

Jenkins, Elizabeth

From: Concerned Citizen <centervilleconcernedcitizens@gmail.com>
Sent: Friday, April 21, 2023 8:34 PM
To: Ells, Mark
Cc: Nober, Karen; Jenkins, Elizabeth; Nik Atsalis
Subject: Public Comment; Grant of Location Regulation

Follow Up Flag: FollowUp
Flag Status: Flagged

Dear Town Manager Ells,

Centerville Concerned Citizens would like to thank our town leaders for understanding the importance of updating our cellular regulations. We appreciate the time and energy taken to accomplish this critical goal. CCC was formed in March of 2018 due to a lack of notification to neighbors of a cellular installation near their homes and commercial properties. We have said from the beginning this must never happen again. Anyone who owns property in the town of Barnstable deserves the opportunity to learn of any proposed cellular infrastructure near where they work or live. Regardless of us not being allowed to fight this intrusion on health grounds, we do have the right to protect our property's aesthetic and monetary value.

We at CCC strongly believe the new regulations must include a provision stating property owners residing within 250 ft of any proposed wireless communications equipment be notified in writing and given the opportunity to speak about said equipment in a public forum.

Best Regards,

Janet Davis
Centerville Concerned Citizens

Diane Bellavance	Doreen Vigue	Corinne Whitaker	James Sproul
Rosalie McCarthy	Thomas Nortz	Patti Buss	Molly Sproul
Gary Conway	Rick Garceau	Steve Buss	Lynda Lynch
Geri Schworer	Katy O'Connor	Marc Jacobson	Nancy Snell
Stephen Fair	Joanne O'Connor	Donna Wren	Arthur Fair
Joyce Frederick	Ann Hibbard	Donna Smiley	Carole Monette
Bruce Bullock	Theresa Mariano	Emily Setzko	Matthew Fair
Sarah Burns	Jennifer Lynch	Carol Lynch	Patricia Murphy
Chester Arnold	Joyce Kaye	Kathy Blackwell	Elizabeth Hurley
Ellen Queeney	Maggie Dwyer	Nancy Ashworth	Barbara McBride
Barbara Thomas	Jack Lynch	Linda Fair	

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Jenkins, Elizabeth

From: Robert P. Frazee <paddleflash@comcast.net>
Sent: Friday, April 21, 2023 5:22 PM
To: Jenkins, Elizabeth
Subject: Draft Grant of Location Regulations

Follow Up Flag: FollowUp
Flag Status: Flagged

Dear Elizabeth –

I read the Draft Regulations, and am gratified by the level of awareness and protection of our town's Historic Districts, Historic Buildings, Residential Areas and other sensitive potential site locations that have been so carefully considered.

As a longtime resident, and one keenly interested in protection for these specific resource types, I find some of the statements in the March 23, 2023 letter from CTIA pretty unsettling, and trust Barnstable will not yield on any issues CTIA raised unless legally bound to do so. The wireless communications industry has a long history of pressing its case forward with a heavy hand, whenever it is permitted to do so.

I have a family member who resides in North Andover, MA, where at one time the now infamously mismanaged MBTA had quietly cut a sweetheart deal with a 5G Pole Siting company that would have placed highly visible poles along the rail right of way, directly through the residential and historic village centers around suburban Boston. Fortunately a loud, politically connected hue & cry arose with sufficient decibels and good timing to put an end to the deal. But it was a close call for those communities.

I commend Barnstable for trying to get out in front of things like that and wish everyone involved all the best going forward.

Many thanks,

Bob Frazee
Barnstable Village, MA

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Jenkins, Elizabeth

From: SARAH BURNS <sarahreid2323@msn.com>
Sent: Thursday, April 20, 2023 11:04 AM
To: Jenkins, Elizabeth
Subject: Public comment on wireless installation regulations

April 20, 2023 at 7:42 AM

CCC would like to take this opportunity to thank our town leaders for understanding the importance of updating our cellular regulations. We appreciate the time and effort taken to accomplish this critical goal. CCC was formed in 2018 due to a lack of notification to neighbors of an cellular installation near our homes and businesses. We have said from the beginning that this must never happen again. Anyone who owns property in the town of Barnstable deserves the opportunity to learn of any proposed cellular infrastructure near where they work or live. Regardless of us not being allowed to fight this intrusion on health grounds, we have a right to protect our properties aesthetic and monetary value. We at CCC strongly believe the new regulations must include a provision stating property owners within 250 feet of any proposed cellular equipment will be notified in writing and given the opportunity to speak against said equipment in a public forum.

Many thanks, Sarah Burns

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Jenkins, Elizabeth

From: Jennifer Lynch <jenniferlynch@comcast.net>
Sent: Thursday, April 20, 2023 11:30 AM
To: Ells, Mark
Cc: McLaughlin, Charles; Nober, Karen; Jenkins, Elizabeth; Alan D. Mandl; Janet Davis; Nik Atsalis
Subject: Wireless communication regulations

Dear Mr. Ells,

As you finalize the new regulations governing location of wireless communication facilities, I'd like to reiterate my hope that you add in a requirement that applicants notify in writing owners of properties within 250 feet of the proposed location. Please also include a requirement that the town hold a public meeting or hearing on the application so that residents have an opportunity to voice any concerns or opinions they may have in a public forum.

As wireless technology expert Cece Doucette's April 18, 2023 letter to you and Elizabeth Jenkins points out, the distance should really be much greater. I encourage you to consider a distance greater than 250 feet. But 250 feet is better than nothing and so I hope you will at least include this.

From some of our discussions, I get the sense this provision hasn't been included yet due to a concern that the town would be taken to court over it by the telecom industry. If this is a concern on the part of you and your legal team, I'd like to respond by sharing some advice I received on this from Doug Wood, the director of Americans for Responsible Technology. I'm sure you remember meeting Doug over our Zoom meeting last year. He advises that including an opportunity for the applicant to seek a variance -- if it can prove that the only way to provide service is by not complying with the provision -- would prevent legal action by the telecoms. Specifically, he stated:

"The way to avoid getting sued for ANY provision in the code is to provide for a variance if the applicant can prove that it is the only way to provide service to the area, and that it is the least intrusive means of doing so.

So you can theoretically put a 1,000 foot setback in your code, so long as the applicant has the opportunity to apply for a variance. They cannot sue you if you allow for this." (From Doug Wood).

As Ms. Doucette points out, had the city of Pittsfield, Mass. had such a requirement in its regulations, it probably would not today be embroiled in a lengthy legal battle with neighbors who found out too late their homes were newly in the shadow of a cell tower. From Ms. Doucette's letter:

"Please also codify in your regulations certified mail notification to those within at least 250' of the property line (though the science indicates a minimum 1,640' is the right starting point) and public hearings for all wireless communication facility applications. If Pittsfield had those codified up front, they likely wouldn't be getting sued today." (From Cece Doucette letter to town of Barnstable, Apr. 18, 2023).

Thank you for considering adding these requirements. Notification of residents is an important part of this, important to good government, openness, inclusion, and to residents' sense of trust and to their right to know what's going on that affects them. And holding a meeting on applications gives residents a chance to be heard.

Thanks for all your hard work on this very important issue.

Best wishes,
Jennifer Lynch

Jennifer Lynch
jenniferlynch@comcast.net
508-280-6672

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April 18, 2023

Mr. Mark Ells, Town Manager
Ms. Elizabeth Jenkins, Director of Planning and Development
Town of Barnstable
367 Main Street
Hyannis, MA 02601

Via email: Mark.Ells@town.barnstable.ma.us, elizabeth.jenkins@town.barnstable.ma.us

Dear Mr. Ells and Ms. Jenkins,

Please enter this statement and the documents included in the links contained herein, into the public record for Barnstable's Grant of Location Regulation revisions.

Thank you for your careful consideration over the years of both the benefits and the public safety risks of wireless infrastructure in your community.

Given mainstream media is owned in large part by the telecom companies and/or their parent organizations, we seldom hear reports of important inroads other communities are making toward safe technology. I thought I'd share the following to give you encouragement to stay the course and be wary of the disinformation provided to you by the wireless industry.

Wireless is No Longer Advanced Technology

See the [testimony sent in to the New Hampshire legislators by Frank Clegg, the retired President of Microsoft Canada](#). He outlines why wireless is no longer advanced technology. Fiber-optics or high-speed cable to and through the premises is, with wireless a distant second for emergencies when on the go.

In addition to strengthening your local zoning code to be as protective as it can be under current laws, I hope you are proactively planning to bring fiber-to-and through-the-premises (FTTTP). I understand [Falmouth](#) is already moving in this direction.

Once your community is trained on the important reasons to choose hard-wired connections indoors for primary connectivity (energy consumption, radiation impact, better security and privacy), then the capacity demands on the current cellular infrastructure goes down and additional cell towers, macro antennas and small cells are not needed.

Citizen Actions: Town Meeting Warrant Articles

Here in MA, citizens in Sheffield, Great Barrington, Upton and Chester have worked with their town clerks and added [articles to Town Meeting warrants](#) to put a pause on any further wireless

buildout until the FCC fulfills its [court-ordered mandate](#) to bring public radiation limits in line with the science. You may wish to seek a legal review and add similar language in Barnstable.

The Industry Playbook

Having participated in legislative and other hearings on this issue, we have seen time and again industry lobbyists deny the science and harm, and provide disinformation to public servants. They promote what is quick, easy and highly profitable for them. Given a nudge, they can produce excellent innovations that are safe and responsible too. They've just never tasked their engineers to do so because the ill-informed customer hasn't required them to change their profit model. It's time to require it.

In Lenox, MA, an industry consultant has persuaded their town leaders that they need to have cell towers at close range for 5G and the Internet of Things (IoT). David Maxson of Isotope, though not an attorney who can legally write laws, has gone so far as to rewrite their zoning code, stripping protections and paving the way for toxic cell tower installations inside neighborhoods.

Fortunately, as in Barnstable, Lenox citizens learned the facts and organized with their town for protections. When the revised zoning code went to Town Meeting last year, [it was defeated](#). The town, however, has refused a pro bono one-hour consultation with top national attorneys to review the bylaws, and Lenox is bringing the industry bylaw back for a vote this May.

As you've likely already discovered, Barnstable would do well to fact-check with non-industry funded experts everything the industry tells you. It seems CTIA is already trying to strip your local control per their comment letter of March 23.

The Responsible Way Forward

Fiber-to-and-through-the-premises (FTTTP) is the answer for superior, sustainable connectivity. Please see the following 34-minute expert advice for municipal leaders from two of the nation's top attorneys on telecom law, Andrew Campanelli and Robert Berg:

<https://www.youtube.com/watch?v=mvE-XBNusi0&t=14s>

You can also hear directly from attorney Scott McCollough who gave oral arguments in the EHT v. FCC lawsuit. He indicates the industry tells our towns their hands are tied when it comes to siting cell towers. McCollough acknowledges that you may have one finger tied by the 1996 Telecommunications Act, but Congress empowered you with nine other fingers for local control, despite what the industry tells you: <https://youtu.be/Ne17CkcPjk0>.

Hopefully through your collaboration with Doug Wood, you have this incorporated into your updated regulations.

I noticed that Mr. Wood encouraged you to incorporate the ANSI/APCO Public Safety Grade Site Hardening Requirements. These are **national standards for cell equipment that ensure safety** around flooding, wind, ice storms, grid failures, physical security, antenna support, structure, lightning protection and grounding, equipment enclosures, environmental and climate control, and more. They ensure the network is hardened and therefore will be available in emergency situations.

As we discovered during hearings on the current bill in New Hampshire, [HB 298](#), the industry does not like them because it means more work and expense for them. NH industry lobbyist Rick Fabrizio told the legislature the ANSI/APCO standards didn't apply to 5G small cells. I checked with APCO, and attorney Scott McCollough, and these new standards (2019) are indeed applicable to all wireless communication facilities regardless of whether they are macro or small cells. So again, be careful with what the industry tells you, and fact-check everything.

Please also codify in your regulations certified mail notification to those within at least 250' of the property line (though the science indicates a minimum 1,640' is the right starting point) and public hearings for all wireless communication facility applications. If Pittsfield had those codified up front, they likely wouldn't be getting sued today.

Engage Policy Makers

I also recommend you reach out to your State and Federal delegates. They need to understand the wireless issues faced by those in their districts. There are [multiple bills in MA](#) this session to address technology safety and disability rights. They include:

- Forming a **commission to investigate wireless radiation risks** as NH has already done (sponsored by your own Senator Cyr; please contact him to express the urgency of wireless radiation in your district; he says he doesn't hear enough from his district or others to make this a priority); you may recall the groundbreaking [NH Commission Report](#) recommends a 1,640' wireless communication facility setback based on the science.
- **Protecting children** from hand-held devices (also sponsored by Senator Cyr)
- **Protecting our schools** from wireless radiation
- Requiring a **no-fee opt-out from toxic utility "smart" meters** (note, this has an emergency preamble this session)
- Incorporating **electromagnetic sensitivity in the state's MAVEN** public health tracking and reporting system
- Prohibiting injurious operations or offering services or products that **discriminate against or injure protected classes**

Please contact each of the committee chairs directly through the bills link above and log your support from Barnstable. Share what you and your town have learned and how important it is for public safety to get technology right.

History-Making Inroads in Pittsfield

Verizon put up a cell tower atop a neighborhood and it made 17 children and adults so sick they've had to abandon their homes. Their Board of Health investigated and issued a first-in-the-nation well-documented [Emergency Order](#) to Verizon. Rather than coming to the table and working together for a better solution, Verizon went to the courts for an injunction.

The Board of Health consulted with state-level attorneys and believes the Telecom Act only applies to the *siting* of a cell tower. Once it is up, if it is harming the populace or environment, the Board of Health has jurisdiction and it is their duty to protect the health of the citizens and the environment. Unfortunately, due to conflicts of interest with the industry, the mayor,

solicitor and others wouldn't give their own BOH the relatively low funding to take Verizon to court.

So now there is a [civil suit against Pittsfield](#) to remove the injunction and let the BOH do its job. If they succeed, this may empower you to protect the citizens harmed by the Centerville church steeple cell tower and other close-range cell antenna installations.

In a further first-in-the-nation action, the Massachusetts Association of Health Boards has filed an [amicus brief](#) in support of the injured citizens.

Until public policy catches up to the science though, it is up to municipalities to protect their citizens and environment within the full extent of the law.

In yet another first-in-the-nation action, Pittsfield City Council has sent [appeal letters](#) you can emulate to send to your legislators and state agencies. They also sent an [appeal letter to the FCC](#).

In Millis, MA, citizens petitioned to include a Town Meeting warrant article to have their administrators send letters of appeal too as towns should not be left on their own to fight these corporate polluters.

Due to miscommunication among Millis town boards, they never responded to their citizens' requests to send these appeal letters. So, citizens did a petition and have a Town Meeting warrant article for May too. They have sent this [fact sheet](#) out to their community.

In addition to the great work you are doing to strengthen your zoning code, it would be a show of good faith to your residents to have **Barnstable send appeal letters too**.

Let's Keep Learning Together

I invite you, your colleagues, loved ones and citizens to join us for free webinars I am co-hosting each month with New Hampshire for Safe Technology to teach the basics of the science, risks, legal actions, public policy inroads and most importantly, steps we can all take TODAY to greatly reduce our radiation exposures while enjoying excellent connectivity:

<https://www.ma4safetech.org/events>.

I have also helped to establish the international non-profit [Wireless Education](#) where we can literally train families, schools and workforces on wireless risks and medically recommended best practices for safer technology use – in about **a half hour on-line**. Please let me know if I can grant you complimentary access to assess the Schools & Families Course for training your town.

I sincerely hope you will bypass industry persuasions and continue to resolve to provide **safe, responsible connectivity** to Barnstable. We know it's not an easy task but I look forward to sharing the good news when you have a really protective zoning ordinance in place!

Respectfully,

Cecelia Doucette

Director, [Massachusetts for Safe Technology](#)

Education Services Director, [Wireless Education](#)

Engelsen, Jennifer

From: Jenkins, Elizabeth
Sent: Monday, April 10, 2023 9:09 AM
To: Engelsen, Jennifer
Subject: 4-10 McChesneyKaye

From: Joyce McChesney-Kaye [<mailto:joycemkaye@gmail.com>]
Sent: Monday, April 10, 2023 6:52 AM
To: mark.ells@townofbarnstable.ma.us; Jenkins, Elizabeth; Nober, Karen
Subject: Proposed Cellular Antennas

Good Morning!

I would like to request as you finalize the new regulations regarding cellular towers that public meetings be added to the regulations.

Whether these towers cause health issues, impact property values, or overall aesthetics, as taxpayers, I believe we have the right to be involved with the location of these monstrosities. At least as a taxpayer in Barnstable for 36 years, I feel I have earned the right to object and suggest a different location, should something near my home be proposed.

Frankly, I could do with fewer cell towers. It's an accident causing convenience each day as we drive to work, school, or complete our errands. No one follows the hands free law. Practically no one...I see it each day as I travel twenty minutes to work.

I maintain a landline in my home...maybe we should consider something that would afford others to do so and need less of these towers.

Thank you for taking the time to read my email.

Best regards,
Joyce Kaye

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Engelsen, Jennifer

From: Jenkins, Elizabeth
Sent: Monday, April 10, 2023 9:08 AM
To: Engelsen, Jennifer
Subject: 4-9 Lynch

From: Jack Lynch [<mailto:johnelynch43@gmail.com>]
Sent: Sunday, April 9, 2023 4:31 PM
To: Jenkins, Elizabeth; Nober, Karen
Subject: Cell Antennas

Please include a requirement for residents to have the right to advance public hearings to express concerns
John Lynch
594 Main Street
Centerville

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Engelsen, Jennifer

From: Jenkins, Elizabeth
Sent: Monday, April 10, 2023 9:07 AM
To: Engelsen, Jennifer
Subject: 4-8 Smiley

From: Donna Smiley [<mailto:lavendert5@gmail.com>]
Sent: Saturday, April 8, 2023 8:30 AM
To: Jenkins, Elizabeth
Subject: Cellular Infrastructure Regulations

Hello Ms. Jenkins,

As a year round resident, I am concerned about the seeming 'free reign' of cellar equipment in our villages.

I am asking that a resident living within 250 feet of a proposed antenna have a right to be fully informed and have a chance to voice objections and suggest alternate locations.

Thank you for your care for this matter.

Sincerely,
Donna Smiley
90 Wilton Drive
Centerville

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Engelsen, Jennifer

From: Jenkins, Elizabeth
Sent: Monday, April 10, 2023 9:07 AM
To: Engelsen, Jennifer
Subject: 4-8 Woeller

From: Michelle Woeller [<mailto:michellewoeller@gmail.com>]
Sent: Saturday, April 8, 2023 12:33 PM
To: Ells, Mark; Jenkins, Elizabeth; Nober, Karen
Subject: Proposed updated cellular infrastructure regulations.

As a resident of Barnstable, I am writing in regards to the proposed updated cellular infrastructure regulations. While there are many good things about the code, the lack of a requirement for a public meeting for any proposed antenna in a residential area is a major oversight and not consistent with good government practice. Given the growing debate questioning the effectiveness of government RF safety regulations and public concern over the deployment of wireless antennas, Barnstable residents living within 250 feet of a proposed antenna certainly have the right to be fully informed and have a chance to voice their objections and suggest alternative locations. This is especially true since antennas in residential areas can negatively impact property values and the aesthetics of the neighborhood. I ask that this requirement be added to the new cellular regulations.

Sincerely,
Michelle Woeller

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Jenkins, Elizabeth

From: Ells, Mark
Sent: Thursday, March 23, 2023 4:14 PM
To: Jenkins, Elizabeth; Nober, Karen
Subject: Fwd: Newly Proposed Code Wireless Technology

Sent from my iPhone

Begin forwarded message:

From: Gary Conway <grc.conway@gmail.com>
Date: March 23, 2023 at 3:06:29 PM EDT
To: "Ells, Mark" <Mark.Ells@town.barnstable.ma.us>
Subject: **Newly Proposed Code Wireless Technology**

(Via Electronic Mail)

Hi Mark -

I thank the town manager and all those within the Town of Barnstable for making these regulations available for our review and for the opportunity today to offer commentary. Please recognize my complete support of all issues raised by Mr. Doug Wood in March 17 letter with attachment. Most notably, the need to advertise the requirement for a public meeting for any proposed antenna in a residential area, residents living within 250 feet (I would like to see 1000 feet if at all possible) should be notified by the applicant. Please also give strong consideration to adding the specifications for fire and safety into the finished draft. Also, noteworthy are the suggestions to increase the Town's liability insurance to cover liability claims due to the items raised in Mr. Wood's letter to include RF radiation.

Again, thank you for all your attention to this matter and we look forward to your concluding additions.

Warmest Regards,

Gary Conway

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March 23, 2023

Elizabeth Jenkins
Director of Planning and Development
Town of Barnstable
367 Main Street
Hyannis MA 02601

**Re: Comments on proposed amendments to the Town Manager Regulations, Part IV
of the Code of the Town of Barnstable, to adopt “Grant of Location” Regulations**

Dear Ms. Jenkins:

CTIA^①, the trade association for the wireless communications industry, respectfully submits these comments on Barnstable’s proposed “Grant of Location Regulations.” CTIA’s members seek to continue to work cooperatively with Town officials to deploy wireless communications services to improve connectivity for residents, schools and businesses. As users increasingly rely on wireless services for text, voice and broadband communications, including Internet access, our members need reasonable and predictable policies that enable upgrading and expanding networks. Our members are committed to working with the Town to deploy facilities to provide reliable, high-speed services while also meeting reasonable siting regulations.

CTIA is pleased that the “purpose and intent” of the Regulations (Section XXX-2) recognizes the benefits of wireless services and the need to be “consistent with applicable state and federal requirements.” However, CTIA is concerned that a number of provisions in the Regulations do not achieve that goal and would in fact undermine it. As outlined in this letter, these provisions would impose unjustified and burdensome requirements, make permitting more costly and violate federal law. We look forward to working with Town officials to discuss these concerns and find ways to modify these provisions to achieve the purpose and intent of the Regulations and comply with federal law.

- *Section XXX-3 – definition of Personal Wireless Service (“PWS”) Provider:* This provision only includes PWS and DAS providers but not other infrastructure companies. Today, those firms deploy non-DAS wireless facilities to be used by PWS providers and they should be able to apply for permits as well. CTIA suggests that the definition be expanded to include “entities deploying wireless facilities that are to be used by providers of Personal Wireless Services.”
- *Section XXX-4(B) and footnote 1:* These provisions discuss applications to modify existing facilities that are filed under 6409(a) of the federal Spectrum Act of 2012. Under that statute, an application that qualifies under Section 6409(a) as an “Eligible Facilities Request” cannot be denied; rather, the locality “shall grant” it. However, the footnote’s last sentence says, “If that

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.



application is denied” To make this footnote consistent with Section 6409(a), the following underlined language should be added to the last sentence: “If that application is denied because the proposed facility was determined not to be an Eligible Facilities Request”

- *Section XXX-5(B)*: This provision requires the applicant to commit to complete deployment within six months of granting. Given potential supply chain delays in securing equipment and adverse weather that can prevent site work, particularly during the winter, this period should be extended to 12 months.
- *Section XXX-5(E)(2) and (3)*: These provisions specify other permits that the Town may require to construct facilities. These provisions are acceptable as long as they are amended to clarify that the issuance of any such additional permits is subject to the federally mandated “shot clock” time periods for the Town to act on all applications, which are set forth in Section XXX-5(J).
- *Section XXX-5(H)*: This provision should be deleted because the third-party “peer review” would intrude on the provider’s determination of how it can optimize reliable service, its choices as to the feasibility of alternative network coverage plans and other technical issues. The FCC has ruled that a state or locality may violate Sections 253 and 332 of the federal Communications Act when it requires the provider to demonstrate “a lack of feasible alternative locations for siting facilities” or intrudes on the provider’s determinations as to how to design its network. *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd 9088, 9102, *aff’d in part sub nom. City of Portland v. U.S.*, 969 F.3d 1020 (9th Cir. 2020) (“*State/Local Siting Order*”). Additionally, this provision fails to require that the peer review be completed within the mandatory “shot clock” time periods.
- *Section XXX-5(I)(1)*: The last sentence of the third paragraph states the applicant “bears the risk of a denial of its application” for incompleteness even if the Town does not provide timely notice that the application is incomplete. This is unreasonable given that the Town could simply not inform the applicant it believes the application is incomplete and summarily deny it without giving the applicant the opportunity to amend it. The sentence should be deleted.
- *Section XXX-5(O)*: This provision requires an applicant to pay a “recording fee” for the Town’s grant of an application but does not specify the amount. The amount should be included given that the *State/Local Siting Order* put limits on fees that can be lawfully charged.
- *Section XXX-5(Q)*: The third sentence of this section places unlawful limits on the construction of new poles because it requires the applicant to demonstrate there is no “technically feasible alternative” to the new pole. However, as we noted above, localities may not condition grants on a “no feasible alternative” standard. The sentence should be deleted.
- *Section XXX-6(B)(2)*: Like other provisions discussed above, this section would impermissibly intrude on an applicant’s network design decisions by imposing a “technically feasible” standard. It exceeds the bounds of the Town’s authority to adopt reasonable aesthetic



standards, which are included later in the Regulations and are fully adequate to protect the Town's interest in managing the appearance of facilities.

- *Sections XXX-6(B)(3), (4)*: The second sentence of (B)(3) and the fourth and fifth sentences of (B)(4) would police and restrict an applicant's technical design decisions, violating federal law, by prohibiting new poles unless the applicant can prove that no other location is "technically feasible or otherwise unavailable." These sentences should be deleted. Additionally, Section XXX-6(B)(4) effectively eliminates small cell deployment because it imposes these requirements on an application for any pole that is 100 feet within a residence given there are few poles that are not within 100 feet of a residence.
- *Section XXX-6(B)(5)*: This provision outright bans poles in areas where there are underground utility facilities. Federal law prohibits a locality from imposing such total bans on deployment, and the provision fails to explain why poles cannot be safely installed in these areas.
- *Section XXX-6(B)(6)*: This provision requires an applicant to enter into a contract with the local electric utility to obtain power on a non-metered basis when available. This provision should be removed. First, there is no basis for the Town to dictate how wireless providers secure power for their facilities. Second, forcing providers to enter into a contract to obtain non-metered service merely because the utility wants such an agreement – rather than supplying power on a metered basis – unjustifiably adds more delay and complexity to the siting process.
- *Section XXX-6(B)(7)*: CTIA opposes several provisions in this section as well as a later provision listed below because they unlawfully impose requirements related to radiofrequency (RF) emissions. Section 332(c)(7) of the Communications Act expressly preempts localities from regulating RF emissions and imposing RF-related siting conditions. The FCC has exclusive authority over RF emissions and has adopted rules that all wireless providers must meet. The following requirements should accordingly be removed:
 - *Section XXX-6(B)(7)(b)*, which requires providers to conduct ongoing RF emissions monitoring and certifications, effectively regulates how providers comply with the FCC RF rules, which is preempted by the FCC. Carriers are already required to review RF emissions when they modify a facility's operations and must comply with FCC RF rules.
 - *Section XXX-6(B)(7)(c)*, which requires third-party "random and unannounced tests" of wireless facilities, constitutes impermissible compliance monitoring of an FCC rule. Again, providers must comply with that rule but localities may not regulate compliance.
 - *Section XXX-6(B)(9)*, which requires carriers to operate and maintain their facilities "in a manner that is not detrimental or injurious to public health or safety," appears to regulate RF emissions. This language should be removed or clarified to state that it does not authorize the Town to impose any requirements that are related to RF emissions.
- *Section XXX-6(B)(11)*: This section gives the Town unbridled discretion to demand that facilities include "stealth elements," most of which are undefined, and fails to give providers reasonable



notice as to when such elements would be required. The section also uses the term “concealment element” to identify an unlimited range of design elements, although the FCC has narrowly defined it as an element that makes a structure look like something other than a communications facility, such as making a pole look like a tree. Given the many other Regulations that enable preserving aesthetics, Section XXX-6(B)(11) is unnecessary.

- *Section XXX-6(B)(13)*: This provision limits a pole’s use to a single service provider unless the facility is operated by a DAS provider. However, there are other infrastructure firms that install wireless facilities other than DAS. The rule should be modified to allow those firms to install facilities that can be used by multiple providers. Promoting collocation by allowing multiple users on the same pole will advance one of the Regulations’ stated purposes of minimizing the number of poles with wireless facilities.
- *Section XXX-6(B)(17)*: As with the other “new pole” sections discussed, this section also effectively prohibits new poles by imposing criteria for an Exception, such as the “justification analysis,” that violate federal law. Sections 253 and 332, as interpreted by the FCC in the *State/Local Siting Order* and upheld on appeal, preempts localities from conditioning wireless permits on an applicant’s “justification” that there are no alternatives to a proposed site.
- *Section XXX-6(B)(19)*: This section should be removed because it sets “design standards” that appear to have been copied from standards that might be relevant to larger “macrocell” facilities or towers but are not appropriate for small cells. The requirements for withstanding wind loads, draining wastewater with sump and drainage devices and handling of hazardous materials have no bearing on small cells. In addition, mandating that antennas and equipment be “as small as possible” sets an inherently vague standard that fails to provide adequate notice of permit requirements and creates unlimited discretion to assess what is “possible.”
- *Section XXX-6(C)(6)(a)*: This provision would impose a requirement that an applicant secure a \$100,000 performance bond for each small cell facility. This amount far exceeds what other communities seek (typically \$1,000-\$5,000). In addition, the Town supplies no explanation for why it chose this excessive amount. The bond should be reduced to no higher than \$5,000.

CTIA the opportunity to comment on these Regulations, and our members are eager to work with the Town on policy approaches that achieve the purpose and intent of the Regulations, benefit the Town’s efforts to improve connectivity and comply with federal law.

Sincerely,

Jeremy Crandall
Assistant Vice President
State Legislative Affairs

Cc: Mark Ells, Town Manager, Town of Barnstable



184 Main Street • Port Washington • New York • 516.883.0887 • www.AmericansForResponsibleTech.org

March 17, 2023

Mr. Mark Ells
Barnstable Town Manager
367 Main Street
Hyannis, MA 02601

Via Electronic Mail

Dear Mr. Ells,

At the request of a group of your constituents, I have reviewed the new proposed code for the Town of Barnstable regarding the deployment of wireless infrastructure in the public rights-of-way. Thank you and your team for including many of the ideas we brought to your attention in our meeting with attorney Alan Mandl last summer.

While there are many very good things about the code, the lack of a requirement for a public meeting for any proposed antenna in a residential area is, in our view, a major oversight and not consistent with good government practice. The principle of public participation in affairs that directly impact their lives and property is fundamental to our democracy. Given the growing debate questioning the effectiveness of government RF safety regulations and public concern over the deployment of wireless antennas, Barnstable residents living within 250 feet of a proposed antenna certainly have the right to be fully informed and have a chance to voice their objections and suggest alternative locations. This is especially true since antennas in residential areas can negatively impact property values and the aesthetics of the neighborhood.

Therefore, I strongly recommend that you include in the code a requirement that within five days of application, the applicant must notify all property owners within 250 feet of the proposed antenna by certified mail, advising them that an application for an antenna has been made, giving the exact location of the antenna and notice that a public meeting will be held regarding the application.

Additionally, I'd like to recommend that the specifications for fire and safety be updated in accordance with rapidly changing weather conditions and storm strength due to a changing climate. I am attaching some specs which may be useful to you in updating your application requirements.

I understand that there have also recently been some related concerns expressed regarding the safety of strand-mount antennas in heavy storm situations, so increased specifications for safety

are warranted. Likewise, many municipalities are increasing insurance requirements significantly (e.g., \$5,000,000 per occurrence) to cover liability claims due to structural collapse, fire, flood, wind or claims resulting from exposure to pollution, including RF radiation.

I also think it might be prudent to include language that allows the Town to revisit any permit for a wireless antenna in the event that (1) the FDA changes its policy on human exposure to RF radiation, (2) the FCC changes its human exposure guidelines, or (3) there is a court decision or a change in Section 704 of the Telecommunications Act allowing local governments to consider the potential health effects of exposure to RF radiation in making decisions about antenna placement.

Thank you for considering these ideas as you make final changes to the proposed code.

Sincerely,

A handwritten signature in black ink, appearing to read 'D.A.W.', with a long horizontal flourish extending to the right.

Douglas A. Wood
National Director

DW:nl
enclosure



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Responsible
Technology**

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Municipal Code Recommendations for a Changing Climate

Due to rapidly changing weather patterns and the increasing possibility of antenna fires, we suggest the following code upgrades for safety, electrical and fire specifications.*

Codes should require not only certification by an electrical engineer, but submission of detailed electrical diagrams. These should be stamped plans, and they should at least include:

- a list of all associated equipment necessary for operation, load calculation
- a one-line diagram of the electrical system
- a plot plan showing the location of the service disconnecting means
- a short circuit and coordination study (“SCCS”) calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages.

Codes should require a set of structural plans demonstrating that the supporting structure will be able to sustain the burden imposed by the equipment. We recommend conformance with APCO ANS 2.106.1, Public Safety Grade Site Hardening Requirements.

* Americans for Responsible Technology does not offer legal advice and this memo should not be construed as such. Please consult qualified legal, electrical and fire safety experts for the applicability of these recommendations for your local code.