Via Email to tony.batalla@santacruzcounty.us

March 8, 2021

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Re: T-Mobile Comments on the County of Santa Cruz Draft Ordinance Addressing Wireless Communications Facilities

Dear Mr. Batalla and Members of the Board of Supervisors

I write on behalf of T-Mobile West LLC ("T-Mobile") regarding the County of Santa Cruz's (the "County") proposed ordinance amending Chapter 13 of the County Code related to wireless facility siting (the "Draft Ordinance"). T-Mobile appreciates the opportunity to review the Draft Ordinance and provide feedback.

As you know, T-Mobile provides wireless communication services across the County to its residents, business community, and visitors. As individuals become ever more reliant on wireless services exclusively and their data demands continue to grow, modifications to existing infrastructure, alongside new infrastructure, becomes increasingly critical to expanding network capacity and coverage. Such projects are also critically important to the deployment of 5G and other next-generation wireless services. As a result, T-Mobile actively encourages jurisdictions to put measures in place that will enable wireless providers to enhance their networks using various infrastructure to support a range of technologies to achieve the coverage, capacity, and performance their networks need. This densification will require the deployment of, and upgrades to, traditional macro sites and the deployment of new infrastructure (e.g., small cells).

While T-Mobile appreciates the County's desire to consider ways to improve and clarify its existing wireless facility requirements, unfortunately the Draft Ordinance still contain some issues that may discourage investment in next generation wireless infrastructure. Specifically, T-Mobile would like to highlight the following significant concerns:

Significant Gap and Least Intrusive Means: Section 13.10.660(C)(4) of the Draft Ordinance addresses the zoning process and standards for certain prohibited locations. Specifically, this provision prohibits placement of new wireless facilities outside of the public right-of-way in the CA, R-1, RM, RB, and MH zones, unless the applicant submits documentation showing that the facility addresses a "significant gap" in the provider's network, or that the proposed facility is the "least intrusive" available. T-Mobile is concerned that these standards are inconsistent with federal law.

In its 2018 Third Report and Order and Declaratory Ruling, the FCC addressed the Section 253 and Section 332(c)(7) framework which is applicable to all wireless facilities, not simply small wireless facilities. The FCC reiterated that Congress, via Sec. 253 and 332, determined that state or local requirements that prohibit or have the effect of prohibiting the provision of service are unlawful and thus preempted. The Commission noted that various courts had, despite FCC decisions to the contrary, interpreted an effective prohibition of service to occur only if "the provider can establish that it has a significant gap in service coverage" to fill. However, the FCC went on to reject that test.

Indeed, the FCC reaffirmed prior language which states that "a state or local legal requirement constitutes an effective prohibition if it 'materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.'" Furthermore, a "material inhibition" limits, restricts, or holds back T-Mobile's ability to deploy the facilities, technologies, or services that T-Mobile deems appropriate, to meet T-Mobile's service and performance goals.

Based on the foregoing, T-Mobile urges the County to remove language associated with the rejected significant gap test, and instead adopt the material inhibition standard consistent with current federal law.

Appeals Process: Section 13.10.661(I)(2) permits "[a]ny person adversely affected by the decision of the Director pursuant to this Section may appeal the Director's decision in accordance with the provisions contained in SCCC 18.10, Article VI." While, T-Mobile is not opposed to mechanisms for timely appeals generally, unfortunately the existing County Code is inconsistent with streamlining the deployment of critical wireless facilities. Specifically, Sec. 18.10.310(F) also provides that "[t]he filing of the notice of appeal shall have the effect of staying the issuance of any permit or approval provided for by the terms of this chapter until such time as final action has occurred on the appeal."

T-Mobile opposes an appeals project which may indefinitely prevent construction of wireless facilities approved via the processes outlined in the Draft Ordinance. Lengthy and indefinitely appeals processes are in direct contradiction to the actions taken by the FCC in recent years. Indeed, the FCC's recent 2020 Declaratory Ruling addressing modifications made under Sec. 6409(a) clarified that the shot clock is intended to "apply to all authorizations necessary to deploy wireless infrastructure." If the current appeals process were permitted to pause issuance of all permits, then in fact the applicant would not have all authorizations necessary to deploy, thus violating the shot clock.

T-Mobile encourages the County to adopt an appeals process which ensures constituent concerns are heard, but ensures applicants may move forward with deployment of critical wireless facilities when applications have been approved in conformance with this Draft Ordinance.

In conclusion, T-Mobile appreciates the opportunity to provide comment and assist the County in its efforts. While the above comments highlight critical issues in the Draft Ordinance, we would be happy to engage with the County further on additional clarifications and/or revisions. Please feel free to contact me at Rod.Delarosa1@T-Mobile.com.

Sincerely,

Rodrigo de la Rosa
Sr. Manager, Siting Advocacy – West Region

Cc: Timothy Halinski, Corporate Counsel – Land Use and Siting Advocacy

MACKENZIE & ALBRITTON LLP
155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

March 8, 2022

VIA EMAIL

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

Re: Draft Wireless Communication Facility Regulations
Commission Agenda Item 7, March 9, 2022

Dear Commissioners:

We write on behalf of Verizon Wireless regarding the draft ordinance regulating wireless telecommunications facilities (the "Draft Ordinance"). Verizon Wireless appreciates the County's initiative to streamline permitting of facilities on private property and to address small cell facilities in the right-of-way. Several provisions should be revised to ensure that the Draft Ordinance aligns with Federal Communications Commission ("FCC") regulations that require counties to adopt reasonable aesthetic criteria for small cells. For example, some equipment placement or dimension limits would not accommodate the required small cell equipment available from manufacturers, and so would be technically infeasible. Other Draft Ordinance standards contradict a new state law that bars the County from discriminating against particular wireless technologies. We urge the Commission to direct staff to make our suggested revisions prior to recommending the Draft Ordinance to the Board of Supervisors.

The FCC's Infrastructure Order

In its 2018 Infrastructure Order, the FCC confirmed that a local government's aesthetic criteria for small cells must be "reasonable," that is, technically feasible and meant to avoid "out-of-character" deployments, and also "published in advance." *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶¶ 86-88 (September 27, 2018). The FCC also found that that local requirements that "materially inhibit" service improvements and new technology constitute an effective prohibition of service under the Telecommunications Act. *Id.,* ¶¶ 35-37; *see also* 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II). In 2020, the Ninth Circuit Court of Appeals upheld these FCC requirements. *See City of Portland v. United States,* 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 2855 (Mem) (U.S. June 26, 2021).

Our comments are as follows.

13.10.660 – Regulations for the Siting, Aesthetics, Operation, and Construction of Wireless Communication Facilities

C(4)(b). Least intrusive standard to site in prohibited zones. These standards for evaluating alternatives contradict those of Section 13.10.661(D)(3), which also apply to evaluation of alternatives to prohibited zones. Further, the provision of this section requiring evaluation of alternative system designs is preempted by federal and state law. The County cannot require carriers to use alternative technologies because that would intrude on the FCC's exclusive authority over the technical and operational aspects of wireless technology. *See New York SMSA Ltd. Partnership v. Town of Clarkstown,* 612 F.3d 97, 105-106 (2nd Cir. 2010). Newly-adopted California Government Code Section 65964.1(h) bars local governments from discriminating against any particular wireless technology. Draft Ordinance Section 13.10.661(D)(3) provides a reasonable standard for evaluating alternatives that involves comparison of visual impacts and acknowledges an applicant's coverage objectives. *Section 13.10.660(C)(4)(b) should be revised to simply refer to the standards of Section 13.10.661(D)(3).*

C(5). Coastal zone. Federal regulations preempt the coastal zone standards adopted by the State and County. Any Local Coastal Program standards that are technically infeasible or otherwise unreasonable per the FCC's Infrastructure Order are preempted as applied to small cells. For example, the requirement to underground utility lines serving a small cell on a utility pole is unreasonable, as described below. *This provision should acknowledge that any Local Coastal Program restrictions that are preempted by federal law will not apply to a proposed facility.*

E(1). Collocation preference. This provision should be qualified by the same quarter-mile search distance as found in Draft Ordinance Section 13.10.661(D)(3). *We suggest inserting the phrase "within one-quarter mile" after the reference to utility poles.*

F(5). Support equipment undergrounding requirement. The blanket requirement to place equipment underground if feasible is burdensome and unnecessary. The support equipment required for macro wireless facilities includes computer cabinets, power supply equipment, batteries, and emergency backup generators, all of which would require substantial grading and excavation as well as dewatering and cooling equipment if placed underground, if feasible at all. Instead, the County should continue to allow wireless support equipment above-ground with the visual impact measures already specified in this provision, which can include compatible fencing. *The references to undergrounding should be deleted.*

G(1). Height. Verizon Wireless appreciates the clear codification of maximum height limits for wireless facilities. This provision also requires that towers be "the shortest height possible to minimize visual impacts," but that could restrict antennas to a height lower than required to serve a target coverage area. *We suggest adding "…while meeting the applicant's coverage objectives" at the end of the first sentence.*

13.10.661 – Applications for Wireless Communication Facilities

D(1)(b). Finding of no better alternative in prohibited zones. As noted above, the referenced Section 13.10.660(C)(4)(b) includes a preempted requirement to consider alternative technologies, and it contradicts a different Draft Ordinance provision. *This section should refer to the alternative review standards of Section 13.10.661(D)(3).*

D(1)(d). Finding of no hazard to aircraft. The County should leave this determination to the Federal Aviation Administration (the "FAA"), which can issue a "determination of no hazard to air navigation" for proposed wireless facilities. Draft Ordinance Section 13.10.660(C)(3) already requires compliance with FAA regulations. *This section should be deleted.*

D(4). On-site visual demonstration. This vague provision could require full-scale "mock-ups" matching all dimensions of a proposed facility, including its width and support equipment. This is unnecessary because photosimulations from multiple vantage points provide sufficient evidence of a facility's visual impact. At most, the County should require a story pole or drone flight to accurately show the facility's height and placement, which can then be used by consultants to prepare accurate photosimulations. *Instead of allowing the Director to waive mock-up requirements, this provision should allow the Director to require a height demonstration by story pole or drone, not a "mock-up."*

13.10.662 – Wireless Communication Facilities in Public Rights-of-Way

The County must ensure that its small cell design standards are consistent with federal and state law. To be reasonable per the FCC's Infrastructure Order, equipment dimension limits must be technically feasible for new and emerging technologies, by accommodating the antenna and radio models available from manufacturers.

In addition to the low-band frequencies currently in use, Verizon Wireless recently licensed mid-band and high-band frequencies from the FCC. These require different equipment. Accordingly, certain small cells may involve several types of antennas, and up to three of each, facing different directions where they provide service. The Draft Ordinance design standards must accommodate multiple types of antennas to avoid violating Government Code Section 65964.1(h) which bars counties from "unreasonably discriminating in favor of, or against, any particular wireless technology."

Verizon Wireless would be pleased to work with the County to ensure that the proposed small cell design standards are technically feasible for its anticipated deployments.

C(3). Minimum standards. This provision imposes a number of standards that violate federal or state law:

- **Avoid placement of above-ground facilities in underground utility districts.** Phrased as a prohibition, this would bar small cells in many County areas, which would "materially inhibit" service improvements in conflict with the FCC's Infrastructure Order, and impose a direct prohibition of service contradiction of federal law. 47

U.S.C. § 332(c)(7)(B)(i)(II). *The County should allow small cells on streetlight poles or new poles in underground utility districts.*

- **Avoid installation of new support structures or equipment cabinets in the public rights-of-way.** Another prohibition, this would bar new poles, but California Public Utilities Pole grants telephone corporations such as Verizon Wireless a statewide right to place their equipment along any right-of-way, including new poles. The FCC's Infrastructure Order contemplates new poles for small cells in part through distinct fees and Shot Clocks. *See, e.g.,* 47 C.F.R. § 1.6003(c)(1)(iii). Draft Ordinance Section 13.10.662(C)(8) allows new infrastructure in the right-of-way, but it should be revised per our comment below. *The County show allow applicants to place a new pole if there is no feasible existing pole within 500 feet along the right-of-way.*

  As to ground cabinets, Section 7901 allows telephone corporations to place equipment "along and upon" the right-of-way. Verizon Wireless may place ground cabinets in select locations to house batteries that provide continued service during power outages or emergencies. *The County should consider allowing ground cabinets.*

- **Periodic review to minimize the intrusion on the rights-of-way.** The County cannot require applicants to re-design and reconstruct facilities that were built in reliance on approved plans. This would violate the vested rights of permittees as well as Government Code Section 65964(b) that provides for a 10-year term for wireless facility permits. *This provision should be deleted.*

- **Inconvenience the public.** The vague term "inconvenience" exceeds the standard in Section 7901, that telephone equipment not "incommode" the public use of the right-of-way. *We suggest replacing "inconvenience" with "incommode."*

C(4)(a)(iii). Prohibitions on sites directly in front of residences, or within driveway or intersection sight lines. The first standard could bar use of existing poles already located along parcel frontages. Instead, the County should steer small cells to any nearby poles closer to property lines, if feasible. As to the second standard, small cell equipment is always elevated above motorist sight lines, so there is no reason to bar placement on poles that are already within sight lines. The small cell would pose no more safety impact than the existing pole. *We suggest deleting these prohibitions, and adding a separate provision that requires a small cell to be located as close as feasible to property lines.*

C(4)(a)(iv). Prohibition of strand-mounted antennas. Strand-mounted antennas are a different technology than pole-mounted antennas, and Government Code Section 65964.1(h) bars the County from discriminating against any particular wireless technology. *This prohibition must be deleted.*

C(4)(b)(iii). Two-foot antenna protrusion limit (utility poles). This misstates the separation distance required by state safety regulations, and it could limit effective use of utility poles for multiple antennas. Rather than limiting protrusion to no more than two feet from a pole centerline, Public Utilities Commission General Order 95 requires that antennas maintain a

minimum of two feet of horizontal clearance from the centerline. General Order 95, Rule 94.4(E). With a minor expansion of protrusion, the County can accommodate multiple antennas and their metal mounting hardware on a utility pole crossarm, with each antenna facing a different direction where it provides service. For cross-arm configurations, cable connections can be minimized, but not entirely invisible. *We suggest revising the second sentence to allow antennas on a horizontal crossarm on the side of a pole, protruding no more than four feet, with cables placed to minimize visual impact.*

C(4)(b)(iv). Antenna shrouding/concealment (utility poles). Some mid- and high-frequency antennas cannot be shrouded or otherwise concealed by coverings because that impedes signal propagation. Any requirements to cover such antennas would be technically infeasible and unreasonable. Small cell antennas pose minimal visual impact by virtue of their small size. *This blanket requirement should be deleted.*

C(4)(b)(v). Cabinets flush-mounted, limited to pole width and 12-inch protrusion (utility poles). This section imposes several technically infeasible requirements. Radios, other network gear and PG&E electric meters cannot be flush-mounted to a utility pole, and instead must be mounted to a stand-off bracket that allows utility workers to safely climb the pole. Some required radio units may be wider than a pole where attached. Given the stand-off bracket, the corners of some radio units may protrude beyond 12 inches from the pole surface. Alone or in combination, these restrictions would be technically infeasible and unreasonable.

To improve appearance, Verizon Wireless can conceal its associated wireless equipment within a vertical shroud attached to a stand-off bracket on the side of a pole, with a volume well under the 28 cubic feet allowed by this section. The small PG&E electric meter and disconnect switch underneath a shroud cannot be covered. *The requirement to flush-mounted equipment must be deleted. To accommodate a concealment shroud, the width and protrusion limits should be deleted.*

C(4)(b)(vi). Requirement to underground electric supply lines (utility poles). Generally, a small cell on an electric utility pole can be served by the existing electric lines, and requiring those to be placed underground would impose burdens on PG&E. On any pole with existing lines attached, a new aerial line would not be "out-of-character," so this requirement is unreasonable per the FCC's Infrastructure Order. *We suggest allowing overhead lines for a small cell if there are already aerial lines attached to the pole.*

C(4)(b)(vii), C(4)(c)(vii). Prohibition on cooling fans, requirement for passive cooling (utility poles, streetlight poles). Some of the antenna and radio models required for service that are available from manufacturers include small cooling fans, and prohibiting these would be technically infeasible and unreasonable. *This prohibition must be deleted.*

C(4)(b)(ix). Minimum eight-foot equipment height (utility poles). This is technically infeasible because PG&E requires its electric meters to be placed between seven and eight feet. PG&E Document 027911, *Installation Details for Service to Pole-Mounted Communication Equipment. The eight-foot minimum should be slightly revised to seven feet.*

C(4)(c)(iv). Antennas top-mounted in shroud (streetlight poles). As noted, some small cells operating in mid- and high-band frequencies require multiple small antennas facing different directions where they provide service. Covering all of these antennas in a shroud would only increase their silhouette and lead to a bulky appearance. As noted, covering such antennas may be infeasible if it impedes their signal propagation. *The County should allow antennas flush-mounted to the side of a streetlight pole.*

C(4)(c)(v). All equipment internal to the pole or in antenna shroud (streetlight poles). Some small cells require small radios that can be flush-mounted to the side of a streetlight pole where they are not "out-of-character" among other right-of-way infrastructure. These radios cannot fit within a narrow metal streetlight pole, and would only increase the bulk of an antenna shroud. *We suggest allowing small radios on the side of a streetlight pole.*

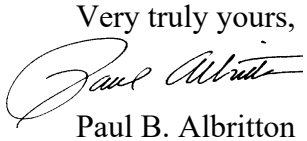
C(8). New infrastructure in right-of-way. As noted, state law allows telephone corporations to place new poles along the right-of-way. Under the FCC's Infrastructure Order, a new pole is part of a small cell, as defined, and so should be permitted in the same manner as a small cell on an existing pole. Instead of subjecting new poles to the same discretionary permit requirements as for macro facilities (that may be unreasonable as applied to small cells), the County should allow a new pole if there is no feasible existing pole nearby. *This section should be replaced with a provision allowing new poles for small cells if there is no existing pole within 500 feet along the right-of-way that is available and technically feasible.*

13.10.663 – Modifications to Wireless Communication Facilities

G(1)(a). Height increase for towers (eligible facilities requests). This misstates the FCC's "substantial change" threshold for an increase in tower height, which is: "Increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet." The FCC has clarified that the 20-foot limit is the distance between antennas, tip-to-tip, not a total 20-foot increase. *See Declaratory Ruling FCC 20-75*, 35 FCC Rcd 5977, ¶ 25 (FCC June 9, 2020). *This provision should be revised to match the FCC's language. For Section (G), the County may consider simply referring to the FCC's "substantial change" thresholds at 47 C.F.R. § 1.6100(b)(7).*

Verizon Wireless appreciates the opportunity to provide comment on the Draft Ordinance. We urge the Commission to direct staff to implement our suggested revisions prior to recommending the Draft Ordinance to the Board of Supervisors.

Very truly yours,



Paul B. Albritton

cc: Jason Heath, Esq.
Daniel Zazueta, Esq.
David Carlson