

de la Guerra, Sheila

Public Comment - Group 1 #3

From: Shank, Aaron M. <AShank@porterwright.com>
Sent: Monday, September 21, 2020 4:12 PM
To: Williams, Das; Hart, Gregg; Hartmann, Joan; Adam, Peter; Lavagnino, Steve
Cc: sbcob; MOUROUX, GREGORY B (Legal)
Subject: AT&T Comments on County of Santa Barbara's small cell application fee ordinance
Attachments: AT&T Comments Sept 21 2020.pdf



Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Chair Hart, Vice Chair Adam, and Supervisors Williams, Hartmann, and Lavagnino: Please accept this letter from Gregory Mouroux on behalf of AT&T to provide comments on the county's proposed ordinance to amend its small cell application fees. Please let us know if you have questions.

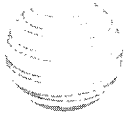
Aaron M. Shank
 Outside Legal Counsel for AT&T

AARON M. SHANK

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END OF NOTICE



Gregory B. Mouroux
Assistant Vice President
Senior Legal Counsel

AT&T
430 Bush Street, Room 6062
San Francisco, CA 94108

T 415.216.2610
gregory.mouroux@att.com

September 21, 2020

VIA E-MAIL

Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: AT&T's Comments on Santa Barbara County's Proposed Fee Ordinance for Small Cell Wireless Facilities

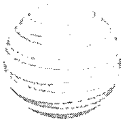
Dear Chair Hart, Vice Chair Adam, and Supervisors Williams, Hartmann, and Lavagnino:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on Santa Barbara County's proposed ordinance setting application fees for small wireless facilities in the public rights-of-way ("Proposed Ordinance"). AT&T only just learned that this item is proceeding tomorrow. While AT&T appreciates the County's much-needed and long-overdue effort to decrease its application fees for small cells, the Proposed Ordinance does not go far enough to bring the County's fees in line with applicable law.

As the Board Agenda Letter explains, the presumptive maximum application fee for attaching a small cell to an existing pole in the right-of-way is \$500 for up to five applications. In stark contrast, just this month the County demanded that AT&T pay well over \$11,000 per small cell application. Now, without sharing any cost study or other justification, the County proposes to decrease the charge to a total of \$3,000. Rather than providing any evidence of the tasks and times involved in what should be an essentially ministerial process, the County estimates its actual costs are about \$6,000. And recognizing that sum is still far too high, it simply cut that number in half. This shows the County has not taken time to meet the legal test of setting an objectively reasonable fee. I urge you to take a step back to develop a true assessment of the reasonable cost for evaluating requests to place small telecommunications infrastructure on poles in the public rights-of-way.

The County's Proposed Fee Is Not Objectively Reasonable

The County has correctly realized that its small cell fees are too high, and AT&T agrees that the County's fees must be reduced substantially to avoid violating federal law. In its *Small Cell Order*, the Federal Communications Commission established a standard for lawful fees, which requires that: "(1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated



competitors in similar situations.”¹ To help municipalities avoid imposing unlawful fees, the FCC established a safe harbor for presumptively reasonable fees: (a) \$500 for the total of all nonrecurring fees for an application including up to five small cells, plus \$100 for each small cell beyond five, or \$1,000 for the total of all nonrecurring fees for a new pole to support small cells, and (b) \$270 per small cell per year for the total of all recurring fees.² And the FCC explained that these fees would be exceeded in “only very limited circumstances.”³

As it is, the County offers no basis why its proposed permitting fee should be any higher than the safe harbor. Moreover, even if the County provides a cost study or some other justification to demonstrate that the \$3,000 fee is based on costs actually incurred, the County still cannot recoup its costs for processing these applications if the costs themselves are not objectively reasonable.⁴ It is not enough for the County to simply eyeball its costs and set an amount that it guesses makes some sense. The law requires the County to justify its costs – to consider deliberately the elements of its processes that are necessary to approve low-profile yet essential infrastructure in the rights-of-way, to limit activities to only those that are necessary, and to apply reasonable costs to those specific tasks.

If the County is incurring such high costs per review, then it should develop a more streamlined permitting process to help reduce costs and ensure compliance with the FCC’s fee standard. AT&T is happy to work with the County to that end. In the meantime, and absent any justification for its excessive fees, the County’s only legal recourse is to charge fees in line with the FCC’s safe harbor.

Conclusion

The County’s admission that its current fees are well above cost is laudatory but still insufficient. The County’s estimated costs – even when reduced by half – are still as much as 30 times above the presumptive maximum. The County needs to set aside its excessive fees and work to identify objectively reasonable costs.

Sincerely,

Gregory B. Mouroux
AVP – Senior Legal Counsel
AT&T

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133, 30 FCC Rcd 9088 (September 27, 2018) (“*Small Cell Order*”) at ¶ 50, upheld in *City of Portland v. United States*, No. 18-72689, 2020 U.S. App. LEXIS 25553 (9th Cir. Aug. 12, 2020).

² *Small Cell Order* at ¶ 79.

³ *Id.* at ¶ 80.

⁴ *Id.* at ¶ 70 (the FCC specifically cautioned local governments that “any unreasonably high costs . . . may not be passed on through fees even though they are an actual ‘cost’ to the government.”).

de la Guerra, Sheila

From: Dr. Connie Stomper <cms320@mac.com>
Sent: Monday, September 21, 2020 4:52 PM
To: sbcob
Subject: To Be Read Into the Record 9/21
Attachments: pubcomfireCounty.pdf; ATT00001.htm

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September 21, 2020

2:00 PM

Public Comment

Topic: Fire Hazards, fire risks and measures to consider for adoption into the Wireless Regulatory Ordinance

From: Dr Connie Stomper of Safe Technology for Santa Barbara County

I request this letter be read into the Record.

My name is Dr. Connie Stomper and I live in the upper east side of Santa Barbara. I would like to address Fire Hazards in relation to Small Wireless Facilities.

There have already been too many deadly, costly and heartbreaking fire disasters because of utility companies, power lines, equipment, poles and now pole overload due to the policies of the Point Pole Association. Our adding yet another significant risk to our area such as pole overload, let alone the possible addition of thousands of more high power, high energy consumptive facilities, as are the small wireless towers and antennas, is setting us up for deadly consequences. Fires are a already constant threat here, a daily concern. Having had to evacuate in 2017, any news of other fires recurring in CA, reignites concerns about fires happening again in Santa Barbara.

PG&E has stated that they cannot fully comply with fire safety rules. Edison was found to be responsible for the Malibu Fire in 2007. PG&E says their incomplete compliance is largely due to global warming, and other power companies as well as cellular companies, are also trying to back out of responsibility. Indeed, it has recently been uncovered that utility companies upon whose poles are installed the 4G/5G+networks do not have the oversight of any antennas and that cities do not oversee maintenance and repairs for such.

A meeting held in 2019 at the Center for Municipal Solutions, two Fire Chiefs, and numerous Firefighters from various locations answered questions about electrical equipment and fires. They stated that any electrical equipment of high wattage or high voltage has the potential to catch fire, especially if damaged. **It was generally understood that if small cell facility electro magnetic equipment is damaged or malfunctions, or a part of its cooling system wears out, it can catch fire.**

Thank you for your consideration of this urgent matter.

Dr Connie Stomper

de la Guerra, Sheila

From: Dr. Connie Stomper <cms320@mac.com>
Sent: Monday, September 21, 2020 4:54 PM
To: sbcob
Subject: To Be Read Into the Record 9/21
Attachments: pubcomfireCounty.pdf; ATT00001.htm

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Dr. Connie Stomper
333 E Arrellaga St. #10
Santa Barbara, CA 93101
805-881-3663

I would like this read into. The public record.

September 21, 2020

2:00 PM

Public Comment

Topic: Fire Hazards, fire risks and measures to consider for adoption into the Wireless Regulatory Ordinance

From: Dr Connie Stomper of Safe Technology for Santa Barbara County

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Thank you for your consideration of this urgent matter.

Dr Connie Stomper

de la Guerra, Sheila

From: Lesley Weinstock <lesleyweinstock@gmail.com>
Sent: Monday, September 21, 2020 5:00 PM
To: sbcob
Subject: Fwd: Public Comment for September 22, 2020- Please use this attachment with one word changed-THANKS!
Attachments: Lesley Weinstock BOS Public Comments 9-22-2020.rtf

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----- Forwarded message -----

From: Lesley Weinstock <lesleyweinstock@gmail.com>
Date: Mon, Sep 21, 2020 at 4:48 PM
Subject: Public Comment for September 22, 2020
To: <sbcob@countyofsb.org>

Dear Clerk of the Board:

Attached is my public comment for September 22, 2020. I would like this read into the record.
Thank you.

Sincerely,
Lesley Weinstock
lesleyweinstock@gmail.com
805-212-0052

9/22/2020

My name is Lesley Weinstock.

Safe Technology for Santa Barbara County, formerly 5G Free Santa Barbara would like to start the conversation about amending current county telecom ordinances and getting a protective ordinance for Santa Barbara County, which includes fire prevention, especially in high risk fire zones.

We can save you time and money, by sending you more info, including the Encinitas and Sebastopol telecom ordinances, that can be applied to the county. We have technical, health and legal experts, available to meet with you.

As you know, So Cal Edison and PG&E have not maintained their poles and are responsible for some of the worst California fires and deaths. We are seeing more power line, power pole and small cell wireless communication facility fires. These sites use high wattage and voltage and produce substantial heat. If there are any equipment or cooling system malfunctions, an electromagnetic fire can occur, by spontaneously combusting, especially when antennas are close to trees and vegetation. Malfunctions can be caused by arcing, strong winds, seismic events, slides, heavy rains and collisions.

We ask you to adopt or amend your wireless regulatory ordinances to involve the fire department to oversee, approve or disapprove small wireless facility applications and permits, and to require an automatic, remote power cut off switch for every small wireless facility. The cost of wireless facility fire investigations should be paid by industry.

Residents in high fire areas should have "Fiber Optics to the Premises" to eliminate tower related fire hazards.