Roland Park Civic League (RPCL)
Community Impact Assessment re: Installation of 5G

I. Background.

In October 2021, neighbors raised a concern with the Civic League's leadership about Verizon's placement of small cell wireless communication facilities (WCFs) in Roland Park. These WCFs use fifth generation ("5G") cellular technology. As a result of a Board vote, Claudia Diamond, the president of the Civic League, sent a letter to Verizon and the City's planning department asking for a pause in installation and for a meeting to inform residents. In response, Verizon's representative Paul Plymouth sent the Civic League a letter explaining Verizon's plans and listing the small cell WCFs already placed on existing poles, and the proposed locations for additional small cell WCFs. (Exh. 1, Letter to RPCL from Verizon). The City's planning department representative, Matthew DeSantis, shared the current regulations used by the City in examining applications to install small cell WCFs. (Exh. 2, "Small Wireless Facilities: Design and Aesthetic Requirements").

Subsequently, the Civic League dedicated most of its November 2021 monthly meeting to learning more about this issue. Attendees participated in person or on Zoom. (Exh. 3, Addendum to 11.3.21 Minutes). In addition to Mr. Plymouth and Mr. DeSantis who attended the meeting, invited guests included wireless technology expert David Witkowski, CEO of Oku Solutions (based in California), and neighbor and JHU electrical engineering professor Andres Andreou, both addressing public health concerns.

The purpose of this impact statement is to provide an overview to our neighbors regarding the installation of small cell WCFs in Roland Park, the applicable law governing their installation, and steps that the Civic League propose the City consider taking, bearing in mind what is feasible considering federal and state oversight. This impact statement also recognizes that Verizon's plans to install small cell WCFs in the Roland Park neighborhood is most likely only the beginning of widespread WCF installation by Verizon and other wireless carriers using 5G and future technologies. As confirmed by Matthew DeSantis, the City's planning representative, at the November 3 meeting Baltimore currently lacks a formal commission to oversee the installation of wireless technology and assess its impacts.

This paper's existence was advertised via social media and posted on the Roland Park website for notice and comment from December 17 to January 7. Comments were reviewed and if deemed relevant, based on further Civic League Board discussion, were incorporated prior to this position paper being submitted to City.

II. The State of 5G.

A. What is it?

5G is the fifth generation of cellular wireless technology. It will replace 3G and augment 4G LTE, which are the technologies responsible for the widespread use of mobile devices today. 5G is the first generation of cellular technology specifically designed to support more than just phones and handsets. 5G is designed to enable faster data transfer speeds, more network responsiveness, and the ability for more users to connect more devices simultaneously without affecting network performance. Unlike 3G and 4G cellular towers (which range in heights of 50 to 200 feet) used to provide wide-area coverage, 5G small cell WCFs are used to augment network capacity and performance. Small cell WCFs are lower-power, smaller in size, and are installed closer to population centers to support network use that cannot be served adequately by wide-area cellular towers. 5G small cell WCFs often resemble utility boxes and attach to streetlights and utility poles often already in existence.[1]

5G is touted as a game changer in increasing access to wireless technology. Under optimal conditions, 5G will provide network speeds more than 100 times faster than 4G, and can handle many more devices, thus enabling Baltimore's government infrastructure to provide real time data in the future.[2] It is projected that 5G will not only increase internet speed for those who already have access but will also increase access in areas that have historically been disconnected or left out. It is also projected to create jobs and lead to significant GDP growth in Maryland.[3]

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[1] In the FCC's 2018 Order, discussed *infra*, the FCC defined what constitutes a "small cell" stating, among other things, that a small cell can be mounted on structures 50 feet or less in height including their antennas; can be mounted on structures no more than 10 percent taller than other adjacent structures; or do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater. *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv*., 33 FCCC Rcd. 9088 (September 26, 2018) (Small Cell Order) https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf (the "Order").

[2] https://www.planning.org/planning/2020/jul/coming-soon-to-a-neighborhood-near-you/

[3] https://md5gpartnership.com/md5g-partnership-launches-in-support-of-5g-deployment-throughout-maryland/

Baltimore is the first city in Maryland to receive Verizon's high-speed wireless network.[4]

B. How was 5G launched?

In the Telecommunications Act of 1996 (the "Act"), Congress enacted comprehensive legislation to accelerate the deployment of telecommunications infrastructure. The conference report for the legislation stated that Congress "intended to remove all barriers to entry in the provision of telecommunications services." Of relevance to Roland Park, § 253(a) of the Act provides that '[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication services." This section has been observed to be a very broad preemption of local or state laws that could be construed as inhibiting competition.[5]

Subsequently, in 2018, the U.S. Federal Communications Commission, under the auspices of the 1996 Act and reacting to subsequent challenges in the courts, issued three orders addressing the deployment of 5G facilities. Two of the orders—the Small Cell Order and the Moratoria Order (hereinafter described as the "Order")—addressed the limits of state and local governments' authority in regulating telecommunications providers. The Order was designed to fast-track deployment 5G on the right-of-ways of all municipalities on an accelerated schedule and required municipalities to create ministerial processes for approval. The Order also severely limited state and local governments' powers to regulate small cell installation.[6] Because of the belief that 5G wireless services will transform the U.S. economy, and that "providers will need to deploy large numbers of wireless cell sites to meet the country's wireless broadband needs," the Commission acknowledged "an urgent need to remove any unnecessary barriers to such deployment, whether caused by Federal law, Commission processes, local and State review, or otherwise."[7] Accordingly, the Order specified that locality may only pass a small cell WCF wireless siting ordinance if the ordinance is (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure, and (3) objective and published in advance. And, of relevance to Roland Park, the FCC's Order in essence banned the ability of communities to establish minimum spacing requirements, create aesthetic guidelines, or mandate underground

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[4] https://www.wbaltv.com/article/baltimore-5g-high-speed-wireless-network-verizon/34372505#

[5] *Puerto Rico Tel. Co. v. Telecomm. Reg. Bd. Of Puerto Rico*, 189 F.3d 1, 11 n.7 (1st Cir. 1999).

[6] https://docs.fcc.gov/public/attachments/FCC-18-133A1_Rcd.pdf.

[7] *Id.*

requirements for small cell WCFs.[8] A local government also is limited on how much it can charge a carrier for use of its poles.[9] In addition, because of the broad reach by the FCC, a local government may not enact legislation or engage in other acts that expressly halt or have the effect of halting small cell WCF deployment.[10]

A number of municipalities challenged the FCC Order in court and, in August 2020, the Ninth Circuit issued an opinion broadly upholding the FCC's Order.[11] It did, however, state that the FCC's requirement that any aesthetic regulation could be "no more burdensome than those applied to other types of infrastructure deployments," contravened the 1996 Communications Act's recognition that some discrimination in handling different technologies might exist by virtue that the technologies might be different. Subsequently, the Supreme Court denied a petition for certiorari, meaning that the 9th Circuit's Order affirming the FCC's Order, with the exception invalidating the aesthetic regulation focusing on "burden," is the law of the land on this issue. In sum, the ability for a local government to challenge the placement of 5G cells is extremely tenuous.

III. Design Guidelines — Adopted by the City.

On March 28, 2019, the Baltimore City Planning Commission adopted "Design and Aesthetic Requirements" governing the installation of "small wireless facilities" which are defined as a "small cell" at a fixed location.[12] *(Exh.* 2) These requirements are used to determine whether an application is approved for a location prior to installation. If the "installation on public right of way meets the standards. . . , the small wireless facility will be fast tracked through the Planning

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[8] *Id.* The FCC Order also limits how long a jurisdiction can respond to a provider's application to cell site. Depending on the type of installation, Baltimore City must object within a 60-to-90-day period. City Planning representative Mr. DeSantis, who oversees reviewing cell installations applications, acknowledged at the November Civic League meeting that his office is understaffed and under-resourced in its ability to keep up with pending applications. There are currently a few contract employees working part-time to assist with "small cell review" applications. Cedrick Lee, a part-time contractual employee, is assigned to Roland Park.

[9] *Id.* The FCC Order limits application fees for small wireless equipment and capped recurring annual fees to cover the cost of maintaining rights-of-way at $270.

[10] This is known as the "Moratoria Order," which was upheld by the 9th Circuit.

[11] *City of Portland v. United States*, No. 18-72689 (9th Cir. 2020).

[12] These requirements were adopted by the Baltimore City Planning Commission on March 28, 2019, and are identified as a "regulation."

Department and otherwise presumed to be permitted as a matter of right, provided the appropriate permits are obtained and all other requirements are satisfied." If the wireless facility does not meet one or more of the standards, then the proposed facility must undergo additional review. The regulation further provides that a replacement pole (i.e., replacing an existing pole with the same material and in the same or similar location) may be fast-tracked as well. At the November Civic League meeting, Mr. DeSantis indicated that very few applications do not meet the "fast-track" status.

The "standards for small wireless facility" include various height and spacing restrictions when placing wireless facilities in residential areas. The standards also provide that the coloration of the wireless facility should be visually similar to the coloration of the structure on which its installed, and "in a local historic district, the facility must be screened and be designed for stealth." Although stealth is not defined, the current small wireless facilities in Roland Park are small gray elongated cylinder attachments to existing gray light poles.

Once a location is approved, Verizon ostensibly provides notice to the community by applying a sign to the existing pole noting the placement of the small wireless facility on the structure or replacement structure. (It's unclear whether there are any guidelines or directions from the City or Verizon regarding the nature and timing of the notice.)

In addition, because Roland Park is in a nationally designated historic district, the small cells' locations may be subject to Section 106 review by the State Historic Preservation Office, the Maryland Historical Trust. Mr. Plymouth, Verizon's representative, remarked in his letter to the community the following:

> In September, we requested the State Historic Preservation Office (SHPO) to review if the presence of a small cell on a cobra-style metal streetlight would change the historic nature of the neighborhood. Seeking SHPO concurrence is common for historic districts. At this time, we are in the process of undergoing Section 106, a full review process, for pending nodes on cobra-head metal streetlights and opined [sic] wood utility poles within the Roland Park Historic District. All small cells follow FCC regulations regarding the NationalEnvironmental Policy Act. We maintain that small cells on wood utility poles and cobra-head metal streetlights will not impact the historic nature of the community.

(Exh. 1).

It currently is not clear whether this 106 review has been completed. As it is Verizon's current plan to use existing poles or replace existing poles with the same materials (i.e., wood to wood; metal to metal), it is doubtful that a 106 review will alter Verizon's plans.

IV. The Roland Park Civic League's position on 5G.

Members of the Roland Park Civic League recognize the potential benefits that 5G will provide including increasing access for underserved areas that historically have been disconnected and left out. We also recognize the importance of transparency and due diligence in ensuring that residents are kept informed and involved in the installation process. Recognizing the neighborhood and Baltimore City's limitations under federal and state law, the recommendations listed below are designed to increase transparency of the process regarding the approach to and process of WCF installations and to encourage the City to consider a more comprehensive approach, in partnership with its constituents, in devising the City's current and future technology strategic planning.

Accordingly, the Civic League respectfully requests that the Planning Department consider the following actions for the benefit of all city neighborhoods and citizens:

- Improve visibility and transparency of the WCF installation process. Currently, finding any information on the City's planning agency website regarding the City's role in approving small cell installation is very difficult. The Civic League would ask the City to consider implementing a page on the City's website that addresses wireless communications facilities; one example is the City of San Jose, CA. This page should list a dedicated point of contact for City residents to address questions/concerns they might have about planned wireless facilities. This page should also clearly communicate to City residents the limited scope of the City's authority pertaining to wireless communication facilities.

- Build and maintain staff resources sufficient to conduct timely and thorough review of applications for 4G and 5G small cell wireless communication facilities.

- Provide direct notice to property owners and community associations in proximity to planned 5G residential sites (in conjunction with Verizon and other carriers) by establishing a policy for timely notifying owners and community associations of installation applications.

- Retain an engineering consultant to advise on both technical and policy issues related to application, permitting, and approvals processes for towers and small cell WCFs as this type of technology will increasingly be part of the City's infrastructure. In addition, or alternatively, create an advisory board, comprised to provide input as the City navigates its ongoing technology planning strategy.

Claudia Diamond, President
Roland Park Civic League
December 17, 2021

Small Wireless Facilities: Design and Aesthetic Requirements

This regulation establishes the design and aesthetic standards for the installation of Small Wireless Facilities and Structures on public right of way. It augments any Streetscape Guideline that may be applied to regulate the design and appearance of Wireless Facilities and Structures on public right of way.

I. Scope of the regulations – Small Wireless Facilities.

(a) If a Small Wireless Facility installation on public right of way meets the standards expressed in this regulation, the facility will be fast-tracked through the Planning Department and otherwise presumed to be permitted as a matter of right, provided the appropriate permits are obtained and all other requirements are satisfied.

(b) If a Small Wireless Facility installation fails to meet one or more of the expressed standards, the proposed facility must undergo a review performed on proposed facilities that have not been fast-tracked and otherwise presumed to have been permitted as a matter of right.

II. Scope of the regulations – Replacement Structures.

As expressed in this regulation, the installation of a Replacement Structure may be fast-tracked and otherwise presumed to be permitted as a matter of right.

III. Scope of the regulations – Structures other than Replacement Structures

(a) The installation of a Structure other than a Replacement Structure cannot be fast-tracked or presumed to be permitted as a matter of right.

(b) A Structure is eligible for approval only if the Structure meets the aesthetic standards contained in this regulations, as well as any other requirements that may established by law or regulation.

IV. Scope of the regulations = Exclusions.

This regulation does not affect:

(a) The permits required for the installation of a Small Wireless Facility or a Structure on public right of way;

(b) The zoning regulations applicable to the installation of a Small Wireless Facility or a Structure on private property; or

(c) The installation of a cell tower.

V. Definitions

(a) "Antenna" means an apparatus designed for the purpose of transmitting and receiving telecommunications signals.

(b) "Antenna Equipment" means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an Antenna, located at the same fixed location as the Antenna, and, when collocated on a Structure, is mounted or installed at the same time as such Antenna.

(c) "Antenna Facility" means an Antenna and Antenna Equipment.

(d) "Collocation" means:

(1) Mounting or installing an antenna facility on a pre-existing structure; and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(e) "Distributed Antenna System" or "DAS" means a network of multiple, spatially separate antenna Nodes connected to a common source via a high capacity transport medium (such as fiber optic cable), for the purpose of providing wireless service within a geographic area.

(f) "Node" means an electronic device that is attached to a Network, and is capable of creating, receiving, or transmitting information over a communications channel.

(g) "Replacement Structure" means a Structure:

(1) That is installed at the same location as the original Structure;

(2) That is no more than 3 feet or 10 percent taller than the original Structure;

(3) That is consistent with the quality and appearance of the original Structure; and

(h) "Small Cell" means a wireless communications technology installation that typically employs low powered wireless base stations, each of which may include only a single node.

(i) "Small Wireless Facility" means Small Cell or Distributed Antenna System equipment, including Antenna Equipment, at a fixed location.

(1) The term includes any radio transceiver, Antenna Facilities including visible coaxial or fiber-optic cable on a structure, regular or backup power supply, and comparable equipment, regardless of technological configuration.

(2) The term does not include:

a. The structure or improvements on, under, or within which the equipment is located; or

b. Coaxial or fiber-optic cable that located between wireless structures or Poles; or not otherwise immediately adjacent to or directly associated with a particular Antenna.

(j) "Structure" means a pole used or to be used for the provision of personal wireless service on public right of way. The term does not include a structure commonly known as a "cell tower."

VI. Standards for a Small Wireless Facility

(a) A Small Wireless Facility must be installed on a Structure when installed in the public right of way.

(b) A Small Wireless Facility may not be installed with 125 feet of another Small Wireless Facility unless it is collocated on a Structure on which a Small Wireless Facility is already installed.

(c) A Small Wireless Facility that is installed within 30 feet in the direct perpendicular line of sight from a full-sized window on the side of a residential structure may not increase the amount of blockage when looking out of said window.

(d) A Small Wireless Facility may not be installed within 12 feet of a front residential lot line, as measured from the perpendicular from said lot line.

(e) A Small Wireless Facility may not be installed within 6 feet of a side residential lot line, as measured from the perpendicular from said lot line.

(f) A Small Wireless Facility may not be installed on a Structure less than 14 feet in height.

(g) An Antenna may not be installed at a height of less than 14 feet from the ground surface.

(h) A Small Wireless Facility may not be installed on a Structure whose combined height exceeds 35 feet.

(i) The dimension of a Small Wireless Facility installed on a Structure may not exceed 22 cubic feet. This dimension includes the sum of all associated equipment installed on the Structure.

(j) The coloration of a Small Wireless Facility must be visually similar to and consistent with the coloration of the Structure on which it is installed.

(k) A Small Wireless Facility must be consistent and uniform in appearance and installed to achieve a visually smooth transition between different attachments.

(l) A Small Wireless Facility must be shrouded.

(m) A shroud must be installed at least 8 feet from the ground surface.

(n) Wiring that extrudes from the location of shrouded equipment must itself be shrouded with a flex shroud whose color matches the structure.

(o) Wiring that extrudes from the location of shrouded equipment may not cumulatively exceed 24 inches.

(p) A Small Wireless Facility must be installed in an elongated fashion to comport with the elongation of the Structure so that the length of the installed equipment is greater than its width.

(q) A Small Wireless Facility may not advertise products or contain pictorial drawings or written messages unrelated to the equipment's functionality.

(r) A Small Wireless Facility may not employ flashing lights.

(s) In a local historic district, a Small Wireless Facility must be screened and be designed for stealth.

VII. Standards for a Replacement Structure.

(a) A Replacement Structure may be installed on public right of way.

(b) A Replacement Structure must be designed to accommodate a luminaire that is consistent with the appearance of the luminaires in the immediate vicinity of the Replacement Structure.

VIII. Standards for a Structure.

(a) A Structure must be designed to accommodate a luminaire that is consistent with the appearance of the luminaires in the immediate vicinity of the Replacement Structure.

(b) A Small Wireless Facility that is installed within 30 feet in the direct perpendicular line of sight from a full-sized window on the side of a residential structure may not increase the amount of blockage when looking out of said window.

(c) A Structure may not be installed within 125 feet of a pole that is currently installed, regardless of whether the existing pole is capable of supporting a Small Wireless Facility.

(d) The installation of a series of Structures on the same blockface must comport with the uniform pole spacing of an adjoining blockface.

(e) A Structure may not exceed the height of any pole on a blockface.

(f) A Structure must have the same general dimensions, coloration and appearance as other poles on a blockface.