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DAY OF HEARING SUBMISSIONS



Gatzke Dillon & Ballance LLP
LAWYERS

ACCEPTED BY THE
COMMISSION

February 6, 2020

FILE COPY

By Email Only (Lucerito.Martinez@LACity.org)

Lucerito Martinez, Project Planner
City of Los Angeles, Department of City Planning
6262 Van Nuys Boulevard, Room 430
Van Nuys, CA 91401

RECEIVED
CITY OF LOS ANGELES

FEB 13 2020

CITY PLANNING DEPT.
AREA PLANNING COMMISSION

Re: Verizon Wireless's Objections to Extra and Unnoticed Conditions of Project Approval Imposed by the South Los Angeles Area Planning Commission Regarding the Appeal of Zoning Administrator's Approval of Case No. ZA-2018-1231-CUW; Unmanned and Disguised Wireless Telecommunications Facility ("Kazi") at about 4632 North Tujunga Avenue, City of Los Angeles.

Ms. Martinez:

Our office represents Verizon Wireless (Verizon) regarding its disguised and unmanned wireless telecommunications facility (Facility) proposed to be located at about 4632 North Tujunga Avenue in the City of Los Angeles (Property). This letter objects to two extra and unnoticed conditions of approval (COAs) imposed on the project after the close of the public hearing on the appeal of the Zoning Administrator's (ZA) Approval of Case No. ZA-2018-1231-CUW.

Verizon objects to the added COAs to (1) underground the equipment enclosure for the Facility, and (2) reduce the Facility height from 58 feet to 45 feet. As explained below, these added conditions are improper and should be removed from the written decision to approve the Facility permits.

Also, the objections in this letter are based on Verizon's understanding of the verbal discussion by the Area Planning Commissioners about the added COAs during the January 23, 2020, appeal hearing on the Facility permits. Verizon reserves the right to submit additional objections after it receives the final written decision of the South Los Angeles Area Planning Commission (APC) on this matter.

A. Objection to the Added COA to Underground the Equipment for the Facility.

Verizon objects to the late, added COA from the APC to require the Facility equipment enclosure to be placed underground. Reasons for the objection are:

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1. The Extra COA Violates Verizon's Due Process Rights.

This added COA for equipment undergrounding was imposed late and without required notice. Possible undergrounding of the Facility equipment was not discussed or raised in (1) the ZA's approval decision for the Facility, (2) the written appeal filed against the ZA's approval of the Facility permits, (3) any opposition materials or testimony submitted before and during the January 23, 2020 appeal hearing before the APC, or (4) any questions and discussion by APC Commissioners during the January 23 appeal hearing. Nor does any City Code provision for wireless facility permits require undergrounding of equipment under the circumstances here.

Instead, the added COA for equipment undergrounding was raised briefly by one Commissioner *after* the public hearing for the appeal was closed. Verizon was not given a chance to address this COA, and to explain why it is unreasonable and infeasible, before the APC voted to add this COA to the Facility permit. Addition of this late unnoticed COA therefore violates Verizon's procedural due process rights as the City deprived the company of a fair and reasonable opportunity to address the extra COA.

2. The Extra COA is not Supported by Substantial Evidence.

No substantial evidence supports the APC's decision to add this COA to the approval of the Facility as required under 47 U.S.C. section 332(c)(7)(B)(iii) and CCP section 1094.5. One Commissioner very briefly stated during the appeal hearing, after the close of the public hearing and without any support in the record, that the equipment undergrounding was somehow related to noise generated by the Facility equipment.

This attempted justification for the added COA fails for many reasons. *First*, the ZA's approval Conditions 1 and 12 in the November 20, 2019 project approval decision, as well as the City Code generally, requires the Facility to comply with all City Codes and laws. This includes a requirement that the noise level generated by Verizon's equipment will not exceed, at the property line, the maximum decibel level for the zone set in the City Code. *Second*, no information in the record suggested, let alone established, that the decibel level of Verizon's equipment would exceed the maximum level set in the City's Code. *Third*, the traffic-generated ambient noise level from the nearly 380,000 combined average daily traffic trips on the immediately adjacent segments of Highways 101/134 and 170 far exceeds the noise level generated by Verizon's equipment items.

3. The Extra COA does not Comply with Requirements for a Nexus and Rough Proportionality Relating to Project Conditions.

The added COA should be removed because it does not satisfy the requirements under federal and state laws that any condition imposed on a development project have both (1) a nexus or

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relationship to the impacts sought to be addressed by the condition, and (2) a rough proportionality between the condition and the impacts generated by the project. *See Koontz v. St. Johns River Management District*, 133 S.Ct. 2586 (2013), which required that all conditions in a land use permit conform to the nexus and rough proportionality requirements of the U.S. Supreme Court's *Nollan* and *Dolan* decisions.

Here, however, the added COA to underground equipment is not related at all to any established noise or other impacts generated by the Facility. Nor are the substantially involved, time-consuming and expensive actions to underground the equipment (as described in part A.4 of this letter below) even remotely proportional to address the already Code-compliant noise levels from Verizon's equipment. The very costly equipment undergrounding COA is therefore unreasonable and is prohibited from being imposed on Verizon's project by the U.S. and California Constitutions. *See Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463, 1474-77 (city could not properly condition a permit approval to convert a house to an office use with a requirement to dedicate land for a road realignment as no sufficient nexus existed between the condition and the demanded project to address traffic impacts.)

4. The Significant Additional Costs Resulting from the Extra COA
will Cause an Effective Prohibition of Verizon's Wireless Services.

Engineering, fabricating, installing, and maintaining an underground vault for the Facility equipment will cost about **\$370,000 more** than to construct and maintain an above-ground equipment enclosure for the Facility as approved by the ZA decision. (See the letter from Verizon's Senior Manager of Implementation, Southern California attached as **Exhibit 1.**) This substantial unnecessary extra cost related to the underground vault is prohibitive, will cause Verizon to abandon the Facility as infeasible, and will therefore result in an effective prohibition of Verizon's needed wireless area network services under 47 U.S.C. section 332(c)(7)(B)(i)(II)¹.

¹ Under the federal Telecommunications Act of 1996 (TCA)(47 U.S.C. § 151 *et seq.*), the City's zoning actions regarding the proposed Facility cannot prohibit or have the effect of prohibiting the provision of wireless services. (47 U.S.C. § 332(c)(7).) The Federal Communications Commission (FCC) clarified what types of local zoning regulations violate 47 U.S.C. section 332(c)(7) as part of its Declaratory Ruling and Third Report and Order, FCC 18-133, dated September 26, 2018 (September 2018 FCC Ruling.) The September 2018 FCC Ruling determined that an effective prohibition of service occurs "where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities." "Thus, an effective prohibition includes materially inhibiting additional services or improving existing services." (September 2018 FCC Ruling ¶37 and footnotes 85-87.)

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If there was a valid concern about noise from the equipment enclosure, which noise levels already have to comply with the City's noise standards at the property line, then a much more economical and reasonable alternative to undergrounding exits. Instead of undergrounding the equipment, Verizon could install a CMU decorative block enclosure at 8 feet high around the equipment area. This would further reduce noise levels at the property line.

B. Objection to the Added COA to Reduce the Facility Height to 45 Feet.

Verizon objects to the late, added COA from the APC to reduce the Facility height from 58 feet to 45 feet. Reasons for the objection are:

1. The Extra COA violates Verizon's due process rights.

This added COA to reduce the Facility height was imposed late and without required notice. Reduction of the Facility height was not discussed or raised in (1) the ZA's approval decision for the Facility, or (2) any questions and discussion by Commissioners of the APC during the public hearing portion of the January 23 appeal hearing.

Instead, the added COA to reduce the Facility height was raised *after* the public hearing for the appeal was closed. Verizon was not given a chance to address this COA, and to explain why it is unreasonable and infeasible, before the APC voted to add this COA to the Facility permit. Under these circumstances, this late unnoticed COA violates Verizon's procedural due process as the company was not provided a fair and reasonable opportunity to address this extra COA.

2. The Extra COA is not Supported by Substantial Evidence.

No substantial evidence supports the APC's decision to add this COA to the approval of the Facility as required under 47 U.S.C. section 332(c)(7)(B)(iii) and CCP section 1094.5. The extra COA was discussed after the close of the public hearing, and without any support in the record as to why a reduction in Facility height was allegedly needed to address aesthetic concerns given that the Facility design significantly disguised the antennas, the immediately adjacent elevated segments of Highways 101/134 and 170 will block views and line of sight to the Facility, and the tall trees near the Facility location also shield it from views.

3. The Extra COA does not Comply with Requirements for a Nexus and Rough Proportionality Relating to Project Conditions.

The added COA should be removed because it does not satisfy the requirements under federal and state laws that any condition imposed on a development project have both (1) a nexus or relationship to the impacts sought to be addressed by the condition, and (2) a rough proportionality between the condition and the impacts generated by the project. *See Koontz v. St. Johns River Management District*, 133 S.Ct. 2586 (2013), which required that all conditions in a land use

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permit conform to the nexus and rough proportionality requirements of the U.S. Supreme Court's *Nollan* and *Dolan* decisions.

Here, however, the added COA to reduce the Facility height to 45 feet is not related or proportional to any established aesthetic or view impacts generated by the Facility.

4. The Reduced Facility Height will Cause a Reduced Coverage Footprint that will Result in an Effective Prohibition of Verizon's Wireless Services.

Verizon's radio frequency (RF) engineers provided information to the City and APC, both in a letter submitted before the appeal hearing, and in testimony at the appeal hearing, that the Facility needed to be 58 feet high to achieve Verizon's needed network coverage objectives. No substantial evidence to contradict this information was provided. Reducing the Facility height to 45 feet will not enable Verizon to achieve its coverage objectives, and will constitute an effective prohibition of Verizon's needed wireless area network services under 47 U.S.C. section 332(c)(7)(B)(i)(II), including as clarified by the September 2018 FCC Ruling.

* * * * *

Based on the information above, Verizon requests that the APC remove from its decision to approve the Facility permits the late, added COAs to (1) underground the equipment enclosure for the Facility, and (2) reduce the Facility height from 58 feet to 45 feet.

Please include this letter as part of the administrative record for the Facility application. Please let me know if you have any questions about this matter. Thank you.

Sincerely,



Kevin P. Sullivan, Esq.
Partner
Gatzke Dillon and Ballance LLP

KPS/jec
Enclosures

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Copies (all via email):

Etta Armstrong
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Robert Howell
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Nanci Hickerson
Melissa Keith

EXHIBIT "1"



February 5, 2020

Lucerito Martinez, Project Planner
City of Los Angeles

Ms. Martinez:

I am the Senior Manager for Implementation for Verizon Wireless in the Southern California market, and have general knowledge of the construction and cost issues discussed in this letter. In addition, I have been provided information for this letter from Verizon's construction team, as well as from engineering and construction vendors for Verizon.

This letter provides information and an explanation for why it is infeasible and prohibitively costly to underground the equipment enclosure for the Verizon wireless facility ("Kazi") proposed to be located at around 4632 North Tujunga Avenue in the City of Los Angeles, Case No. ZA-2018-1231-CUW. I'm informed that the City requires Verizon to underground facility equipment for the Kazi project.

Substantial extra costs for (1) engineering, construction and installation work with additional equipment and design items, (2) fabrication of the vault, and (3) added maintenance and safety requirements, apply to undergrounding wireless facility equipment compared to having a typical above-ground equipment enclosure for a facility. All of this extra work and costs make undergrounding equipment prohibitive to moving forward with the project, and will cause Verizon to abandon the Kazi facility if it is required to implement the condition to underground equipment.

Installing an above-ground equipment enclosure for a project typically requires minimal grading, and installation of a limited concrete pad for the equipment. No cooling or venting elements are needed for the equipment area as the enclosure is open to the elements, although the equipment cabinets are generally protected from weather.

The extra work and costs to underground the equipment at the Kazi location, compared to the typical above-ground equipment enclosure, are described below.

Extra engineering, construction and installation work.

To underground the facility equipment, Verizon would have to perform extra engineering, construction and installation work, and to include additional equipment and design items, as follows:

- Geotechnical and soils analysis, and engineering, and revised zoning and construction drawings, for an underground vault area that is about 17 feet deep, about 17 feet long, and over 7 feet wide. This includes engineering to ensure that the walls of the vault will not cave in, and for drainage systems to prevent the vault from flooding. (About \$15,000.)
- Significant equipment and labor to excavate the large vault area, and to remove soils. (About \$100,000.)
- Engineering and installation of retention walls inside the vault area, and a rock bed on which to set the equipment platform.
- Engineering and installation of drainage elements (including guttering and sump pumps) to prevent the vault from flooding during rains.
- Engineering and installation of venting to address equipment exhaust. (Exhaust is not an air quality issue with an open above-ground equipment enclosure as exhaust elements are well within air quality control levels. But, with an underground vault, equipment exhausts accumulate and concentrate unless vented, and cause safety issues for maintenance workers accessing the vault.)
- Engineering and installation of venting to address heat generated by equipment operations. Air-conditioning units also need to be installed in the vault to ensure the equipment does not overheat and shut down.
- Engineering and installation of a submarine-style hatch for the vault to help prevent flooding.

Depending on the soils and other underground conditions for this site, which have not been analyzed, the estimated extra costs for the engineering, construction and vault-related elements listed above (not including the vault itself) would be about \$115,000.

Fabrication costs for the vault.

The underground vault has to be specially designed and manufactured for the particular facility location. Estimated costs for the vault fabrication and delivery typically is about \$135,000. I'm told, however, that the City of LA has a 163-page manual that lays out many conditions and requirements for a vault to be approved by the City. These requirements, which have not been reviewed regarding this matter, could cause vault costs to increase.

Added maintenance and safety requirements.

The underground vault will require continual extra power usage to run needed cooling and exhaust systems. Accordingly, the underground vaults are not nearly as sustainable as above-ground equipment enclosures. This added power cost, above and beyond those for an above-ground equipment enclosure, would typically total about \$2,400 to \$3,600 more per year, with an up to 30-year Verizon lease at the site. Over the maximum life of the lease for the site, the added energy costs for the vault would range from \$72,000 to \$108,000.

Further, extra safety considerations apply to maintenance work in the vault. A phone land line (copper line) needs to be installed in the vault to ensure maintenance workers can place calls in the event of a safety concern. Wireless phones won't work in the vault. So a copper phone line needs to be extended to the vault from the nearest copper line location. It is unknown where that nearest location is. But extending a copper phone line to the vault from 1,000 feet away (the average length of 2 City blocks) would typically cost about \$30,000 for trenching, installation of the copper line and other elements, repair of pavement, permits, lane closure/traffic control measures, and other work and safety items, often for work performed in the public right-of-way.

Also, maintenance workers entering the underground vault need to ensure that any accumulated exhausts have dissipated before entering to work. This is an added labor and time component to working in an underground vault.

Summary

The total extra costs for (1) engineering, construction and installation work with additional equipment and design items, (2) fabrication of the vault, and (3) added maintenance and safety requirements for an underground vault would be at least about \$370,000. This substantial added cost makes an underground equipment vault infeasible for Verizon's network operations. Given the significant extra work and related costs, Verizon would be forced to abandon the Kazi facility if it was required to implement the City's condition to underground the facility equipment for the project.

Also, underground equipment vaults have a high failure rate. They often eventually flood when it rains, despite measures to prevent flooding. When flooding occurs, all of the expensive equipment cabinets and other items in the vault that are needed to run a wireless facility have to be re-placed, and Verizon often has to bring in a temporary cell site facility, at added costs, to operate while vault repairs and replacements are made.

Finally, if there was a concern about noise from the equipment enclosure, which noise levels have to comply with the City's noise standards at the property line, a much cheaper alternative to undergrounding exists. Verizon could install a CMU decorative block enclosure at 8 feet high around the equipment area. This would reduce noise levels at the property line. Costs to install this block wall enclosure would be about \$17,000.

Thank you,

Janice Cruz

A handwritten signature in blue ink, appearing to read 'Janice Cruz', is positioned above the printed name.

Senior Manager for Implementation
Verizon Wireless – Southern California