

**TOWN OF LITTLETON  
BOARD OF APPEALS**

37 Shattuck Street  
P.O. Box 1305  
Littleton, MA 01460  
Tel: 978-540-2420



**APPLICATION FOR PUBLIC HEARING**

Pursuant to MGL Chapter 40A, 40B and 41 and the Littleton Zoning Bylaws

**TOWN USE ONLY**

Received by the Town Clerk Office

**received**  
1/7/2019 11:30 AM (D)

The filing is not official until stamped by the Town Clerk

Filing Fee paid: \$ 450.00 Check # 10063

Pursuant to the provisions of Chapter 40, §57 of the Massachusetts General Laws as adopted by Town Meeting 2003, this document must be signed by the Tax Collector verifying payment of taxes.

Deborah A. Richards  
Signature of Tax Collector

The undersigned hereby submits this petition for the following action (check all that apply):

- ☐ Appeal of Decision of Building Inspector or other administrative official (see page 2)
- ☐ Special Permit (40A) (see page 2)
- ☐ Variance (see page 3)
- ☐ Comprehensive Permit (40B) Complete additional application (see page 2)

PETITIONER: Signature Haleluya Haile Date: 12/19/2018

New Cingular Wireless PCS, LLC  
Print Name  
550 Cochituate Rd. Suite 13 & 14  
Address  
Framingham, MA 01701  
Town, State, Zip

978-235-6131  
Phone #  
Haleluya.Haile@smartlinkllc.com  
Email Address  
Deed Reference: Bk 12706 Page 580

PROPERTY OWNER: include authorization of Owner for Petitioner to represent Owner, if unsigned

Signature \_\_\_\_\_ Date \_\_\_\_\_ Phone # \_\_\_\_\_  
Print Name (if different from petitioner) \_\_\_\_\_ Email \_\_\_\_\_  
Address (if different from petitioner) \_\_\_\_\_

ASSESSOR MAP & PARCEL NUMBER Map U-30, Parcel 5A

ZONING DISTRICT: **R VC B IA IB** (Circle all that apply)

Check box if **AQUIFER DISTRICT**  
applicable

- ☐ **WATER RESOURCE DISTRICT**
- ☐

**FEES**  
Residential Property \$200 filing fee + \$75 recording fee + \$25 abutter list = \$300 to Town of Littleton  
Commercial Property \$350 filing fee + \$75 recording fee + \$25 abutter list = \$450.00 to Town of Littleton  
Comprehensive Permit \$1000 + \$100/unit over 10 units  
**ADDITIONAL FEES: ALL APPLICATIONS:**  
Legal Notice publication fee to be paid prior to opening the hearing

559 A Newtown Rd

ZBA Case 916A

## **Appeal**

Under MGL c. 40A §. 8

The undersigned hereby appeals a written order or decision of the Building Commissioner / Zoning Officer or other administrative official alleged to be in violation of the provisions of MGL c. 40A or the Zoning By-laws to the Board of Appeals for the Town of Littleton.

1. From what Town Official or Board is the appeal being sought?

*Mandatory: Attach copies of written order or decision under appeal*

Administrative Official \_\_\_\_\_ Date of order / decision \_\_\_\_\_

2. Which statute or Zoning Bylaw do you rely for your appeal?

MGL c.40A § \_\_\_\_\_ Zoning Bylaw § \_\_\_\_\_ Code of Littleton § \_\_\_\_\_  
*You may also consider whether you qualify for relief under any other authority of the Board to grant a Special Permit or Variance.*

3. *I hereby certify that I have read the Board of Appeals Instructions for Appellants and that the statements within my appeal and attachments are true and accurate to the best of my knowledge and belief.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

## **Special Permit 40A**

Under MGL c. 40A §. 9

The undersigned hereby petitions the Board of Appeals for the Town of Littleton to grant a Special Permit for the reasons hereinafter set forth and in accordance with the applicable provisions of the Zoning By-law.

1. Special Permits are expressly permitted in the Zoning Bylaws. Which Zoning Bylaw section do you rely for your appeal?

Zoning Bylaw § \_\_\_\_\_

2. Why are you applying for a Special Permit? Attach a written statement that specifically describes existing conditions and your objectives, along with necessary exhibits as listed in the filing instructions. *You may also consider whether you qualify for relief under any other authority of the Board to grant a variance.*

3. *I hereby certify that I have read the Board of Appeals Instructions for petitioners and that the statements within my petition and attachments are true and accurate to the best of my knowledge and belief.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

See supplemental instructions: Littleton Zoning Board of Appeals Rules for the Issuance of a Comprehensive Permit under

## **Special Permit 40B**

Under MGL c. 40B

M.G.L.c40B

# Variance

Under MGL c. 40A §. 10

The undersigned hereby petitions the Board of Appeals for the Town of Littleton to vary, in the manner and for the reasons hereinafter set forth, the applicable provisions of the Zoning By-law.

1. Specifically, from what Zoning bylaw section are you seeking relief? 173-131 B (5)
2. Why are you seeking relief from a literal enforcement of this Zoning Bylaw?  
*Attach a written statement that specifically describes existing conditions and your objectives, along with plans, specifications, certified plot plan and any documentation necessary to support your request.*
3. Show evidence that you meet the minimum requirements of a variance under section 173-6 B (2) of the Littleton Zoning Bylaws.  
*Attach a written statement which specifically includes why, owing to conditions (soil, shape, or topography) especially affecting the premises, but not affecting generally the zoning district in which it is located, a literal enforcement of the Zoning By-law would result in a substantial hardship to you. Applicant must clearly demonstrate the lack of alternative remedies.*
4. *I hereby certify that I have read the Board of Appeals Instructions for petitioners and that the statements within my petition and attachments are true and accurate to the best of my knowledge and belief.*

Haleluya Haile  
Signature

Haleluya Haile (Smartlink, LLC) Agent for AT&T  
Print name

## Filing Instructions

1. **IMPORTANT: SEE THE BUILDING COMMISSIONER/ZONING ENFORCEMENT OFFICER BEFORE YOU FILL OUT THIS APPLICATION.** He will assist you with the proper zoning sections and application request(s). His review may save time by preventing delays in the hearing process.
  2. Apply for a certified abutters list with the Assessors office (request for certified list of abutters form enclosed)
  3. Bring the completed application packet to the Administrative Assistant to the Building Commissioner who will assist you in filing with the Town Clerk.
- Necessary Exhibits**— provide 3 copies of the following with the completed application:
- ✓ 1. A copy of the most recently recorded plan of land or where no such plan exists, a copy of a plot plan endorsed by a registered engineer or land surveyor. The plan should show;
    - A) metes and bounds of the subject land
    - B) adjacent streets and other names and readily identifiable landmarks and fixed objects
    - C) dimensional layout of all buildings
    - D) distances and setbacks from the various boundaries
    - E) exact dimensions, setbacks and specifications of any new construction, alterations, additions or installations
    - F) direction of North
    - G) the name of each abutting property owner
  - ✓ 2. Copy of the latest recorded deed
  - ✓ 3. A written statement which details the basis for your petition
  - ✓ 4. Pictures, plans, maps, drawings and models are always helpful in explaining the problem
  - ✓ 5. In cases pertaining to signs, a scale print of the sign lettering and colors
  - ✓ 6. In cases pertaining to subdivisions of land, prints should show the proposed subdivision endorsed by a registered engineer or land surveyor
  - ✓ 7. In cases pertaining to Accessory dwellings evidence that the Board of Health has approved the septic system
  - ✓ 8. The date of the building construction and the history of ownership are useful in finding facts about the case

Completed applications filed with the Town Clerk by the third Thursday of the month will be considered at the next regularly scheduled Zoning Board of Appeals meeting, held on the third Thursday of the following month.

The Board in its discretion may dismiss an application or petition for failure to comply with any of the foregoing rules

# General Information

## What authority does the Board of Appeals have?

The Board of Appeals obtains its authority under the Massachusetts General Laws Chapter 40A §14 and the Town of Littleton's Zoning By-law 173-6 to hear and decide *appeals*, to hear and decide applications for *Chapter 40A special permits*, and to hear and decide petitions for *variances*. The Board of Appeals also hears and decides applications for *special permits for low and moderate income housing* under Massachusetts General Laws Chapter 40B Sections 20, 21, 22, and 23.

## What is an Appeal?

Pursuant to Massachusetts General Laws Chapter 40A §8 and Littleton Zoning By-law 173-6 B(3) and 173-6 B(5) the Board of Appeals hears and decides appeals by any person aggrieved by any written order or decision of the Zoning Enforcement Officer or other administrative official in violation of any provision of Massachusetts General Laws Chapter 40A or the Littleton Zoning By-laws. Building permits withheld by the Building Commissioner acting under MGL C. 41, §81Y as a means of enforcing the Subdivision Control Law may also be issued by the Board of Appeals. Action taken by the Building Commissioner acting under the Code of Littleton Chapter 152 will also be heard by the Board of Appeals. *If the Zoning Enforcing Officer or other administrative official does not issue a written order or decision, the Board of Appeals will not hear the appeal.* Appeals from the written decisions of the Zoning Enforcement Officer or other administrative official must be filed with the Office of the Town Clerk pursuant to Massachusetts General Laws Chapter 40A Section 15 within thirty (30) days from the date of the written order or decision which is being appealed. **Failure to file a timely appeal is fatal.**

## What is a Chapter 40A Special Permit?

Certain uses of property are permitted as a matter of right. However, the Littleton Zoning By-laws provide that other uses are not allowed in certain zoning districts, and that specific types of uses shall only be permitted in specified zoning districts upon the issuance of a Special Permit from the Board of Appeals pursuant to Massachusetts General Laws Chapter 40A § 9, 9A, and 9B. Special Permits may be issued only for uses which are in harmony with the general purpose and intent of the By-law, and may be subject to general or specific provisions set forth therein, and such permits may also impose conditions, safeguards and limitations on time or use. A Special Permit, unlike a Variance, may be conditioned by limiting its duration to the term of ownership or use by the Applicant. When a Special Permit application is accompanied by plans or specifications detailing the work to be undertaken, the plans and specifications become conditions of the issuance of the permit. Therefore, once a Special Permit is granted, modification of the plans or specifications require as a prerequisite, modification of the Special Permit through the filing of a successive Special Permit application. No building permit may be issued by the Building Commissioner for a use or structure that requires a Special Permit until 1) a Special Permit has been granted by the Board of Appeals, 2) the expiration of the twenty (20) day appeal period pursuant to Massachusetts General Laws Chapter 40A Section 11, and 3) the Special Permit has been recorded at the Middlesex South District Registry of Deeds. The Building Commissioner shall require proof of recording at the Registry of Deeds from the Town Clerk prior to issuance of a building permit. No party is entitled "as a matter of right" to a Special Permit. The Board of Appeals, in the proper exercise of its discretion, is free to deny a Special Permit even if the facts show that such a permit could be lawfully granted. **Special Permits 40A shall lapse 24 months following the granting unless substantial use or construction has commenced.**

## What is a Chapter 40B Special Permit?

Chapter 40B is a state statute, which enables local Boards of Appeals to approve affordable housing developments under flexible rules if at least 25% of the units have long-term affordability restrictions. Also known as the Comprehensive Permit Law, Chapter 40B was enacted in 1969 to help address the shortage of affordable housing statewide by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions. Its goal is to encourage the production of affordable housing in all communities throughout the Commonwealth. **Special Permits 40B shall lapse 3 years from the date the permit becomes final unless construction authorized by a comprehensive permit has begun, or unless specifically noted otherwise in the permit by the Board of Appeals.**

## What is a Variance?

A Variance is a waiver of the zoning rules adopted by the Citizens of Littleton at Town Meeting. A Variance may be granted pursuant to the Littleton Zoning By-laws and Massachusetts General Laws Chapter 40A Section 10. Accordingly, it is only in rare instances and under exceptional circumstances that relaxation of the general restrictions established by the Zoning By-laws are permitted. A Variance is distinguished from a Special Permit. The Variance is used to authorize an otherwise prohibited use or to loosen dimensional requirements otherwise applicable to a structure. No person has a right to a Variance. *Variance of "use" is almost never granted by the Board of Appeals. Variance of "dimensional" requirements is granted in rare occasions.* **The Board of Appeals has no discretion to grant a Variance unless the petitioner provides evidence, and that the Board of Appeals determines that, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.** Even if the Board of Appeals find that such hardship exists, it may exercise its discretion and not grant a Variance. No building permit may be issued by the Building Commissioner for a use or structure that requires a Variance until 1) a Variance has been granted by the Board of Appeals, 2) the expiration of the twenty (20) day appeal period pursuant to Massachusetts General Laws Chapter 40A Section 11, and 3) the Variance has been recorded at the Middlesex South District Registry of Deeds. The Building Commissioner shall require proof of recording at the Registry of Deeds from the Town Clerk prior to issuance of a building permit. **Rights authorized by a Variance must be exercised within 1 year of granting, or said variance shall lapse.**

**LEGAL NOTICE  
NOTICE OF HEARING**

The Littleton Board of Appeals will conduct a public hearing on Thursday December 20, 2018 at the Littleton Town Offices, 37 Shattuck Street, Room 103 to consider the following petition:

7:40pm Case #916A – The petitioner New Cingular Wireless PCS, LLC requests a Special Permit/Variance pursuant to Littleton Zoning Bylaws 173-131B(5) Ad Dimensional Variance from the height limitation at 559A NEWTOWN RD.

LITTLETON BOARDS OF APPEALS  
Alan Bell, Clerk

Littleton Independent December 28, 2018 and January 4, 2019

January 7, 2019

Town of Littleton  
Zoning Board of Appeals  
37 Shattuck Street  
PO Box 1305  
Littleton, MA 01460

RE: Wireless Communication Facility

Applicant: New Cingular Wireless PCS, LLC by and through its Manager, AT&T Mobility Corporation ("AT&T" or "Applicant")

Site: 559 A Newtown Road, Littleton, MA (Assessor's Map U30, Block A Lot 5) (the "Site")

Land Owner: Town of Littleton

Tower Owner: Crown Castle USA, Inc.

Facility: Install nine (9) panel antennas (three (3) per sector) at the 109' above ground level ("AGL") centerline mark upon an existing 100' lattice tower (the "Tower") on the Site, as extended by a 15' tower extension, together with related amplifiers, coaxial cables, fiber and other associated antenna equipment including remote radio heads, surge arrestor, cable trays, small GPS antennas and conduits, the associated electronic equipment installed inside an equipment shelter and a generator for emergency back-up power to be located within an existing fenced compound area (the "Facility").

Relief Requested: A Dimensional Variance from the height limitation of Article XXI, Section 173-131 (B) (5) pursuant to Article III, Section 173-6 (B) (2) of the Town of Littleton Zoning Bylaw (hereinafter the "Bylaw") and, to the extent required, all rights reserved, any other required relief, pursuant to Massachusetts General Laws, Ch. 40A as well as the Federal Telecommunications Act of 1996 (the "TCA"), the federal Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act") and such other relief as deemed necessary, all rights reserved.

Dear Honorable Members of the Town of Littleton Zoning Board of Appeals:

On behalf of AT&T, we are pleased to submit this memorandum to the Town of Littleton Zoning Board of Appeals (the "Board") in support of AT&T's application (the "Application")



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for the installation, operation and maintenance of the Facility on the existing lattice Tower located at the Site. The following provides background information regarding the Facility and addresses each applicable section of the Bylaw with respect to an Application for a dimensional variance to extend the height of the existing 100' Tower by 15', all rights reserved.

## **BACKGROUND**

AT&T proposes to install nine (9) panel antennas (three (3) per sector) at the 109' AGL centerline mark upon an existing 100' lattice tower (the "Tower") on the Site, as extended by a 15' tower extension, of the Tower on the Site, together with related amplifiers, coaxial cables, fiber and other associated antenna equipment including remote radio heads, surge arrestor, cable trays, small GPS antennas and conduits, associated electronic equipment installed inside an equipment shelter and a generator for emergency back-up power to be located within the existing fenced compound area on the Site. AT&T's antennas will not exceed the height of the Tower extension, which will extend to 115' AGL. AT&T will seek a special permit from the Planning Board. Article XXI, Section 173-131 (B) (5) of the Bylaw limits the height of towers to 100'. The Facility is shown in detail on the plans (the "Plans") attached hereto and submitted with this Application. The Site is located in the Residence zoning district. The Facility complies with the terms of the Bylaw to the extent possible. The Application follows the applicable sections of the Bylaw and sets forth Applicant's response to each of the relevant provisions.

The Applicant will lease a portion of the Site from the Owner of the Tower. AT&T operates a nationwide wireless communications system that offers enhanced features such as caller ID, voice mail, e-mail, and superior call clarity. AT&T is in the process of building out a national network as required by AT&T's license issued by the Federal Communications Commission (the "FCC"). By filling a significant coverage gap, the Facility will aid in reaching AT&T's goal of providing adequate and reliable wireless communications services in and around Littleton and to all of Massachusetts. Additionally, AT&T is enhancing its data network to provide high speed data services commonly referred to as "long term evolution" ("LTE"). Currently, LTE is designed to improve AT&T's data services network. LTE will be incorporated into this Facility.

A reliable communications system depends on a grid of antennae arranged in a geographical pattern, similar to a honeycomb. Each "site" is created by an antenna and serves as a link between the customer and the telephone system, while that customer is within proximity to the site. Each site can handle a finite number of connections. As the number of customers increase, more sites must be added to handle the increased volume. If this is not accomplished, connections are dropped or customers' calls are blocked and they will get a busy signal. A new antenna installation must be constructed each time a new site is created.

AT&T submits and will demonstrate through the Application materials and the written and oral evidence at the public hearing(s) in connection with the Application that the proposed Facility meets with all applicable requirements of the Bylaw, to the extent possible. The Facility





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will not adversely impact adjacent properties and neighborhoods as AT&T's Facility will not significantly change the appearance of the Tower. The Facility will not be a threat to public health, safety and welfare. In fact, Applicant submits that the proposed Facility will aid in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity. The benefits of telecommunications coverage in the vicinity of the Site include enhanced emergency capabilities consistent with the Town's objective to protect the public health, safety and welfare pursuant to the Bylaw. These services further the public interest of health and safety as it will enable wireless 911 services to be available to the community and communication services for the public. According to the FCC, more than 240 million 911 calls, or nearly two-thirds of all calls received by the 911 centers nationwide, are made annually from mobile handheld devices in the United States. See FCC Press Release, entitled FCC takes Action to Improve Wireless 9-1-1 Services, dated September 23, 2010. Today, wireless infrastructure is required to assist with public safety needs.

Consistent with the Bylaw, the Facility will function as a wireless communication services facility within a local, regional, and national communications system. This system operates under license from the FCC and AT&T is mandated and authorized to provide adequate service to the general public. This Site was selected after a careful screening process and was found useful to AT&T. The Facility will not generate any objectionable noise, odor, fumes, glare, smoke, or dust or require signage. The Facility will have no negative impact on property values in the area. No significant increase in traffic or hindrance to pedestrian movements will result from the Facility. On average, only one round trip visit per month is required to service and maintain the Facility. This is an unmanned Facility and will have minimal negative effect on the adjoining lots. The Facility does not require police or fire protection because the installation has its own monitoring equipment that can detect malfunction and/or tampering.

## **RELIEF REQUESTED**

AT&T respectfully requests that the Board grant a Dimensional Variance from the height limitation of Article XXI, Section 173-131 (B) (5) pursuant to Article III, Section 173-6 (B) (2) and, to the extent required, all rights reserved, any other required relief, pursuant to Massachusetts General Laws, Ch. 40A as well as the TCA, the Spectrum Act and such other relief as deemed necessary in connection with the installation, maintenance and operation of the Facility as provided in the Plans submitted with the Application, all rights reserved. The Board is specifically empowered to grant such relief pursuant to Article III, Section 173-6 (B) (2) of the Bylaw. As will be further demonstrated by AT&T through evidence submitted to the Board at the public hearing(s) in connection herewith, such relief is appropriate as the Facility satisfies all pertinent provisions and standards contained in the Bylaw and Massachusetts General Laws, Ch. 40A for the granting of a special permit, to the extent required, all rights reserved, as enumerated below. AT&T further requests, to the extent required, all rights reserved, any other required relief, pursuant to Massachusetts General Laws, Ch. 40A as well as the TCA, the Spectrum Act, and such other relief as deemed necessary.





**COMPLIANCE WITH ARTICLE III, SECTION 173-6 OF THE ORDINANCE AND  
MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 10**

**B. (2) To hear and decide appeals or petitions for variances from the terms of this chapter, including variances for use, with respect to particular land or structures. Such variances shall be granted only in cases where the Board finds all of the following:**

- (a) That a literal enforcement of the provisions of this chapter would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.**

AT&T's hardship is its significant gap in coverage. The location of the Site relative to AT&T's gap in network coverage, and the presence of an existing Tower renders the proposed location uniquely suited for the Facility to fill the existing significant gaps in coverage thereby permitting AT&T the ability to provide adequate coverage in this area of Littleton as part of its network pursuant to its FCC license. Pursuant to developing case law, if a local permit granting authority prevents a wireless service provider from filling a significant gap in its network coverage, that authority's decision may prohibit or have the effect of prohibiting the provision of adequate coverage. The Site is an ideal, unique candidate because it can meet AT&T's identified significant gaps in coverage while also meeting substantially all of the requirements of the Ordinance. AT&T proposes to mount its antennas on a 15' extension of the 100' Tower. AT&T respectfully requests a dimensional variance from the height limitation of the Bylaw. If AT&T were required to mount its antennas on the available space on the Tower at its current height, AT&T would not be able to provide adequate service and significant gaps in its wireless network would continue to exist in this area of Littleton. The use of the Site for the Facility at the height proposed will enable AT&T to provide enhanced wireless communications services in an area in which AT&T is currently experiencing significant gaps in coverage. Without the requested relief, the Applicant would have substantial gaps in reliable service coverage in its network. Radio frequency coverage maps and a Report of Radio Frequency Engineer, submitted herewith, confirm that a communications facility located at the Site at the height proposed is required to remedy the existing significant gaps in AT&T's network coverage in the area.

- (b) That the hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.**

The hardship is owing to the shape and topography of the land and its location within the narrowly defined area within which a facility will provide the



necessary coverage to fill significant gaps in AT&T's network. AT&T respectfully asserts that it cannot provide adequate coverage by filling its significant gaps in coverage if the Tower were limited to its present height of 100' AGL. Please refer to the Report of Radio Frequency Engineer and Coverage Maps included among the materials submitted herewith.

**(c) That desirable relief may be granted:**

- [1] Without substantial detriment to the public good; or**
- [2] Without nullifying or substantially derogating from the intent or purpose of this chapter.**

The variance may be granted without substantial detriment to the public good or nullification or substantial derogation of the intent or purpose of the Bylaw because AT&T proposes to locate its Facility upon an existing 100' Tower as extended by only 15' upon a municipally owned parcel of land upon which are located the facilities of other Wireless Communications Service Providers. The Tower extension and AT&T's Facility will be consistent with the appearance of the existing Tower and facilities so that potential visual impacts are minimized and the aesthetic qualities of the City of Town of Littleton are preserved to the maximum extent possible. Locating AT&T's Facility on an extended existing Tower, through collocation upon a single structure, will help to minimize the overall number of towers in the area. The proposed Facility is a passive use and will not cause any nuisance such as unreasonable noise, vibration, smoke, odors, waste, glare or significant traffic. Further, the Facility will improve communication coverage to residents, commercial establishments and travelers through the area and improves communication services in this area of the Town of Littleton. The installation of the Facility will not be a threat to public health, safety and welfare. In fact, Applicant submits that the proposed Facility will improve emergency communications for police and fire personnel by reducing the number and frequency of dropped and incomplete calls due to weak signals and adding an additional layer of communication to traditional land lines. Published reports have highlighted the fact that during and after adverse major weather events, including ice storms, wireless telecommunications have been the only form of reliable communication. Lastly, the installation of the Facility at the Site will assist the Town of Littleton in complying with its obligations under the TCA. Consistent with the Bylaw, the Facility will function as a wireless communications services facility within a local, regional, and national communications system. This system operates under licenses from the FCC, and AT&T is mandated and authorized to provide adequate service to the general public. The proposed Facility will comply with all applicable regulations, standards and guidelines with respect to radio frequency emissions.



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### **THE TELECOMMUNICATIONS ACT OF 1996 - THE TCA**

Without the relief requested, AT&T would be unable to provide adequate coverage by filling its existing significant gaps in coverage, thereby creating a hardship recognized by federal and state courts interpreting the TCA. The Site is located within the limited geographic area whereby AT&T's radio frequency engineers determined that a wireless facility is required. Federal courts interpreting the TCA have held that where an applicant for the installation of wireless communications facilities to provide communications services seeks zoning relief as required by the municipal zoning ordinance, federal law imposes substantial restrictions affecting the standard for granting the requested relief. The TCA provides that: no laws or actions by any local government or planning or zoning board may prohibit, or have the effect of prohibiting, the placement, construction, or modification of communications towers, antennas, or other wireless facilities in any particular geographic area, see 47 U.S.C. §332(c)(7)(B)(i); local government or planning or zoning boards may not unreasonably discriminate among providers of functionally equivalent services, see 47 U.S.C. §332(c)(7)(B)(i); health concerns may not be considered so long as the emissions comply with the applicable standards of the FCC, see 47 U.S.C. §332(c)(7)(B)(iv); and, decisions must be rendered within a reasonable period of time, see 47 U.S.C. §332(c)(7)(B)(ii) and the FCC's Declaratory Ruling commonly referred to as the "Shot Clock".

In Omnipoint Holdings, Inc. v. City of Cranston, 586 F.3d 38 (1st Cir. 2009), the First Circuit Court of Appeals held that an effective prohibition occurs if a carrier demonstrates a significant gap in coverage and has investigated other viable alternatives. The factors the Court considered in judging the feasibility an alternative solution include whether the alternative solution is: technically efficient or at least technically adequate; economically feasible; preferred by local authorities; and, the level of willingness to cooperate. In Nextel Communications of the Mid-Atlantic v. Wayland, 231 F.Supp.2d 396 (D. Mass. 2002) and Omnipoint Communications MB Operations, LLC v. Town of Lincoln, 107 F. Supp. 2d 108 (D. Mass. 2000), the courts held that a municipality must approve a wireless facility if denying the petition would result in a "significant gap" in wireless services within a municipality because such denial would amount to an effective prohibition of wireless services. See 47 U.S.C. §332 (c) (7) (B) (i) (II). The court recognized that "an effective prohibition can exist even where a town allows for the erection of [wireless communications facilities] but subject to criteria which would result in incomplete wireless services within the town, i.e., significant gaps in coverage within the town." Town of Lincoln, 107 F. Supp. 2d at 117. Therefore, if an applicant establishes that the proposed facility would fill a significant gap in its wireless service coverage and is the least intrusive and only means reasonably available to accomplish that end, then the municipality must approve the requested zoning relief.

Of significance to the Board, courts have ordered the municipality to issue the necessary permits to allow the construction of the tower as described in the petition for zoning relief, foregoing an opportunity for the municipality to impose reasonable conditions on the wireless communications installation. Further, the Wayland court held that the need for closing a



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significant gap in coverage, to avoid an effective prohibition of wireless services, constitutes another unique circumstance when a zoning variance is required. We note that in the case of Sprint Spectrum L.P. v. Town of Swansea, Civil Action No. 07-12110-PBS, June 26, 2008, the federal District Court for Massachusetts held that notwithstanding the town zoning bylaw or Massachusetts state law, towns have the authority and obligation to grant variances to avoid violating the TCA. In a growing number of cases, the federal courts have found that variance denials violate the TCA, even if such denials would be valid under state law. For example, in Omnipoint Communications v. Town of Lincoln 107 F. Supp. 2d 108 (D. Mass. 2000), the court found that denial of a variance for a location outside of the town's wireless overlay district violated the TCA and ordered the variance to issue despite a town bylaw provision prohibiting use variances. Additionally, in Nextel Communications of the Mid-Atlantic, Inc. v. Town of Wayland, 231 F. Supp. 2d 396 (D. Mass. 2002), the court reached the same result. In that case, the court stated: "Although the Board's statement [regarding its lack of authority to issue a use variance] may be a correct statement in Massachusetts regarding variances, it is not controlling in the special case of wireless communications facilities...under the Telecommunication Act, the Board cannot deny the variance if in so doing it would have the effect of prohibiting wireless services."

Through the evidence submitted, AT&T has demonstrated that significant gaps exist in AT&T's network in this area of Littleton and the Facility is the only feasible means reasonably available to AT&T to fill its significant gaps in coverage.

## **THE TELECOMMUNICATIONS ACT OF 1996 - THE TCA**

The Federal TCA provides that: no laws or actions by any local government or planning or zoning board may prohibit, or have the effect of prohibiting, the placement, construction, or modification of communications towers, antennas, or other wireless facilities in any particular geographic area, see 47 U.S.C. §332(c)(7)(B)(i); local government or planning or zoning boards may not unreasonably discriminate among providers of functionally equivalent services, see 47 U.S.C. §332(c)(7)(B)(i); health concerns may not be considered so long as the emissions comply with the applicable standards of the FCC, see 47 U.S.C. §332(c)(7)(B)(iv); and, decisions must be rendered within a reasonable period of time, see 47 U.S.C. §332(c)(7)(B)(ii) and the FCC's Declaratory Ruling commonly referred to as the "Shot Clock". Likewise, Section 6409 of the Spectrum Act mandates that an eligible facilities request must be approved.

## **ELIGIBLE FACILITIES REQUEST**

In the alternative, AT&T requests approval of this Application as an Eligible Facilities Request. As you know, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, commonly referred to as the Spectrum Act, mandates that state and local governments "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." Under Section 6409(a)(2)(A)-(C), an Eligible Facilities Request is any request to



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modify a Tower or Base Station that involves “collocations of new Transmission Equipment,” “removal,” or “replacement” of Transmission Equipment.

This Eligible Facilities Request involves an effort to collocate Transmission Equipment on the tower at the Site used by AT&T as a Base Station. AT&T proposes to modify the 100’ tower by extending its height by fifteen (15) feet to 115’ and collocating nine (9) panel antennas (three (3) per sector). AT&T will also collocate eighteen (18) remote radio units and four (4) surge arrestors on the Tower as extended, all as depicted on the Plans submitted herewith.

The list of equipment identified in the Eligible Facilities Request application that will be collocated at the Tower is Transmission Equipment pursuant to the FCC definition. The FCC has defined Transmission Equipment as “any equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and back-up power supply. This definition includes equipment used in any technological configuration associated with any Commission-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband.”

The FCC adopted a Report and Order captioned, *In re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, FCC Docket No. 13-238, Report and Order No. 14-153 (October 17, 2014) Final Rule codified at 47 CFR Parts 1 and 17 promulgating regulations (the “Regulations”) interpreting and implementing the provisions of the Spectrum Act which determined that any modification to an Existing Tower that meets the following six criteria does not substantially change the physical dimensions of the existing tower and, therefore, is an Eligible Facilities Request which must be granted:

1. The modifications to the Tower do not increase the height of the Tower by more than twenty feet (20’) or ten percent (10%), whichever is greater.
2. The modifications to the Tower do not protrude from the edge of the Tower by more than twenty feet (20’).
3. The modifications to the Eligible Support Structure, in this case the Tower, do not involve the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four.
4. The modifications to the Eligible Support Structure, in this case the Tower, do not entail any excavation or deployment outside of the Site.



5. The modifications to the Eligible Support Structure, in this case the Tower do not defeat any existing concealment elements of the Eligible Support Structure.
6. The modifications to the Eligible Support Structure, in this case the Tower, comply with prior conditions of approval of the Tower, unless the non-compliance is due to an increase in height, increase in width, addition of equipment cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds in numbers 1-4.

As evidenced on the Plans, this Eligible Facilities Request satisfies each of the six review criteria identified by the FCC. In accordance with the Spectrum Act and FCC Regulations, AT&T's proposed modifications will not increase the height of the Tower by more than twenty feet (20') nor protrude from the edge of the Tower by more than twenty feet (20'). AT&T is only installing one walk-in equipment cabinet and does not propose to excavate outside of the existing Site. Lastly, AT&T's modifications will not defeat any concealment elements of the tower and are fully consistent with the previously special permit issued by the Littleton Planning Board. AT&T's modifications to the Tower contained in this Eligible Facilities Request fully conform to Section 6409(a). A comprehensive analysis confirming that this installation does not substantially change the physical dimensions of the tower is attached hereto as Addendum "A".

We are confident that you will agree that AT&T's proposed modifications do not substantially change the physical dimensions of the tower at the Site as enumerated in the FCC Regulations.

AT&T is committed to working cooperatively with the Town of Littleton, and all jurisdictions around the country, to secure expeditious approval of requests to modify existing personal wireless service facilities.

## **CONCLUSION**

As evidenced by the materials submitted with the Application and as will be further demonstrated by AT&T through evidence submitted to the Board at the public hearing(s) in connection herewith, the Facility satisfies the intent and objectives of the Bylaw. The Facility will not have any adverse effect on property values in the area. The Facility will not be dangerous to the public health or safety as it is designed to comply with all applicable FCC requirements relating to radio frequency emissions and will comply with all applicable requirements of the Massachusetts building code. Indeed, the maximum radio frequency output per channel for the Facility will be well below the maximum radio frequency exposure levels established by the FCC. The Facility is a passive use, and will not cause any nuisance such as unreasonable noise, vibration, smoke, odor or dust. Further, the Facility will improve communication coverage to residents, commercial establishments and travelers through the area



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and improves call connections in this area of the Town of Littleton. This Facility will greatly improve emergency communications for police and fire personnel by reducing the number and frequency of dropped and incomplete calls due to weak signals and adding an additional layer of communication to traditional land lines. In fact, published reports have highlighted the fact that during and after adverse major weather events, including ice storms, wireless telecommunications has been the only form of reliable communication. Lastly, the installation of the Facility at the Site will assist the Town of Littleton in complying with its obligations under the TCA and the Spectrum Act.

Applicant respectfully requests that the Board grant all necessary relief to install and operate the Facility. For the foregoing reasons, as well as to satisfy the mandate of the Federal Government to facilitate competition in the telecommunications industry as set forth in the TCA and the Spectrum Act, Applicant respectfully requests that the Board grant the foregoing zoning relief. We respectfully submit that the standards for relief as set forth in the Bylaw as well as Massachusetts law relating to zoning must be interpreted and applied such that the decision issued by the Board is in conformance with the TCA and the Spectrum Act. Accordingly, a denial of the foregoing petition would effectively prohibit AT&T from providing adequate service to the Town of Littleton and unreasonably discriminate among providers of functionally equivalent services and thus would be contrary to the purpose and intent of the TCA and the Spectrum Act.

Sincerely,

Brown Rudnick LLP



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Michael R. Delan, Esq.





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## **ATTACHMENTS**

1. Application form(s)
2. Report of Radio Frequency Engineer
3. RF Coverage Plots
4. Prior Decisions
5. Copy of Deed (required)
6. MPE Study
7. DPH Policy Statement
8. Photographs and Simulations
9. Plans