

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|---|---|-----------------------|
| In the Matter of |) | |
| |) | |
| Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies |) | WT Docket No. 13-238 |
| |) | |
| 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 |) | WC Docket No. 11-59 |
| |) | |
| Amendment of Parts 1 and 17 of the Commission's Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers |) | RM-11688 (terminated) |
| |) | |
| 2012 Biennial Review of Telecommunications Regulations |) | WT Docket No. 13-32 |
| |) | |

**ERRATUM FILED BY THE LEAGUE OF CALIFORNIA CITIES, THE CALIFORNIA STATE
ASSOCIATION OF COUNTIES AND SCAN NATOA**

Erratum Date: February 5, 2014

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On February 3, 2014, the League of California Cities, California State Association of Counties and SCAN NATOA (“California Local Governments”) filed joint comments with the Commission in response to the notice of proposed rulemaking released on September 26, 2013.¹ Those comments contained references to exhibits but did not include the actual exhibits referenced. California Local Governments now amends its comments through this erratum as follows:

1. Footnote 21 is deleted in its entirety and replaced with “See Letter from Robert Jystad, Channel Law Group, LLC, to Joseph Thompson, T-Mobile (Oct. 5, 2012) (attached as Exhibit A to these comments) (emphasis added).”
2. Footnote 27 is deleted in its entirety and replaced with “A copy of Article 25 of the San Francisco Public Works Code is attached hereto as Exhibit B to these comments.”
3. Footnote 28 is deleted in its entirety and replaced with “A copy of the relevant excerpts from the deposition of Mr. Daniel Paul taken on December 19, 2013 in T-Mobile West Corp. v. City and County of San Francisco is attached hereto as Exhibit C to these comments.”
4. Exhibit A, attached to this Erratum, is incorporated into the comments.
5. Exhibit B, attached to this Erratum, is incorporated into the comments.
6. Exhibit C, attached to this Erratum, is incorporated into the comments.

Respectfully submitted,

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¹ See In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, *Notice of Proposed Rulemaking*, 2013 WL 5405395 (F.C.C.), ¶ 102 (adopted Sep. 26, 2013).

EXHIBIT A

Appears Behind This Coversheet

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By Electronic Mail

October 5, 2012

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Re: Interpreting Collocation and Related Rights under the Middle Class Tax Relief Act, § 6409(a)

Dear Joe:

Per your company's request, please see the following analysis of the scope and purpose of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Act").

On February 22, 2012, President Obama signed into the Act law. One of the measures included in the Act was the creation of a nationwide interoperable broadband network for first responders ("FirstNet"). In addition to authorizing the FCC to allocate necessary spectrum for this new interoperable public safety network, the Act also contained provisions designed to establish voluntary incentive auctions of wireless spectrum, which are expected to raise \$15 billion over the next eleven years. Seven billion dollars of the auction proceeds have been allocated for the build out of FirstNet.

The Act reflects an implicit acknowledgement that realizing the maximum financial return from the auction would depend on making it possible for purchasers to more easily deploy the infrastructure needed to utilize the newly acquired spectrum. To that end, the Act contains a provision that addresses the possibility of impediments to deployment arising from local permitting processes. In a carefully crafted attempt to address both industry and local concerns, Section 6409(a) of the Act includes a provision designed to create incentives for the use of collocation opportunities in lieu of constructing new sites (the "Collocation Approval Provision"). Section 6409(a) thus requires that state and local governments approve permits for the modification of an existing wireless tower or base station provided such modification would

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not substantially change the physical dimensions of such tower or base station. A copy of this section is attached.

Section 6409(a) applies to “eligible facilities requests” for the modification of existing wireless towers and base stations. The Act defines “eligible facilities request” as any request for modification of an existing wireless tower or base station that involves:

- Collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

Although questions might arise regarding some of the terms or concepts employed in the section, in fact their meaning is well established. The Federal Communications Commission (“FCC”) has relied for years on these same terms or concepts in connection with its regulation of wireless broadcasts and communications. For example, in connection with its obligations under the National Environmental Policy Act or NEPA (42 U.S.C. § 4321 et seq.), the FCC’s regulations incorporate provisions of two nationwide programmatic agreements (“NPAs”) that were hammered out in negotiations between local government and industry representatives. In one of those agreements, for example, “collocation” is defined as “the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”¹ Section 6409 is somewhat more restrictive than the Collocation NPA in that it only applies to collocations on “existing wireless towers or base stations.” In the Collocation NPA, the FCC has defined the term “tower” as “any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.”²

The term “base station” is also a term of art with a well-established meaning. A base station is any transmission/reception facility that operates using fixed antennas. The base station is the entire facility at a particular fixed location. While “base station” can refer to such a facility with respect to any type of radio-based system,³ in the context of personal wireless communications, the term is synonymous with the commonly understood notion of a “cell site.”

¹ Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), available at 47 C.F.R. Part I, Appendix B (“Collocation NPA”). See also *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Red 13994, 14021 1171 (2009) (“Shot Clock Ruling”), recon. denied, 25 FCC Red 11157 (2010), *aff’d*, *City of Arlington, Tex., et al. v. FCC*, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

² *Id.*

³ For example, § 6408(d), the section of the Act that immediately precedes the Collocation Approval Provision, defines “transmission system” as “any telecommunications, broadcast, satellite, commercial mobile service, or other communications system that employs radio spectrum.”

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The term "base station" is not dependent upon the type of structure to which the antennas are affixed. Thus, a transmission facility is still classified as a base station whether the support structure is a lattice tower, monopole, rooftop, utility pole, electrical transmission tower, water tower or other support structure.

This accepted understanding of the term "base station" is evident on the Internet:

- A base station is a fixed communications location and is part of a network's wireless telephone system. It relays information to and from a transmitting/receiving unit, such as a mobile phone. Often referred to as a cell site, a base station allows mobile phones to work within a local area, as long as it is linked to a mobile or wireless service provider.
(<http://www.techopedia.com/definition/5268/base-station-bs>)
- As you drive along the highway, you may notice cellular towers or cellular base stations appearing every few miles. A base station is the interface between wireless phones and traditional wired phones. It's what allows you to use your cell phone to call your home phone. The base station, a wireless system, uses microwave radio communication. It is composed of several antennas mounted on a tower and a building with electronics in it at the base.
(http://www.iceeghn.org/wiki/index.php/Cellular_Base_Stations)
- Cellular Base Stations, more commonly called Cell Towers, are the structures which connect mobile phones within their range to the regular landline phone system. (<http://www.steelintheair.com/celltower101/cellular-base-station.html>)
- Base stations actually consist of two main portions; the antenna, and the tower or mast which raises the antenna well above the ground. (*Id.*)
- The term "base station" was first used to refer to the towers you see on the side of the road that relay cell phone calls. These stations handle all cellular calls made within their area, receiving information from one end of the call and transmitting it to the other. (<http://www.techterms.com/definition/basestation>)
- A fixed station in a cellular wireless network, used for communicating with mobile terminals (phones). A base station is what links mobile phones to a wireless carrier's network.
(<http://www.phonescoop.com/glossary/term.php?gid=22>)

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The FCC's regulations specifically define a "base station" as "[a] land station in the land mobile service." 47 CFR 2.1(c). That same section defines a "station" as "[o]ne or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service, or the radio astronomy service." (Emphasis added.) FCC regulations also define a "base station" as "[a] station at a specified site authorized to communicate with mobile stations." 47 CFR 90.7. Thus it is clear that a "base station" consists of a location that includes both "transmitters or receivers" and "the accessory equipment, necessary . . . for carrying on a radiocommunication service." That location cannot be so narrowly defined as to be limited to, for example, merely the equipment shelter, since all of the transmission equipment both within and outside of such a shelter (including antennas) would be necessary for carrying on a radiocommunication service.

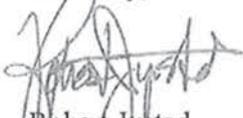
Indeed, the manner in which the term is used throughout the FCC's regulations makes it clear that the base station is the entirety of the equipment that is found at the location. Another definitional provision which repeats the above-quoted definition of "base station" is found in 47 CFR 24.5. That section contains two other definitions that shed considerable light on what the definition means:

- Land Mobile Service. A mobile service between base stations and land mobile stations, or between land mobile stations.
- Mobile Service. A radiocommunication service between mobile and land stations, or between mobile stations.

The use of the term "between" indicates that "station" refers to the aggregation of equipment at the site which is necessary for the radiocommunication service to operate. Similarly, in several places, the FCC regulations speak of base stations that "provide coverage" (e.g., 47 CFR 24.5), licensees that "operate" base stations (e.g., 47 CFR 25.202, 25.214, 25.263) and base stations that "suffer[] harmful interference" (e.g., 47 CFR 27.53). They even speak of the possibility of one base station being collocated with another (e.g., 47 CFR 27.53, 47 CFR 25.253).

This notion that a base station is basically the location or site where radiocommunication is currently being carried on is consistent with the intent of the Act, which is both to facilitate the equipment upgrades that the spectrum auction will necessitate and to incentive the industry to collocate new antennas at existing cell sites. Please contact us if you have any questions.

Sincerely,



Robert Jystad
Julian K. Quattlebaum, III
Attorneys for T-Mobile

EXHIBIT B

Appears Behind This Coversheet

EXHIBIT B

ARTICLE 25: PERSONAL WIRELESS SERVICE FACILITIES

| | |
|------------|---|
| Sec. 1500. | Personal Wireless Service Facility Site Permit. |
| Sec. 1501. | Department Orders and Regulations. |
| Sec. 1502. | Definitions. |
| Sec. 1503. | Types of Personal Wireless Services Facilities. |
| Sec. 1504. | Initial Review of a Personal Wireless Facility Site Permit Application. |
| Sec. 1505. | Conditions of Approval. |
| Sec. 1506. | Street Tree. |
| Sec. 1507. | Department of Public Health Review. |
| Sec. 1508. | Department Review of a Personal Wireless Service Facility Site Permit Application. |
| Sec. 1509. | Planning Department Review of a Tier II-B, Tier III-A, or Tier III-B Facility Permit Application. |
| Sec. 1510. | Recreation and Park Department Review of a Tier II-C or Tier III-C Facility Permit Application. |
| Sec. 1511. | Department Determination. |
| Sec. 1512. | Notice Following Tentative Approval of a Tier III Facility Permit Application. |
| Sec. 1513. | Protest of a Tier III Facility Permit. |
| Sec. 1514. | Notice of Final Determination. |
| Sec. 1515. | Appeals. |
| Sec. 1516. | Notice of Completion and Inspection. |
| Sec. 1517. | Compliance. |
| Sec. 1518. | Abandonment. |
| Sec. 1519. | Term of Permit. |
| Sec. 1520. | Renewal. |
| Sec. 1521. | Replacement of Equipment. |
| Sec. 1522. | Modification of Permit. |
| Sec. 1523. | Deposit. |
| Sec. 1524. | Liability. |
| Sec. 1525. | Indemnification and Defense of City. |
| Sec. 1526. | Insurance. |
| Sec. 1527. | Fees and Costs. |
| Sec. 1528. | Severability. |

SEC. 1500. PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT.

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(a) **Personal Wireless Service Facility Site Permit Required.** The Department shall require any Person seeking to construct, install, or maintain a Personal Wireless Service Facility in the Public Rights-of-Way to obtain a Personal Wireless Service Facility Site Permit.

(b) **Minimum Permit Requirements.**

(1) The Department shall not issue a Personal Wireless Service Facility Site Permit if the Application for a Personal Wireless Service Facility Site Permit does not comply with all of the requirements of this Article 25.

(2) The Department shall require an Applicant for a Personal Wireless Service Facility Site Permit to demonstrate to the satisfaction of the Department that:

(A) The Department has issued the Applicant a Utility Conditions Permit as required by San Francisco Administrative Code Section 11.9;

(B) The pole owner has authorized the Applicant to use or replace the Utility or Street Light Pole identified in the Application; and

(C) The Applicant has obtained any approvals that may be required under the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) to construct, install, and maintain the proposed Personal Wireless Service Facility.

(c) The Department shall not issue a Personal Wireless Service Facility Site Permit if the Applicant seeks to:

(1) Install a new Utility or Street Light Pole on a Public Right-of-Way where there presently are no overhead utility facilities; or

(2) Add a Personal Wireless Service Facility on a Utility or Street Light Pole for which a Personal Wireless Service Facility Site Permit has already been approved.

(d) **Permit Conditions.** The Department may include in a Personal Wireless Service Facility Site Permit such conditions, in addition to those already set forth in this Article 25 and other Applicable Law, as may be required to govern the construction, installation, or maintenance of Personal Wireless Service Facilities in the Public Rights-of-Way, and to protect and benefit the public health, safety, welfare, and convenience, provided that no such conditions may concern the particular technology used for a Personal Wireless Service Facility. Such conditions may also govern the installation and use of equipment that is not located on a Utility or Street Light Pole, but that is necessary for the use of a permitted Personal Wireless Service Facility.

(e) **Installation of Cabinets or Vaults in the Public Rights-of-Way.** The Department shall not include in a Personal Wireless Service Facility Site Permit an authorization for the Permittee to install a surface-mounted equipment cabinet or underground equipment vault in the Public Rights-of-Way. In order to install such an equipment cabinet or vault in the Public Rights-of-Way for use with a Personal Wireless Service Facility, a Permittee must fully comply with any other City permitting requirements related to the installation of such facilities.

(f) **Other Provisions Inapplicable.** Notwithstanding the requirements of San Francisco Business and Tax Code Sections 5, 6, and 26(a), the provisions of this Article 25 shall govern all actions taken by the City with respect to the approval or denial of an Application for a Personal Wireless Service Facility Site Permit under this Article 25.

(Added by Ord. 12-11, File No. 100041)

SEC. 1501. DEPARTMENT ORDERS AND REGULATIONS.

The Department may adopt such orders or regulations as it deems necessary to implement the requirements of this Article 25, or to otherwise preserve and maintain the public health, safety, welfare, and convenience, as are consistent with this requirements of this Article 25 and Applicable Law.

(Added by Ord. 12-11, File No. 100041)

SEC. 1502. DEFINITIONS.

For purposes of this Article 25, the following terms, phrases, words, abbreviations, their derivations, and other similar terms, when capitalized, shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.

(a) "Adjacent" means:

(1) On the same side of the street and in front of the building or the next building on either side, when used in connection with a national historic landmark, California landmark, San Francisco landmark, structure of merit, architecturally significant building, or locally significant building; and

(2) In front of and on the same side of the street, when used in connection with a City park or open space.

(b) "Applicable Law" means all applicable federal, state, and City laws, ordinances, codes, rules, regulations and orders, as the same may be amended or adopted from time to time.

(c) "Applicant" means any Person submitting an Application for a Personal Wireless Service Facility Site Permit under this Article 25.

(d) "Application" means an application for a Personal Wireless Service Facility Site Permit under this Article 25.

(e) "City" means the City and County of San Francisco.

(f) "Conditions" means any additional requirements that a City department reviewing an Application for a Personal Wireless Service Facility Site Permit has determined are necessary for the Application to comply with those requirements of this Article 25 that are within that department's purview, provided that no such Conditions may include a requirement that an Applicant use a particular technology for a Personal Wireless Service Facility.

(g) "Department" means the Department of Public Works.

(h) "Director" means the Director of Public Works.

(i) "FCC" means the Federal Communications Commission.

(j) "Immediate Vicinity" means:

(1) Within one (1) block in any direction from the boundary of a Planning Protected Location that is a national historic landmark district, listed or eligible national register historic district, listed or eligible California register historic district, San Francisco landmark district, local historic or conservation district, or locally significant district;

(2) Within twenty-five (25) feet of the property lines from the properties that are Adjacent to a Planning Protected Location that is a national historic landmark, California landmark, San Francisco landmark, structure of merit, architecturally significant building, or locally significant building, or across the street from the above boundary lines;

(3) Within one (1) block in any direction from the boundary of a Zoning Protected Location; and

(4) Within one (1) block in any direction from the boundary of a Park Protected Location.

(k) "Park Protected Location" means a proposed location for a Personal Wireless Service Facility in the Public Rights-of-Way that is

EXHIBIT B

Adjacent to a City park or open space.

(l) "Park Protected Location Compatibility Standard" means whether a Personal Wireless Service Facility that is proposed to be located in a Park Protected Location would significantly impair the views of a City park or open space or significantly degrade the aesthetic or natural attributes that define the City park or open space.

(m) "Permittee" means a Person issued a Personal Wireless Service Facility Site Permit.

(n) "Person" means any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity. "Person" shall not include the City.

(o) "Personal Wireless Service" means commercial mobile services provided under a license issued by the FCC.

(p) "Personal Wireless Service Facility" or "Facility" means antennas and related facilities used to provide or facilitate the provision of Personal Wireless Service.

(q) "Personal Wireless Service Facility Site Permit" or "Permit" means a permit issued by the Department pursuant to this Article 25 authorizing a Permittee to construct, install, and maintain a Personal Wireless Service Facility.

(r) "Planning Protected Location" means any of the following proposed locations for a Personal Wireless Service Facility:

(1) On an historic, historically or architecturally significant, decorative, or specially designed Street Light Pole located in the Public Rights-of-Way;

(2) On a Utility or Street Light Pole that is on a Public Right-of-Way that is within a national historic landmark district, listed or eligible national register historic district, listed or eligible California register historic district, San Francisco landmark district, local historic or conservation district, or locally significant district, as more specifically described and cataloged in materials prepared and maintained by the Planning Department;

(3) On a Utility or Street Light Pole that is on a Public Right-of-Way that is Adjacent to a national historic landmark, California landmark, San Francisco landmark, structure of merit, architecturally significant building, or locally significant building, as more specifically described and cataloged in materials prepared and maintained by the Planning Department;

(4) On a Utility or Street Light Pole that is on a Public Right-of-Way that the San Francisco General Plan has designated as being most significant to City pattern, defining City form, or having an important street view for orientation; or

(5) On a Utility or Street Light Pole that is on a Public Right-of-Way that the San Francisco General Plan has designated as having views that are rated "excellent" or "good."

(s) "Planning Protected Location Compatibility Standard" means whether an Applicant for a Personal Wireless Service Facility Site Permit demonstrates that a proposed Personal Wireless Service Facility would be compatible with any of the Planning Protected Locations as follows:

(1) For a historic, historically or architecturally significant, decorative, or specially designed Street Light Pole, the applicable standard is whether a proposed Personal Wireless Service Facility would significantly degrade the aesthetic attributes that distinguish the Street Light Pole as historic, historically significant, architecturally significant, decorative, or specially designed.

(2) For a Public Right-of-Way that is within a national historic landmark district, listed or eligible national register historic district, listed or eligible California register historic district, San Francisco landmark district, local historic or conservation district, or locally significant district, the applicable standard is whether a proposed Personal Wireless Service Facility would significantly degrade the aesthetic attributes that were the basis for the special designation of the district.

(3) For a Utility or Street Light Pole that is Adjacent to a national historic landmark, California landmark, San Francisco landmark, structure of merit, architecturally significant building, or locally significant building, the applicable standard is whether a proposed Personal Wireless Service Facility would significantly degrade the aesthetic attributes that were the basis for the special designation of the building.

(4) For a Public Right-of-Way that the San Francisco General Plan has designated as being most significant to City pattern, defining City form, or having an important street view for orientation, the applicable standard is whether a proposed Personal Wireless Service Facility would significantly degrade the aesthetic attributes that were the basis for the designation of the street for special protection under the General Plan.

(5) For a Public Right-of-Way that the San Francisco General Plan has designated as having views that are rated "excellent" or "good," the applicable standard is whether a proposed Personal Wireless Service Facility would significantly impair the views of any of the important buildings, landmarks, open spaces, or parks that were the basis for the designation of the street as a view street.

(t) "Public Health Compliance Standard" means whether: (i) any potential human exposure to radio frequency emissions from a proposed Personal Wireless Service Facility described in an Application is within the FCC guidelines; and (ii) noise at any time of the day or night from the proposed Personal Wireless Service Facility described in an Application is not greater than forty-five (45) dBA as measured at a distance three (3) feet from any residential building facade.

(u) "Public Rights-of-Way" means the area in, on, upon, above, beneath, within, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, spaces, and boulevards within the geographic area of the City in which the City now or hereafter holds any property interest, which is dedicated to public use and which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining Personal Wireless Service Facility to provide Personal Wireless Service to customers.

(v) "Step-Down Tier III Facility" means a Personal Wireless Service Facility that would be a Tier III Facility because of the size of the antenna enclosure(s) being added to a Utility or Street Light Pole, but that would not add any equipment enclosure(s) to any Utility or Street Light Pole.

(w) "Step-Down Tier II Facility" means a Personal Wireless Service Facility that would be a Tier II Facility because of the size of the antenna enclosure(s) being added to a Utility or Street Light Pole, but that would not add any equipment enclosure(s) to any Utility or Street Light Pole.

(x) "Street Light Pole" means a pole used solely for street lighting and which is located in the Public Rights-of-Way.

(y) "Tier III-A Compatibility Standard" the standard by which the Planning Department shall make a compatibility determination based on an analysis of the additional impact, if any, that a proposed Tier III-A Facility would have on the character of the neighborhood, as compared to the impact a Tier II Facility would have at the same location.

(z) "Tier III-B Compatibility Standard" means a Planning Protected Location Compatibility Standard or Zoning Protected Location Compatibility Standard by which the Planning Department shall make a compatibility determination based on an analysis of the additional impact, if any, that a proposed Tier III-B Facility would have on a Planning Protected Location or Zoning Protected Location, as compared to the impact a Tier II Facility would have at the same location.

(aa) "Tier III-C Compatibility Standard" means a Park Protected Location Compatibility Standard by which the Recreation and Park

EXHIBIT B

Department shall make a compatibility determination based on an analysis of the additional impact, if any, that a Proposed Tier III-C Facility would have on a Park Protected Location, as compared to the impact a Tier II Facility would have at the same location.

(bb) "Tier II-B Compatibility Standard" means a Planning Protected Location Compatibility Standard or Zoning Protected Location Compatibility Standard by which the Planning Department shall make a compatibility determination based on an analysis of the additional impact, if any, that a proposed Tier II-B Facility would have on a Planning Protected Location or Zoning Protected Location, as compared to the impact a Tier I Facility would have at the same location.

(cc) "Tier II-C Compatibility Standard" means a Park Protected Location Compatibility Standard by which the Recreation and Park Department shall make a compatibility determination based on an analysis of the additional impact, if any, that a Proposed Tier II-C Facility would have on a Park Protected Location, as compared to the impact a Tier I Facility would have at the same location.

(dd) "Tier I Criteria" is the criteria for the equipment allowed to be used with a Tier I Personal Wireless Service Facility, as set forth in Section 1503(a) below.

(ee) "Tier II Criteria" is the criteria for the equipment allowed to be used with a Tier II Personal Wireless Service Facility, as set forth in Section 1503(b) below.

(ff) "Tier I Facility" is a Personal Wireless Service Facility that meets the Tier I Criteria.

(gg) "Tier III Facility" is a Personal Wireless Service Facility that does not meet the Tier I or Tier II Criteria.

(hh) "Tier II Facility" is a Personal Wireless Service Facility that meets the Tier II Criteria.

(ii) "Tier I Facility Permit" is a Permit to install a Tier I Facility.

(jj) "Tier III Facility Permit" is a Permit to install a Tier III Facility.

(kk) "Tier II Facility Permit" is a Permit to install a Tier II Facility.

(ll) "Tier III Necessity Standard" means whether a Tier II Facility is insufficient to meet the Applicant's service needs because the Applicant has demonstrated one of the following:

(1) A Tier II Facility would not provide the coverage or functionality the Applicant requires to meet its service needs in the vicinity of the proposed Tier III Facility.

(2) Approval of the Application for a Tier III Facility Permit would reduce the number of Personal Wireless Service Facilities that the Applicant would otherwise need to install in the vicinity of the proposed Tier III Facility.

(3) Any other showing related to the Applicant's service needs that the Department may allow by order or regulation.

(mm) "Unprotected Location" means a proposed location for a Personal Wireless Service Facility that is neither a Planning Protected, Zoning Protected, nor a Park Protected Location.

(nn) "Utility Pole" means a power pole, telephone pole, or other similar pole located within the Public Rights-of-Way.

(oo) "Zoning Protected Location" means on a Utility or Street Light Pole that is on a Public Right-of-Way that is within a Residential or Neighborhood Commercial zoning district under the San Francisco Planning Code.

(pp) "Zoning Protected Location Compatibility Standard" means whether an Applicant for a Personal Wireless Service Facility Site Permit on a Public Right-of-Way that is within a Zoning Protected Location demonstrates that a proposed Personal Wireless Service Facility would not significantly detract from the character of the Residential or Neighborhood Commercial zoning district.

(Added by Ord. 12-11, File No. 100041)

SEC. 1503. TYPES OF PERSONAL WIRELESS SERVICES FACILITIES.

(a) **Tier I Facility.** The Department shall not approve an Application for a Tier I Facility Permit unless the Application meets the following Tier I Criteria:

(1) **Antenna Facilities.**

(A) A Tier I Facility may add no more than three (3) antenna enclosures to a Utility or Street Light Pole mounted to either the top or the side of the Utility or Street Light Pole as follows:

(i) If only one (1) antenna enclosure is to be added to a Utility or Street Light Pole, then the antenna enclosure shall be no more than four (4) feet high and have a diameter that is not greater than the diameter of the Utility or Street Light Pole at the point to which it is attached.

(ii) If more than one (1) antenna enclosure is to be added to a Utility or Street Light Pole, then each antenna enclosure shall be no more than four (4) feet high and three (3) inches in diameter.

(2) **Supporting Elements.** If Applicable Law, or generally applicable written rules of the pole owner, require a supporting element for any antenna enclosure such as a cross-arm or pole top extension, such supporting element shall be no larger, longer, or bulkier than is necessary to comply with Applicable Law or such generally applicable written rules.

(3) **Equipment Enclosures.** A Tier I Facility may add no more than two (2) equipment enclosures to a Utility or Street Light Poles, as follows:

(A) A primary equipment enclosure installed on the same Utility or Street Light Pole as the antenna enclosure(s), preferably facing the street or perpendicular to the street, shall be no larger than three (3) cubic feet in volume with a width not exceeding twelve (12) inches and a depth not exceeding ten (10) inches. An electric meter and a cut-off switch may be located outside of the primary equipment enclosure; and

(B) A secondary equipment enclosure installed on a Utility or Street Light Pole that is near the Utility or Street Light Pole to be used for the antenna enclosure(s) and primary equipment enclosure, preferably facing the street or perpendicular to the street, shall be no larger than three (3) cubic feet in volume with a width not exceeding twelve (12) inches and a depth not exceeding ten (10) inches.

(3) The Department may, by order, allow a larger primary equipment enclosure if the Applicant demonstrates that the enclosure will contain an electricity meter and cut-off switch, provided that the width of the enclosure does not exceed twelve (12) inches and the depth does not exceed ten (10) inches.

(b) **Tier II Facility.** The Department shall not approve an Application for a Tier II Facility Permit unless the Application meets the following Tier II Criteria:

(1) **Antenna Facilities.** A Tier II Facility may add one (1) or more antenna enclosures to a Utility or Street Light Pole mounted to either the top or the side of the Utility or Street Light Pole as follows:

(A) For an installation on top of a Utility or Street Light Pole, the antenna enclosure(s) shall:

- (i) Be cylindrical in shape;
- (ii) Not exceed four (4) feet in height; and

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- (iii) Not exceed the diameter of the top of the pole.
- (B) For an installation on the side of a Utility or Street Light Pole, the size of the antenna enclosure(s) shall:
 - (i) Not exceed four (4) feet in height; and
 - (ii) In the case of a cylindrical antenna enclosure, not exceed eighteen (18) inches in diameter; or
 - (iii) In the case of a rectangular antenna enclosure, not exceed eighteen (18) inches in width or depth.
- (2) **Supporting Elements.** If Applicable Law, or generally applicable written rules of the pole owner, require a supporting element for any antenna enclosure such as a cross-arm or pole top extension, such supporting element shall be no larger, longer, or bulkier than is necessary to comply with Applicable Law or such generally applicable written rules.
- (3) **Equipment Enclosures.** A Tier II Facility may add no more than two (2) equipment enclosures to a Utility or Street Light Pole, as follows:
 - (A) A primary equipment enclosure installed on the same Utility or Street Light Pole as the antenna enclosure(s), preferably facing the street or perpendicular to the street, shall be no larger than four (4) cubic feet in volume, with a width not exceeding twelve (12) inches and a depth not exceeding ten (10) inches. An electric meter and a cut-off switch may be located outside of the primary equipment enclosure; and
 - (B) A secondary equipment enclosure installed on a Utility or Street Light Pole that is near the Utility or Street Light Pole to be used for the antenna enclosure(s) and primary equipment enclosure, preferably facing the street or perpendicular to the street, shall be no larger than four (4) cubic feet in volume with a width not exceeding twelve (12) inches and a depth not exceeding ten (10) inches.
 - (C) The Department may, by order, allow a larger primary equipment enclosure if the Applicant demonstrates that the enclosure will contain an electricity meter and cut-off switch, provided that the width of the enclosure does not exceed twelve (12) inches and the depth does not exceed ten (10) inches.
- (5) **Types of Tier II Facilities.**
 - (A) A Tier II Facility shall be designated a Tier II-A Facility if the proposed location for the facility is in an Unprotected Location.
 - (B) A Tier II Facility shall be designated a Tier II-B Facility if the proposed location for the facility is in a Planning Protected Location or Zoning Protected Location.
 - (C) A Tier II Facility shall be designated a Tier II-C Facility if the proposed location for the facility is in a Park Protected Location.
- (c) **Tier III Facility.**
 - (1) **No Limitations on Equipment.** The Department shall not place any limitations on the antennas, antenna enclosures or other equipment that may be contained in an Application for a Tier III Facility Permit.
 - (2) **Types of Tier III Facilities.**
 - (A) A Tier III Facility shall be designated a Tier III-A Facility if the proposed location for the facility is in an Unprotected Location.
 - (B) A Tier III Facility shall be designated a Tier III-B Facility if the proposed location for the facility is in a Planning Protected Location or Zoning Protected Location.
 - (C) A Tier III-C Facility shall be designated a Tier III-C Facility if the proposed location for the facility is in a Park Protected Location.
- (d) **Step-Down Facilities.**
 - (1) **Step-Down Tier II Facility.** A Step-Down Tier II Facility shall be designated a Tier I Facility.
 - (2) **Step-Down Tier III Facility.** A Step-Down Tier III Facility shall be designated a Tier II Facility.

(Added by Ord. 12-11, File No. 100041)

SEC. 1504. INITIAL REVIEW OF A PERSONAL WIRELESS FACILITY SITE PERMIT APPLICATION.

- (a) **Completeness Review.**
 - (1) **Initial Determination.** Following receipt of an Application for a Personal Wireless Service Facility Site Permit, the Department shall make an initial determination whether the Application is complete.
 - (2) **Notice of Completeness Determination.** The Department shall promptly notify an Applicant for a Personal Wireless Service Facility whether the Application is complete.
- (b) **Tier Review.**
 - (1) **Initial Determination.** Following a Department determination that an Application for a Personal Wireless Service Facility Site Permit is complete, the Department shall make an initial determination as follows:
 - (A) The Application is for a Tier I, Tier II, or Tier III Facility Permit.
 - (B) The Department is required to refer the Application to the Planning Department, and/or the Recreation and Park Department under Sections 1509(a)(1) and 1510(a)(1) below.
 - (C) The Department is exercising its discretion to refer an Application for a Tier II-A Facility Permit to the Planning Department and/or the Recreation and Park Department under Sections 1509(a)(2) and 1510(a)(2) below.
 - (2) **Notice of Tier Determination.** The Department shall promptly notify an Applicant for a Personal Wireless Service Facility of the Department's tier determination.

(Added by Ord. 12-11, File No. 100041)

SEC. 1505. CONDITIONS OF APPROVAL.

- (a) **Conditions of Approval.** Any City department reviewing an Application for a Personal Wireless Service Facility Site Permit, as required by this Article 25, may add Conditions to its approval, tentative approval, or determination.
- (b) **Conditions in Writing.** Any Conditions that a City department includes in its approval, tentative approval, or determination with respect to an Application for a Personal Wireless Service Facility Site Permit shall be in writing.
- (c) **Notice of Conditions.** The Department shall promptly notify the Applicant of any such Conditions and shall give the Applicant a reasonable time to accept or reject the Conditions.
- (d) **Acceptance of Conditions Required.** The Department shall not approve an Application for a Personal Wireless Service Facility Site

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Permit unless the Applicant accepts all of the Conditions added to an approval, tentative approval, or determination by any City department that reviewed the Application.

(Added by Ord. 12-11, File No. 100041)

SEC. 1506. STREET TREE.

(a) **Condition of Approval.** When reviewing an application for a Tier II or Tier III Facility Permit, the Planning Department and/or Recreation and Park Department (as appropriate) may require as a Condition of approval that the Permittee plant and maintain an appropriate street tree adjacent to the Utility or Street Light Pole so as to provide a screen for a permitted Tier II or Tier III Facility.

(b) **Implementation of Street Tree Requirement.** When installation of a street tree is required by the Planning Department and/or Recreation and Park Department, the Department shall implement the requirement as follows:

(1) The Department shall require the Permittee to install a street tree that is a minimum of twenty-four (24)-inch box size. The Department's Bureau of Urban Forestry shall work with the Permittee to select the appropriate species and location for the required tree.

(2) In any instance in which the Department cannot require the Permittee to install a street tree, on the basis of inadequate sidewalk width, interference with utilities, or other reasons regarding the public health, safety, or welfare, the Department shall instead require the Permittee to make an "in-lieu" payment into the Department's "Adopt-A-Tree" fund. This payment shall be in the amount specified in San Francisco Public Works Code § 807(f), and shall be payable prior to the Department's issuance of the Personal Wireless Service Facility Site Permit.

(c) **Care and Maintenance of Street Trees.** The Permittee shall be responsible for the care and maintenance of any street tree required to be installed in the Public Rights-of-Way under this Section. In this regard, the Permittee shall assume the duty of a "property owner" as set forth in San Francisco Public Works Code § 805.

(Added by Ord. 12-11, File No. 100041)

SEC. 1507. DEPARTMENT OF PUBLIC HEALTH REVIEW.

(a) **Department of Public Health Referral.** The Department shall refer every Application for a Personal Wireless Service Facility Site Permit to the Department of Public Health for review of the proposed Personal Wireless Service Facility under the Public Health Compliance Standard.

(b) **Department of Public Health Determination.** The Department of Public Health shall make a determination whether the Application satisfies the Public Health Compliance Standard. The determination of the Department of Public Health shall be in writing and shall set forth the reasons therefor. The Department of Public Health shall transmit its determination to the Department within twenty (20) business days of receipt of the Application from the Department. With the concurrence of the Applicant, the Department of Public Health may extend this review period beyond twenty (20) business days.

(c) **Affirmative Determination Required.** The Department shall not approve an Application for a Personal Wireless Service Facility Site Permit unless the Department of Public Health makes a determination that the Application satisfies the Public Health Compliance Standard.

(Added by Ord. 12-11, File No. 100041)

SEC. 1508. DEPARTMENT REVIEW OF A PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.

(a) **Tier I Facility Permit.** The Department shall review an Application for a Tier I Facility Permit to determine whether the Application:

- (1) Satisfies the Tier I Criteria; and
- (2) Receives an affirmative determination from the Department of Public Health under the Public Health Compliance Standard.

(b) **Tier II-A Facility Permit.** The Department shall review an Application for a Tier II-A Facility Permit to determine whether the Application:

- (1) Satisfies the Tier II Criteria; and
- (2) Receives an affirmative determination from the Department of Public Health under the Public Health Compliance Standard.

(c) **Tier II-B or Tier II-C Facility Permit.** The Department shall review an Application for a Tier II-B or Tier II-C Facility Permit to determine whether the Application:

- (1) Satisfies the Tier II Criteria;
- (2) Receives an affirmative determination from the Department of Public Health under the Public Health Compliance Standard; and
- (3) Receives an affirmative determination from the Planning Department or the Recreation and Park Department (or both if required)

under the applicable Tier II-B or Tier II-C Compatibility Standard.

(d) **Tier III Facility Permit.** The Department shall review an Application for a Tier III Facility Permit to determine whether the Application:

- (1) Satisfies the Tier III Necessity Standard;
- (2) Receives an affirmative determination from the Department of Public Health under the Public Health Compliance Standard; and
- (3) Receives an affirmative determination from the Planning Department or the Recreation and Park Department (or both if required)

under the applicable Tier III-A, Tier III-B, or Tier III-C Compatibility Standard.

(Added by Ord. 12-11, File No. 100041)

SEC. 1509. PLANNING DEPARTMENT REVIEW OF A TIER II-B, TIER III-A, OR TIER III-B FACILITY PERMIT APPLICATION.

(a) **Referral to Planning Department.**

(1) **Referral Required.**

(A) The Department shall refer an Application for a Tier II-B Facility Permit to the Planning Department for a review of the proposed Personal Wireless Service Facility under the applicable Tier II-B Compatibility Standard.

(B) If the Department determines that an Application for a Tier III-A, or Tier III-B Facility Permit satisfies the Tier III Necessity Standard, the Department shall refer the Application to the Planning Department for a review of the proposed Personal Wireless Service Facility under the applicable Tier III-A, or Tier III-B Compatibility Standard.

(2) **Referral Allowed.** The Department may refer an Application for a Tier II-A Facility Permit to the Planning Department if the proposed location for the Personal Wireless Service Facility is in the Immediate Vicinity of a Planning Protected or Zoning Protected Location.

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The Department shall designate such a facility a Tier II-B Facility. The Planning Department shall then review the Application under the Tier II-B Compatibility Standard that would apply to the Planning Protected or Zoning Protected Location that is in the Immediate Vicinity of the proposed Tier II-A Facility.

(b) **Planning Department Determination.**

(1) The Planning Department shall make a determination whether an Application for a Personal Wireless Service Facility Site Permit referred to the Planning Department under this Section satisfies the applicable Tier II-B, Tier III-A, or Tier III-B Compatibility Standard. The Planning Department's determination shall be in writing and shall set forth the reasons therefor. The Planning Department shall transmit its determination to the Department within twenty (20) business days of receipt of the Application from the Department. With the concurrence of the Applicant, the Planning Department may extend this review period beyond twenty (20) business days.

(2) The Planning Department's determination that an Application for a Personal Wireless Service Facility Site Permit satisfies the Tier II-B or Tier III-B Compatibility Standard for a Zoning Protected Location may include a Condition that the Personal Wireless Service Facility not obstruct the view from or the light into any adjacent residential window.

(c) **Affirmative Determination Required.** The Department shall not approve an Application for a Tier II-B, Tier III-A, or Tier III-B Facility Permit unless the Planning Department makes a determination that the Application satisfies the applicable Tier II-B, Tier III-A, or Tier III-B Compatibility Standard.

(Added by Ord. 12-11, File No. 100041)

SEC. 1510. RECREATION AND PARK DEPARTMENT REVIEW OF A TIER II-C OR TIER III-C FACILITY PERMIT APPLICATION.

(a) **Referral to Recreation and Park Department.**(1) **Referral Required.**

(A) The Department shall refer an Application for a Tier II-C Facility Permit to the Recreation and Park Department for a review of the proposed Personal Wireless Service Facility under the Tier II-C Compatibility Standard.

(B) If the Department determines that an Application for a Tier III-C Facility Permit satisfies the Tier III Necessity Standard, the Department shall refer the Application to the Recreation and Park Department for a review of the proposed Personal Wireless Service Facility under the Tier III-C Compatibility Standard.

(2) **Referral Allowed.** The Department may refer an Application for a Tier II-A or Tier III-A Permit to the Recreation and Park Department if the proposed location for the Personal Wireless Service Facility is in the Immediate Vicinity of a Park Protected Location. The Department shall designate such a facility a Tier II-C or Tier III-C Facility. The Recreation and Park Department shall then review the Application under the applicable Tier II-C or Tier III-C Compatibility Standard.

(b) **Recreation and Park Department Determination.** The Recreation and Park Department shall make a determination whether an Application for a Personal Wireless Service Facility Site Permit referred to the Planning Department under this Section satisfies the applicable Tier II-C or Tier III-C Compatibility Standard. The Recreation and Park Department's determination shall be in writing and shall set forth the reasons therefor. The Recreation and Park Department shall transmit its determination to the Department within twenty (20) business days of receipt of the Application from the Department. With the concurrence of the Applicant, the Recreation and Park Department may extend this review period beyond twenty (20) business days.

(c) **Affirmative Determination Required.** The Department shall not approve an Application for a Tier II-C or Tier III-C Facility Permit unless the Recreation and Park Department makes a determination that the Application satisfies the applicable Tier II-C or Tier III-C Compatibility Standard.

(Added by Ord. 12-11, File No. 100041)

SEC. 1511. DEPARTMENT DETERMINATION.

(a) **Determination in Writing.**

(1) **Tentative Approval.** A Department tentative approval of an Application for a Tier III Facility Permit shall be in writing and shall set forth the reasons therefor. If a Department tentative approval contains any Conditions, the Conditions shall also be in writing.

(2) **Final Determination.** A Department final determination to approve or deny an Application for a Personal Wireless Service Facility Site Permit shall be in writing and shall set forth the reasons therefor. If a Department final determination to approve an Application contains any Conditions, the Conditions shall also be in writing.

(b) **Tier I or Tier II-A Facility Permit.**

(1) **Denial.** The Department shall issue a final determination denying an Application for a Tier I or Tier II-A Facility Permit within three (3) business days of any of the following events:

- (A) The Department making a determination that the Application does not meet the Tier I or Tier II Criteria, as applicable;
- (B) The Department's receipt of a determination from the Department of Public Health that the Application does not comply with the Public Health Compliance Standard; or
- (C) If the Department or the Department of Public Health adds any Conditions to its approval of the Application, the Department's receipt of a notice from the Applicant that it rejects any of those Conditions.

(2) **Approval without Conditions.** If neither the Department nor the Department of Public Health adds any Conditions to its approval of an Application for a Tier I or Tier II-A Facility Permit, the Department shall issue a final determination approving the Application within three (3) business days of the occurrence of the last of the following events:

- (A) The Department making a determination that the Application meets the Tier I or Tier II Criteria, as applicable; or
- (B) The Department's receipt of a determination from the Department of Public Health that the Application complies with the Public Health Compliance Standard.

(3) **Approval with Conditions.** If the Department or the Department of Public Health adds any Conditions to its approval of an Application for a Tier I or Tier II-A Facility Permit, the Department shall issue a final determination approving the Application within three (3) business days of the occurrence of the last of the following events:

- (A) The Department making a determination that the Application meets the Tier I or Tier II Criteria, as applicable;
- (B) The Department's receipt of a determination from the Department of Public Health that the Application complies with the Public Health Compliance Standard; or

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(C) The Department's receipt of a notice from the Applicant that it accepts all of those Conditions.

(c) **Tier II-B or Tier II-C Facility Permit.**

(1) **Denial.** The Department shall issue a final determination denying an Application for a Tier II-B or Tier II-C Facility Permit within three (3) business days of any of the following events:

- (A) The Department making a determination that the Application does not meet the Tier II Criteria;
- (B) The Department's receipt of a determination from the Department of Public Health that the Application does not comply with the Public Health Compliance Standard;
- (C) The Department's receipt of a determination from the Planning Department or the Recreation and Park Department that the Application does not meet the applicable Compatibility Standard; or
- (D) If any City department that reviewed the Application adds any Conditions to its approval of the Application, the Department's receipt of a notice from the Applicant that it rejects any of those Conditions.

(2) **Approval without Conditions.** If no City department reviewing an Application for a Tier II-B or Tier II-C Facility Permit adds any Conditions to its approval of the Application, the Department shall issue a final determination approving the Application within three (3) business days of the occurrence of the last of the following events:

- (A) The Department's receipt of a determination from the Department of Public Health that the Application complies with the Public Health Compliance Standard; or
- (B) The Department's receipt of a determination from the Planning Department or the Recreation and Park Department (or both if required) that the Application meets the applicable Compatibility Standard.

(3) **Approval with Conditions.** If any City department reviewing an Application for a Tier II-B or Tier II-C Facility Permit adds any Conditions to its approval of the Application, the Department shall issue a final determination approving the Application within three (3) business days of the occurrence of the last of the following events:

- (A) The Department's receipt of a determination from the Department of Public Health that the Application complies with the Public Health Compliance Standard;
- (B) The Department's receipt of a determination from the Planning Department or the Recreation and Park Department (or both if required) that the Application meets the applicable Compatibility Standard; or
- (C) The Department's receipt of a notice from the Applicant that it accepts all of those Conditions.

(d) **Tier III Facility Permit.**

(1) **Denial.** The Department shall issue a final determination denying an Application for a Tier III Facility Permit within three (3) business days of any of the following events:

- (A) The Department making a determination that the Application does not meet the Tier III Necessity Standard;
- (B) The Department's receipt of a determination from the Department of Public Health that the Application does not comply with the Public Health Compliance Standard;
- (C) The Department's receipt of a determination from the Planning Department or the Recreation and Park Department (or both if required) that the Application does not meet the applicable Compatibility Standard; or
- (D) If any City department reviewing the Application adds any Conditions to its approval of the Application, the Department's receipt of a notice from the Applicant that it rejects any of those Conditions.

(2) **Approval without Conditions.**

(A) If no City department reviewing an Application for a Tier III Facility Permit adds any Conditions to its approval of the Application, the Department shall issue a tentative approval of an Application for a Tier III Facility Permit without Conditions within three (3) business days of the occurrence of the last of the following events:

- (i) The Department's receipt of a determination from the Department of Public Health that the Application complies with the Public Health Compliance Standard; and
- (ii) The Department's receipt of a determination from the Planning Department or the Recreation and Park Department (or both if required) that the Application meets the applicable Compatibility Standard.

(B) Following the Department's tentative approval of an Application for a Tier III Facility Permit without any Conditions, the Department shall issue a final determination as follows:

- (i) The Department shall require the Applicant to give notice of the tentative approval as required by Section 1512 below; and
- (ii) If no protest is timely submitted, the Department shall issue a final determination approving the Application within a reasonable time after the time to file a protest has expired; or
- (iii) If a protest is timely submitted, the Department shall issue a final determination approving or denying the Application within a reasonable time after the Director issues a decision under Section 1513(g) below.

(3) **Approval with Conditions.**

(A) If any City department reviewing an Application for a Tier III Facility Permit adds any Conditions to its approval of the Application, the Department shall issue a tentative approval of the Application with Conditions within three (3) business days of the occurrence of the last of the following events:

- (i) The Department's receipt of a determination from the Department of Public Health that the Application complies with the Public Health Compliance Standard;
- (ii) The Department's receipt of a determination from the Planning Department or the Recreation and Park Department (or both if required) that the Application meets the applicable Compatibility Standard; or
- (iii) The Department's receipt of a notice from the Applicant that it accepts all of those Conditions.

(B) Following the Department's tentative approval of an Application for a Tier III Facility Permit with Conditions, the Department shall issue a final determination as follows:

- (i) The Department shall require the Applicant to give notice of the tentative approval as required by Section 1512 below; and
- (ii) If no protest is timely submitted, the Department shall issue a final determination approving the Application within a reasonable time after the time to file a protest has expired; or
- (iii) If a protest is timely submitted, the Department shall issue a final determination approving or denying the Application

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within a reasonable time after the Director issues a decision under Section 1513(g) below.

(Added by Ord. 12-11, File No. 100041)

SEC. 1512. NOTICE FOLLOWING TENTATIVE APPROVAL OF A TIER III FACILITY PERMIT APPLICATION.

(a) **Notice Required.** The Department shall require an Applicant for a Tier III Facility Permit to notify the public of a tentative approval of the Application under Sections 1511(d)(2) or 1511(d)(3) above, and to provide the Department with evidence, as the Department may require, of compliance with this requirement.

(b) **Types of Notice Required.**

(1) **Notice by Mail.** The Applicant shall mail a copy of the notice to:

(A) Any Person owning property or residing within one hundred and fifty (150) feet of the proposed location of the Tier III Facility; and

(B) Any neighborhood association identified by the Planning Department for any neighborhood within three hundred (300) feet of the proposed Tier III Facility.

(2) **Notice by Posting.** The Applicant shall post a copy of the notice in conspicuous places throughout the block face where the proposed Tier III Facility is to be located.

(c) **Contents and Form of Notice.** The notice shall contain such information, and be in such form, as the Department reasonably requires in order to inform the general public as to the nature of the Application for a Tier III Facility Permit. At a minimum, the notice shall:

(1) Provide a description and a photo-simulation of the proposed Tier III Facility;

(2) Summarize the determinations of any City departments that were necessary for the tentative approval of the Application;

(3) Identify any Conditions added by any City departments that have been accepted by the Applicant and are now part of the Application;

(4) State that any Person seeking to protest the Application must submit a protest to the Department within twenty (20) days of the date the notice was mailed and posted;

(5) Describe the procedure for submitting a timely protest;

(6) Specify the applicable grounds for protesting the Application under this Article 25; and

(7) Explain how any interested Person may obtain additional information and documents related to the Application.

(Added by Ord. 12-11, File No. 100041)

SEC. 1513. PROTEST OF A TIER III FACILITY PERMIT.

(a) **Protest Allowed.** Any Person may protest a tentative approval of an Application for a Tier III Facility Permit. A protest must be in writing and must be submitted to the Department within twenty (20) days of the date the notice was mailed and posted as required under Section 1512 above.

(b) **Hearing Required.** If a protest is timely submitted, the Department shall hold a hearing. The Department shall set a date for the hearing that is at least fifteen (15) days, but no more than forty-five (45) days, after the Department's receipt of the protest, unless the Applicant and any Person submitting a protest agree to a later hearing date.

(c) **Notice of Hearing Date.** At least ten (10) days before the hearing, the Department shall notify in writing any Person submitting a protest, the Applicant, and any City department that reviewed the Application of the date set for the hearing. The Department shall follow its regular procedures for notifying the general public of the hearing.

(d) **Hearing Officer.** The Department shall appoint an impartial hearing officer to conduct a public hearing on a protest.

(e) **Hearing Record.** The hearing record shall include:

(1) The Application and the Department's tentative approval of the Application;

(2) Any written determination from the Department, the Planning Department, the Recreation and Park Department, and the Department of Public Health (as applicable);

(3) Any further written evidence from any City departments submitted either prior to or during the hearing;

(4) Any written submissions from the Applicant, any Person submitting a protest, or any other interested Person submitted either prior to or during the hearing; and

(5) Any oral testimony from any City departments, the Applicant, any Person submitting a protest, or any interested Person taken during the hearing.

(f) **Hearing Officer's Report.** The hearing officer shall issue a written report and recommendation within ten (10) days of the close of evidence. The hearing officer shall include in the report a summary of the evidence and a recommendation to the Director to either grant or deny the protest of an Application.

(g) **Director's Decision.** The Director shall issue a written decision adopting, modifying, or rejecting the hearing officer's written report and recommendation within seven (7) days of receipt of the report.

(h) **Grounds for Granting a Protest.** The Director may grant a protest of a tentative approval of Application for a Tier III Facility Permit only if the Director finds that the evidence at the hearing supports any one of the following findings:

(1) The Department of Public Health incorrectly determined that the Application complies with the Public Health Compliance Standard;

(2) The Department incorrectly determined that the Application meets the Tier III Necessity Standard;

(3) In the case of an Application for a Tier III-A or Tier III-B Facility Permit, the Planning Department incorrectly determined that the Application meets the Tier III-A or Tier III-B Compatibility Standard, as applicable; or

(4) In the case of an Application for a Tier III-C Facility Permit, the Recreation and Park Department incorrectly determined that the Application meets the Tier III-C Compatibility Standard.

(Added by Ord. 12-11, File No. 100041)

SEC. 1514. NOTICE OF FINAL DETERMINATION.

(a) **Approval.** The Department shall provide notice of a final determination to approve an Application for a Personal Wireless Service Facilities Site Permit.

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(1) **Notice Required.**

(A) The Department shall promptly mail a notice of final determination to approve an Application for a Personal Wireless Service Facility Site Permit to both the Applicant and to any neighborhood association identified by the Planning Department for any neighborhood within three hundred (300) feet of the approved Personal Wireless Service Facility.

(B) If a hearing was held on an Application for a Tier III Facility Permit, the Department shall promptly mail a notice of final determination to approve an Application for a Personal Wireless Service Facility Site Permit to any Person who either filed a protest, submitted evidence, or appeared at the hearing, and whose name and address are known to the Department.

(C) The Department shall require an Applicant for a Personal Wireless Service Facility Site Permit to promptly post notice of a Department final determination to approve an Application for a Personal Wireless Service Facility Site Permit in conspicuous places throughout the block face where the approved Personal Wireless Service Facility is to be located and to provide the Department with evidence, as the Department may require, of compliance with this requirement.

(2) **Contents and Form of Notice.** A notice of final determination to approve an Application for a Personal Wireless Service Facility Site Permit shall contain such information, and be in such form, as the Department reasonably requires in order to inform the general public of the approved Application. At a minimum, the notice of final determination shall:

(A) Provide a description and a photo-simulation of the approved Personal Wireless Service Facility;

(B) Summarize the determinations of the City departments that were necessary for the approval of the Application, including any Conditions added by any City departments that were accepted by the Applicant;

(C) State that any Person may file an appeal of the approval of the Application with the Board of Appeals within fifteen (15) days after the date that all notices required by Section 1514(a) above have been provided;

(D) Describe the procedure for submitting a timely appeal;

(E) Specify the applicable grounds for appealing the approval of the Application under this Article 25; and

(F) Explain how any interested Person may obtain additional information and documents related to the Application.

(b) **Denial.** The Department shall provide notice of a final determination to deny an Application for a Personal Wireless Service Facilities Site Permit.

(1) **Notice Required.** The Department shall promptly mail a notice of final determination to deny an Application for a Personal Wireless Service Facility Site Permit to the Applicant.

(2) **Contents of Notice.** A notice of final determination to deny an Application for a Personal Wireless Service Facility Site Permit shall at a minimum:

(A) Summarize the determinations of any City departments that were necessary for the denial of the Application, including any Conditions added by any City departments that were rejected by the Applicant.

(B) State that the Applicant may file an appeal of the denial of the Application with the Board of Appeals within fifteen (15) days of the Department's mailing of the notice.

(C) Describe the procedure for submitting a timely appeal; and

(D) Specify the applicable grounds for appealing the denial of the Application under this Article 25.

(Added by Ord. 12-11, File No. 100041)

SEC. 1515. APPEALS.

(a) **Appeal Permitted.** Any Person may appeal a Department final determination with respect to an Application for a Personal Wireless Service Facility Site Permit to the Board of Appeals.

(b) **Final Determination.**

(1) **Approval or Denial.** The Department's approval or denial of an Application for a Personal Wireless Service Facility Site Permit shall be an appealable final determination under this Section.

(2) **Refusal To Accept Conditions.** The Department's denial of an Application for a Personal Wireless Service Facility Site Permit based on the Applicant's refusal to accept any Conditions imposed by a City department shall be an appealable final determination under this Section.

(c) **Board of Appeals Review.** Upon such appeal, the Board of Appeals shall determine whether the final determination was correct under the provisions of this Article 25.

(Added by Ord. 12-11, File No. 100041)

SEC. 1516. NOTICE OF COMPLETION AND INSPECTION.

(a) **Notice of Completion.** A Permittee shall notify the Department immediately upon completion of the installation of a Personal Wireless Service Facility. The notice of completion must include a written statement from a certified engineer confirming that the permitted Personal Wireless Service Facility complies with the Public Health Compliance Standard.

(b) **Inspection.**

(1) **Required After Installation.** The Department shall inspect a Personal Wireless Service Facility installed in the Public Rights-of-Way within a reasonable time after a Permittee provides the Department with a notice of completion required under Section 1516(a) above. The Department shall determine during the inspection whether:

(A) The installation is in accordance with the requirements of the Personal Wireless Service Facility Site Permit; and

(B) The permitted Personal Wireless Service Facility complies with the Public Health Compliance Standard.

(2) **Subsequent Inspection.** If at any time the Department has a valid reason to believe that a permitted Personal Wireless Service Facility does not comply with the Public Health Compliance Standard, the Department shall require the Permittee to provide additional proof of compliance with the Public Health Compliance Standard. The Department may also request that the Department of Public Health inspect the facility.

(Added by Ord. 12-11, File No. 100041)

SEC. 1517. COMPLIANCE.

(a) **Compliance Required.** Any Personal Wireless Service Facility installed in the Public Rights-of-Way pursuant to a Personal Wireless Service Facility Site Permit issued under this Article 25 must comply with the terms and conditions of the Permit and this Article 25.

(b) **Notice of Deficiency.**

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(1) **Non-Compliance with Permit.** If the Department determines, either after an inspection required under Section 1516(b) above or at any other time, that a Personal Wireless Service Facility is not in compliance with the Personal Wireless Service Facility Site Permit or this Article 25, the Department shall issue a notice of deficiency and require the Permittee to take corrective action to bring the Personal Wireless Service Facility into compliance.

(2) **Radio Frequency Emissions.** If the Department determines, either after an inspection required under 1515(b) above or at any other time, that potential human exposure to radio frequency emissions from a permitted Personal Wireless Service Facility exceeds FCC guidelines, the Department shall issue a notice of deficiency and require the Permittee to take corrective action to bring the Personal Wireless Service Facility into compliance with FCC guidelines.

(3) **Noise.** If the Department determines, either after an inspection required under 1516(b) above or at any other time, that noise from a permitted Personal Wireless Service Facility at any time of the day or night exceeds forty-five (45) dBA as measured at a distance three (3) feet from any residential building facade, the Department shall issue a notice of deficiency and require the Permittee to take corrective action to bring the Personal Wireless Service Facility into compliance with the noise limit.

(c) **Department Remedies.**

(1) **Required Action.** If a Permittee fails to take corrective action with respect to a Personal Wireless Service Facility within a reasonable time after receiving a notice of deficiency the Department shall:

- (A) Take all reasonable, necessary, and appropriate action to remedy a Permittee's non-compliance; or
- (B) Require a Permittee to remove the non-compliant Personal Wireless Service Facility from the Public Rights-of-Way; and
- (C) Charge to a Permittee the reasonable costs that the City has actually incurred including, but not limited to, administrative costs.

(2) **Discretionary Action.** In addition to the foregoing, if a Permittee fails to take corrective action with respect to a Personal Wireless Service Facility within a reasonable time after receiving a notice of deficiency the Department may deny any pending Application for a Personal Wireless Service Facility Site Permit.

(Added by Ord. 12-11, File No. 100041)

SEC. 1518. ABANDONMENT.

(a) **Permittee Must Maintain Facilities.** Any Personal Wireless Service Facility installed in the Public Rights-of-Way pursuant to a Personal Wireless Service Facility Site Permit issued under this Article 25 must be properly maintained and used to provide Personal Wireless Services.

(b) **Notice of Abandonment.** A Permittee shall notify the Department, or the Department may determine and notify a Permittee, that a Personal Wireless Service Facility installed in the Public Rights-of-Way has been abandoned either because it has not been properly maintained or because it is no longer being used to provide Personal Wireless Services. In such event, a Permittee shall promptly remove the abandoned Personal Wireless Service Facility as required by the Department and at Permittee's expense.

(c) **Remedy for Non-Compliance.** If a Permittee fails to remove an abandoned Personal Wireless Service Facility within a reasonable period of time after receiving a notice of abandonment, the Department shall take all reasonable, necessary, and appropriate action to remedy the Permittee's failure to comply with the notice (including removing the Personal Wireless Service Facility) and may charge to the Permittee the reasonable costs the City has actually incurred including, but not limited to, administrative costs.

(Added by Ord. 12-11, File No. 100041)

SEC. 1519. TERM OF PERMIT.

A Personal Wireless Service Facility Site Permit shall have a term of two (2) years. The term shall commence upon the completion of the inspection required under Section 1516(b)(1) above.

(Added by Ord. 12-11, File No. 100041)

SEC. 1520. RENEWAL.

(a) **Renewal Permitted.** At the end of the term set forth in Section 1519 above, the Department may renew a Personal Wireless Service Facility Site Permit for the identical Personal Wireless Service Facility at the same permitted location for four (4) additional two (2)-year terms.

(b) **Renewal Application Required.** A Permittee seeking to renew a Personal Wireless Service Facility Site Permit must file a renewal Application with the Department prior to the end of the existing term. The renewal Application shall include a written report from a certified engineer confirming that the permitted Personal Wireless Service Facility complies with the Public Health Compliance Standard.

(c) **Approval of Renewal Application.**

(1) **Approval Required.** The Department shall approve a renewal Application using the existing equipment at the same permitted location provided that, since the commencement of the Permit term as set forth in Section 1519 above, there have been no changes to: (A) Applicable Law that would allow the Department to deny a new Application for a Personal Wireless Service Facility Site Permit for the identical Personal Wireless Service Facility at the permitted location; or (B) readily available technology for Personal Wireless Service Facilities that would make it feasible for the Applicant for a renewal Permit to replace the existing equipment with less visually obtrusive equipment.

(2) **Denial Required.** The Department shall deny a renewal Application if the Permittee fails to provide the Department with a written report from a certified engineer confirming that the permitted Personal Wireless Service Facility complies with the Public Health Compliance Standard.

(d) **Referral to Other Departments.** The Department shall refer a renewal Application to other City departments for review before approving or denying the Application under the following circumstances.

(1) **Department of Public Health.** If Applicable Law with respect to human exposure to radio frequency emissions has changed since the date of the approval of the original Application for a Personal Wireless Service Facility Site Permit, the Department shall refer the renewal Application to the Department of Public Health for further review. The Department may not renew the Permit unless the Department of Public Health makes a determination that the Application satisfies the Public Health Compliance Standard and/or other Applicable Law related to human exposure to radio frequency emissions.

(2) **Planning Department and Recreation and Park Department.**

(A) If a renewal Application is for a Personal Wireless Service Facility that is in a location that was not a Planning Protected, Zoning Protected, or Park Protected Location on the date of the approval of the original Application for a Personal Wireless Service Facility Site Permit, the Department shall determine whether changes to Applicable Law since that date have made the location a Planning Protected, Zoning

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Protected, or Park Protected Location. If so, the Department shall refer the renewal Application to the appropriate City department for review under any Compatibility Standard that did not apply to the original Application.

(B) The Department may also exercise its discretion to refer a renewal Application to the Planning Department and/or Recreation and Park Department if the location of the Personal Wireless Service Facility is in the Immediate Vicinity of a Planning Protected, Zoning Protected, or Park Protected Location, whether or not the Department referred the original Application to the applicable City department.

(C) If the Department refers a renewal Application to the Planning Department and/or Recreation and Park Department under this Section, the Department shall not renew the Permit unless the Planning Department and/or Recreation and Park Department recommends approval under the newly applicable Compatibility Standard.

(e) **Applicability of Other Provisions of this Article.** The other provisions of this Article 25 related to approval of an Application for a Personal Wireless Service Facility Site Permit shall only apply to the Department's review of a renewal Application if the Department refers a renewal Application to the Planning and/or Recreation and Park Departments. These provisions shall include, but are not limited to, Notice of Final Determination (Section 1514 above) and Appeals (Section 1515 above).

(Added by Ord. 12-11, File No. 100041)

SEC. 1521. REPLACEMENT OF EQUIPMENT.

During the term of a Personal Wireless Service Facility Site Permit, a Permittee may replace equipment that is part of a permitted Personal Wireless Service Facility; provided that the replacement equipment would be of substantially the same size, appearance, and power as the previously permitted equipment. The Permittee shall notify the Department prior to replacing any permitted equipment. The Permittee shall not install the proposed replacement equipment unless and until the Department notifies Permittee in writing that the Department has determined that the proposed replacement equipment complies with the requirements of this Section.

(Added by Ord. 12-11, File No. 100041)

SEC. 1522. MODIFICATION OF PERMIT.

A Permittee may file an Application with the Department to modify a Personal Wireless Service Facility Site Permit to replace any equipment that is part of a permitted Personal Wireless Service Facility if the proposed replacement equipment would not be of substantially the same size, appearance, and power as the previously permitted equipment. The Department shall not approve an Application to modify a Permit unless the Application complies with all of the requirements of this Article 25.

(Added by Ord. 12-11, File No. 100041)

SEC. 1523. DEPOSIT.

Each Permittee shall submit and maintain with the Department a bond, cash deposit, or other security acceptable to the Department securing the faithful performance of the obligations of the Permittee and its agents under any and all Personal Wireless Service Facility Site Permits issued to the Permittee under this Article 25. The deposit shall be in the sum of twenty-five thousand dollars (\$25,000) in favor of the "Department of Public Works, City and County of San Francisco." If, in accordance with this Article 25, the Director deducts any amounts from such a deposit, the Permittee must restore the full amount of the deposit prior to the Department's issuance of a subsequent Permit. The Department shall return the deposit to the Permittee should Permittee cease to operate any Personal Wireless Service Facilities in the Public Rights-of-Way.

(Added by Ord. 12-11, File No. 100041)

SEC. 1524. LIABILITY.

As a condition of a Personal Wireless Service Site Facility Site Permit, each Permittee agrees on its behalf and on behalf of any agents, successors, or assigns to be wholly responsible for the construction, installation, and maintenance of any permitted Personal Wireless Service Facility. Each Permittee and its agents are jointly and severally liable for all consequences of such construction, installation, and maintenance of a Personal Wireless Service Facility. The issuance of any Personal Wireless Service Facility Site Permit, inspection, repair suggestion, approval, or acquiescence of any person affiliated with the City shall not excuse any Permittee or its agents from such responsibility or liability.

(Added by Ord. 12-11, File No. 100041)

SEC. 1525. INDEMNIFICATION AND DEFENSE OF CITY.

(a) **Indemnification of City.** As a condition of a Personal Wireless Service Site Facility Site Permit, each Permittee agrees on its behalf and on behalf of its agents, successors, or assigns, to indemnify, defend, protect, and hold harmless the City from and against any and all claims of any kind arising against the City as a result of the issuance of a Personal Wireless Service Facility Site Permit including, but not limited to, a claim allegedly arising directly or indirectly from the following:

(1) Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns while engaged in the permitting, construction, installation, or maintenance of any Personal Wireless Service Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about the Public Rights-of-Way that are subject to the Permit for any reason connected in any way whatsoever with the performance of the work authorized by the Permit, or allegedly resulting directly or indirectly from the permitting, construction, installation, or maintenance of any Personal Wireless Service Facility authorized under the Permit;

(2) Any accident, damage, death, or injury to any of a Permittee's contractors or subcontractors, or any officers, agents, or employees of either of them, while engaged in the performance of the construction, installation, or maintenance of any Personal Wireless Service Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about the Public Rights-of-Way that are subject to the Permit, for any reason connected with the performance of the work authorized by the Permit, including from exposure to radio frequency emissions;

(3) Any accident, damage, death, or injury to any Person or accident, damage, or injury to any real or personal property in, upon, or in any way allegedly connected with the construction, installation, or maintenance of any Personal Wireless Service Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about the Public Rights-of-Way that are subject to the Permit, from any causes or claims arising at any time, including any causes or claims arising from exposure to radio frequency emissions; and

(4) Any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by a Permittee or its agents about, in, on, or under the Public Rights-of-Way.

(b) **Defense of the City.** Each Permittee agrees that, upon the request of the City, the Permittee, at no cost or expense to the City, shall indemnify, defend, and hold harmless the City against any claims as set forth in Sections 1525(a) above, regardless of the alleged negligence of

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City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Each Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claims that actually or potentially fall within the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to the Permittee or its agent by the City and continues at all times thereafter. Each Permittee further agrees that the City shall have a cause of action for indemnity against the Permittee for any costs the City may be required to pay as a result of defending or satisfying any claims that arise from or in connection with a Personal Wireless Service Facility Site Permit, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Each Permittee further agrees that the indemnification obligations assumed under a Personal Wireless Service Facility Site Permit shall survive expiration of the Permit or completion of installation of any Personal Wireless Service Facility authorized by the Permit.

(c) **Additional Requirements.** The Department may specify in a Personal Wireless Service Facility Site Permit such additional indemnification requirements as are necessary to protect the City from risks of liability associated with the Permittee's construction, installation, and maintenance of a Personal Wireless Service Facility.

(Added by Ord. 12-11, File No. 100041)

SEC. 1526. INSURANCE.

(a) **Minimum Coverages.** The Department shall require that each Permittee maintain in full force and effect, throughout the term of a Personal Wireless Service Facility Site Permit, an insurance policy or policies issued by an insurance company or companies satisfactory to the City's Risk Manager. Such policy or policies shall, at a minimum, afford insurance covering all of the Permittee's operations, vehicles, and employees, as follows:

(1) Workers' compensation, in statutory amounts, with employers' liability limits not less than one million dollars (\$1,000,000) each accident, injury, or illness.

(2) Commercial general liability insurance with limits not less than one million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations.

(3) Commercial automobile liability insurance with limits not less than one million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired auto coverage, as applicable.

(4) Contractors' pollution liability insurance, on an occurrence form, with limits not less than one million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage and any deductible not to exceed twenty five thousand dollars (\$25,000) each occurrence.

(b) **Other Insurance Requirements.**

(1) Said policy or policies shall include the City and its officers and employees jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no other insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall provide for severability of interests.

(2) Said policy or policies shall provide that an act or omission of one insured, which would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other insured. Said policy or policies shall afford full coverage for any claims based on acts, omissions, injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in part, during the policy period.

(3) Said policy or policies shall be endorsed to provide thirty (30) days advance written notice of cancellation or any material change to the Department.

(4) Should any of the required insurance be provided under a claims-made form, a Permittee shall maintain such coverage continuously throughout the term of a Personal Wireless Service Facility Site Permit, and, without lapse, for a period of three (3) years beyond the expiration or termination of the Permit, to the effect that, should occurrences during the term of the Permit give rise to claims made after expiration or termination of the Permit, such claims shall be covered by such claims-made policies.

(5) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified in Section 1526(a) above.

(c) **Indemnity Obligation.** Such insurance shall in no way relieve or decrease a Permittee's or its agent's obligation to indemnify the City under Section 1525 above.

(d) **Proof of Insurance.** Before the Department will issue a Personal Wireless Service Facility Site Permit, a Permittee shall furnish to the Department certificates of insurance and additional insured policy endorsements with insurers that are authorized to do business in the State of California and that are satisfactory to the City evidencing all coverages set forth in Section 1526 (a) above.

(e) **Self-Insurance.** Where a Permittee is self-insured, and such insurance is no less broad and affords no less protection to the City than the requirements specified in Section 1526(a) above, the Department, in consultation with the City's Risk Manager, may accept such insurance as satisfying the requirements of Section 1526(a) above. Evidence of such self-insurance shall be provided in the manner required by the City's Risk Manager.

(Added by Ord. 12-11, File No. 100041)

SEC. 1527. FEES AND COSTS.

(a) **Application Fees.** City departments shall impose fees for review of an Application for a Personal Wireless Service Facility Site Permit. The purpose of these fees is to enable City departments to recover their costs related to reviewing an Application for a Personal Wireless Service Facility Site Permit.

(1) **Department Application Fee.** Each Applicant for a Personal Wireless Service Facility Site Permit shall pay to the Department a non-refundable Application fee of one hundred dollars (\$100.00) for each Personal Wireless Service Facility proposed in the Application.

(2) **Other City Department Application Fees.** Where, as required under this Article 25, the Department has referred an Application for a Personal Wireless Service Facility Site Permit to the Planning Department, the Recreation and Park Department, or the Department of Public Health, an Applicant shall pay the following additional fees for each Personal Wireless Service Facility contained in an Application for a Personal Wireless Service Facility Site Permit.

(A) A Planning Department non-refundable Application fee of one hundred ninety dollars (\$190.00) plus time and materials for any review that takes more than thirty (30) minutes.

(B) A Recreation and Park Department non-refundable Application fee of one hundred twenty-five dollars (\$125.00) plus time and materials for any review that takes more than thirty (30) minutes.

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(C) A Department of Public Health non-refundable Application fee of one hundred eighty-one dollars (\$181.00) plus time and materials for any review that takes more than sixty (60) minutes.

(b) **Inspection Fees.** The Department and the Department of Public Health shall impose fees for the inspection of a permitted Personal Wireless Service Facility. The purpose of these fees is to enable these City departments to recover their costs related to inspecting a permitted Personal Wireless Service Facility.

(1) **Department Inspection Fee.** Each Permittee shall pay the Department a non-refundable time and materials inspection fee not to exceed one hundred fifty dollars (\$150.00) to inspect a permitted Personal Wireless Service Facility as required under Section 1516(b) above.

(2) **Department of Public Health Inspection Fee.** Each Permittee shall pay the Department of Public Health a non-refundable time and materials inspection fee to inspect a permitted Personal Wireless Service Facility where such inspection is required or requested under Section 1516(b) above.

(c) **Adjustment of Fees for CPI.** Beginning with fiscal year 2011-2012, the fees established herein may be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index ("CPI") (as determined by the Controller). No later than April 15th of each year, the Director shall submit the current fee schedule to the Controller, who shall apply the CPI adjustment to produce a new fee schedule for the following year. No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new fee and certifying that the fees produce sufficient revenue to support the costs of providing the services for which the Permit fee is charged, and that the fees do not produce revenue that exceeds the costs of providing the services for which each Permit fee is charged.

(d) **Discretion to Require Additional Fees.** In instances where the review of an Application for a Personal Wireless Service Facility Site Permit is or will be unusually costly to the Department or to other City departments, the Director, in his or her discretion, may, after consulting with other applicable City departments, agencies, boards, or commissions, require an Applicant for a Personal Wireless Service Facility Site Permit to pay a sum in excess of the amounts charged pursuant to this Section 1527. This additional sum shall be sufficient to recover actual costs incurred by the Department and/or other City departments, agencies, boards, or commissions, in connection with an Application for a Personal Wireless Service Facility Site Permit and shall be charged on a time and materials basis. Whenever additional fees are charged, the Director, upon request, shall provide in writing the basis for the additional fees and an estimate of the additional fees.

(e) **Deposit of Fees.** All fees paid to the Department for Personal Wireless Service Facility Site Permits shall be deposited in the Public Works Excavation Fund established by San Francisco Administrative Code Section 10.100-230. All other fees shall go directly to the appropriate City department.

(f) **Reimbursement of City Costs.** A City department may determine that it requires the services of a technical expert in order to evaluate an Application for a Personal Wireless Service Facility. In such case, the Department shall not approve the Application unless the Applicant agrees to reimburse the applicable City department for the reasonable costs incurred by that department for the services of a technical expert.

(Added by Ord. 12-11, File No. 100041)

SEC. 1528. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Article 25 or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article 25 or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid or ineffective.

(Added by Ord. 12-11, File No. 100041)

EXHIBIT C

Appears Behind This Coversheet

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF SAN FRANCISCO
3 UNLIMITED JURISDICTION

4 ---000---

5 T-MOBILE WEST CORPORATION, a)
6 Delaware Corporation, NEXTG)
7 NETWORKDS OF CALIFORNIA,)
8 INC., a Delaware Corporation,)
9 and EXTENET SYSTEMS)
10 (CALIFORNIA)LLC, a California)
11 Limited Liability Company,)
12)
13 Plaintiffs,)

14 vs.

) CASE NO.
) CGC-11-510703

15 THE CITY AND COUNTY OF SAN)
16 FRANCISCO, and the CITY AND)
17 COUNTY OF SAN FRANCISCO)
18 DEPARTMENT OF PUBLIC WORKS,)
19 public entities organized and)
20 existing under the laws of)
21 the State of California,)
22)
23 Defendants.)

24 _____)

25 DEPOSITION OF DANIEL PAUL
Thursday, December 19, 2013

SF REPORTERS
912 Cole Street, Number 304
San Francisco, California 94117
415-948-8289
Info@sf-reporters.com

Reported By: Karla Ellis-Davis
Certified Shorthand Reporter No. 12998, RPR

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4 A. So T-Mobile put a new antenna array on the
5 top -- it's really an antenna mast; it's got a silo over
6 it -- and a new box.

7 Q. What is different about the antenna that you
8 used -- let me finish my question -- that you put on
9 when it became a DAS facility?

10 A. The new antenna is slimmer so it's less
11 visually apparent. It's more the same diameter as the
12 pole, which was our objective, right, to try to make
13 this as aesthetically pleasing as we could. That was
14 probably the biggest difference with the pole -- with
15 the antenna.

16 Q. Did it function the same as the microcell
17 antenna?

18 A. The characteristics of the antennas might be
19 slightly different in gain, but the functionality is the
20 same as far as the antennas are radiating energy and
21 receiving it.

22 Q. What equipment would be put in the new boxes
23 that T-Mobile installed on these reconfigured sites?

24 A. So the new device, it's really just a new
25 piece of hardware that handles all the -- sort of an

□

1 integrated platform that handles the conversion from an
2 optical signal back to an RF signal for communication to
3 the antenna, as well as communication back to the
4 optical interface that is connected to the radio cabinet
5 some distance away.

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6 Q. So the radio cabinets that are now part of the
7 base station are no longer on these poles when they were
8 reconfigured. Is that fair to say?

9 A. There is still radio equipment on the poles
10 that that new cabinet absolutely has radio
11 functionality. That's how you take an optical signal
12 and amplify it and convert it to -- take an optical
13 signal, convert it to RF, amplify the signal and then
14 have it transmit out of the antenna.

15 Q. What is the difference between the Ericsson
16 cabinets and the new optical converter cabinet, the
17 equipment in the new optical converter cabinet, if that
18 is a fair term to use?

19 A. The difference is more in how we reconfigured
20 the various components of the site. There is an
21 Ericsson cabinet at a different location. That has some
22 radio equipment in it that connects up to an optical
23 unit that then is able to transmit that optical signal
24 to this new location. It's just a reconfiguration of
25 the equipment we have. We just distributed the

□

1 different parts of the functionality out across the base
2 station.

3 Q. Is that Ericsson cabinet on a utility pole?

4 A. As it relates to these 32 poles we're talking
5 about, that new cabinet on the pole is not an Ericsson
6 cabinet.

7 Q. The Ericsson cabinet is off-site in some

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8 building somewhere; is that fair to say?

9 A. Yes.

10 Q. Did you bring fiber to all of these 32
11 locations or -- that's my question.

12 A. We had a -- there was company that ran fiber
13 for T-Mobile.

14 Q. So all of these 32 sites which were once
15 connected with coaxial cable are now connected with
16 fiber.

17 A. The original -- I think maybe the terms are
18 getting mixed up.

19 Q. Okay.

20 A. When you say they were -- if I understood what
21 you said correctly, you said the old sites were
22 connected with coaxial and the new ones are connected
23 with fiber. It's not quite that simple. It's about the
24 connections that we're referring to. There are still
25 coaxial cable on each of these poles.

□

1 Q. On the pole --

2 A. Just like there was before.

3 Q. Right.

4 MR. FINEMAN: One at a time, please.

5 MR. SANDERS: Q. But there is no coaxial
6 cable from the pole to some remote location.

7 A. There wasn't before. There wasn't coaxial
8 cable before from the radio box to some far distance
9 place. That was the copper T1 facilities that I

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10 mentioned earlier, right. Those facilities to
11 communicate with a distance switch no longer reside
12 strictly at that pole location. That fiber at the pole
13 location now is to connect the various components of the
14 base station together.

15 Q. Okay. So you no longer needed that copper
16 connection when T-Mobile reconfigured these to DAS?

17 A. Our goal when we reconfigured the -- and
18 redistricted the electronics and the devices at the site
19 was to end up basing that, that connection between the
20 site and our switch via fiber because it's higher
21 capacity, higher speed. So we are using fiber now as
22 opposed to having used copper before.

23 Q. And did you say that -- does T-Mobile own the
24 fiber that goes from these poles to the T-Mobile remote
25 location?

□

1 A. T-Mobile does own that fiber.

2 Q. Before these 51 sites were reconfigured, were
3 there any power supplies at them?

4 A. Every one of these 51 sites had to have power
5 in order to operate. They are active devices so they
6 all had power going to them.

7 Q. Let ask a different way. Was there back-up
8 power at any of these 51 sites?

9 A. I believe there was just the integrated power
10 units which was a very, very small amount inside the
11 electronic box that was on the poles, the Ericsson

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12 electronic boxes.

13 Q. Let's step back a bit. When I refer to
14 back-up power, I mean power supply that would enable
15 these sites to continue to operate in case there was
16 some sort of power outage. Can we agree on that
17 definition?

18 A. I guess the big question is the understanding
19 of how long that is. These 51 sites did not have what I
20 would consider reliable battery backup, right. So
21 that's, if we are -- yeah. Let's leave it at that for
22 now.

23 Q. When they were reconfigured, was the reliable
24 battery backup added to any of the 32 sites?

25 A. We did not add batteries at the -- at the

□

1 locations in the public right-of-way. The batteries
2 are -- we added batteries at the locations where the
3 Ericsson electronics boxes are located.

4 Q. Again, are those generally in a building of
5 some kind?

6 A. Yes. Those are located in a building.

7 Q. And are those buildings -- what equipment does
8 T-Mobile generally have in those buildings?

9 A. So those buildings have various amounts of
10 batteries for back-up power. They've got transport
11 equipment. They've got optical equipment. They have
12 base band equipment. They have radios, filters.

13 Q. What is the term T-Mobile uses to describe

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14 those buildings?

15 A. The building themselves, you know, if I'm
16 describing where I place the radio gear, the Ericsson
17 radio gear in these locations, we refer to them as hub
18 locations or it's just one aspect of the overall base
19 station but it's just where we concentrate those
20 particular components of the base station.

21 Q. How many of these hub locations, for lack of a
22 better term, does T-Mobile have in San Francisco?

23 A. So if we are referring to the locations that
24 are part of the base station that these 32 sites, the
25 base stations that they encompass, there are three

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1 locations right now in the city of San Francisco.

2 Q. And do these three locations have their own
3 antennas?

4 A. Some of them have a regular, what we would
5 consider a separate base station on there that is
6 distinct from the base station that the DAS encompasses.

7 Q. So some of these are macrocells? These hub
8 locations also function as macrocells at times?

9 A. There are what could be defined as a macrocell
10 at some of these hub locations.

11 Q. How do you define the term base station?

12 A. As I mentioned earlier in the deposition, a
13 base station is all of the equipment that is necessary
14 to and located in fixed land stations to communicate
15 with a mobile device via radio frequency emissions.

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16 Q. what are all the various components of a base
17 station?

18 A. I think some of the components would include
19 antennas. It would include whether it's optical fiber,
20 coaxial cable, various connectors, radios, filters. It
21 could include things like TMAs. It could include the
22 LMUs we talked about. It could include base band units.
23 It could include all those amongst some other things.

24 Q. Do you agree with this statement: "That a
25 base station includes any structure that supports or

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1 houses an antenna, transceiver or other associated
2 equipment that constitutes part of a base station"?

3 A. I think what a base station requires is part
4 of that is what the antenna is actually -- its mounting
5 point. The base station -- part of having a base
6 station is being able to have an antenna physically
7 attached to something.

8 Q. So do you agree with the statement that I just
9 read?

10 A. would you re-read the whole statement.

11 Q. "That a base station includes any structure
12 that supports or houses an antenna, transceiver or other
13 associated equipment that constitutes part of the base
14 station."

15 A. I mean, I think that -- as far as the
16 structure, I think it encompasses the portion of the
17 structure necessary to attach the antennas to and to

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18 support that, the electronics.

19 Q. So in your opinion is any part of a base
20 station a base station?

21 A. I --

22 MR. FINEMAN: I object.

23 THE WITNESS: I don't understand that. Sounds
24 like it is circular argument. I'm not quite sure what
25 your question is.

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1 MR. SANDERS: Q. Well, an antenna located a
2 mile away from the radio equipment is still part of one
3 base station; is that your testimony?

4 A. If that antenna is connected to that radio
5 cabinet forming the base station of that, that
6 particular base station, then I would say yes.

7 Q. So the pole where that antenna is is a base
8 station?

9 A. That antenna -- the mounting point that is
10 holding that antenna up is an integral part of the base
11 station.

12 Q. So it's a base station.

13 MR. FINEMAN: There is no question pending.

14 MR. SANDERS: Q. Is it a base station, the
15 antenna where the pole is located?

16 A. The antenna --

17 Q. The pole where the antenna is located.

18 A. It forms part of the base station. We have to
19 have a place to mount the antenna to have a real base

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20 station.

21 Q. Okay. So let's assume that we are in an area
22 now where all the utilities are above ground, so all the
23 utility poles. And there is fiber going from a DAS
24 node, T-Mobile DAS facility, to one of these hubs.
25 That's how they are connected; is that correct?

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1 A. Are we referring to these 32 sites?

2 Q. Yes.

3 A. These 32 sites, that the equipment on that
4 pole is connected via fiber to equipment at another
5 location.

6 Q. Let's assume from my hypothetical here that
7 this fiber is all in utilities pole, one mile worth of
8 fiber on utility poles going from a T-Mobile DAS
9 facility to a T-Mobile hub. Is every one of those poles
10 part of the base station?

11 A. The fiber is part of the base station and
12 those poles are supporting that fiber. Those poles
13 provide an integral part of maintaining the base
14 stations operations.

15 Q. So is it your testimony that they are part of
16 the base station?

17 A. The support of that fiber is a part of the
18 base station. We need to build it to support that
19 transmission. If those -- if the pole went away, if
20 someone chopped the pole down, right, and it destroyed
21 the fiber, the base station wouldn't work anywhere.

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22 Q. And your answer would be the same whether it
23 was one mile or ten miles of fiber between the DAS
24 facility and the hub?

25 A. However much fiber is necessary, right, to

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1 connect the hub to the base station is an integral part
2 of the base station.

3 Q. Are all DAS facilities base stations?

4 A. If it is designed, if it is contained to
5 provide the coverage that I described, right. So if
6 it's -- if the DAS -- in and of itself, a DAS is a base
7 station. It's just a reconfiguration of the components
8 of the base station. So as long as all those components
9 are there to provide functionality so that we can
10 communicate with those mobile devices via radio
11 frequency emissions, then that constitutes the base
12 station.

13 Q. Are there any instances in your opinion where
14 a DAS facility would not be a base station?

15 A. I think it's important to separate out what we
16 are referring to. It depends on what -- I guess I need
17 to know what framework you are referring to. Because I
18 have defined a DAS, right, and how that forms a base
19 station. I don't know if your argument is going in the
20 lines of an analogy where, you know, if you think of the
21 DAS as speakers on a stereo system. If you hold those
22 speakers in isolation, like I'm assuming, and please
23 tell me if I am not understanding your question

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24 correctly. But if you take, say, the equipment located
25 on those poles in a DAS configuration and you equate

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1 those to a stereo speaker, just having a stereo speaker
2 doesn't make it a stereo system, right. You need a
3 receiver and an amplifier and all of that. The base
4 station brings all of that together. Those are one part
5 of the base station, those remote nodes. A DAS in and
6 of itself is a base station.

7 Q. So an antenna pole that is part of a DAS
8 facility whether there is equipment on the pole or not
9 is a base station in your opinion.

10 A. I guess I need you to clarify when you say
11 whether there is equipment or not on the pole, what you
12 mean by that.

13 Q. Let's say the equipment is on a different
14 pole. The equipment is in a building a mile away and
15 all you have is an antenna on a pole that's part of a
16 DAS facility. Is that a base station?

17 A. Well, the antenna is part of the equipment.
18 The antenna is part of the base station.

19 Q. Do you agree that a DAS network consists --
20 I'm going to read a few items here and tell me if you
21 agree that this was generally considered part of a DAS
22 network. "A number of remote communications nodes
23 deployed throughout the desired coverage area, each
24 including at least one antenna for the transmission and
25 reception of a wireless service provider's RF signals."

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1 Do you agree that is generally part of a DAS network?

2 A. The DAS network does include distributed
3 antennas. I agree there are distributed antennas in a
4 DAS.

5 Q. Do you agree that a DAS network generally
6 includes a high-capacity signal transport medium,
7 typically fiberoptic cable connecting each node to
8 central communications hub site?

9 A. I would agree that a DAS node has to have a
10 means to connect back to a central location where the
11 other components of the base station are located.

12 Q. Do you agree that a DAS network generally
13 consists of, as part of it, a radio transceiver located
14 at the hub site?

15 A. I don't believe it has to have the radio
16 transceivers physically located at a hub site.

17 Q. It needs radio transceivers though?

18 A. Those don't necessarily have to be located at
19 the hub site.

20 Q. Where else could they be located?

21 A. Potentially they could be located at the pole.
22 You could potentially have just the base band unit at a
23 hub location and connect that via fiber to a remote
24 radio unit.

25 Q. Does T-Mobile have any DAS facilities in

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1 San Francisco where radio transceivers are located on
2 the pole?

3 A. On these 32 poles, there are radios on those
4 poles. That's how you broadcast -- that's how they
5 broadcast RF admissions out of that antenna.

6 Q. There are other DAS facilities where there
7 aren't radio transceivers at the poles?

8 A. I don't believe I said that.

9 Q. Okay.

10 A. But it is possible you can configure a DAS
11 depending on how you are connecting it to where the
12 radios aren't located physically on the same pole as the
13 antenna. As I mentioned with DAS is, you can
14 reconfigure the electronics of the base station in
15 multiple ways.

16 Q. Is the word "node" commonly used in connection
17 with DAS?

18 A. It is. It is used.

19 Q. What is your understanding of what a DAS node
20 is?

21 A. So a lot of times people refer to DAS nodes as
22 the location that the antenna is located at.

23 Q. So the 32 facilities we've talked about
24 earlier, the T-Mobile facilities in San Francisco, would
25 you refer to those as nodes?

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1 A. They could be referred to in several different
2 ways. I could refer to the antenna location as a node
3 or as a sector on the base station. It's somewhat
4 synonymous. But again, that depends on how you
5 reconfigure it.

6 Q. In T-Mobile terminology, how do you refer to
7 these 32 DAS facilities? What term do you use to
8 describe them?

9 A. I refer to them as base stations, cell sites,
10 site locations. It depends on which portion of the base
11 station that I am referring to.

12 Q. How do you distinguish them between the 19
13 that have not been reconfigured?

14 A. The ones that have been reconfigured I refer
15 to those as modernized base stations and the ones that
16 haven't as non-modernized. Not because they are DAS but
17 because we placed LTE and 1900 UMTS on those.

18 Q. So the modernization is not because they have
19 been reconfigured to DAS but because, as you said,
20 you've added LTE and UMTS to it?

21 A. In order to modernize those facilities on
22 those 32 poles, given the available product offerings
23 from the various vendors, that was the only way to
24 accomplish it.

25 Q. So is that the reason for the reconfiguration?

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1 A. We reconfigured those 32 sites specifically to
2 enable us to offer our customers the services they have

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN FRANCISCO) ss.

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6 CERTIFICATE OF REPORTER

7 I, KARLA K. ELLIS-DAVIS, a Certified Shorthand
8 Reporter, duly authorized to administer oaths pursuant
9 to Section 2093(b) of the California Code of Civil
10 Procedure, I hereby certify that the witness in the
11 foregoing deposition was by me duly sworn to tell the
12 truth, the whole truth, and nothing but the truth in the
13 within-entitled cause;

14 That said deposition was taken down in shorthand
15 by me, a disinterested person, at the time and place
16 therein stated, and that the testimony of the said
17 witness was thereafter reduced to typewriting, by
18 computer, under my direction and supervision;

19 I further certify that I am not of counsel or
20 attorney for either or any of the parties to the said
21 deposition, nor in any way interested in the events of
22 this cause, and that I am not related to any of the
23 parties thereto.

24 Dated: December 26, 2013

25 _____
KARLA ELLIS-DAVIS, CSR NO. 12998

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ACKNOWLEDGMENT OF DEPONENT

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I, _____, do hereby certify that I have read the foregoing pages, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

DANIEL PAUL

Subscribed and sworn to before me this _____ day of _____, 20____.

□

1 I, DANIEL PAUL, have read my proceedings transcript
2 consisting of the preceding pages, taken on