ITS PROCESSES

It is no surprise that being in the heart of Silicon Valley means there is significant demand for superior broadband capabilities. Clearly, the City has not served as a barrier to broadband deployment; to the contrary, there are numerous providers in the city.

⁴ For more information about SVP, see www.siliconvalleypower.com.

PROVIDERS	SERVICES	% of City of Santa Clara Covered
WIRESLINE PROVIDERS		
AT&T	Wireline (telephone provider)	100%
CELL PHONE PROVIDERS		
AT&T (22 towers)	Wireless Internet Provider, Wireless Communications, Cellular Telephone	100%
Sprint (2 towers)	Wireless Internet Provider, Wireless Communications, Cellular Telephone,	100%
T-Mobile (9 towers)	Wireless Internet Provider, Wireless Communications, Cellular Telephone,	100%
Verizon (13 towers)	Wireless Internet Provider, Wireless Communications, Cellular Telephone,	100%
BROADBAND INTERNET SERVICE (Wireless, DSL, ISP) PROVIDERS		
AT&T	Wireless Internet Provider, Wireless Communications, Internet Service Provider (ISP)	100%
Atroad Inc.	Wireless Internet Provider	N/A
Aviatnet	Wireless Internet Provider	N/A
Charter Communications	Wireless Internet Provider and ISP	
City of Santa Clara, Metro Wi-Fi	Outdoor Wireless Network	70%
Comcast	Digital Cable with HD and On Demand, High-Speed Internet, and digital phone service (ISP)	100%
Cox Business	Wireless Internet Provider and ISP	N/A
Cricket Wireless	Wireless Internet Provider	N/A
Earthlink	Wireless Internet Provider and ISP	N/A
Kineto Wireless	Wireless Internet Provider and ISP	N/A
Sonic Net Inc. Services	Wireless Internet Provider and ISP	N/A
Speakeasy Business Broadband	Wireless Internet Provider and ISP	N/A
Telekom Malaysia USA Inc.	Wireless Internet Provider and ISP	N/A
CABLE AND SATELLITE TV		
AT&T	U-Verse (TV, High Speed Internet, and Phone Services)	N/A
Comcast	Digital Cable with HD and On Demand, High-Speed Internet, and digital phone service	N/A
Direct Sat TV (DirectTV)	Wireless Internet Provider and Satellite & Cable TV	N/A
Dish2U Network TV	Wireless Internet Provider and Satellite & Cable TV	N/A
Charter Cable TV	Wireless Internet Provider and Satellite & Cable TV	N/A

The City has not only facilitated the deployment of these multiple private sector broadband networks to serve the demands of its residents and businesses, it is constantly looking for ways to improve its processes. For example, one of the City's innovations is the development of a one-stop Permit Center located physically in City Hall, and with additional online access to relevant information, policies, guidelines, maps, forms, etc available for reference and applications that can be filled out and submitted by fax as well as in person.⁵ Starting July 27, 2011, the online system was further upgraded to allow online submission of applications and paperless permitting.⁶ For its efforts in this and other areas, the City's IT department has received numerous awards for excellence in information technology practices from the Municipal Information Systems Association of California (MISAC).⁷

While the City is constantly looking for ways to streamline, we also recognize a strong need to be rigorous in permitting. In our community, the deployments are so dense and residents and businesses are so dependent on broadband that careless actions in right of way could interrupt communications by companies that are critical to the communications infrastructure for the country.

III. AT&T'S ASSERTION THAT THE CITY AND SVP OPPOSE DISTRIBUTED ANTENNA SYSTEM ("DAS") DEPLOYMENTS ON UTILITY POLES IS FALSE

As demonstrated above, the City has not deterred broadband deployment in any respect. If AT&T is directing a complaint at the City or SVP, at most, the Commission would be facing a complaint from a single provider and not one that is indicative of some broader problem. More importantly, AT&T simply fails to tell an accurate or complete story.

⁵ See the City's Permit Center at this link: <http://santaclaraca.gov/index.aspx?page=1012>.

⁶ See the City's new Online Permit at this link: <https://pwp.santaclaraca.gov:8443/apps/shell.html?jsxapppath=../gihome/JSXAPPS/SCCP/>.

⁷ For a list of awards see <http://santaclaraca.gov/index.aspx?page=1523>.

The reference to “Silicon Valley” in AT&T’s Comments is perplexing on many levels. First, AT&T offers absolutely no evidence to support its statements about SVP, and the statements are in fact inaccurate. SVP employees involved in decisions to allow attachments to SVP facilities are unaware of any actual request having been made by AT&T to place antennas on SVP’s utility poles. Moreover, as far as the City is aware, neither the City, nor SVP has taken the position that AT&T cannot place antennas on electric utility poles. At the time that AT&T filed its comments in this proceeding quoted above, SVP and AT&T were negotiating a reciprocal pole attachment agreement but that agreement covered wireline attachments only. AT&T never suggested that it should address wireless facilities as well. The agreement is in the final stages of negotiations. That is, AT&T is simply misstating the City’s position with respect to attachment to poles from the perspective of SVP.

In any case, even assuming that SVP were somehow refusing to allow the attachment to its poles (which it is not), that refusal would provide no basis for action by the Commission because the Commission does not have any jurisdiction over SVP’s poles. Not only are municipal poles specifically excluded from the federal Pole Attachments Act, 47 U.S.C. § 244(a)(1), the State of California is among the numerous states that have certified that they regulate pole attachments.⁸

Furthermore, AT&T’s broader allegation that the City or SVP “opposes” DAS deployments is simply untrue. As mentioned earlier, SVP has 7,999 street lights. The City and SVP have allowed numerous small antennas to be deployed on SVP’s street lights, including from DAS providers. Currently, six telecom providers have pole contact agreements with the

⁸ See STATES THAT HAVE CERTIFIED THAT THEY REGULATE POLE ATTACHMENTS WC Docket No. 10-101, DA 10-893 (May 19, 2010) http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-10-893A1.doc.

City of Santa Clara including, AT&T, Comcast, MCI Metro Access Transmission, Paxio Communications, PG&E, and Sunesys, LLC. Attaching small antennas to street lights can be preferable as a less complex undertaking because installations on street lights generally involve less difficult technical installation and maintenance issues, and worker safety concerns than installations on electric utility poles. For example, for installations on utility poles, one must consider both the safety of the telecom workers working in proximity to energized electric facilities but also that of electric utility workers doing work in proximity to transmitting communication antennas. While there may be a preference for the relative simplicity of installing antennas on street lights, that is not to say that the City or SVP would not consider an application to install antennas on utility poles. The fact of the matter is there have been no such utility pole applications, and certainly none from AT&T.

AT&T has also caused delays in broadband deployment by being unwilling to abide by City's rules that other utilities follow. For example, AT&T slowed its own U-verse deployment because it would not enter into an encroachment permit to install its facilities and insisted the City develop an ordinance (which the City did).⁹

IV. THE CITY STRONGLY SUPPORTS THE NATIONAL ASSOCIATIONS' COMMENTS OPPOSING FEDERAL REGULATION OF LOCAL RIGHTS OF WAY AND WIRELESS SITING

AT&T's filing illustrates one reason why the City joins the National Associations in opposing federal action – if the cryptic and inaccurate statements made by AT&T about the City and SVP are representative of the “evidence” being offered by industry to support claims that local governments are a “barrier” to broadband deployment, then there is simply no credible basis for federal action. It is noteworthy that none of the high tech companies located in Santa

⁹ This example is also cited in the National Associations' Comments at 36.

Clara have filed comments decrying the City's policies as a "barrier" to broadband deployment. The communications industry has simply not made its case.

Even if communications industry filings do reveal *some* legitimate problems experienced by *some* providers in *some* locales, there still is absolutely no justification for federal action. As mentioned earlier, the City has over many decades developed and implemented policies that have attracted and sustained a successful high tech industry, maintaining Santa Clara's place at the center of Silicon Valley. It is rightfully proud of these achievements and continues to strive to make improvements. But because these efforts are designed to meet *local needs and conditions* in the city, it would be inappropriate, unnecessary and potentially disruptive and dangerous for the Commission to substitute rules and models of the Commission's own making for the ones successfully implemented by the City.

Moreover, the City is concerned that federal regulation in this area may hamper cities from experimenting with different models and approaches to spur broadband deployments. Giving localities broad flexibility to try new arrangements – and to abandon them if they do not work – may be critical to the development of successful deployment and adoption strategies. An inflexible federal rule will stifle local innovation.

Nor is mandatory federal regulation of these local matters what our federal system envisions. Thus, the City strongly supports the National Associations in their call for the Commission to defer in these local deployment matters to the experts – the local governments – and to focus Commission efforts on other areas more appropriate for national policy action such as broadband literacy, barriers to broadband adoption, and broadband deployment in rural areas, to name a few.

V. CONCLUSIONS

The City urges the Commission to conclude that local right of way and facility management processes and charges are not impeding broadband deployment. There is no evidence that the City's or SVP's policies have impaired any company from providing broadband service in Santa Clara; in fact, Santa Clara has promoted and encouraged broadband deployment with great success. There are many reasons to believe that federal regulations would prove costly and disruptive to our community, and stifle our efforts to develop innovative and flexible processes.

September 30, 2011

Respectfully submitted,



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