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August 9, 2021

Gary L. Myers
Executive Director
Capital Region Council of Governments
209 South Sporting Hill Road
Mechanicsburg, PA 17050

RE: Capital Region COG: Proposal for Wireless Facilities Management Services

Dear Gary:

I enjoyed talking to you recently regarding two recent major developments in municipal regulation of wireless facilities. First, the PA General Assembly approved PA Act 50, the "Small Wireless Facilities Deployment Act," and the Governor signed it into law on June 30, 2021. Act 50 adds a new set of regulations to municipal management of small cell wireless facilities in the public rights-of-way ("ROW"). These include, but are not limited to, new requirements regarding the following: timing for approval of wireless facilities; batching of wireless facility applications; dimensions of "small wireless facilities;" the authority to enact local design standards for these facilities; the ability to restrict wireless facilities in underground areas; and permissible fees for wireless applications and use of the ROW.

In addition, on June 28, 2021, the U.S. Supreme Court let stand the Federal Communications Commission's ("FCC's") Third Report and Order of 2018, which, among other rulings, created and defined a new classification of "Small Wireless Facilities" ("SWF's"); imposed certain "shot clocks" for approval or denial of SWF applications; established "presumptively reasonable" fees that may be assessed on wireless providers; and prescribed general rules for enacting local design standards for SWF's.

In 2015, our law firm had the privilege of assisting 17 municipalities in the Capital Region Council of Governments ("CapCOG") in drafting wireless facilities management ordinances. Given these recent developments, however, those ordinances no longer comply with state and federal law. As such, we recommend amending the municipalities' current wireless ordinances to bring them into compliance with the new laws. We also recommend enacting written design standards, which are an increasingly important tool for managing SWFs. For CapCOG municipalities that have not enacted any wireless ordinance or design standards, we recommend doing so to ensure that they are able to exercise their full rights to manage wireless facilities.¹

¹ There are 6 municipalities for which we drafted wireless ordinances and design standards subsequent to the FCC's Third Report and Order in 2019-21. They are: Hampden Township, Londonderry Township, Lower Allen Township, Silver Spring Township, Susquehanna Township and Upper Allen Township. We will need to review these ordinances individually to determine whether new amendments are necessary in light of PA Act 50.

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Please note that PA Act 50 does not allow municipalities to exercise their authority over wireless facilities unless they do so proactively by means of a legally valid wireless ordinance and design standards. Moreover, the Act states that, if a municipality has not adopted a wireless ordinance that complies with the Act by **October 28, 2021**, then the Act alone will govern the review, approval/denial and management of wireless facilities in the ROW without any municipal involvement. This would not be a favorable outcome for the municipality.

Our law firm is well equipped to assist CapCOG municipalities in amending (or drafting) their wireless ordinances and preparing design standards. For over 23 years, we have specialized exclusively in representing municipalities in cable, wireless, and broadband matters. Collectively, our attorneys have represented over 500 municipalities in six states in these areas of the law. In the wireless arena, we have assisted over 200 municipalities in drafting or amending their wireless facilities ordinances. These include, of course, our work for the applicable CapCOG municipalities.

Benefits of Wireless Facilities Regulation Project

There are significant benefits available to the CapCOG municipalities in drafting amendments to their wireless ordinances and written design standards for SWFs. The following is a list of some of these benefits, along with a brief description of each. Please note that these benefits would also apply to COG municipalities that did not participate in the 2015 CapCOG wireless ordinance project and do not currently have a legally valid ordinance today.

1. Requirements for Wireless Facilities in the Rights-of-Way. The amendments will include new requirements for wireless facilities in the ROW. First, the new ordinance will clearly define SWFs and impose regulations that are distinct to these facilities. Certain requirements pertaining to “Tower-Based WCFs” and “Non-Tower WCFs” in the current ordinances no longer apply, as using these terms to govern wireless facilities in the ROW will result in either the imposition of illegal requirements on SWF’s or the sacrificing of local authority over non-SWFs. In addition, certain other requirements in the current ordinances are now inconsistent with the new laws. Examples include restricting Tower-Based Facilities in the ROW to certain streets and requiring that such facilities be removed within 60 days of notice by the municipality.

2. Design Standards. We strongly recommend that the municipalities establish design standards for SWFs in the ROW as required by the new state and federal laws. If such standards are not in place when a wireless facility application is received, the municipalities cannot impose aesthetic requirements on a proposed site. This also limits the municipalities’ authority to deny applications for facilities that are aesthetically obtrusive. Design standards include, but are not limited to, the designs and types of antennas, the designs of support structures, the design and placement of accessory equipment required at the site, and specific “stealth” requirements aimed at mitigating the aesthetic impact of a proposed SWF.

3. “New Generation” Facilities. The new wireless facilities ordinances will address new antennas that have been added to cell towers and poles, known as “new generation” facilities. These facilities are deployed in part to allow for the provision of “5G” wireless service. As the demand for broadband continues to grow, wireless carriers not only seek approval for new structures, but also add “load” to existing structures. The additional load must be safe, but municipalities may wish to encourage “collocation” to avoid the unnecessary installation of new utility poles and towers. A well-crafted ordinance can strike a balance between these competing interests.

4. Incorporation of Regulatory Changes. As discussed above, there have been two major regulatory changes at both the state and federal levels in the last few years. The amended wireless ordinances will include many revisions that bring them into compliance with the FCC’s Third Report and Order (2018) and the most recent PA Act 50 (2021). It is important that the municipalities effectively regulate SWFs in the public ROW in a manner that complies with state and federal law.

5. Fees. For wireless facilities located in the ROW, the municipalities may assess both application fees and recurring right-of-way fees in accordance with state and federal requirements. The new amendments will revise the municipalities’ fee schedules to bring them into compliance with these new laws. Fees for traditional cell towers and rooftop antennas on municipal property are at the discretion of the municipality and often subject to negotiation.

6. Legal Protections. It is critical to include legal protections for the municipalities in the event of liability resulting from construction of wireless facilities or potential accidents. These include, but are not limited to, repair and restoration requirements, indemnification of the municipality, and insurance coverage requirements. The new state and federal laws have specific requirements related to these protections that will be included in the amendments.

Scope of Services

The following is the scope of services that we propose if CapCOG municipalities engage our firm to assist in amending or drafting their wireless ordinances and drafting design standards.

A. Project Launch Meeting and Ordinance Review

The first step of the project will be to review the municipalities’ current wireless ordinances, arrange an in-person or virtual meeting or with the Managers (and possibly Zoning Officers) to provide background on the new state and federal laws, listen to their concerns, and determine the municipalities’ priorities. Our attorneys will make recommendations regarding specific amendments to the wireless ordinances and the preparation of new design standards.

B. Preparation of Wireless Facilities Ordinances and Design Standards

We will then draft amendments to each of the municipalities’ current wireless ordinances. The amendments will address the new wireless technologies, incorporate recent regulatory

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changes, add fee provisions and provide key legal protections. They will also be crafted to include the municipalities' priorities regarding siting of wireless facilities and approval processes. The amendments for each municipality will be different from those of the others depending on the municipality's particular circumstances. We will also prepare written design standards for small wireless facilities in the ROW. Unless directed otherwise by the municipality, the design standards will be contained in a separate document.

C. Refinement and Finalization of Ordinances and Design Standards

After our proposed ordinance amendments (or in some cases, brand new ordinances) and design standards have been reviewed by each municipality, there will most likely be one or two follow-up calls with officials of each municipality to provide comments and answer questions. We will then incorporate the municipal comments into each municipality's ordinance and design standards as appropriate. The distribution of the final documents will complete the scope of services for the project. It is anticipated that the Solicitor will: 1) incorporate the ordinance into the current Code; 2) repeal or amend outdated or inconsistent ordinances; and 3) advertise the new ordinance for legislative consideration.

D. Consulting Services

In addition to drafting a wireless ordinance amendments and design standards as outlined above, our firm is available to assist any municipality with other issues related to the management of wireless facilities as they may arise. These may include, but are not limited to, negotiating master lease agreements requested by wireless providers, reviewing wireless facility applications, providing advice regarding treatment of applications for wireless facilities, or responding to communications from wireless providers. This aspect of the engagement will be performed on an hourly, as-needed basis as determined by each municipality and is not included in the flat fee below.

Cost of Services

The following represents the cost of services to each municipality for our firm to draft amendments to its wireless facilities ordinance and new design standards. This fee would also apply to municipalities that did not participate in the 2015 wireless ordinance project and do not currently have a legally valid ordinance today. We propose to perform these services on a flat fee basis, because our significant experience in preparing wireless facilities ordinances and design standards lends predictability to our efforts on behalf of the COG. In addition, a flat fee provides "price certainty" to each municipality.

As shown below, we are offering our services at a discounted rate depending on the number of municipalities that participate in the project. We offer these discounts due to our firm's longstanding (over 23 years) relationship with CapCOG and because there are certain economies of scale involved in representing a multi-municipal group. The following is our

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standard flat fee followed by our discounted fees for CapCOG depending on the number of municipalities that participate:

FLAT FEE SCHEDULE FOR WIRELESS FACILITIES MANAGEMENT

Standard Single Municipality Fee = \$6,000

CapCOG Discounted Fees (by number of participating municipalities):

2-10 Municipalities - 10% Discount	\$5,400
11-20 Municipalities - 15% Discount	\$5,100
21-30 Municipalities - 20% Discount	\$4,800
31+ Municipalities - 25% Discount	\$4,500

The flat fee amounts above do not include expenses, such as copying and postage charges, which are kept to a minimum and divided among all participating municipalities. They also do not include attendance at public meetings, unforeseeable developments or extraordinary requests outside the scope of services in this proposal. If such additional services are required, CLG will charge an hourly rate of \$300 per hour. With the exception of the project launch meeting, we do not anticipate that travel will be necessary for this project. If requested by a municipality, we will bill travel time at one-half our hourly rate or \$150 per hour. We do not charge for mileage. As noted above, any additional consulting work will be performed at the hourly rate of \$300 per hour.

Our billing policy is to bill one-half of the fee for this project at the commencement of the project and one-half upon the provision of the relevant documents to the municipality. Thank you for the opportunity to submit this proposal. If the terms of this engagement are acceptable, please ask the appropriate official from each participating municipality to sign this letter on behalf of the municipality and send or email a copy back to me. Thank you for your consideration.

Sincerely yours,

Daniel S. Cohen

Accepted on Behalf of _____:

Signature: _____

Print: _____

Title: _____

Date: _____

2021 Wireless Ordinance Participants - 13

Annville Township
Carroll Township
Hampden Township
Highspire Borough
Hummelstown Borough
Lemoyne Borough
Marysville Borough
Monaghan Township
New Cumberland Borough
Paxtang Borough
Royalton Borough
South Hanover Township
Swatara Township