August 6, 2018

Burlington Board of Selectmen
Town Hall
29 Center Street
Burlington, Massachusetts 01803

Re: Petitions to Board of Selectmen for Grant of Location Pole Attachment
Small Cell Communications Equipment

Dear Board Members:

Cellco Partnership d/b/a Verizon Wireless has filed petitions to install small cell equipment on utility poles, which are owned by Eversource in the town of Burlington, Massachusetts. Following the July 16th hearing, Verizon Wireless is providing additional information related to certain aspects of the proposed installations.

Prior to the July 16th Board of Selectmen meeting, Verizon Wireless had provided an engineer stamped structural for each of the pole locations. The structural analysis confirms that the poles with the proposed Verizon Wireless equipment have sufficient capacity to support the load.

To further support its petitions, Verizon Wireless is providing the enclosed Affidavit of Radio Frequency Engineer. The enclosed Affidavit of Radio Frequency Engineer was prepared by the engineer that has studied the proposed sites relationship to the network design in the town of Burlington. Based upon the review of the network, the engineer has provided a sworn statement certifying the need and suitability of the selected utility poles to address the targeted service gaps in the town of Burlington.

As stated in the petitions and described at the July 16th hearing, the proposed small cell facilities comply with the both federal and state statutes, which delegated regulatory authority to state governmental agencies and preempt any provisions that conflict with the non-discriminatory right of access. The governing federal statute, the Pole Attachment Act of 1978, 47 U.S.C. §224 (“Federal Pole Attachment Act”), provides that “[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it.” The U.S. Supreme Court has definitively determined that this requirement applies to wireless service providers in concluding that an “attachment” is

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1 See 47 U.S.C. § 224(f)(1)
covered by the Federal Pole Attachment Act regardless of whether it is wireline or wireless equipment. At the state level, the controlling statute, G.L. c. 166 §25A, explicitly addresses exactly the situation presented here—a wireless provider attaching antennas and equipment to a utility pole. It provides that, “[a] utility shall provide a wireless provider with nondiscriminatory access to any pole or right-of-way used or useful, in whole or in part, owned or controlled by it for the purpose of installing a wireless attachment.”

The federal and state regulatory framework in this area is comprehensive and does not contemplate or accommodate local government regulation precluding a wireless carrier from exercising its right to nondiscriminatory access to utility poles and rights-of-way. The federal and state statutes determine the sole grounds upon which an installation may be excluded by stating that access to poles or rights-of-way may only be denied “…where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes” or “…[o]n a non-discriminatory basis only for reasons of inadequate capacity, safety, reliability and generally applicable engineering standards…”

As has been discussed at the prior meeting and expounded upon in the attached affidavit, the objective of the proposed “small cell” installations on utility poles is to address a gap in service for Verizon Wireless customers within areas of Burlington that are not adequately served by existing Verizon Wireless coverage from “macro” facilities on towers or other tall structures. Through the attached affidavit with supporting documentation including radio frequency mapping, my client has clearly established significant capacity gaps. The proposed small cell facilities will add the capacity service in the targeted areas where this service is currently unavailable or unreliable because the signal is dissipated by the distance from the nearest macro facility, obstructed by the intervening terrain, or diverted by high demand closer to the macro facility. Each of these “small cell” installations is designed to improve wireless service in the town of Burlington. Although each individual site will cover a relatively small area, as a group they provide Verizon Wireless with the ability to address an extensive gap in reliable coverage.

Because Verizon Wireless is applying for approval for the installation of equipment that provides wireless services, the application is subject to §704 of the federal Telecommunications Act of 1996, codified at 47 U.S.C. §332(c)(7)(B). By way of background, the Telecommunications Act is a federal law enacted in 1996 whose purpose is “[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” Without the requested installations, Verizon Wireless would be unable to provide adequate coverage by filling existing significant gaps in capacity, thereby creating a hardship recognized by federal and state courts interpreting the Telecommunications Act.

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3 See M.G.L. Chapter 166, §25A
4 See 47 U.S. Code § 224(f)(2)
5 See M.G.L. Chapter 166, §25A
The Petitioner looks forward to meeting with Board of Selectmen and continuing the presentation of its Petitions. Should you require any additional information, please don’t hesitate to contact me.

Thank you very much for your cooperation.

Very truly yours,

DUVAL & KLASNICK LLC

[Signature]

By: Daniel D. Klasnick
Attorney at Law