

North Hills Council of Governments

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May 16, 2016

The Honorable Rosemary Chiavetta
Secretary
Pennsylvania Public Utilities Commission
Keystone Building
400 North Street
Harrisburg, PA 17120

***RE: Comments by North Hills Council of Governments (hereinafter- NHCOG)
in PUC Proceeding Related to Certification of DAS Providers, Doc. No.
M-2016-2517831***

Dear Ms. Chiavetta:

The Pennsylvania Public Utilities Commission (“Commission”) is seeking comments on whether it should continue to grant utility status, through the issuance of Certificates of Public Convenience (“CPC’s”), to providers of distributed antenna systems (“DAS”). Our understanding is that the statewide municipal associations have submitted comments on behalf of all Pennsylvania municipalities that address this matter; however, the nineteen member municipalities of the NHCOG would also like to add their own ‘collective’ general comments on this important issue.

We respectfully request that the Commission discontinue the practice of granting CPC’s to DAS providers for the following reasons:

First, DAS is not a “public utility” as defined in 66 Pa.C.S. §102 the PA Public Utilities Code. In fact, the definition of “public utility” specifically exempts any company that furnishes “mobile domestic cellular radio telecommunications.”

Second, DAS is an interstate service in which wireless signals cross state boundaries. As an interstate service, DAS is, and rightfully ought to be, regulated by the Federal Communications Commission (“FCC”), not individual state public utility agencies.

Third, DAS is merely a component of a much larger wireless network that includes cell towers, antennae, fiber, hub sites, and other components. DAS providers build infrastructure to

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complement a larger system. They do not provide telecommunications and broadband services and they do not manage the operations of the network. It is neither the responsibility nor the practice of the Commission to grant utility status to every contractor that constructs a component of a larger network.

Fourth, DAS companies are not otherwise treated by the PUC as utilities. They are not regulated by the PUC. They are not required to obtain rate and related approvals via the tariff process, and the PUC has not issued any safety standards to which they must adhere. In short, DAS companies currently enjoy the benefits of utility status, but do not follow the same set of rules as do other public utilities. As such, DAS contractors are not entitled to be designated as public utilities.

This is especially true given the tremendous power inherent in the receipt of “public utility” status. In Pennsylvania, in addition to their other powers, public utilities are granted the power of eminent domain. Public utilities can legally take ownership of public or private property so long as they provide the property owner with just compensation. This is one of the most intrusive powers that could ever be conferred upon a governmental entity, let alone a private company. In our judgment, such power should not be granted lightly to a wireless contractor without having a strong, compelling, public interest reason for doing so.

Finally, pursuant to federal law, wireless facilities siting is regulated through local zoning. Municipalities have decades of experience in administering zoning requirements in a lawful manner. They know how to balance the rights of wireless carriers with the character of their communities. Moreover, there are ample federal and state zoning laws and regulations that protect wireless providers, including DAS contractors. These include, but are not limited to, the 1996 Telecommunications Act, the FCC’s 2014 *Wireless Infrastructure Order*, the FCC’s 2009 *“Shot Clock” Order*, and the PA Wireless Broadband Colocation Act of 2012. In short, DAS contractors are strongly protected under federal and state law without having to grant them utility status.

In light of these reasons, the municipal membership of the NHCOG strongly recommends that the Commission decide to end its practice of granting CPC’s to DAS providers. Thank you for allowing us to submit these comments and please feel free to contact me if you have any questions or concerns.

Sincerely yours,

Wayne E, Roller

Wayne E. Roller
NHCOG Executive Director

Submitted via email: 5/16/16
Submitted by regular mail: 5/16/16