

Moore-Love, Karla

From: Moore-Love, Karla
Sent: Thursday, January 26, 2012 11:15 AM
To: Papaefthimiou, Jonna; Grumm, Matt; Crail, Tim; Schmanski, Sonia; Edwards, Kenneth; Oishi, Stuart
Cc: Cate, Sylvia; Rees, Linly
Subject: FW: Verizon Wireless Appeal (LU 11-125536) Testimony from PCIA and NWWA
Attachments: PCIA NWWA Letter to Portland OR Final.pdf

Testimony is attached.

Karla Moore-Love | Council Clerk

Office of the City Auditor
503.823.4086

From: Rich Busch [mailto:rich.busch@wirelesscounsel.com]
Sent: Wednesday, January 25, 2012 1:26 PM
To: Moore-Love, Karla
Subject: Verizon Wireless Appeal (LU 11-125536) Testimony from PCIA and NWWA

Dear Ms. Moore-Love:

I have attached for filing with the City Council the Testimony in Support of Verizon Wireless Appeal (LU 11-125536) from PCIA-The Wireless Infrastructure Association, and the Northwest Wireless Association.

I would appreciate it if you could reply to this email message, acknowledging receipt of the attachment.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

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January 25, 2012

VIA ELECTRONIC MAIL

Honorable Mayor Sam Adams and
City Commissioners
City of Portland
1221 SW 4th Avenue
Portland, OR 97204

**Re: Testimony in Support of Verizon Wireless Appeal (LU 11-125536)
Portland City Code– Wireless Communications Facility Regulation**

Dear Mayor Adams and Commissioners,

PCIA—The Wireless Infrastructure Association (PCIA) and the Northwest Wireless Association (NWWA) write to testify in support of Verizon Wireless' Appeal (LU 11-125536). The appeal concerns the denial of a Verizon Wireless application for a 45' tall monopole in a commercial zone by the city's hearings officer.

PCIA is the national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, telecommunications, and broadcasting services. PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of each community. NWWA is a non-profit corporation made up of volunteers who work in the wireless/telecommunications industry in Oregon, Washington and Idaho.

Wireless infrastructure is essential to the provision of wireless service. Wireless services from basic voice communication to broadband require robust wireless infrastructure. These services enable communication, productivity, mobility, and public safety. Residents and businesses rely on wireless services to navigate their daily lives and compete in a global economy. It is estimated that by 2015, a majority of Americans will utilize a wireless device as their primary Internet access tool. Wireless service is therefore essential to access the vast resources and benefits enabled by the Internet, from commerce to political inclusion. Further, more than 70% of all emergency calls each day are placed with a wireless device—without wireless infrastructure, the ability to access first responders is significantly hindered. Unfortunately, the City of Portland's Zoning Regulation currently stifles the ability to deploy the infrastructure necessary to provide the wireless services that consumers, businesses, and first responders demand, contravening federal law.

One of the key issues in the Verizon Wireless' Appeal is how to interpret and apply the 1000 watt Effective Radiated Power (ERP) threshold in PCC 33.815.225(C). We agree with the City's Staff and with Verizon Wireless that when this power threshold was adopted by the City in 2004, it was intended to be consistent with the relevant FCC power limits for wireless facilities which limit power per channel to 1000 watts ERP or less. As noted by Staff in their report to Council, the City has consistently applied the ERP threshold in PCC 33.815.225(C) in this way over the years. We believe that the City should continue to interpret and apply its ERP threshold in PCC 33.815.225 in this way, in a manner that is consistent with the position of Staff and Verizon Wireless, which in turn is consistent with federal law.

As you know, although federal law preserves local zoning authority, it does not allow local governments to base zoning decisions on concerns over radio frequency emissions. Under federal law, "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC's] regulations concerning such emissions." 47 U.S.C. § 332(c)(7)(B)(iv). The opponents in this case have raised concerns about how to interpret the 1000 watt ERP threshold, as an attempt to subject the facility to heightened scrutiny based on RF health effects.

We would also note that under federal law, the City may not unreasonably discriminate among providers of functionally equivalent services. 47 U.S.C. § 332(c)(7)(B)(i)(I). Because the City previously approved numerous other similarly situated wireless communications facility sites under Staff's interpretation of PCC Section 33.815.225 C, denial of this application based upon a new interpretation of the city's code would result in unjust discrimination against Verizon's facility in violation of federal law.

PCIA and the NWWA urge the City of Portland to seriously consider the effect the City's zoning regulations have on the ability of wireless providers to build the infrastructure needed to provide wireless telecommunication services. In order to expand the availability of broadband, it is essential for the City to increase delivery of these services by deploying the necessary wireless infrastructure.

The City of Portland has an opportunity to facilitate expanded wireless coverage to its citizens, businesses and first responders by overturning the Hearings Officer's decision in Verizon Wireless' Appeal. At some point in the future, the City should also revise its zoning regulations to ensure that decisions cannot be impermissibly based upon RF concerns and to prevent unjust discrimination against wireless carriers. In the meantime, PCIA and the NWWA urge the City to interpret and apply its code in a manner that is consistent with federal law.

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Conclusion

We appreciate your support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the needs of the citizens, businesses, and first responders in the City of Portland, OR.

With best regards,



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