

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2012-30

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4  
5 AN ORDINANCE

6 RELATING TO TELECOMMUNICATIONS FACILITIES AUTHORIZED IN THE  
7 PUBLIC RIGHTS-OF-WAY, ARTICLE 27-2 SFCC 1987; AMENDING SECTION 27-2.3  
8 SFCC 1987 TO AMEND THE DEFINITIONS OF *APPLICANT*, *GROSS REVENUE*,  
9 *PROVIDER* AND *TELECOMMUNICATIONS SERVICES*; AMENDING SECTION 27-2.5  
10 SFCC 1987 TO INCLUDE THAT THE TELECOMMUNICATIONS FACILITIES IN  
11 THE PUBLIC RIGHTS OF WAY ORDINANCE APPLIES TO PROVIDERS WITH  
12 TELECOMMUNICATIONS NETWORKS IN THE PUBLIC RIGHT-OF-WAY THAT  
13 DO NOT PROVIDE SERVICES WITHIN THE CITY LIMITS; AMENDING SECTION  
14 27-2.13 SFCC 1987 TO CORRECT A CITATION; AND MAKING SUCH OTHER  
15 STYLISTIC OR GRAMMATICAL CHANGES THAT ARE NECESSARY.

16  
17 Section 1. Section 27-2.3 SFCC 1987 (being Ord. #2010-14, §5, as amended) is  
18 amended to amend the following definitions:

19 *Applicant* means any person who files an application with the city under subsection 27-2.4  
20 SFCC 1987 in order to obtain a franchise to use the public rights-of-way to provide  
21 telecommunications services.

22 *Gross revenue* means:

23 A. Includes the following types of provider revenues derived from the provision of  
24 telecommunications services to customers within the city served from telecommunication facilities  
25 located in the public rights-of-way:

1 (1) Recurring, nonrecurring and usage charges paid by customers for  
2 telecommunications or other services provided through use of the telecommunications  
3 network;

4 (2) Revenues received from access fees, interconnection fees, or any other fees  
5 relating to or arising out of the use of the telecommunications network (including the  
6 facilities and equipment of such network) by any person providing commercial mobile radio  
7 service, cellular, personal communications service, or other communications service;

8 (3) Interlata (local access transit area) toll revenue;

9 (4) Intralata toll revenue;

10 (5) Equipment lease and sale revenue not to include revenue from the sale or  
11 lease of equipment that is readily available in the consumer retail market;

12 (6) Installation and service fees;

13 (7) Data transport or network charges;

14 (8) Any amounts collected by a provider from its customers denominated as  
15 reimbursement for expenses of construction, equipment and related expenses paid by  
16 provider for the benefit of its customers; or

17 (9) Payments received by a provider from any federal or state agency or other  
18 carriers pursuant to any universal service fund requirement.

19 B. Excludes the following types of revenue derived from the provision of  
20 telecommunications services to customers within the city limits:

21 (1) Proceeds from the sale of bonds, mortgages, or other evidence of  
22 indebtedness, securities or stocks;

23 (2) Bad debt write-offs and customer credits;

24 (3) Revenue from direct advertising;

25 (4) Any amounts collected by a provider from its customers that are required to

1 be remitted to a federal or state agency as part of a universal service fund or other  
2 government program;

3 (5) Amounts collected for taxes, fees or surcharges and paid to the federal, state  
4 or local governments;

5 (6) Any franchise fee or tax; or

6 (7) Revenue from the sale or lease of equipment that is readily available in the  
7 consumer retail market.

8 (8) Revenue from the provision of internet access services as defined in the  
9 Federal Internet Tax Freedom Act, 47 U.S.C. § 151, but only to the extent prohibited by law.

10 C. Gross revenue as set forth above shall be interpreted consistent with FCC regulations  
11 and rulings, and any relevant decision by a federal court and to the fullest extent allowed by  
12 applicable law. Any change in federal law subsequent to the effective date of a franchise shall not  
13 affect the definition of gross revenues unless the change specifically preempts one of the components  
14 of the definition. Gross revenue shall be measured and monitored periodically by the city. As  
15 telecommunications services continue to advance and evolve, the definition of gross revenues will be  
16 read based on the intent reflected in the above list. When a bundling of services is offered by a  
17 provider that includes services included in gross revenues or excluded from gross revenues there will  
18 be a pro rata allocation between franchise fees based services and nonfranchise fee categories based  
19 on the provider's product usage rate.

20 *Provider* means:

21 A. Any person who uses the public rights-of-way within the city to provide any  
22 telecommunications services by means of: (i) a telecommunications network owned by such person;  
23 (ii) specifically identifiable facilities of a telecommunications network reserved or made available for  
24 the use of such person under a lease or any other arrangement for a term longer than one hundred  
25 twenty (120) days; or (iii) facilities of a telecommunications network not owned by such person and

1 not specifically identifiable but obtained from another provider if the use of such facilities is  
2 continuing and substantial.

3 B. Except to the extent that a provider or a person uses the public rights-of-way, a  
4 provider or any person which provides commercial mobile radio service, cellular, personal  
5 communications service, or other communications service shall not be subject to this chapter with  
6 respect to such service.

7 *Telecommunications services* means the offering of telecommunications for a fee directly to  
8 the public, or to such classes of users as to be effectively available directly to the public, regardless of  
9 the facilities used.

10 **Section 2. Section 27-2.5 SFCC 1987 (being Ord. #2010-14, §7, as amended) is**  
11 **amended to read:**

12 **27-2.5 Compensation and Charges.**

13 A. *Fees and Charges.*

14 (1) Franchise fee. As partial compensation for the use of the public rights-of-  
15 way, each telecommunications services provider shall be subject to an annual fee of three  
16 percent (3%) of the provider's gross revenue or for providers with telecommunications  
17 networks and/or facilities in the public rights-of-way that do not provide telecommunications  
18 services within the city three percent (3%) of that portion of the provider's gross revenue  
19 attributable to the provider's telecommunications networks and/or facilities within the city  
20 and not limited to revenues derived from the provision of telecommunications services within  
21 the city.

22 (2) Franchise filing fee. Each applicant shall submit a nonrefundable application  
23 filing fee for each franchise request. The filing fee shall initially be two thousand five  
24 hundred dollars (\$2,500), and may be adjusted annually by resolution of the governing body.  
25 Additional land use review fees shall apply as set forth in subsection 27-2.13G. SFCC 1987.

1           (3)     Non-monetary consideration. Upon mutual agreement between the city and  
2 provider, a provider may pay up to one percent (1%) of the annual fee in the form of non-  
3 monetary consideration, including, without limitation, network capacity, conduit, equipment,  
4 or other infrastructure or services for use by the city for the purposes specified below. This  
5 non-monetary consideration shall be negotiated with each provider taking into account the  
6 unique characteristics of each provider's services and network. Said consideration shall be  
7 valued in a fair manner based on the provider's actual costs, including make-ready costs,  
8 maintenance, and repair charges, labor and material costs, plus ten percent (10%) as  
9 reimbursement for supervision and general and administrative costs. Further, any non-  
10 monetary consideration furnished to the city shall be for the city's public and noncommercial  
11 purposes. Use by the city under subsection 27-2.5B(7)(a) SFCC 1987 below, shall be  
12 included in the calculation of non-monetary consideration pursuant to this paragraph along  
13 with any other use of provider facilities by the city.

14           (4)     Permit, inspection, and review/location charges. Each provider shall pay all  
15 permit and inspection charges related to a provider's construction in the public rights-of-way,  
16 as assessed by the director in accordance with city requirements including, without limitation,  
17 Section 23-2 SFCC 1987.

18     B.     *Payment of Franchise Fee.*

19           (1)     Commencing the calendar quarter following the calendar quarter any public  
20 rights-of-way franchise becomes effective, payment of the franchise fees and other fees due  
21 hereunder are required to be made within forty-five (45) days after the end of each calendar  
22 quarter. The fee shall be based on gross revenues received by the provider for the preceding  
23 quarter. Such payment shall be made through an electronic deposit process as established by  
24 the city treasurer.

25           (2)     In the event that a fee payment is not received by the city on or before the

1 due date set forth in this subsection or in a franchise, or the fee owed is not fully paid, the  
2 provider subject to the fee shall be charged a penalty of:

3 (a) Two percent (2%) per quarter to a maximum of ten percent (10%);

4 and

5 (b) Interest on the outstanding amount owed from the due date at an  
6 interest rate equal to two percent (2%) above the rate for three-month federal treasury  
7 bills at the most recent United States treasury department sale of such treasury bills  
8 occurring prior to the due date of the franchise fee payment.

9 (3) The provider shall furnish to the city with each payment of compensation  
10 required by this section a detailed written statement showing the amount of gross revenue  
11 received by the provider within the city limit or attributable to its telecommunications  
12 facilities within the city limit, broken out by provider's line of business for the period covered  
13 by the payment. The city treasurer shall within a reasonable time after submission determine  
14 the basis and accuracy of the amounts reported. Where the amount paid by the provider is less  
15 than ninety-five percent (95%) of the amount actually due, the provider shall also compensate  
16 the city for the city's costs in discovering and recovering the underpayment. However, neither  
17 payment of the fee nor failure to make such investigation shall estop the city in any way or  
18 prevent subsequent investigation, collection, or return of any amount properly due.

19 (4) In the event that it is claimed by the city that the amount of the fee paid for  
20 any calendar year is insufficient, or in the event that the provider claims that the amount is  
21 excessive, and the parties cannot agree, the city and the provider shall follow the dispute  
22 resolution provisions of this section.

23 (5) In the event that the fee or portion thereof set forth in any franchise is  
24 declared illegal, unconstitutional, or void for any reason by any court or proper authority, the  
25 provider shall be contractually bound to pay the city an amount equal to the reasonable use of

1 the city's public rights-of-way. This section, however, shall not constitute a waiver of any  
2 claim the provider may assert against the city.

3 (6) Acceptance by the city of any payment due under a franchise shall not be  
4 deemed to be a waiver by the city of any breach of the franchise occurring prior thereto, nor  
5 shall the acceptance by the city of any such payments preclude the city from later establishing  
6 that a larger amount was actually due under the franchise, or from collecting any balance due  
7 to the city.

8 (7) In consideration of the rights and privileges granted by any franchise, the  
9 following apply:

10 (a) The city shall have and provider shall grant to it the right and  
11 privilege at the city's expense to suspend and maintain wires and necessary control  
12 boxes on poles placed by the provider in the public right-of-way if space therein is  
13 available, which the city may require for fire, police, emergency, or other municipal  
14 purposes. All such wires shall be placed in mutually agreed upon locations on the  
15 poles or in the conduits so as not to interfere with the service of the provider and shall  
16 not pose a danger to the provider's facilities, customers, or customer's property.  
17 However, nothing in the franchise shall limit the provider's right to reserve conduit  
18 space and/or pole space which in its sole discretion it retains for purposes of assuring  
19 its ability to provide future services or the safety or servicing of its facilities.

20 (b) City agrees, in consideration of the establishment of the service and  
21 furnishing of the facilities described in subsection 27-2.5B(7)(a) SFCC 1987, to hold  
22 the provider free and harmless from all claims or liability for damage which may  
23 arise out of the city's operation of such wires and control boxes. In no event shall the  
24 city be required to pay any pole attachment fees in connection with the exercise of  
25 the city's rights under this subsection; however, the fair market value of the city's use

1 of provider's wires or control boxes without recurring costs shall be included as part  
2 of non-monetary consideration paid by the provider as further provided for in  
3 subsection 27-2.5A(3) SFCC 1987.

4 (8) To facilitate the city's annual budget process, on or before the 1st of  
5 November and each succeeding 1st of November thereafter during the term of any franchise  
6 granted under this section, the provider will provide the city with an estimate of the gross  
7 revenue and resultant fee for the following calendar year. Nothing herein shall preclude the  
8 provider and the city from agreeing to a revised payment schedule.

9 C. *City's Right to Audit.*

10 (1) Providers shall keep complete and accurate books of accounts and records of  
11 their business and operations pursuant to any franchise granted hereunder in accordance with  
12 generally accepted accounting principles. If required by the FCC, providers shall use the  
13 system of accounts and the forms of books, accounts, records, and memoranda prescribed by  
14 the FCC in 47 CFR or its successor, and as may be further described herein. The director may  
15 require the keeping of additional records or accounts which are reasonably necessary for  
16 purposes of identifying, accounting for, and reporting gross revenue and uncollectibles for  
17 purposes of any franchise. Providers shall keep their books of account and records in such a  
18 way that identification of revenues by type of service within the city is available.

19 (2) Upon reasonable prior notice by the city of not less than thirty (30) days, or  
20 such other time as may be agreed upon by the city and the provider, the city shall have the  
21 right to review or audit the provider's books and records in accordance with regularly  
22 accepted accounting and audit standards regarding any amounts which may be owed under a  
23 franchise. This right includes the right to review and audit all books and records of revenue  
24 not included in the calculation of the fee paid. The city shall give written notice to the  
25 provider of any additional amount claimed to be due to the city as a result of the city's review.



1 If the provider disputes the additional amount allegedly due to the city, if any, the dispute  
2 shall be determined according to the dispute resolution provisions of this section.

3 (3) In the event of an audit, the provider shall provide city-specific books,  
4 records, contracts, account codes, documents, and papers for its operations within the city.

5 (4) All such books, records, and accounts of the provider shall be retained by the  
6 provider for a period of six (6) years, in accordance with § 37-1-3 NMSA 1978, or its  
7 successor. The provider shall make such records as are necessary for the city to complete its  
8 audit and be available for inspection by the city upon thirty (30) days notice from the city.

9 (5) All audits will take place on provider premises within the city of Santa Fe or  
10 provider will pay the reasonable, documented costs required for the auditor to go to provider's  
11 offices. The city's auditors may review all directly relevant materials and may make copies of  
12 any materials with the approval of the provider. Such approval will not be unreasonably  
13 withheld.

14 (6) In addition to paying all fees owed plus interest, in the event that the city  
15 reviews the provider's franchise fee payments, and finds that the provider has underpaid the  
16 fee owed for any year in an amount exceeding five percent (5%) of the franchise fees actually  
17 paid, the provider shall pay the reasonable cost of the city's review and underpayment  
18 recovery costs.

19 (7) The city will maintain confidentiality of information provided by providers  
20 to the maximum extent permitted by law when providers have notified the city of the  
21 confidential nature of specifically identified information reasonably marked by the provider  
22 as "Confidential." The city will maintain the confidentiality of this information to the  
23 maximum extent permitted by law.

24 **Section 3. Section 27-2.13 SFCC 1987 (being Ord. #2010-14, §15, as amended) is**  
25 **amended to read:**

1           **27-2.13 Land Use Review.**

2           A.     *Zoning Districts; Location.* Telecommunications facilities are permitted in all zoning  
3 districts, except self-supporting lattice and guyed towers are prohibited in the public rights-of-way in  
4 residential and historic districts. However, to the maximum extent practicable, telecommunications  
5 networks shall be designed in such a manner as to locate facilities:

- 6                   (1)     On existing structures;
- 7                   (2)     In nonresidential districts; and
- 8                   (3)     Along major arterials.

9           B.     *Maximum Height.* Telecommunications facilities located on existing structures shall  
10 not exceed the height of the structure upon which the facility is located. Telecommunications  
11 facilities located on new structures shall not exceed the maximum height for buildings otherwise  
12 permitted as set forth in Chapter 14 SFCC 1987.

13           C.     *Aesthetic Requirements.* Subject to applicable federal standards, the following criteria  
14 shall be met:

15                   (1)     Telecommunications facilities shall be installed underground to the  
16 maximum extent feasible, including without limitation, in residential areas where covenants  
17 regulate underground installations.

18                   (2)     If above ground, the telecommunications facilities shall be designed,  
19 installed and maintained in such a manner as to minimize the visual impact. Acceptable  
20 methods to minimize visual impact shall include, but not be limited to: concealment,  
21 screening, camouflaging, color, materials, texture, shape, size and location.

22                   (3)     Consideration shall be given to minimize disruption to or alteration of the  
23 natural environment.

24                   (4)     No permanent lighting is permitted unless the lighting is necessary for  
25 compliance with federal, state or local law. Permanent lighting shall not include equipment

1 status indicating lights not exceeding fifteen (15) watts of power.

2 (5) Telecommunications facilities located within the historic districts shall be  
3 reviewed by the historic design review board for compliance with this subsection.

4 D. *Archaeological Requirements.* The provider shall comply with subsection 14-5.3  
5 SFCC 1987 regarding the city's archaeological review districts.

6 E. *Other Requirements.*

7 (1) No signs are permitted unless the sign is required for safety reasons or for  
8 compliance with the federal, state or local law, or unless permitted by the city.

9 (2) All above ground telecommunications facilities shall be maintained so as to  
10 be orderly and attractive.

11 (3) All telecommunications facilities shall be designed, constructed and installed  
12 in such a manner as to minimize noise to the maximum extent possible, but in no event shall  
13 it exceed the standards set forth in Section 10-2 SFCC 1987.

14 (4) All lockable telecommunications facilities shall be kept locked when not  
15 being actively serviced by the provider.

16 (5) All nonlockable telecommunications facilities shall be kept closed when not  
17 being actively serviced by the provider.

18 F. *Application to Land Use Department.* After approval of a franchise as set forth in  
19 subsection 27-2.4 SFCC 1987 and prior to construction, any person proposing to construct  
20 telecommunications facilities in the city's public rights-of-way shall submit an application to the land  
21 use department for review by the planning commission.

22 (1) The application, in a form prescribed and as necessary updated by the land  
23 use department, shall, without limitation:

24 (a) Describe the applicant's proposed telecommunications services and  
25 facilities;

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(b) Demonstrate compliance with this subsection;

(c) Include a map at a suitable scale of the project area indicating the proposed route and specific locations of telecommunications facilities and specific information regarding a facility's radio frequency emissions;

(d) If a significant gap in coverage is claimed by the applicant, the applicant shall prove by clear and compelling evidence that the proposed facilities are necessary to close a defined and disclosed significant gap in service coverage, and that its proposed facilities are the least intrusive means to close the proven significant gap;

(e) To the extent that facilities are located in the Historic or Escarpment Overlay Districts or do not comply with the priorities set forth in subsection 27-2.13A (1)–(3) of this section, demonstrate that the applicant has investigated alternative siting and that no other practicable alternative exists; and

(f) Demonstrate that the applicant has complied with the National Historic Preservation Act for the siting of proposed facilities that may affect sites that are listed or eligible for listing in the National Register of Historic Places.

(2) The application shall be in writing with the accompanying data in a format acceptable to the city that can be posted on the city's website in the same descriptive format as tendered in physical form (i.e., by use of PDF or other similar page reproduction software).

(3) The applicant may submit one (1) application showing multiple phases or may submit a new application for each successive phase.

G. *Land Use Review Fee.* Each application, which may include multiple phases as set forth in paragraph F(3) of this subsection, shall be accompanied by a nonrefundable fee of two thousand five hundred dollars (\$2,500.) or the fee established by the governing body for development plan review, whichever is less.

1 H. *Staff Review of Application.* The land use department and other city staff as necessary  
2 shall review the application according to the standard procedures established by the land use  
3 department for applications to the planning commission.

4 I. *Community Information Availability.* Following verification by the land use  
5 department that the application is complete, the application and related submittal documents shall be  
6 made available to the public on the city's website and in the land use department at least fifteen (15)  
7 days prior to the planning commission hearing.

8 J. *Public Notice of Public Hearing and Review by Planning Commission.*

9 (1) The planning commission agenda shall be mailed and published by the land  
10 use department as set forth in subsection 14-3.1H(1)(b) SFCC 1987.

11 (2) No less than fifteen (15) days prior to the public hearing, the applicant shall  
12 give notice to the public as set forth below. The posters, mailings and display advertisements  
13 shall state the nature of the application; the date, time and place of the public hearing; and the  
14 availability for the public to review the application as set forth above. In addition, the  
15 mailings and display advertisement shall include a map of the project area indicating the  
16 proposed route and specific locations of all proposed above ground facilities and equipment.

17 The applicant shall:

18 (a) Place in the public right-of-way in a location approved by the city, or  
19 if the project is on private or public property immediately adjacent to the public right-  
20 of-way in a location approved by the city, one (1) poster obtained from the land use  
21 department at each major intersection within the project area provided that there shall  
22 be no less than one (1) poster every one-quarter (1/4) mile along the proposed route.

23 (b) Mail by first class mail a notice in a format approved by the land use  
24 department to all property owners and physical addresses adjacent to the public  
25 rights-of-way where the telecommunications services are to be located.

1 (c) Publish a display advertisement in the local daily newspaper of  
2 general circulation.

3 K. *Planning Commission Review.*

4 (1) The planning commission shall review the application for compliance with  
5 this subsection and all relevant city codes.

6 (2) In approving an application, the planning commission shall determine that:

7 (a) The application is in compliance with this subsection;

8 (b) The application is necessary in order to close a proven significant  
9 gap in service coverage, either generally or of the applicant; and

10 (c) The applicant has demonstrated that no other less intrusive means or  
11 alternative to the approved facilities siting exists.

12 (3) The planning commission may not regulate the placement of  
13 telecommunications facilities on the basis of the environmental effects of radio frequency  
14 emissions where such telecommunications facilities comply with 47 C.F.R. 1.1310 et seq.

15 (4) The planning commission may place conditions upon its approval of the  
16 application but the conditions shall not prohibit or have the effect of prohibiting the provision  
17 of the telecommunications services.

18 (5) Findings of fact and conclusions of law shall be prepared and approved.

19 (6) A decision of the planning commission is appealable as set forth in  
20 subsection 14-3.17 SFCC 1987.

21 (7) Any denial of an application or any approval of an application containing any  
22 conditions not accepted by the applicant shall:

23 (a) Be in writing, and

24 (b) Shall cite to the administrative record, and

25 (c) Shall not become final until approved by the same body at its next

1                   regularly scheduled meeting.

2           L.       *Modifications to Approved Plans.*

3                   (1)       Modifications to approved telecommunications facilities plans that comply  
4 with the standards of this Section 27-2 and do not materially modify the approved  
5 telecommunications plan may be approved by the land use director. An example of a material  
6 modification to the approved telecommunications plan is a route for which residents did not  
7 receive notice of the planning commission public hearing, or an increase in effective radiated  
8 power or any proposed increase in frequency. Relocation of a single antenna to an adjacent  
9 structure along the approved route is not a material modification.

10                  (2)       The maintenance, repair, replacement-in-kind, or reinforcement of existing  
11 telecommunications facilities, or the undergrounding of new telecommunications facilities  
12 are not modifications to approved plans and shall not require approval of the land use  
13 department or the planning commission.

14           M.       *Waivers.*

15                  (1)       The planning commission may grant a waiver of the requirements set forth in  
16 this subsection 27-2.13 SFCC 1987 provided that the commission finds based on clear and  
17 convincing evidence provided by the applicant that the waiver:

18                           (a)       Is necessary to assure continuing service coverage by the applicant at  
19 the same level, or is necessary to close a significant gap in coverage proven by clear  
20 and convincing evidence;

21                           (b)       Is in the best interest of the community as a whole;

22                           (c)       Will not jeopardize public safety and welfare;

23                           (d)       Will better serve the purposes contained in Section 27-2 SFCC 1987;

24                   and

25                           (e)       The applicant demonstrates that compliance with the requirement is

1 not practicable due to physical or legal constraints proven by the applicant by clear  
2 and convincing evidence.

3 (2) The planning commission shall consider the following when granting a  
4 waiver:

5 (a) The general appearance of the facility;

6 (b) The nature of uses on adjacent and nearby properties;

7 (c) The physical surroundings and constraints; and

8 (d) Improved telecommunications services including service coverage  
9 and the potential for increasing the affordability of telecommunications services  
10 through competition.

11 N. *Permits Required.* In addition to the permits required set forth elsewhere in Section  
12 27-2 and city code, the following permits are required from the land use department:

13 (1) Secondary electrical permit at each antenna or other facility site requiring  
14 secondary electrical service; and

15 (2) Other permits as may be required.

16 O. *Monitoring Standards.*

17 (1) At all times, a telecommunications provider shall ensure that its  
18 telecommunications facilities comply with the most current regulatory and operational  
19 standards including but not limited to radio frequency emissions standards adopted by the  
20 FCC and antenna height standards adopted by the Federal Aviation Administration.

21 (2) The telecommunications provider shall obtain and maintain the most current  
22 information from the FCC regarding allowable radio frequency emissions and all other  
23 applicable regulations and standards, and, at the following indicated times, shall file a report  
24 with the land use director indicating whether the provider is in compliance with such  
25 standards, advising the land use director of any regulatory changes that require modifications



1 to the telecommunications facilities and advising the land use director of the measures taken  
2 by the provider to comply with such regulatory changes as follows:

3 (a) Prior to the commencement of the installation of the  
4 telecommunications facility;

5 (b) Within ten (10) days after initial activation of the  
6 telecommunications facility (the initial compliance report);

7 (c) Every year, on the anniversary of the submittal of the initial  
8 compliance report, and

9 (d) Upon any proposed increase of at least ten percent (10%) in the  
10 effective radiated power or any proposed change to frequency use, and

11 (e) Within ten (10) days after the activation of the proposed increase in  
12 effective radiated power or change in frequency use of the telecommunications  
13 facility.

14 (3) Both the initial and updated certifications shall be subject to review and  
15 approval by the city, and shall be public records.

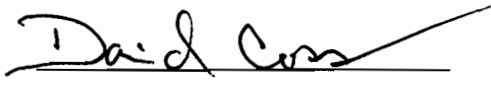
16 (4) At the land use directors' sole discretion, a qualified independent radio  
17 frequency engineer, selected by and under contract to the city, may be retained to review said  
18 certifications for compliance with FCC regulations and for actual compliance with the FCC  
19 regulations at the telecommunications facility.

20 (5) All costs associated with the city's review of these certifications shall be the  
21 responsibility of the provider, which shall promptly reimburse the city for the cost of review.

22 P. *Enforcement.* The land use director has the authority to interpret this subsection in  
23 accordance with the purpose of this section and shall administer and enforce the provisions of this  
24 subsection.

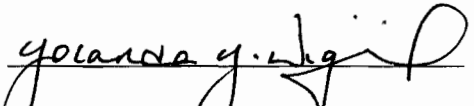
25 PASSED, APPROVED and ADOPTED this 24<sup>th</sup> day of September, 2012.

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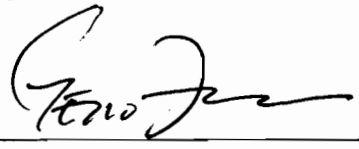
DAVID COSS, MAYOR

ATTEST:



YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



GENO ZAMORA, CITY ATTORNEY