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VIA EMAIL

Mayor Raul Valdes-Fauli (rvaldes-fauli@coralgables.com)
Vice Mayor Vince Lago (vlago@coralgables.com)
Commissioner Pat Keon (pkeon@coralgables.com)
Commissioner Frank Quesada (fquesada@coralgables.com)
Commissioner Michael Mena (mmena@coralgables.com)
Coral Gables City Hall
405 Biltmore Way
Coral Gables, Florida 333134

Re: Comcast Objections
Commission Meeting, January 22, 2019
Agenda Item F-4, Ord. 18-7839
Communications Rights-of-Way Ordinance

Dear Mayor Valdes-Fauli, Vice Mayor Lago and Commissioners Keon, Mena and Quesada:

I write on behalf of Comcast regarding the scheduled second reading of proposed Ordinance 18-7839 governing communications facilities located in the City's rights-of-ways. After the first reading of this ordinance last September, an industry working group (including AT&T, Verizon Wireless, T-Mobile, Crown Castle and Comcast) provided City representatives with written comments and alternative language addressing numerous practical and operational concerns of the industry participants. We also noted specific provisions of the ordinance that violate state and federal laws governing communications infrastructure.

Despite this process, few material changes have been made to the ordinance as of the pending second reading. Comcast continues to have significant concerns that parts of the ordinance impose exceptional burdens on Comcast's operations, and other provisions continue to violate state and federal law. Comcast therefore requests that the ordinance be tabled to allow further revisions to address these concerns.

In order to help the Commission understand our concerns, we provide a general explanation below. More detailed objections and requested edits are contained in the enclosed table of violations, which includes the comments of other service providers as well as Comcast.

I. Permit Requirements for All Aerial Wireline Plant, Including Replacement of Existing Plant.

Comcast is concerned that the ordinance includes numerous provisions that apply to all “Communications Services Providers,” including state franchised video service providers (“VSP”) such as Comcast. Among other things, Comcast objects to the requirement for a VSP to obtain permits for its ubiquitous aerial wireline facilities and associated pole attachments that occupy the communications space on utility poles. Aerial wireline communications facilities, such as those of VSPs and other wireline communications services providers, use existing utility poles that have themselves been permitted, so that the addition of a wire or pole attachment in the communications space does not affect the underlying rights of way at all.

The objectionable provisions include, without limitation, permit requirements for:

- An engineering plan, including details on the “type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, stealth design, and concealment features of the proposed facility”;
- “The Global Positioning System (GPS) coordinates of the proposed facility...”;
- “Distances between the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way...within a 500-foot radius”;
- “For proposed new communications facilities, a sketch showing pavement, sidewalks, driveways, ramps, trees, above-grade utilities, and other above-grade ... structures and utilities located within a 500-foot radius of the proposed facility and below-grade structures and facilities within a fifty (50) foot radius, if available.”; and
- “Photographic or video documentation of the pre-construction condition of the public rights-of-way...”

See Sections 70-81(b)(3)(b)-(e); 70-81(b)(6). These provisions impose extraordinary burdens on operators of ubiquitous and interconnected wireline communications facilities seeking to work on or expand hundreds or thousands of linear feet of their systems using existing utility poles – which themselves are already permitted. Yet there is no discernible use for such excessive detailed information requirements for the placement of a communications wire on an existing pole. Aerial wireline facilities do nothing more than use existing utility pole lines, as they have done forever.

Indeed, with no discernible reason, the ordinance exempts from permitting the replacement of certain *wireless* facilities – but not routine maintenance or replacement of *wireline* facilities. *See* Section 70-80(b)(4). The City’s representatives rejected requests to include wireline facilities in this sensible exemption, creating a discriminatory regulatory burden on wireline facilities.

In addition, the Consumer Choice Act of 2007 limits local authority over VSPs holding state franchises (like Comcast and AT&T), and prohibits localities from imposing “additional requirements” of any kind “except as expressly permitted” by the statute. 610.114(1), F.S. The same Act dramatically limits the information that a local government may require a VSP to provide. 610.114(1)(b), F.S. The provisions of the ordinance to which Comcast objects exceed those allowed under the Act, and are not expressly permitted by its terms. Those provisions therefore are not enforceable against VSPs.

II. The Ordinance Requires a Security Fund In Violation of State Law.

Comcast further notes that the requirement of a \$50,000 “permanent performance bond to guarantee compliance” directly violates the Communications Services Tax Simplification Act (CST Law) as recently amended by HB 7087. *See* Sec. 70-79(d). The statute specifically preempts the authority of any local government “to require taxes, fees charges, or other impositions from dealers of communications services.” Section 202.24, F.S. The law clarifies that the prohibition extends to “any amount . . . which is required by ordinance or agreement to be paid or furnished to a public body” regardless of whether it is “designated as a sales tax, excise tax, subscriber charge, franchise fee . . . or other tax or fee.” *Id.* The state legislature recently amended this provision, effective July 1, 2018, to specifically clarify that a “security fund” is one form of “imposition” prohibited by the law.

Despite the new law, Section Sec. 70-79(d) of the proposed ordinance imposes a \$50,000 security fund in the form of cash or an irrevocable letter of credit. Regardless of the label the ordinance assigns this requirement – “a permanent performance bond to guarantee compliance” – its substance and purpose govern its meaning. The cash fund “to ensure compliance” is indistinguishable in substance and purpose from a standard franchise security fund that municipalities have historically required from some users of the rights of way to secure performance and provide a source of funds for enforcement of local franchise and ordinance requirements. Such a fund constitutes a “security fund” that is prohibited by the CST Law, as amended. “Any amount” imposed by a local government on a communications service provider is expressly prohibited under the CST Law, whether or not that type of charge is listed in the CST Law, and regardless of what name it is given by the public body.

In addition, the proposed security fund violates the Consumer Choice Act, which expressly prohibits the imposition of “taxes, fees, charges, or other exactions . . . in connection with the use of public right-of-way” so long as a VSP like Comcast pays the statewide Communications Services Tax. 610.106, F.S. Indeed, the City’s attorneys have defended this fund on grounds it is a “performance bond” expressly authorized by 337.401(7)(d)(12), but that provision applies only to small wireless facilities, and does not address any other type of communications facility in the rights of way. The ordinance’s \$50,000 cash security fund is thus an exaction in connection with the use of the rights of way that is not authorized against VSPs, and is unenforceable.

III. Pre-Approval of Micro Wireless Facilities in Violation of State Law.

Finally, the proposed ordinance violates a provision of the Advanced Wireless Infrastructure Deployment Act which states:

(e) An authority *may not require approval* or require fees or other charges for:

* * *

3. Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

Despite this clear prohibition on any local approval process for micro wireless facilities, the ordinance requires that “Prior to placing a micro wireless facility in the public rights-of-way . . . the registrant shall submit a certification or the manufacturer’s specifications of the micro wireless facility’s dimensions to the City for review” and potential rejection by the City. *See* Section 70-807(b)(6). By mandating the submission of construction details to the city, this requires a de facto approval process in violation of 337.401(7)(e) F.S. With respect to VSPs, this provision also violates state law which prohibits local obligations for “the filing of reports and documents...that are not required by state or federal law...” 610.114(b), F.S. Nor could this requirement be allowed per 610.114 as “schematics indicating the location of facilities for a specific site that are provided in the normal course of the municipality’s permitting process,” because permits are prohibited. This provision should therefore be deleted.

This provision alone indicates the need for the Commission to assure that the proposed ordinance satisfies legal requirements of state and federal law, and that City law promotes, rather than hinders, the deployment of wireless and wireline broadband infrastructure.

* * *

Comcast therefore requests that the Commission defer this item to allow further revisions to bring the ordinance into compliance with applicable law. In the alternative, Comcast reserves all of its rights to contest the enforceability of any or all of these provisions, including in the context of any future legal action.

Respectfully submitted,



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