December 24, 2019

To City of Davis Council Members:
Mayor Brett Lee <blee@cityofdavis.org>
Mayor Pro Tempore Gloria Partida <gpartida@cityofdavis.org>
Council Member Will Arnold <warnold@cityofdavis.org>
Council Member Dan Carson <dcarson@cityofdavis.org>
Council Member Lucas Frerichs lucasf@cityofdavis.org

To City of Davis Staff:
City Attorney Inder Khalsa <gkhalsa@rwglaw.com>
Michael Webb <cmoweb@cityofdavis.org>
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Head Planner Sherri Metzker smetzker@cityofdavis.org

City of Davis
23 Russell Blvd.
Davis, CA 95616
530-757-5610 ext. 7239

Re: Notice of cease and desist from processing applications and issuing encroachment permits pertaining to 4G and 5G "small" wireless telecommunications facilities and from any installation and operations thereof, as noncompliant with the 8/9/19 D.C. Circuit Court of Appeals unanimous ruling in case No.18-1129.

CEASE AND DESIST DEMAND
Sent by email and USPS

Dear Mayor Brett Lee and Davis City Council, City Manager Michael Webb, Assistant City Managers Ashley Feeney and Kelly Stachowicz, and City Attorney Inder Khalsa:
Our law firm represents the Davis Anti-5G Microwave Network. We forward this demand on their behalf.

This is your third letter of notification to cease and desist on all 4G and 5G applications. The first letter you received is entitled, "Request for Toll Agreement on Shot Clocks Regarding All 5G/4G “Small” Wireless Telecommunication Facilities Pending Receipt of Environmental Assessment et al." dated and received on November 1, 2019, and the second letter entitled "Notice of Appellate Decision relevant to, and Notice of Cease and Desist from, Processing and Approving Applications pertaining to all 5G/4G "Small Wireless Telecommunications Facilities" (sWTF), and from any placement, construction, modification and operations thereof, as non-compliant with 8/9/19 Ruling in Case 18-1129" dated and received on November 29, 2019.

The City of Davis has been receiving a steady stream of applications from telecommunications industries to install and operate, to date, thirteen wireless telecommunications facilities (WTFs) in our town as part of the 4G and 5G federal undertaking branded as “small cells” by the wireless industry, on municipal facilities, including streetlight and utility poles, in the public right-of-way, and are property of the municipality.

This correspondence advises you that the D.C. Circuit Court of Appeals in its unanimous 8/9/19 ruling in case No. 18-1129, a copy of which is attached hereto, vacated the portion of Federal Communications Commission (FCC) Order 18-30 that exempted “small” cells from environmental review under the National Environmental Policy Act (NEPA) and historic-preservation review under the National Historic Preservation Act (NHPA), and remanded the matter to the FCC.

The D.C. Circuit judges presented the following reasons for the ruling:

The FCC failed to “adequately address possible harms of deregulation and benefits of environmental and historic-preservation review. The Order’s deregulation of small cells [was] thus arbitrary and capricious.”

“The Commission did not adequately address the harms of deregulation or justify its portrayal of those harms as negligible.”

The FCC Order "[did] not justify the Commission’s determination that it was not in the public interest to require review of small cell deployments. In particular, the Commission failed to justify its confidence that small cell deployments pose little to no cognizable religious, cultural, or environmental risks, particularly given the vast number of proposed deployments."

The scale of the deployment the FCC seeks to facilitate ... [made] it impossible ... to credit the claim that small cell deregulation [would] leave little to no environmental footprint."
"In light of its mischaracterization of small cells' footprint, the scale of the deployment it anticipates, the many expedients already in place for low-impact wireless construction, and the Commission's decades-long history of carefully tailored review, the FCC's characterization of the Order as consistent with its longstanding policy was not 'logical and rational.'"

The anticipated nationwide deployment of approximately 800,000 "small" WTFs by 2026 is clearly a federal undertaking, because the wireless industry licenses its wireless spectrum frequencies from the federal government. That makes every "small" WTF planned for the City of Davis a part of this federal undertaking.

Therefore, this 8/9/19 DC Circuit Court ruling renders every "small" WTF application in the City of Davis incomplete, stopping all shot-clocks, because the FCC has not yet addressed the remanded issue. The Court set expectations that the FCC write rules specific for "small" WTFs as a "class" that address the need for the FCC to complete environmental review for the anticipated nationwide rollout of "small" WTFs.

This letter, therefore, demands that the City of Davis cease and desist from: the processing of any and all "small" WTF applications, current and in the future, the approval of any and all encroachment permits for "small" WTFs, and the construction, placement, and operation of any and all "small" WTFs.

Promptly notify Verizon, ATT, Sprint, Crown Castle, Nexius, and any other applicants that until they place substantial written evidence in the public record, proving that the FCC has written rules specific to "small" WTFs "as a class" and has completed any required environmental and historical-preservation review for the anticipated nationwide deployment of an 800,000-unit network of "small" WTFs, their applications for any "small" WTFs in Davis are incomplete as a matter of law. In connection with the above-ceased activities, you may wish to inform them of the DC Circuit Court case No. 18-1129 ruling, requiring the FCC to revert back to previous rules, making these installations subject to NEPA and NHPA review.

Kindly inform me of your intent to cease and desist from the above-listed activities.

Sincerely,
Pollock & James, LLP

[Signature]
Mark S. Pollock