

January 24, 2013

**By Hand Delivery**

Chairman John P. Ewasutyn  
and Members of the Planning Board  
Town of Newburgh  
308 Gardnertown Road  
Newburgh, New York 12550

Re: New Cingular Wireless PCS, LLC ("AT&T") Site 4041  
Planning Board Application #2013-01  
Upgrade Existing Wireless Telecommunication Facility  
Premises: Bannerman View Drive, Middle Hope  
Tax Id.: Section 22, Block 4, Lot 2

Dear Chairman Ewasutyn and Members of the Planning Board:

On behalf of our client AT&T, we respectfully submit this application and its enclosures in connection with minor modifications to upgrade its existing wireless telecommunication facility located on an existing 88 foot lattice tower off of Bannerman View Drive. These minor upgrades are in furtherance of AT&T's Long Term Evolution "LTE" deployment and in accordance with the FCC's mandate to provide enhanced wireless services to the public.

**Existing and Proposed AT&T Upgrade**

AT&T's existing facility consists of nine (9) panel antennas installed at centerline heights of approximately 62 feet above grade level on the existing 88 foot tall lattice tower and an existing unmanned equipment shelter at the base of the existing tower within an existing fenced in compound. This upgrade merely seeks to install three (3) new panel antennas (of similar size to the existing antennas) and add six (6) small radio head units and junction boxes to the tower. In addition, AT&T will install a rack within the existing equipment shelter at grade.

The proposed modifications will not change the height of the existing 88 foot lattice tower or the size of AT&T's existing equipment building. In fact, there will be no additional site work at grade. AT&T's proposed modification of its existing facility on the existing tower will have no impact on the surrounding neighborhood and there will be no significant adverse effect on the health, safety and welfare of the Town.

AT&T's Proposed Upgrade Must be Approved Pursuant to New Federal Law

In February of 2012, Congress passed a law, which among other things, contains provisions requiring the approval of certain wireless facility applications by state and local agencies.<sup>1</sup> One such section specifically provides that:

Notwithstanding Section 704 of the Telecommunications Act of 1996 or any other provision of law, a state or local government may not deny and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station (emphasis added).<sup>2</sup>

In this case, and as more fully described above, AT&T's proposed upgrade does not involve a physical change to the dimension of the tower or base station because neither the height of the existing tower nor the area of the existing base station are being increased. Accordingly, this federal law precludes the denial of AT&T's application, as it must be approved.

Application Materials

In any event, AT&T submits herewith twelve (12) copies of the following documentation in support of its application:

- (A) A completed Planning Board Application Form;
- (B) A/E Checklist executed, stamped and sealed by Tectonic Engineering;
- (C) A SEQRA Short Form Environmental Assessment Form;
- (D) A structural analysis prepared by Paul J. Ford and Company which concludes the existing tower and its foundation are sufficient to support the proposed modifications<sup>3</sup>;
- (E) A cumulative MPE Report demonstrating compliance with all applicable emissions standards promulgated by Federal and State law;
- (F) A copy of AT&T's applicable FCC Licenses for Orange County;
- (G) A brief narrative from Black & Veatch's RF Engineers explaining the need for the upgrade and describing the antenna specifications and Remote Radio Head Units; and
- (H) A copy of §6409 (a)(1) of the Middle Class Tax Relief and Job Creation Action of 2012, which new federal law precludes the denial of this application.

<sup>1</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §6409 (2012), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3630enr/pdf/BILLS-112hr3630enr.pdf>; see also H.R. Rep. No. 112-399

<sup>2</sup> See, Section 6409 (a)(1) of the Act which is attached hereto as Exhibit H.

<sup>3</sup> Please note the Structural Analysis takes it a step further by showing that in addition to AT&T's antennas, even if the tower were extended 12ft and an additional carrier was added, the existing tower is still structurally capable. Verizon is contemplating a 12 ft. extension, but has not yet submitted a formal application to the Town.

Please also find twelve (12) sets of signed, sealed site plans prepared by Tectonic Engineering, last revised November 28, 2012. Additionally, we have enclosed three (3) checks made payable to the Town of Newburgh in the amounts of \$1,650.00 (representing the site plan and public hearing fees), \$250 (representing the EAF fee) and \$7,500.00 (representing the escrow establishment fee).

#### SEQRA & Waiver Requests

This minor upgrade to AT&T's existing wireless facility site is exempt from SEQRA as a Type II action. See 6 NYCRR Section 617.5(c)(7) and NYSDEC guidance on pg. 31 of the Department's SEQRA Handbook. As such, no environmental assessment form or SEQRA action is required by the Planning Board.

As noted above, AT&T is not proposing a new facility and is merely making minor modifications to upgrade its existing facility. As such, AT&T respectfully requests waivers, in accordance with Section 168-6(X) and 168-29 of the Wireless Law, from certain submission requirements due to the limited nature and scope of the proposed antenna upgrade. More specifically, AT&T is requesting waivers from the following Sections: 168-6(F)(1-24), 168-6(G), 168-6(I), 168-6(K), 168-6(M), 168-6(O), 168-6(V), 168-6(W), 168-6(Z), and 168-6(AA). AT&T requests that waivers for all, but the above information submitted, be granted.

#### Conclusion

In accordance with Section 168-6(D), AT&T's facility will continue to be maintained in a safe manner, and in compliance with all conditions, without exception, unless specifically granted relief, from the Planning Board, as well as all applicable and permissible local codes, ordinances and regulations, including any applicable City, State and Federal laws, rules and regulations. Further, the modification to its existing facility is legally permissible, including, but not limited to the fact that AT&T is authorized to do business in the State of New York.

We look forward to appearing before the Planning Board at its February 7, 2013 meeting. Should the Board or Town Staff have any questions or comments in the interim, please feel free to contact me.

January 24, 2013  
Page 4

Thank you in advance for your cooperation and consideration in this matter.

Very truly yours,



JOHN W. FURST

Enclosures

cc: Mike Musso, HDR/LMS (w/ enclosures via overnight mail)  
Bryant Cocks, BC Planning (w/ enclosures – 2 copies via overnight mail)  
Black & Veatch (w/o enclosures)  
AT&T (w/o enclosures)