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Re: Verizon Fiber Easements Pending Board Approval

Dear Mr. Kuglitsch and Mr. Farwell,

I am writing on behalf of Verizon to express concerns regarding the status of three fiber easements pending with Milwaukee County. As further discussed below, the County's treatment of Verizon's access requests violates applicable law in that (i) the County has exceeded the scope of its authority under state law to regulate telecommunications facilities, (ii) the County's unreasonable delay and failure to act on the easement requests has resulted in a *de facto* moratorium prohibited by federal law, and (iii) the County's treatment of the easement requests evidences discrimination among providers of similar services in violation of both state and federal law. Verizon asks that the County respond to this letter by placing the subject easement agreements on the agenda for its next meeting and approving or denying each in accordance with applicable law.

I. Background

The easements at issue authorize the installation of fiber optic cable in the right-of-way at the following locations: (1) on Lincoln Memorial Drive ("Lincoln Memorial Easement") near the War Memorial, (2) along the Milwaukee River Parkway ("Milwaukee River Parkway Easement"), and (3) along Root River Parkway between S 92nd Street and Layton Avenue ("Root River Easement"). Verizon began the process of gaining approval with the County back in April of 2019 but still has not received authorization to begin laying fiber that is critical to Verizon's ability to provide improved telecommunications service to Milwaukee County residents and businesses. Although the easement agreements were negotiated and agreed to with County staff and presented for approval at multiple committee meetings, the Board has declined to render decision. The

record reflects that the Board declined to act in response to concerns regarding the relationship of the fiber easements to Verizon's proposed deployment of wireless facilities or "small cells".

As background, Verizon first applied for the initial two easements using the County's land utilization portal, receiving approval for the Milwaukee River Parkway Easement in April 2019 and for the Lincoln Memorial Easement in October 2019. The parties thereafter commenced agreement negotiations, and the terms and compensation rate were agreed upon with Milwaukee County Parks Department staff in March 2020 for the Lincoln Memorial and Milwaukee River Parkway Easements and in May of 2020 for the Root River Easement. The annual fee amounts ultimately agreed to by Verizon demonstrate how critical this infrastructure is to Verizon's network and ability to serve its customers in Milwaukee County.

Although the agreement terms and compensation were *months ago* approved by the Parks Department and submitted for Board approval, as detailed below, the Board has repeatedly declined to approve or deny the easement agreements:

- The Lincoln Memorial Easement and the Milwaukee River Parkway Easement agreements were first presented to the Board's Parks Committee for consideration at the May 19, 2020 meeting. However, the Committee declined to place the easements on the Agenda.
- In June, the Root River Easement was presented to the Committee for the June 12, 2020 meeting of the Parks Committee, along with the Lincoln Memorial and Milwaukee River Parkway Easements. During this meeting, the Committee voted to hold over the three easements due to concerns relating to small cells, even though none of these three easements would authorize Verizon to place a small cell in Milwaukee County.
- The July 2020 meeting resulted in a similar outcome, with the Committee again voting to hold over the three easements due to concerns about small cells.
- Since the Committee does not convene in August, Verizon's next opportunity to obtain Board approval is in September, nearly *six months* after the Lincoln Memorial Easement (and nearly 18 months after Verizon has sought initial approval through the land utilization portal) and Milwaukee River Parkway Easement agreements were agreed upon, and *three months* after the Root River Easement agreement was agreed upon.

II. Discussion

The County has a right under state and federal law to reasonably regulate telecommunications easements. As you are no doubt aware, Wisc. Stat. § 196.499(14) allows telecommunications service providers to install or extend their facilities into or through any municipality, subject to the "reasonable regulation" of a local municipality. This "reasonable regulation" is related to the location of poles and wires and the preservation of the safety of the public and includes the following types of activities: (a) registering utilities, (b) processing permits, (c) inspections, (d) work related to utility equipment used during work in the rights-of-way, (e) restoration work, (f) revoking utility permits, (g) maintenance of databases, and (e) scheduling work relevant to a utility permit (Wisc. PSC § 130). While Milwaukee County is entitled to require Board approval of fiber easements as part of their effort to reasonably regulate fiber facilities in the right-of-way, they cannot refuse to act on a provider's request for access due to concerns over the placement of wireless facilities. The County's actions in this case go well beyond the concept of "reasonable regulation" under Wisconsin state law.

Moreover, the County's failure to act violates federal law because it amounts to a de facto moratorium and effectively prohibits Verizon's ability to provide service. Section 253(a) of the federal Telecommunications Communications Act, 47 U.S.C. § 253(a), provides that "no 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 telecommunications service." More recently, the Federal Communications Commission ("FCC") confirmed that both express and *de facto* moratoria that suspend processing or approval of applications violate Section 253. *See FCC's Third Report and Order and Declaratory Ruling: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, ¶¶ 145-148 (August 2, 2018). The FCC concluded that "moratoria limit the provision of service, harm competition, and impose significant costs that impede the deployment of telecommunications infrastructure and thereby exacerbate the digital divide." *Id.* at ¶ 147.

Last, the County's refusal to act on Verizon's fiber easements amounts to discriminatory treatment in violation of both state and federal law. Wisc. PSC § 130.04 and 47 USC §253(c) require Milwaukee County to treat Verizon's request for access to and use of the right-of-way in a competitively neutral and non-discriminatory manner. Verizon does not believe that other users of the right-of-way require multiple Board meetings and months of delays for approval of easements, nor does Verizon believe that other users of the right-of-way find their easements repeatedly held over due to concerns relating to the deployment of certain wireless technologies.

III. Conclusion

Verizon requests that the County place the three easements on the agenda for their September 2020 Parks Committee meeting, limit their regulation of those easements to those areas specifically permitted by applicable law, and treat Verizon's request for access and use of the right-of-way in a competitively neutral and non-discriminatory manner. If the County does so, we believe the record will support approval of Verizon's easements and Verizon will be able to deploy its network infrastructure and meet the needs and expectations of our customers during a time when they are relying more heavily than ever on the connectivity and services we provide.

Please do not hesitate to contact me with questions or if you wish to further discuss the concerns summarized herein.

Sincerely,

Meghan E. Riley

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Counsel – Network

cc: Tanya Rosin, Verizon State Government Affairs
Nick Polydoros, Verizon Network Real Estate