



BUILDING, ZONING & LICENSING DEPARTMENT
31 Wakefield Street,
Rochester, New Hampshire 03867-1917
(603) 332-3976- Fax (603) 509-1912
Web Site: www.rochesternh.net

NOTICE OF PUBLIC HEARING

Dear Abutter:

You are hereby notified of a **Public Hearing** to be held at **7:00 p.m.** on **Wednesday, April 9, 2014** in the City Hall Council Chambers concerning the following:

2014-05 Application by AT&T Mobility for a variance under Table 42.14 (D) (4) of the City's Zoning Ordinance to permit a Wireless Communications Facility w/ tower to be located in a Residential 1 zone, pursuant to Section 42.28 (C) of the Ordinance, RSA-674:33 and the Federal Telecommunications Act of 1996, and any and all relief within the jurisdiction of the ZBA.

Location: 156 A Lowell St.
Map 244 Lot 2 Blk 1 Residential 1 Zone

If you are planning to attend the meeting and have paperwork you wish to have reviewed, or if you are *not* planning to attend the meeting, you may comment by letter, fax or email (karen.grenier@rochesternh.net). However, for the Board to consider your comments they MUST be received NO LATER than 12:00 noon on the Monday before the meeting (April 7, 2014).

The project application is available for review by the public in the Department of Building Safety or you can view the entire application on the City's website – www.rochesternh.net. Click on *Boards & Commissions*, then *Zoning Board of Adjustment*, then *Zoning Board Projects*. Look under the map and lot number shown above.

Please feel free to contact this department with any questions or if you have any disability requiring special provisions for your participation.

Office Hours are between 8:00 a.m. to 5:00 p.m. Monday through Friday.

Karen Grenier, Building, Zoning & Licensing Secretary
cc: file



PLANNING & DEVELOPMENT DEPARTMENT
City Hall - Second Floor
31 Wakefield Street
Rochester, New Hampshire 03867-1917
(603) 335-1338 - Fax (603) 335-7585
Web Site: www.rochesternh.net

Planning & Zoning
Community Development
Conservation Commission
Historic District Commission
Arts & Culture Commission

APPLICATION FOR A VARIANCE

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

Phone No 781-727-6516

DO NOT WRITE IN THIS SPACE

CASE NO. 2014-05

DATE FILED 3-19-14

Karen G. Miller
ZONING BOARD CLERK

Name of applicant AT&T Mobility, c/o Nanepashemet Project Management, Inc.

Address 328 West Shore Drive, Marblehead, MA 01945

Owner of property concerned Joseph P. Casavant
(If the same as applicant, write "same")

Address_16 Sunset Lane, Somersworth, NH 03878
(If the same as applicant, write "same")

Location_156 A Lowell Street, Rochester, NH 03867

Map No. 244 Lot No. 2-1 Zone R-1

Description of property Vacant Lot with Pasture and Wooded Area

Proposed use or existing use affected Erection of 150 Monopole buffeted by trees in the wooded area,

The undersigned hereby requests a variance to the terms of Article_(see below)_____,
Section_(see Below)_____and asked that said terms be waived to permit_(see
Below)_____

(1) Variance from Section 42.14(D)(4) of the Ordinance to permit

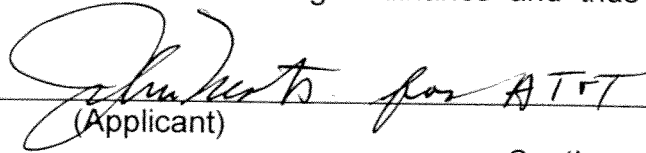
a Wireless Communications Facility including a tower to be
located in a Residential-1 zoning district pursuant to Section
42.28(C) of the Ordinance, RSA-674:33, and the Federal
Telecommunications Act of 1996 ("TCA"); and

(2) Any other relief required within the jurisdiction of the Zoning
Board of Adjustment (All relief is requested if and to the extent
necessary, all rights reserved under the TCA and otherwise).

If applicable in this case, the undersigned also requests a waiver from the requirement to provide a certified plot plan, (see attached request sheet) Yes _____ No ✓

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance.

Signed _____


(Applicant)

Continue on Page 2

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CRITERIA FOR VARIANCE

Case # 2014-05

Date: March 19, 2014

A Variance is requested by AT&T Mobility

from Section (1) Variance from Section 42.14(D)(4) of the Ordinance to permit a Wireless Communications Facility including a tower to be located in a Residential-1 zoning district pursuant to Section 42.28(C) of the Ordinance, RSA-674:33, and the Federal Telecommunications Act of 1996 ("TCA"); and

(2) Any other relief required within the jurisdiction of the Zoning Board of Adjustment (All relief is requested if and to the extent necessary, all rights reserved under the TCA and otherwise).

of the Zoning Ordinance to permit: the installaiton of a 150' monopole communications tower at 156 A Lowell Street, Rochester, NH Map No. 244 Lot No. 2-1 Zone R-1

Facts supporting this request:

1) The proposed use would not diminish surrounding property values because:

AT&T's proposed Facility has been carefully sited to minimize adverse impacts to surrounding properties. The remote siting of the Facility on the property and the natural buffer and screening provided by the substantial surrounding tree cover and existing vegetation will minimize its visibility from surrounding properties.

AT&T has submitted copies of numerous reports from the record appendix in the *Daniels* case that analyze the question whether wireless towers (such as the proposed Facility) diminish the value of surrounding residential properties as to other towers in similar settings.

2) Granting the variance is not contrary to the public interest because:

The variance will not conflict with the basic objectives of Rochester's Zoning Ordinance. Rather, as demonstrated in the "spirit of the ordinance" criteria discussion below, the grant of the requested variance is consistent with the Rochester Zoning Ordinance concerning telecommunications facilities as set forth in Section 42.24A.

The requested variance will promote the public interest by bringing advanced, improved wireless telecommunications to the citizens, residents, businesses, visitors and travelers in under-served areas of the City of Rochester. The Facility will enhance communications for voice, data and in-building applications. In addition, the Facility will promote public safety in the event of fire, flood, panic and other dangers. The Facility will enable users of AT&T's network to communicate immediately with police, fire, EMT, and other public officials in the event of a fire, accident, or other medical emergency or natural disaster.

3.) Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property: Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of the property that distinguish it from other properties in the area.

a. There is no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of that provision to the property.

b. The proposed use is a reasonable one.


AT&T has an immediate and compelling need for a location for its communications antennas in this area of Rochester because (a) AT&T has significant coverage and capacity problems in the area of the proposed Facility and (b) AT&T cannot address these problems from an existing facility sited within other areas of the City of Rochester or in abutting cities or towns. The purpose of the proposed Facility is to address these coverage and capacity problems. Without a Facility at the subject property, AT&T will suffer an unnecessary hardship from a literal enforcement of the ordinance. The property is "special" due to its size, topography and location proximate to the area requiring service. As demonstrated by the Plans submitted herewith, the extensive tree cover and vegetation which will mitigate the visibility of the proposed Facility also distinguish the property from other properties in the area. This unique set of facts demonstrates that the proposed Facility is appropriate to the area and the site.

4.) Granting the variance would do substantial justice because:

Substantial justice would be done by granting the requested variance. As demonstrated by the Radio Frequency Report included with this application, the significant coverage and capacity problems cannot be addressed by any other feasible means, and use of the subject site is necessary for the Facility. The proposed Facility will improve the provision of wireless communications services in the City in areas that currently have significant coverage and capacity problems. See *Daniels*, 953 A.2d at 414 ("A tower at this site would also serve the public interest in that it would alleviate a significant gap in coverage and would be used to provide service for at least two other wireless telecommunications companies to limit the need for any further towers. In addition, Omnipoint showed that substantial justice would be done in granting the variances because it was the only reasonable way to remedy an existing gap in coverage.") Consistent with the *Daniels* decision, granting the variances will achieve the substantial justice of allowing AT&T to provide adequate coverage to its significant gap in coverage, while complying with the City's Ordinance to the extent feasible.

5.) The use is not contrary to the spirit of the ordinance because:

To the extent feasible AT&T's proposed Facility is consistent with the requirements of the Ordinance concerning wireless communications facilities set forth in Section 42.24A of the Ordinance. Please see enclosed Anderson & Kriger narrative which elaborates upon this.

Name  John West for AT&T Date: 3/12/14

ANDERSON & KREIGER LLP

BRIAN S. GROSSMAN
bgrossman@andersonkreiger.com
T: 617-621-6582
F: 617-621-6682

March 19, 2014

Zoning Board of Adjustment
City of Rochester
31 Wakefield Street
Rochester, NH 03867

RE: Applicant: New Cingular Wireless PCS, LLC ("AT&T")
 Property Owner: Joseph P. Casavant
 Property: 156A Lowell Street, Rochester, New Hampshire
 Parcel ID 244-2-1 (the "Property")
 Petition: (1) Variance from Section 42.14(D)(4) of the Ordinance to permit
 a Wireless Communications Facility including a tower to be
 located in a Residential-1 zoning district pursuant to Section
 42.28(C) of the Ordinance, RSA-674:33, and the Federal
 Telecommunications Act of 1996 ("TCA"); and
 (2) Any other relief required within the jurisdiction of the Zoning
 Board of Adjustment (All relief is requested if and to the extent
 necessary, all rights reserved under the TCA and otherwise).

Dear Board Members:

Pursuant to the applicable provisions of the City of Rochester Zoning Ordinance (the "Ordinance"), the New Hampshire Revised Statutes and the Federal Telecommunications Act of 1996, New Cingular Wireless PCS, LLC ("AT&T") hereby applies to the City of Rochester Zoning Board of Adjustment (the "Board") for the above-captioned zoning relief to construct, operate and maintain a Wireless Communication Facility (the "Facility") on property located at 156A Lowell Street, Rochester, New Hampshire (the "Property"). The Property is in the City's Residential-1 Zoning District.

I. APPLICATION PACKAGE

Enclosed are the required fees for the application. In addition to the signed original letter, attached are the required copies of this letter and the following materials:

1. Completed Application to Board of Adjustment;
2. Abutters List;
3. Tax Map;

4. Letter of Authorization from Property Owner;
5. Redacted Lease;
6. The following plans prepared by Dewberry Engineers Inc. (the "Plans"):

SHEET	TITLE
T-1	Title Sheet
G-1	General Notes
C-1	Abutters Plan - I
C-2	Abutters Plan - II
C-3	Grading Plan
C-4	Detailed Site Plan & Elevation
C-5	Construction Details - I
C-6	Construction Details - II
C-7	Antenna Mounting Details & RF Schedule
E-1	Electrical Riser Diagram
E-2	Schematic Grounding Plan
E-3	Grounding Details

7. Radio Frequency ("RF") report including coverage maps and description of AT&T's existing facilities in the vicinity of the proposed Facility, coverage maps demonstrating the need for the facility and the coverage it will provide, and related information that more specifically addresses the Ordinance requirements and coverage analysis;
8. Alternatives Analysis submitted by John Nestor, Site Acquisition Specialist;
9. TOWAIR report;
10. Removal Agreement;
11. Real Estate Valuation Reports:
 - 2007 impact study by Horizon Associates
 - 2006 opinion letter by R.G. Bramley & Co.
 - 1998 study by Crafts Appraisal Associates
 - 1992 study by Lessard Appraisal Services
 - 1990 opinion letter by R.G. Bramley & Co.
12. Copies of AT&T's FCC licenses; and
13. Copies of equipment brochures for AT&T's proposed equipment.

II. PROPOSED FACILITY DESIGN

AT&T has determined that significant coverage gaps exist in its network in Rochester, including along substantial portions of Lowell Street and the surrounding areas (collectively, the “Targeted Coverage Area”). These gaps also include areas along side roads proximate to Lowell Street and residential and business areas proximate thereto. The purpose of the Facility is to address these coverage gaps, referred to hereinafter as the “Targeted Coverage Area.”

As shown on the enclosed plans, AT&T proposes to construct, operate and maintain a Wireless Communication Facility consisting principally of the following elements:¹

- 1) A 150' high, multi-carrier monopole tower within a 50' x 50' fenced equipment compound;
- 2) Twelve (12) multi-band (700/850/1900/2100 MHz) panel antennas (four per sector) on an antenna platform mounted at a centerline elevation of 146'± above ground level on the monopole tower;
- 3) Twenty-seven (27) remote radio units (“RRUs”) (nine per sector);
- 4) Four (4) surge arrestors pipe-mounted below the antenna platform;
- 5) Two (2) fiber-optic trunks, eight (8) DC power trunks and 3 RET lines running from the antennas, down the monopole tower and across an ice bridge to AT&T's radio and electronic equipment housed in a prefabricated 11'-5" x 16' equipment shelter located at the base of the monopole tower;
- 6) Up to three (3) GPS antennas;
- 7) A generator and related facilities on a concrete pad for back-up power in the event of an emergency;
- 8) Electric and telephone utilities and a meter bank within the fenced equipment compound, together with a pad-mounted transformer outside of the fenced compound;
- 9) A 6' high chain link fence with three strands of barbed wire (for a total height of 7'); and

¹ AT&T reserves the right to change the manufacturer, make, model, type and operating characteristics of the antennas and any other equipment based on availability, price, performance and other considerations and in accordance with all applicable laws.

- 10) A 12' wide access route (within a 25' wide access easement) to the fenced equipment compound, with improvements where necessary.

The proposed monopole will accommodate the equipment of up to four (4) wireless carriers, including AT&T. AT&T will rent space to other interested carriers at prevailing market rents. Accommodating co-location in this manner will help to minimize the number of new monopoles or other antenna support structures that may be needed in the City of Rochester.

The Facility will be an unmanned, passive use, will not generate any appreciable noise, dust or odors and will not adversely affect existing developed and natural environments around Rochester. The location of the Facility will mitigate adverse visual impacts. The Facility will enable users to access a state-of-the-art, fully digital system for voice communication, messaging, and data transmission and reception.

III. AT&T's NETWORK

AT&T is the premier wireless company in the United States, with more than 107.9 million subscribers who use the nation's fastest 4G network. AT&T is dedicated to providing customers with wireless technology designed to enrich their lives. AT&T continually raises its performance to meet and exceed customer expectations.

AT&T is licensed by the FCC to provide wireless communication services across the country and throughout New Hampshire, including the City of Rochester and surrounding communities. Wireless coverage is provided by the placement of a number of low power antenna sites within a given area. The sites are geographically spaced so that the coverage from each site overlaps with its neighboring sites. When a connection is established on a certain site, the wireless device monitors the signal from the serving site, as well as the signals of all of the adjacent sites. When the wireless device receives a stronger signal from an adjacent site, it requests a transfer from the site it is currently using to the stronger site. If there is seamless coverage provided by the carrier, the connection will transfer without interruption. If there is insufficient signal strength at the transfer point, the quality of the connection degrades and may ultimately be lost.

IV. FEDERAL TELECOMMUNICATIONS ACT OF 1996

A. General Background

AT&T's application is governed by the provisions of the Federal Telecommunications Act of 1996, which the United States Supreme Court has explained as follows:

Congress enacted the Telecommunications Act of 1996 (TCA) ... to promote competition and higher quality in American telecommunications services and to "encourage the rapid deployment of new telecommunications technologies." ... One of the means by which it sought to accomplish these goals was reduction of the impediments

imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers. To this end, the TCA amended the Communications Act of 1934 ... to include § 332(c)(7), which imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities ... 47 U.S.C. § 332(c)(7). Under this provision, local governments may not “unreasonably discriminate among providers of functionally equivalent services,” § 332(c)(7)(B)(i)(I), take actions that “prohibit or have the effect of prohibiting the provision of personal wireless services,” § 332(c)(7)(B)(i)(II), or limit the placement of wireless facilities “on the basis of the environmental effects of radio frequency emissions,” § 332(c)(7)(B)(iv). They must act on requests for authorization to locate wireless facilities “within a reasonable period of time,” § 332(c)(7)(B)(ii), and each decision denying such a request must “be in writing and supported by substantial evidence contained in a written record,” § 332(c)(7)(B)(iii).

City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 115-116 (2005) (citations omitted).

The TCA was intended to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans. The Facility will help bring these advanced telecommunications and information technologies to Rochester and adjoining communities.

B. Application of Variance Standards in light of the TCA

The appropriateness of granting the requested variances is reinforced by the TCA. In *Daniels v. Londonderry*, 953 A.2d 406 (N.H. 2008), the New Hampshire Supreme Court has specifically guided Zoning Boards of Adjustment as to how to apply New Hampshire's variance standards to be consistent with the federal Telecommunications Act. The Court affirmed the grant of a use variance and two area variances by the Londonderry Zoning Board of Adjustment to Omnipoint Communications, Inc. for a 170' monopole on property located in Londonderry's agricultural-residential zone where wireless communication facilities were otherwise not permitted. *Id.* at 411. In particular, the Court credited Omnipoint's radio frequency coverage information showing that the facility at the proposed location would fill a substantial gap in coverage. *Id.* at 410. In upholding the variance relief, the Daniels court reconciled "our statutory variance criteria, specifically, the hardship standard, with the overarching standards set forth in the TCA." *Id.* at 412.

AT&T respectfully requests that the Board grant the requested variance to allow the proposed Facility in order to address AT&T's significant coverage needs in the area in question, and to follow New Hampshire Supreme Court precedent on the very issues involved here.

V. RELIEF REQUESTED

Pursuant to Section 16.2 of the Ordinance, Telecommunications Facilities are limited to the Telecommunications District. AT&T is unable to address this significant gap in its wireless network by locating a facility within the Telecommunications District or its other existing facilities. As a result, AT&T must locate its Facility outside of the Telecommunications District and therefore requests a variance from the limitation set forth in Section 16.2 of the Ordinance.

Therefore, pursuant RSA-674:33, Section 1.4.1 of the Ordinance and the TCA, and AT&T's proposed Facility satisfies the required findings for grant of a variance as follows:²

A. The variance will not be contrary to the public interest³.

In *Chester Rod & Gun Club, Inc. v. Town of Chester*, 152 N.H. 577 (N.H. 2005), the New Hampshire Supreme Court stated that, "The first step in analyzing whether a variance would be contrary to the public interest or injurious to the rights of others is to examine the applicable zoning ordinance." *Id.* at 581. The Court noted, "As the provisions of the ordinance represent a declaration of public interest, any variance would in some measure be contrary thereto." *Id.* (quoting *Heffernan v. Zoning Board of Review*, 50 R.I. 26 (R.I. 1929)). "Thus, to be contrary to the public interest or injurious to the rights of others, the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives'." *Id.* (quoting *Coderre v. Zoning Board of Review of City of Pawtucket*, 105 R.I. 266, 273 (R.I. 1969)).

The variance will not conflict with the basic objectives of Rochester's Zoning Ordinance. Rather, as demonstrated in the "spirit of the ordinance" criteria discussion below, the grant of the requested variance is consistent with the Rochester Zoning Ordinance concerning telecommunications facilities as set forth in Section 42.24A.

The requested variance will promote the public interest by bringing advanced, improved wireless telecommunications to the citizens, residents, businesses, visitors and travelers in under-served areas of the City of Rochester. The Facility will enhance communications for voice, data and in-building applications. In addition, the Facility will promote public safety in the event of fire, flood, panic and other dangers. The Facility will enable users of AT&T's network to communicate immediately with police, fire, EMT, and other public officials in the event of a fire, accident, or other medical emergency or natural disaster. The concealed Facility will also serve the public interest

² Section 42.28(C) of the Ordinance incorporates by reference the variance criteria set forth in RSA-674:33.

by promoting co-location and helping to minimize the number of new towers in Rochester.

As the New Hampshire Supreme Court has noted, “A tower at this site would also serve the public interest in that it would alleviate a significant gap in coverage and would be used to provide service for at least two other wireless telecommunications companies to limit the need for any further towers.” *Daniels*, 953 A.2d at 414. The primary purpose of AT&T’s application is the same as the proponent in *Daniels*, i.e., to address significant coverage and capacity issues and thereby to serve the public interest in this area.

The provision of personal wireless service has become a pervasive fact of modern life, and represents a technological breakthrough in how people communicate with each other. There is a profound public interest in being able to send and receive such communications. Increasingly, the general public is relying upon wireless service for their telecommunication needs, including for personal, family, business, health care, and educational purposes. The facility here will provide coverage to an area that has poor service at present. (*See*, Radio Frequency Report, attached hereto showing existing wireless coverage without the proposed Facility and increased and improved coverage with the proposed Facility). The introduction of this service will benefit not only those members of the public who reside, regularly transact business in, or visit Rochester but also those who are traveling in the area as well.

The Facility would not generate any objectionable noise, odor, fumes, or traffic. The Facility will not be dangerous to public health or safety because it will comply with all FCC requirements relating to radio frequency emissions and all New Hampshire building code requirements.

B. The spirit of the Ordinance is observed.

To the extent feasible AT&T’s proposed Facility is consistent with the requirements of the Ordinance concerning wireless communications facilities set forth in Section 42.24A of the Ordinance as follows:

42.24 A. Wireless Communications Facilities

- a) **Commercial Facilities.** Any plan to install wireless facilities for the commercial transmission or reception of telecommunications shall be subject to the specific requirements detailed herein and elsewhere in the Zoning Ordinance and Site Plan Regulations. Commercial wireless communications facilities that were approved and constructed prior to the effective date of this amendment are subject to Section 8 and 9 below. Commercial wireless communications facilities shall not be considered accessory uses. (See 42.24A(b) for standards applicable to noncommercial facilities.)

As set forth herein and within the Site Plan application to be submitted to the Planning Board, AT&T's proposed Facility complies with the applicable requirements set forth in the Ordinance and Site Plan Regulations.

- (1) Co-Location All commercial wireless communication facilities erected or located within the municipality shall comply with the following:**

A proposal for a new wireless communications facility may only be approved subsequent to a determination to be made by: (a) the Zoning Board of Adjustment, as part of a consideration for a special exception, in zoning districts where a WCF is permitted by special exception (See Special Exceptions) in this chapter or (b) the Planning Board as part of the site plan review process, in zoning districts where a wireless is permitted by right - that the telecommunications equipment planned for the proposed site cannot be accommodated on any existing or approved antenna support structure in the City of Rochester or on any prospective alternative tower structure in the City of Rochester for one of the following reasons:

- (A) The planned equipment would exceed the structural capacity of the existing or approved antenna support structures, as documented by a qualified professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.**
- (B) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the antenna support structure as documented by a qualified professional engineer and the interference cannot be prevented at a reasonable cost.**
- (C) Existing or approved antenna support structure within the required radius cannot accommodate the planned equipment at the necessary height as documented by a qualified professional engineer.**
- (D) Any other substantial reason that precludes the co-location. The burden of proof is upon the applicant to demonstrate that all reasonable alternatives to the erection of a new structure have been fully explored.**

As set forth in the RF Report and Alternatives Analysis submitted herewith, there are no existing or approved antenna support structures, towers, or other structures located in the area within which AT&T has

identified this significant gap in its wireless coverage network. As a result, the proposed Facility, including the proposed monopole, is necessary in order to address AT&T's significant gap in coverage.

(2) Design. Facilities shall be designed to blend into the environment through the use of color and camouflaging architectural treatment (unless otherwise dictated by the FAA or other government authority).

The proposed Facility has been designed to blend into the environment to the extent feasible. The proposed Facility has been located on the Property to minimize its visibility. The proposed location uses the existing vegetation on and near the Property in order to screen it from view to the extent feasible. In addition, the proposed monopole will be a non-reflective galvanized steel gray unless otherwise required by FAA or other regulations.

(3) Height. The maximum permitted height from grade is as follows:

- (A) 60 feet if the structure is designed to accommodate only one service provider.**
- (B) 100 feet if the structure is designed to accommodate two service providers.**
- (C) 140 feet if the structure is designed to accommodate three service providers.**
- (D) 180 feet if the structure is designed to accommodate four or more service providers.**

AT&T's proposed Facility complies with the height requirements of this provision of the Ordinance. AT&T's proposed Facility, including the proposed 150 foot monopole, will accommodate at least four service providers.

(4) Accessory Utility Structures All utility structures accessory to a tower shall also be designed to blend in with the environment and shall meet the minimum setback requirements of the zoning district. Ground mounted equipment shall be screened from view by suitable vegetation or by any other screening method which blends with the architectural character of neighborhood.

As depicted on the Plans, AT&T's proposed equipment shelter and accessory utilities will be screened from view by the existing vegetation on and near the Property. Further, AT&T's proposed Facility is located at approximately 125± feet from the nearest side lot line, approximately 862 ± feet to Lowell

Street and approximately 521± feet from the rear lot line . Therefore, the proposed Facility complies with all applicable setback requirements within the Residential-1 zoning district.

- (5) Lighting. Antennas and support structures shall not be illuminated and shall not display strobe lights unless specifically required by the FAA or another governmental authority. Where lighting is required by the FAA other options (including but not limited to reducing the height of the support structure) to the extent practicable shall be explored which would remove said requirement for lighting.**

AT&T is performing the necessary studies to determine whether marking and/or lighting will be required pursuant to FAA or other regulations. AT&T will comply with the requirements set forth by the FAA or other applicable authority.

- (6) Temporary Wireless Communications Facilities. Any facility designed for temporary use (as defined in 42.6), is subject to the following:**

- (A) Use of a temporary facility is allowed if the owner has received a use permit from the Rochester Code Enforcement.**
- (B) Temporary wireless facilities are permitted for use not to exceed 30 days during construction of permanent facilities or 10 days during a special event.**
- (C) The maximum permitted height of a temporary wireless facility is 50 above grade.**
- (D) Temporary facilities are subject to all applicable portions of Ordinances.**

The above provisions of the Ordinance concerning temporary wireless communications facilities are not applicable to AT&T's proposed Facility.

- (7) Interference with Public Safety Telecommunications. No new or existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Telecommunications providers shall notify the Police and Fire Departments at least ten calendar days in prior to placing new services on line to give those Departments an opportunity to monitor interference levels during the testing process.**

AT&T's proposed Facility will not interfere with public safety communications.⁴

- (8) Declaration of Continuing Operation.** The owner of a wireless facility, with written authorization from the property owner, shall file annually a declaration with the Planning Department as to the continuing operation of every facility installed subject to these regulations. Failure to do so may be construed to mean that the facility is no longer in use and considered abandoned, thus subject to the provisions of (9), below.

AT&T will comply with this provision of the Ordinance to the extent lawful and applicable and otherwise reserves its rights.

(9) Abandoned or Unused Wireless Communications Facilities.

Abandoned or unused antennas and structures shall be removed as follows:

- (A) An agreement between the facility owner (and successors in interest), property owner (and successors in interest), and the City of Rochester which incorporates the provisions (B) through (E) of this section shall be submitted at the time of application.**
- (B) A copy of the relevant portions of a signed lease (except in cases where the land is structure, and associated facilities upon cessation of operations at the site shall be submitted at the time of the application.**
- (C) All abandoned wireless communications facilities shall be removed within 180 days of the cessation of operations at the site unless a time extension is approved by the Planning Department.**

⁴ To the extent that the Ordinance seeks to regulate interference from personal wireless services facilities, it is preempted by federal law. *See, e.g. Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2d Cir. 2000); *Southwestern Bell Wireless, Inc. v. Johnson County Board of County Commissioners*, 199 F.3d 1185 (10th Cir. 1999); *Cellular Phone Task Force v. Federal Communications Commission*, 205 F.3d 82, 88 (2nd Cir. 2000). *In re Cingular Wireless, L.L.C.*, FCC Docket No. 02-100 (July 7, 2003), the FCC held that federal law preempts a local government's attempt to regulate radio frequency interference ("RFI") with local public safety communications systems. In sweeping language, the FCC indicated that local zoning provisions having the "intent and effect ... to regulate the operations - not the placement, construction and modification - of licensed facilities" are preempted because they focus on "radio frequency regulation rather than local land use concerns" (at page 10-11). Nor are preempted local regulations saved by the claim that the local government is attempting to "assure itself that a carrier is complying with FCC standards" where the regulation is "effectively regulating federally licensed operation" as opposed to "traditional zoning regulation of the physical facility" (at page 11). Accordingly, federal law preempts any and all provisions of the Ordinance or conditions imposed within an approval affecting the operations of the FCC-licensed facility.

- (D) Unused portions of support structures above a manufactured connection shall be removed within 180 days of the time of antenna relocation. The replacement of portions of a support structure previously removed will require a new approval.**
- (E) In the event that these elements are not removed within 180 days of the cessation of operations at a site, the City of Rochester (in addition to other remedies) may remove the antenna, structure, and associated facilities and assess the cost of removal against the property or if the City must enforce the agreement required by (A) through legal measures, the landowner and facility owner shall reimburse the City for legal costs.**

In accordance with this provision of the Ordinance, AT&T has submitted herewith a redacted copy of its lease for the Property. Further, as a condition of approval, AT&T will agree to reasonable conditions concerning the removal of its Facility in the event of the cessation of operations.

- (10) Signs and Advertising. No portion of an antenna or support structure may be used for signs or advertising other than warning or equipment information signs, as appropriate.**

AT&T's proposed Facility complies with this provision of the Ordinance. AT&T's proposed Facility does not include any advertising and only includes signage identifying AT&T as the owner of the site, site identification information, and contact information. In addition, the only other signage at the Facility is signage required by the FCC or other lawfully applicable regulations.

- (11) Independent Evaluation. The City, as its option, may require, at the expense of the applicant, an independent evaluation of any wireless communications facility proposal, by a qualified licensed professional engineer selected by the City.**

AT&T will pay for any reasonable and lawful fees associated with a qualified outside consultant's review of the RF Report and related materials to be provided. AT&T requests the Board notify AT&T of potential candidates for consultation in this regard, if it determines such review is necessary, and otherwise reserves its rights.

- b) Non-Commercial Wireless Facilities. Non-commercial wireless communications facilities (including television antennas and amateur radio antennas) are exempt from review and approved that:**

- (1) These facilities shall not be illuminated and shall not contain any advertising signage.
- (2) Freestanding structures must be located behind the primary rear building façade and in conformance with all side and rear setback requirements or otherwise located and designed so as to be unobtrusive from the street or other public rights-of-way.
- (3) Free standing structures may not exceed 49 feet in height and building mounted structures may not be higher than 20 feet above the ridge of the roof unless the applicant demonstrates to the reasonable satisfaction of the Planning Department that such height is necessary for the intended amateur radio communications (for reference see the Federal Communications Commission's preemptive ruling PRB1 regarding amateur radio antennas.

These provisions of the Ordinance are not applicable to AT&T's Facility. AT&T is not proposing a non-commercial wireless facility.

- c) **Commercial Wireless Facilities Performance Criteria.** Height regulations, setback distances, types of new facility applications shall be as prescribed in Table 3. See attached "APPENDIX C."

Pursuant to Appendix C, no additional height regulations, setback distances, are required for the proposed Facility located within the Residential-1 zoning district.

- C. By granting the variance, substantial justice is done.

Substantial justice would be done by granting the requested variance. As demonstrated by the Radio Frequency Report included with this application, the significant coverage and capacity problems cannot be addressed by any other feasible means, and use of the subject site is necessary for the Facility. The proposed Facility will improve the provision of wireless communications services in the City in areas that currently have significant coverage and capacity problems. See *Daniels*, 953 A.2d at 414 ("A tower at this site would also serve the public interest in that it would alleviate a significant gap in coverage and would be used to provide service for at least two other wireless telecommunications companies to limit the need for any further towers. In addition, Omnipoint showed that substantial justice would be done in granting the variances because it was the only reasonable way to remedy an existing gap in coverage.") Consistent with the *Daniels* decision, granting the variances will achieve the substantial justice of allowing AT&T to provide adequate coverage to its significant gap in coverage, while complying with the City's Ordinance to the extent feasible.

D. By granting the variance, surrounding property values are not diminished

AT&T's proposed Facility has been carefully sited to minimize adverse impacts to surrounding properties. The remote siting of the Facility on the property and the natural buffer and screening provided by the substantial surrounding tree cover and existing vegetation will minimize its visibility from surrounding properties.

AT&T has submitted copies of numerous reports from the record appendix in the *Daniels* case that analyze the question whether wireless towers (such as the proposed Facility) diminish the value of surrounding residential properties as to other towers in similar settings. The conclusions of the *Daniels* case and of these reports underscore that wireless towers do not diminish the value of surrounding residential properties:

- 1) A 2007 impact study by Horizon Associates, undertaken to analyze the impact of the proposed 170' tower in Londonderry, New Hampshire at issue in the Daniels case. The study examined paired sales of nearly identical properties, of which one property was in the vicinity of a tower and the other property was not in the vicinity of a tower. The study concluded that market value of properties in the vicinity of the proposed Londonderry tower would experience no diminution in value.
- 2) A 2006 opinion letter by R.G. Bramley & Co., submitted to the Cornish, New Hampshire ZBA in connection with the proposed construction of a 190' lattice tower, indicating that, based upon studies of similarly situated towers, construction of the proposed tower would not be expected to diminish the value of properties surrounding the proposed tower in Cornish.
- 3) A 1998 study by Crafts Appraisal Associates examining the impact of wireless towers on property values in Bedford, Nashua, Merrimack, Candia, Manchester and Exeter, New Hampshire, which concluded that wireless towers did not detrimentally affect values of nearby properties in the subject communities.
- 4) A 1992 study by Lessard Appraisal Services, analyzing the impact of a 190' tower in Candia, New Hampshire, which concluded that towers in the area did not diminish property values.
- 5) A 1990 report completed for the proposed construction of a 280' tower in Auburn, New Hampshire, which found no diminution of value in the value of properties located near existing towers in Chester, Candia, Hudson or Merrimack, New Hampshire.

Furthermore, the proposed use is a passive use, and does not generate noise, smoke, fumes or any significant vehicle traffic. For all of these reasons, there will not be any diminution of surrounding property values. Indeed, set forth herein, the proposed Facility would

provide enhanced, state-of-the-art wireless services to residents, visitors and businesses in Rochester, thereby contributing to the local economy and preserving, not diminishing, property values.

- E. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of the property that distinguish it from other properties in the area.
- a. There is no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of that provision to the property.
 - b. The proposed use is a reasonable one.

AT&T has an immediate and compelling need for a location for its communications antennas in this area of Rochester because (a) AT&T has significant coverage and capacity problems in the area of the proposed Facility and (b) AT&T cannot address these problems from an existing facility sited within other areas of the City of Rochester or in abutting cities or towns. The purpose of the proposed Facility is to address these coverage and capacity problems. Without a Facility at the subject property, AT&T will suffer an unnecessary hardship from a literal enforcement of the ordinance. The property is "special" due to its size, topography and location proximate to the area requiring service. As demonstrated by the Plans submitted herewith, the extensive tree cover and vegetation which will mitigate the visibility of the proposed Facility also distinguish the property from other properties in the area. This unique set of facts demonstrates that the proposed Facility is appropriate to the area and the site.

The variance will not conflict with the basic objectives of Rochester's Zoning Ordinance. Rather, as set forth above in the "spirit of the ordinance" criteria discussion, the grant of the requested variance is consistent with the purposes of the Rochester Zoning Ordinance concerning telecommunications. By granting the requested variance to allow the proposed Facility, AT&T will be permitted to address a significant gap in its coverage, thereby enhancing wireless communications services in the vicinity of the Property without having any material impact on the surrounding area.

AT&T has demonstrated that the proposed Facility conforms to those purposes as detailed more fully in the "spirit of the ordinance" criteria discussion herein. Therefore, applying the Ordinance to prohibit this use on this unique parcel will bear "no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of [those] provisions to the property."

The proposed Facility is a reasonable use of the property, given AT&T's immediate and compelling need to address coverage and capacity problems in this area of Rochester. The size of the property and the natural buffer and screening provided by the surrounding tree cover and existing vegetation also make this an ideal location for the proposed Facility.

In the 2008 *Daniels* decision, the New Hampshire Supreme Court restated the hardship standards for use and area variances in *Simplex Technologies v. Newington*, 145 N.H. 727 (2001) and *Boccia v. Portsmouth*, 151 N.H. 85 (2004), respectively and introduced a new perspective on the interplay between the standards and the TCA.⁵ *Daniels* at 411-412. The Court held that:

[W]e believe that a broader, more inclusive view of hardship is required under these circumstances. When an application to build a wireless telecommunications tower is designed to fill a significant gap in coverage, the suitability of a specific parcel of land for that purpose should be considered for purposes of determining hardship. The fact that a proposed location is centrally located within the gap, has the correct topography, or is of an adequate size to effectively eliminate the gap in coverage, are factors that may make it unique under the umbrella of the TCA. Similarly, that there are no feasible alternatives to the proposed site may also make it unique. Thus, although a parcel of land may be similar to the surrounding properties in terms of its general characteristics, it may still be 'unique' for purposes of hardship when considered in light of the TCA.

AT&T's site in Rochester is strikingly similar to the Omnipoint property in Londonderry. The subject site is uniquely and ideally situated within AT&T's target coverage area, and AT&T has amply demonstrated through the radio frequency report and coverage maps

⁵ As the Board is aware, the variance statute NH RSA 674:33 was amended in 2009 to harmonize the variance standards for use and area variances. The New Hampshire Legislature included a Statement of Intent regarding the amendment (2009, 307:5, eff. Jan. 1, 2010) that provided: "The intent of section 6 of this act is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court...." There was a bill filed in the New Hampshire Senate (NH SB 317) that would have reinstated the pre-2009 amendment variance standard and effectively reinstated the prior case law, but it has not been enacted at this time. Either way, the *Daniels* case remains good law given the Legislature statements regarding incorporation of the standards of the *Simplex* case and its progeny.

that there are no feasible alternatives that would address the coverage gaps and capacity problems, which will be further demonstrated through testimony at the public hearing.

As the *Daniels* Court stated, "With respect to the 'uniqueness' factor, the evidence before the ZBA demonstrated the necessity of a tower, at the height ultimately approved, on the proposed parcel, in order to fill what could be considered a significant gap in coverage." *Id.* at 412 - 413. AT&T's proposed Facility is necessary for similar reasons.

VI. CONCLUSION

AT&T respectfully requests the Board to grant the requested variance and any other zoning relief required for the proposed Facility. AT&T respectfully requests that the Board schedule this application for a public hearing at its next meeting for which proper notice can be given.

If I can provide any further information regarding this application, please let me know.

Sincerely,



Brian S. Grossman

Enclosures

cc: John Nestor (by email w/encl.)
Jessica Rincon (by email w/encl.)
Stephen D. Anderson (by email w/encl.)

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March 19, 2014

Zoning Board of Adjustment
City of Rochester
31 Wakefield Street
Rochester, NH 03867

RE: Applicant: New Cingular Wireless PCS, LLC ("AT&T")
 Property Owner: Joseph P. Casavant
 Property: 156A Lowell Street, Rochester, New Hampshire
 Parcel ID 244-2-1 (the "Property")
 Petition: (1) Variance from Section 42.14(D)(4) of the Ordinance to permit
 a Wireless Communications Facility including a tower to be
 located in a Residential-1 zoning district pursuant to Section
 42.28(C) of the Ordinance, RSA-674:33, and the Federal
 Telecommunications Act of 1996 ("TCA"); and
 (2) Any other relief required within the jurisdiction of the Zoning
 Board of Adjustment (All relief is requested if and to the extent
 necessary, all rights reserved under the TCA and otherwise).

Dear Board Members:

Pursuant to the applicable provisions of the City of Rochester Zoning Ordinance (the "Ordinance"), the New Hampshire Revised Statutes and the Federal Telecommunications Act of 1996, New Cingular Wireless PCS, LLC ("AT&T") hereby applies to the City of Rochester Zoning Board of Adjustment (the "Board") for the above-captioned zoning relief to construct, operate and maintain a Wireless Communication Facility (the "Facility") on property located at 156A Lowell Street, Rochester, New Hampshire (the "Property"). The Property is in the City's Residential-1 Zoning District.

I. APPLICATION PACKAGE

Enclosed are the required fees for the application. In addition to the signed original letter, attached are the required copies of this letter and the following materials:

1. Completed Application to Board of Adjustment;
2. Abutters List;
3. Tax Map;

4. Letter of Authorization from Property Owner;
5. Redacted Lease;
6. The following plans prepared by Dewberry Engineers Inc. (the "Plans"):

SHEET	TITLE
T-1	Title Sheet
G-1	General Notes
C-1	Abutters Plan - I
C-2	Abutters Plan - II
C-3	Grading Plan
C-4	Detailed Site Plan & Elevation
C-5	Construction Details - I
C-6	Construction Details - II
C-7	Antenna Mounting Details & RF Schedule
E-1	Electrical Riser Diagram
E-2	Schematic Grounding Plan
E-3	Grounding Details

7. Radio Frequency ("RF") report including coverage maps and description of AT&T's existing facilities in the vicinity of the proposed Facility, coverage maps demonstrating the need for the facility and the coverage it will provide, and related information that more specifically addresses the Ordinance requirements and coverage analysis;
8. Alternatives Analysis submitted by John Nestor, Site Acquisition Specialist;
9. TOWAIR report;
10. Removal Agreement;
11. Real Estate Valuation Reports:
 - 2007 impact study by Horizon Associates
 - 2006 opinion letter by R.G. Bramley & Co.
 - 1998 study by Crafts Appraisal Associates
 - 1992 study by Lessard Appraisal Services
 - 1990 opinion letter by R.G. Bramley & Co.
12. Copies of AT&T's FCC licenses; and
13. Copies of equipment brochures for AT&T's proposed equipment.

II. PROPOSED FACILITY DESIGN

AT&T has determined that significant coverage gaps exist in its network in Rochester, including along substantial portions of Lowell Street and the surrounding areas (collectively, the “Targeted Coverage Area”). These gaps also include areas along side roads proximate to Lowell Street and residential and business areas proximate thereto. The purpose of the Facility is to address these coverage gaps, referred to hereinafter as the “Targeted Coverage Area.”

As shown on the enclosed plans, AT&T proposes to construct, operate and maintain a Wireless Communication Facility consisting principally of the following elements:¹

- 1) A 150' high, multi-carrier monopole tower within a 50' x 50' fenced equipment compound;
- 2) Twelve (12) multi-band (700/850/1900/2100 MHz) panel antennas (four per sector) on an antenna platform mounted at a centerline elevation of 146'± above ground level on the monopole tower;
- 3) Twenty-seven (27) remote radio units (“RRUs”) (nine per sector);
- 4) Four (4) surge arrestors pipe-mounted below the antenna platform;
- 5) Two (2) fiber-optic trunks, eight (8) DC power trunks and 3 RET lines running from the antennas, down the monopole tower and across an ice bridge to AT&T's radio and electronic equipment housed in a prefabricated 11'-5" x 16' equipment shelter located at the base of the monopole tower;
- 6) Up to three (3) GPS antennas;
- 7) A generator and related facilities on a concrete pad for back-up power in the event of an emergency;
- 8) Electric and telephone utilities and a meter bank within the fenced equipment compound, together with a pad-mounted transformer outside of the fenced compound;
- 9) A 6' high chain link fence with three strands of barbed wire (for a total height of 7'); and

¹ AT&T reserves the right to change the manufacturer, make, model, type and operating characteristics of the antennas and any other equipment based on availability, price, performance and other considerations and in accordance with all applicable laws.

- 10) A 12' wide access route (within a 25' wide access easement) to the fenced equipment compound, with improvements where necessary.

The proposed monopole will accommodate the equipment of up to four (4) wireless carriers, including AT&T. AT&T will rent space to other interested carriers at prevailing market rents. Accommodating co-location in this manner will help to minimize the number of new monopoles or other antenna support structures that may be needed in the City of Rochester.

The Facility will be an unmanned, passive use, will not generate any appreciable noise, dust or odors and will not adversely affect existing developed and natural environments around Rochester. The location of the Facility will mitigate adverse visual impacts. The Facility will enable users to access a state-of-the-art, fully digital system for voice communication, messaging, and data transmission and reception.

III. AT&T's NETWORK

AT&T is the premier wireless company in the United States, with more than 107.9 million subscribers who use the nation's fastest 4G network. AT&T is dedicated to providing customers with wireless technology designed to enrich their lives. AT&T continually raises its performance to meet and exceed customer expectations.

AT&T is licensed by the FCC to provide wireless communication services across the country and throughout New Hampshire, including the City of Rochester and surrounding communities. Wireless coverage is provided by the placement of a number of low power antenna sites within a given area. The sites are geographically spaced so that the coverage from each site overlaps with its neighboring sites. When a connection is established on a certain site, the wireless device monitors the signal from the serving site, as well as the signals of all of the adjacent sites. When the wireless device receives a stronger signal from an adjacent site, it requests a transfer from the site it is currently using to the stronger site. If there is seamless coverage provided by the carrier, the connection will transfer without interruption. If there is insufficient signal strength at the transfer point, the quality of the connection degrades and may ultimately be lost.

IV. FEDERAL TELECOMMUNICATIONS ACT OF 1996

A. General Background

AT&T's application is governed by the provisions of the Federal Telecommunications Act of 1996, which the United States Supreme Court has explained as follows:

Congress enacted the Telecommunications Act of 1996 (TCA) ... to promote competition and higher quality in American telecommunications services and to "encourage the rapid deployment of new telecommunications technologies." ... One of the means by which it sought to accomplish these goals was reduction of the impediments

imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers. To this end, the TCA amended the Communications Act of 1934 ... to include § 332(c)(7), which imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities ... 47 U.S.C. § 332(c)(7). Under this provision, local governments may not “unreasonably discriminate among providers of functionally equivalent services,” § 332(c)(7)(B)(i)(I), take actions that “prohibit or have the effect of prohibiting the provision of personal wireless services,” § 332(c)(7)(B)(i)(II), or limit the placement of wireless facilities “on the basis of the environmental effects of radio frequency emissions,” § 332(c)(7)(B)(iv). They must act on requests for authorization to locate wireless facilities “within a reasonable period of time,” § 332(c)(7)(B)(ii), and each decision denying such a request must “be in writing and supported by substantial evidence contained in a written record,” § 332(c)(7)(B)(iii).

City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 115-116 (2005) (citations omitted).

The TCA was intended to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans. The Facility will help bring these advanced telecommunications and information technologies to Rochester and adjoining communities.

B. Application of Variance Standards in light of the TCA

The appropriateness of granting the requested variances is reinforced by the TCA. In *Daniels v. Londonderry*, 953 A.2d 406 (N.H. 2008), the New Hampshire Supreme Court has specifically guided Zoning Boards of Adjustment as to how to apply New Hampshire's variance standards to be consistent with the federal Telecommunications Act. The Court affirmed the grant of a use variance and two area variances by the Londonderry Zoning Board of Adjustment to Omnipoint Communications, Inc. for a 170' monopole on property located in Londonderry's agricultural-residential zone where wireless communication facilities were otherwise not permitted. *Id.* at 411. In particular, the Court credited Omnipoint's radio frequency coverage information showing that the facility at the proposed location would fill a substantial gap in coverage. *Id.* at 410. In upholding the variance relief, the Daniels court reconciled "our statutory variance criteria, specifically, the hardship standard, with the overarching standards set forth in the TCA." *Id.* at 412.

AT&T respectfully requests that the Board grant the requested variance to allow the proposed Facility in order to address AT&T's significant coverage needs in the area in question, and to follow New Hampshire Supreme Court precedent on the very issues involved here.

V. RELIEF REQUESTED

Pursuant to Section 16.2 of the Ordinance, Telecommunications Facilities are limited to the Telecommunications District. AT&T is unable to address this significant gap in its wireless network by locating a facility within the Telecommunications District or its other existing facilities. As a result, AT&T must locate its Facility outside of the Telecommunications District and therefore requests a variance from the limitation set forth in Section 16.2 of the Ordinance.

Therefore, pursuant RSA-674:33, Section 1.4.1 of the Ordinance and the TCA, and AT&T's proposed Facility satisfies the required findings for grant of a variance as follows:²

A. The variance will not be contrary to the public interest³.

In *Chester Rod & Gun Club, Inc. v. Town of Chester*, 152 N.H. 577 (N.H. 2005), the New Hampshire Supreme Court stated that, "The first step in analyzing whether a variance would be contrary to the public interest or injurious to the rights of others is to examine the applicable zoning ordinance." *Id.* at 581. The Court noted, "As the provisions of the ordinance represent a declaration of public interest, any variance would in some measure be contrary thereto." *Id.* (quoting *Heffernan v. Zoning Board of Review*, 50 R.I. 26 (R.I. 1929)). "Thus, to be contrary to the public interest or injurious to the rights of others, the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives'." *Id.* (quoting *Coderre v. Zoning Board of Review of City of Pawtucket*, 105 R.I. 266, 273 (R.I. 1969)).

The variance will not conflict with the basic objectives of Rochester's Zoning Ordinance. Rather, as demonstrated in the "spirit of the ordinance" criteria discussion below, the grant of the requested variance is consistent with the Rochester Zoning Ordinance concerning telecommunications facilities as set forth in Section 42.24A.

The requested variance will promote the public interest by bringing advanced, improved wireless telecommunications to the citizens, residents, businesses, visitors and travelers in under-served areas of the City of Rochester. The Facility will enhance communications for voice, data and in-building applications. In addition, the Facility will promote public safety in the event of fire, flood, panic and other dangers. The Facility will enable users of AT&T's network to communicate immediately with police, fire, EMT, and other public officials in the event of a fire, accident, or other medical emergency or natural disaster. The concealed Facility will also serve the public interest

² Section 42.28(C) of the Ordinance incorporates by reference the variance criteria set forth in RSA-674:33.

by promoting co-location and helping to minimize the number of new towers in Rochester.

As the New Hampshire Supreme Court has noted, “A tower at this site would also serve the public interest in that it would alleviate a significant gap in coverage and would be used to provide service for at least two other wireless telecommunications companies to limit the need for any further towers.” *Daniels*, 953 A.2d at 414. The primary purpose of AT&T’s application is the same as the proponent in *Daniels*, i.e., to address significant coverage and capacity issues and thereby to serve the public interest in this area.

The provision of personal wireless service has become a pervasive fact of modern life, and represents a technological breakthrough in how people communicate with each other. There is a profound public interest in being able to send and receive such communications. Increasingly, the general public is relying upon wireless service for their telecommunication needs, including for personal, family, business, health care, and educational purposes. The facility here will provide coverage to an area that has poor service at present. (*See*, Radio Frequency Report, attached hereto showing existing wireless coverage without the proposed Facility and increased and improved coverage with the proposed Facility). The introduction of this service will benefit not only those members of the public who reside, regularly transact business in, or visit Rochester but also those who are traveling in the area as well.

The Facility would not generate any objectionable noise, odor, fumes, or traffic. The Facility will not be dangerous to public health or safety because it will comply with all FCC requirements relating to radio frequency emissions and all New Hampshire building code requirements.

B. The spirit of the Ordinance is observed.

To the extent feasible AT&T’s proposed Facility is consistent with the requirements of the Ordinance concerning wireless communications facilities set forth in Section 42.24A of the Ordinance as follows:

42.24 A. Wireless Communications Facilities

- a) **Commercial Facilities.** Any plan to install wireless facilities for the commercial transmission or reception of telecommunications shall be subject to the specific requirements detailed herein and elsewhere in the Zoning Ordinance and Site Plan Regulations. Commercial wireless communications facilities that were approved and constructed prior to the effective date of this amendment are subject to Section 8 and 9 below. Commercial wireless communications facilities shall not be considered accessory uses. (See 42.24A(b) for standards applicable to noncommercial facilities.)

As set forth herein and within the Site Plan application to be submitted to the Planning Board, AT&T's proposed Facility complies with the applicable requirements set forth in the Ordinance and Site Plan Regulations.

- (1) Co-Location All commercial wireless communication facilities erected or located within the municipality shall comply with the following:**

A proposal for a new wireless communications facility may only be approved subsequent to a determination to be made by: (a) the Zoning Board of Adjustment, as part of a consideration for a special exception, in zoning districts where a WCF is permitted by special exception (See Special Exceptions) in this chapter or (b) the Planning Board as part of the site plan review process, in zoning districts where a wireless is permitted by right - that the telecommunications equipment planned for the proposed site cannot be accommodated on any existing or approved antenna support structure in the City of Rochester or on any prospective alternative tower structure in the City of Rochester for one of the following reasons:

- (A) The planned equipment would exceed the structural capacity of the existing or approved antenna support structures, as documented by a qualified professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.**
- (B) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the antenna support structure as documented by a qualified professional engineer and the interference cannot be prevented at a reasonable cost.**
- (C) Existing or approved antenna support structure within the required radius cannot accommodate the planned equipment at the necessary height as documented by a qualified professional engineer.**
- (D) Any other substantial reason that precludes the co-location. The burden of proof is upon the applicant to demonstrate that all reasonable alternatives to the erection of a new structure have been fully explored.**

As set forth in the RF Report and Alternatives Analysis submitted herewith, there are no existing or approved antenna support structures, towers, or other structures located in the area within which AT&T has

identified this significant gap in its wireless coverage network. As a result, the proposed Facility, including the proposed monopole, is necessary in order to address AT&T's significant gap in coverage.

(2) Design. Facilities shall be designed to blend into the environment through the use of color and camouflaging architectural treatment (unless otherwise dictated by the FAA or other government authority).

The proposed Facility has been designed to blend into the environment to the extent feasible. The proposed Facility has been located on the Property to minimize its visibility. The proposed location uses the existing vegetation on and near the Property in order to screen it from view to the extent feasible. In addition, the proposed monopole will be a non-reflective galvanized steel gray unless otherwise required by FAA or other regulations.

(3) Height. The maximum permitted height from grade is as follows:

- (A) 60 feet if the structure is designed to accommodate only one service provider.**
- (B) 100 feet if the structure is designed to accommodate two service providers.**
- (C) 140 feet if the structure is designed to accommodate three service providers.**
- (D) 180 feet if the structure is designed to accommodate four or more service providers.**

AT&T's proposed Facility complies with the height requirements of this provision of the Ordinance. AT&T's proposed Facility, including the proposed 150 foot monopole, will accommodate at least four service providers.

(4) Accessory Utility Structures All utility structures accessory to a tower shall also be designed to blend in with the environment and shall meet the minimum setback requirements of the zoning district. Ground mounted equipment shall be screened from view by suitable vegetation or by any other screening method which blends with the architectural character of neighborhood.

As depicted on the Plans, AT&T's proposed equipment shelter and accessory utilities will be screened from view by the existing vegetation on and near the Property. Further, AT&T's proposed Facility is located at approximately 125± feet from the nearest side lot line, approximately 862 ± feet to Lowell

Street and approximately 521± feet from the rear lot line . Therefore, the proposed Facility complies with all applicable setback requirements within the Residential-1 zoning district.

- (5) Lighting. Antennas and support structures shall not be illuminated and shall not display strobe lights unless specifically required by the FAA or another governmental authority. Where lighting is required by the FAA other options (including but not limited to reducing the height of the support structure) to the extent practicable shall be explored which would remove said requirement for lighting.**

AT&T is performing the necessary studies to determine whether marking and/or lighting will be required pursuant to FAA or other regulations. AT&T will comply with the requirements set forth by the FAA or other applicable authority.

- (6) Temporary Wireless Communications Facilities. Any facility designed for temporary use (as defined in 42.6), is subject to the following:**

- (A) Use of a temporary facility is allowed if the owner has received a use permit from the Rochester Code Enforcement.**
- (B) Temporary wireless facilities are permitted for use not to exceed 30 days during construction of permanent facilities or 10 days during a special event.**
- (C) The maximum permitted height of a temporary wireless facility is 50 above grade.**
- (D) Temporary facilities are subject to all applicable portions of Ordinances.**

The above provisions of the Ordinance concerning temporary wireless communications facilities are not applicable to AT&T's proposed Facility.

- (7) Interference with Public Safety Telecommunications. No new or existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Telecommunications providers shall notify the Police and Fire Departments at least ten calendar days in prior to placing new services on line to give those Departments an opportunity to monitor interference levels during the testing process.**

AT&T's proposed Facility will not interfere with public safety communications.⁴

- (8) Declaration of Continuing Operation.** The owner of a wireless facility, with written authorization from the property owner, shall file annually a declaration with the Planning Department as to the continuing operation of every facility installed subject to these regulations. Failure to do so may be construed to mean that the facility is no longer in use and considered abandoned, thus subject to the provisions of (9), below.

AT&T will comply with this provision of the Ordinance to the extent lawful and applicable and otherwise reserves its rights.

(9) Abandoned or Unused Wireless Communications Facilities.

Abandoned or unused antennas and structures shall be removed as follows:

- (A) An agreement between the facility owner (and successors in interest), property owner (and successors in interest), and the City of Rochester which incorporates the provisions (B) through (E) of this section shall be submitted at the time of application.**
- (B) A copy of the relevant portions of a signed lease (except in cases where the land is structure, and associated facilities upon cessation of operations at the site shall be submitted at the time of the application.**
- (C) All abandoned wireless communications facilities shall be removed within 180 days of the cessation of operations at the site unless a time extension is approved by the Planning Department.**

⁴ To the extent that the Ordinance seeks to regulate interference from personal wireless services facilities, it is preempted by federal law. *See, e.g. Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2d Cir. 2000); *Southwestern Bell Wireless, Inc. v. Johnson County Board of County Commissioners*, 199 F.3d 1185 (10th Cir. 1999); *Cellular Phone Task Force v. Federal Communications Commission*, 205 F.3d 82, 88 (2nd Cir. 2000). *In re Cingular Wireless, L.L.C.*, FCC Docket No. 02-100 (July 7, 2003), the FCC held that federal law preempts a local government's attempt to regulate radio frequency interference ("RFI") with local public safety communications systems. In sweeping language, the FCC indicated that local zoning provisions having the "intent and effect ... to regulate the operations - not the placement, construction and modification - of licensed facilities" are preempted because they focus on "radio frequency regulation rather than local land use concerns" (at page 10-11). Nor are preempted local regulations saved by the claim that the local government is attempting to "assure itself that a carrier is complying with FCC standards" where the regulation is "effectively regulating federally licensed operation" as opposed to "traditional zoning regulation of the physical facility" (at page 11). Accordingly, federal law preempts any and all provisions of the Ordinance or conditions imposed within an approval affecting the operations of the FCC-licensed facility.

- (D) Unused portions of support structures above a manufactured connection shall be removed within 180 days of the time of antenna relocation. The replacement of portions of a support structure previously removed will require a new approval.**
- (E) In the event that these elements are not removed within 180 days of the cessation of operations at a site, the City of Rochester (in addition to other remedies) may remove the antenna, structure, and associated facilities and assess the cost of removal against the property or if the City must enforce the agreement required by (A) through legal measures, the landowner and facility owner shall reimburse the City for legal costs.**

In accordance with this provision of the Ordinance, AT&T has submitted herewith a redacted copy of its lease for the Property. Further, as a condition of approval, AT&T will agree to reasonable conditions concerning the removal of its Facility in the event of the cessation of operations.

- (10) Signs and Advertising. No portion of an antenna or support structure may be used for signs or advertising other than warning or equipment information signs, as appropriate.**

AT&T's proposed Facility complies with this provision of the Ordinance. AT&T's proposed Facility does not include any advertising and only includes signage identifying AT&T as the owner of the site, site identification information, and contact information. In addition, the only other signage at the Facility is signage required by the FCC or other lawfully applicable regulations.

- (11) Independent Evaluation. The City, as its option, may require, at the expense of the applicant, an independent evaluation of any wireless communications facility proposal, by a qualified licensed professional engineer selected by the City.**

AT&T will pay for any reasonable and lawful fees associated with a qualified outside consultant's review of the RF Report and related materials to be provided. AT&T requests the Board notify AT&T of potential candidates for consultation in this regard, if it determines such review is necessary, and otherwise reserves its rights.

- b) Non-Commercial Wireless Facilities. Non-commercial wireless communications facilities (including television antennas and amateur radio antennas) are exempt from review and approved that:**

- (1) **These facilities shall not be illuminated and shall not contain any advertising signage.**
- (2) **Freestanding structures must be located behind the primary rear building façade and in conformance with all side and rear setback requirements or otherwise located and designed so as to be unobtrusive from the street or other public rights-of-way.**
- (3) **Free standing structures may not exceed 49 feet in height and building mounted structures may not be higher than 20 feet above the ridge of the roof unless the applicant demonstrates to the reasonable satisfaction of the Planning Department that such height is necessary for the intended amateur radio communications (for reference see the Federal Communications Commission's preemptive ruling PRB1 regarding amateur radio antennas.**

These provisions of the Ordinance are not applicable to AT&T's Facility. AT&T is not proposing a non-commercial wireless facility.

- c) Commercial Wireless Facilities Performance Criteria. Height regulations, setback distances, types of new facility applications shall be as prescribed in Table 3. See attached "APPENDIX C."**

Pursuant to Appendix C, no additional height regulations, setback distances, are required for the proposed Facility located within the Residential-1 zoning district.

- C. By granting the variance, substantial justice is done.

Substantial justice would be done by granting the requested variance. As demonstrated by the Radio Frequency Report included with this application, the significant coverage and capacity problems cannot be addressed by any other feasible means, and use of the subject site is necessary for the Facility. The proposed Facility will improve the provision of wireless communications services in the City in areas that currently have significant coverage and capacity problems. See *Daniels*, 953 A.2d at 414 ("A tower at this site would also serve the public interest in that it would alleviate a significant gap in coverage and would be used to provide service for at least two other wireless telecommunications companies to limit the need for any further towers. In addition, Omnipoint showed that substantial justice would be done in granting the variances because it was the only reasonable way to remedy an existing gap in coverage.") Consistent with the *Daniels* decision, granting the variances will achieve the substantial justice of allowing AT&T to provide adequate coverage to its significant gap in coverage, while complying with the City's Ordinance to the extent feasible.

D. By granting the variance, surrounding property values are not diminished

AT&T's proposed Facility has been carefully sited to minimize adverse impacts to surrounding properties. The remote siting of the Facility on the property and the natural buffer and screening provided by the substantial surrounding tree cover and existing vegetation will minimize its visibility from surrounding properties.

AT&T has submitted copies of numerous reports from the record appendix in the *Daniels* case that analyze the question whether wireless towers (such as the proposed Facility) diminish the value of surrounding residential properties as to other towers in similar settings. The conclusions of the *Daniels* case and of these reports underscore that wireless towers do not diminish the value of surrounding residential properties:

- 1) A 2007 impact study by Horizon Associates, undertaken to analyze the impact of the proposed 170' tower in Londonderry, New Hampshire at issue in the Daniels case. The study examined paired sales of nearly identical properties, of which one property was in the vicinity of a tower and the other property was not in the vicinity of a tower. The study concluded that market value of properties in the vicinity of the proposed Londonderry tower would experience no diminution in value.
- 2) A 2006 opinion letter by R.G. Bramley & Co., submitted to the Cornish, New Hampshire ZBA in connection with the proposed construction of a 190' lattice tower, indicating that, based upon studies of similarly situated towers, construction of the proposed tower would not be expected to diminish the value of properties surrounding the proposed tower in Cornish.
- 3) A 1998 study by Crafts Appraisal Associates examining the impact of wireless towers on property values in Bedford, Nashua, Merrimack, Candia, Manchester and Exeter, New Hampshire, which concluded that wireless towers did not detrimentally affect values of nearby properties in the subject communities.
- 4) A 1992 study by Lessard Appraisal Services, analyzing the impact of a 190' tower in Candia, New Hampshire, which concluded that towers in the area did not diminish property values.
- 5) A 1990 report completed for the proposed construction of a 280' tower in Auburn, New Hampshire, which found no diminution of value in the value of properties located near existing towers in Chester, Candia, Hudson or Merrimack, New Hampshire.

Furthermore, the proposed use is a passive use, and does not generate noise, smoke, fumes or any significant vehicle traffic. For all of these reasons, there will not be any diminution of surrounding property values. Indeed, set forth herein, the proposed Facility would

provide enhanced, state-of-the-art wireless services to residents, visitors and businesses in Rochester, thereby contributing to the local economy and preserving, not diminishing, property values.

- E. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of the property that distinguish it from other properties in the area.
- a. There is no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of that provision to the property.
 - b. The proposed use is a reasonable one.

AT&T has an immediate and compelling need for a location for its communications antennas in this area of Rochester because (a) AT&T has significant coverage and capacity problems in the area of the proposed Facility and (b) AT&T cannot address these problems from an existing facility sited within other areas of the City of Rochester or in abutting cities or towns. The purpose of the proposed Facility is to address these coverage and capacity problems. Without a Facility at the subject property, AT&T will suffer an unnecessary hardship from a literal enforcement of the ordinance. The property is “special” due to its size, topography and location proximate to the area requiring service. As demonstrated by the Plans submitted herewith, the extensive tree cover and vegetation which will mitigate the visibility of the proposed Facility also distinguish the property from other properties in the area. This unique set of facts demonstrates that the proposed Facility is appropriate to the area and the site.

The variance will not conflict with the basic objectives of Rochester's Zoning Ordinance. Rather, as set forth above in the “spirit of the ordinance” criteria discussion, the grant of the requested variance is consistent with the purposes of the Rochester Zoning Ordinance concerning telecommunications. By granting the requested variance to allow the proposed Facility, AT&T will be permitted to address a significant gap in its coverage, thereby enhancing wireless communications services in the vicinity of the Property without having any material impact on the surrounding area.

AT&T has demonstrated that the proposed Facility conforms to those purposes as detailed more fully in the “spirit of the ordinance” criteria discussion herein. Therefore, applying the Ordinance to prohibit this use on this unique parcel will bear “no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of [those] provisions to the property.”

The proposed Facility is a reasonable use of the property, given AT&T's immediate and compelling need to address coverage and capacity problems in this area of Rochester. The size of the property and the natural buffer and screening provided by the surrounding tree cover and existing vegetation also make this an ideal location for the proposed Facility.

In the 2008 *Daniels* decision, the New Hampshire Supreme Court restated the hardship standards for use and area variances in *Simplex Technologies v. Newington*, 145 N.H. 727 (2001) and *Boccia v. Portsmouth*, 151 N.H. 85 (2004), respectively and introduced a new perspective on the interplay between the standards and the TCA.⁵ *Daniels* at 411-412. The Court held that:

[W]e believe that a broader, more inclusive view of hardship is required under these circumstances. When an application to build a wireless telecommunications tower is designed to fill a significant gap in coverage, the suitability of a specific parcel of land for that purpose should be considered for purposes of determining hardship. The fact that a proposed location is centrally located within the gap, has the correct topography, or is of an adequate size to effectively eliminate the gap in coverage, are factors that may make it unique under the umbrella of the TCA. Similarly, that there are no feasible alternatives to the proposed site may also make it unique. Thus, although a parcel of land may be similar to the surrounding properties in terms of its general characteristics, it may still be 'unique' for purposes of hardship when considered in light of the TCA.

AT&T's site in Rochester is strikingly similar to the Omnipoint property in Londonderry. The subject site is uniquely and ideally situated within AT&T's target coverage area, and AT&T has amply demonstrated through the radio frequency report and coverage maps

⁵ As the Board is aware, the variance statute NH RSA 674:33 was amended in 2009 to harmonize the variance standards for use and area variances. The New Hampshire Legislature included a Statement of Intent regarding the amendment (2009, 307:5, eff. Jan. 1, 2010) that provided: "The intent of section 6 of this act is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court...." There was a bill filed in the New Hampshire Senate (NH SB 317) that would have reinstated the pre-2009 amendment variance standard and effectively reinstated the prior case law, but it has not been enacted at this time. Either way, the *Daniels* case remains good law given the Legislature statements regarding incorporation of the standards of the *Simplex* case and its progeny.

that there are no feasible alternatives that would address the coverage gaps and capacity problems, which will be further demonstrated through testimony at the public hearing.

As the *Daniels* Court stated, "With respect to the 'uniqueness' factor, the evidence before the ZBA demonstrated the necessity of a tower, at the height ultimately approved, on the proposed parcel, in order to fill what could be considered a significant gap in coverage." *Id.* at 412 - 413. AT&T's proposed Facility is necessary for similar reasons.

VI. CONCLUSION

AT&T respectfully requests the Board to grant the requested variance and any other zoning relief required for the proposed Facility. AT&T respectfully requests that the Board schedule this application for a public hearing at its next meeting for which proper notice can be given.

If I can provide any further information regarding this application, please let me know.

Sincerely,



Brian S. Grossman

Enclosures

cc: John Nestor (by email w/encl.)
Jessica Rincon (by email w/encl.)
Stephen D. Anderson (by email w/encl.)



March 11, 2014

Zoning Board of Adjustment
City of Rochester
31 Wakefield Street
Rochester, NH 03867

RE: Applicant: New Cingular Wireless PCS, LLC ("AT&T")
 Property Owner: Joseph P. Casavant
 Property: 156A Lowell Street, Rochester, New Hampshire
 Parcel ID 244-2-1 (the "Property")

Dear Board Members:

New Cingular Wireless PCS, LLC ("AT&T") is applying for zoning relief to construct and operate a telecommunications tower and facility to be located on the Property. Section 42.24A(a)(9) of the City of Rochester Zoning Ordinance (the "Ordinance") provides as follows:

9) Abandoned or Unused Wireless Communications Facilities.

Abandoned or unused antennas and structures shall be removed as follows:

- (A) An agreement between the facility owner (and successors in interest), property owner (and successors in interest), and the City of Rochester which incorporates the provisions (B) through (E) of this section shall be submitted at the time of application.**
- (B) A copy of the relevant portions of a signed lease (except in cases where the land is owned by the provider) which requires the applicant to remove the antenna, support structure, and associated facilities upon cessation of operations at the site shall be submitted at the time of the application.**
- (C) All abandoned wireless communications facilities shall be removed within 180 days of the cessation of operations at the site unless a time extension is approved by the Planning Department.**
- (D) Unused portions of support structures above a manufactured connection shall be removed within 180 days of the time of antenna relocation. The replacement of portions of a support structure previously removed will require a new approval.**

- (E) **In the event that these elements are not removed within 180 days of the cessation of operations at a site, the City of Rochester (in addition to other remedies) may remove the antenna, structure, and associated facilities and assess the cost of removal against the property or if the City must enforce the agreement required by (A) through legal measures, the landowner and facility owner shall reimburse the City for legal costs.**

Pursuant to Section 42.24A(a)(9)(B) of the Ordinance, attached to this letter is a copy of the relevant portions of AT&T's signed lease with the Property Owner which requires A&T& to remove its communications facility from the site upon expiration or termination of the lease.

Subject to the foregoing lease provision, pursuant to Section 42.24A(a)(9)(A) of the Ordinance, please accept this letter as AT&T's written agreement to abide by provisions (B) through (E) of Ordinance Section 42.24A(a)(9) with respect to the removal of its abandoned wireless communications facility within 180 days of the cessation of operations at the site, unless a time extension is approved by the Planning Board.

This commitment is, of course, premised on AT&T obtaining all applicable governmental permits and approvals for the facility and on the facility being built pursuant thereto and subject to the Telecommunications Act of 1996, 47 U.S.C. §332(c), the Wireless Facilities Deployment Law, 47 U.S.C. §1455, enacted as Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, and any other federal law.

Sincerely,

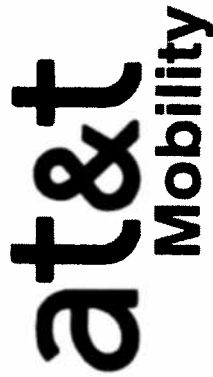
Kevin Mason
Area Manager – Construction and Engineering
Site Acquisition for the New England Market

ACCEPTED AND AGREED:

Joseph P. Casavant

ACCEPTED AND AGREED:

City of Rochester



**ROCHESTER LOWELL STREET
SITE NO.: S4143B
156A LOWELL ST. STREET
ROCHESTER, NH 03867**



3400 WEST SHORE DRIVE
SUITE 1-A
NAPERVIL, ILL. 60540

ROCHESTER
LOWELL STREET
SITE NO.: 841435

CONSTRUCTION DRAWINGS

[illegible]

Dewberry Engineers Inc.



CLASSIFIED BY:	IN
REVIEWED BY:	048
CHECKED BY:	MBP
PROJECT NUMBER:	10037973
JOB NUMBER:	8001284
SW ADDRESS:	156A LOWELL STREET ROCHESTER, NH 03861
SHEET TITLE:	

156A LOWELL STREET
ROCHESTER, NH 03867

TITLE SHEET

WILEY

SIT. NO.	DESCRIPTION
1-1	TITLE SHEET
1-2	GENERAL NOTES
2-1	ADDITIONAL PLAN - 1
2-2	ADDITIONAL PLAN - 2
2-3	CHANGING PLAN
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ATLANTA
150A LINDL ST.
ROCKFORD, NH 03067

APPROVAL	DATE
APPROVAL	DATE
APPROVAL	DATE
APPROVAL	DATE

PROJECT DESCRIPTION
<p>A PROPOSED EQUIPMENT IN-LEAK AND DIESEL GENERATOR SHALL BE INSTALLED AT GRADE ABOVE A PROPOSED 30" ØST FORCED COMPOUNDING TUNNEL (132" PANEL, AIRFRAME (4) SECTION) AND ASSOCIATED 800-PSI/INCH PROTECTIVE WALL BE INSTALLED ON A PROPOSED 30" TALL MONOPOLIC PIPE WITH A 12" ØST. THE WALL SHALL BE 12" THICK AND SHALL BE 12" FROM AN EXISTING UTILITY POLE OFF OF LOCAL STREET.</p>

THE DOCUMENT WAS DEVELOPED TO REFLECT A SPECIFIC SITE AND ITS SITE CONDITIONS AND IS NOT TO BE USED FOR ANOTHER SITE OR UNDER OTHER CONDITIONS. PERMANENT SOURCE OF THIS DOCUMENT IS AT THE BULL HORN OF THE LAGOON.

STE JAMES
ROCKSTON LAMBL H. HWY

STE KASPER
84-138

PROPERTY CHANGES
JANUARY 9 COMMUNITY
10 ELIZABETH ST
BOSTONMASS 02116

STATE OF MASSACHUSETTS
SAC CIVIL RIGHTS DIVISION
WASHINGTON, D C 07101

ELECTRIC INDUSTRY
PUBLIC SERVICE OF NEW HAMPSHIRE
(603) 866-7794

TELEPHONE INDUSTRY
NATIONAL ASSOCIATION
(800) 880-2801

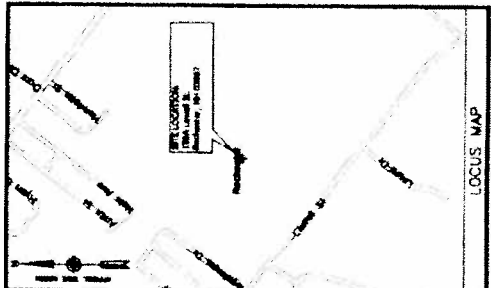
COORDINATES
OFFICE OF THE CLERK (GENERAL)
UNIVERSITY MICROFILMS INTL
SERIALS ACQUISITION
300 N ZEEB RD
ANN ARBOR MI 48106

CONCRETE
CONCRETE CONSTRUCTORS, INC.
3800 WILSON BLVD.
BOSTON, MA 02217
PHONE (617) 890-2400
FAX (617) 890-3315
CONTACT: ROGER A. BARNES

PIPE JACKING
S.P.A.I.
320 WEST PINE AVE
SUITE 1-4
WHEELING, IL 07044
PHONE (708) 737-0818
CONTACT: JOSE HESTER

CONCRETE
S.P.A.I.
320 WEST PINE AVE
SUITE 1-4
WHEELING, IL 07044
PHONE (708) 737-0818
CONTACT: JOSE HESTER

CONSULTANT TEAM

[illegible]

X3GN1 133HS
SHEET INDEX



550 DOCKLATE ROAD
SUITE 13 & 14
FRAMINGHAM, MA 01701

npmi

781-727-0510

328 WEST SHORE DRIVE
SUITE 1-4
MARLBOROUGH, MA 01545

ROCHESTER
LOWELL STREET
SITE NO.: S4143B

CONSTRUCTION DRAWINGS	
0	03/05/14 FOR SUBMITTAL
A	02/10/14 FOR COMMENT

Dewberry

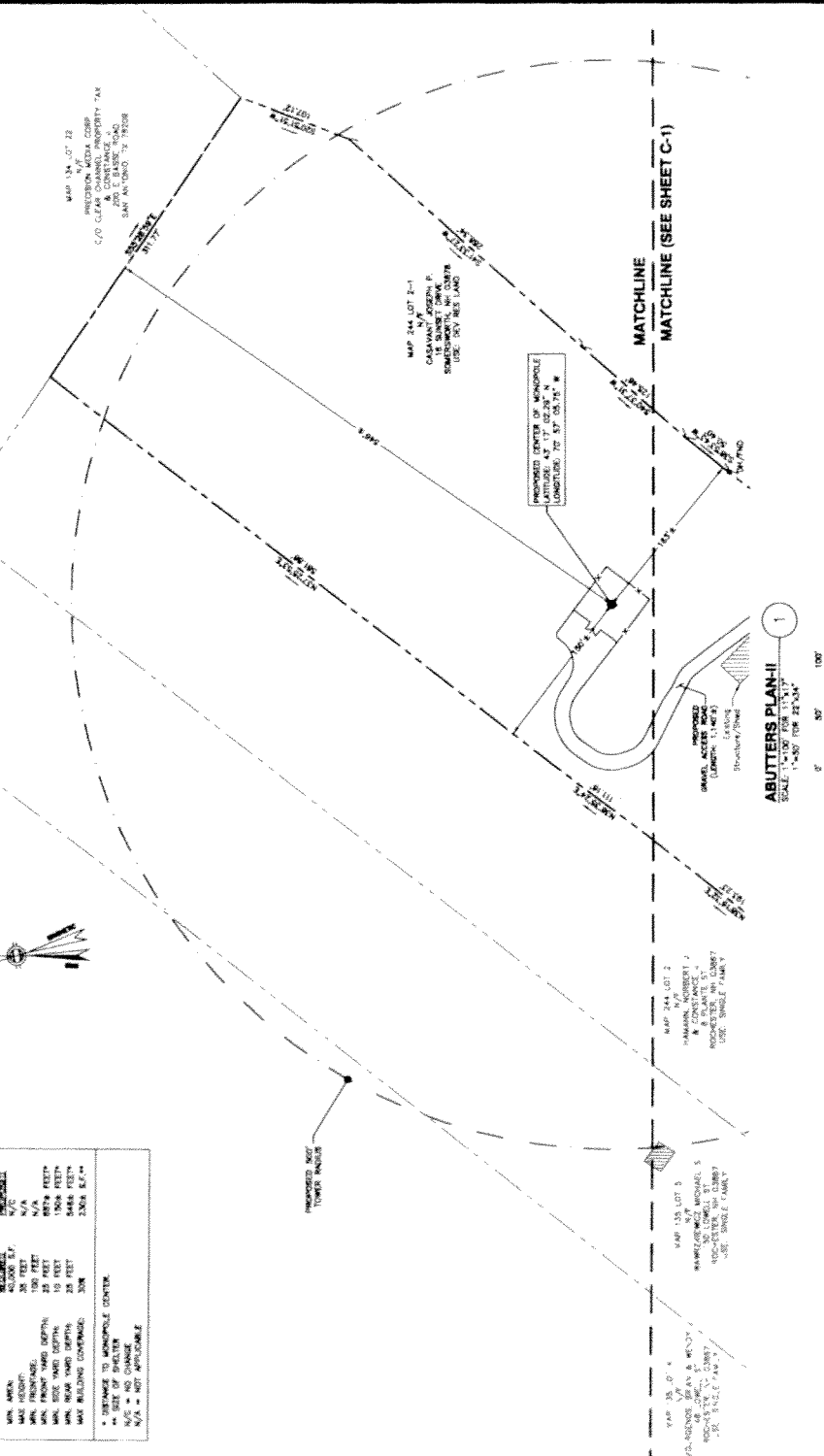
Dewberry Engineers Inc.
100 BROAD STREET
SUITE 200
ROCHESTER, NH 03867



DRAWN BY	SK
REVIEWED BY	DM
CHECKED BY	DM
PROJECT NUMBER	5027973
SHEET NUMBER	5028-2A
SITE ADDRESS	156A LOWELL STREET ROCHESTER, NH 03867
SHEET TITLE	
ABUTTERS PLAN - II	
SHEET NUMBER	

C-2

LEGEND	
LOCUS PROPERTY LINE	Existing Structure
Edge of Property	
500' TOWER RADUS	



ZONING INFORMATION	
DISTRICT: RESIDENCE 1 (R-1)	
MIN. AREA	1.5 ACRES
MAX. HEIGHT	35 FEET
MIN. FRONTAGE	150 FEET
MIN. FRONT YARD DEPTH	25 FEET
MIN. REAR YARD DEPTH	25 FEET
MAX. BUILDING COVERAGE	30%
* REFERENCE TO CONFORMANCE CENTER	
N/C = NO CHANGE	
N/A = NOT APPLICABLE	

NOTES:
1. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
2. SCALE: 1" = 100' FOR 25' X 35' PLAN.

550 COCHITUATE ROAD
SUITE 13 & 14
FRAMINGHAM, MA 01701

ind
NAMEPASHMENT

Project Management Services
781-727-6516
3328 WEST SHORE DRIVE
SUITE 1--A
MARBLEHEAD, MA 01945

ROCHESTER
LOWELL STREET
SITE NO.: S4143B

INSTRUCTION DRAWINGS

[illegible]

Dowberry:

Dewberry Engineers Inc.
200 WASHINGTON STREET
5TH FLOOR
ROCKTON, MA 01567
PHONE: 517.888.5420
FAX: 517.888.3950



For a complete overview of the current state of research on the topic, see the following review articles:

[illegible]

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IS A LOWELL STREET?

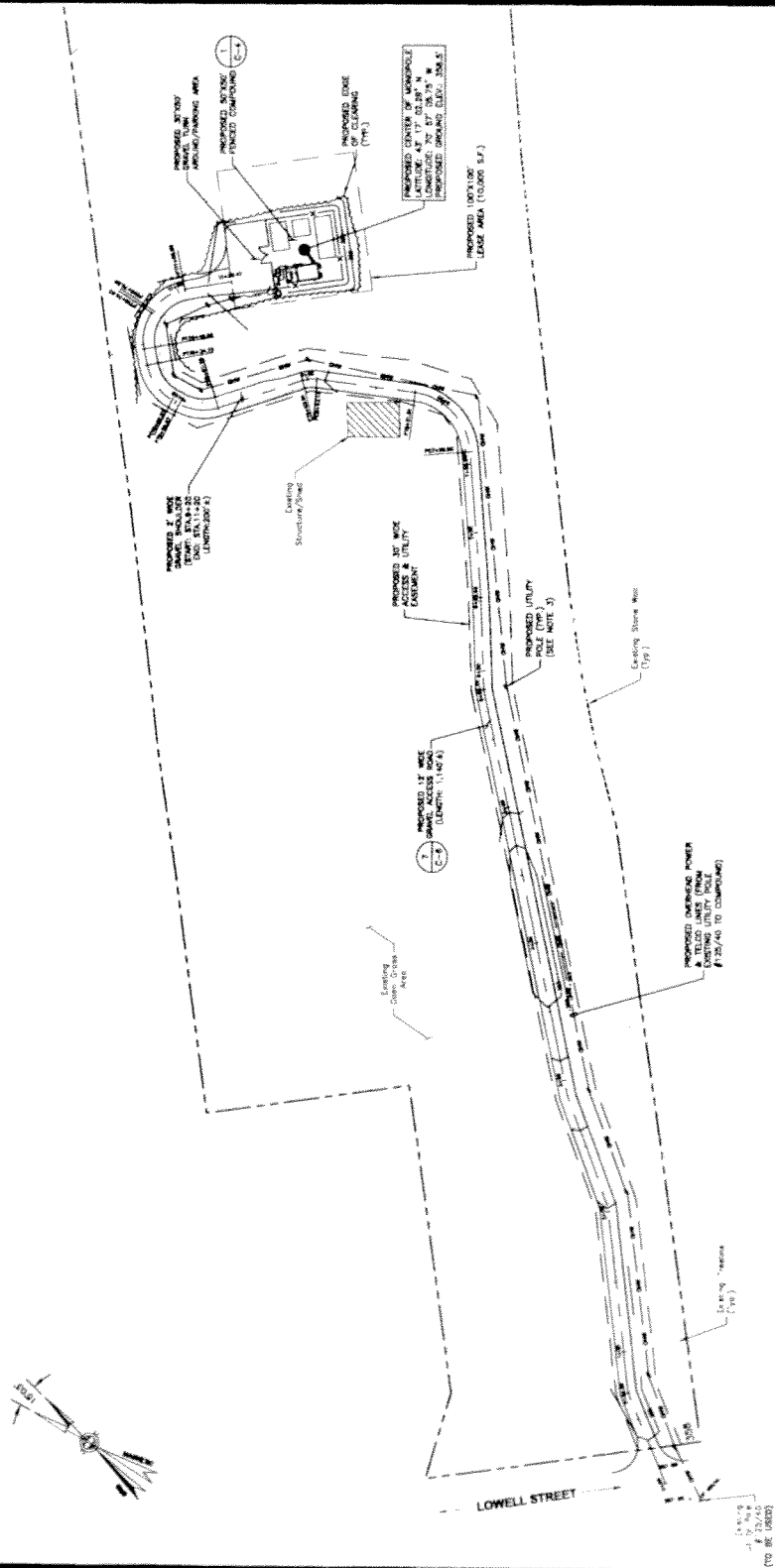
156A LOWELL STREET
ROCHESTER, NH 03867

STILL AHEAD

GRADING PLAN

Journal of Interpersonal Violence

3-0























GRADING PLAN

SCALE: 1 = none, 2 = moderate, 3 = severe



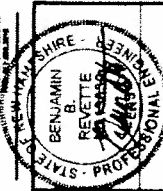
LEGEND

																			
PROPOSED LEASE AREA	LOCAL PROPERTY LINE	PROPOSED UTILITY POLE	PROPOSED CENTRAL	Existing Corridor	PROPOSED ROAD CENTERLINE	PROPOSED ACCESS & UTILITY EASEMENT	PROPOSED TOPE OF DRAINAGE	Existing Traverse	PROPOSED CHANGING FENCE	PROPOSED OVERHEAD WIRE	Existing Stone Wall								

[illegible]

1. SOME CUSTING AND PROVIDED INFORMATION ARE NOT KNOWN FOR CLARITY.
2. TOTAL AREA TO BE REMOVED ESTIMATED 14,472 SQ. FT. (3,444 ACRES). THE TOTAL INCLUDES THE PROPOSED ACCESS ROAD, GRAVE, CONCRETE AND CURB/PAVEMENT AREAS.
3. LOCATION, SPACING, FREQUENCY AND TOTAL NUMBER OF PROPOSED STREET POLES WILL BE DETERMINED BY THE LOCAL STREET DEPARTMENT.

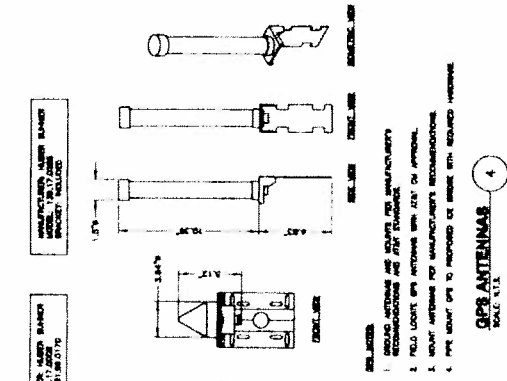
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CONTRACTOR TO WATKINS FARM, FARMER, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2



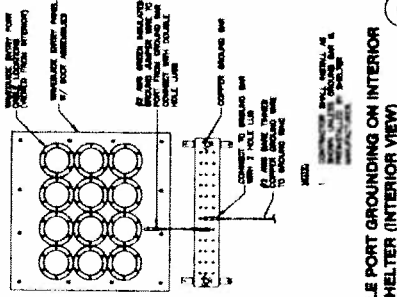
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JOB NUMBER	3087224
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156A LOWELL STREET ROCHESTER, NH 03867	
PERMIT NO.	

CONSTRUCTION DETAILS—

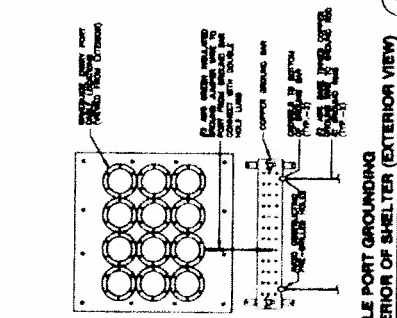
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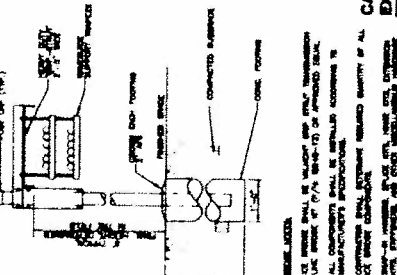
CABLE PORT GROUNDING ON INTERIOR OF SHELTER (INTERIOR VIEW)



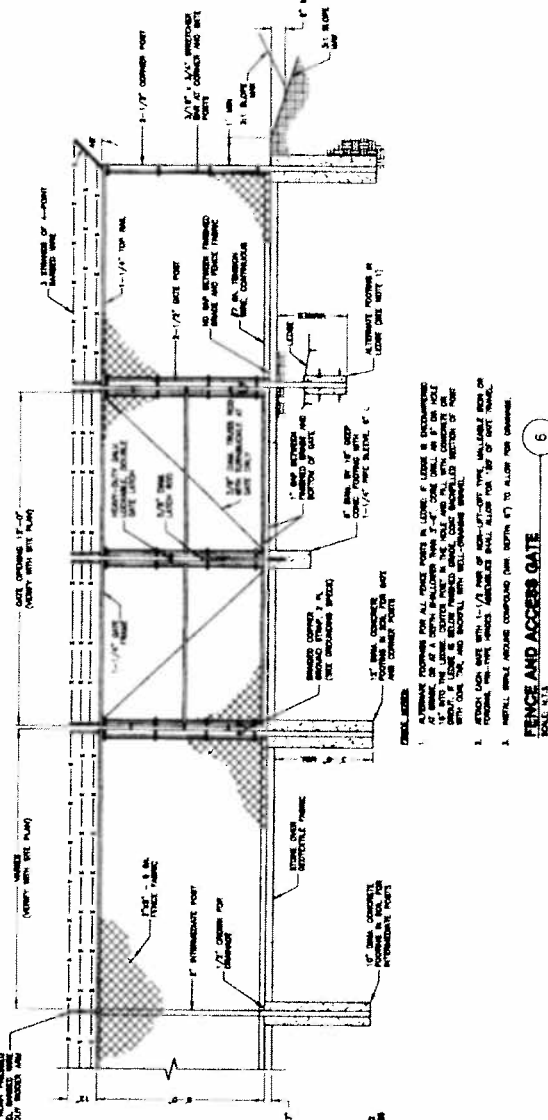
**CABLE PORT GROUNDING
EXTERIOR OF SHELTER (EXTERIOR VIEW)**



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DATE 08-01-2010 BY 60322 UCBAW/SAB/STP

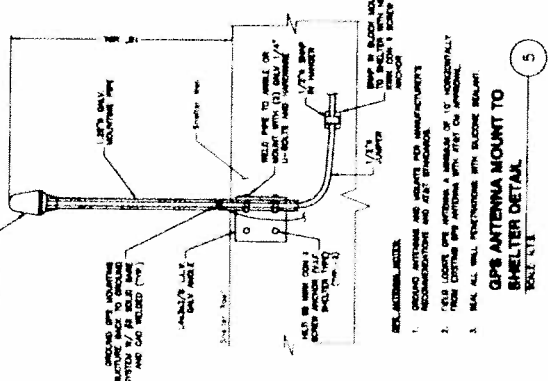


GP8 A1
SCALE 11.8

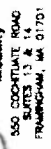


FENCE AND ACCESS GATE

**GPS ANTENNA MOUNT TO
SHELTER DETAIL**



IN DE



npmi
National Payment Management Institute
781-777-6510
328 WEST SHORE DRIVE
SUITE 1-A
WARREN, MA 01845

ROCHESTER
LOWELL STREET
SITE NO.: 84143B

[illegible]

Dowberry.

Dewberry Engineers Inc.
250 PLAZA STREET
14TH FLOOR
BOSTON, MA 02108
617-552-2000, 617-552-2000



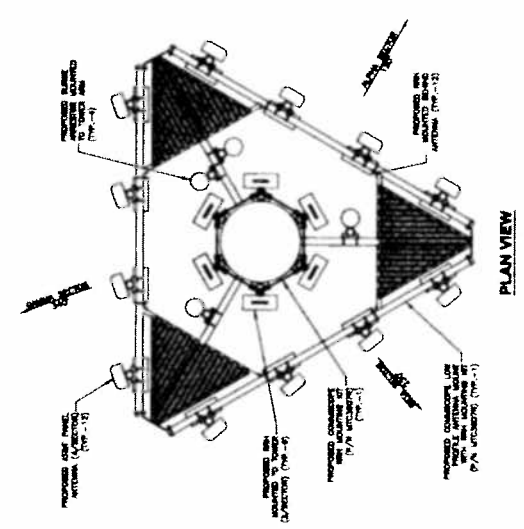
OWNER BY	SW
REPORTED BY	GAB
CHECKED BY	IMP
PROJECT NUMBER	6003772
JOB NUMBER	5008124
SPS ADDRESS	

156A LOWELL STREET
ROCHESTER, NH 03867

FULL TEXT

ANTENNA MOUNTING
DETAILS & RF SCHEDULE

C-7



PROPOSED ANTENNA MOUNTING DETAIL.
SCALE 1/2"

RF SCHEDULE & B.O.M.*											
SECTION	ANTENNA	LENGTH (FEET - INCHES)	NO. OF CABLES	Mechanical Components	Electrical Components	SWR	ADDITIONAL COMPONENTS	REF. CABLES	FEED	DC LEADS	SHIELD
1A	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1B	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-12 (1) SWR-13	-				
1C	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11	-				
1D	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1E	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1F	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1G	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1H	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1I	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1J	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1K	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1L	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1M	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1N	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1O	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1P	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1Q	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1R	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				
1S	90°-20°-90°-10°	1.80'	14#	0	7/7	(1) SWR-11 (1) SWR-12 (1) SWR-13	(1) AS MODULE				

* IF SCHEDULE BASED ON 90°-20°-90°-10° DATED 7/7/76, CONSTRUCTOR TO VERIFY FINAL SIZE AND CABLE LENGTH PRIOR TO CONSTRUCTION.

RF SCHEDULE & B.O.M.
SCALE 1/4" = 1'

2



judi
MASTROBONNETT
Project Management Services
781-727-6816

328 WEST SHORE DRIVE
SUITE 1-A
WATERBURY, MA 01845

ROCHESTER
LOWELL STREET
OFFICE NO. 214-1227

CONSTRUCTION DRAWINGS	
0	03/05/14 FOR SUBMITTAL
A	02/10/14 FOR COMMENT

Dowberry.

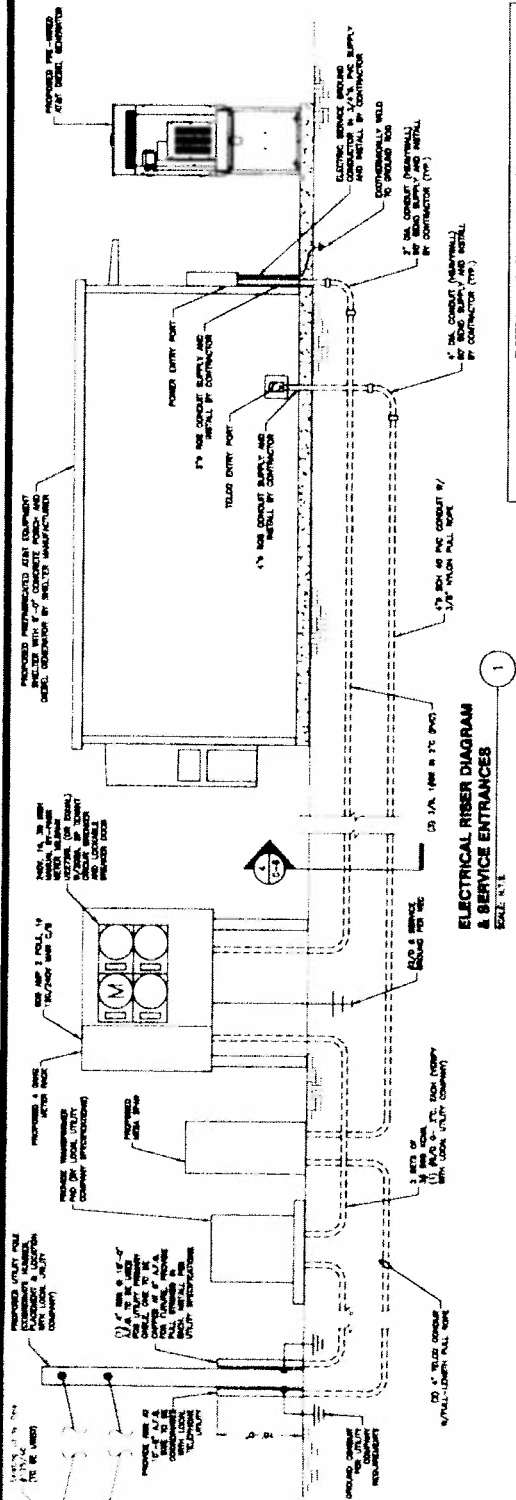
Demberry Engineers Inc.
ONE BLANDFORD STREET
NORTH FLOOR
ROSLINDALE, MA 02130
TEL: 617/252-2400



DATE: 04/01/84	BY: JH
REVIEWED BY: CME	
CHECKED BY: BBA	
PROJECT NUMBER: 86037972	
JOB NUMBER: 80861584	
BY: JACOBSON	
56A LOWELL STREET ROCHESTER, NH 03867	
SHEET TITLE	

ELECTRICAL RISER
DIAGRAM

11



ELECTRICAL RISER DIAGRAM & SERVICE ENTRANCES

THE

ELECTRICAL AND TELEPHONE CONTACTS			
POWER COMPANY:	PUBLIC SERVICE OF NEW HAMPSHIRE	TELEPHONE COMPANY:	PATRIOT COMMUNICATIONS
PHONE NUMBER:	(603) 868-7794	PHONE NUMBER:	(603) 864-2041

ELECTRICAL AND TELEPHONE GENERAL NOTES:

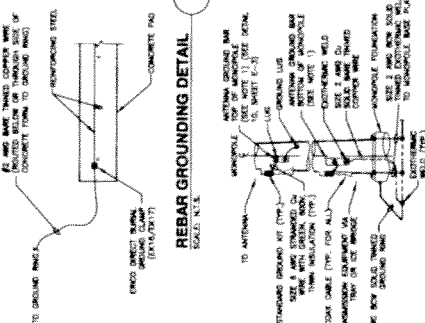
- [illegible]

- [illegible]

GROUNDING GENERAL NOTES

- [illegible]

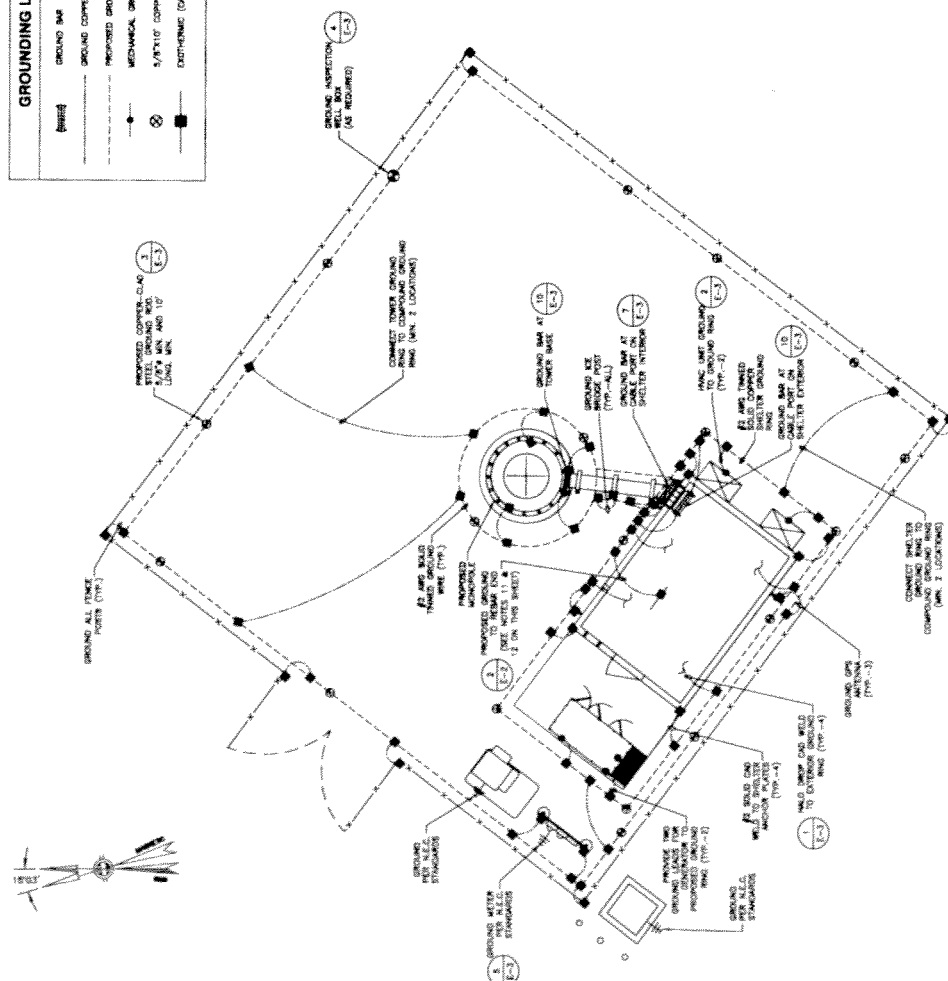
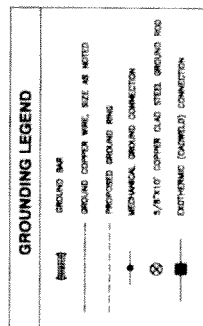
REBAR GROUNDING DETAIL



MONOPOLE GROUNDING

- NUMBER OF CARTRIDGE BANDS MAY VARY DEPENDING ON THE TYPE OF WORKSHEET, AIRGUN LOCATION AND COMPRESSION ORIENTATION.
 PREVIEW AS REQUIRED. ORANGE MARK IS NOT REQUIRED FOR MPMS

GROUNDING LEGEND



SCHEMATIC GRINDING BY AN

- NOTES:**
- GROUND UTILITY MATTER PER N.E.C. STANDARDS.
 - CONTRACTOR TO VERIFY WITH AEST MOISTURE C.M. FOR FINAL GROUNDING METHOD.
 - GROUNDING RING IS SHOWN AS SCHEMATIC ONLY. IT IS DESIGNED WITHOUT BENEFIT OF RESISTIVITY TESTING AND DOES NOT NECESSARILY REPRESENT A GROUNDING SYSTEM.

ABUTTER LIST

City of Rochester, NH
Please Print or Type

Applicant: AT&T Mobility c/o Nanepashemet Project Management, inc. Phone 781-727-6516

Project Address: 156A Lowell Street, Rochester, NH 03867

List the names and addresses of all parties below. For abutting lot owners, list each owner whose lot adjoins or is directly across the street or a body of water from the subject property. This form may not be completed more than five (5) days prior to submitting the application.

LEGAL OWNER OF SUBJECT LOT

Map	Lot	Zone	Owner Name	Mailing Address
244	2-1	R-1	Joseph P. Casavant	16 Sunset Lane, Somerset, NH 03878

ABUTTING LOT OWNERS

Map	Lot	Owner Name	Owner Mailing Address (NOT property location)
244	2	Norbert J & Constance J Hamann	8 Plant Street, Rochester, NH 03667
244	2	Scott R, Thorp	156 Lowell Street, Rochester, NH 03867
135	6	Kimberly A. Plante Living Tr,	6 Quarry Drive, Rochester, NH 03867
140	72	Donald E. & Joan M. Seavey	PO Box 874, Rochester, NH 03867
244	3	Leo J. Scarponi	PO Box 7187, Rochester, NH 03867
244	4	John C. and Paulette C. Britton	168 Lowell Street, Rochester, NH03867
134	22	Precision Media Corp.	200 E Basse Road, San Antonio, TX 78209

PROFESSIONALS AND EASEMENT HOLDERS. *Engineers, Surveyors, Soil Scientists, and Architects whose seal appears or will appear on the plans (other than any agent submitting this application); holders of conservation, preservation, or agricultural easements; and upstream dam owners/NHDES.*

Name of Professional or Easement Holder	Mailing Address

I, the undersigned, acknowledge that it is the responsibility of the applicant or his/her agent to fill out this form. I understand that any error or omission could affect the validity of any approval. The names and address listed on this form were obtained from the City of Rochester Assessing Office computer – Assess Pro (located in the Revenue Bldg at 19 Wakefield Street)

On this date: March 19, 2014 This is page 1__ of 1 pages.

Applicant or Agent: 

Planning Staff Verification:

R. J. Miller

Date: 3/21/14