

March 1, 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 4195
Planning Board Application #2013-____
Upgrade Existing Wireless Telecommunication Facility
Premises: 929 Orchard Drive
Tax Id.: Section 1, Block 1, Lot 37

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 140 foot lattice tower off of Orchard 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 six (6) panel antennas installed at centerline heights of approximately 114 feet above grade level on the existing 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 and add six (6) small radio head units and junction boxes behind the panel antennas. 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 140 foot lattice tower or expand the size of AT&T's existing equipment building. In fact, there will be no additional site work at grade. The proposed antennas will be similar in size to the existing antennas and mounted at the same centerline height on the same bracket utilized by the existing antennas. 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.¹ 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).²

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 with Letter of Authorization;
- (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 American Tower Corporation which concludes the existing tower and its foundation are sufficient to support the proposed modifications;
- (E) A cumulative MPE Report demonstrating compliance with all applicable emissions standards promulgated by Federal and State law with a brief narrative explaining the need for the upgrade and describing the antenna specifications and Remote Radio Head Units;
- (F) A copy of AT&T's applicable FCC Licenses for Orange County; and
- (G) A copy of §6409 (a)(1) of the Middle Class Tax Relief and Job Creation Act of 2012 (as well as the FCC's Public Notice), which new federal law precludes the denial of this application.

¹ 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

² See, Section 6409 (a)(1) of the Act which is attached hereto as Exhibit G. Also attached to Exhibit G is a copy of the FCC's Public notice, dated January 24, 2013, which provides guidance on the interpretation of §6409(a).

Please also find nine (9) sets of signed, sealed site plans prepared by Tectonic Engineering, last revised February 20, 2013. 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 next scheduled meeting to discuss this further. Should the Board or Town Staff have any questions or comments in the interim, please feel free to contact me.

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)