

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 GREATER METRO TELECOMMUNICATIONS
CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, THE
CITIES OF TACOMA AND SEATTLE, AND KING COUNTY WASHINGTON, AND THE
COLORADO MUNICIPAL LEAGUE**

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EXHIBITS:

EXHIBIT A - Westminster, Colorado Application for Private Use of Public Property for Telecommunications Facility

EXHIBIT B - King County, Washington correspondence from Stephen L. Salyer dated September 29, 2011, regarding consultants

EXHIBIT C - Lacey, Washington memorandum dated September 4, 2011 regarding Review and Permitting of Wireless Cell Towers

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These Reply Comments are filed by the Greater Metro Telecommunications Consortium (“GMTC”), the Rainier Communications Commission (“RCC”), the cities of Tacoma and Seattle, Washington (“Tacoma” and “Seattle”), King County, Washington (“the County”), and the Colorado Municipal League (“CML”) (collectively referred to as “the Local Governments”). The Local Governments filed Comments on July 18, 2011 in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. After review of other Comments filed in this proceeding; the Local Governments seek to provide additional information for the Commission’s consideration.

I. INTRODUCTION

The Local Governments believe that the Comments filed in this proceeding overwhelmingly indicate that there is no broad based, consistent local government problem on a national level that requires a federally imposed, one-size fits all rule to “fix.” Further, based upon the legal analysis in the Comments and Reply Comments filed by 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, the International City/County Management Association and the American Planning Association (the “National Associations”), the Commission lacks the legal authority to adopt the rules sought by industry.¹

In these Reply Comments, the Local Governments will address a number of the arguments and policy preferences proposed by the industry. We will explain why those industry positions demonstrate little more than a misunderstanding of how local government works, and a request for a special set of rules for the wireless industry that are not available to any other public or private sector entity seeking land use or permitting approval from a local government. Further, while very few of these Local Governments were cited by industry commenters as bad actors, these Reply Comments will address those complaints and those made about some of our neighbors, and will describe for the Commission the actual practices that have occurred on the local government level with respect to rights of way permitting and wireless facilities siting.

In the course of preparing these Reply Comments, the Local Governments have been provided with information relevant to the industry claims related to Thurston County, San Juan County and the City of Lacey, Washington. These Reply Comments will additionally contain the responses of these three jurisdictions.

¹ Comments (July 18, 2011) and Reply Comments (September 30, 2011) 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, the International City/County Management Association and the American Planning Association (the American Planning Association was not a party to the Comments and has joined the National Associations in the filing of the Reply Comments).

Finally, these Reply Comments will also describe why a one size fits all rule is bad policy, and will not impact broadband deployment, especially in rural America.

II. INDUSTRY COMMENTS DEMONSTRATE A MISUNDERSTANDING OF LOCAL GOVERNMENT OPERATIONS

A. Changing and Upgrading Equipment

Verizon Wireless asserts that changing or upgrading equipment on existing wireless facilities is not the kind of local authority that Congress intended to preserve in Section 332(c)(7) of the Telecommunications Act of 1996. It asks the Commission to declare these kinds of activities outside the scope of local control.² Local governments hold police powers to address issues related to public health, safety and welfare. Included in these police powers is the authority to ensure that construction within local government boundaries complies with all applicable, local, state and federal building codes, safety codes, and other similar codes that affect the safety of construction. A property owner installing new windows is required to obtain a building permit from the local jurisdiction, even though that property owner is simply “changing” equipment. Installation of new plumbing fixtures, a new roof, or a new fence, requires similar approvals, including often times, inspection and sign off by a local building official.

A wireless provider may change equipment on a vertical structure that has received prior land use approval, and the new equipment may look substantially the same as the equipment it replaces. However, it still needs to be installed in compliance with the National Electrical Code and the National Electrical Safety Code. While the facility may look the same, the weight of the attachment might be different, and that might affect the structural integrity of the facility it is attached to, or the ability to safely withstand climate challenges like wind or ice, which may be a factor in that jurisdiction. Additionally, while the federal government sets standards for radio

² Comments of Verizon and Verizon Wireless (hereafter “Verizon”), pp. 2, 10.

frequency emissions, it is within the purview of the local government to ensure that when new equipment is placed upon a previously approved site, the emissions from that new equipment will be within the federal standards. There is nothing in the Telecommunications Act of 1996 or in its legislative history³ that would support a claim that Congress intended to either directly preempt this local police power authority, or to delegate such preemptive authority to the Commission.

B. The Use of Consultants is Customary and Proper for Both Industry and Local Governments.

A number of industry commenters criticize local government use of consultants to evaluate applications for wireless facilities.⁴ Without providing any basis for its claims, PCIA asserts that zoning of wireless facilities is no more complicated than other zoning matters, and that no experts are needed to assist a local government in its evaluation.⁵ This statement is simply wrong for a number of reasons.

Most local zoning proceedings involve local, and at times, state law, as interpreted by state court decisions. Most local zoning proceedings do not involve federal statutes nor do they involve a limited ability on the part of the local government to seek a demonstrated compliance with technical regulations that have been approved by a federal agency. Most small and medium sized communities see very few land use and/or rights-of-way permitting applications that require an understanding of federal statutes and regulations, when compared with the number of the more common applications related to housing, parks, or retail and commercial development.

In addition, most small communities, and many medium sized jurisdictions lack full time staff available to review specialized elements of a land use application. None of the industry commenters recognize this fact, and importantly, that the need for such expertise is not limited to

³ Indeed, Verizon cites to no such authority.

⁴ Verizon Comments, p. 16; PCIA Comments, pp. 23-24; CTIA Comments, p. 21.

⁵ PCIA Comments, p. 23.

wireless facilities. It is not uncommon for local governments (including many communities that comprise these Local Governments) to retain consultants in connection with local land use applications for traffic engineering, drainage and ground water engineering, structural engineering and other specialties. Moreover, it is common for local government codes to include an obligation for the applicant to pay for the costs of these services.⁶ Industry commenters in this proceeding are simply wrong to allege that this is not a long standing practice for local governments that extends far beyond wireless facilities.

It is also hypocritical for industry commenters to criticize local governments' use of consultants when industry applicants for wireless facility sites utilize consultants as much, if not more, than local governments. As an example, Westminster and Cherry Hills Village, Colorado have had applications in the recent past from a variety of wireless providers including AT&T, Verizon Wireless, NewPath Networks (now Crown Castle), Sprint, Clearwire and Light Squared. While some of the interactions related to applications are with the providers, in many cases these municipalities have been addressing application issues with the consultant retained by the provider to process the application – entities that include Black & Veatch Corp., Planning & Zoning Consultants, Inc., Trinity One Group, LLC, Marken Telecom Services, and Bauman Consultants. The Local Governments do not criticize the fact that the industry uses consultants. We simply point out that an industry attack on the use of consultants is both hypocritical and demonstrates a lack of understanding of how the local land use process works. Moreover, it seeks to carve out special rules that would exempt the wireless industry from long standing practices that have worked effectively for both local governments and applicants in most other kinds of

⁶ For example, see City of Dacono, Colorado provisions for reimbursement of consultant costs (not limited to wireless matters) at <http://www.ci.dacono.co.us/DocumentView.aspx?DID=530>.

land use applications. It is common for the industry to demand that fees be limited to costs, in a variety of settings. Here the communications industry goes one unreasonable step further, and asks for a free pass to avoid the responsibility for the actual costs that most local governments reasonably incur in the processing of land use and rights-of-way applications – costs that are paid for by all other industries.

The NOI asks whether the Commission can assist in the faster deployment of broadband networks by helping to educate local governments.⁷ The Local Governments suggest that the Commission can assist by focusing efforts working with the industry to educate industry consultants about the need to carefully review and follow local government procedures when filing applications for land use approval. We are not privy to the specifics of how industry applicants compensate their consultants, and suspect that the Commission is not either. However, we understand that in some cases, industry consultants may be paid by the number of real estate locations identified and the number of requests filed for local government approval. If compensation is tied to the number of applications made (as opposed to permits granted) this would suggest a lack of any incentive for industry consultants to take the time to carefully review and understand local filing requirements. As an example, Westminster requires that when seeking approval for new attachments on a previously approved City-owned site, the applicant must provide drawings depicting the new facilities. The instructions, attached as Exhibit A, describe the type of information required, and the size (24 inches by 36 inches) of the drawings. Despite clear instructions, it is common for consultants for applicants to make their submissions on the wrong sized documents. This results in the service providers having to endure delays in the City's application review. The Commission can assist local government efforts to reduce the time

⁷ NOI at paras. 36, 37.

needed to approve site applications by obtaining information about how the industry retains and compensates its consultants, and encouraging the industry to work with its consultants to understand and properly follow local application requirements.

III. INDIVIDUAL COMMUNITY CRITICISM IS UNFOUNDED

Individual industry comments mentioned two members of these Local Governments by name, with limited descriptions of alleged facts surrounding a particular complaint. In addition, the PCIA Comments contained an exhibit which listed four members of these Local Governments among the hundreds of others on that list – with absolutely no allegations of specific facts related to a particular complaint.⁸ These Reply Comments will address the allegations with as much detail as possible, given the difficult task of addressing complaints that contain no dates, names of applicants, and in the best cases, only partial allegations of a problem.

A. NextG Complaint Against Seattle, Washington.

In its complaints about municipal electric utilities, NextG alleges that “attempts to deploy DAS facilities in Seattle, Washington have been met with significant resistance by the municipal utility (Seattle Power and Light) to allow pole attachments at reasonable rates that would allow NextG to construct its facilities within Seattle.”⁹

Seattle needs to correct the record. First, the municipal utility is Seattle City Light (“SCL”), not Seattle Power and Light. Second, *SCL has had a signed contract in place with NextG since 2005*. The rates were negotiated by NextG at that time. There is no resistance by SCL to allow NextG to attach facilities to poles at their agreed upon rate.

In addition, SCL has another DAS provider in its service territory that is paying this same rate. There is no reason to offer NextG a lower rate, as that would give NextG an unfair

⁸ PCIA Comments at Exhibit B.

⁹ NextG Comments at p. 29.

competitive advantage. NextG's allegations demonstrate the lack of a basic understanding of the agreement it negotiated with SCL.

Regarding the reasonableness of SCL rates compared to other jurisdictions, the only other entity in the area that presently allows wireless facilities on distribution poles is Puget Sound Energy ("PSE"), which covers a wide swath of jurisdictions. SCL undertook a rate study in 2005, which found that PSE charges on a sliding scale depending upon the equipment on the pole. Therefore, PSE rates can vary, and at present it is charging between \$1,200 and \$3000 per pole. SCL's current DAS rate is \$1,771.45 and increases 4% annually. Clearly, SCL's rates are within the market.

B. PCIA Complaint Against Jefferson County, Colorado.

In its discussion of rights-of-way regulations and the impact on deployment of DAS facilities, PCIA mentions that in Jefferson County, Colorado the local regulations conflict with the regulations of the Colorado Department of Transportation.¹⁰

Jefferson County is unable to respond to the allegation made by PCIA without further information. The footnote to the PCIA's comment asserts only that a DAS forum member reports that Jefferson County, Colorado takes the position that it has jurisdiction over wireless telecommunication attachments in the right of way. While it is true that Jefferson County claims jurisdiction over wireless attachments in the right of way, it is inaccurate to suggest, however, that the County's position conflicts with Colorado Department of Transportation regulations or other Colorado law. In fact, the cited regulations themselves recognize a county's right to regulate utilities in the right of way. See 2 CCR 601-18:1.2.2 ("The Commission's specific authority is consistent with the concurrent authority granted by the State Legislature...to local agencies

¹⁰ PCIA Comments at p. 29, n. 105.

regarding utilities facilities in public highway right-of-way.") The only rights of way within the County where the County might not have jurisdiction under the cited regulations would be State highways. However, it is not clear from the PCIA comment if the DAS Forum member reported that Jefferson County asserted jurisdiction over a State highway or if the State had delegated jurisdiction to the County as applicable to any specific license application.

Without more detailed information about the license applicant or other party from the DAS Forum that has made these allegations or about the specific incident from which they stem, or which regulation was allegedly violated, it is not possible for Jefferson County to directly address the allegations. The allegations alone do not necessarily indicate any wrongdoing on the part of Jefferson County, Colorado, due to the limited scope of the Colorado Department of Transportation regulations and to the jurisdiction exercised properly by the County over wireless facility installations within rights of way under the regulatory scheme.

C. PCIA Complaint Against Puyallup, Washington.

The Local Governments join in the Reply Comments discussion of the National Associations regarding the deficiencies of PCIA's Exhibit B, and its lack of evidentiary value in this proceeding. PCIA includes Puyallup, Washington in its list of communities that utilize "problematic consultants."¹¹ After the passage of the Telecommunications Act of 1996, there was a significant increase in the wireless industry's attempts to site facilities, which included facilities located on public property. In approximately 1997, Puyallup engaged a consultant to assist in determining reasonable values for city owned property that might be considered for use as wireless facility sites. Having this information allowed the City to act in a timely manner when approached by industry about a site.

¹¹ PCIA Comments at Exhibit B.

Puyallup used no other consultants in connection with siting wireless facilities until 2008. Since that time, in all cases but one, the City only used a consultant in connection with lease negotiations for wireless facilities on City owned property. The City *has not* used a consultant for zoning issues.

On one occasion, the City had a difficult rights-of-way issue to address with T-Mobile. T-Mobile was told by former assistant city attorney that it did not have a right to access City rights-of-way and T-Mobile objected pursuant to the City Code. The then new city attorney brought in an outside consultant to address the issue in 2008. That consultant worked with the City to prepare a franchise agreement permitted under state law, which granted authority to access rights-of-way throughout the City to T-Mobile. The City presented that franchise agreement to T-Mobile, but T-Mobile ignored it and made no further attempts to locate facilities in Puyallup. In this case, *it was the use of a consultant that facilitated the City's ability to review the industry request*, and the applicant chose to go no further.

It should be noted that pursuant to Washington state law, since the early 1980s cities cannot assess franchise fees on telecommunications facilities in the rights-of-way. However, cities can impose utility taxes. Local governments are authorized by state law to recover costs incurred in connection with negotiating fees related to granting telecommunications permits and franchises.¹² In 2000, the state passed additional legislation regarding wireless facilities in the rights-of-way, which addressed when local governments can assess site fees on wireless facilities.¹³

The limited use of consultants by Puyallup has been in accordance with state law, and has *never* impeded any application for a permit or other required land use authorization to locate

¹² RCW 35.21.860.

¹³ RCW 35.99.

wireless facilities. If the Commission chooses not to follow the National Associations' recommendation to disregard PCIA's Exhibit B, it should still disregard the unsubstantiated complaint regarding Puyallup, Washington.

D. PCIA Complaint Against King County, Washington.

PCIA includes King County, Washington in its list of "problematic consultants."¹⁴ This is another unsubstantiated and false statement. The County has not utilized consultants in connection with its review of applications for wireless site agreements. Moreover, the County has not been made aware of these alleged problems by PCIA or any individual wireless provider. See, correspondence from Stephen L. Salyer, Manager of the County's Real Estate Services section, dated September 29, 2011 and attached as Exhibit B.

E. PCIA Complaint Against Lacey, Washington.

PCIA includes Lacey, Washington in its list of "problematic consultants."¹⁵ While Lacey is not one of the participating Local Governments in this filing, it has given the Local Governments information in order to address that complaint in our Reply Comments. A memorandum describing Lacey's experience with wireless facilities applications over the past seven years is attached as Exhibit C. Lacey does not report any delays or rejected applications related to the use of consultants. Without detailed allegations from PCIA regarding Lacey's alleged use of problematic consultants, PCIA's unfounded claims must be disregarded.

F. PCIA Complaint Against Seattle, Washington.

PCIA names Seattle as an entity that requires full discretionary hearings for co-locations.¹⁶ This is not entirely accurate. The types of wireless communications equipment addressed in

¹⁴ PCIA Comments at Exhibit B.

¹⁵ PCIA Comments at Exhibit B.

¹⁶ PCIA Comments at Exhibit B.

PCIA's Comments are covered by the term "Minor Communications Utility" in Seattle's Municipal Code ("SMC").¹⁷ Minor communications utilities located entirely within a structure are always allowed except in a single family zoning district.¹⁸ In certain zoning districts wireless facilities are permitted uses, and in those districts applicants need only apply for building permit. Therefore, only those applications that have visual impact and are located in zoning districts requiring review of the Department of Planning and Development are required to go through the discretionary review process.

In those zoning districts where exterior wireless facility placement is not permitted by right, an applicant must present sufficient information to meet certain criteria, including a showing that the proposed facility is least intrusive facility in the least intrusive location. The public is given the opportunity to informally provide input in writing and on rare occasions, in a meeting with City staff. There is no sworn testimony at a formal hearing. After the application is reviewed, a representative of the Director of Planning and Development makes an administrative decision, granting or denying the application. While this process involves discretion, it is not a formal administrative hearing. It cannot be disputed that more antennas create more visual impact. The City's review and decision process is intended to take these issues in account in a reasonable and timely manner.

The Commission should also recognize that the system works reasonably well. The City

¹⁷ "Communication utility, minor" means a use in which the means for radiofrequency transfer of information are provided but do not have significant impacts beyond the immediate area. These utilities are smaller in size than major communication utilities and include two-way, land-mobile, personal wireless services and cellular communications facilities; cable TV facilities; point-to-point microwave antennas; FM translators; and FM boosters with under ten watts transmitting power. A minor communication utility does not include wire, cables, or communication equipment accessory to residential uses; nor does it include the studios of broadcasting companies, such as radio or television stations, which shall be considered administrative offices even if there is point-to-point transmission to a broadcast tower. SMC 23.84A.006 "C".

¹⁸ SMC 23.57.009.B.

receives approximately 20 – 30 applications per year, and on average, only 1 or 2 are appealed.

G. PCIA Complaint Against Thurston County, Washington.

PCIA names Thurston County, Washington as an entity that requires full discretionary hearings for co-locations.¹⁹ Like Lacey, Thurston County is not one of the participating Local Governments in this filing, and it has given the Local Governments information in order to address that complaint in our Reply Comments. PCIA’s allegations are a misrepresentation of the Thurston County Code.

Section 20.33 of the Thurston County Code recognizes four types of wireless facilities.²⁰

(1) A freestanding facility is a typical tower on which antennas are attached. This facility requires a full discretionary special use permit with approval by the hearing examiner after a public hearing. (2) A remote freestanding facility is also a typical tower, but is located in a forestry or military zone more than 1000 feet from the nearest residential property. It requires a limited discretionary administrative special use permit. No hearing is required and the decision is made by staff. Based on height above the tree line, this type of facility may convert to a full special use permit process. (3) An attached facility includes antennas attached to existing structures such as buildings and water towers. Such facilities require a limited discretionary administrative special use permit. No hearing is needed. The decision is made by staff. (4) Co-location includes placement of antennas on existing towers. Such facilities require a limited discretionary administrative special use permit. No hearing is needed. The decision is made by staff. A simple review of the County Code, which is available on line, would have informed PCIA that its allegations were false.

¹⁹ PCIA Comments at Exhibit B.

²⁰ <http://library.municode.com/index.aspx?clientId=16720&stateId=47&stateName=Washington>.

H. PCIA Complaint Against San Juan County, Washington.

PCIA names San Juan County, Washington as an entity that requires full discretionary hearings for co-locations.²¹ Like Lacey and Thurston County, San Juan County has provided information to the Local Governments to include in these Reply Comments. San Juan County, Washington is comprised of 176 named islands and reefs in the north westernmost part of Washington, with many of the most scenic view corridors in the state. It has traditionally been difficult to deploy wireless facilities on the islands.

Recognizing the need for better wireless coverage, the County has undertaken a comprehensive effort to rewrite its code provisions to encourage more deployment. This process has involved significant citizen and industry input. The new code provisions, which generally call for public input for readily visible new sites, and a shorter, administrative approval process for less visible and co-located sites, have been recommended for approval by the County Planning Commission. In the near future the ordinance will be presented to the County Council for consideration.

What makes PCIA's allegations against the County disingenuous, is the fact that PCIA knows the County is in the process of revising its code provisions, and withheld that information from the Commission. In fact, PCIA corresponded with the County about problems it saw in the Planning Commission's draft ordinance, and has subsequently has been invited *on two occasions*, to participate in the process to revise the code. PCIA has had a seat at the table in shaping this new ordinance and the County's legal counsel is taking PCIA's legal concerns into consideration. A final ordinance has not even made its way to the County Council. PCIA's allegations against the County should be disregarded, both for its inaccuracy, and for PCIA's failure to advise the

²¹ PCIA Comments at Exhibit B.

Commission that it has been provided opportunities to work cooperatively with the County to revise the code.

I. The Local Governments' Responses Demonstrate No Issues Requiring Federal Intervention.

The complaints made against these Local Governments are inaccurate, and lack any specific factual foundation necessary to provide the accused with enough information to offer a more detailed response. The industry commenters have ignored the Commission's directive to provide a detailed, factual basis in support of their complaints.²² As the National Associations point out in their Reply Comments, most of the allegations of the industry comments, and certainly the laundry list of local governments cited in PCIA's exhibit, can not be relied upon as evidence in support of any suggested Commission action.

IV. ONE SIZE FITS ALL RULES ARE NOT NEEDED, AND WOULD NOT PROMOTE BROADBAND DEPLOYMENT

A review of all industry comments does disclose two interesting points. First, at least one industry commenter notes that in the majority of cases, local governments act in a timely and appropriate manner.²³ As described in more detail in the National Associations' Reply Comments, the record in this proceeding supports the original Congressional intent and statutory language to review local land use and permitting activities on a case-by-case basis. Second, the Commission must recognize what is absent from all of the industry's comments – the lack of any assurance that any Commission imposed rules (whether such rules relate to timing of local action, or caps on fees) will result in more deployment of broadband infrastructure.

The record clearly demonstrates both the need for more deployment in rural America *and* a lack of any restrictive local regulatory regime governing deployment in these areas. Yet

²² NOI at para. 9.

²³ Verizon Comments, p. 16.

nowhere in the industry plea for special rules does the industry promise the Commission that its broadband goals will be more readily met if such rules are enacted. Indeed, the historical record is clear that when state governments have given the telecommunications industry a free pass on fees and costs that are paid by other industries, there is absolutely no correlation to any increased broadband deployment in these states.²⁴

Finally, it is interesting, but not helpful, for the industry to promote “race to the top” type recognition for local governments that streamline their regulatory regimes.²⁵ Unlike the cited race to the top activity where the Knight Foundation has promised financial rewards for the winners, the industry offers no promises of increased broadband deployment for local governments recognized as race to the top winners. If the industry believes that a certificate of recognition from the Commission will create a real incentive for local governments to facilitate broadband deployment, perhaps the Commission should offer similar recognition for communications providers that deploy broadband infrastructure to unserved and underserved parts of the United States. Will a certificate of recognition from the Commission incent the private sector to deploy more broadband in rural America?

V. CONCLUSION

The industry’s record in this proceeding is filled with unverified, anecdotal allegations that should be disregarded by the Commission. The complaints demonstrate both a misunderstanding of local processes, and a disingenuous request for special treatment. Local governments regularly engage consultants with special expertise to provide needed information in a wide variety of land use matters – including, but certainly not limited to the siting of wireless facilities. It is indeed the *regular practice* of local governments to charge fees of land use applicants to cover the costs of

²⁴ GMTC, et. al Comments, pp.28-30; National Association Comments, pp. 9-16.

²⁵ PCIA Comments, p. 52; CTIA Comments, p. 28.

the application review process, including costs incurred in utilizing outside expertise needed to evaluate applications. By requesting Commission action to limit the use of consultants and to prohibit local government cost recovery, the industry asks for a special set of rules, whereby all local land use applicants must follow the local government's process, except for the communications industry, which gets a free pass and a local taxpayer subsidy from the Commission. Even if the record demonstrated a need for such a federal intrusion on local control, the Commission lacks the statutory authority to grant the industry's wishes.

Preemption of local authority and special rules for communications applicants will result in unintended consequences impacting local government operations in areas where the Commission has little interest and no expertise. Rules that negatively impact local budgets and create de facto subsidies of industry imposed costs will necessarily impair local government operations and cause job losses at a time when our nation can least afford it. If the Commission is inclined to give serious consideration to the preemptory rules that the industry seeks, at a minimum, the Commission should first explore in detail the anticipated loss of revenue and jobs on local governments throughout the nation, and how those losses will impact the delivery of local government services. In addition, the Commission must additionally study the quality of life issues that will be impacted by eliminating local zoning authority in communities throughout the nation – just as it would if it were considering a rule to allow automatic access for the placement of wireless facilities in all national parks and wildlife areas, without any input or regulatory oversight from the federal agencies with primary responsibilities for these lands.

The record does reflect opportunities for non-regulatory Commission action to promote our shared goals for broadband deployment and adoption. The Commission can promote better understanding between local governments and industry, including providing education materials,

informal dispute resolution and advocating for municipal broadband networks. As new technologies develop which may not fit easily into an existing regulatory framework, the Commission can work with all interested parties to gain a better understanding of the challenges faced and opportunities available with respect to broadband deployment in our communities. In this way, the Commission will be seen as a partner working to advance our nation's broadband capabilities in a collaborative manner, and not as an adversary dictating special rules to benefit one class of local government applicants.

These Local Governments stand ready to work with the Commission on cooperative, educational and informational programs aimed at increasing broadband deployment, affordability and adoption. We urge the Commission to limit its actions in this proceeding to these cooperative efforts.

Respectfully submitted,

**THE GREATER METRO TELECOMMUNICATIONS
CONSORTIUM, THE RAINIER COMMUNICATIONS
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SEATTLE, AND KING COUNTY, WASHINGTON,
AND THE COLORADO MUNICIPAL LEAGUE**

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September 2011, I served a true and correct copy of the foregoing **REPLY COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF TACOMA AND SEATTLE, AND KING COUNTY, WASHINGTON AND THE COLORADO MUNICIPAL LEAGUE** addressed to the following and in the manner specified:

VIA ELECTRONIC MAIL

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National Association of Counties (jarnold@naco.org)

National Association of Telecommunications Officers and Advisors (straylor@natoa.org)

United States Conference of Mayors (rthaniel@usmayors.org.)

Government Finance Officers Association (btberger@gfoa.org)

International Municipal Lawyers Association (cthompson@imla.org)



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EXHIBIT A



Application for Private Use of Public Property for Telecommunications Facility

(STAGE 2 – FILE THIS APPLICATION ONLY AFTER RECEIVING AFFIRMATIVE CONFIRMATION FROM THE CITY OF STAGE 1 REQUEST)

Contact Information (City will discuss pending applications only with the individual listed here)

Print Applicant's Name: _____

Title and Company: _____

Mailing Address: _____

Phone (office): _____ E-mail: _____

Phone (mobile): _____

Facility Owner/Operator Information

Facility Owner/Operator's Name: _____

If facility owner/operator is different than applicant's company, describe relationship between applicant and facility owner:

Real Property Information

Public Facility's Name: _____

Address of Property: _____

Briefly describe portion(s) of public facility to be utilized for telecom installation: _____

Nature of Request

Please check all boxes that apply:

New telecom installation Existing lease or agreement renewal Existing lease or agreement amendment

Assignment (If checked, list name of assignee) _____

Sublease (If checked, list name of sublessee) _____

New company equipment (above and/or below ground) New utility/service lines (above and/or below ground)

If new equipment and/or utility/service lines:

Is this site a co-location site? yes no

If yes, what other telecom facilities are currently located at this site? _____

Is there the potential for this site to become a co-location telecommunications facility? yes no

Will any of the new lines and/or equipment be located in the public right-of-way? yes* no
 *(If yes, a right-of-way permit is required)

Required Items

Please verify that all items listed below have been included as a part of this submittal by placing a check mark (✓) in the box provided for each item. Please note that incomplete submittals will not be accepted. In some cases, additional copies of documents or plan sets may need to be provided.

The complete application package shall be submitted to:

**Kissinger & Fellman, P.C.
 Ptarmigan Place, Suite 900
 3773 Cherry Creek North Drive
 Denver, CO 80209**

ALL REQUESTS:

- | <input type="checkbox"/> | <u># COPIES</u> | <u>ITEM REQUIRED</u> |
|--------------------------|-----------------|--|
| <input type="checkbox"/> | 1 | Fee \$2,500.00.* Certified funds, payable to the City of Westminster. |
| <input type="checkbox"/> | 1 | Recording fee \$10.00. Payable to the City of Westminster. This may be paid upon formal agreement between the City and the applicant. This fee shall be submitted to:
Community Development Dept.
 City of Westminster
 4800 W. 92nd Ave.
 Westminster, CO 80031 |
| <input type="checkbox"/> | Original | Completed and signed Application & Checklist (this form) |
| <input type="checkbox"/> | 15 | Written narrative of the existing or proposed use describing the operational characteristics. |
| <input type="checkbox"/> | 1 | Owners & Encumbrances Report. (Deed restrictions may apply that prohibit proposed use entirely.) |

IF OWNER HAS AN EXISTING SITE LEASE OR AGREEMENT WITH THE CITY::

- | | | |
|--------------------------|---|---|
| <input type="checkbox"/> | 1 | Copy of existing lease or site agreement |
| <input type="checkbox"/> | 1 | If new terms are desired, provide proposed revised terms |

IF NEW EQUIPMENT AND/OR NEW UTILITY/SERVICE LINES:

- | | | |
|--------------------------|----|--|
| <input type="checkbox"/> | 1 | Color photo simulation of proposed facility and equipment superimposed on the proposed site showing elevations (N-S-E-W) |
| <input type="checkbox"/> | 1 | Coverage Study. The study shall indicate: <ul style="list-style-type: none"> (i) How the proposed communication site fits into the overall communication network for the community, to confirm the necessity for the site; (ii) To the extent that it is meant to address gaps in coverage or capacity, demonstrate by a preponderance of the evidence that there are no viable alternatives to remedy gaps in the applicant's network; and (iii) To the extent that the applicant provides services under a license granted by a governmental authority, that a failure to approve the application will result in the applicant's inability to provide the minimum coverage or capacity it is required to provide pursuant to its license and any applicable law. |
| <input type="checkbox"/> | 15 | Properly folded and collated Plan Sets in the format shown as attached and including the following items: |

SHEET 1: COVER

SHEET 2: GENERAL NOTES & ABBREVIATIONS

SHEET 3: SITE PLAN (1:100 or larger)

Include proposed ingress and egress for proposed telecommunications facility; proximity of the tower or other telecommunications facility to residential structures and residential district boundaries; nature of uses on adjacent and nearby properties within two hundred (200) feet of cellular facility; surrounding topography; and tree coverage within two hundred (200) feet of cellular facility

SHEET 4: ENLARGED SITE PLAN

SHEET 5: BUILDING/STRUCTURE ELEVATIONS

Include a design description with height above grade, materials, and color for the proposed antenna on building, tower or alternative tower structure

SHEET 6: EQUIPMENT LAYOUT & CABINET ELEVATIONS

Include all equipment cabinets, both on-site and in the public right-of-way

SHEET 7: EQUIPMENT & CABINET DETAILS

SHEET 8: SCREENING PLAN & DETAILS

Include a landscaping and visual mitigation plan (including plant species), detailing how screening from the public view will be accomplished, and how design characteristics will have the effect of reducing or eliminating visual obtrusiveness, how the landscaping and screening will be maintained, and who is responsible for the maintenance

SHEET 9: ELECTRICAL PLAN

SHEET 10: GROUNDING PLAN & DETAILS

SHEET 11: ANTENNA LAYOUT & DETAILS

SHEET 12: MICROWAVE SPECIFICATIONS (if applicable)

Include north arrow and graphic and text scale on each page. This list may not be all inclusive, and additional information may be required.

All plan sets must meet the following requirements:

1. All graphics and text shall be of such quality to be capable of reproduction on both microfilm and/or diazo blueprint equipment.
2. Sheet size shall be 24" x 36"
3. Lettering shall be a minimum 1/8-inch height
4. Required minimum margins shall be
LEFT – 2 inch
TOP, BOTTOM & RIGHT – 1/2 inch

By signing below, I assert, under penalty of perjury, that the above information is true, correct, and complete to the best of my knowledge. I further assert that, as the applicant, I am either the owner of the facility or equipment that will be installed (if approved) or I have been authorized, in writing, by the owner to negotiate on its behalf as the owner's authorized representative.

PERSON AUTHORIZED TO SIGN ON BEHALF OF FACILITY AND/OR EQUIPMENT OWNER:

NAME: _____
(print)

TITLE: _____
(print)

Signature

Date

***If negotiating on behalf of the intended facility or equipment owner, attach written proof of authorization hereto.
Failure to do so will result in automatic rejection of this Application.***

****Refer to Process Overview for more information***

**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 GREATER METRO TELECOMMUNICATIONS
CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, THE
CITIES OF TACOMA AND SEATTLE, AND KING COUNTY WASHINGTON, AND
THE COLORADO MUNICIPAL LEAGUE**

EXHIBIT B



King County

Real Estate Services

Facilities Management Division
Department of Executive Services
500 Fourth Avenue, Room 500
Seattle, WA 98104
Phone: (206) 205-5772

September 29, 2011

Kenneth S. Fellman, Esq.
Kissinger & Fellman, P.C.
3773 Cherry Creek N. Drive
Ptarmigan Place, Suite 900
Denver, Colorado 80209

Re: Local Government Consultants
F.C.C. WC Docket #11-59

Dear Mr. Fellman

We've been informed that King County has been criticized for its wireless site approval practices by an industry group before the Federal Communications Commission ("FCC"). The Personal Communications Industry Association ("PCIA") listed King County as employing "problematic consultants" in its comments of July 18, 2011 in WC Docket #11-59.

King County is listed as one of the local governments that retain "obstructionist" consultants who "charge excessive application fees" and "impose superfluous application requirements" for wireless site permits. Allegedly, these consultants: 1) establish costly and unreasonable local wireless site approval codes, 2) charge excessive fees for reviewing site applications, and 3) require the applicant to pay the consultant's fees through an escrow account.

King County can assure the FCC that these complaints are not true in our county. King County has never employed consultants as part of its permit review process in any capacity and certainly not for the purposes described in the PCIA comments. We received no notice of particular problematic activities from the PCIA and we have received no complaints from any wireless provider of the kind PCIA describes.

Please submit our comments to the FCC in the referenced docket.

If you have any questions about this matter, please contact me.

Sincerely,

Stephen L. Salyer
Real Estate Services

**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 GREATER METRO TELECOMMUNICATIONS
CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, THE
CITIES OF TACOMA AND SEATTLE, AND KING COUNTY WASHINGTON, AND
THE COLORADO MUNICIPAL LEAGUE**

EXHIBIT C



MEMORANDUM

September 4, 2011

TO: Scott Spence, City Manager

FROM: Rick Walk, Director of Community Development *RW*

SUBJECT: Review and permitting of wireless cell towers.

ATTACHMENTS: 1. Lacey Municipal Code 16.68

BACKGROUND:

Over the past seven years, the City of Lacey has processed approximately 16 applications for wireless facilities. 10 of the applications were to collocate the new facilitate onto an existing tower or building and 6 of the applications were to establish a new monopole facility.

To date, all of the applications have been approved.

The City reviews applications for new establishment of new wireless facilities under the provisions of Lacey Municipal Code (LMC) 16.68, adopted the City in 1997. Wireless facilities proposed for co-location or location on existing towers, commercial or public structures are subject to the City's administrative land use permit process. Typical processing timeframe for an administrative land use permit is 45 days. Wire facilities proposed as a free standing support structure (mono-pole) are subject to the City's conditional use process, which requires a public hearing. Typical processing timeframe for a conditional use permit is 90 to 120 days. As part of the review process, LMC 16.68 allows the City to hire a third party specialist to review an application on its technical merits. This option has only been used once by the City in 2003. In this case the application was approved for a 150 foot monopole as proposed.

Proposed wireless facilities are encouraged by the City to co-locate on existing poles, buildings or structures if a carrier can meet their coverage needs and the existing structure can structurally support co-location.

General standards for locating a wireless facility within the City of Lacey are contained within LMC 16.68 which is attached for reference.

LACEY MUNICIPAL CODE
A Codification of the General Ordinances of the City of Lacey, Washington

Title 16: ZONING

Chapter 16.68
WIRELESS COMMUNICATION FACILITIES

Sections:

- 16.68.010 Intent
- 16.68.020 Definitions
- 16.68.025 Review Process
- 16.68.027 Submittal requirements
- 16.68.030 Permitted locations
- 16.68.040 Permitted height
- 16.68.050 Site development standards
- 16.68.060 Co-location
- 16.68.080 Radio frequency standards
- 16.68.090 Technological change and periodic review
- 16.68.100 Permit limitations
- 16.68.110 Applicability

16.68.010 Intent. The purpose of this ordinance is to establish appropriate locations, site development standards, and permit requirements to allow for wireless communication services to the residents of the city, in a manner which will facilitate the location of various types of wireless communication facilities in permitted locations so they are consistent with the character of the city. Minimizing the adverse visual impact of these facilities is one of the primary objectives of this ordinance. The ordinance is intended to allow wireless communication facilities which are sufficient to allow adequate service to citizens, the traveling public and others within the city and to accommodate the need for connection of such services to wireless facilities in adjacent and surrounding communities. (Ord. 1052 §1, 1997).

16.68.020 Definitions.

- A. "Antenna" means the specific device the surface to which is used to capture an incoming and/or to transmit an outgoing radio-frequency signal. Antennas include the following types:
1. Omni-Directional (or 'whip') Antenna. Receives and transmits signals in a three hundred-sixty degree pattern, and which is up to fifteen feet in height and up to four inches in diameter.
 2. Directional (or 'panel') Antenna. Receives and transmits signals in a directional pattern typically encompassing an arc of one hundred-twenty degrees.
 3. Parabolic (or 'dish') Antenna. A bowl shaped device that receives and transmits signals in a specific directional pattern.
 4. Ancillary Antenna. An antenna that is less than twelve inches in its largest dimension and that is not directly used to provide persona wireless communications services. An example would be a global positioning satellite (GPS) antenna.
 5. Other. All other transmitting or receiving equipment not specifically described herein shall be regulated in conformity with the type of antenna described herein which most closely resembles such equipment.
- B. "Co-location" means the use of a single support structure and/or site by more than one wireless communications provider.
- C. "Equipment enclosure" means a small structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communications signals. Associated equipment may include air conditioning and emergency generators.
- D. "Stealth technology" means those strategies and technological innovations designed to resemble other features in the surrounding environment to better blend or integrate the technology into an area. Strategies include, but are not limited to, hiding, masking or screening the feature or mimicking other surrounding features.
- E. "Support structure" means the structure to which antenna and other necessary associated hardware is mounted. Support structures include but are not limited to the following:
1. Lattice tower. A support structure which consists of a network of crossed metal braces, forming a tower which is usually triangular or square in cross-section.
 2. Monopole. A support structure which consists of a single pole sunk into the ground and/or attached to a foundation.
 3. Existing non-residential structure. Existing structures as specified in Section 16.68.030 to which antennas may be attached which conform to the requirements of Section 16.68.030.
- F. "Wireless Communications Facility (WCF)" means an unstaffed facility for the transmission and reception of radio or microwave signals used for commercial communications. WCFs are composed of two or more of the following components:
1. antenna
 2. support structure
 3. equipment enclosure

4. security barrier. (Ord. 1098 §19(A), 1999; Ord. 1052 §1, 1997).

16.68.025 Review process.

- A. All requests to locate wireless communication facilities in Lacey shall receive site plan review approval pursuant to Section 1C.040 of the City of Lacey Development Guidelines and Public Works Standards or conditional use permit approval pursuant to Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.
- B. Wireless communication facilities proposed for co-location or location on existing commercial buildings or public structures or public property shall require approval through the site plan review process of Chapter 16.84.
- C. Wireless communication facilities proposed as free-standing support structures shall require conditional use permit approval pursuant to Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.
- D. Third party review of submittal requirements. Because of the complexity of technical data and analysis required for adequate review of proposals, a third party may be contacted for review and analysis of such applications, particularly where disputes arise regarding the capability of meeting city goals, standards or policies in siting these facilities. The third party analysis will be at the discretion of the Community Development Director and will be at the expense of the applicant. The cost of such analysis will be agreed to and paid prior to processing or any action on the permit application. (Ord. 1197 §4, 2002; Ord. 1108 §1, 1999; Ord. 1098 §19(B), 1999; Ord. 1052 §1, 1997).

16.68.027 Submittal requirements.

- A. Applications proposed under Chapter 16.66 of the Lacey Municipal Code. In addition to the information requested in the conditional use application the following items shall be required for a WCF application:
1. A diagram or map showing the viewshed of the proposed facility.
 2. Photosimulations of the proposed facility from affected residential properties and public rights-of-way at varying distances.
 3. A map showing the service area of the proposed WCF and an explanation of the need for that facility.
 4. A map showing the locations and service areas of other WCF sites operated by the applicant and those that are proposed by the applicant which are close enough to impact service within the city.
 5. A site/landscaping plan showing the specific placement of the WCF on the site; showing the location of existing structures, trees, and other significant site features; and indicating type and locations of plant materials used to screen WCF components and the proposed color(s) for the WCF.
 6. A signed statement indicating:
 - a. The applicant agrees to allow for the potential co-location of additional WCF requirement by other providers on the applicant's structure or within the same site location; and
 - b. That the applicant agrees to remove the facility within eighteen months after that site's use is discontinued.
 7. A lease agreement with the landholder or letter of authorization from the owner allowing the provider to act as an agent for the landowner in a land use application.
 8. Evaluation of reasonable stealth technology that could be proposed to lessen the visual land use impacts from the facility.
 9. Justification must be provided that the structure is necessary and essential, that other methods are not possible, such as use of existing structures (other towers, buildings, etc.) or use of other technological methods such as microcell technology where systems are built as part of cable systems and no towers are needed.
- B. Applications submitted under Chapter 16.84 of the Lacey Municipal Code. In addition to information listed on the site plan review application, the following information may be required:
1. Those items listed under Section 16.68.027.A of the Lacey Municipal Code that the administrator deems necessary to properly evaluate the application. (Ord. 1208 §69, 2003; Ord. 1192 §181, 2002; Ord. 1052 §1, 1997).

16.68.030 Permitted locations.

- A. Zoning and land use compatibility shall be a primary consideration in location of WCFs. Industrial, commercial and public properties and existing commercial and industrial buildings with the exception of neighborhood commercial zones shall be encouraged for such use. Residential areas shall normally not be considered except on city property preferably in conjunction with city improvements such as water towers or public buildings.
- B. WCFs may be mounted on all currently existing nonresidential buildings in nonresidential zones except as follows:
1. Any building which is an accessory structure to a residence.
 2. Buildings which, due to their small size, would be dominated by the facility.
- C. Building mounted WCFs must meet the following conditions and criteria:
1. A building mounted WCF may consist of the following:
 - a. Nonreflective panel antenna(s);
 - b. Whip antenna(s);
 - c. Nonreflective parabolic dish;
 - d. The number of antennas shall be reasonable to accommodate the technology and maintenance compatible with the constraints of the building and prevailing land use.
 2. In addition to the overall height limitations in Section 16.68.040, the antennas should conform to the following general height restrictions relating to the existing building provided the site plan review committee may approve any height it feels is reasonably necessary to meet the requirements of the technology that is also compatible with surrounding land uses so as not to significantly impact the aesthetic character of the area.
 - a. Fifteen feet measured to the top of a panel antenna above the roof proper of the existing building at the point of attachment.

- b. Twenty feet measured to the tip of a whip antenna above the roof proper of the existing building at the point of attachment.
 - c. Five feet measured to the top of a parabolic dish above the roof proper of the existing building at the point of attachment.
 - 3. Whip antennas shall be camouflaged and located to minimize views from residential structures and rights-of-way.
 - 4. Panel and parabolic antennas shall be adequately screened from residential views and public rights-of-way in a manner that is architecturally compatible with the building on which it is located.
 - 5. Equipment enclosures shall be located within the building in which the facility is placed or located underground if site conditions permit. Otherwise, equipment enclosures shall be screened from view by compatible wall, fences or landscaping.
 - 6. Design review standards of Chapter 14.23.
- D. WCFs requiring construction of a support structure may be located on the site of existing nonresidential uses in nonresidential zones except the following:
- 1. Areas where support structures may not be effectively screened from view by existing structures.
 - 2. Areas where support structures cannot be adequately set back from the nearest residential use property line or the nearest vacant property zoned for residential use (usually a minimum of fifty feet), measured from the property line.
- E. WCFs requiring construction of a support structure must be located on a portion of the site that is effectively isolated from view of residential areas or public rights-of-way by structures or terrain features unless they are integrated or act as an architectural element of the structure, such as a flag pole.
- F. WCFs are not allowed on properties zoned for residential use except on public facilities or properties that can accommodate the use with stealth technology or screening designed to avoid aesthetic impacts; an example could be a water tower with a camouflaged antenna attached. (Ord. 1108, §2, 1999; Ord. 1052 §1, 1997).

16.68.040 Permitted height. WCFs utilizing a free-standing support structure and omni-directional antennas and supporting structures shall be limited to the minimum height reasonably required to accommodate the technology. Support documentation shall be submitted justifying the requested height, which may include a technical analysis from an independent party of the city's choice. (Ord. 1052 §1, 1997).

16.68.050 Site development standards.

A. Free-standing WCFs shall conform to the following site development standards:

- 1. Support structures shall be set back from all residential property lines a distance equal to the height of the support structure plus the height of any antennas, and shall comply with all required setbacks of the zoning district in which it is located.
 - 2. Support structures shall be designed and placed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures so as to:
 - a. Use existing site features to screen as much of the total WCF as possible from prevalent views; and/or,
 - b. Use existing site features as a background so that the total WCF blends into the background with increased sight distances.
 - 3. Relocation of a proposed facility on the site and infill landscaping of mature plant materials consistent with landscaping of the city may be required by the city to make the best use of or to supplement existing trees and vegetation to more effectively screen the facility.
 - 4. Support structures, panel and parabolic antennas, and any associated hardware shall be painted a nonreflective color or color scheme appropriate to the background against which the WCF would be viewed from a majority of points within its viewshed. Natural colors only may be employed and the final colors and color scheme must meet the approval of the city.
 - 5. Equipment enclosures shall conform to the following:
 - a. Equipment enclosures will be placed underground if site conditions permit and if technically feasible.
 - b. Equipment enclosures shall be screened from view except as provided in 16.68.050.A.5.c.
 - c. Walk-in equipment enclosures:
 - (1) May not be constructed with exposed metal surfaces.
 - (2) May not be required to be totally screened from view provided the city finds that the walk-in equipment enclosure has been designed using materials, colors, and detailing that produces a structure which emulates the desired character of the zone in which it is located.
 - 6. Security fencing, if used, shall conform to the following:
 - a. No fence shall exceed six feet in height.
 - b. Security fencing shall be effectively screened from view through the use of appropriate landscaping materials consistent with requirements of Chapter 16.80.
 - c. Chain-link fences shall be painted or coated with a nonreflective color.
- B. The city shall consider the cumulative visual effects of WCFs mounted on existing structures and/or located on a given permitted site in determining whether additional permits can be granted so as to not adversely affect the character of the city. (Ord. 1052 §1, 1997).

16.68.060 Co-location.

A. A permittee shall cooperate with other WCF providers in co-locating additional antennas on support structures and/or on existing buildings provided said proposed co-locators have received an appropriate permit for such use at said site from the city. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site, provided such shared use does not give rise to a substantial technical level impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive conflict or financial burden). Such good faith shall include sharing technical information to evaluate the feasibility of co-location. In the event a dispute arises as to whether a permittee has exercised good faith

in accommodating other users, the city may require a third party technical study at the expense of either or both the applicant and permittee.

B. All applicants shall demonstrate reasonable efforts in developing a co-location alternative for their proposal.

C. Failure to comply with the co-location requirements of this section may result in the denial of a permit request or revocation of an existing permit. (Ord. 1052 §1, 1997).

16.68.080 Radio frequency standards.

A. The applicant shall comply with federal standards for radio frequency emissions. Within six months after the issuance of its operational permit, the applicant shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site and compares the results with established federal standards. Said report shall be subject to review and approval of the city for consistency with federal standards. If on review, the city finds that the WCF does not meet federal standards, the city may revoke or modify this conditional use permit.

B. The applicant shall ensure that the WCF will not cause localized interference with the reception of area television or radio broadcasts. If on review the city finds that the WCF interferes with such reception, and if such interference is not cured within sixty days, the city may revoke or modify this permit. (Ord. 1192 §182, 2002; Ord. 1052 §1, 1997).

16.68.090 Technological change and periodic review. The city recognizes that WCFs and communication technologies in general are currently subject to rapid change. Innovations in such things as switching hardware and software, transmission/receiving equipment, communications protocols, and development of hybrid cable/wireless systems may result in reducing the impacts of individual facilities and to render specific portions of Ordinance 1052 obsolete. The city recognizes the fast pace of this technology and shall have the flexibility to accommodate it where there is a conflict with provisions of Ordinance 1052 where the city considers it reasonable to do so where the purposes of Ordinance 1052 and vision of the city can still be accomplished. (Ord. 1052 §1, 1997).

Section 16.68.100 Permit limitations.

A. A permit for a freestanding support structure WCF shall expire ten years after the effective date of the permit approval. A permittee wishing to continue the use of a specific WCF at the end of the ten-year period must apply for a new permit to continue that use at least six months prior to its expiration. In ruling on said renewal, the city shall apply all then-existing regulations affecting the application and shall consider new technology that may reduce aesthetic and land use impacts.

B. A permit shall become null, void and non-renewable if the permitted facility is not constructed and placed into use within eighteen months of the date of the city approval, provided that the permit may be extended one time for six months if construction has commenced before expiration of the original time period.

C. The permit shall expire and the applicant must remove the facility if the facility is not put into use within ninety days after construction or if use is discontinued for a period in excess of ninety days. If the facility is not so removed, the city may cause the facility to be removed and all expenses of removal shall be paid by the owner of the land where the facility is located.

D. The applicant shall maintain the WCF to standards that may be imposed by the city at the time of the granting of a permit. Such maintenance shall include, but shall not be limited to, maintenance of the paint, structural integrity and landscaping. If the applicant fails to maintain the facility, the city may undertake the maintenance at the expense of the applicant or terminate the permit, at the city's sole option.

E. The applicant shall notify the city of all changes in ownership or operation of the facility within sixty days of the change. (Ord. 1052 §1, 1997).

16.68.110 Applicability. The requirements of this ordinance apply to all new WCFs and the expansion and/or alteration of any existing WCFs; provided that an in-kind or smaller replacement of transmission equipment will only require a written notification to the city. (Ord. 1052 §1, 1997).

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