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From: Cohen Law Group

Action Alert: AT&T Offers Wireless Ordinance that Limits Municipal Rights

Several of our municipal clients have informed us that AT&T has contacted them about local regulation of wireless facilities. These municipalities are updating their old cell tower ordinances to address changes in wireless technology, including mini-cell towers in the public rights-of-way, as well as recent changes in the law. AT&T is taking the position that these municipalities should not enact legal and reasonable regulations regarding the installation of towers and antennas.

For example, in a memo to one of our municipal clients, AT&T says that it should not be required to obtain financial security for the construction of cell towers or to notify residents within 500 feet of a proposed tower of an upcoming public hearing. With respect to antennas that increase the height of an existing wireless facility by more than 10%, AT&T contends that a wireless company should not have to obtain the municipality's approval, justify the height of the antenna, or even indemnify the municipality for injury or property damage during the construction of the facility.

In addition, AT&T claims to have worked in "close partnership" with the PA State Association of Boroughs (PSAB) and the PA State Association of Township Supervisors (PSATS) to develop a "fair" wireless ordinance, which it is offering to municipalities. We investigated this claim of partnership with the municipal organizations and have reviewed the proposed ordinance. We learned that, in fact, AT&T did not work in any partnership with PSAB in the development of its ordinance. PSAB told us that no one from AT&T

contacted anyone at PSAB regarding such an ordinance. PSATS further advised us that AT&T sent them the ordinance and that PSATS provided comments.

More importantly, the wireless ordinance being offered by AT&T minimizes your legal rights. Pursuant to federal and state law, every municipality in the Commonwealth has the right to control the construction, placement, and modification of wireless facilities through zoning. AT&T's ordinance is biased in that it makes it easy for wireless companies to place mini-cell towers in the rights-of-way and does not protect sensitive areas. The ordinance does not take into account the character of your municipality, common sense municipal protections, areas where all utilities are underground, or whether your municipality has any historic areas. Effectively, it creates a regulatory gateway for wireless companies to install towers and antennas without the involvement of local governments.

If your municipality were to enact AT&T's ordinance, it would be limiting its legal right to control where wireless facilities are placed, how those facilities are designed, and how they are maintained. We wanted to make you aware of this recent development and would be happy to discuss this matter with you in more detail via telephone or email.

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The Cohen Law Group is a law firm that represents municipalities in cable, wireless, and broadband matters.